

Frequently Asked Questions — Special Assessments

September 2020

What is a special assessment?

State legislation may authorize a State or its component jurisdictions (i.e., counties, cities, towns) to impose a charge against real property for certain types of projects. A jurisdiction wishing to use this authorization will enact an ordinance to implement special assessments. The key to a special assessment is that the real estate parcels subject to this fee must receive a “direct and special benefit” from the project. Typically, a direct and special benefit may be manifested by an increase in the value of land served by a particular project. Extension of public water, sewer, and roads to previously unserved places are typical of projects that create a direct and special benefit. Likewise, a municipal parking structure or a flood control project might create benefits for some properties but not for others—and are thus candidates for being funded, in whole or in part, by special assessments.

Sometimes, a facility improvement, such as a sewer connection or curb cut, benefits a single property. In other instances, facility improvements, such as a municipal parking garage, a new highway interchange, or a transit station, benefit multiple properties. In instances with multiple beneficiaries, the process of determining which properties receive a unique and direct benefit, and creating a boundary within which the special assessment is levied, will be determined by the special assessment authorizing legislation and will be reflected in a particular special assessment ordinance. This bounded area is known as a special assessment district (SAD).

Regardless of the method chosen for apportioning the fee among benefiting properties, the total revenue collected cannot exceed the benefits created or the costs incurred by the public sector. Determining the nature and extent of the special and direct benefit helps determine how the fee will be apportioned. For curb cuts or connections to

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water and sewer lines, a flat fee related to the actual cost of the work is likely. For the extension of a water line or road, the cost of the project often is apportioned among the benefiting properties by one of the following methods:

- Dividing the costs by the distance of the infrastructure extension adjacent to each property (front footage)
- Dividing the costs by the number of properties being served
- Applying a percentage property tax surcharge against the total property value
- Applying a percentage property tax surcharge against the land value only

Are there other names for this funding technique?

SADs are referred to by different names, including:

- Benefit assessment district
- Transportation improvement district
- Downtown improvement district
- Public improvement district
- Community improvement district (CID), business improvement district (BID), neighborhood improvement district, or special services district (SSD)

Is a SAD the same as an SSD, a BID, or a CID?

SADs, SSDs, BIDs, and CIDs are similar, but they are different in some key respects. SADs are established and administered by a local jurisdiction. In contrast, SSDs are independent elected public bodies with enumerated taxing and administrative powers established to fulfill a function, or set of related functions, not being handled by existing jurisdiction(s). These might include street lights, drainage, sanitation, water and sewer services, power generation and distribution, or landscaping of public spaces.

In some cases, properties within an SSD might span multiple jurisdictions. For example, a flood control district, defined by a watershed, could include several jurisdictions. Although some school districts are organized like SSDs with public elected boards empowered to raise taxes and spend revenues for facilities and teachers, they are classified as “school districts” and not as “special service districts.” States may establish criteria for creating SSDs. A special election by the voters within the designated area is typically necessary to create an SSD. Often, they are created by developers when the developer is the only voter within the designated area. Once established, they are accountable to all residents within the SSD. In California, they are called community facilities districts (CFDs) or Mello-Roos districts (after the names of the State legislators who created them in the 1980s).ⁱ Due to Proposition 13, CFDs may not use the value of the properties as a basis for calculating the fee. Instead, CFDs could divide the cost of the facility or service by front footage (good for sidewalks or water and sewer lines) or by the number of properties served if it appears that each property receives roughly the same benefit (e.g., street lighting).ⁱⁱ

A BID is an entity authorized by the State and created by a local government. However, it is run by private property owners to provide enhanced services in the public realm. These service enhancements might include more frequent street litter pickup, landscaping, hospitality services, or public entertainment. The public sector might not be able to provide this level of service throughout the jurisdiction, and

might conclude that providing additional services within a small area would be inequitable. On the other hand, if some private landowners within a neighborhood agreed to fund these additional services and other landowners in this neighborhood did not contribute, the non-contributing landowners would receive the benefits without paying the costs. To avoid this “free-rider” problem, some jurisdictions provide a process whereby property owners can elect to create a BID, select its directors, and establish a mandatory fee to be collected by the jurisdiction in addition to (and as part of) its regular property tax collection process. However, revenues from this additional mandatory fee are not spent by the jurisdiction that collects them. Instead, the BID revenues are distributed to, and administered by, the BID directors. Thus, BIDs are created by, and accountable to, property owners within their boundaries.

