



Introduction to Special Assessments

Disclaimer

The contents of this presentation do not have the force and effect of law and are not meant to bind the public in any way. This presentation is intended only to provide information and clarity to the public regarding a funding option that may be available to FHWA grant and sub-grant recipients. Value capture techniques and policies are often implemented outside of Federal funding or regulatory requirements.

Presentation Outline

- 1 Overview of Special Assessments
- 2 Application
- 3 Establishment
- 4 Calculating The Fee
- 5 Administration
- 6 Legal and Regulatory Issues
- 7 Financing
- 8 Examples

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What is a Special Assessment?

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Special Assessments are also called:

Special Assessment Districts

Benefit Assessment Districts

Local Improvement Districts

Transportation Improvement Districts

Community Improvement Districts

Neighborhood Improvement Districts

Overview: Concept behind SADs

1

Transportation enhances property values

- New or improved infrastructure provides special benefits to nearby properties.
- Access to transportation infrastructure creates higher land values.
- Special assessments return a portion of this special benefit to the public sector that created it.

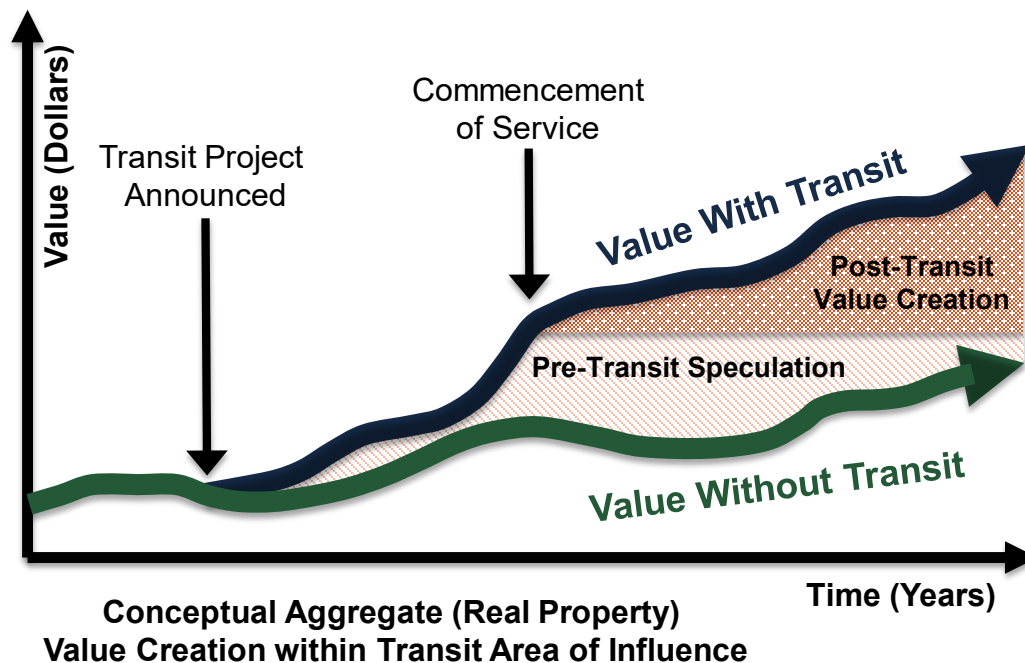
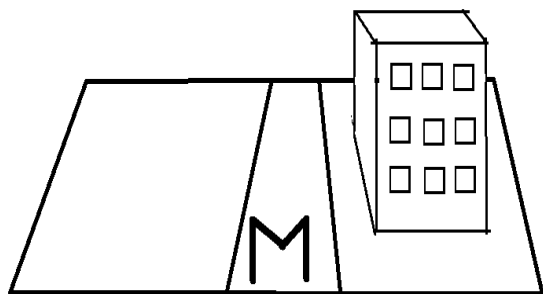


Figure source: Transportation Research Board, TCRP Report 190, 2016.

