COMMUNITY SERVICE DISTRICT

Here are some things everyone should know about the proposed community service district in Sierra Camp (This is the legal name of what is known as Sierra Park).

DISTRICT

Those wishing to form a community service district must follow the procedures spelled out by the local agency formation commission (LAFCO). This procedure will not be discussed in this document.

Notwithstanding any other provision of the law, a local agency formation commission shall not approve a proposal that includes the formation of a district unless the commission determines that the proposed district will have sufficient revenues to carry out its purposes. LAFCO can approve a district without sufficient funds contingent upon the voters approving special taxes or benefit assessments to meet LAFCO's requirements for funding (CA Code 61014 {b & c]).
If no majority protest exists, the commission shall do either of the following:

1. Order the formation subject to the approval of the voters. (Note – Brian at the State of California said this means registered voter in the district. This was confirmed by Scott Moody, General Manager of the Twain Harte CSD and John Bliss, a civil engineer with the SCI Corporation (Mr. Bliss certifies the assessments for the Twain Harte CSD). ***It should be noted that the three individuals cited above are not attorneys but each is aware of how CSDs are organized, how they operate, and understand the legislation that applies to CSDs.***
2. Order the formation subject to the approval by the voters of a special tax or the approval by property owners of a "special

benefit assessment", pursuant to subdivision (c) (CA Code 61014 {e (2) A &B}).

If the local agency formation commission orders the formation of a district pursuant to paragraph (2) of subdivision (c), the commission shall direct the board of supervisors to direct county officials to conduct the necessary elections on behalf of the proposed district (CA Code 61014 {c}).

Under the law there are two classifications of districts. One type allows the voters to elect the board and in the other LAFCO requires that the county board of supervisors serve as the district board. A district shall be deemed an "independent special district," as defined by Section 56004, except when a county board of supervisors or a city council is the board of directors (CA Code 61007 {c}).

In the case of a proposed district which contains only unincorporated territory in a single county and less than 100 voters, the local agency formation commission may provide, as a term and condition of approving the formation of the district, that the county board of supervisors shall be the initial board of directors until conversion to an elected board of directors (CA Code 61022 {a}).
For a district to convert to an elected board, a district is required to meet one of the following conditions:

1. Reach 500 voters
2. Increase to a voter population specified by LAFCO
3. After ten years have elapsed
4. Less than ten years as specified by LAFCO (CA Code 61022 {1-4}).

LOCAL ELECTION

The board of directors of a CSD is elected in a local election which is defined as a municipal, county, or district election (CA Election Code 328).

VOTER

Voters in local elections must meet certain guidelines. The criteria used to determine who qualifies as a voter in an area (Such as a CSD) is:

1. "Residence" for voting purposes means a person's domicile.
2. The domicile of a person is that place in which his or habitation is fixed, wherein the person has the intention of remaining, and to which, whenever he or she is absent, he or she has the intention of returning. At a given time, a person may have only one domicile.
3. The residence of a person is that place in which the person's habitation is fixed for some period of time, but wherein he or she does not have the intention of remaining. At a given time, a person may have more than one residence (CA Election Code 349).

BOARD

There are different kinds of boards for a Community Service District (CSD). The type of board that would probably apply in our subdivision is an at-large board. An at-large board is one elected by the voters of the entire CSD rather than a board elected from divisions or zones within the district (CA Code 61002). Since Sierra Camp is so small, it would not make sense to break the CSD into zones or divisions and have one board member elected from each zone or division as is done in supervisorial districts.

The question arises as to what type of district is being proposed as well as to what applies in a CSD. One classification is a "landowner voting district" which means a district whose principal act requires an elector to be an owner of land located within the district. For example, voting for assessments in a CSD is based on owning property rather than being a registered voter and resident of the CSD. A second type is a "resident voting district" which means any district other than a landowner voting district. This will have to be clarified when and if a CSD is established in Sierra Park (Elections Code 10500 {8 & 11}). Larry Houseberg, Assistant Executive Officer of Tuolumne County and LAFCO official for Tuolumne County, offered some help with this question. He sent an email stating "Because a CSD is a registered voter district, only written protests by registered voters, registered within the proposed boundary will be considered." This, along with legislation explained later, seems to indicate that most of the voting in the CSD proposed for Sierra Camp will be limited to the registered voters residing in Sierra Camp. Assessments seem to be the exception since all property owners are allowed to vote on them even if they are registered to vote elsewhere.