Community improvement districts (CIDs), as established in Georgia and Missouri, are similar to BIDs because they are typically initiated and administered by developers or commercial property owners. However, their fundraising and planning powers are more robust, akin to SSDs, allowing them to take on significant capital infrastructure projects.

Similarities:

- Both SADs, BIDs, and CIDs are districts within a single jurisdiction subject to the rules established by that jurisdiction.
- Property owners in SADs, SSDs, BIDs, and CIDs pay an additional fee on top of their regular property tax payments.

Differences:

- SADs are typically set up to pay for one-time capital improvement projects that are constructed by a public agency. (Special assessment payments may be structured to pay off the cost of a one-time capital improvement over a specified number of years.)
- SADs are initiated and administered by a jurisdiction responsible for making certain types of capital improvements.

- SSDs are independent, special-purpose elected bodies that have the power to levy taxes and/or fees as enumerated by State authorizing legislation. In California, Proposition 13 prohibits CFDs from levying an *ad valorem* property tax. In other words, the fee must be based on something other than real estate value. (See the [question below regarding the type of analysis typically required for implementation.](#))
- BIDs are typically set up to pay for ongoing services.
- BIDs are created by the property owners pursuant to local enabling legislation. If a BID is created, property owners elect a BID director or directors to administer BID funds. The directors are accountable to the property owners.
- CIDs in Georgia and Missouri are distinguished from BIDs by more robust capital infrastructure planning, funding, and financing capabilities.

What are the potential advantages and disadvantages of special assessments?

As discussed in recent value capture research reports,ⁱⁱⁱ the potential advantages and disadvantages of special assessments include:

Advantages:

- To the extent that some public projects confer measurable benefits primarily to benefited properties, it could be inequitable to fund such projects equally from all taxpayers. Special assessments can enhance funding equity by ensuring that property owners who receive a special and direct benefit pay their fair share.
- Important projects that would likely be opposed by most taxpayers (on the grounds that they would pay more than their fair share) can avoid this opposition and be approved as part of a jurisdiction's capital improvement budget.
- Special assessments are easy to collect because the property tax collection apparatus is already in place.

Disadvantages:

- Project benefits that are related to proximity to a facility typically taper off as distance from

the facility increases. But SAD boundaries are rarely so nuanced. Typically, SADs will require all property owners within the SAD to pay the same fee, even if some owners within the SAD benefit more than others. Additionally, property owners immediately outside the SAD do not pay the fee, even though their distance from properties inside the SAD (and the difference in the level of benefits received) may be negligible. In some cases, a SAD is divided into zones with properties in the zone closest to the infrastructure improvement paying a higher fee than properties in the zone farther away. However, the boundaries are inherently somewhat arbitrary.

- Creating a SAD will likely focus the attention of property owners within the district's boundaries on a proposed project and its associated fees. This could lead to political opposition to the project. However, outreach to affected property owners prior to creation of a SAD may reduce the likelihood of this occurring.

What types of infrastructure projects could special assessments support?

The answer to this question can be found in the State statute that authorizes the creation of special assessments and special assessment districts. But at a minimum, the types of projects supported by special assessments are those that confer a particular benefit within a limited geographic area.

Less complex projects like water and sewer connections, curb cuts, and first-time paving of streets and sidewalks may entail a one-time fee levied against the adjacent benefiting properties. An example of a more complicated project would be the creation of a municipal parking garage. It might be deemed to benefit commercial properties within a certain distance of the garage. This distance would identify the boundaries of the SAD. However, non-commercial properties within that boundary might be exempted if it is determined that they will not benefit from the garage. In that case, the fees would be calculated by dividing the garage's benefits (or costs) among the identified commercial properties within the SAD according

to criteria established in the SAD's implementing ordinance.

Could special assessments be used for construction, operations, or maintenance?

The answer to this question can be found in the State statute that authorizes the creation of special assessments and special assessment districts. Typically, they are used for construction expenses and improvement expenses. But, if the State enabling statute allows, they could be used for any legitimate governmental spending related to the facility that justifies the special assessment.

What is the timing of revenues?

The timing of revenues depends upon the legislation creating the special assessment. For simple water and sewer connections, there is typically a one-time fee. For larger construction projects, jurisdictions may decide to issue bonds to provide the up-front cash. The special assessment can then be calculated so that it raises an amount equal to the annual debt service on the bonds. Typically, once the bonds are retired, the special assessment ends.

Are the revenues from a special assessment constant, or do they change over time?

