S263734

No. _____
Court of Appeal
2 CIVIL No. B295181
c/w B295315

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

HILL RHF HOUSING PARTNERS, L.P., et al.,

Petitioners and Appellants,

vs.

CITY OF LOS ANGELES, et al.,

Defendants and Respondents.

MESA RHF PARTNERS, L.P.,

Petitioner and Appellant,

vs.

CITY OF LOS ANGELES, et al.,

Defendants and Respondents.

Los Angeles County Superior Court Case Nos.
BS170127 and BS170352
Hon. Mitchell L. Beckloff, Department 86
Judge of the Superior Court

PETITION FOR REVIEW

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ISSUES PRESENTED

1. In order to challenge the constitutionality of an assessment imposed by the City of Los Angeles for a business improvement district, must a property owner -- who has complied with the express constitutional and statutory requirement to state publicly its opposition to the assessment via a ballot provided by the City -- also articulate the specific reasons for its opposition (either orally or in writing) at the City's noticed public hearing in order to exhaust administrative remedies pursuant to the inferred requirement expressed for the first time by the Court of Appeal in this case?

2. Where the Court of Appeal infers a new administrative exhaustion requirement, should such a newly inferred requirement only be applied prospectively given the lack of prior notice to the challenger?

3. Are the recent amendments to Streets and Highways Code sections 36601(e), 36601(h)(2) and 36615.5 -- which define "incidental or collateral effects" of special benefits also to be

considered as special benefits -- contrary to Article XIII D of the California Constitution, which explicitly limits the term “special benefits” to “a particular and distinct benefit over and above general benefits conferred on real property located in the district or to the public at large” and which specifically excludes “general enhancement of property value” from being deemed special benefits?

II.

INTRODUCTION

Proposition 218, which added Article XIII D to the California Constitution, was specifically designed to make it *harder* for local governments to impose assessments and fees. Yet the Opinion of the Court of Appeal in this case makes it much *easier* to impose such assessments by creating a newly "inferred" administrative exhaustion requirement and applying this judicially created extra requirement retroactively. The new hurdle requires property owners to go above and beyond returning a public ballot expressing their opposition to the newly proposed assessments as described by Article XIII D. Instead, the Opinion for the first time requires -- without statutory basis -- that property owners must provide detailed reasons for their objections at a public hearing before being allowed to challenge the assessments in court. Because the Opinion raises an important state constitutional issue, and because this new administrative exhaustion requirement has never before been mentioned in any of the prior cases concerning assessments under Proposition 218, this Court should grant review.

The Court should also consider the state constitutional question raised by Petitioners, but not reached by the Court of Appeal. As explained by this Court in the seminal case of *Silicon Valley Taxpayers' Assn., Inc. v. Santa Clara County Open Space Authority* (2008) 44 Cal.4th 431, 443 ["*Silicon Valley*"], Article XIII D only allows for assessments against a property owner to the extent of any "special benefits" conferred upon that property. On the other hand, economic enhancement, quality-of-life benefits, and derivative, indirect benefits do *not* constitute "special benefits." Yet on January 1, 2015, the California Legislature amended the Property and Business Improvement Law of 1994 and redefined special benefits to include "incidental or collateral effects." This constituted an end run around *Silicon Valley* in an effort to make it easier for local governments to impose assessments on property owners, including charitable organizations such as Petitioners, again in direct violation of Proposition 218's express intent. The Court should grant review on this constitutional issue of first impression as well.

III.

STATEMENT OF THE CASE

A. Creation of the Business Improvement Districts

In April and May 2017, the City of Los Angeles adopted ordinances declaring its intent to create the Downtown Center Business Improvement District ("DCBID") and the San Pedro Historic Waterfront Business Improvement District ("SPBID"), respectively. Such ordinances provided for assessments against the property owners within those two districts to fund the activities of the BIDs.

The three Petitioners in this case are affiliates of Retirement Housing Foundation, one of the nation's largest non-profit providers of housing and services for low-income seniors. (AA 9-10, ¶1 [Hill]; AA 7-9, ¶¶1, 9-11 [Mesa].)[1] Petitioners Hill RHF Housing Partners, L.P. ("Hill") and Olive RHF Housing Partners, L.P. ("Olive") own federally subsidized residential rental property for low-income

[1] The Appellants' Appendix will be cited as "AA [page no.]." The Reporter's Transcript will be cited as "RT at [page no.]." The Administrative Record will be cited both as "AR or SP [page no.]" (based on the bates numbers used in the trial court) and "(NOL [page no.])" (based on the page numbers of the electronic version attached to the Notice of Lodgment submitted to the Court of Appeal in accordance with Rule of Court 8.123(d)(1)).

seniors located within the boundaries of the DCBID; Petitioner Mesa RHF Housing Partners, L.P. ("Mesa") owns residential rental property for low-income seniors inside the boundaries of the SPBID. (Opn. 4, attached as Exhibit A.) The properties are subject to Regulatory Agreements with the City of Los Angeles restricting the amount of rent that can be charged. (AA 274-365 [Hill]; AA 311-378 [Mesa].) Accordingly, these attractive and fully occupied senior facilities receive no possibility of increased rental rates from any BID service. Moreover, the purpose of the rental communities is to assure that senior citizens who receive only social security benefits and are otherwise without means can afford to live in quality housing. Raising rents would destroy the very point of the Foundation's efforts.

B. <u>The Professed Special Benefits of the BIDs Include General Economic Enhancements Which Do Not Benefit RHF's Low Income Senior Apartments</u>

The general purpose and benefits of the DCBID are described in Section A of its Engineer's Report as follows: "Each of the [DCBID] activities or improvements is intended to increase building

occupancy and lease rates, to encourage new business development, attract businesses that benefit the parcels, and improve the economic vitality of the parcels." (AR 94 [NOL 96] [emphases added].) DCBID's various services are discussed in Section B of the Engineer's Report, entitled "IMPROVEMENTS AND ACTIVITIES." (AR 97-101 [(NOL 99-103].) The categories of services are as follows:

Safe Team Program: The Safe Team Program consists of "security services for the individual assessed parcels located within the District in the form of patrolling bicycle personnel, nighttime vehicle patrol and downtown ambassadors." "[T]he special benefit to assessed parcels from these services is increased commercial activity which directly relates to increases in lease rates, residential serving business and customer usage." (AR 97 [NOL 99] [emphases added].)

Clean Program: The Clean Program consists of sidewalk cleaning, trash collection, graffiti removal, and landscape improvement and maintenance. (AR 98 [NOL 100].) The Engineer's Report provides that "the special benefit to assessed parcels from

these services is increased commercial activity which directly relates to increases in lease rates and customer usage." *Id*.

