

**COUNTY OF SAN DIEGO, CALIFORNIA
BOARD OF SUPERVISORS POLICY**

Subject

Comprehensive Goals and Policies for Community Facilities Districts

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Purpose

In compliance with Section 53312.7 of the Government Code, the County of San Diego (County) has developed the following Goals and Policies where special taxes may be levied within the boundaries of a Community Facilities District (CFD) within the unincorporated areas. It is the County's goal to support projects that address a public need and provide a public benefit. Proposed projects requesting CFD financing of public facilities and/or services will be evaluated to determine if such financing is viable and in the best interest of the County and current and future County residents.

As an alternative, the California Statewide Communities Development Authority (California Communities) has adopted Goals and Policies that meet the requirements of Section 53312.7. This means that the County of San Diego may turn all functions of a particular CFD formation over to the California Communities, which would then be the lead agency for formation and financing of the District. This County set of goals and policies is meant to align with and supplement the California Communities' adopted Goals and Policies.

In accordance with Board of Supervisors Policy B-65: *Long-Term Obligations and Financial Management Policy*, the management and planning for the long-term financial outlook and obligations that bear the County of San Diego's name or name of any related Agency for the County must be properly managed. The Chief Administrative Officer established the Debt Advisory Committee (DAC) to provide direct oversight on long-term financings and the portfolio of the County's long-term obligations. As the Board may consider assessment district and community facilities district financings, whether initiated by petition of the property owners, the County or a non-County agency, initial contact will be directed to the DAC. If the Committee decides that the financing is feasible, financially and economically prudent, coincides with the County's objectives, and does not impair the County's creditworthiness, it then will be forwarded to the Board of Supervisors for consideration.

1. Definitions

Unless the context otherwise requires, the terms employed in the following policies shall have the meanings specified below:

"Ad valorem Property Tax" means any source of revenue derived from applying a property rate to the assessed value of property.

"Bonds" means bonds authorized and issued under the Mello-Roos Act.

"County" means the County of San Diego, California.

"District" means a community facilities district formed under the Mello-Roos Act. The term "District" may also refer to a separate improvement area of the District.

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“Lien” means, in the case of public debt imposed on a parcel or parcels, the amount of debt attributable to a parcel or parcels, based on an apportionment of the debt to such parcel or parcels in relation to the probable debt service to be borne by such parcel or parcels.

“Mello-Roos Act” means the Mello-Roos Community Facilities Act of 1982 (Mello-Roos Act) as amended.

“Public Facilities” means improvements authorized to be constructed or acquired under the Mello-Roos Act, including, but not limited to, fees for capital facilities.

“Public Services” means any service authorized by the Mello-Roos Act.

“Value” or **“Fair Market Value”** means the amount of cash or its equivalent which property would bring if exposed for sale in the open market under conditions in which neither buyer nor seller could take advantage of the exigencies of the other, and both have knowledge of all the uses and purposes to which the property is adapted and for which it is capable of being used, and of the enforceable restrictions upon uses and purposes.

“Value-to-lien Ratio” means a calculation to measure the number of times the value of a property exceeds the sum of the Liens, including any proposed liens.

2. General Policies

The County will consider applications requesting the formation of CFDs and the issuance of bonds to finance eligible public facilities pursuant to the Mello-Roos Act. An application to form a CFD must be completed prior to any determination that a CFD will be formed. The County reserves the right to request any additional reports, information or studies reasonably necessary in evaluating the application. All applications and their proposed facilities and services will be considered on a case by case basis.

These Goals and Policies contain the following requirements:

- A. A statement of the priority that various kinds of public facilities and services shall have for financing through the Mello-Roos Act.
- B. A statement concerning the credit quality to be required of bond issues, including criteria to be used in evaluating the credit quality.
- C. A statement concerning the disclosure requirements to ensure that prospective property purchasers are fully informed about their tax obligations.
- D. A statement concerning criteria for evaluating the equity of tax allocation formulas, and concerning desirable and maximum amounts of special tax to be levied against any parcel pursuant to the Mello-Roos Act.

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E. A statement of definitions, standards and assumptions to be used in appraisals. The County may confer with other District consultants and the applicant to learn of any unique District requirements such as regional serving facilities or long-term development phasing prior to making any financial determination.

All County and consultant costs incurred in the evaluation of new development, District applications, and the establishment of Districts must be paid by the applicant(s) by advance deposit increments. The County will not incur any non-reimbursable expense for evaluating and/or processing Districts. Any expenses incurred by the County that are not prepaid shall be promptly reimbursed by the applicant. The County may obtain reimbursement from any subsequent deposit from applicant.

