

# Client Alert

Latham & Watkins Finance Department

## Special Assessments May Be Possible for Master Planned Improvements

The California Court of Appeal recently took a slightly more lenient stance on the use of special assessments to pay for improvements that have a less easily measurable impact. In *Beutz v. County of Riverside*,<sup>1</sup> decided last month, it held that, even if a special assessment is levied on real property within a special assessment district to fund just a portion of an improvement project, such assessment may be based on the "special benefit" conferred on the assessed property by the entire improvement project.<sup>2</sup>

Many developers, cities and counties have elected not to use special assessments to pay for construction or maintenance of parks and open space due to concerns that it would be difficult to demonstrate that such amenities conferred any "special benefit."

In *Beutz*, the court determined that an assessment to pay for the maintenance of landscaping in certain local public parks was properly based on the special benefit conferred as a result of the parks being part of a master plan to acquire and develop parks. However, the *Beutz* court found that a local government agency levying an assessment must still quantify the relative amounts of special and general benefits conferred, in order to prove that the assessment is in proportion to the special benefit. Thus, considerable hurdles still remain

for developers, cities and counties who want to use assessments for master planned public improvements and maintenance.

### Constitutional Requirements for Special Assessments

Article XIII D of the California Constitution imposes two substantive requirements on the levy of a special assessment on real property within a special assessment district.<sup>3</sup> First, the assessment can be imposed only for a "special benefit" conferred on the real property assessed. Second, the assessment on each parcel must be in proportion to, and not greater than, the special benefit conferred on that parcel.<sup>4</sup> Under Article XIII D, the local government agency levying an assessment bears the burden of proving that such assessment meets both requirements.<sup>5</sup>

### Requirement No. 1: Special Benefit

For purposes of the first requirement, "special benefit" means "a particular and distinct benefit over and above general benefits conferred on real property located in the district or to the public at large."<sup>6</sup> General enhancement of property value does not constitute

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“special benefit.”<sup>7</sup> “If a proposed project will provide both general benefits to the community and special benefits to particular properties, the agency can impose an assessment based only on the special benefits. It must separate the general benefits from the special benefits and must secure other funding for the general benefits.”<sup>8</sup> This standard has typically made it difficult for local jurisdictions to find a way to levy assessments for improvements that arguably have a general community benefit, such as parks and open space.

### **Facts of *Beutz***

In *Beutz*, the County of Riverside (the County) adopted a master plan for the acquisition and development of certain public parks and park facilities. Thereafter, it formed a special assessment district comprising residential properties. An assessment levied on such properties would pay for all of the ongoing costs of maintaining the parks’ landscaping. An engineer’s report supporting the assessment determined that each single-family residential unit in the district would benefit equally from maintaining the landscaping regardless of its proximity to the parks. The amount of the annual assessment was calculated by dividing the annual costs of maintaining the landscaping by the total number of such units.

### **Holding in *Beutz***

The plaintiff argued that, because the assessment was based solely on the costs of maintaining the parks’ landscaping, the County must assess only for the special benefit conferred by the landscaping portion of the master plan, not the master plan as a whole. The court, however, held that the County properly determined the amount of assessable special benefits by analyzing the general and special benefits of the entire master plan, and not just the landscaping portion.

### **Distinguishable Case**

In a distinguishable case, *Silicon Valley Taxpayers’ Association, Inc. v. Santa Clara Open Space Authority*,<sup>9</sup> the court struck down a county open space authority’s assessment to fund a program to acquire, improve and maintain unspecified open space lands in a district, which program was not part of a master plan. In determining whether the assessment met the “special benefit” requirement under Article XIII D, the court looked at the special benefit, if any, conferred specifically by the open space. It determined that the open space authority could not show any distinct benefits to particular properties above those which the general public using the open space would receive.<sup>10</sup>

### **Requirement No. 2: Proportionality**

In *Beutz*, the court nevertheless invalidated the special assessment because the County failed to satisfy the second substantive requirement under Article XIII D. That is, the County failed to meet its burden of demonstrating that the assessment was in proportion to the special benefit conferred by the master plan.

Specifically, the engineer’s report for the assessment failed to separate the general from the special benefits to be realized from the implementation of the entire master plan and estimate the quantity of each in relation to the other.<sup>11</sup> It lacked an analysis of the extent to which (1) owners of district parcels, relative to the general public, and (2) owners of district parcels, relative to one another, might reasonably be expected to use or benefit from the parks. Moreover, the assessments appeared to be cost-driven rather than special benefit-driven, *i.e.*, based solely on the annual costs of maintaining the parks’ landscaping rather than the special benefits conferred by the parks on assessed parcels.

