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Subject: Written Public Comment for December 2025 Meetings: Evidence of Unconstitutional Tax District Formation and Formal Notice of Violations
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Dear Clerks of the Board of EDHCSD, EDC's Board of Supervisors, Planning Commission and D.A. Pierson (cc: EDHCSD's Baker-Tilly Auditor; bcc: numerous others),

[Clerk of each Board, please incorporate these comments into the official record for the Supervisors' 12/2/2025, Planning's 12/11/2025 EDHCSD's December 13, 2025—General Session Public Comment]

I am calling out for the record that the written evidence demonstrates that Community Facilities District 2019-01 ("Districtwide") was formed through an unconstitutional manipulation of the electorate, in violation of Article XIII A, Article XIII C, Proposition 218, and controlling case law, including City of San Diego v. Shapiro (2014) 228 Cal.App.4th 756.

If an agency adopts, administers, **or knowingly perpetuates a financing mechanism** that is **unconstitutional under Proposition 13/218-related jurisprudence**, that is a **failure to support and defend the state constitution**.

LOEWEN'S MANAGEMENT REPORTS

A. In June 2019, District staff acknowledged the legally correct method: a registered-voter election

Loewen's June 13, 2019 report states:

"A registered voter election CFD is the recommended approach..."

**El Dorado Hills Community Services District (District)
Thursday, June 13, 2019**

GENERAL MANAGER'S REPORT

Respectfully submitted by General Manager Kevin A. Loewen (Loewen)

STRATEGIC INITIATIVES

- 1. COMMUNITY FACILITIES DISTRICT (CFD) FORMATION** – A CFD is being formed to address future District park and recreation facilities' maintenance in-lieu of the formation of multiple lighting & landscaping assessment districts (LLADs). A registered voter election CFD is the recommended approach to providing the maintenance for planned future community centers and aquatic facilities. Formation details and timeline provided by SCI Consulting, was presented to the Parks and Planning Committee outlining a schedule that would provide for a special ballot measure for CFD formation to occur in March 2020. Proposals were solicited for and received by two (2) communication-consulting firms; proposals are currently under review with recommendation to be presented to the Parks and Planning Committee.

This is an express recognition that a districtwide special tax must go to the registered voters who will actually bear the tax.

B. In July 2019, staff abruptly “paused” the voter-election process

Loewen wrote on July 11, 2019:

“Further research... has brought some pause... Staff may cancel the current work effort...”

**El Dorado Hills Community Services District (District)
Thursday, July 11, 2019**

GENERAL MANAGER'S REPORT

Respectfully submitted by General Manager Kevin A. Loewen (Loewen)

STRATEGIC INITIATIVES

- 1. COMMUNITY FACILITIES DISTRICT (CFD) FORMATION** – A CFD is being formed to address future District park and recreation facilities' maintenance in-lieu of the formation of multiple lighting & landscaping assessment districts (LLADs). A registered voter election CFD was the recommended approach to providing the maintenance for planned future community centers and aquatic facilities. Further research into the appropriate method for formation, i.e., property owner vote or registered voter approach, has brought some pause to this matter. Staff may cancel the current work effort and look to let it out to a new consultant.

This pause directly coincides with developer involvement and marks the moment the legal path was abandoned.

C. By August–September 2019, the District reversed course and adopted a one-developer landowner vote

Loewen's August 8, 2019 staff report:

“...expected that the first subdivision to join/create this maintenance funding mechanism will occur prior to year-end.”

Loewen (Sept. 12, 2019):

“A property-owner election method will be utilized. This approach allows the CFD to be formed by one development, with future development to be obligated to annex...”

El Dorado Hills Community Services District (District)
Thursday, August 08, 2019

GENERAL MANAGER'S REPORT

Respectfully submitted by General Manager Kevin A. Loewen (Loewen)

STRATEGIC INITIATIVES

1. **COMMUNITY FACILITIES DISTRICT (CFD) FORMATION** - A CFD is being formed to address future District park and recreation facilities' maintenance in-lieu of the formation of multiple lighting & landscaping assessment districts (LLADs). Formation work has advanced to a point in which it is expected that the first subdivision to join/create this maintenance funding mechanism will occur prior to yearend.

(Source GM Reports: [linked here](#))

This is the exact formation structure condemned in *CITY OF SAN DIEGO v. SHAPIRO*:

- a tiny formation area,
- a limited, aligned electorate,
- a tax intended to bind a vastly larger future territory.

D. The GM's statements reveal the actual purpose: districtwide taxation, not a tax for the seed parcel

Repeated language shows that the intent from the outset was to tax the entire future town of El Dorado Hills:

“...future development to be obligated to annex...”

El Dorado Hills Community Services District (District)
Thursday, September 12, 2019

GENERAL MANAGER'S REPORT

Respectfully submitted by General Manager Kevin A. Loewen (Loewen)

STRATEGIC INITIATIVES

1. **COMMUNITY FACILITIES DISTRICT (CFD) FORMATION** – A CFD is being formed to address future District park and recreation facilities' maintenance costs in-lieu of the formation of multiple landscape and lighting assessment districts (LLADs). A property-owner election method will be utilized. This approach allows the CFD to be formed by one development, with future development to be obligated to annex into the CFD, providing the necessary maintenance funding to maintain planned future facilities, such as community centers and aquatic facilities. The formation process is expected to begin in October 2019, with a two to three-month timeline to complete.

