

**RESOLUTION NO. 2016-22**

**A RESOLUTION OF THE SCOTIA COMMUNITY SERVICES DISTRICT BOARD OF DIRECTORS**

**ADOPTING PROPOSITION 218 PROCEDURES FOR ASSESSMENT BALLOT PROCEEDINGS**

WHEREAS, Proposition 218 was adopted on November 6, 1996, adding articles XIIC and XIID to the California Constitution; and

WHEREAS, article XIID of the California Constitution imposes certain procedural and substantive requirements relating to the assessments (as defined); and

WHEREAS, the Proposition 218 Omnibus Implementation Act (Government Code §53750 *et seq.*) clarifies Proposition 218; and

WHEREAS, Proposition 26 amended Cal. Const. arts. XIIA and XIIC and provided a new definition of “tax”; and

WHEREAS, article XIIC Section 1(e)(7) makes “assessments and property-related fees” an exception to the new definition of “tax”; and

WHEREAS, the Scotia Community Services District shall apply Government Code §61122 allowing community services districts to levy benefit assessments pursuant to individual assessment acts as well as “any other statutory authorization enacted on or after January 1, 2006; and

WHEREAS, under the Benefit Assessment Act of 1982, Section 54703 *et seq.* of the Government Code, the Scotia Community Services District may levy annual assessments for the operation, maintenance, acquisition of land or facilities, expansion, construction and installation of the storm drainage system; and

WHEREAS, the Scotia Community Services District shall be responsible for the maintenance and operation of the storm drainage system; and

WHEREAS, some of the requirements of Proposition 218 remain unclear and require judicial interpretation or legislative implementation; and

WHEREAS, a previous Proposition 218 hearing was held for the proposed Assessment on June 16, 2016, in which a weighted majority protest existed, with the results as described in SCSD Resolution 2106-19; and

WHEREAS, a new balloting process for Storm Drainage is being held, based on a reduced Storm Drainage layout; and

WHEREAS, the Scotia Community Services District Board of Directors (“Board”) believes it to be the best interests of the community to record its decisions regarding the implementation of the provisions of Proposition 218 relating to assessments and to provide the community with a guide to those decisions and how they have been made.

NOW, THEREFORE, the Scotia Community Services District Board of Directors does hereby resolve as follows:

SECTION 1: All the above recitals and attached exhibits are hereby incorporated by reference.

SECTION 2: **Statement of Legislative Intent.** It is the Board's intent in adopting this resolution, to establish assessment ballot proceedings that are consistent, and in compliance with, Articles XIII C and XIII D of the California Constitution and with the Proposition 218 Omnibus Implementation Act and the provisions of other statutes authorizing the levy of assessments. It is not the intent of the Board to vary in any way from the requirements of Articles XIII C and XIII D or the Proposition Omnibus Implementation Act.

SECTION 3: **Definition of Assessment.** Proposition 218 defines "assessment" as any levy or charge upon real property by an agency for a special benefit conferred upon the real property. "Assessment" includes, but is not limited to, "special assessment," "benefit assessment," "maintenance assessment" and "special assessment tax." This means that an assessment that is not a charge upon real property for a special benefit conferred upon the real property is not an "assessment" but rather a "tax" for purposes of article XIII D, section 2(b) of the California Constitution.

SECTION 4: Scotia Community Services District, a newly formed public agency, has adopted Assessments for Parks and Recreation, and Streets and Street Lighting, and is working to levy a Benefit Assessment for Storm Drainage. The Engineer's Report for Assessment of Storm Drainage Benefits (Exhibit C) describes the projected revenue requirements for the Fiscal Year ("FY") 2016-17 for Storm Drainage \$26,290. These projected revenue requirements do not include capital improvements the Board has determined are necessary in the near future. In order to provide special benefits to properties within the District, the Board has determined that a revenue source is necessary.

SECTION 5. The Board hereby declares its intention to levy and collect assessments pursuant to California law on identified parcels within the District's boundaries. These assessments shall be utilized to pay the costs associated with the operation, maintenance and improvements for storm drainage services.

SECTION 6: The Board of Directors accepts the preliminary "Engineer's Report" required under California Constitution article XIII D, section 4(b) "Storm Drainage: Engineer's Report for Assessment of Benefits". (Exhibit C) The Board acknowledges that minor changes may occur prior to the public hearing.

SECTION 7. The Board hereby directs staff to mail the notice of the public hearing regarding the levy of an assessment to be held on February 16, 2017 at 5:30 p.m. at the Scotia Community Services District office located at 122 Main Street, Scotia. The Board also directs staff to include the assessment ballot and Resolution 2016-22.

SECTION 8: **Assessment Ballot Proceeding.** The Board directs staff to use the following procedures in the assessment ballot proceedings required by article XIII D, section 4 of the California Constitution:

**A. Identification of Assessment Parcels.**

The Engineer's Report has identified the parcels upon which a special benefit shall be conferred. The amount of the proposed assessment for each identified parcel shall be calculated and the record owner shall be determined by the tax roll and notified.