The *Beutz* court compared the assessments to the assessments in *Town of Tiburon v. Bonander* in that respect.<sup>12</sup> In *Tiburon*, a special assessment district was formed to pay the costs of placing overhead utility lines underground within the district. Such costs varied throughout the district, and different assessment amounts were levied accordingly, even though the town engineer had determined that most properties within the district would receive the same degree of special benefits. The *Tiburon* court held that the assessment violated Article XIII D because it was based on an area-by-area determination of the costs of the public improvement, rather than on the cost of the public improvement as a whole, and it was not levied on each district parcel in proportion to the special benefits conferred on each parcel.<sup>13</sup>

## Implications Going Forward

*Beutz* shows that California courts may be willing to uphold a special assessment to fund only part of a larger project that is based on the special benefit conferred by the larger project (e.g., the implementation of a master plan). However, *Beutz* also shows that local government agencies have a difficult burden of proof to meet with respect to whether the amount of the special assessment and the amount of special benefit conferred are proportional.

Governmental agencies looking to bolster the enforceability of their special assessments should try to obtain as much credible evidence as they can concerning the relative quantities of general and special benefits. Any engineer's report supporting a special assessment should demonstrate the relative quantities of general and special benefits. Moreover, it should demonstrate that the assessment levied on each parcel is proportional to the special benefit conferred on that parcel. Lastly, a special assessment should be special benefit-driven, not cost-driven.

## Endnotes

- <sup>1</sup> *Beutz v. County of Riverside*, No. E046318, 2010 Cal. App. LEXIS 755 (Cal. Ct. App. May 26, 2010).
- <sup>2</sup> The court left open the question of whether a governmental agency could *decide* which frame of reference to use in determining whether a project provides a special benefit; it merely held that, in this case, the proper frame of reference was the development plan as a whole. See *Beutz*, 2010 Cal. App. LEXIS, at \*26–29.
- <sup>3</sup> CAL. CONST., art. XIII D, § 4, subd. (a). All further references to articles are to the California Constitution.
- <sup>4</sup> *Id.* The *Beutz* court added that the special benefit and proportionality prongs “are perhaps best understood as being interrelated, not separate, requirements.” *Beutz*, 2010 Cal. App. LEXIS, at \*9. Note that there are also certain procedural requirements that must be met for a special assessment to be enforceable. See CAL. CONST. art. XIII D, § 4, subd. (b)–(e).
- <sup>5</sup> *Silicon Valley Taxpayers' Assn., Inc. v. Santa Clara County Open Space Authority*, 44 Cal. 4th 431, 447-48 (2008).
- <sup>6</sup> CAL. CONST., art. XIII D, § 2, subd. (i). Article XIII D does not affirmatively define “general benefit.”
- <sup>7</sup> *Id.*
- <sup>8</sup> *Silicon Valley Taxpayers' Assn., Inc.*, 44 Cal. 4th at 450.
- <sup>9</sup> 44 Cal. 4th 431.
- <sup>10</sup> See *id.* at 455-56. Moreover, because the open space authority did not identify any specific open space acquisition or planned acquisition, it could not show any potential specific benefits to assessed parcels, such as proximity to the open space, based on the parcels' location.
- <sup>11</sup> “All assessments” are to be “supported by a detailed engineer's report[.]” CAL. CONST., art. XIII D, § 4, subd. (b).
- <sup>12</sup> *Town of Tiburon v. Bonander*, 180 Cal. App. 4th 1057 (Cal. Ct. App. 2009).
- <sup>13</sup> *Id.* at 1082-83.

If you have any questions about this *Client Alert*, please contact one of the authors listed below or the Latham attorney with whom you normally consult:

**Ursula H. Hyman**  
+1.213.891.7906  
ursula.hyman@lw.com  
Los Angeles

**Anna Rienhardt**  
+1.213.891.7839  
anna.rienhardt@lw.com  
Los Angeles

**Lindsey D. Levine**  
+1.213.891.7697  
lindsey.levine@lw.com  
Los Angeles

**Soo-Jean Chi**  
+1.213.891.8536  
soo-jean.chi@lw.com  
Los Angeles

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\* In association with the Law Office of Mohammed A. Al-Sheikh