



# Tax Development, or What?

## Fiscal Foundations for the Next Era of Land Use Regulation in California

Chris Elmendorf & Darien Shanske  
UC Davis School of Law

June 1, 2023



a member-supported nonprofit organization

# 1. The Problem

**New development requires new revenue to pay for associated political & economic needs, yet the usual “revenue tools” have made good projects financially infeasible.**



# 1.1 Historical context

HAZY SUNSHINE  
May weather baby with a  
temperature range of 45 to 65  
degrees. Details, Page B-2

179th YEAR  
SAN DIEGO, CALIFORNIA  
A City of Ideas  
WEDNESDAY MORNING, JUNE 7, 1978  
64 PAGES  
DAILY 15 CENTS

## The San Diego Union FINAL

# PROP. 13 APPROVED BY WIDE MAJORITY

## Younger Wins GOP Nomination

**DULL — BUT SOUND**  
**Younger's  
Strategy  
Pays Off**

**BY PETER KATE**

It was like the calm of the storm and the heat — only this time the calm was on the side of the San Diego eagle.

Bill Younger, who had been elected to the San Diego Assembly in 1974, was the only Republican to win the nomination in the 13th district. He had been elected to the San Diego Assembly in 1974, and was re-elected in 1976. He was the only Republican to win the nomination in the 13th district.

Younger's strategy was to focus on the issues that were most important to voters. He focused on the issues of education, health care, and the environment. He also focused on the issue of Proposition 13. He argued that Proposition 13 would protect property values and ensure that the government was spending money wisely.

Younger's strategy paid off. He won the nomination with a wide majority. He was elected to the San Diego Assembly in 1978.

**COURT TEST  
Looms On  
Tax Slash**

**By GENE CARBON**

California voters' approval of Proposition 13, the state's new property tax limit, will be tested in court by the state's attorney general.

The state's attorney general, Stanley Mosk, has filed a lawsuit with the U.S. Supreme Court to challenge Proposition 13. Mosk argues that Proposition 13 is unconstitutional because it violates the state constitution's provision that the state legislature has the power to tax.

The state's attorney general has also filed a lawsuit with the state supreme court to challenge Proposition 13. Mosk argues that Proposition 13 is unconstitutional because it violates the state constitution's provision that the state legislature has the power to tax.

**November Ballot  
Fights Tough  
Fight For Brown**

**By DONALD H. WARRISON**

California voters' approval of Proposition 13, the state's new property tax limit, will be tested in court by the state's attorney general.

The state's attorney general, Stanley Mosk, has filed a lawsuit with the U.S. Supreme Court to challenge Proposition 13. Mosk argues that Proposition 13 is unconstitutional because it violates the state constitution's provision that the state legislature has the power to tax.

The state's attorney general has also filed a lawsuit with the state supreme court to challenge Proposition 13. Mosk argues that Proposition 13 is unconstitutional because it violates the state constitution's provision that the state legislature has the power to tax.

**STATES TO SHARE COST  
Carter Proposes  
Policy On Water**

**By JAMES CAHY**

President Jimmy Carter has proposed a policy on water that would require states to share the cost of water projects.

Carter's proposal is part of a larger plan to reform federal water programs. The plan would require states to contribute more to the cost of water projects and to take more responsibility for managing their water resources.

Carter's proposal is part of a larger plan to reform federal water programs. The plan would require states to contribute more to the cost of water projects and to take more responsibility for managing their water resources.

**Curb Wins,  
Will Face  
Dymally**

**By GENE CARBON**

California voters' approval of Proposition 13, the state's new property tax limit, will be tested in court by the state's attorney general.

The state's attorney general, Stanley Mosk, has filed a lawsuit with the U.S. Supreme Court to challenge Proposition 13. Mosk argues that Proposition 13 is unconstitutional because it violates the state constitution's provision that the state legislature has the power to tax.

The state's attorney general has also filed a lawsuit with the state supreme court to challenge Proposition 13. Mosk argues that Proposition 13 is unconstitutional because it violates the state constitution's provision that the state legislature has the power to tax.