“...providing the necessary maintenance funding to maintain planned future community centers and

aquatic facilities.”

This shows:

- the tax was conceived as districtwide, and
- the seed parcel was merely a procedural vehicle.

Under *Shapiro*, the purpose of the formation structure is key. Here, the purpose was to impose a tax across El Dorado Hills through an artificially small electorate.

E. Developer and BIA involvement confirms improper influence

Loewen reported:

“The Building Industry Association (BIA) has requested...” (Oct. 10)

El Dorado Hills Community Services District (District)
Thursday, October 10, 2019

GENERAL MANAGER'S REPORT

Respectfully submitted by General Manager Loewen A. Loewen (Loewen)

STRATEGIC INITIATIVES

1. **COMMUNITY FACILITIES DISTRICT (CFD) FORMATION** – A CFD is being formed to address future District park and recreation facilities' maintenance costs in-lieu of the formation of multiple landscape and lighting assessment districts (LLADs). A property-owner election method will be utilized. This approach allows the CFD to be formed by one development, with future development to be obligated to annex into the CFD, providing the necessary maintenance funding to maintain planned future facilities, such as community centers and aquatic facilities. The formation process is anticipated to begin November 2019, with a two to three-month timeline to finalize formation. The Building Industry Association (BIA) has requested that the details of the CFD be explained to them at a meeting scheduled to occur in October.

“Staff met with local developers and the BIA... resulting in overall support...” (Nov. 2019)

This reflects developer capture of the taxation process—another red flag identified in *Shapiro*.

F. “Future development to be obligated to annex” defeats the “voluntary annexation” claim

Mello-Roos annexation must be voluntary.

A CFD cannot lawfully be designed so that all future development is pre-obligated to annex into a tax approved by an unrelated, single landowner.

Moreover: as has been previously identified, undeveloped property cannot be “engineered” to be exempt from the special tax for which it benefits forevermore (*Town of Tiburon v. Bonander* 2009).

While *Tiburon* deals with special assessments, the underlying principle that a public financing mechanism cannot be arbitrarily or disproportionately applied is relevant to the reasonableness requirement for a special

tax under a CFD. Undeveloped property cannot be exempted "forevermore"—CFDs must meet a standard of reasonableness in how the tax is apportioned.

CITY OF SAN DIEGO v. SHAPIRO

***City of San Diego v. Shapiro*, 228 Cal.App.4th 756 (2014) holds:**

- A public agency cannot create a tiny “electorate” of landowner(s) for purposes of approving a special tax
- when the tax is intended to apply to, or bind, property owners/uses outside that electorate, including future owners.

In *Shapiro*, the City attempted to form a district where hotel owners alone approved a tax that would bind future hotels.

The Court ruled this unconstitutional because it evaded Article XIII A and Proposition 218 voting requirements.

CFD 2019-01 mirrors the unconstitutional structure:

- A single uninhabited parcel (Saratoga) was used to form the CFD by landowner vote.
- The Future Annexation Area covers all of El Dorado Hills, but none of those future taxpayers were permitted to vote.
- The tax is imposed as a condition of development approval, not as a validly approved special tax.
- The developer class that created the CFD was simultaneously exempted “forevermore.”

If this analysis is correct, CFD 2019-01 is void under *Shapiro*, Article XIII A §4, and Proposition 218.

Continuing to enforce or expand a void special tax constitutes a constitutional violation, directly contrary to the oath each of you has taken.

The County—including the Auditor-Controller, Mr. Harn, and the Planning Commission—is likewise on notice that enforcing or expanding a void special tax is a breach of constitutional duty and a violation of the oath of office.

THE DEVELOPER-EXEMPTION: A SEPARATE LEGAL DUTY BREACH

A public agency cannot:

- Give a permanent tax exemption to a politically favored class (developers),
- While imposing that tax on future homeowners who never voted and never consented.

This implicates:

- Equal protection concerns (arbitrary class-based exemption)
- Gov. Code § 53313 & § 53321, requiring uniform application of Mello-Roos special taxes
- Fiduciary duty to taxpayers
- The constitutional requirement that special taxes be voter-approved by the people who pay them

A Board that knows these exemptions exist and fails to correct them is knowingly permitting:

- An unconstitutional financing structure
- A discriminatory tax regime
- A misuse of statutory authority

That directly implicates your oath to faithfully discharge the office.

THE SOLUTION

Accordingly, the Board should:

1. **Suspend annexations,**
2. **Initiate an independent legal review,** and
3. **Prepare to invalidate CFD 2019-01** consistent with *Shapiro* and Proposition 218.

Certainly, the County's Planning Commission, Board of Supervisors and Auditor-Controller should not be knowingly enforcing or expanding a void special tax which constitutes a constitutional violation, directly contrary to the oath each of you has taken.

Should you have any questions—I can be reached at (916) 807-0876.

Sincerely,

Dean Getz

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