

# **Bond Case Briefs**

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## **SPECIAL ASSESSMENTS - CALIFORNIA**

### **Broad Beach Geologic Hazard Abatement District v. 31506 Victoria Point LLC**

**Court of Appeal, Second District, Division 4, California - August 2, 2022 - Cal.Rptr.3d - 2022 WL 3053306**

Property owners, including trust, filed petition for writ of mandate, seeking to set aside special assessment to fund shoreline fortification project as violative of state constitutional limitations on assessments.

The Superior Court entered judgment invalidating assessment, but subsequently denied property owners' motions for attorney fees under private attorney general statute. District appealed from judgment and property owners appealed from order denying attorney fees.

The Court of Appeal held that:

- Project would create general benefit of improved public beach;
- State agency's requirement that city district ensure public access to beach did not render beach cost of project rather than general benefit;
- District was required to apportion special benefits that revetment would confer on parcels behind it;
- District was required to assess county-owned parcels specially benefited by project;
- Possibility of new assessment in future did not render financial benefits from litigation so uncertain as to warrant attorney fees;
- Trial court properly considered litigation benefits to property owners who joined litigation after petition was first filed in considering attorney fee award; and
- Trust had adequate financial motivation to participate in litigation absent award of attorney fees.

Shore fortification project would create wider, sandy beach that would benefit public in general, and, thus, constitutional provision governing assessments required city district to separate project's special benefits to certain parcels from general benefit, including beach, and include only portion of cost of project representing special benefits in special assessment used to fund project, even if general benefits did not impose additional costs and district did not subjectively intend to widen beach for recreational purposes; allowing any special benefit that also provided general benefits to support assessment for entire cost of project would be inconsistent with constitutional separation and quantification requirements, which depended on real-world effects rather than agency intent.

Coastal Commission's requirement that city district ensure public access to beach that would be enlarged and enhanced as a result of shore fortification project did not render enhanced public beach a cost of such project rather than general benefit, and, thus, did not exempt district from constitutional requirement of separating such general benefit from project's special benefit of protecting particular properties and include only costs attributable to special benefit when imposing special assessment on those properties; provision of wide, sandy beach was central to revetment project, not mere condition for approval or required consideration by agency, and Commission's

action to ensure project would not cut off public's beach access did not transform project's general benefits into costs.

Revetment was integral part of city district's proposed shoreline fortification project, and, thus, constitutional article governing assessments required district, when imposing assessment to fund project, to apportion special benefits that revetment would confer by providing additional protection to parcels behind it so that assessment would be proportional to those parcels' relative special benefits, even though property owners constructed existing, temporary revetment and agreed to fund its relocation; State Lands Commission required district to pay for existing revetment's unauthorized use of state lands, district persuaded Coastal Commission to keep revetment, and Coastal Commission's conditions of approval required district to relocate revetment and mitigate its environmental impact.

Shoreline fortification project would provide special benefit of protection to county-owned parcels that contained stairs providing public access to beach, and, thus, constitutional article governing special assessments required city district to impose project-funding assessment against such parcels, even if project would not change stairs' function; project would protect shoreline, including stairs and parcels, by adding sand and maintaining revetment, each parcel encompassed large area, and constitution did not permit district to treat county parcels more favorably than it did privately-owned parcels that also received special benefit from project, such as by exempting county parcels from assessment or funding benefits to county parcels through in-kind contributions from homeowners.