3. Eligible Public Facilities and Services

In accordance with the Mello-Roos Act, improvements eligible to be financed must be owned by a public agency, public utility or private entity, and must have a useful life of at least five years. The County will retain final determination as to any Public Facility's eligibility for financing, as well as the prioritization of Public Facilities and/or Public Services to be included within a given proposed District's financing plan.

Except for Public Facilities completed to the satisfaction of the County prior to formation of a District, all Public Facilities to be acquired or constructed by the CFD will be required to be constructed in a manner as if it had been constructed by the County or other government entity that will own or operate the facilities.

Public Facilities eligible to be financed by a District include any facility eligible to be financed under the Mello-Roos Act as it now exists or may be amended in the future. These include, but are not limited to, construction of:

- Streets, highways and bridges
- Street lighting
- Traffic signals, roundabouts, traffic circles, and safety lighting
- Parks, trails, pathways, open space and recreation facilities
- Governmental facilities
- Sanitary sewer facilities and stormwater structural best management practices (BMPs)
- Storm drain facilities
- Potable and reclaimed water facilities
- Flood control facilities
- Fire stations
- Libraries
- Public utilities

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Subject to limitations set forth in the Mello-Roos Act, Public Services eligible to be financed by a District include any service eligible to be financed under the Mello-Roos Act as it exists now or may be amended in the future. These services include, but are not limited to:

- Police, fire protection, emergency medical services including paramedic services
- Operation and maintenance of recreation facilities
- Biological mitigation measures involving land acquisition, dedication and revegetation
- Street lighting and public rights of way landscaping
- Road maintenance, including bicycle and pedestrian facilities
- Operation and maintenance of storm drain facilities and stormwater structural BMPs

Public Services are subject to limitations set forth in the Mello-Roos Act. In those instances where Public Services necessary to support a development are not eligible for Mello-Roos Act financing, or where the County elects not to form a CFD, the County may require a developer as a condition of approval to form a special district pursuant to applicable law or provide for private maintenance by a mechanism acceptable to the County. The County may also require annexation into an existing special district, such as a Permanent Road Division Zone or Landscape Maintenance District Zone to provide ongoing maintenance of facilities.

Special Tax Formula

Tax Burden Limit. The total of the following burdens, when taken in the aggregate, at the time of adoption of the special tax, may not exceed 1.86 % of the estimated sales price of the subject properties to an end user within the District:

- A. *Ad valorem* property taxes levied by the County.
- B. Voter *approved ad valorem* taxes levied by the County in addition to the *ad valorem* property taxes described above.
- C. Special taxes levied by any existing District for the payment of bonded indebtedness or on-going services.
- D. Assessments levied for any assessment district or maintenance district for the payment of bonded indebtedness or services.
- E. The assigned special tax for the proposed District.
- F. The maximum special tax shall include the reasonable and necessary annual administrative costs of the County to administer the District (a portion of these costs may be established as superior in lien position to the debt service).

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The assigned special tax for any parcel within a District may escalate annually, but not by more than six percent (6%) per year if used to fund Public Services and not by more than two percent (2%) if used to fund Public Facilities or Bonds secured by the District.

The County shall retain a special tax consultant to prepare a report which:

- A. *Recommends* a special tax method for the proposed District, and
- B. Evaluates the special tax proposed to determine its ability to adequately fund identified Public Facilities, fees, County administrative costs, services (if applicable) and other related expenditures. Such analysis shall also address the resulting aggregate tax burden of all proposed special taxes plus existing special taxes, *ad valorem* taxes, and assessments on the properties within the Districts.

4. Property Owner and Voter Support

Special taxes to be imposed by a District are subject to a 2/3rds voter approval requirement. To assess the possibility of successful formation of a District and allow the County to calculate the required processing deposit, petitioners seeking to form a District shall include in the petition evidence that the special tax is supported by at least 2/3rds of the persons residing in the District in the case of an inhabited District and at least 2/3rds of the property owners owning property subject to special tax where the District has 12 or fewer registered voters or is uninhabited.

5. Disclosure to Purchasers

Statutory requirements of disclosure to property purchasers are contained in the Mello-Roos Act, most notably, but not limited to, Sections 53328.3, 53328.5 (including the referenced sections of the California Streets and Highways Code), 53340.2 and 53341.5. The following County Policy is meant to ensure compliance with State law.

The applicant or property owner will be required to demonstrate to the satisfaction of the County that there will be full disclosure of this and any other special tax, assessment, or other liens on individual parcels of which the seller or lessor has knowledge to existing and future property owners. In addition to all requirements of law, the County shall require the applicant to provide disclosure of such information as the County deems appropriate to the purchasers of property within the District, with respect to the existence of the District, amounts of assessments or special taxes to be levied within the District, and the terms and conditions of bonds issued on behalf of the District. Such disclosure shall take place prior to sale, and may include homebuyer notifications requiring signature prior to home sales, as well as methods to notify subsequent home purchasers.