**How California Voted**

**GOVERNOR**

Party	Count
Republican	32
Democrat	328

**SENATORS**

Party	Count
Republican	10
Democrat	178

**SECT. OF STATE**

Party	Count
Democrat	100
Republican	180

**ATTORNEY GENERAL**

Party	Count
Democrat	100
Republican	180

**CONTROLLERS**

Party	Count
Democrat	100
Republican	180

**LEGISLATIVE COUNCIL**

Party	Count
Democrat	100
Republican	180

**1309 x 2048**

## Propositions 26 and 218

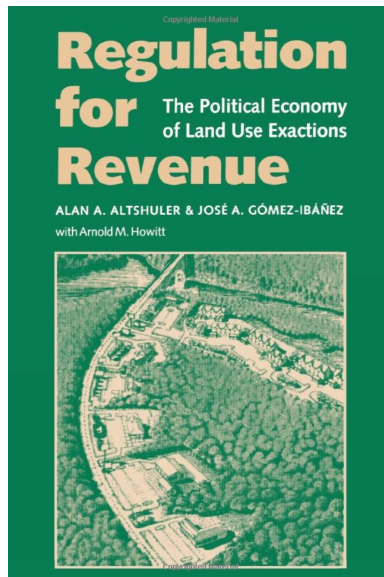
IMPLEMENTATION GUIDE | MAY 2019

**LEAGUE OF CALIFORNIA CITIES**

Copyright ©2019 League of California Cities

All rights reserved. This publication, or parts thereof, may not be reproduced in any form without the permission of the League of California Cities.

# 1.2 The municipal response



- **Exactions** (ad-hoc exchange of permit for infrastructure or money)
- **Development agreements** (ad-hoc exchange of infrastructure or money for legal certainty)
- **Impact fees** (fee schedule set & announced in advance, keyed to ostensible impacts of project)
- **Inclusionary zoning** (kin to impact fees, but the public benefit is provided in kind)

## 1.3 Perils

This regime depends on...

(1) **political discretion + economic clairvoyance + goodwill**, with exactions / fees adjusted on case-by-case basis to remain in sweet spot of feasibility.

Or else it...

(2) puts a ***de facto* floor on price of housing** (assuming high demand).

# 1.3 Perils

DEVELOPMENT | SAN FRANCISCO

## Report: Housing creation economically “infeasible” in SF

With development costs over \$700 psf, every unit type fails to reach breakeven

A recent feasibility study on San Francisco Mayor London Breed’s proposed “Cars to Casas” legislation shines a headlight on why so many developers are unable to move forward with residential projects in the city, which has the highest construction costs in the world.

With hard and soft development costs coming to a total of more than \$700 per square foot, not one of 16 scenarios analyzed for the city’s Planning Department by Century Urban was deemed economically viable. The Cars to Casas law would cut bureaucratic red tape and offer incentives to develop housing on parcels formerly used for automotive purposes.



## **2. A Solution**

**Enact a progressive parcel tax on the “allowable building envelope” created by upzoning ordinances.**



## 2.1 Tax the potential, not the project

- When cities upzone for greater density in high-demand locations, they increase the value of the upzoned sites (unless they undermine the upzoning w/excessive fees).
- If cities replaced impact fees & exactions w/ tax on this newly created value, they could “capture value” from upzoning w/o deterring development.

[No deterrent effect b/c tax has no marginal effect on cost of building or returns from building]



## 2.2 What about Prop. 13?

- A tax on “development value” per se (i.e., a land-value tax) would (likely) be foreclosed by Prop. 13.
- But seemingly similar taxes tied to other parcel characteristics—e.g., size, street frontage, dwelling-unit size, or even “potential building envelope”—are not foreclosed
- One such tax has been in widespread use for decades...