A CSD board is composed of five members and no person shall be a candidate for the board of directors unless he or she is a voter of the district or proposed district (CA Code 61040 {a & b}). ***It should be noted that some individuals in Sierra Camp think that members of the current Recreation Association Board will automatically move to the CSD board should a CSD be formed. This does not meet the requirements of the law since the members of the Recreation Association Board were elected by the eighty or so shareholders of the Odd Fellows Sierra Recreation Association, a for-profit corporation. The other property owners were banned from voting for this board. Also, some of the Recreation Association members who voted are not registered voters in the proposed CSD.***

Selecting the board for a CSD is addressed by Government Code Section 58130. It states that within twenty days after the adoption of the resolution establishing the boundaries, the supervising authority (LAFCO) shall call and give notice of an election to be held in the proposed district to determine whether the district shall be formed and to select the elective officers, if any, of the district. Governing Code Section 58131 states that the election shall be called and conducted and candidates shall be nominated as in general district elections.

A board of directors shall hold a regular meeting at least once every three months. Meetings of the board are subject to the Ralph M. Brown Act (CA Code 61044).

The term of office for board members is four years (CA Code 61042).

Within forty-five days after the effective date of the formation of a district, the board of directors shall meet and elect its officers (CA Code 61043 {a}).

The board of directors can vote themselves a salary of up to $100 per day of service but are limited to a maximum of six days of pay a month (CA Code 61047 {a}).

The directors, by law, are required to appoint a general manager. The county treasurer shall serve as the treasurer unless the board appoints a district treasurer. It is legal for the board to appoint the same person as general manager and treasurer. The general manager and treasurer serve at the pleasure of the board. Their compensation is set by the board. The general manager and treasurer must be bonded (CA Code 61050 {a-f}).

The general manager is responsible for all of the following:

1. The implementation of the policies established by the board of directors
2. The appointment, supervision, discipline, and dismissal of the district's employees, consistent with the employee relations system established by the board of directors.
3. The supervision of the district's facilities and services.
4. The supervision of the district's finances (CA Code 61051 {a-d}).

DISTRICTS MAY

Under the law a CSD is able to perform a number of functions and provide the services for which they have funding. Some of the things that a CSD can do are:

Supply water for any beneficial uses, in the same manner as a ***municipal water district.***

Acquire, construct, improve, maintain, and operate recreation facilities, including, but not limited to parks and open space, in the same manner as a recreation and park district.

Organize, promote, conduct, and advertise programs of community recreation, in the same manner as a recreation and park district.

Acquire, construct, improve, and maintain streets, roads, rights-of-way, bridges, culverts, drains, curbs, gutters, sidewalks, and any incidental works.

Remove snow from public streets, roads, easements, and rights-of-way.

Other items include sewage treatment, solid waste removal, fire protection, street lighting, act like a mosquito abatement district, provide police protection, provide security service, provide library service, convert utilities to underground, provide emergency medical service, provide and maintain airports, provide transportation service, abate graffiti, establish flood protection, provide community facilities, abate weed and rubbish, provided hydroelectric power, television translator facilities, animal control, pest control, maintain mailboxes,

provide mail delivery services under contract to the United States Postal Service, own and operate cemeteries, area planning commission, and the list goes on. (Note – many of these have not been proposed but once a CSD is in place a board could legally pursue any of these.) (CA Code 61100 {a – af}).

FUNDING A CSD and PROPOSITION 218

Note- the page numbers refer to the report on Proposition 218 listed under sources at the end of this report. Any other source will be noted.

Proposition 218 was approved by the state's voters in November 1996. It applies to each of California's nearly 7,000 cities, counties, special districts (CSDs), schools, community college districts, redevelopment agencies, and regional organizations.

Proposition 218 restricts local government's ability to impose assessments and property related fees and requires elections to approve many local government revenue raising methods (Page 4).

The revenue reductions brought about by Proposition 218 results in lower payments by people and businesses to government and decreases spending for local public service (Page 5).

Prior to Proposition 218, locally elected governing bodies held most of the power over raising local revenue. Proposition 218 shifts most of the power over taxation from locally elected governing boards to residents and property owners (Page 5).

Under Proposition 218 local government's powers become significantly constrained. While locally elected governing boards continue to be fully responsible for decision-making regarding the expenditure of public funds, they now have very little authority to raise funds without a vote of the residents or property owners. In addition, Proposition 218

limits local government's authority to call an election to raise revenues. Specifically, except in cases of emergency, local governments now may hold elections on general taxes only once every two years. Moreover, Proposition 218 limits the amount of an assessment or property-related fee that may be put before the property owners for a vote (Page 5 & 6).

A tax is called a "special" tax if its revenues are used for specific purposes and a "general" tax if its revenues may be used for any governmental purpose. This distinction is important because it determines whether a tax must be approved by a majority vote of the electorate (general tax) or two-thirds vote (special tax) (Page 6).