The State authorizing legislation typically sets permissible parameters for calculating special assessment fees. Within these parameters, there might be multiple possible methods for fee determination. The local legislation establishing a SAD for a particular purpose or project will answer this question. For example, construction costs related to sidewalks, utility pipes, and streets are typically proportional to the distance of the facility being constructed. Thus, a "front-foot" fee is sometimes used for such purposes. Property owners pay a one-time fee based on number of feet of sidewalk, street, or pipe that are constructed adjacent to the property. This yields a predictable, one-time fee.

Alternatively, special assessments might be calculated as a percentage of a property's value when the project is undertaken. This yields predictable revenue throughout the duration of the special assessment as defined in its implementing

legislation. However, if the fee was calculated as a percentage of property value during each year of the assessment's duration, and if property values changed during this time, then fees for individual property owners might change over time. However, debt service typically requires fixed payments and property owners are typically opposed to uncertainty about future fees. For these reasons, SAD revenues are typically established to be constant.

What types of financing tools could special assessments support?

Except for one-time fees (e.g. water and sewer hook-ups, sidewalk paving), special assessments for large capital projects are designed to yield revenue annually for a fixed number of years. Such a revenue stream could potentially support any legally permissible debt instrument. Additionally, if a project is eligible for Federal loan guarantees, such guarantees can reduce the interest rates applied to bonds, loans, or other financing instruments and thereby reduce the special assessment revenue requirement accordingly.

Are special assessments better suited for urban, suburban, or rural areas?

Special assessments can be implemented in any of these areas. The key is whether each of these areas is well-suited for the infrastructure project being contemplated. Typically, density makes infrastructure more affordable by spreading fixed, linear costs over more taxpayers. As density decreases, the cost per taxpayer rises regardless of whether the fee is based on a "front foot" basis, a percentage of property value, or some other calculation. However, flood control projects in rural areas, such as the Miami Conservancy District in Ohio, have been funded by special assessments based upon the increased value of farmland that results from the reduced risk from flooding.^{iv} The Wright Act of 1887^v (as amended in 1917) funded irrigation districts in California through water consumption user fees combined with special assessments based on land values. The improved access to irrigation increases land values, even if no water is actually consumed.

How do market conditions impact the appropriateness or efficacy of special assessments?

Market conditions typically impact the economic viability of infrastructure projects. If bonds are used to provide the up-front cash for a project, the bond underwriters will want to ensure that the assessed value of real property within the SAD is sufficient so that any fee on that value yields sufficient revenue for the debt service without imposing undue financial hardship on the property owners. Taxpayer hardship could lead to a failure to make payments, which would threaten the bondholders' right to repayment.

If the fee is based on the value of property assessments in each year (as opposed to the value of assessments when the project is undertaken), then this would add more market risk to the calculation of the fee and more risk of non-payment.

Could special assessments provide funding for a project in its entirety, or only partial funding?

This answer depends both on technical and equity calculations. The technical calculation would be based on the magnitude of the benefits created by the project and the degree to which these benefits are general (for all taxpayers) or unique (primarily for nearby property owners). For example, a municipal parking garage might create a special benefit for commercial properties within walking distance, but not for residential properties within that same area. Creation of SADs typically requires a public hearing, at which the public could question or dispute any analysis about the distribution of benefits. The combined funding from general taxpayers and from those subject to a special assessment should not exceed total project costs. If there are no general benefits, then State or local officials may find it reasonable for the benefiting properties to pay the entire local share of the cost.

The equity calculation is based on the capacity of general taxpayers and proximate property owners to tolerate additional taxes or fees. Case law generally requires a rational basis for the distribution

of taxes and fees, and all taxpayers in the same category must be treated uniformly. Practitioners are advised to consult with their legal counsel when enacting special assessments.

When projects are partially funded using SADs, it is important to avoid funding the same part of a project twice. If Title 23 funds are used on any part of a project also funded by a SAD, officials should be careful to avoid over- or under-compensating landowners whose property is taken or damaged by the project. For example, if property is taken (in whole or in part) for a project and the compensation to a landowner is diminished by the "special benefit" that the landowner's remaining and unimpaired land will receive, charging that landowner a special assessment for the special benefit will result in an overcharge because the benefit was already used to offset compensation for a Fifth Amendment taking.

What is the legislative process for implementation?

Typically, the ability to create special assessments (and special assessment districts) is defined in State law. If permitted by State law, a local law or ordinance typically needs to be enacted to define the purpose, geographic area, and funding plan for a particular SAD.