## 2.3 Mello-Roos Taxes

Typical arrangement:

- Developer & city negotiate development “deal” which includes parcel tax on future residences to pay for infrastructure
- Stream of future taxes can be securitized as tax-exempt bonds
- Consensual nature of the deal becomes the means of compliance with state-constitutional requirements for (supermajority) voter approval of special taxes

## 2.3 Mello-Roos Taxes



“[The Cannery.](#)” Davis, CA

## 2.3 Mello-Roos Taxes

**TABLE 1**

**Fiscal Year 2015-16  
Assigned Special Taxes for Developed Property**

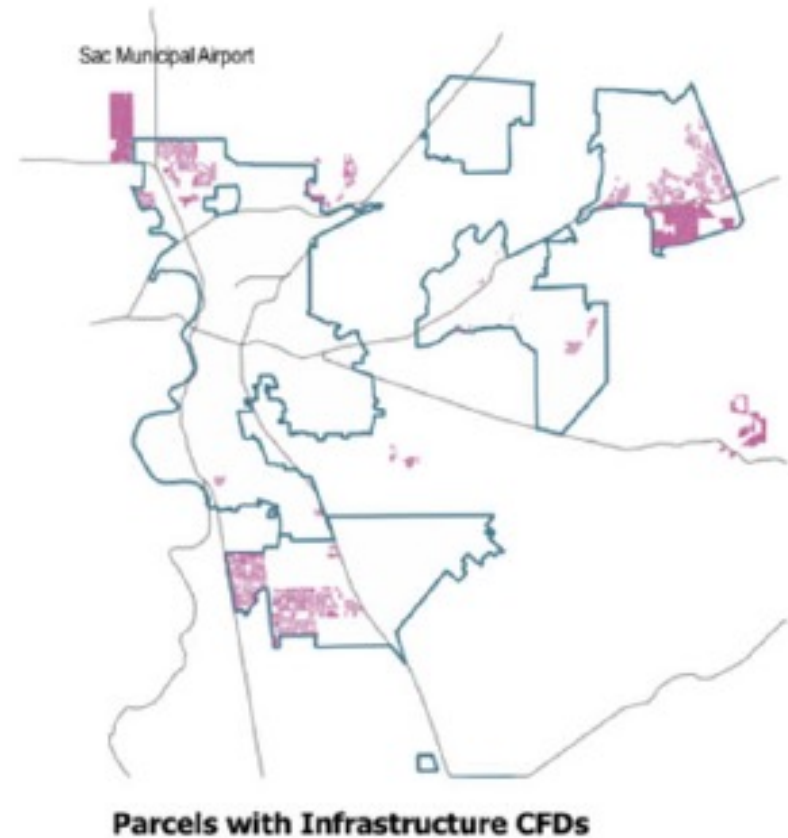
Land Use Class	Description	Residential Floor Area	Fiscal Year 2015-16 Assigned Special Tax
1	Residential Property	$\geq 3,025$ sq. ft.	\$2,188 per Dwelling Unit
2	Residential Property	2,575 to 3,024 sq. ft.	\$1,826 per Dwelling Unit
3	Residential Property	2,125 to 2,574 sq. ft.	\$1,502 per Dwelling Unit
4	Residential Property	1,675 to 2,124 sq. ft.	\$854 per Dwelling Unit
5	Residential Property	$\leq 1,674$ sq. ft.	\$475 per Dwelling Unit
6	Affordable Housing	NA	\$0 per Dwelling Unit
7	Non-Residential Property	NA	\$0.26 per Sq. Ft. of Non-Residential Floor Area

“[The Cannery.](#)” Davis, CA

## 2.3 Mello-Roos Taxes

They are very common!

