

LAND SECURED FINANCING

**POLICIES AND PRACTICES
OF THE COUNTY OF SANTA CRUZ**

JUNE 2004

LAND SECURED FINANCING

POLICIES & PRACTICES

SUBJECT: SPECIAL DISTRICT FINANCING OF PUBLIC IMPROVEMENTS

PURPOSE: To set policy for the financing of public improvements through the creation of Assessment Districts and Community Facilities Districts (collectively referred to as Special Districts). These Special Districts may also be called Land Secured Financings, as bonds are secured by a lien on real property. This policy addresses the financing of public improvements and infrastructure, in conjunction with the associated administrative costs of a bond financing, and excludes funding for the operation and maintenance of facilities and other public services.

Additionally, this policy establishes the standards and criteria to determine the feasibility of special district financing given the public policy direction of the Board of Supervisors (the "Board").

POLICY: The Board will consider the use of special benefit Assessment Districts (**AD's**) to fund the cooperative and orderly construction of infrastructure improvements throughout the County.

The Board will also consider the use of Community Facilities Districts (**CFD's**) when, in the County's sole opinion, the public facilities to be constructed or acquired represents a significant public benefit. Significant public benefit may be defined as a public facility having regional impact and/or benefit beyond the proposed development.

In the case of undeveloped land the proposed development project must be consistent with the County's General Plan and have secured appropriate land use entitlements from the County to allow for the implementation of the ultimate development of the area.

Additionally, the combined total of property taxes, special assessments and special taxes collected on the property tax roll shall not exceed 2% of the average anticipated property sales price. Special Districts shall have a finite duration coinciding with the term of the bonds, typically 25 – 30 years. The rates, along with the calculation methodology and duration, will be clearly identified in the Engineer's Report submitted at a Public Hearing for each proposed Special District.

REFERENCES: The Board will consider the use of special benefit Assessment Districts (**AD's**) to fund the cooperative and orderly construction and/or acquisition of infrastructure improvements throughout the County.

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The Board will also consider the use of Community Facilities Districts (CFD's) when, in the **County's** sole opinion, the public facilities of a development represents a significant public benefit. Significant public benefit may be defined as a public facility having regional impact and/or benefit beyond the proposed development.

Community Facilities Districts are formed pursuant to the Mello-Roos Community Facilities Act of **1982** - Government Code Section 53311, et seq.

PRINCIPLES: The underlying principles of this policy are:

- To protect the public interest
- To assure fairness in application of the assessments, special taxes or fees to current and future property owners
- To assure full disclosure of the Special District
- To insure the creditworthiness of any Special District debt
- To protect the County's credit rating and financial position
- To assure that the applicants for Special District proceedings or parties benefited thereby, pay all costs associated with the formation of any Special District. All costs of County initiated proceedings shall be paid by the affected landowners.

This policy is intended to provide Staff and owners and developers of property located within the County with guidance in the application for and consideration of the establishment of Special Districts. It is not the intent of this policy to relieve any developer of responsibilities for public improvements or conditions of development related to the subdividing of property, the processing of tentative or final maps, **or** master plan developments. This policy does not supersede any law but the intent is to further restrict or clarify its use.

PRACTICES: **Written Request**

A written request for Special District financing may be initiated by the owners of the **property/residents** of the area subject to payment of the assessments or special tax, as defined per statutory requirements, as provided in the applicable statutes.

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Reimbursement Agreement

An advance reimbursement agreement shall be executed and a sum sufficient to pay all fees and costs for the Special District formation shall be deposited with the County by the proponents of the district prior to the beginning of formation proceedings, unless said advance funding requirement is waived by the Board in its discretion. The factors that the Board will consider in determining whether to waive the advance funding requirements are:

- (1) Whether the land is improved or unimproved;
- (2) Whether the land is owned by a single or small group of persons or whether diverse ownership exists;
- (3) Whether sixty percent (60%) or more of the landowners in the case of an Assessment District or sixty percent (60%) of the registered voters who voted in the last general election residing in the proposed Community Facilities District in the case of a Community Facilities District have signed the Petition requesting formation;
- (4) The nature of the public facilities; and
- (5) The public purpose and public benefits of the project.