Is voter approval required?

Some State laws authorize local jurisdictions to create special assessments and SADs under specified circumstances. In those cases, prior approval by voters generally (or property owners in particular) is not necessarily required, although public hearings are typically required. However, depending on the applicable law, creation of a business improvement district or a special services district often requires a vote of the affected property owners because they are subjecting themselves to a new governing entity.

What type of analysis is typically required prior to a special assessment?

The State statute authorizing special assessments will typically provide requirements in this regard. Local implementing ordinances may have additional requirements. To survive judicial review, a jurisdiction typically must show a relationship between the properties required to

pay a special assessment and some direct and unique benefit from a new or improved public good or service that is not received by the general public. Additionally, the jurisdiction must often show that the required payment is proportionate to the benefit received. See the discussion about the determinations of boundaries and the setting of rates below.

How are the boundaries of a SAD determined?

As mentioned previously, certain types of public infrastructure confer unique advantages (or disadvantages) to nearby properties. These advantages and disadvantages often are measured in terms of changes in nearby land value. Typically, the advantage or disadvantage created by a public facility, in terms of impact per square foot or impact per acre, will be larger nearest to the facility and smaller as distance from the facility increases. If local real estate professionals have expertise regarding the significance and extent of the benefit from a particular facility, utilizing this expertise to inform the creation of the SAD boundaries could help jurisdictions avoid a finding that the boundaries are arbitrary. (Local real estate professionals should be free from any conflicts of interest before being utilized in this manner.) The legislative body establishing the SAD will hold hearings (as with any proposed legislation) as a way to obtain information from affected property owners and to provide due process.

How is the amount of the fee determined?

The sponsoring jurisdiction will typically prepare a report detailing the cost of the project, the benefits of the project and a proposed fair apportionment of the costs among the beneficiaries. The amount of revenue to be raised by a special assessment could be actual cost (either total cost or a portion thereof, depending on the ratio of general benefits to unique benefits) apportioned according to:

- Cost per property: Absent special circumstances, standard procedures such as water and sewer connections or curb cut permits, have identical, fixed costs per procedure. For these standard procedures, a jurisdiction might enact a fee schedule.

Alternatively, if a SAD is created and each property within it will receive approximately the same benefit regardless of property size, value, or location within the SAD, then the project costs could simply be divided by the number of properties. In either of these cases, a special assessment might be calculated based on actual cost or a percentage thereof.

- The amount of frontage: For sidewalks, new utility lines or pipes, and the first-time paving of streets, costs are primarily related to distance. Thus, a jurisdiction might employ a “front-foot” calculation based on the distance that the sidewalk, pipe, or street must be constructed adjacent to each particular property. A jurisdiction might make an exception for corner lots which may have twice as much frontage, but which arguably would not receive twice as much benefit.
- Land value: As mentioned previously, new or improved public facilities and services often increase the value of nearby land. Therefore, the special assessment could be calculated as a percentage of publicly-created land value. Pursuant to the Wright Act of 1887 as amended, irrigation districts in California were funded in part by fees levied against the value of land within the districts. Likewise, flood control along the Miami River in Ohio was funded from special assessments on the value of farmland that increased in value due to the lower risks of flood damage. Pittsburgh’s BID, the Pittsburgh Downtown Partnership, calculated its fee based on a rate applied only to land value.
- Total value: Many jurisdictions calculate a special assessment as a percentage of the total property value, including the value of privately created buildings. Such an assessment is partially a value capture fee and partially a tax on privately created building value. NOTE: If improved infrastructure enhances nearby land values, two adjacent lots of the same size and

zoning within the SAD will receive roughly the same benefit. However, if the fee is based on total assessed value, and one lot is developed and other is vacant, the developed lot will pay much more than the vacant lot for the same benefit.

Are the determinations of boundaries or fees updated?

Special assessments are typically a one-time charge or an annual charge for a set number of years. Typically, once the determination of boundaries, fee calculation, and duration are made, they do not have to be updated.

What are the legal tests?

As documented in NCHRP Research Report 873^{vi}, a governmental entity creating a special assessment generally must document that:

- A particular facility or service will create benefits for particular properties that are unique and special to them and not shared equally among all the properties within the jurisdiction;
- The determination of which properties benefit is rational and fair;
- The determination of the fee is related to the benefit received (or costs imposed) and proportionate;
- Special assessment revenue will be spent only on the facility or service that benefits the affected properties; and that
- All similarly situated properties are treated the same.