Overview: Concept behind SADs



Financial beneficiaries pay in proportion to benefits received



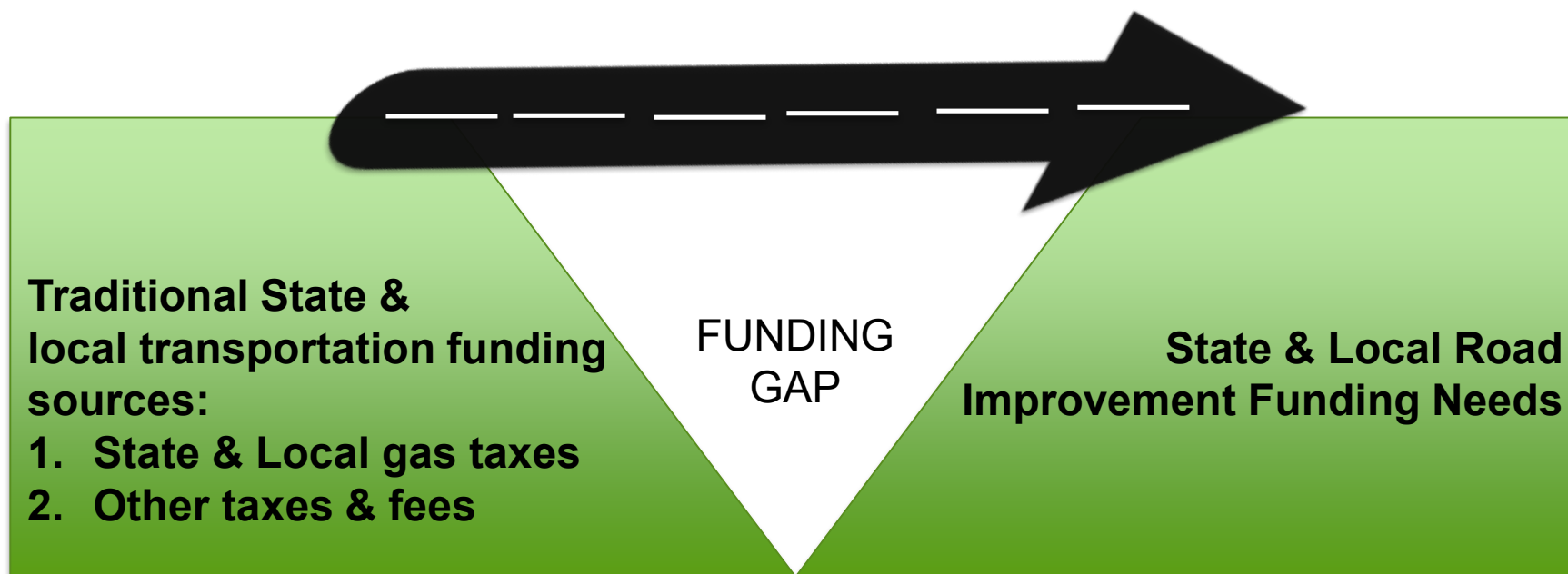
Both Lots Benefit Equally
from New Infrastructure “M”

- Even if a landowner lives elsewhere and never uses the transportation facilities near his/her property, higher land values provide the owner with a direct benefit.
- Fees based on increased land value will be paid by beneficiaries in proportion to the benefits received.

Overview: Why use SADs?

1

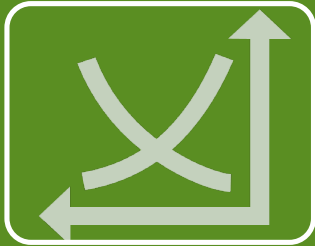
Closing Funding Gaps



Overview: Why use SADs?

1

Efficiency, equity, and stakeholder benefits



Economic Efficiency

- Linking benefits and payments can encourage more efficient land development decisions
- Simple administration (property tax billing in place)



Equitable

- Those who benefit pay
- Payments in proportion to benefits received



Stakeholder Benefits

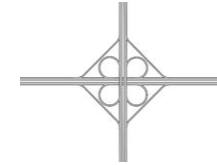
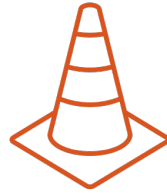
- Transparency in how Special Assessments are spent
- Transparency & accountability build trust

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Application of Special Assessments

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- Street & sidewalk paving, curb cuts,
- Municipal Parking Facilities
- Transit Stations
- Intersections & Interchanges
- Elimination of RR Grade Crossings
- Road Widening

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Establishing a Special Assessment

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1

Special Benefits?
Enabling legislation?

2

Identifying properties
Defining boundaries

3

Defining exclusions

4

Fee basis: Cost or Benefit?
Schedule or rate ?