Economic Development/Marketing Services: The Economic Development/Marketing Program consists of "Marketing Collateral," including newsletters, public relations materials, information kiosks, a downtown center map, a retail guide, marketing materials, website design/operation, property owner communication, annual report/marketing plan, property owner survey, consumer attitude survey, special events, downtown center welcome program, convention and visitor program, banners, media relations, and advertising. (AR 100 [NOL 102].) The Economic Development/Marketing Program also consists of "Downtown Center Business Recruitment and Retention," which includes targeted business meetings, downtown center brokers program, outlying brokers program, investment media relations, trade show marketing, property managers program, property database development/update, property marketing material, economic studies and planning, and downtown center residential development programs. (AR 100-101 [NOL 102-103].) The Engineer's Report

justifies the Economic Development/Marketing Programs as follows:

> The special benefit to District assessed parcels from these services is increased commercial activity which directly relates to increases in lease rates and enhanced commerce. The special benefit to residential and mixed-use residential parcels is increased occupancy rates and an increase in residential serving businesses such as restaurants and retail stores . . . Residential and mixed-use residential parcels benefit from District programs that provide an increased awareness of District amenities such as retail and transit options which in turn enhances the business climate and improves the business offering and attracts new residents, businesses and District investment.

(Emphases added.) (AR 99-101 [NOL 101-103].)[2]

C. Petitioners Oppose the BIDs in Accordance With Statutory Requirements and the City's Notice

The City mailed notices to property owners within the districts that it would be considering the establishment of the BIDs at upcoming City Council hearings. The notices included summaries of the management district plans for each BID, assessment ballots, and summaries of procedures for completing, returning, and tabulation of the assessment ballots. (Opn. 4.) Hill and Olive returned public

[2] The SPBID consists of similar programs (Opn. 5) with similar descriptions of the alleged "special benefits."

ballots on behalf of those properties opposing the establishment of the DCBID, and Mesa returned a public ballot opposing the establishment of the SPBID. (*Ibid*.) None of the Petitioners provided other written opposition or spoke at the public hearings. (Opn. 5.)

The City held the noticed public hearings on June 7, 2017 and June 27, 2017 for the DCBID and SPBID, respectively. After tabulating the ballots, the City created by ordinance the DCBID and SPBID for terms beginning on January 1, 2018. (*Ibid*.)

D. Petitioners Challenge the BIDs in Superior Court

On July 3, 2017, Hill and Olive filed a petition for writ of mandate challenging the establishment of the DCBID. (Opn. 5.) On July 26, 2017, Mesa filed a petition for writ of mandate challenging the establishment of the SPBID. Among other arguments, Petitioners raised facial challenges to the constitutionality of recent amendments to the Property and Business Improvement Law of 1994 ("PBID Law"), claiming the amendments redefined special benefits in a manner directly contrary to this Court's interpretation of Article XIII D. Petitioners also argued that the Engineer's Report improperly characterized general benefits (such as improved

economic vitality) as special benefits, and failed to account for the unique characteristics of Petitioners' properties. (Opn. 6.)

In answering the petitions, Respondents disputed Petitioners' arguments and also alleged failure to exhaust administrative remedies as an affirmative defense. The parties argued that defense in their trial briefs. (*Ibid*.)

On September 19, 2018, the trial court heard argument on the petitions. (Opn. 6) As to administrative exhaustion, the trial court commented at oral argument that "I'm not sure what more petitioners should have done other than vote 'no' during that process to exhaust their administrative remedies. . . . And looking at the process and the discussion of the process for the adoption of a B.I.D., it seems to [me] that that argument is correct." (RT at 36.) The trial court denied the petitions on the merits,[3] and these appeals followed.[4] (Opn. 7.)

[3] The trial court did not rule on the administrative exhaustion point in its ultimate orders, thereby implicitly rejecting it.

[4] The appeals were subsequently consolidated for oral argument and decision.

E. The Court of Appeal Affirms Based on Failure to Exhaust Administrative Remedies.

The Court of Appeal affirmed, not on the merits, but based on a failure to exhaust administrative remedies. The appellate court found that Petitioners were required to articulate the basis for their objections to the BIDs at the public hearing, and that submission of ballots in opposition did not suffice. The Opinion relied upon Government Code section 53753, subdivision (d), which provides:

> At the public hearing, the agency shall consider all objections or protests, if any, to the proposed assessment. At the public hearing, any person shall be permitted to present written or oral testimony.

Subdivision (e)(5) goes on to provide that "If there is a majority protest against the imposition of a new assessment . . . the agency shall not impose, extend or increase the assessment."[5] (Opn. 9.)

The Opinion then cited this Court's decision in *Williams & Fickett v. County of Fresno* (2017) 2 Cal.5th 1258, for the proposition that an exhaustion requirement will be inferred "even within statutory

[5] "A majority protest exists if the assessment ballots submitted, and not withdrawn, in opposition to the proposed assessment exceed the assessment ballots submitted, and not withdrawn, in its favor . . ." (Government Code § 53753(e)(4).)

schemes that 'do not make the exhaustion of the [administrative] remedy a condition of the right to resort to the courts.'" (Opn. 10.) The appellate court concluded that the procedure outlined in the PBID Law "bespeaks a legislative determination that the [City] should, in the first instance, pass on" the questions Petitioners presented. (Opn. 12.)

Petitioners argued that *Williams & Fickett* should not apply because Article XIII D specified only the ballot process. However, the Court of Appeal rejected that argument, finding that "for just a 'no' vote in the context of the remedies the statute provides to constitute exhaustion would frustrate the purpose of the exhaustion doctrine." (Opn. 12-13.) The Opinion further stated:

> If the agency's decision is to be challenged in court, the agency – the City in this context – is entitled to the benefit of the opportunity to either address the specific issues a property owner raises or to pass on the opportunity to do so and allow the courts to make the decision based on an administrative record that reflects a development of the disputed issues to the extent the administrative process allows.

(Opn. 15.)

RHF petitioned for rehearing, urging that the Opinion should

only be given prospective effect because (1) Petitioners reasonably relied on prior case law – including California Supreme Court authority – which made no mention of the newly announced requirement that a property owner appear and speak at the public hearing or provide detailed written opposition in addition to the ballot in order to exhaust administrative remedies; (2) the nature of the change worked by the Opinion will have a substantive effect; (3) denying retroactive application would not unduly impact the administration of justice; and (4) retroactive application would deprive Petitioners of any remedy whatsoever. The Court of Appeal denied the Petition for Rehearing on July 15, 2020. (Exhibit B, attached.)

IV.

WHY REVIEW SHOULD BE GRANTED

A. Legal Background

Article XIII D was added to the California Constitution by Proposition 218, which was adopted in 1996 by voters to protect taxpayers from local governments seeking to exact revenues without taxpayer consent. *(*See *Silicon Valley, supra,* 44 Cal.4th at 443

[Prop. 218 "buttresses Proposition 13's limitations on ad valorem property taxes and special taxes by placing analogous restrictions on assessments, fees, and charges"].) "The Legislative Analyst explained to the voters that Proposition 218 was designed to 'constrain local governments' ability to impose . . . assessments . . .' and to place 'extensive requirements on local governments charging assessments.' . . . Proposition 218 was intended to make it more difficult for an assessment to be validated in a court proceeding."[6] (*Id.* at 445, citing Ballot Pamp., Gen. Elec. (Nov. 5, 1996) analysis of Prop. 218 by Legis. Analyst, p. 73.)

