



Fagen Friedman & Fulfroost LLP

Public Hearing Comments in Advance of Preparing Trustee Area Map Options

San Dieguito

Union High School District

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October 12 & 19, 2017

F3law.com



Purpose of Tonight's Meeting

- Introduction to CVRA
- Step-by-step Process
- Public Hearing



What is the California Voting Rights Act (“CVRA”)?

- Took effect January 1, 2003
- Prohibits the use of “at-large” elections when such an election system:

“impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election....”

(Elections Code § 14027.)



Does not require intent

- The CVRA is far broader than its federal counterpart
- Much easier for a plaintiff to bring a claim against a government entity
- Proof of intent on the part of voters or elected officials to discriminate against a protected class is not required
(Elections Code § 14028(d).)



Right to Attorneys' and Expert Fees

CVRA grants a prevailing plaintiff the right to recover reasonable attorneys' fees **AND** expert witness fees.

If district wins, it is **not** granted the same right.



(Elections Code § 14030.).



Major CVRA Litigation to Date

Recent Years:

- **\$110,000** (*Gomez v. Hanford Joint Union School District*)
- **\$3 million** (*Sanchez v. City of Modesto*)
- **\$1.2 million** (*Rey v. Madera Unified School District*)
- **\$500,000** (*Avitia, et al. v. Tulare Local Healthcare District*)
- **\$4.5 million + interest** (*Jauregui v. City of Palmdale*)
- It is important to note that these amounts do not account for the fees paid to the entity's own attorneys.



What Constitutes a Violation of CVRA?



Racially Polarized Voting

- A violation of the CVRA is established if it is shown that racially polarized voting has occurred in a district's governing board election, or alternatively state or national elections (as measured by voters who live within the District's boundaries).
- Evaluation looking to see if minority "candidates of choice" have been elected or prevented from being elected due to at-large election system.



The Only Safe Harbor Guarantee from a CVRA claim is...

A transition to “by-trustee” area election system and holding elections using the by-trustee area election system.



What is a “By-Trustee Area” Election System?

- School district is divided into trustee areas
- A governing board member is elected from each trustee area
- Board members are elected **by only the registered voters in the particular trustee area** where the governing board member resides



Recent Legislative Changes

■ AB 350

- Additional “pre-map” public hearing requirements
 - Two within first 30 days
- Transition Timelines with litigation safe havens
 - 90 days from initiation
- Plaintiff fee reimbursement



Next Steps



First Step for Establishing By-Trustee Area Elections

- Pass a resolution of governing board declaring:
 - Intent to establish “by-trustee area” election system
- District passed this resolution in September



Current Step: Two Public Hearings

- Prior to the preparation of draft trustee voting area plans by the District's demographer
- Receive community comments and public testimony concerning:
 - The composition of potential trustee voting areas associated with the District's transition to a by-trustee area election system



District's Demographics

Total Population

Race/Ethnic Profile	Count	Percent
Total Population	165,839	
Latino	16,915	10%
NH White	125,074	75%
NH Black/African-American	1,375	1%
NH Native American	752	0%
NH Asian-American	20,314	12%
NH Pacific Islander	326	0%
NH Other	550	0%
NH Multi-Race	533	0%

Sources: 2010 Census, California Statewide Database (2012 and 2014 November elections), 2011-2015 American Community Survey Special Tabulation of Citizen Voting Age data, and 2011-2015 American Community Survey data. "Latino" registration and turnout numbers are Spanish-surnamed data adjusted with US Census