5

Termination date

6

Enact Legislation or Ordinance

Establishing a Special Assessment

3

1

DOES PROJECT CREATE A SPECIAL BENEFIT? IF SO, IS THERE STATE ENABLING LEGISLATION?

- Does a capital project create a special benefit for one or more properties that is not generally available to all properties in the jurisdiction?
- “Special assessments are authorized in all 50 States, the District of Columbia and Puerto Rico, either under explicit enabling legislation or by State constitutional provisions.”
- However, are special assessments authorized for the level of government undertaking the project?

Establishing a Special Assessment



2

Identifying the properties receiving a special benefit;

New or improved infrastructure provides special benefits to nearby properties. Typically, access to transportation infrastructure creates higher land values.

- Typically, being close to a highway does not create a benefit. It's access to the highway (via an interchange) that creates a benefit.
- Typically, the intensity of the benefit diminishes with distance from the interchange.
- But some properties might not benefit, despite proximity.
 - Residences near an airport beneath the flight path
 - Industrial property near a municipal parking garage.

Establishing a Special Assessment

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2

Defining a District Boundary

EXAMPLE: Route 17 Special Tax District

APPENDIX J: ROUTE 17 SPECIAL TAX DISTRICT IN THE CITY OF SUFFOLK, VIRGINIA



Reprinted by permission of the *Suffolk News-Herald*.

Real estate professionals can be helpful in determining the geographic extent of project benefits.

The Route 17 Special Tax District was created to pay the debt service for road improvements and to foster economic development in a portion of the City of Suffolk in Virginia. The special assessment rate was \$0.25 per \$100 of assessed value in FY16.

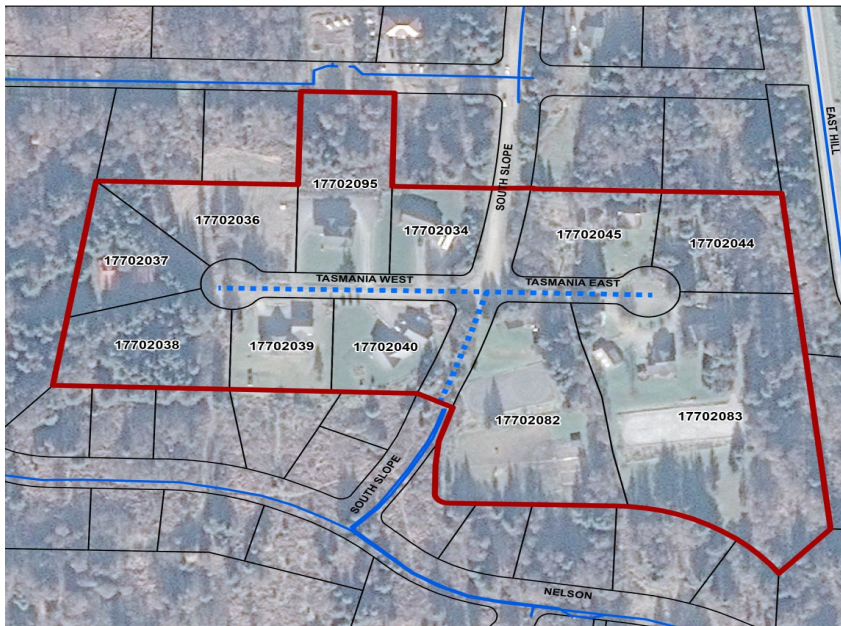
Establishing a Special Assessment

3

2

Defining a District Boundary

EXAMPLE: Homer, Alaska



The City of Homer, Alaska, established a boundary for a new special assessment district for the extension of water and sewer lines. The district consists of properties serviced by the extensions.

Establishing a Special Assessment

3

3

Defining any exclusions of properties within the district

Separate Beneficiaries from Non-Beneficiaries

Example: Municipal Parking Facility

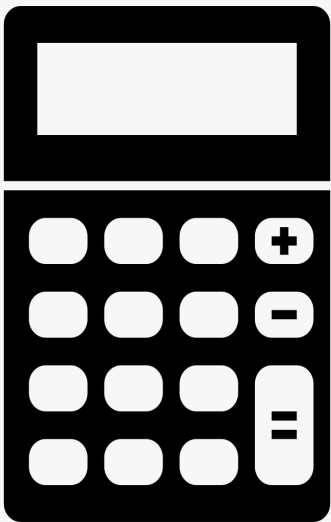
- Retail establishments within walking distance will get the most benefit from this facility.
- Residential and industrial land uses will likely receive no benefit. Therefore, these properties might be exempted from liability for the special assessment, even if they are in close proximity to the facility and within its geographic benefit zone or district.