Appraisal

An appraisal of the property may be required, in the discretion of the County, if the property is subject to any lien or tax required to secure any public financing. The appraisal shall be a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by presentation and analysis of relevant market information. The appraisal shall reflect nationally recognized appraisal standards.

A minimum property value to lien ratio is 3:1 (all ratios to be calculated assuming the public facilities being finances are completed and including any overlapping assessment districts or community facilities districts).

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Credit enhancements may be required at the discretion of the County. These enhancements may include, but are not limited to, letters of credit and/or bond insurance.

Market Absorption Study

A market absorption study of the proposed development project may be required, in the discretion of the County. The absorption study shall be used to determine if the financing of the public facilities is appropriate given the timing of development and if sufficient revenues will be generated by the project to retire the debt service.

Feasibility Report

A fiscal feasibility report may be required, in the discretion of the County if forty percent (**40%**) or more of the land within a district is substantially undeveloped. The report shall be prepared by or at the direction of the County. All costs for preparing the report shall be borne by the **applicant/developer**. An estimate of the report costs will be prior to initiating the study and the **applicant/developer** shall deposit that amount prior to starting the report.

CFD Apportionment Rate & Method

With regard to community facilities districts, the proposed rate and method of apportionment of the special tax shall comply with the following criteria:

- A. The primary emphasis of the special tax formula shall be equitable for the future property owner.
- B. The projected annual special tax revenues shall include annual administrative expenses and other direct operational costs to the community facilities districts as a result of community facilities district formation.
- C. The projected ad valorem property tax and other direct and overlapping debt for the proposed development project, including the proposed maximum special tax, shall not exceed two percent (**2%**) of the anticipated assessed value of each improved residential parcel upon completion of the improvements.

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- D. Each bond issue shall be structured to protect bond owners from default of the issue and to ensure the bonding capacity and credit rating of the County.

Disclosure

Full disclosure of the special tax or assessment lien shall be in compliance with applicable statutory authority. The disclosure notices provided to purchasers of property shall clearly state the amount of the maximum annual special tax or assessment which the property owner can be expected to incur. The County, in its sole judgment, may require additional property owner notification if it deems such disclosure will assist subsequent property owners' awareness of the lien obligation.

County Liability

All statements and material related to the sale of special tax bonds (community facilities districts) and improvement bonds (assessment districts) shall emphasize and state that neither the faith, credit, nor the taxing power of the County is pledged to the repayment of the bonds, nor that there is an obligation of the County to replenish the reserve fund from revenue sources other than special taxes, annual assessments or proceeds from foreclosure proceedings. The County has no contingent liability for the debt service.

Consultants

The County shall, in its sole discretion, select all professionals including, without limitation, Bond Counsel, Disclosure Counsel, **Underwriter** Financial Advisor, Appraiser, Absorption Consultant, Special Tax Consultant, Engineer, and others.

GLOSSARY:

Assessment – Any levy or charge by the County upon real property that is based upon the special benefit conferred upon the real property.

Assessment District – A special district formed by the County that includes property that will receive direct benefit from the construction of new public improvements. The most common type of public improvements financed include roads, sidewalks and drainage.

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Community Facilities District Act of 1982 – Authorizes local governments to create ^{CFDs} for the purpose of financing facilities and certain services and issuing bonds to fund public improvements. Property owners within a CFD pay a ‘special tax’ to repay the bonds.

Improvement Bond Act of 1915 – Authorizes cities, counties and public districts which use other assessment acts to issue bonds.

Mello-Roos – In 1982 Senator Henry **Mello** and Assemblyman Mike **Roos** affected the passage of the Community Facilities District Act of **1982**.

Municipal Improvement Act of 1913 – Lets cities, counties and special districts levy benefit assessments for the construction and maintenance of public facilities including streets, sidewalks, sewer systems, drains, lighting, etc.

Special District – Within this policy, the term Special District refers to Assessment Districts and Community Facilities Districts together.

Special Tax – Requires approval by two-thirds of the qualified voters in the district and provides for a landowner election if less than **12** registered voters in the district.

Value to Lien Ratio – The value of the taxable or assessed property, including the public improvements proposed to be financed, relative to the amount of the assessment or special tax debt.