District's Demographics

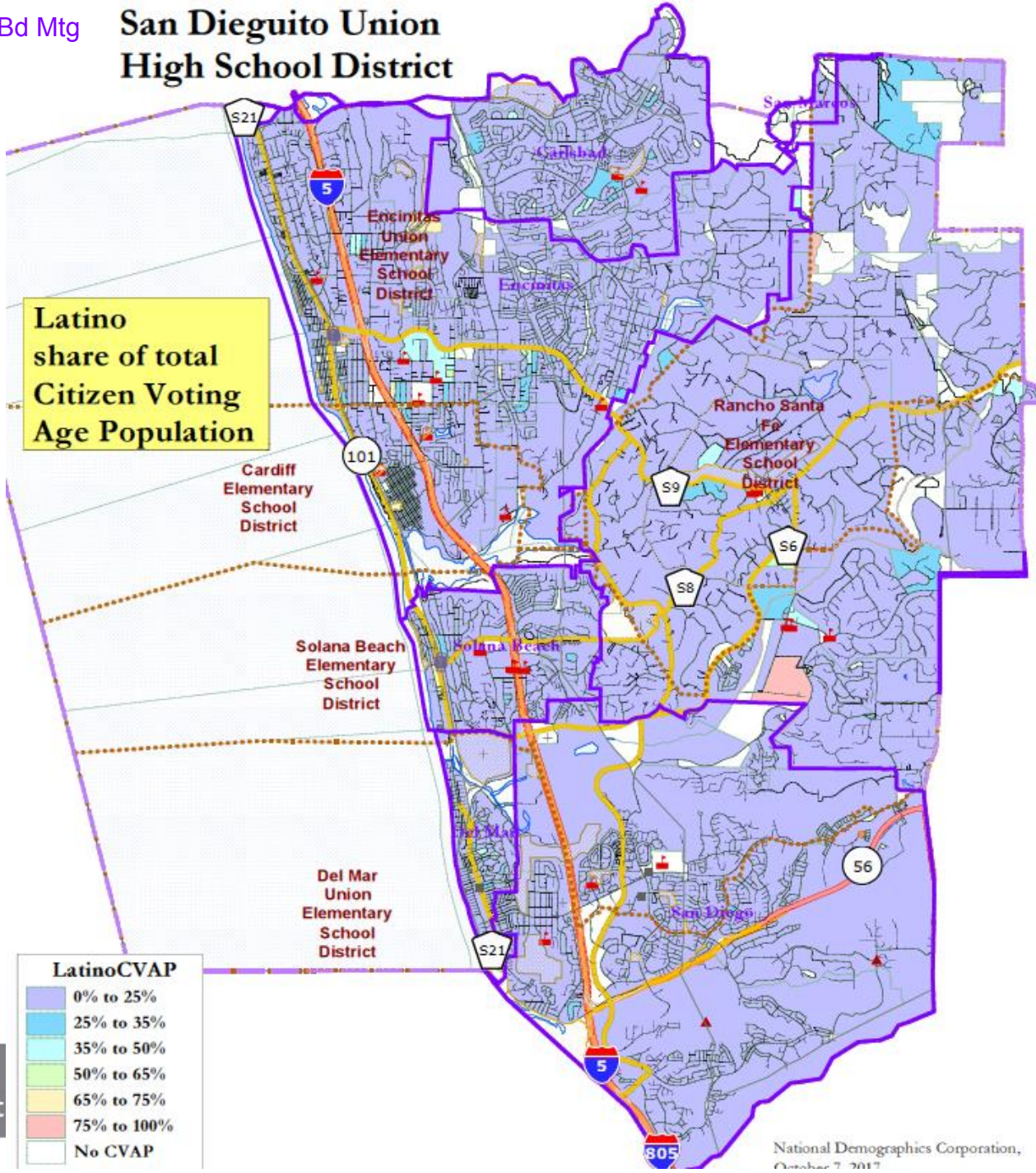
CVAP

Citizen VAP total	119,226	
CVAP Latino	9,308	8%
CVAP NH White	95,559	80%
CVAP NH African-American	1,492	1%
CVAP NH Asian & Pacific Islander	11,544	10%
CVAP Other	1,323	1%

Sources: 2010 Census, California Statewide Database (2012 and 2014 November elections), 2011-2015 American Community Survey Special Tabulation of Citizen Voting Age data, and 2011-2015 American Community Survey data. "Latino" registration and turnout numbers are Spanish-surnamed data adjusted with US Census