The County will require that the applicant provide the County with copies of each and every signed disclosure within 90 days of close of escrow.

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6. Security

For new development, the applicant or property owner must demonstrate its financial plan for the property within the District and ability to pay all special taxes during the build-out period. Additional security such as credit enhancement may be required by the County in certain instances. If the County requires letters of credit or other security, the credit enhancement shall be issued by an institution in a form and upon terms and conditions satisfactory to the County. All fees payable on the letter of credit or other security shall be the sole responsibility of the applicant or developer, not the County or District.

7. Bond Financing Requirements

A. Value-To-Lien

The County requires a District-wide value-to-lien ratio of at least 4:1 for a District. The District property value-to-lien ratio for each individual parcel within the District may be less than 4:1, but not less than 2:1, as long as the overall valuation of the District is at least 4:1. Valuations shall be determined based upon an independent appraisal of the proposed District properties. Assessed valuation data from the County may be used for valuation purposes in lieu of an appraisal report.

The County shall have discretion to retain a consultant to prepare a report to verify market absorption assumptions and projected sales prices of the properties which may be subject to the maximum special tax in the District. Such a report may be used by appraisers in determining the value of property to be taxed.

B. Credit Enhancement

The County may, at its discretion, require additional credit enhancement or lower the threshold at which a letter of credit must be provided in order to increase the credit quality of any bond issue. Credit enhancements may be required in additional situations where there is an insufficient value-to-lien ratio, a substantial amount of property in the District is undeveloped; tax delinquencies are present on parcels within the District; and in any other situation as required by the County. As a practical matter, such additional requirements will generally be the result of recommendations made by the County's bond counsel, financial advisor, bond underwriter, or other members of the County's financing team.

The form of credit enhancement is subject to the approval of the County and the County shall impose specific requirements (including but not limited to an absorption study) with respect to such credit enhancement on a case-by-case basis.

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If the California Communities forms a Community Facilities District within San Diego County, the California Communities' Goals and Policies provisions regarding credit enhancement shall prevail.

Significant Property Owners. Owners of the property in a District who are deemed responsible for 33% or more of the debt service obligation of a given bond issue (Significant Property Owner) secured by the District are required to provide a letter of credit or cash deposit in an amount equal to one year's special taxes on their property based on current assessed value (Credit Enhancement). The letter of credit may be drawn on if and to the extent that the landowner is delinquent in paying its special taxes.

A Significant Property Owner may submit a request to reduce or terminate the Credit Enhancement provided pursuant to these Goals and Policies. This request shall be accompanied by documentation in support of such request. The County will review such request to determine (a) the percentage of annual special tax payment obligation applicable to property owned by the property owner submitting the request and (b) the annual amount of special taxes applicable to such property. These requests shall not be submitted more frequently than every six months.

If the County determines, based on its review of the information submitted, that the percentage of debt service the Significant Property Owner is responsible for has fallen below 33%, the County shall notify the Significant Property Owner and release the Credit Enhancement. If the County determines that such percentage remains at 33% or above but that the amount of one year's special tax payment obligation has decreased, the County shall notify the Significant Property Owner and cooperate with the Significant Property Owner in obtaining a reduced amount of Credit Enhancement.

C. Terms and Conditions of Bonds

Unless otherwise authorized by the County, the following shall serve as bond requirements:

- 1) A reserve fund shall be set at the lesser of the three tests:
 - i. 10% of par amount,
 - ii. maximum annual debt service, or
 - iii. 125% of average annual debt service.
- 2) Interest may be (capitalized) for up to 24 months.
- 3) The maximum term of the bonds issued shall not exceed 35 years.
- 4) Debt service on the bonds may increase by not more than two percent (2%) per year.

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5) The debt service shall be established at a level such that the anticipated Assigned Special Taxes, as this term is customarily defined in the Rate and Method of Apportionment, produces at least 110% coverage of debt service on all bonds secured by such special taxes.

6) All statements and documents related to the sale of bonds shall emphasize and state that (i) the Bonds are limited obligations of the County and neither the faith, credit nor the taxing power of the County is pledged to security or repayment of the bonds, (ii) the sole source of revenues are special taxes, the debt service reserve fund or proceeds raised by foreclosure proceedings, and (iii) the County shall not be obligated to make payments of principal, interest or redemption premiums (if any) from any other source of funds.