**B. Amount of Assessment.**

Only special benefits are assessable. The amount of each assessment shall be limited to each identified parcel's proportionate share of the public improvement or property-related service based upon that parcel's special benefit from the improvement or service. The amount shall be proportional to and no greater than the special benefits conferred on the property.

**C. Special Benefit.**

For the purposes of determining the amount of the assessment:

1. Special benefit means a particular and distinct benefit over and above general benefits conferred on real property located in the assessment district or to the public at large;
2. Special benefits are those which the assessed property receives, due to the improvement or service, in excess of the general public benefit;
3. The fact that other property within the city or within the area will be, to a greater or lesser extent, specially benefited by the improvement or service, will not have the effect of depriving assessed property of its character as a specially benefited property;
4. A special benefit is immediate and of such a character as can be seen and traced. General benefits are remote and sometimes contingent.

**D. Engineer's Report.**

The Board shall direct the filing of an engineer's report that shall comply with the applicable state statute authorizing the assessment and with article XIID, Section 4 of the California Constitution.

1. The detailed engineer's report (Exhibit C) shall be prepared by a registered professional engineer certified by the State of California.
2. The report shall describe and identify the boundaries of the District.
3. The engineer's report shall identify the improvement or service to be funded by the assessment.
4. The engineer's report shall estimate the annual cost, including all planning, administrative, and ancillary costs authorized by law to be funded by the assessment.
5. The report shall identify the entire special benefit attributable to the improvement or service, which benefit shall be separated from the general benefit, if any. Each parcel assessed shall be specially benefitted by the

improvement or service. The engineer's report shall also provide the evidence upon which this Board may find that a special benefit exists.

6. The engineer's report shall apportion the assessment to each parcel in the district according to its respective special benefit.
7. The report shall include an Assessment Roll containing the proposed Levy for each Assessor or Parcel Number within the District.

**E. Notice.**

The following guidelines shall apply to giving notice of an assessment:

1. The record owner(s) of each identified parcel to be assessed shall be determined from the last equalized property tax roll. If the property tax roll indicates more than one owner, each owner shall receive notice. Only record owners shall receive notice.
2. The form of notice is attached to this Resolution as Exhibit A.
3. The notice shall be sent at least forty-five (45) days prior to the date set for the public hearing on the assessment.
4. The notice provided by this section and in accordance with article XIID, section 4 of the California Constitution, shall supersede and be in lieu of any other statutes requiring notice to levy or increase an assessment, including but not limited to the notice required by the state statute authorizing the assessment and Government Code §54954.6.
5. Failure of any person to receive notice shall not invalidate the proceedings.
6. The cost of providing notice will NOT be included as a cost of the assessment.

**F. Assessment Ballots.**

The following guidelines shall apply to the assessment ballots:

1. The Storm Drainage Assessment shall have a separate assessment ballot and each record owner shall have a separate vote.
2. The ballot required by article XIID, section 4(d) of the California Constitution shall be mailed to all property owners of record within the assessment district at least forty-five (45) days prior to the date of the public hearing on the proposed assessment.
3. The form of the ballot is attached to this resolution as Exhibit B.
4. All ballots must be returned to the Board Clerk by mail or in person, sealed in the envelope provided not later than the date for return of ballots stated on the notice.
5. The District-provided envelopes shall be "security envelopes" which conceal the contents therein. The envelopes shall denote the property(ies) to which the ballot applies.
6. A ballot must be signed under penalty of perjury. For properties with more than one owner of record, ballots will be accepted from each owner of record. Each owner of record is entitled to vote. If more than one owner of record votes, the Board Clerk shall apportion the voting rights between the owners based upon respective record interests as the Clerk deems correct, proper, and appropriate.

However, if only one owner votes, the Clerk shall tabulate that vote on behalf of the entire parcel.

7. Because assessments are levied on property and tenants are not directly liable to the District for payment of assessments, a tenant of real property shall not have the power or authority to submit an assessment ballot. Any tenant that is directly liable to the District for payment of assessments shall have the power to submit an assessment ballot.
8. Only ballots with original signatures, not photocopies, will be accepted. Ballots will not be accepted via email or fax. Ballots not submitted in the security envelope provided by the District shall not be counted.
9. The Board Clerk may issue a duplicate ballot to any property owner whose original ballot was lost or destroyed. Such ballots shall be clearly marked as duplicate ballots and shall be accompanied by sufficient information for the Clerk to verify the location and ownership of the property in question and the identity of the individual casting the ballot in order to verify its authenticity.
10. An assessment ballot proceeding is not an election.
11. Assessment ballots shall remain sealed until the tabulation of ballots commences at the conclusion of the public hearing. An assessment ballot may be submitted, changed, or withdrawn by the person who submitted the ballot prior to the conclusion of the public testimony on the proposed assessment at the public hearing.
12. Prior to public hearing, neither the assessment ballot nor the envelope in which it is submitted shall be treated as a public record, pursuant to Government Code §6254(c) and any other applicable law, in order to prevent potential unwarranted invasions of the submitter's privacy and to protect the integrity of the balloting process.