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Latino CVAP

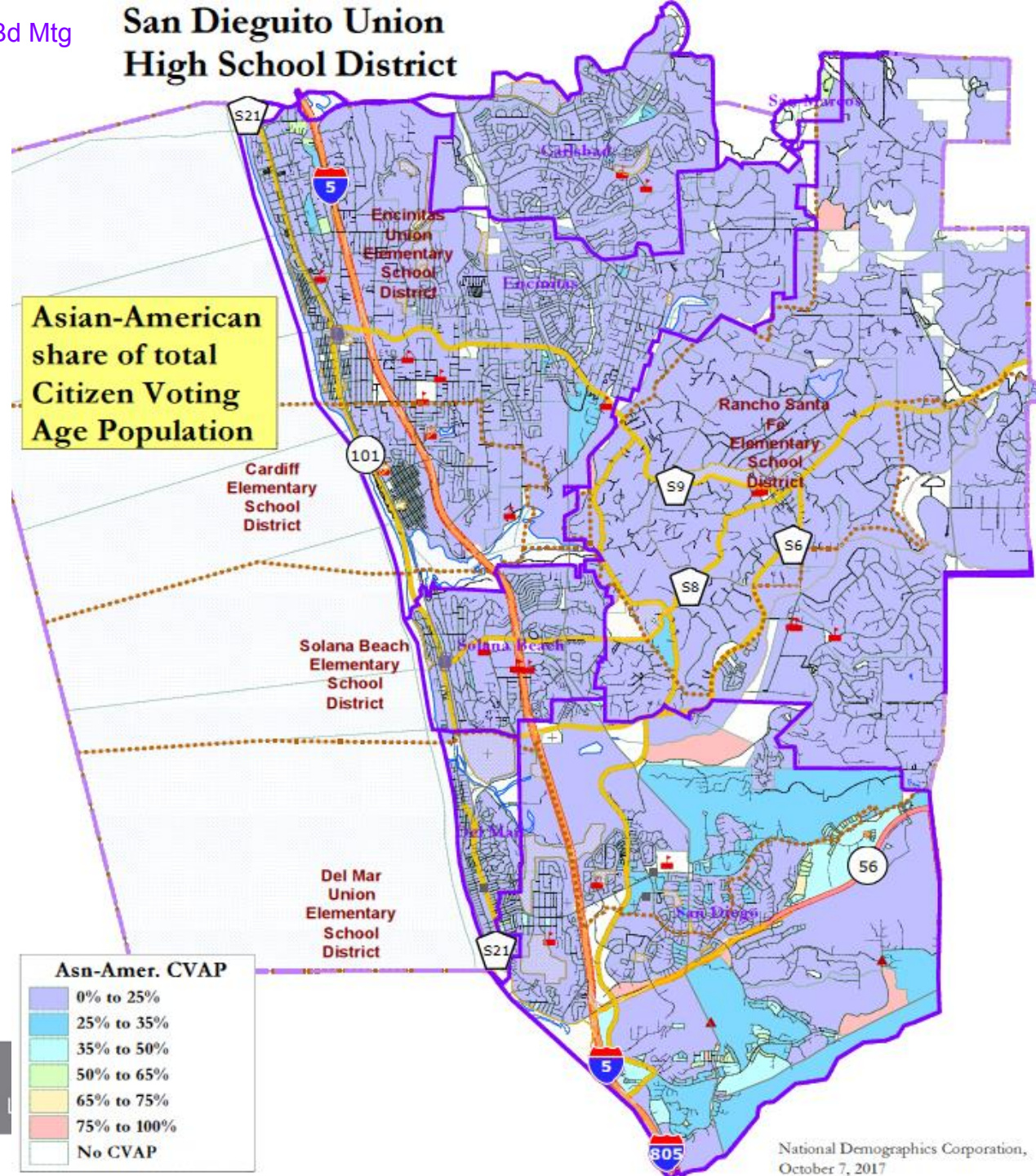
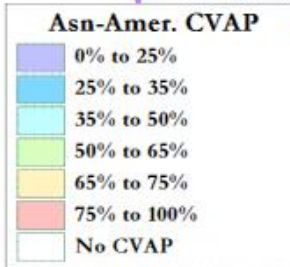