7) Bond indentures may include provisions allowing for immediate collection of delinquent taxes, including provisions for the subject district to cause judicial foreclosure proceedings to be filed in the Superior Court, within 90 days of determination of delinquency, against any such property for which Special taxes remain delinquent.

The County retains the right to withhold public financing in its sole discretion. Issuance of bonds and receipt of bond funds by the County does not guarantee payment of any funds to the applicant/developer.

8. District Cost Deposits and Reimbursements

All County and consultant costs incurred in the evaluation of District applications and the establishment of Districts will be paid by the applicant by advance deposit increments. Except for those applications for Districts where the County is the applicant, the County shall not incur any non-reimbursable expenses for processing and administering applicant-initiated Districts. Any expenses incurred by the County that are not prepaid shall be promptly reimbursed by the applicant. The County may obtain reimbursement from any subsequent deposit from applicant.

Each application for formation of a District shall be accompanied by an initial deposit in the amount determined by the County to fund initial staff time and consultant costs associated with District review and implementation. Deposit terms and conditions will be defined by a deposit and reimbursement agreement to be executed by the applicant and the County, as soon as practical after receipt of an application, with amount of deposit to be commercially reasonable. The Director, Planning and Development Services, or Director's designee ("Director") is delegated authority to enter into these agreements on behalf of the County. The County may in its discretion deem a unilateral agreement in a unanimous consent to District formation that is accompanied by full payment of the County determined deposit and which contains terms acceptable to the Director to satisfy this requirement. If additional funds are needed to off-set costs and expenses incurred by the District, the County shall make written demand upon the applicant for such funds and the applicant shall comply with each demand within ten (10)

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business days of receipt of such notice. If the applicant fails to make any deposit of additional funds for the proceedings the County may suspend all proceedings until receipt of such additional deposit.

The deposits shall be used by the County to pay for actual costs and expenses incurred by the County relative to the proceedings, including but not limited to, legal, engineering, appraisal, special tax consultant and financial advisory expenses; documented County staff time, administrative costs and expenses; required notifications; and printing and publication of legal matters.

The County shall refund any unexpended portion of the deposits upon the following conditions:

- A. The District is not formed;
- B. Bonds are not issued and sold by the District;
- C. The proceedings for formation of the District or issuance of bonds is disapproved by the County; or
- D. The proceedings for formation of the District or issuance of bonds are abandoned in writing by the applicant.
- E. Except as otherwise provided herein, the applicant shall be entitled to reimbursement for all reasonable costs and expenses incident to the proceedings and construction of the Public Facilities as provided under the Mello-Roos Act, provided that all such costs and expenses shall be verified by the County as a condition of reimbursement.

The applicant or property owner shall not be entitled to reimbursement from bond proceeds for any of the following:

- A. In-house administrative and overhead expenses incurred by the applicant, or expenses of applicant's counsel or consultants; and
- B. Interest expense incurred by the applicant on moneys advanced or expended during the proceedings and construction of public facilities;

The County shall not accrue or pay any interest on any portion of the deposit refunded to the applicant or the costs and expenses reimbursed to the applicant. Neither the County nor the District shall be required to reimburse the applicant or property owner from any funds other than the proceeds of bonds issued by the District and moneys remaining in the deposit account as provided above. Excess funds on deposit after the formation of the proposed District will be refunded to the depositor.

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9. Use of Consultants

Only in cases where the California Communities is not involved, the County shall select all consultants necessary for District formation and bond issuance, including the underwriter(s), bond counsel, financial advisor, appraiser, market study consultant, assessment engineer, and the special tax consultant. Prior consent of the applicant shall not be required in the determination by the County of the consulting and financing team. However, the applicant may make recommendations to the County on an advisory basis in their application.

No firm may serve as both design engineer and engineer of work and special tax consultant on the same District.

10. Exceptions to These Policies

The County reserves the right to amend or modify these policies at any time as well as to make exceptions or changes for specific financing projects, as facts or circumstances so warrant.

The County may find in limited and exceptional instances that a waiver to any of the above stated policies is reasonable given identified special County benefits to be derived from such waiver or in the case of resident-voter Districts. Such waivers are granted only by action of the County Board of Supervisors based on specific public purpose, health and safety findings, and/or financial matters.

Sunset Date: This policy will be reviewed for continuance by 12-31-2029.

Previous Board Action

- 02-28-07 (9)
- 05-14-08 (9)
- 12-09-08 (33)
- 09-25-12 (11)
- 12-16-15 (8)
- 11-16-22 (8)

CAO Reference

1. Department of Planning & Development Services
2. FG3 Executive Office / Office of Financial Planning
3. Department of Public Works
4. Department of Parks & Recreation
5. County Fire Protection District