Section 4 of Article XIII D of the California Constitution contains the requirements for assessments, and Section 2 contains the definitions of terms used in Article XIII D. In relevant part, Section 4(a) provide as follows:

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[6] For example, Proposition 218 changed the standard of review of local government assessments from abuse of discretion to independent judgment. (*Silicon Valley, supra*, 44 Cal.4th at 449 ["Because Proposition 218's underlying purpose was to limit government's power to exact revenue and to curtail the deference that had been traditionally accorded legislative enactments on fees, assessments, and charges, a more rigorous standard of review is warranted."].)

> An agency which proposes to levy an assessment shall identify all parcels which will have a special benefit conferred upon them and upon which an assessment will be imposed. The proportionate special benefit derived by each identified parcel shall be determined in relationship to the entirety of the capital cost of a public improvement, the maintenance and operation expenses of a public improvement, or the cost of the property related service being provided. No assessment shall be imposed on any parcel which exceeds the reasonable cost of the proportional special benefit conferred on that parcel. Only special benefits are assessable, and an agency shall separate the general benefits from the special benefits conferred on a parcel. Parcels within a district that are owned or used by an agency, the State of California or United States shall not be exempt from assessment unless the agency can demonstrate by clear and convincing evidence that those publicly owned parcels in fact receive no special benefit.

In turn, Section 2(i) provides:

> "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. General enhancement of property value does not constitute "special benefit."

Taken together, these sections "tighten[] the definition[s] of two key findings necessary to support an assessment: special benefit and proportionality." *(Silicon Valley, supra,* 44 Cal.4th at 443.) Special assessments are also subject to the PBID Law, California Streets and Highways Code, sections 36600 *et seq.,* whose purpose is, in

part, to ensure that assessments conform to all constitutional requirements.

Subdivisions (c) through (e) of section 4 of Article XIII D specify the procedural requirements imposed on the assessing agency, starting with the requirement that the assessing agency's written notice of its proposed assessments "include, in a conspicuous place thereon, a summary of the procedures applicable to the completion, return, and tabulation of the ballots required pursuant to subdivision (d), including a disclosure statement that the existence of a majority protest . . . will result in the assessment not being imposed." (Art. XIII D, § 4(c).) Subsection (d) further clarifies, "Each notice mailed to owners of identified parcels within the district pursuant to subdivision (c) shall contain a ballot which includes the agency's address for receipt of the ballot once completed by any owner of the parcel, and his or her support or opposition to the proposed assessment." Subdivision (e) provides:

> The agency shall conduct a public hearing upon the proposed assessment not less than 45 days after mailing the notice of the proposed assessment to record owners of each identified parcel. At the public hearing, the agency shall consider all protests against the proposed assessment and tabulate the ballots. The

> agency shall not impose an assessment if there is a majority protest. A majority protest exists if, upon the conclusion of the hearing, ballots submitted in opposition to the assessment exceed the ballots submitted in favor of the assessments.

Subdivision (e) nowhere states that anything other than submission of a ballot is required to record a property owner's protest.

B. The Court Should Grant Review Because the Opinion's Newly Created Administrative Exhaustion Requirement Runs Directly Counter to Article XIII D and Contradicts Prior Case Law.

The Opinion's new administrative exhaustion requirement runs directly contrary to Proposition 218's purpose, which was to make it more difficult for local governments to impose assessments and to defend those assessments in court. Moreover, the Opinion glosses over the fact that Article XIII D specifies the procedure for objecting to assessment districts. That procedure is limited to the ballot process established by subdivisions (c) through (e) of section 4. Nothing in Article XIII D imposes an additional requirement to articulate a detailed basis for objecting at the public hearing set to tabulate the ballots. Accordingly, the Court should grant review on

this important question of state constitutional law.[7]

The Opinion cites *Williams & Fickett* for the proposition that an exhaustion requirement will be inferred "even within statutory schemes that 'do not make the exhaustion of the [administrative] remedy a condition of the right to resort to the courts.'" (Opn. 10.) However, this inference presupposes that the statutory (or, in this case, constitutional) scheme in question contains no specified procedures. That is *not* the case with respect to Article XIII D, which contains only the ballot requirement.

Indeed, the process in *Williams & Fickett* was markedly different from the constitutional and statutory scheme at issue here. In *Williams & Fickett*, "when the County first gave notice of the escape assessments, it informed plaintiff that *if plaintiff wished to challenge the assessments*, it had 60 days from the date of the notice to apply to the County's assessment appeals board for

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[7] This Court recently considered a somewhat similar question -- "whether a Proposition 218 hearing could ever be considered an administrative remedy that must be exhausted before challenging the substantive propriety of a fee in court" -- but left it unresolved in its final decision. (*Plantier v. Ramona Municipal Water Dist.* (2019) 7 Cal.5th 372, 388.)

assessment reductions." (Emphasis added.) (*Williams & Fickett*, *supra*, 2 Cal.5th at 1265.) In contrast, consistent with Government Code section 53753, Petitioners *did* challenge the assessments by voting against them as specified in the notice they received from the City. The "Notice of Public Hearing" to establish these BIDs merely stated that the City Council "will hold a public hearing to determine whether to establish [the BID] and levy assessments." (AA 49-50 [Hill RHF]; AA 38-39 [Mesa RHF].) The notice went on to state that the City Council "may correct minor defects in the proceedings." The notice then provided detailed instructions regarding the enclosed *assessment ballot*, noting that the ballot must be received by the City Clerk prior to the close of the public hearing. The notice then explained as follows:

> The City Council will not impose an assessment if there is a majority protest. A majority protest will exist if the *assessment ballots* submitted, and not withdrawn, in opposition to the proposed assessment exceed the assessment ballots submitted, and not withdrawn, in its favor, weighting those assessment ballots by the amount of the proposed assessment to be imposed upon the identified parcel for which each assessment ballot was submitted.

(*Id*. [emphasis added].) These procedures clearly did not require or

provide notice that anything other than a ballot was necessary to challenge the assessments.

Moreover, nothing in any of the several pre-existing published appellate decisions regarding BIDs suggested that property owners were required to state their reasons at a public hearing as a condition to a later court challenge to BID assessments. Indeed, in *Silicon Valley Taxpayers' Assn., Inc. v. Santa Clara County Open Space Authority* (2008) 44 Cal.4th 431, the seminal California Supreme Court case on BID assessments, while the plaintiff participated in the public hearing, its objection was limited to a procedural issue regarding the tabulation of ballots, not the substantive issue which ultimately led the Supreme Court to invalidate the BID. (*Id*. at p. 440.)