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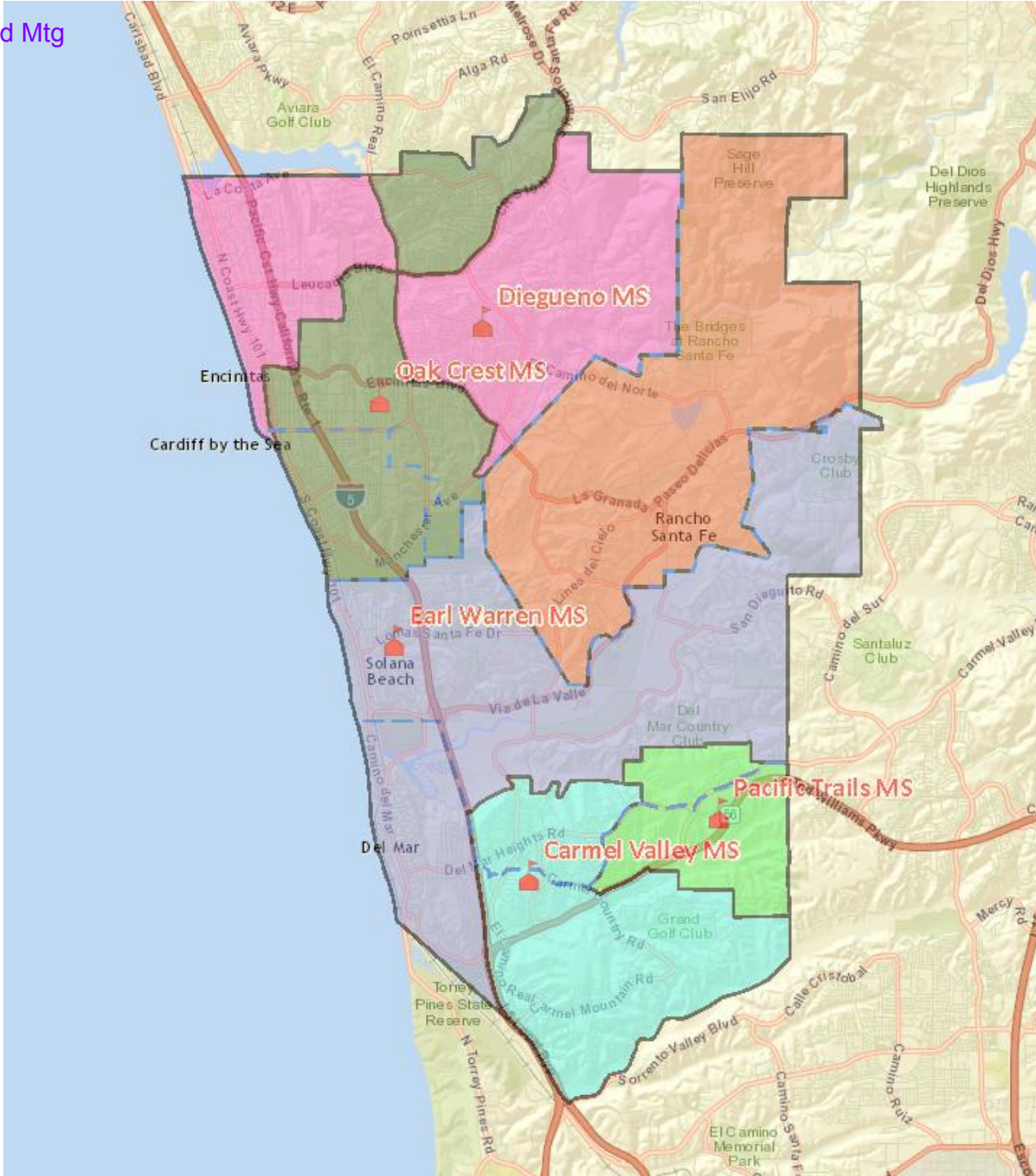
Asian CVAP