Establishing a Special Assessment

3

4

**Defining the basis for the fee;
Establishing the fee as a schedule or rate**



A. Fixed cost (fee schedule) for standard activity?

- Water & sewer hookups:

B. Variable cost for standard activity?

- Water & sewer extensions, sidewalk creation, new street construction:

C. Variable Benefit Based Upon:

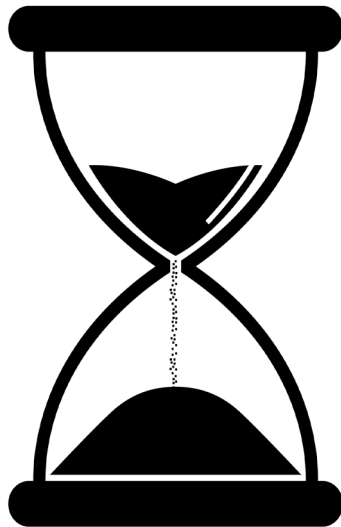
- Relationship of Infrastructure & Land Use
- Distance from Infrastructure

Establishing a Special Assessment

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Establishing a termination date for the special assessment.



If a special assessment is established to fund a capital project, termination is typically determined to be the date when specified capital costs (such as payment of debt service on a bond) have been completed.

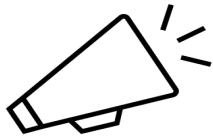
Alternatively, if the special assessment funds ongoing operating costs, there might be a sunset or termination date with an option for renewal.

Establishing a Special Assessment

3

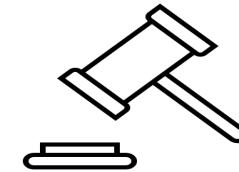
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NOTIFYING THE PUBLIC & ADOPTING AN ORDINANCE



Notice & Public Hearing

Hearings are held to obtain input from the affected public. Interested persons are provided an opportunity to support, oppose or suggest changes to the proposed SAD legislation.



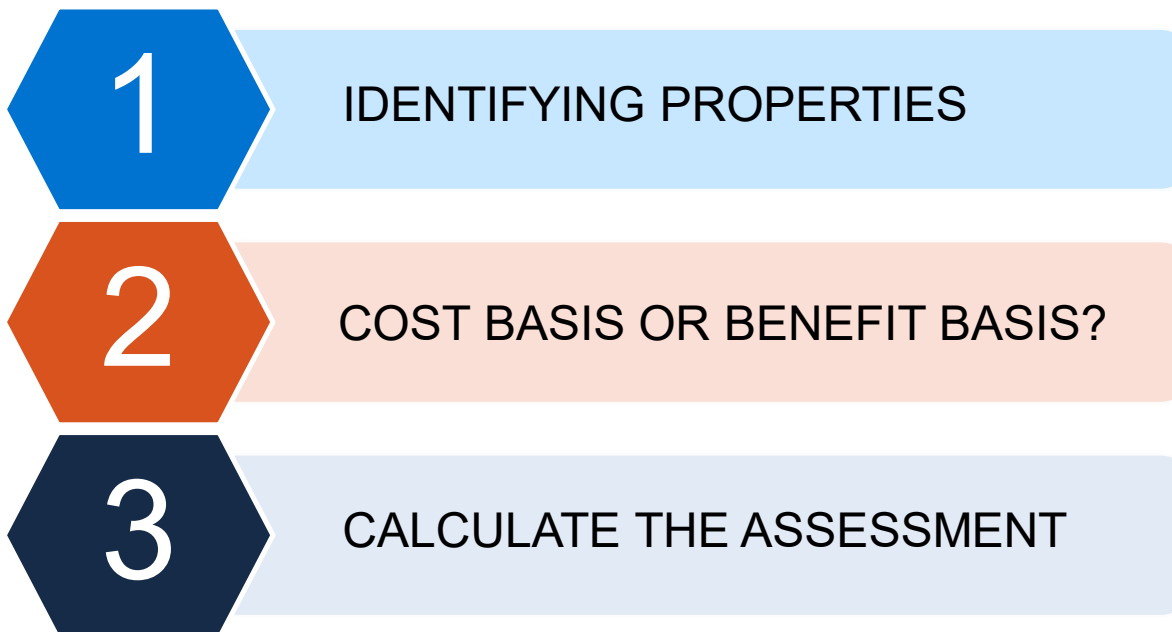
Enact SAD Ordinance

State enabling legislation will provide substantive and procedural requirements for local legislation to implement a SAD.