Nor do any of the pertinent Court of Appeal decisions mention anything about such an exhaustion requirement. (*Dahms v. Downtown Pomona Property & Business Improvement District* (2009) 174 Cal.App.4th 708, 713 [no indication that plaintiff participated in the city council hearing or even submitted an opposing ballot]; *City of Saratoga v. Hinz* (2004) 115 Cal.App.4th

1202, 1209 [plaintiff attended city council meeting but "did not directly challenge the resolution approving the formation of the assessment district"]; *Town of Tiburon v. Bonander* (2009) 180 Cal.App.4th 1057, 1070 [no indication that property owners participated in the council hearing on the supplemental district at issue]; *Beutz v. County of Riverside* (2010) 184 Cal.App.4th 1516, 1527 [no indication that plaintiff participated in the public hearing or even submitted an opposing ballot]; *Golden Hill Neighborhood Assn., Inc. v. City of San Diego* (2011) 199 Cal.App.4th 416, 424-425 [no indication that plaintiff participated in the city council hearing or even submitted an opposing ballot].) Accordingly, review is necessary both to secure uniformity of decision, as well as to settle this important question of law.

C. The Court Should Grant Review to Determine Whether a Newly Inferred Administrative Exhaustion Requirement Should Apply Retroactively.

The key case upon which the Opinion rests, *Williams & Fickett*, found that a taxpayer was required to pursue a property tax assessment appeal even though the taxpayer's challenge was

based on an assertion that it did not own the property, rather than an issue of valuation. In so finding, the Court overruled previous case law which had created a "nullity exception" to the exhaustion doctrine. However, *Williams & Fickett* itself found that the new administrative exhaustion requirement it imposed should only be applied prospectively. As explained by this Court:

> [C]onsiderations of fairness and public policy may require that a decision be given only prospective application. [Citations.] Particular considerations relevant to the retroactivity determination include the reasonableness of the parties' reliance on the former rule, the nature of the change as substantive or procedural, retroactivity's effect on the administration of justice, and the purposes to be served by the new rule.

(*Williams & Fickett*, *supra*, 2 Cal.5th at 1282, quoting *Claxton v. Waters* (2004) 34 Cal.4th 367, 378–379.) Similarly, where a court infers a new administrative exhaustion requirement, as took place here, such a requirement should only be applied prospectively to comply with fundamental precepts of notice.

1. Reasonable Reliance

As discussed above, nothing in any of the several published appellate decisions regarding BIDs suggested that property owners

were required to state their reasons to the City Council as a condition to a later court challenge to BID assessments. Accordingly, Petitioners reasonably relied on the state of the law in effect at the time of the City Council hearings on these BIDs in June of 2017. Moreover, unlike the notice of administrative procedures provided in *Williams & Fickett*, the notices sent to Petitioners did not indicate that participation in the City Council hearing was necessary to preserve their rights. Thus, Petitioners had no notice that they had to do anything other than return their assessment ballots in order to lodge a protest to the BID assessments. Under such conditions, a newly inferred administrative exhaustion requirement should only be applied prospectively.

2. Substantive Effect

Prospective application is also appropriate because the Opinion will have a substantive effect on pending cases, not just a procedural one. For example, in *Claxton*, *supra*, this Court held that extrinsic evidence was inadmissible in workers' compensation proceedings to show that a standard release form was also meant to apply to claims outside the workers' compensation system. Noting

that “our holding . . . has a substantive effect because it may, in individual cases, effectively alter the legal consequences of executing the standard compromise and release form,” the Court gave its decision only prospective effect. (*Claxton*, *supra*, 34 Cal.4th at 379.). Similarly, here, any BID challenges filed prior to publication of the Opinion in which the petitioners did not articulate their objections to the city council or other body will suddenly be defective, with substantive effect.

3. Administration of Justice

In giving its holding only prospective application, the Court in *Claxton* also reasoned that, “although barring the use of extrinsic evidence will preserve judicial resources, denying retroactive application will not unduly impact the administration of justice because it will merely permit a gradual and orderly transition.” (*Ibid*.) In this case, requiring challengers to present the specific reasons for their objections at the designated public hearing is similarly designed to “lighten the burden of overworked courts.” (Opinion at 14, quoting *Leff v. City of Monterey Park* (1990) 218 Cal.App.3d 674, 681.) By the same token, however, there is no reason to believe that denying

retroactive application will unduly burden the courts while any pending BID challenges are gradually resolved. Thus, limiting the retroactivity of the Opinion would not have an adverse effect on the administration of justice.

4. Deprivation of Remedy

Finally, while the purpose of the administrative exhaustion rule announced in the Opinion will not be served as to any pending challenges where the petitioners did not present their objections to the city council, the result of retroactive enforcement would be to deprive those petitioners of any remedy whatsoever. As in *Williams & Fickett*:

> Prospective application will not remove any substantive defense to which defendants would otherwise be entitled. Retroactive application of the change, on the other hand, would bar plaintiffs' actions regardless of their merits. Retroactive application of an unforeseeable procedural change is disfavored when such application would deprive a litigant of 'any remedy whatsoever.'

(*Williams & Fickett*, *supra*, 2 Cal.5th at 1282, quoting *Woods v.Young* (1991) 53 Cal.3d 315, 330.) Here, barring Petitioners' claims will result in these nonprofits paying more than $1,000,000 in

assessments in the Hill RHF case alone, without ever having had their day in the Court of Appeal. On the other hand, Respondents will retain all of their constitutional and other arguments to defend against any pending BID challenges. Accordingly, considerations of fairness and public policy require prospective application of the Opinion only, and this Court should take up the broader question of whether newly inferred administrative exhaustion requirements should have retroactive effect as a general proposition.

D. The Court Should Grant Review to Determine the Constitutionality of the 2015 Amendments to the Streets and Highways Code.

As previously explained by this Court, economic enhancement, quality-of-life benefits, and derivative, indirect benefits do not constitute special benefits. (*Silicon Valley, supra,* 44 Cal.4th at 454.) However, on January 1, 2015, the California Legislature amended the PBID Law and redefined special benefits in a manner not consistent with this Court's interpretation of Article XIII D. Specifically, the changes at issue are amendments to section 36601 and the addition of section 36615.5 to the Streets and Highways

Code.

In relevant part, section 36601(e), as amended, states: "Property and business improvement districts formed throughout this state have conferred special benefits upon properties and businesses within their districts and have made those properties and businesses more useful by providing the following benefits: (1) Crime reduction; (2) Job creation; (3) Business attraction; (4) Business retention; (5) Economic growth; and (6) New investments." New Section 36601(h)(2) provides:

> Activities undertaken for the purpose of conferring special benefits upon property to be assessed inherently produce incidental or collateral effects that benefit property or persons not assessed. Therefore, for special benefits to exist as a separate and distinct category from general benefits, the incidental or collateral effects of those special benefits are inherently part of those special benefits. The mere fact that special benefits produce incidental or collateral effects that benefit property or persons not assessed does not convert any portion of those special benefits or their incidental or collateral effects into general benefits.