Asian-American share of total Citizen Voting Age Population

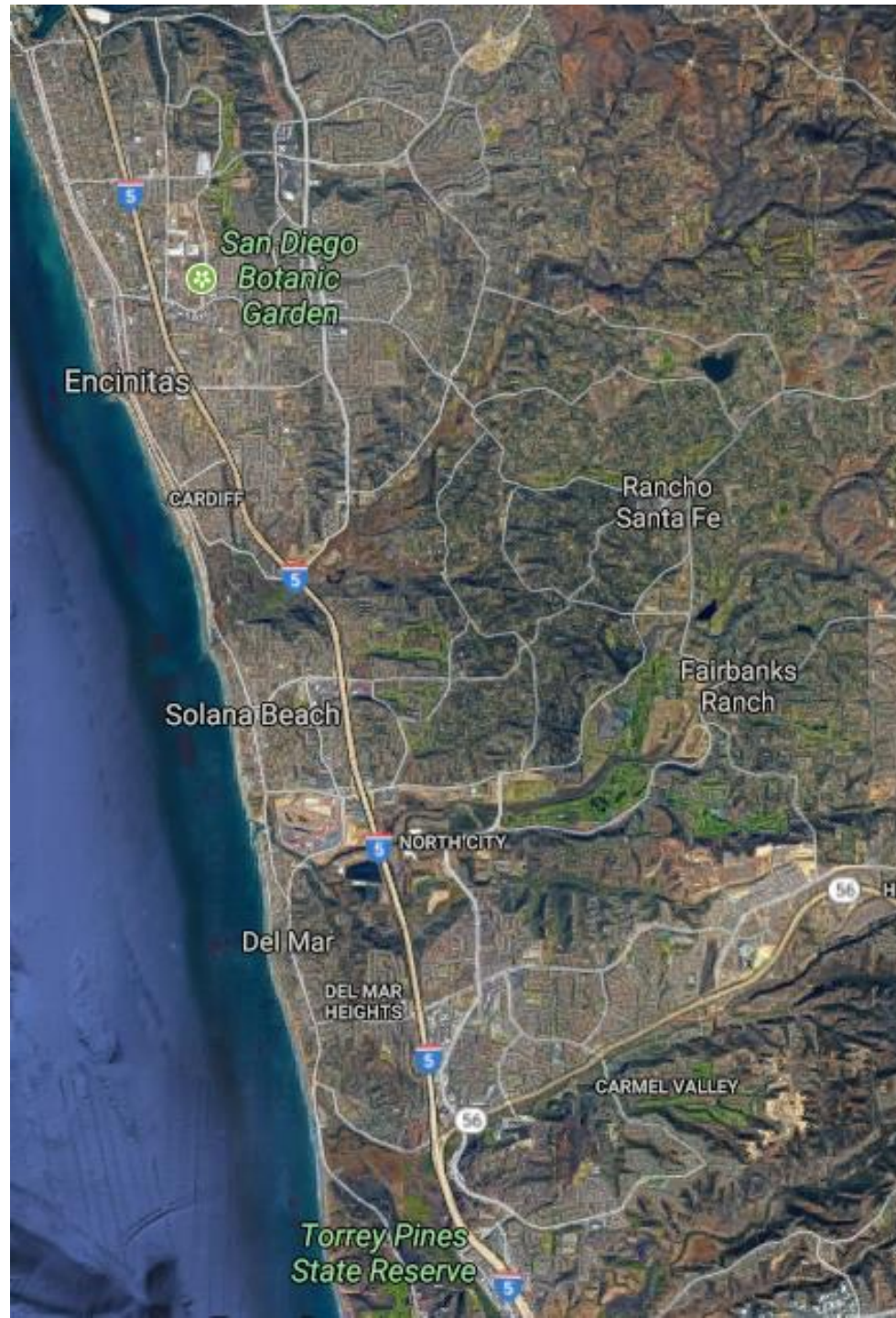


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How Might the District be Divided into Trustee Areas?