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Calculating Special Assessments

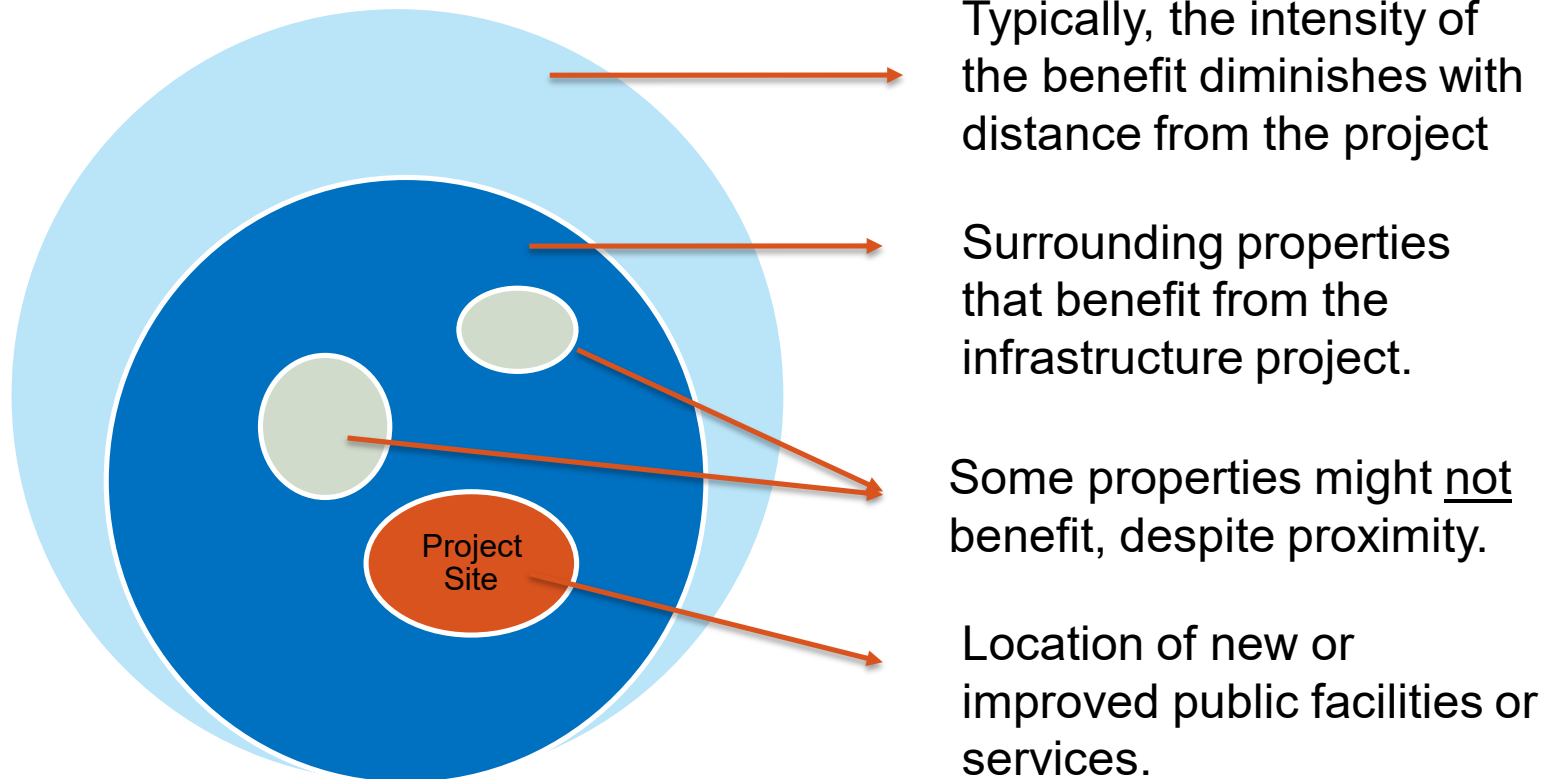


Calculating Special Assessments

4

1

Identifying the properties receiving a special benefit



Calculating Special Assessment

4

2

Cost Basis or Benefit Basis

A. Fixed cost for standard activity?

- Water & sewer hookups
- Curb Cuts

B. Variable cost for standard activity?

- Street Lights
- Water & sewer extensions,
- Sidewalk creation
- New street construction:

C. Variable Benefit?

- Assessment by property or by zone

Calculating Special Assessment

4

2

Cost Basis or Benefit Basis

A. Fixed cost for standard activity

- Water & sewer hookups
- Curb Cuts

Establish a Fee Schedule:

- Water connection & valve: \$XYY
- Sewer connection \$ZYX
- Curb Cut:
 - Permit Review & Approval . . \$ KJ
 - Impact mitigation (zone A) . . \$BCD
 - Impact mitigation (zone B) . . \$EAA

Calculating Special Assessment

4

2

Cost Basis or Benefit Basis

B. Variable cost for standard activity

- Street Lights
- Water & sewer extensions
- Sidewalk creation
- New street construction

Establish a Cost Reimbursement Formula:

- $(\text{Cost} / \text{Distance}) \times \text{front footage}$
(e.g., \$51.20/linear foot for a 4' wide sidewalk)
 - Total Costs / # of properties served
- or
- Other Formula Related to the Costs Incurred or Benefits Received

Calculating Special Assessment

4

2

Cost Basis or Benefit Basis

C. Variable Benefit

- Assessment by property or by district

Percentage rate applied to land value

- Uniform rate throughout district (e.g., \$0.05/\$100 assessed land value)
- Graduated or zone rates within district
 - \$0.05/\$100 assessed land value within 1,000 feet of project
 - \$0.02/\$100 assessed land value within 1,001 ft & 1,500 ft of project

Or

- Other formula related to costs incurred or benefits received

Calculating Special Assessments

4

3

CALCULATE THE ASSESSMENT

A. Fixed cost (fee schedule) for standard activity?

- Fee collected for permit approval

B. Variable cost for standard activity?

- Fee is a surcharge collected with the standard property tax

C. Variable Benefit Based Upon:

- Fee is a surcharge collected with the standard property tax

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Administering Special Assessments

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Standard Activity – Fixed Fee

- Collect Fee for Permit Approval

Standard Activity – Variable Cost

Variable Benefits

- Properties Identified (individually or by district)
 - Property Owners May Appeal Designation
- Surcharge Formula Applied Annually Until Termination
- Collection Via Standard Property Tax Billing
- Fee Receipts Segregated & Deposited to Account Dedicated to the Project for which Fees Were Assessed

Enforcement

- Special Assessments Are Liens Against The Property
- Compliance Is Almost Universal

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Legal and Regulatory Issues

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Definitions:

A Special Assessment is **NOT** a **Tax!**

A “**tax**” is a compulsory payment required from “individuals, businesses or property to support and carry on the legitimate functions of the government.”

A tax can be levied "without reference to peculiar benefits to particular individuals or property." Indeed, "[n]othing is more familiar in taxation than the imposition of a tax upon a class or upon individuals who enjoy no direct benefit from its expenditure, and who are not responsible for the condition to be remedied." — *U.S. Supreme Court, Carmichael v. Southern Coal Co. (1937)*

Legal and Regulatory Issues

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Definitions:

A Special Assessment **IS** a **Fee**

A “**fee**” is also a compulsory payment required from individuals, businesses or property. Unlike a tax, a fee is compensation for particular services or facilities.

Legal and Regulatory Issues

6

Definitions:

A special assessment is a type of fee levied against real property particularly and directly benefited by a local improvement in order to pay the cost of that improvement.

The rationale of special assessment is that the assessed property has received a special benefit over and above that received by the general public.

The general public should not be required to pay for special benefits for the few, and the few specially benefited should not be subsidized by the general public.

Legal and Regulatory Issues

6

Ensuring Appropriate Legal Authority

States can levy special assessments and they can delegate this power to subordinate levels of government by statute.