(Emphasis added.) Section 36615.5 similarly provides that "special benefit" includes "incidental or collateral effects that arise from the improvements, maintenance, or activities of property-based districts

even if those incidental or collateral effects benefit property or persons not assessed." (Emphasis added.)

Section 36601(e) thus statutorily provides that economic enhancements constitute special benefits, and sections 36601(h)(2) and 36615.5 statutorily conclude that derivative and indirect benefits to people and properties not assessed do not constitute general benefits. The January 1, 2015 amendments (1) contradict the California Constitution as interpreted by this Court; and (2) expand the government's ability to levy broad assessments without taxpayer consent, circumventing the intended constitutional limitations placed on special assessments.

Of course, the Legislature may not abridge the requirements of the California Constitution:

> [C]learly established rules of constitutional interpretation require that a term used in a constitutional amendment must be construed according to the meaning it had when the amendment was adopted. The Legislature cannot expand the meaning of the amendment by subsequent legislation, since such an expansion would be equivalent to a constitutional amendment.

(*Nunes Turfgrass, Inc. v. County of Kern* (1980) 111 Cal.App.3d 855, 862 ["Although the Legislature can clarify constitutional amendments

of doubtful or obscure meaning . . . it cannot transcend the meaning intended by the constitutional framers"]; see also *Sail'er Inn, Inc. v. Kirby* (1971) 5 Cal.3d 1 [reviewing the exercise of quasi-judicial power, finding that the statute on which the quasi-judicial power relied was unconstitutional, and ordering the issuance of a peremptory writ of mandate]; *Sonoma County Org. of Public Employees v. County of Sonoma* (1979) 23 Cal.3d 296 [finding that Cal. Gov't Code Section 16280 violated Article XI of the California Constitution and issuing a peremptory writ of mandate].) Yet the 2015 Amendments constitute a legislative end run around Proposition 218's strict limitation of assessments to special benefits.

No court has yet passed on the constitutionality of the 2015 Amendments. Accordingly, this Court should also grant review on the important question of whether the January 1, 2015 amendments are consistent with Article XIII D.

V.

CONCLUSION

For the foregoing reasons, Petitioners request that the Court grant this Petition for Review.

DATED: August 6, 2020 REUBEN RAUCHER & BLUM

By: _____
Stephen L. Raucher
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CERTIFICATE OF COMPLIANCE

[Cal. Rule of Court 8.204(c)(1)]

The text of this brief consists of 5,361 words as counted by the Microsoft Word 2010 word-processing program used to generate the brief, not including the tables of contents and authorities, and caption page.

DATED: August 6, 2020 REUBEN RAUCHER & BLUM

By: _____
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CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

HILL RHF HOUSING PARTNERS, L.P., et al., Petitioners and Appellants, v. CITY OF LOS ANGELES, et al., Objectors and Respondents.	B295181 (Los Angeles County Super. Ct. No. BS170127)
MESA RHF PARTNERS, L.P., Petitioner and Appellant, v. CITY OF LOS ANGELES, et al., Objectors and Respondents.	B295315 (Los Angeles County Super. Ct. No. BS170352)

APPEALS from judgments of the Superior Court of Los Angeles County, Mitchell L. Beckloff, Judge. Affirmed.

Reuben Raucher & Blum, Timothy D. Reuben and Stephen L. Raucher for Petitioners and Appellants.

Michael N. Feuer, City Attorney, Beverly A. Cook, Assistant City Attorney, and Daniel M. Whitley, Deputy City Attorney, for Objector and Respondent City of Los Angeles.

Colantuono, Highsmith & Whatley, Michael G. Colantuono, Holly O. Whatley, and Pamela K. Graham for Objectors and Respondents Downtown Center Business Improvement District Management Corporation and San Pedro Property Owners Alliance.

Hill RHF Housing Partners, L.P. (Hill), Hill Olive Housing Partners, L.P. (Olive), and Mesa RHF Partners, L.P. (Mesa) appeal from judgments entered after the trial court denied petitions for writ of mandate and related declaratory and injunctive relief challenging the City of Los Angeles's June 2017 establishment of the Downtown Center Business Improvement District (DCBID) and the San Pedro Historic Waterfront Business Improvement District (SPBID) (collectively, the BIDs).

"The Property and Business Improvement District Law of 1994 (Sts. & Hy. Code, §§ 36600 et seq.) [PBID Law] authorizes cities to establish property and business improvement districts . . . in order to levy assessments on real property . . . ."[1] (*Epstein v. Hollywood Entertainment Dist. II Business*

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[1] The assessments are intended, among other things, to "promote the economic revitalization and physical maintenance of business districts in order to create jobs, attract new businesses,

Improvement Dist. (2001) 87 Cal.App.4th 862, 865.) Proposition 218 added article XIII D to the California Constitution in part to restrict cities' abilities to levy these and other assessments. (*Apartment Ass'n of Los Angeles County, Inc. v. City of Los Angeles* (2001) 24 Cal.4th 831, 837.)

Together, article XIII D and the PBID Law establish a comprehensive procedure cities must follow to create a business improvement district.[2] That procedure includes opportunities for property owners in proposed assessment districts to state their objections to proposed assessments, and a requirement that those objections be considered before levying an assessment. Hill, Olive, and Mesa opposed the establishment of the BIDs, but did not avail themselves of any of the opportunities they had to create a record of the reasons for their objection. They then challenged the establishment of the BIDs in court by filing petitions for writ of mandate and complaints for injunctive and declaratory relief. The City and the BIDs opposed Hill, Olive, and Mesa's petitions on the merits, but also argued that Hill, Olive, and Mesa failed to exhaust their administrative remedies before seeking judicial intervention.

The trial court denied Hill, Olive, and Mesa's petitions on the merits. We view exhaustion of administrative remedies, however, as a threshold question. Because we agree with the City and the BIDs that Hill, Olive, and Mesa were required to exhaust administrative remedies before seeking judicial intervention and that they failed to do so, we affirm the trial

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and prevent the erosion of the business districts." (Sts. & Hy. Code, § 36601, subd. (b).)

[2] Unspecified references to "article" refer to articles of the California Constitution.

court's judgments on that ground and decline to reach Hill, Olive, and Mesa's arguments on the merits.

BACKGROUND

In April and May 2017, the City of Los Angeles adopted ordinances declaring its intent to create the DCBID and the SPBID based on engineers' reports and management district plans referenced in the ordinances.[3] Hill and Olive own residential rental property for low-income seniors located in the district boundaries of the DCBID. Mesa owns residential rental property for low-income seniors inside the boundaries of the SPBID.

The City mailed notices to owners of property inside the BIDs of the public hearings at which it intended to consider the establishment of the BIDs. The notices included summaries of the management district plans for each BID, assessment ballots, and summaries of procedures for completing, returning, and tabulation of assessment ballots. Hill and Olive returned ballots to the City opposing the establishment of the DCBID, and Mesa returned a ballot opposing the establishment of the SPBID.[4]

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[3] DCBID consists of "approximately 65 blocks of the west, northwestern and central downtown area of Los Angeles . . . ." SPBID consists of "approximately 30 blocks of primarily commercial property in central downtown San Pedro . . . ."