An assessment is a charge levied on property to pay for a public improvement or service that benefits property. Assessments are usually collected on the regular tax bill. They are different, however, from the regular 1 percent property tax and property tax debt overrides in that assessment rates are not based on the value of the property. Assessments are also different from another charge that sometimes is placed on the property tax bill, parcel taxes. Unlike parcel taxes, assessments typically were not voter approved prior to Proposition 218. In addition, assessment rates were linked to the cost of providing a service or improvement, whereas parcel taxes could be set at any amount (Pages 6 & 7).

Proposition 218 restricts property-related fees, defined as fees imposed "as an incident of property ownership" (Page 7).

Under Proposition 218, some assessments will qualify for exemption. To qualify for the exempt list an assessment must meet one of the following conditions to be exempt:

1. The assessment was previously approved by the voters or by all the property owners at the time the assessment was created.
2. All of the assessment proceeds are pledged to bond repayment.

3. All the assessment proceeds are used to pay for sidewalks, streets, sewers, water, flood control, drainage systems, or "vector control".

If the assessment is not exempt, then the local government must eliminate the assessment or bring it into compliance with Proposition 218's assessment calculation and election requirements. The types of assessments that are not likely to satisfy any of the conditions for exemption are: fire, lighting and landscaping, and park and recreation assessments.

Local governments must recalculate all existing assessments that do not qualify for the exempt list.(Page 9)
The specific calculation provisions are:

1. The local government must determine whether property owners would receive a "special benefit" from the project or service to be financed by the assessment. Proposition 218 defines a special benefit as a particular benefit to land and buildings, not a general benefit to the public or a general increase in property values. If a project or service would not provide such a special benefit, Proposition 218 states that it may not be financed by an assessment.
2. Local government must use a professional engineer's report to estimate the amount of special benefit landowners would receive from the project or service, as well as the amount of "general benefit." This step is needed because Proposition 218 allows local government to recoup from assessments only the proportionate share of cost to provide the special benefit. That is, if special benefits represent 50 percent of total benefits, local government may use assessments to recoup half the project or service's cost. This limitation on the use of assessments represents a major change from the law prior to Proposition 218, when local governments could recoup from assessments the costs of

providing both general and special benefits. ***It should be noted that Twain Harte uses a firm called SCI Corporation to provide the required reports to meet the requirements of Proposition 218 concerning assessments. Larry Bliss, the civil engineer mentioned earlier who works for SCI, estimated that it would cost between $50,000 and $100,000 to do the reports for special benefit assessments in Sierra Camp.***

3. Finally, the local government must set individual assessment charges so that no property owner pays more than his or her proportional share of the total cost. This may require local government to set assessment rates on a parcel-by-parcel basis (Page 10).

Local government must mail information regarding assessments to all property owners. Each assessment notice must contain a mail-in ballot for the property owner to indicate his or her approval or disapproval of the assessment. After mailing the notices, the local government must hold a public hearing. At the conclusion of the hearing, the ballots are tabulated. The ballots are weighed in proportion to the amount of the assessment each property owner would pay. (For example, if homeowner Jones would pay twice as much assessment as homeowner Smith, homeowner Jones' vote would "count" twice as much as homeowner Smith's vote.) The assessment may be imposed only if 50 percent or more weighted ballots support the assessment (Page 10).

PROPERTY RELATED FEES

Local government must begin by examining all existing fees to determine whether they are "property-related" fees, imposed as an "an incident of property ownership." If a fee is not property related, then the local government need not take any further action regarding the fee. Conversely, if the fee is property-related, then the local government must make sure that the fee complies with Proposition

218's restrictions on use of revenues and the rate calculation requirements (Page 12).

RAISING REVENUES

In order to raise a new tax, assessment, or a property-related fee, or to increase an existing one, local governments must comply with the provisions required by Proposition 218. In general, these requirements are that local governments may use assessments and property-related fees only to finance projects and services that directly benefit property and most revenue-raising measures must be approved in an election. A vote is not needed to raise fees for water or refuse collection but the fee is the actual cost without a profit added (Page 13 & 14*).* ***It should be noted that a court case will be discussed later that gives the voter more power over water fees.***

REQUIREMENTS FOR NEW TAXES

All general taxes must be approved by a majority of the people. (This means registered voters residing in the community or affected area.)
Elections for general taxes must be consolidated with a regularly scheduled election for members of the local governing body. (In emergency this can be waived by unanimous vote of the governing body.)
Any tax for a specific purpose is a "special tax," even if the funds are placed into the community's general fund. (A "special tax" requires a two-thirds vote of all registered voters residing in the community or affected area.) (Page 14).

