

**CONTRA COSTA COUNTY OPEN SPACE FUNDING AUTHORITY**

**Resolution #2004-02**

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

**WHEREAS**, Proposition 218 was adopted on November 6, 1996, adding Articles XIII C and XIII D to the California Constitution; and

**WHEREAS**, Articles XIII C and XIII D of the California Constitution impose certain procedural and substantive requirements relating to assessments (as defined); and

**WHEREAS**, some of the requirements of Proposition 218 are unclear and require, or have required, judicial interpretation and/or legislative implementation; and

**WHEREAS**, the Governing Board of the Contra Costa County Open Space Funding Authority ("Board") believes it to be in the best interest of the community to record its decisions regarding implementation of the provisions of Proposition 218 relating to assessments and to provide the community with a guide to those decisions and how they were reached.

**NOW, THEREFORE**, the Board does hereby resolve as follows:

**SECTION 1. Statement of Legislative Intent.** In adopting this resolution, it is the Board's intent to adopt 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 (Government Code sections 53750 through 53754). 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 218 Omnibus Implementation Act.

**SECTION 2. 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" for purposes of article XIII D, section 2(b) of the California Constitution.

**SECTION 3. Assessment Ballot Proceeding.** The following procedures shall be used by the Authority in an assessment ballot proceeding that follows the requirements of article XIII D, section 4, of the California Constitution:

- A. **Amount of Assessment.** Only special benefits are assessable. The amount of each assessment shall be 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 benefits conferred on the property.
- B. **Special Benefit.** For 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 property assessed receives, due to the improvement or service, in excess of the general public benefit;
  3. The fact that other property 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 of specially benefited property.
- C. **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. The Engineer's Report shall explain the special benefit, as defined in Section 3B of this resolution, conferred by the improvement or property-related service. The Engineer's Report shall also provide the evidence upon which the Board may find that a special benefit exists. If the improvement or service confers a general benefit, the Engineer's Report shall describe the general benefit and explain how it will be funded.
- D. **Notice.** The following guidelines shall apply to giving notice of an assessment:
1. The record owner(s) of each parcel to be assessed shall be determined from the last secured equalized property tax roll. If the property tax roll indicates more than one owner, each owner shall receive notice. Only property owners shall receive notice.
  2. The notice shall be sent at least 45 days prior to the date set for the public hearing on the assessment.
  3. The notice provided by this section and in accordance with article XIID, section 4, of the California Constitution, and

Government Code section 53753(c) shall be in lieu of any other notices required by statute to levy or increase an assessment, including but not limited to the notice required by the state statute authorizing the assessment and Government Code section 54954.6.

4. Failure of any person to receive notice shall not invalidate the proceedings.
5. The cost of providing notice shall be included as a cost of the assessment district.

**E. Assessment Ballot.** The following guidelines shall apply to the assessment ballot:

1. 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. This ballot shall comply with Government Code section 53753(c).
2. All ballots must be returned by mail to the Authority at the address indicated on the assessment ballot, or hand delivered to the Secretary of the Authority at the public hearing sealed in the envelope provided. Ballots must be received by the Authority not later than the conclusion of the public testimony on the proposed assessment at the public hearing in order to be included in the tabulation of ballots.
3. Each ballot must be signed under penalty of perjury.
4. A tenant of real property shall not, solely by virtue of such tenancy, have the power or authority to submit an assessment ballot.
5. If a parcel has multiple owners, any owner may request a proportional assessment ballot. If the ownership interest of the owner is not shown on the last equalized secured property tax assessment roll, such request must include evidence, satisfactory to the Authority, of the owner's proportional rights in the parcel. The Authority, or the Authority's agents, will provide the proportional ballot to the owner at the address shown on the assessment roll. Any request for a ballot to be mailed to another location must be made in writing and must include evidence, satisfactory to the Authority, of the identity

of the person requesting the ballot. Each proportional ballot will be marked to show the date, on which the ballot was provided, to identify it as a proportional ballot and to indicate the owner's proportional rights in the parcel. The Authority will keep a record of each proportional ballot provided to an owner.