[4] The prescribed administrative process for establishment of a BID allows property owners to submit votes either in favor of or opposing the establishment of the BID. (Cal. Const., art. XIII D, § 4, subd. (c); Gov. Code, § 53753, subd. (b).) If the "ballots submitted in opposition to the assessment exceed the ballots submitted in favor of the assessment," that is considered a "majority protest," and no assessment may be imposed. (Cal. Const., art. XIII D, § 4, subd. (e).) The administrative process

The City held the noticed public hearings—on June 7, 2017 for the DCBID and June 27, 2017 for the SPBID. For the DCBID, there were no "valid written protests received," and four speaker cards received. For SPBID, there were no written protests received, and two speaker cards.[5]

Based on the public hearings and the ballots tabulated after those hearings, the City created by ordinance the DCBID and the SPBID for terms to begin January 1, 2018. The DCBID's assessments were to fund three components: (1) "Clean and Safe Programs," (2) economic development and marketing programs, and (3) BID management. The SPBID's assessments were to fund four components: (1) visitor, "Ambassador," and security services, (2) sanitation, beautification, and capital improvements, (3) marketing and special events, and (4) BID management.

On July 3, 2017, Hill and Olive filed a petition for writ of mandate and complaint for declaratory and injunctive relief against the City challenging the establishment of the DCBID.

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also requires that the agency hold a public hearing, at which "any person shall be permitted to present written or oral testimony." (Gov. Code, § 53753, subd. (d).) When documenting the hearing, the City referred to ballots as either "supporting" or "opposing," and referred to the "written . . . testimony" contemplated by Government Code section 53753, subdivision (d) as "written protest."

[5] The record contains no evidence regarding the identity of the speakers at the DCBID hearing. According to the speaker cards submitted for the SPBID hearing, neither of the speakers represented Mesa. The record is silent regarding the content of the speakers' presentations. Neither Hill, Olive, nor Mesa allege they submitted written protests or had representatives speak at the public hearings regarding the BIDs' establishment.

On July 26, 2017, Mesa filed a petition for writ of mandate and complaint for declaratory and injunctive relief against the City challenging the establishment of the SPBID. Hill, Olive, and Mesa's contentions center largely on the definition of "special benefit" as distinct from "general benefit" as those terms are used and defined in the PBID Law and article XIII D, as clarified by the Supreme Court in *Silicon Valley Taxpayers' Assn., Inc. v. Santa Clara County Open Space Authority* (2008) 44 Cal.4th 431 (*Silicon Valley*). Among other arguments, Hill, Olive, and Mesa raised facial challenges to the constitutionality of amendments to the PBID Law the Legislature made after *Silicon Valley*. Hill, Olive, and Mesa also argued that if the benefits the BIDs conveyed were special benefits, the City improperly failed to consider and account for unique characteristics about *their* properties (separate and apart from each other parcel in each BID) that would affect the value to the parcel of the benefit conveyed. Finally, Hill, Olive, and Mesa challenged the BIDs' quantification methods, alleging that attributions between special and general benefits were based on evidence that was not solid and credible. Each of the petitions alleges exhaustion of administrative remedies. Each of the City's answers alleges "failure to exhaust administrative remedies and/or identify issues of dispute prior to bringing suit in Superior Court" as an affirmative defense. And the City and BIDs briefed exhaustion of administrative remedies in their trial briefs.

On September 19, 2018, the trial court heard argument on the petitions. The trial court inquired about—and the parties argued—exhaustion of administrative remedies during the hearing.

The trial court issued orders on October 30, 2018 (Hill and Olive) and October 31, 2018 (Mesa) denying the petitions and the requested injunctive and declaratory relief on the merits. Neither of the orders mentions exhaustion of administrative remedies.

The trial court entered judgments on December 3, 2018 (Hill and Olive) and December 19, 2018 (Mesa) based on its orders. Hill, Olive, and Mesa filed timely notices of appeal.

DISCUSSION

A. Relevant BID Procedural Requirements

Article XIII D requires that the record owner of a parcel in a proposed business improvement district "be given written notice by mail of the proposed assessment, the total amount thereof chargeable to the entire district, the amount chargeable to the owner's particular parcel, the duration of the payments, the reason for the assessment and the basis upon which the amount of the proposed assessment was calculated, together with the date, time, and location of a public hearing on the proposed assessment. Each notice shall also include, in a conspicuous place thereon, a summary of the procedures applicable to the completion, return, and tabulation of the ballots . . . , including a disclosure statement that the existence of a majority protest . . . will result in the assessment not being imposed." (Cal. Const., art. XIII D, § 4, subd. (c).)

The Constitution requires that the agency proposing to levy the assessment "conduct a public hearing upon the proposed assessment not less than 45 days after mailing the notice of the proposed assessment to record owners of each identified parcel. At the public hearing, the agency shall consider all protests against the proposed assessment and tabulate the ballots. The

agency shall not impose an assessment if there is a majority protest. A majority protest exists if, upon the conclusion of the hearing, ballots submitted in opposition to the assessment exceed the ballots submitted in favor of the assessment. In tabulating the ballots, the ballots shall be weighted according to the proportional financial obligation of the affected property." (Cal. Const., art. XIII D, § 4, subd. (e).)

The PBID Law also imposes a host of administrative requirements on an agency considering levying an assessment. Specifically, for a new or increased property assessment, the PBID Law requires a "notice and protest and hearing procedure [that] compl[ies] with Section 53753 of the Government Code." (Sts. & Hy. Code, § 36623, subd. (a).)

Government Code section 53753 requires the agency to "give notice by mail to the record owner of each identified parcel. Each notice shall include the total amount of the proposed assessment . . . and the basis upon which the amount of the proposed assessment was calculated, and the date, time, and location of a public hearing on the proposed assessment. Each notice shall also include, in a conspicuous place thereon, a summary of the procedures for the completion, return, and tabulation of the assessment ballots required . . . , including a statement that the assessment shall not be imposed if the ballots submitted in opposition to the assessment exceed the ballots submitted in favor of the assessment, with ballots weighted according to the proportional financial obligation of the affected property. An agency shall give notice by mail at least 45 days prior to the date of the public hearing upon the proposed assessment." (Gov. Code, § 53753, subd. (b).)

"At the time, date, and place stated in the notice mailed pursuant to subdivision (b), the agency shall conduct a public hearing upon the proposed assessment. *At the public hearing, the agency shall consider all objections or protests, if any, to the proposed assessment. At the public hearing, any person shall be permitted to present written or oral testimony. The public hearing may be continued from time to time*." (Gov. Code, § 53753, subd. (d), italics added.)