Check The State's Special Assessment Enabling Statute:

- Does it apply to your jurisdiction?
- What are the substantive requirements?
- What are the procedural requirements?

Legal and Regulatory Issues

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Key Legal Issues

Uniformity

- All people and property in the same situation are treated the same.
- Special assessments treat some properties differently than others.
 - **OK if** community establishes justification for different treatment.

Due Process

- Prior to having a mandatory fee imposed, affected property owners are provided with
 - Notice of the proposed project and associated fees
 - Opportunity to comment in support or opposition

Legal and Regulatory Issues

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Surviving Legal Challenges

- **Jurisdictions proposing special assessments will document that:**
 - Substantive and procedural requirements of the special assessment enabling legislation have been satisfied;
 - A methodology was selected to accurately and fairly ascertain which properties benefit and which ones don't;
 - This methodology identified properties receiving special benefits and this justifies their liability for a special assessment fee;
 - A relationship exists between the benefits received and the fees imposed;
 - The method for apportioning costs among the properties receiving special benefits is fair; and
 - Fees collected will be applied to the services or facilities conferring the benefit and will not exceed actual costs.

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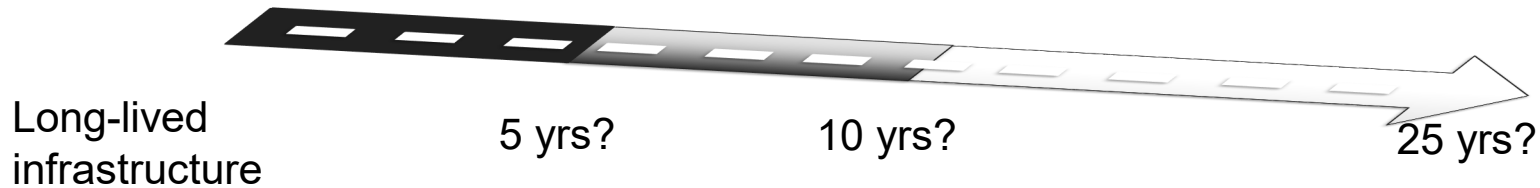
Special Assessments and Financing



OPERATIONS, LOCAL MATCH & PAY-GO

- Special assessments for curb cuts or water & sewer connections are typically a one-time payment.
- Operating expenses (and capital expenses also) for business improvement districts (BIDs) might be paid for through a special assessment. However, BIDs are typically created by property owners pursuant to a process established by a local government.
- Special Assessment revenue can be used as a local match for state or federal funding.
- Assessments for long-lived assets, such as street or water main extensions, may be calculated to provide steady funding for many years. Revenues can fund construction as funds become available.

Special Assessments and Financing



CAPITAL PROJECTS & FINANCING

- Assessments for long-lived assets, such as street or water main extensions, may be calculated to provide steady funding over the life of the asset.
- Because special assessment revenue tends to be certain and secure over a long period of time, investors are willing to make loans (or buy bonds) to provide up-front cash for infrastructure projects that will be paid back by special assessment revenues over the life of the special assessment.
- Special Assessments can also serve as backstops for less certain revenue, such as Tax Increment Financing.

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Examples: California Irrigation Districts

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Transporting Water to Fertile But Arid Valleys

- The Wright Act of 1897 enabled the creation and operation of irrigation districts;
- Initially, these irrigation districts were funded by user fees levied on the amount of water withdrawn from the canals.
- Large estates next to the canals became valuable, but some owners contributed nothing because they were not farming and not withdrawing water.
- The Wright Act was amended to require special assessments based on land value from all land benefiting from proximity to the canals. Benefiting lands included both farmland and nearby towns.
- Revenues increased and were more equitably distributed among beneficiaries.
- Special assessments motivated the intensive cultivation of nearby land.