6. The Authority will accept only official ballots with original signatures.
7. Upon receipt of a written request, signed by the owner and delivered to the Authority Secretary, the Authority may issue a duplicate ballot to any property owner whose original ballot was lost, withdrawn, destroyed or never received. The duplicate ballot will be marked to show the date on which it was issued and to identify it as a duplicate ballot or a duplicate proportional ballot. The above procedure also applies to duplicate ballots or duplicate proportional ballots that are lost, withdrawn, destroyed or never received.
8. An assessment ballot proceeding is not an election.
9. An assessment ballot is a "public record" as that phrase is defined by the California Public Records Act (Government Code, § 6252) and shall be open to public inspection during and after tabulation of the ballots.
10. To complete an assessment ballot, a person must (1) mark the appropriate box supporting or opposing the proposed assessment and (2) sign, under penalty of perjury, the statement on the ballot that the person completing the ballot is the owner of the parcel or the owner's authorized representative. Only one box may be stamped or marked on each ballot. All incomplete or improperly marked ballots shall be disqualified from balloting. The Authority Secretary shall retain all disqualified ballots.
11. After submitting an assessment ballot to the Authority, the person who signed the ballot may withdraw the ballot by submitting a written statement to the Authority Secretary directing the Authority Secretary to withdraw the ballot. Such statement must be received by the Authority Secretary prior to the close of the public testimony portion of the public hearing on the proposed assessment. When ballots for the assessment are tabulated, the Authority Secretary shall segregate withdrawn ballots from all other submitted ballots.

The Authority Secretary shall retain all withdrawn ballots and shall indicate on the face of such withdrawn ballots that they have been withdrawn.

12. In order to change the contents of a ballot that has been submitted, the person who signed the ballot may (1) request that such ballot be withdrawn, (2) request that a duplicate ballot be issued, and (3) return the duplicate ballot fully completed. Each of these steps must be completed according to the procedures set forth above.

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

1. Carol Keane & Associates is hereby designated as the impartial person to tabulate the assessment ballots. Carol Keane & Associates shall determine the validity of all ballots. All ballots shall be accepted as valid except those in the following categories:
  - a. A photocopy of a ballot;
  - b. A ballot that does not contain an original signature;
  - c. A letter or other form of a ballot that is not an official ballot provided by the Authority;
  - d. An unsigned ballot, or ballot signed by an unauthorized individual;
  - e. A ballot that lacks an identifiable mark in the box for a "yes" or "no" vote or with more than one box marked;
  - f. A ballot that appears tampered with or otherwise invalid based upon its appearance or method of delivery or other circumstances;
  - g. A ballot for which the barcode representing the parcel number is damaged or obstructed, unless the parcel number is legible.
  - h. A ballot received after the close of the balloting time period.

The decision of Carol Keane & Associates, after consultation with legal counsel, that a ballot is invalid shall be final and may not be appealed to the Board.

2. In the event of a dispute regarding whether the signer of a ballot is the owner of the parcel to which the ballot applies, Carol Keane & Associates will make such determination from the last equalized assessment roll and any evidence of ownership submitted to the Authority prior to the conclusion of the public hearing. Carol Keane & Associates will be under no duty to obtain or consider any other evidence as to ownership of property and its determination of ownership will be final and conclusive.
3. In the event of a dispute regarding whether the signer of a ballot is an authorized representative of the owner of the parcel, Carol Keane & Associates may rely on the statement on the ballot signed under penalty of perjury that the person completing the ballot is the owner's authorized representative and on any evidence submitted to the Authority prior to the conclusion of the public hearing. Carol Keane & Associates will be under no duty to obtain or consider any other evidence as to whether the signer of the ballot is an authorized representative of the owner and its determination will be final and conclusive.
4. For properties with more than one owner of record, ballots will be accepted from each owner of record. In the event that more than one of the record owners of a parcel submits an assessment ballot, the amount of the proposed assessment to be imposed upon the parcel shall be allocated to each ballot submitted in proportion to the respective record ownership interests or, if the ownership interests are not shown on the record, as established to the satisfaction of the Authority by documentation provided by those record owners. If only one owner of record votes, that vote shall be tabulated on behalf of the entire parcel.
5. A property owner's failure to receive an assessment ballot shall not invalidate the proceedings conducted under this section and section 4, article XIID, of the California Constitution.

**G. Public Hearing.**

1. At the public hearing, the Board shall hear all public testimony regarding the proposed assessment and shall accept ballots until the close of the public testimony portion of the public hearing.
2. The Board 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 public testimony portion of the hearing, Carol Keane & Associates shall begin tabulation of the ballots, including those received during the public hearing.
4. If it is not possible to tabulate the ballots on the day of 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, or 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 the affected property, a "majority protest" exists and the Board shall not impose the assessment.

\*\*\*\*\*

Passed and adopted this 25<sup>th</sup> day of May, 2004, by the following vote:

X  UNANIMOUS (ABSENT  None )

AYES: \_\_\_\_\_

NOES: \_\_\_\_\_

ABSENT: \_\_\_\_\_

ABSTAIN: \_\_\_\_\_

I HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF AN ACTION TAKEN AND ENTERED ON THE MINUTES OF THE CONTRA COSTA COUNTY OPEN SPACE FUNDING AUTHORITY ON THE DATE SHOWN:

ATTESTED:  May 25, 2004

Dennis M. Barry, Secretary of the  
Contra Costa County Open Space  
Funding Authority

BY:  Dennis M. Barry