REQUIREMENTS FOR NEW ASSESSMENTS

All new or increased assessments must follow the assessment calculation and election requirements established by Proposition 218.

There are no exceptions to this requirement. As a practical matter, this requirement will mean that programs that benefit people such as libraries and recreation programs for example, rather than benefitting specific properties, must be financed by general or special taxes or by other non-assessment revenue (Page 15***). It should be noted that some owners in Sierra Camp think that the recently passed item called an assessment, $1,023, qualifies as an assessment under the terms of Proposition 218. John Bliss, the civil engineer mentioned earlier, said that each assessment must be listed separately. Since the so called assessment passed in May 2012 covered a myriad of items but did not designate specific assessments, it will be red flagged by LAFCO. An assessment is defined as a charge levied on property to pay for a public improvement or service that benefits property such as flood control improvements, streets, and lighting and landscaping (Pages 6-7).***

REQUIREMENTS FOR NEW FEES

To impose new or increased property-related fees, local government must comply with the fee restriction and fee rate calculation requirement of Proposition 218.
Local governments must also:

1. Mail information regarding the proposed fee to every property owner.
2. Hold a hearing at least 45 days after the mailing.
3. Reject the proposed fee if written protests are presented by a majority of the affected property owners.
4. Hold an election on any property-related fee, other than a fee for water, sewer, or refuse collection. ***It should be noted that the California Supreme Court in the case Bighorn-Desert View Water Agency v. Virjil,2006 WL 2042597 ruled that water rates could be the subject of local initiatives to repeal or reduce the rates. Even though this was specifically for water the same reasoning would***

apply to sewage and garbage. Water, sewer, and garbage rates were originally considered exempt from the initiative process under Proposition 218 (CA Cities Advocate July28, 2006). The Court ruled that Proposition 218 applies to charges for a property-related service, whether the charge is calculated on the basis of consumption or is imposed as a fixed monthly fee. Water rates, sewer rates, garbage, and other property related fees are now subject to Proposition 218's "cost of service" requirement (These fees cannot be used to make a profit for government – they must be billed at cost) (Howard Jarvis Taxpayer's Association, August 14, 2006).

As a practical matter, local governments will find it much more difficult, and expensive to impose or increase property-related fees as a result of the passage of Proposition 218. (Page 15).

Proposition 26 was passed in 2010 and made it more difficult for governments to increase taxes. Now, the local government bears the burden of proving by a preponderance of the evidence that a levy, charge, or other exaction is not a tax, that the amount is no more than necessary to cover the reasonable costs of the governmental activity, and that the manner in which those costs are allocated to a payer bear a fair or reasonable relationship to the payer's burden on, or benefits received from, the governmental activity.

INITIATIVE POWER

The local residents can use the initiative power to repeal or reduce any local tax, assessment, or fee. (Page 16).

BURDEN OF PROOF

Prior to Proposition 218, a business or resident challenging the validity of a fee or assessment carried the "burden of proof" to show the court that the fee or assessment was illegal. Proposition 218 changed this legal standard by shifting the "burden of proof" to local governments. Now local governments must prove that any disputed fee or assessment charge is legal (Page 17*).* ***It should be noted that the California Supreme Court addressed "burden of proof" and ruled on it in the case Silicon Valley Taxpayers Association, Inc. v. Santa Clara County Open Space Authority (2008) LEXIS 8677. The court ruled that Proposition 218 eliminates any shield normally held by local agencies against challenges to their decisions. Without any presumption of validity, the burden now lies on the agency to prove why its decision was valid. Now it is clear that when a plaintiff challenges a special assessment, the government agency has the burden to prove that it acted lawfully, and the court reviews the agency's decisions de novo (Considering the matter anew, the same as if it had not been heard before and as if no decision previously had been rendered). The case involved a special assessment for open space with an increase of $20.00 to the property tax. The court held that the assessment amounted to a special tax, and therefore two-thirds of the voters must approve it in order for it to be valid. The special benefit listed by the OSA included "enhanced recreational activities and expanded access to recreational areas," "increased economic activity" etc. The court found that none of the benefits amounted to a special benefit inuring (benefitting) to the properties taxed.***

SPECIAL DISTRICT

A special district, such as a CSD, is an agency of the state, formed pursuant to general law or a special act, for the local performance of governmental or proprietary functions with limited geographic boundaries. (Page 19).

CONCLUSION

Forming a CSD in Sierra Camp seems like a mistake based on the information presented above.