How do special assessments relate to a jurisdiction's Capital Improvement Plan (CIP)?

A Capital Improvement Plan (CIP) is a State or local planning document containing all the individual capital projects, financial plans, and major studies for a State or local government. A CIP looks beyond a federally required, fiscally constrained plan and includes projects outside of the fiscally constrained plan. Construction and completion schedules can also be included. The plan provides a working blueprint for sustaining and improving the community's infrastructures. It coordinates strategic planning, financial capacity, and physical development.

A Transportation Improvement Program (TIP) is a four-year, fiscally constrained document required for metropolitan planning organizations (MPOs). The TIP lists all transportation projects in an MPO's metropolitan planning area that use Federal transportation funding. Detailed requirements for TIPs and the MPO transportation planning process are located in 23 CFR part 450. There are similar requirements, also found in 23 CFR part 450, for State Transportation Improvement Programs (STIPs).

Special assessments are a source of funds that can be used to fund capital projects partially or in their entirety. Special assessments can also be a source of local matching funds for grants from other levels of government.

Are there any special accounting procedures associated with special assessments?

Where jurisdictions are authorized to levy special assessments, special assessment revenues typically must be deposited to separate accounts that are dedicated solely to the payment for the project(s) which served as the justification for creation of the special assessment.

Where have special assessments been used?

Examples of special assessments include the following:

- Roadway: Route 29 Expansion and Interchange Project (Fairfax, Virginia)
- Transit: NOMA-Gallaudet Metrorail Station Construction (Washington, DC)
- Flood control: Pittsburgh Downtown Partnership (Pittsburgh, Pennsylvania)
- Flood control: Miami River Conservancy (Ohio)
- Irrigation districts: Multiple districts created pursuant to the Wright Act of 1887 (California)

For additional examples, see the National Cooperative Highway Research Program's Report 873, [Guidebook to Funding Transportation through Land Value Return and Recycling](#). Other examples are also described in Chapter 6 of FHWA's [Value Capture Implementation Manual](#).



Value Capture: Capitalizing on the Value Created by Transportation

RESOURCES

FHWA EDC-5 Value Capture: Capitalizing on the Value Created by Transportation

https://www.fhwa.dot.gov/innovation/everydaycounts/edc_5/value_capture.cfm

FHWA Center for Innovative Finance Support – Value Capture

https://www.fhwa.dot.gov/ipd/value_capture

FHWA Center for Innovative Finance Support – Special Assessments

https://www.fhwa.dot.gov/ipd/value_capture/defined/special_assessments.aspx



Value Capture: Capitalizing on the Value Created by Transportation

- ⁱ See California Debt and Investment Advisory Commission, California Mello-Roos Community Facilities Districts Yearly Fiscal Status Reports 2017–2018, <https://www.treasurer.ca.gov/cdiac/reports/M-Roos/2018.pdf>.
- ⁱⁱ Proposition 13 is embodied in Article XIII A of the Constitution of the State of California. Section 4 of Article XIII A prohibits special districts from imposing *ad valorem* taxes on real property or a transaction tax or sales tax on the sale of real property. Article XIII A is available at: https://leginfo.ca.gov/faces/codes_displayText.xhtml?lawCode=CONS&division=&title=&part=&chapter=&article=XIII%20A.
- ⁱⁱⁱ Sharada Vadali, et al, NCHRP Research Report 873: *Guidebook to Funding Transportation through Land Value Return and Recycling*, (Transportation Research Board, 2018), <http://www.trb.org/Main/Blurbs/177574.aspx>. Daniel D'Angelo, et al, *Value Capture Implementation Manual: Capitalizing on the Value Created by Transportation*, (FHWA, 2019), https://www.fhwa.dot.gov/ipd/value_capture/resources/value_capture_resources/value_capture_implementation_manual/.
- ^{iv} The Miami Conservancy District is a political subdivision under Ohio law. The district operates under Ohio Revised Code Chapter 6101, which is available at: <http://codes.ohio.gov/orc/6101>.
- ^v The Wright Act is incorporated into the California Water Code; see Division 11, Irrigation Districts (sections 20500 to 29978) at: <https://law.justia.com/codes/california/2011/wat/division-11/>. In particular, sections 23511, 23532, and 25650 authorize *ad valorem* assessments on land.
- ^{vi} Sharada Vadali, et al, *Guidebook to Funding Transportation through Land Value Return and Recycling*. Legal requirements are discussed in Chapter 4.



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