"At the conclusion of the public hearing . . . , an impartial person designated by the agency who does not have a vested interest in the outcome of the proposed assessment shall tabulate the assessment ballots submitted, and not withdrawn, in support of or opposition to the proposed assessment. . . ." (Gov. Code, § 53753, subd. (e)(1).) "A majority protest exists if the assessment ballots submitted, and not withdrawn, in opposition to the proposed assessment exceed the assessment ballots submitted, and not withdrawn, in its favor, weighting those assessment ballots by the amount of the proposed assessment to be imposed upon the identified parcel for which each assessment ballot was submitted. [¶] . . . If there is a majority protest against the imposition of a new assessment, or the extension of an existing assessment, or an increase in an existing assessment, *the agency shall not impose, extend, or increase the assessment*." (Gov. Code, § 53753, subd. (e)(4) & (5), italics added.)[6]

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[6] Neither the record nor the parties' arguments contain any allegation that the City failed to comply with the procedural requirements set forth in section 4 of article XIII D, Streets and Highways Code section 36623, and Government Code section 53753.

B. Exhaustion of Administrative Remedies

"The question whether the doctrine of exhaustion of administrative remedies applies in a given case raises legal issues, which we review de novo." (*Evans v. City of San Jose* (2005) 128 Cal.App.4th 1123, 1136.)

"Generally, 'a party must exhaust administrative remedies before resorting to the courts. . . .' " (*Plantier v. Ramona Municipal Water Dist.* (2019) 7 Cal.5th 372, 382.) The Supreme Court has "inferred an exhaustion requirement even within statutory schemes that ' "do not make the exhaustion of the [administrative] remedy a condition of the right to resort to the courts." ' " (*Williams & Fickett v. County of Fresno* (2017) 2 Cal.5th 1258, 1271 (*Williams & Fickett*).) "The general rule of exhaustion 'forbids a judicial action when administrative remedies have not been exhausted, even as to constitutional challenges . . . .' " (*Bockover v. Perko* (1994) 28 Cal.App.4th 479, 486.)

"[I]n California a requirement that administrative remedies be exhausted is jurisdictional."[7] (*California*

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[7] " 'The concept of jurisdiction embraces a large number of ideas of similar character, some fundamental to the nature of any judicial system, some derived from the requirement of due process, some determined by the constitutional or statutory structure of a particular court, and some based upon mere procedural rules originally devised for convenience and efficiency, and by precedent made mandatory and jurisdictional.' " (*Mokler v. County of Orange* (2007) 157 Cal.App.4th 121, 134, quoting *Abelleira v. District Court of Appeal, Third Dist.* (1941) 17 Cal.2d 280, 293.) In the exhaustion context, "jurisdictional" does not implicate subject matter or personal jurisdiction. Rather, it is " 'a fundamental rule of procedure laid down by courts of last resort,

Correctional Peace Officers Assn. v. State Personnel Board (1995) 10 Cal.4th 1133, 1151.) "The rule 'is not a matter of judicial discretion, but is a fundamental rule of procedure . . . binding upon all courts.' " (*Campbell v. Regents of University of California* (2005) 35 Cal.4th 311, 321.)

The general rule is that "[a]dministrative agencies must be given the opportunity to reach a reasoned and final conclusion on each and every issue upon which they have jurisdiction to act before those issues are raised in a judicial forum." (*Sierra Club v. San Joaquin Local Agency Formation Com.* (1999) 21 Cal.4th 489, 510.) "The exhaustion doctrine is principally grounded on concerns favoring administrative autonomy (i.e., courts should not interfere with an agency determination until the agency has reached a final decision) and judicial efficiency (i.e., overworked courts should decline to intervene in an administrative dispute unless absolutely necessary)." (*Farmers Ins. Exchange v. Superior Court* (1992) 2 Cal.4th 377, 391.) "Even where the administrative remedy may not resolve all issues or provide the precise relief requested by a plaintiff, the exhaustion doctrine is still viewed with favor 'because it facilitates the development of a complete record that draws on administrative expertise and promotes judicial efficiency.' [Citation.] It can serve as a preliminary administrative sifting process [citation], unearthing the relevant evidence and providing a record which the court may review." (*Yamaha Motor Corp. v. Superior Court* (1986) 185 Cal.App.3d 1232, 1240.)

Hill, Olive, and Mesa posit that exhaustion is not required in the BID assessment context and alternately that they

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followed under the doctrine of *stare decisis*, and binding upon all courts.' " (*Ibid.*)

exhausted their administrative remedies by submitting ballots opposing the City's proposed BID assessments.[8] We disagree with both assertions.

As we have noted, the Supreme Court has "inferred an exhaustion requirement even within statutory schemes that ' "do not make the exhaustion of the [administrative] remedy a condition of the right to resort to the courts." ' " (*Williams & Fickett*, *supra*, 2 Cal.5th at p. 1271.) The PBID Law's detailed administrative procedural requirements "provide affirmative indications of the Legislature's desire" that agencies be allowed to consider in the first instance issues raised during that process. (*Ibid.*) As in *Williams & Fickett*, we conclude that the procedure outlined in the PBID Law "bespeaks a legislative determination that the [City] should, in the first instance, pass on" the questions Hill, Olive, and Mesa present in their petitions, "or decide that it need not do so." (*Ibid.*)

Neither are we persuaded that voting against the assessments without availing themselves of the PBID Law's comprehensive protest and hearing process constituted "exhaustion" of that process. At argument, counsel for Hill, Olive, and Mesa contended that the Supreme Court through *Williams & Fickett* requires exhaustion only in circumstances where the statutory or constitutional provision creating an administrative process does not expressly articulate what behavior constitutes exhaustion. Because the Constitution and statutes applicable here allow property owners to submit a ballot,

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[8] Hill, Olive, and Mesa's contention that no exhaustion was required here is undermined by headings and allegations in each of their petitions that they had exhausted administrative remedies.

counsel argued, submitting a ballot opposing the establishment of the BID exhausts administrative remedies. *Williams & Fickett* does not support that contention.

In *Williams & Fickett*, the Supreme Court considered whether a taxpayer who asserted that they did not own a particular property must exhaust administrative remedies (that the statutory scheme detailed) or whether that requirement was obviated by the nullity exception—the exception to the exhaustion doctrine "where a tax assessment is 'a nullity as a matter of law.' " (*Williams & Fickett*, *supra*, 2 Cal.5th at p. 1264.) The administrative process at issue in that case—a property tax assessment appeal—*did* articulate the procedures a taxpayer needed to exhaust before invoking judicial process. (*Ibid.*) The taxpayer's argument was that it did not *need* to exhaust administrative remedies because doing so would not serve the exhaustion doctrine's purposes. (*Id.* at p. 1267.) The Supreme Court rejected the taxpayer's argument in *Williams & Fickett*, and explained that even where the taxpayer's challenge was not a question of valuation that implicated the local board's expertise, exhaustion was still required because the question presented was within the jurisdiction of the local board. (*Id.* at pp. 1268, 1270.)