#### **G. Public Hearing.**

1. At the public hearing, the Board of Directors shall hear all oral and written public testimony regarding the proposed assessment and accept ballots until the close of the public hearing which hearing may be continued from time to time.
2. The Board of Directors may impose reasonable time limits on both the length of the entire hearing and the length of each speaker's testimony.
3. At the conclusion of the hearing, the Clerk shall complete a tabulation of the ballots, including those received during the public hearing.
4. If it is not possible to tabulate the ballots on the same day as the public hearing, or if additional time is necessary for public testimony, the Board may continue the public hearing to a later date to receive additional testimony, information or to finish tabulating the ballots; or may close the public hearing and continue the item to a future meeting to finish tabulating the ballots.
5. If according to the final tabulation of the ballots, ballots submitted against the assessment exceed the ballots submitted in favor of the assessment, weighted according to the proportional financial obligation of each affected property, a "majority protest" exists and the Board shall not impose or increase the assessment.

6. If according to the final tabulation of the ballots, no majority protest exists, the Board may adopt a resolution to establish the assessment district and levy the assessments.

H. **Tabulating Ballots.** The following guidelines shall apply to tabulating assessment ballots:

1. The Clerk shall determine the validity of the ballots. The Clerk shall accept as valid all ballots except those in the following categories:
  - a) A photocopy of the ballot which does not contain an original signature;
  - b) An unsigned ballot;
  - c) A ballot which lacks an identifiable “yes” or “no” vote;
  - d) A ballot which appears to be tampered with or otherwise invalid based upon its appearance or method of delivery or other circumstances;
  - e) A ballot which is submitted on a form which is different than the form of ballot provided by the District;
  - f) A ballot submitted to the District via email.
  - g) A ballot not returned to the District in its District-provided “security envelope.”

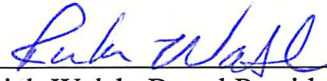
The Clerk’s decision, after consultation with the Special Counsel, that a ballot is invalid, shall be final and may not be appealed to the Board of Directors.

2. An impartial person designated by the Board who does not have a vested interest in the outcome of the proposed assessment shall tabulate the assessment ballots submitted, and not withdrawn, in support or opposition to the proposed assessment. The impartial person may include the Board Clerk. During and after tabulation, the assessment ballots shall be treated as disclosable public records (as defined in the Public Records Act) and shall be equally available for inspection by proponents and opponents of the proposed assessment. They shall be preserved by the Board Clerk for two years and be available as a public record.
3. A property owner who has submitted an assessment ballot may withdraw the ballot and submit a new or changed ballot at any time until the conclusion of the public hearing on the assessment.
4. A property owner’s failure to receive an assessment ballot shall not invalidate the proceedings conducted under section 4, article XIID of the California Constitution.

SECTION 8: The Board Clerk shall attest and certify to the passage and adoption of this Resolution, and it shall become effective immediately upon its approval.

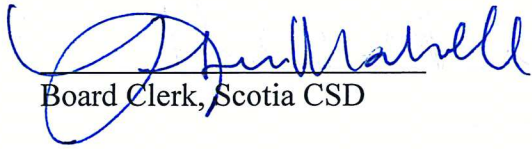
Dated: December 15, 2016

APPROVED:



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Rick Walsh, Board President, Scotia CSD

ATTEST:

  
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Board Clerk, Scotia CSD

CLERK'S CERTIFICATE

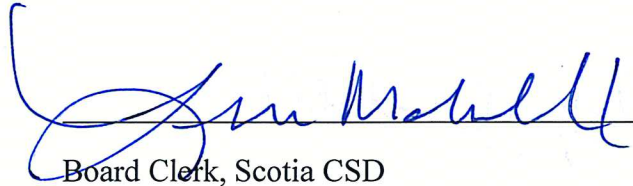
I hereby certify that the foregoing is a true and correct copy of Resolution No. 2016-22, passed and adopted at a regular meeting of the Board of Directors of the Scotia Community Service District, County of Humboldt, State of California, held on the 15<sup>th</sup> day of December, 2016, by the following vote:

AYES: Bristol, McKnight, Newmaker, Pryor, Walsh

NOES: 0

ABSTAIN: 0

ABSENT: 0



Board Clerk, Scotia CSD

Attachments: Exhibit A: Form of Notice

Exhibit B: Form of Assessment Ballot

Exhibit C: Engineer's Report for Assessment of Storm Drainage Benefits