- 31 percent of parcels in Sacramento County had CFD levies as of 2017—and they're mostly in the 'burbs ([Shanske & Neimeier \(2021\)](#))
- 90% of new PUDs in California use Mello-Roos taxes ([NAHB, 2007](#))



## 2.4 Our proposal

Step 1: upzone high-value / low-opposition big-street, downtown, commercial, and PDR parcels, w/o impact fees or IZ

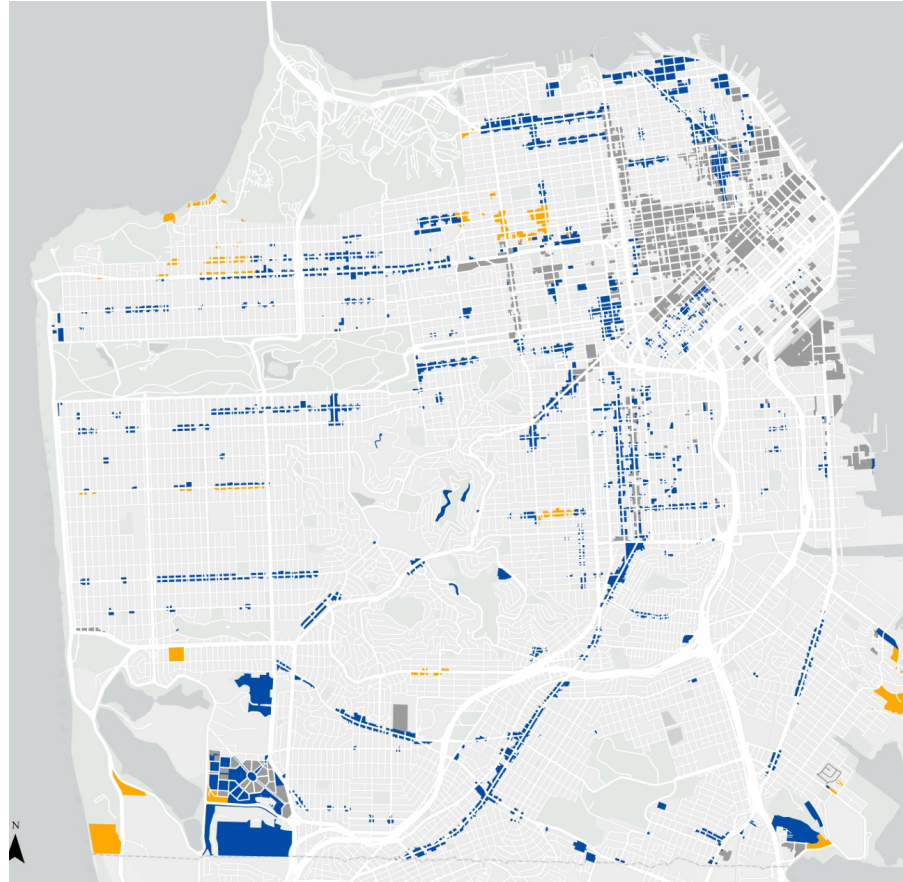
Step 2: draft a “potential square feet” parcel tax designed to cover a substantial share of projected infrastructure costs but staying below (say) 50% of the value conferred by upzoning; designate other permissible uses of revenue

Step 3: hold *citywide* vote on the parcel tax (but not necessarily on the upzoning ordinance)

## 2.5 Our proposal

Something like this...

For more details of the proposal, see [Elmendorf and Shanske, 2023](#).



AB 2011 100% affordable sites  
([SF Planning, 2023](#))

# 3. Objections?





## 3.1 But surely this is a property tax?

No. (The law is a web of fine distinctions.)

- A property tax subject to Prop 13 is “any source of revenue derived from applying a property tax rate to the assessed value of property.” ([Heckendorn v. City of San Marino](#), 723 P.2d 64, 64–65 (1986))
- Such precedents should not be surprising given the prevalence of Mello-Roos taxes.
- Like Mello-Roos taxes, our proposed tax wouldn’t vary over time w/ property values (a driver of tax revolt that delivered Prop 13).

## 3.2 Unfairness in some cases?

Imagine a “[legacy business](#)” that doesn’t want to sell out, or homeowner who wants to stay put.

Solutions:

- Tailored exemptions / deferrals
- Variances?

## 3.3 Would upzoning become even harder?

“Fear of the parcel tax” may induce political opposition to upzoning from those who’d normally be its biggest beneficiaries.

But we’re not *too* worried about this, b/c..

- Owners of high-development-potential sites aren’t that influential in city politics
- They’d be seriously outnumbered in the citywide vote