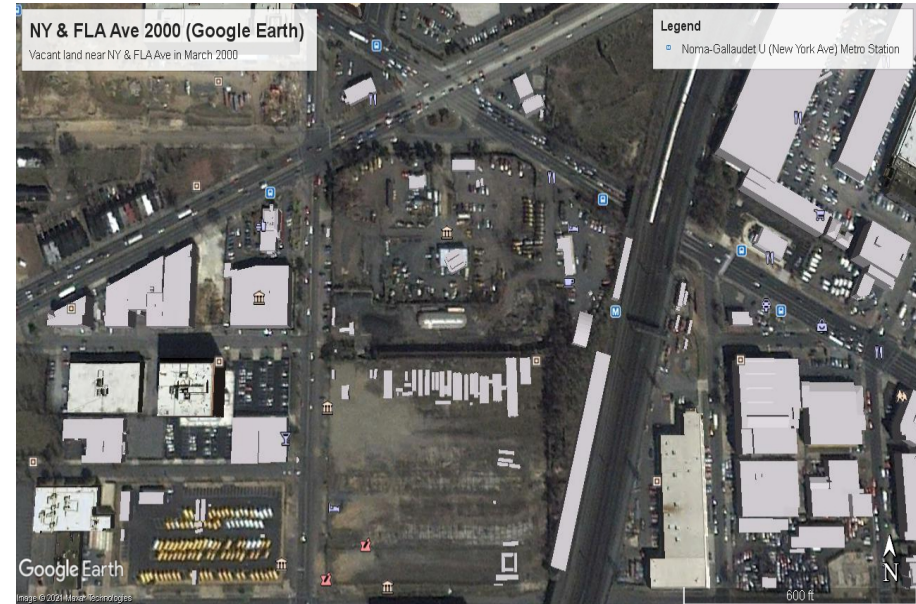
Source: Fresno Water District

Examples: NoMA Transit Stations & Streets

8

Development-Oriented Transit

- The aerial photo on the right is from 2000. Owners of vacant land wanted to develop office buildings. But permits were denied because the only access was via over-crowded arterial streets.
- Landowners petitioned the District Government to construct a transit station nearby to facilitate development.*
- The District Government was in receivership and refused to proceed unless the landowners contributed significantly to the project.
- Landowners offered \$25 million (about 1/3 of the estimated initial cost). The District Government issued a \$25 million bond. The nearby landowners are paying it off over 20 years through a special assessment that was enacted with their support. (Pre-existing residential properties were exempted.)



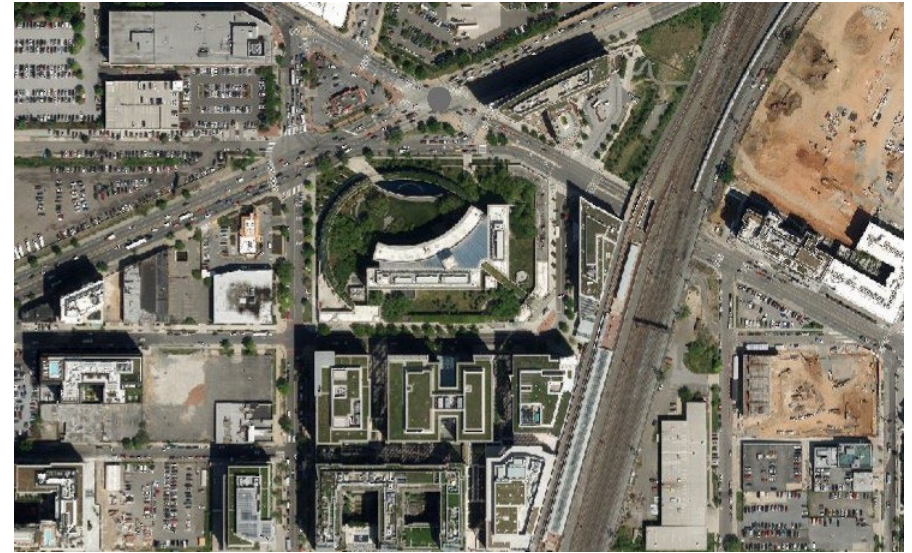
Source: Google Earth

Examples: NoMA Transit Stations & Streets

8

Development-Oriented Transit (continued)

- The aerial photo on the right is from 2019. The new transit station is near the center on the left side of the tracks.
- New street segments to the east and south of the new Bureau of Alcohol Tobacco & Firearms were paid for by the adjacent landowners because they primarily provide access to those properties.
- As of 2021, most of the vacant land in this photo near the new transit station has been developed. Old warehouses (east of the tracks) are being redeveloped.
- Special assessment payments, based on land value, encourage development.
- For more info, see [NoMa- Gallaudet U Metro Station: Success Built on Transit](#) by ULI Washington.



Source: District of Columbia