The facts here present an even more compelling rationale for exhaustion. For just a "no" vote in the context of the remedies the statute provides to constitute exhaustion would frustrate the purpose of the exhaustion doctrine. "The doctrine of exhaustion of administrative remedies limits the scope of issues subject to judicial review to those that the administrative agency has had the opportunity to consider." (*Evans v. City of San Jose* (2005) 128 Cal.App.4th 1123, 1130 (*Evans*).) The doctrine "affords the public agency an 'opportunity to receive and respond to

articulated factual issues and legal theories before its actions are subjected to judicial review.' [Citation.] Thus, by presenting the issue to the administrative body, the agency 'will have had an opportunity to act and render the litigation unnecessary' [citation]; and, in so doing, 'lighten the burden of overworked courts in cases where administrative remedies are available and are as likely as the judicial remedy to provide the desired relief. . . .' [Citation.] Finally, the doctrine ' . . . facilitates the development of a complete record that draws on administrative expertise and promotes judicial efficiency.' " (*Leff v. City of Monterey Park* (1990) 218 Cal.App.3d 674, 681.)

Exhaustion of administrative remedies is not a pro forma exercise. "The purposes of the doctrine are not satisfied if the objections are not sufficiently specific so as to allow the [a]gency the opportunity to evaluate and respond to them. [Citation.] 'The essence of the exhaustion doctrine is the public agency's opportunity to receive and respond to articulated factual issues and legal theories *before* its actions are subjected to judicial review.' " (*Evans*, *supra*, 128 Cal.App.4th at p. 1138.)

The BID assessment process provides property owners at least 45 days' notice of the public hearing the PBID Law requires. At that hearing, the city is required to "consider all objections or protests," and at that hearing, "any person shall be permitted to present written or oral testimony." (Gov. Code, § 53753, subd. (d).) If a property owner presents factual issues or legal theories for the city's consideration that require more research, investigation, or development, "[t]he public hearing may be continued from time to time." (*Ibid.*)

While the process mandates that an assessment fail if there exists a majority protest, the process gives the city *discretion* to

pass or decline an assessment even if property owners' votes are sufficient to sustain the assessment. (Cal. Const., art. XIII D, § 4, subd. (e) ["[t]he agency shall not impose an assessment if there is a majority protest"]; Gov. Code, § 53753, subd. (e)(5) ["[i]f there is a majority protest . . . , the agency shall not impose . . . the assessment"].) If the agency's decision is to be challenged in court, the agency—the City in this context—is entitled to the benefit of the opportunity to either address the specific issues a property owner raises or to pass on the opportunity to do so and allow the courts to make a decision based on an administrative record that reflects a development of the disputed issues to the extent the administrative process allows. (See *Williams & Fickett*, *supra*, 2 Cal.5th at p. 1271.)

Exhaustion of administrative remedies in this context requires nothing more of a property owner than submitting a ballot opposing the assessment and presenting to the agency at the designated public hearing the specific reasons for its objection to the establishment of a BID in a manner the agency can consider and either incorporate into its decision or decline to act on. The administrative procedure outlined in the Constitution and the Government Code allows property owners to do that either orally or in writing at a public hearing called for the purpose of "consider[ing] all objections or protests . . . to the proposed assessment" and tabulating ballots. (Gov. Code, § 53753, subd. (d).) Because we conclude that Hill, Olive, and Mesa were required to exhaust administrative remedies before seeking judicial intervention—a threshold question in this case—and did not do so, we affirm the trial court's denial of the petitions for writs of mandate.

DISPOSITION

The judgments are affirmed. The respondents are entitled to their costs on appeal.

CERTIFIED FOR PUBLICATION

CHANEY, J.

We concur:

ROTHSCHILD, P. J.

WHITE, J.*

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

DIVISION 1

HILL RHF HOUSING PARTNERS LP et al.,
Plaintiffs and Appellants,
v.
CITY OF LOS ANGELES et al.,
Defendants and Respondents.

c/w B295315

B295181
Los Angeles County Super. Ct. No. BS170127

THE COURT:

Petition for rehearing is denied.

ROTHSCHILD, Presiding Justice

CHANEY, Associate Justice

WHITE, Judge*

*Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 12400 Wilshire Boulevard, Suite 800, Los Angeles, California 90025.

On August 6, 2020, I served the foregoing document described as:

PETITION FOR REVIEW

on all interested parties in this action by placing a true copy thereof enclosed in sealed envelope(s) addressed as follows:

Xavier Becerra Office of the Attorney General 300 South Spring Street Los Angeles, CA 90013-1230	Los Angeles Superior Court Hon. Michael L. Beckloff 111 North Hill Street, Dept. 86 Los Angeles, CA 90012

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited in U.S. Postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 6, 2020, at Los Angeles, California.

Nathalie Quach

PROOF OF SERVICE BY E-MAIL

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 12400 Wilshire Boulevard, Suite 800, Los Angeles, California 90025.

On August 6, 2020, I served the foregoing document described as:

PETITION FOR REVIEW

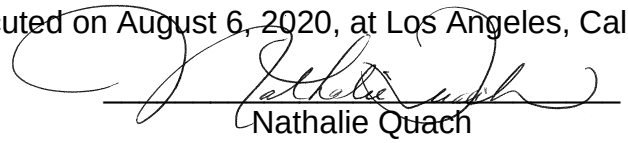
on all interested parties in this action by serving a true copy of the above-described document in the following manner:

Daniel M. Whitley, Esq. Deputy City Attorney **City Hall East** 200 N. Main Street, Room 920 Los Angeles, CA 90012 Email: daniel.whitley@lacity.org *Attorneys for City of Los Angeles*	Michael G. Colantuono, Esq. Holly O. Whatley, Esq. Pamela K. Graham, Esq. **Colantuono, Highsmith & Whatley, PC** 790 East Colorado Boulevard, Suite 850 Pasadena, CA 91101 Email: mcolantuono@chwlaw.us Email: hwhatley@chwlaw.us Email: pgraham@chlaw.us *Attorneys for Downtown Center Business Improvement District Management Corporation; and San Pedro Property Owners Alliance*

I am familiar with the office practice of Reuben Raucher & Blum for collecting and processing documents for delivery by E-mail. Under that practice, documents and email by Reuben Raucher & Blum personnel responsible for emailing are transmitted on that same day in the ordinary course of business. I emailed the above referenced documents to the address listed above through TrueFiling.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 6, 2020, at Los Angeles, California.



Nathalie Quach

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **Hill RHF Housing Partners, L.P., et al. v. City of Los Angeles, et. al. / Mesa RHF Partners, L.P. v. City of Los Angeles, et al.**
Case Number: **TEMP-Z3J5HHHD**
Lower Court Case Number:

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **sraucher@rrbattorneys.com**

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

8/6/2020
Date

/s/Nathalie Quach
Signature

Raucher, Stephen (162795)

Last Name, First Name (PNum)

Reuben Raucher & Blum

Law Firm