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Type of Feedback & Commentary Being Solicited

***“I would like to keep Neighborhood X
and Neighborhood Y in the same trustee
area...”***



Type of Feedback & Commentary Being Solicited

“I think . . .

- The 5
- Via De La Valle
- Encinitas Blvd.
- San Elijo Lagoon
- Fairbanks Ranch Country Club property
- Del Mar Heights Road
- El Camino Real
- Encinitas Ranch Golf Course

***. . . may make sense as a trustee area
boundary because . . .***

- It seems like a natural boundary
- It makes sense geographically

”



After Pre-Map Public Hearings

- Draw Draft Trustee Area Plans
 - Demographer to use 2010 Census Data and additionally permitted updated data.
 - Population must be as equal “as is practicable” – people, not citizens.
 - Ed Code section 1002: “...trustee areas shall be as nearly equal in population...”
 - A certain amount of deviation may be permitted.



More Criteria for Consideration

Article 21 of the California Constitution:

- Comply with the U.S. Constitution.
- Achieve population equality as nearly as is practicable.
- Comply with the Federal Voting Rights Act.
- Voting districts shall be geographically contiguous.
- Local *communities of interests*.
- Geographical compactness.
- Cannot favor or discriminate against an incumbent, political candidate or political party.



Sharing Draft Voting Area Plans with District Constituents

- Draft presented to public for comments before final board consideration.
 - Hold public information sessions
 - Place draft plans on district website
 - Translate documents, if necessary
- Communicate with County during process.



Procedure for Establishing By-Trustee Area Elections

- Governing Board Approval of Final Trustee Area Plan – Requires 2 public hearings before 3rd public hearing to adopt final plan.
- Approval by County Committee on School District Organization at hearing within District.
- Ordinarily, once approved by County Committee, the by-trustee area election proposal and final map would be placed on ballot for approval by electorate; however, the District's choice to seek a waiver will reduce costs and risk of exposure.

(Education Code section 5020)



Final Steps in Completing Transition

- File new Voting Area Plan with County Registrar of Voters.
- Hold November 2018 Governing Board elections under new by-trustee area election system.



Additional Items to Keep in Mind

- Once transition made to by-trustee area election system, then following each federal census:
 - Governing board must approve adjustment of trustee area boundaries to make sure the populations in each trustee area are as nearly as equal as practical, among other things.

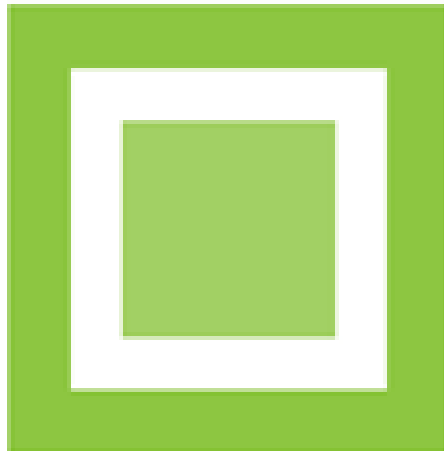
(Education Code section 5019.5(a).)



Final Thoughts

- Does not change overall District boundaries
- Does not change school attendance boundaries
- **Does not** change how the District is governed:
 - Each Board member, regardless of the trustee area in which he/she resides, still owes fiduciary duty to entire District
 - Still one District with common goals and challenges!!!





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How Might the District be Divided into Trustee Areas?