For example:

There are only 365 lots in our subdivision, 366 lots when and if OFSRA is able to add the property they are selling over at the old Boy Scout Camp. Out of the 365 lots, less than thirty-five are occupied full time. About ten of those are renters and not owners. There are approximately ten children living in the park full time. Is a CSD needed for such a small number of full time residents?

A CSD will cost a great deal of money. Scott Moody, the general manager of the Twain Harte CSD, said that he told the group from the subdivision that met with him that a CSD becomes expensive to operate because it is a governmental agency. Because of this, there are fixed costs, administrative costs for example, that are required and they must be funded.

It will bring restrictions inherent in government. The CSD board will operate and have powers similar to a city council and/or a county board of supervisors.

The requirement of the CSD law to hire a highly trained manager with qualifications similar to those possessed by a city manager will bring with the position increased costs. The CSD in Groveland has a manager making $220,000 a year. The manager's assistant makes $135,000 per year.

The best estimate on Groveland's bond indebtedness is somewhere between $20,000,000 and $25,000,000. They need to lay off some of their workers due to the voters turning down a $300,000 bond. However, their employees are members of a union and reducing their labor force is difficult.

Funding will be difficult because of the Proposition 218 requirement to put funding proposals to a vote.

Fixed costs will increase to support the bureaucracy which will be required of a CSD.

Property values could decline or stagnate with the formation of a CSD if the cost of operating the subdivision increases substantially and if there are large and long term bond indebtedness incurred.

Lot owners should not rush into a CSD or a mutual water company until we resolve certain issues. The water system is old and antiquated. Remember, in October, 2011 a break occurred on old Jordan and the problem was a connection made with a radiator hose. Odd Fellows Sierra Recreation Association developed the subdivision; they installed the water system, charged a great deal for providing water over the last twenty-five years, and currently own the water system. Because of the present and future liabilities of owning the water system, the lot owners should not rush into assuming control or taking over all of the problems and costs inherent in owning it. If the lot owners do take over the water system, they should not agree to any type of hold-harmless clause or other item that releases OFSRA from future liability.

OPTIONS

1. Instead of forming a CSD, water can be provided by forming a mutual water company which is similar to how a CSD supplies water.
2. A more viable option for the water system might be to turn it over to the Tuolumne Utilities District. TUD is in the business of supplying water in Tuolumne County and they seem like a better option than what is currently being considered.
3. Roads can be maintained, repaired, and snow removed and the lot owners billed under Civil Code 845 once it is determined who actually owns the roads in Sierra Camp.
4. The garbage dumpster can be removed and the full time residents can pay for weekly pick-up.
5. The needle dump can be closed and lot owners can haul to the site at the lower Twain Harte exit. It is not that expensive.
6. The pond can be fenced off and those using it can pay as those in Twain Harte do for the use of the lake located there.
7. Use of the playground can follow the same plan as that mentioned above for the pond.
8. Those lot owners desiring social programs can pay for them and those who do not want to pay will not participate. Pay your own way in life and do not depend on others to feed and entertain you.

By keeping the CSD out and following the plan above, we should be able to keep costs below what OFSRA is currently trying to collect. The subdivision will also be able to pay for water, road maintenance, and snow removal. Form a CSD if you want an increase in costs and more regulation and control in the subdivision but, if you do not want this, consider and demand a plan that is more economical and less restrictive.

SOURCES

1. California Codes 58130, 58131, and 61000-61131
2. Revenue and Taxation Code 95-95.4
3. Elections Code 328, 349, and 10500 – 10556
4. CA Cities Advocate July 28, 2006
5. California Supreme Court – Bighorn –Desert Agency v. Virjil, 2006 WL 2042597 also Silicon Valley Taxpayers Association, Inc. v. Santa Clara County Open Space Authority (2008) LEXIS 8667
6. SCI Corporation 1-800-273-5167 – John Bliss, Civil Engineer
7. Tuolumne County (209)533-5633 – Larry Houseberg Assistant Executive Officer and LAFCO
8. Twain Harte Community Service District (209)586-3172 – Scott Moody General Manager
9. State of California – Brian (916) 651-4119
10. Community Needs, Community Services: A Legislative History of SB 135 (Kehoe) and the "Community Services District Law" (Go to www.sen.ca.gov/locgov in order to retrieve the text of this report).
11. Understanding Proposition 218 by the Legislative Analyst's Office December, 1996
12. The Howard Jarvis Taxpayer Association at www.hjta.org for Proposition 218, Proposition 26, community service districts, other tax issues, court cases resolved, and court cases pending
13. Text of Proposition 26, the Supermajority Vote to Pass New Taxes and Fees Act (California) – (Go to www.ballotpedia.org)

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