

**California Debt and Investment
Advisory Commission
Fundamentals of Land Secured Financing
February 2008**

Introduction

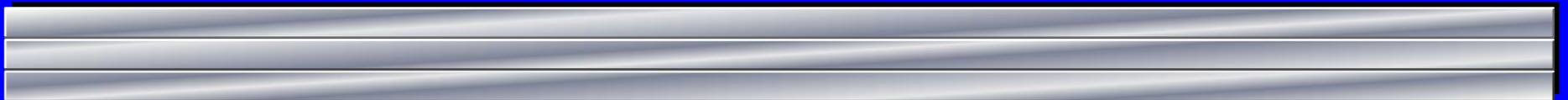
**California Debt and Investment
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Session I

*Basic Structures of Assessment
and Community Facilities
Districts*

History of Each in a Nutshell

- Special Assessment Districts
 - Municipal Improvement Act of 1913
 - Used with the Improvement Bond Act of 1915
 - Other Acts normally used for maintenance
- Mello-Roos Community Facilities Districts
 - In 1978, Prop. 13 was approved by CA voters
 - In response, the Community Facilities Act of 1982 was adopted



California Statutes & Constitution

- Assessment District (AD)
 - Primarily 1913 & 1915 Acts for capital projects
 - Primarily 1972 & 1982 Acts for maint./services
 - Article XIID of CA Constitution
 - Section 53753 of the Govt. Code
- Community Facilities District (CFD)
 - Mello-Roos Community Facilities Act of 1982
 - Articles XIII A & XIIC of CA Constitution
- Charter Cities can use legislative powers



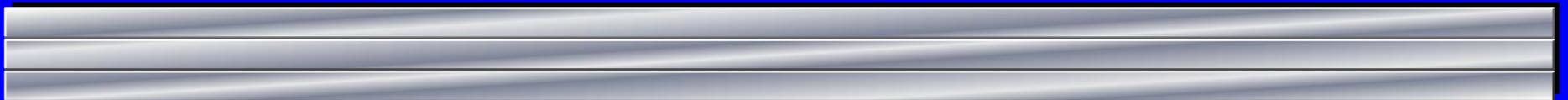
Eligible Capital Facilities to Finance

● Assessment District

- Authorized public improvements
- Must provide local, special benefits to property

● Community Facilities District

- Public improvements with 5+ years useful life
- Can finance facilities:
 - Owned/controlled by issuer and/or
 - Owned, operated and maintained by other public entities
 - JCFA's with other public agencies



AD vs. CFD

- Assessment District
 - Sets a Fixed Lien for every parcel
 - Annual payment reduces lien
 - Term of payments = term of bonds
- Community Facilities District
 - Sets a Maximum Annual Special Tax Rate
 - Max. tax rate may escalate
 - Term of tax may outlive term of bonds
- Neither directly based on property value
 - (a.k.a. an *ad valorem* charge)

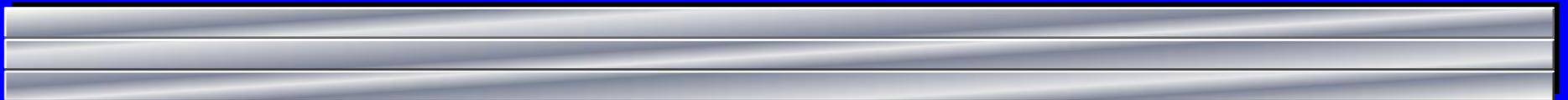
Special Benefits vs. Reasonableness

● Special Benefits - AD's

- Assessment based on the direct and special benefit each property receives from “works of improvement”

● Reasonableness - CFD's

- Special tax is not a special assessment
- May be apportioned and levied on any “reasonable” basis (except ad valorem), as determined by the legislative body

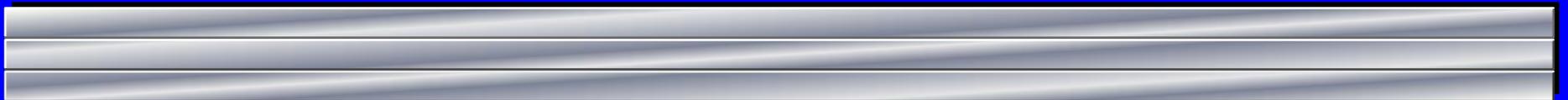


Usual Sequence of Events - AD's

1. Local agency/property owner petition initiated
2. Actions taken by Legislative Body
3. Legislative Body commences assessment proceedings
4. Public Hearing
5. Assessment balloting and “majority protest”
6. Final actions taken by Legislative Body
7. End of cash collection / statute of limitations
8. Bonds issued
9. Project costs funded / reimbursed
10. Annual assessments levied

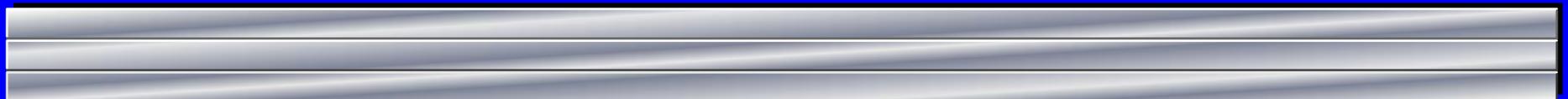
Usual Sequence of Events - CFD's

1. Local agency/property owner petition initiated
2. Local Goals & Policies adopted
3. Legislative Body commences CFD proceedings
4. Public Hearing
5. Election
6. Final actions taken by Legislative Body
7. Bonds issued
8. Project costs funded / reimbursed
9. Annual special taxes levied



AD vs. CFD Comparison - Similarities

Issue	AD's	CFD's
Pay-as-you-go finance	1913 Act - Not common but possible 1972 Act – Permitted and fairly common	Permitted and fairly common
Pay-off or Prepayment of Lien	Automatically allowed by State statute	Allowed if included in RMA
Debt Service Structure	Almost universally level debt service	Usually level or escalating debt service
Maximum Residential Property Tax Burden as % of Sales Price	No State statutory limit. Standard is not to exceed 2%	No State statutory limit. Standard is not to exceed 2%

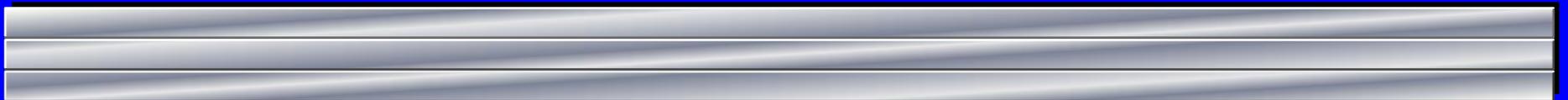


AD vs. CFD Comparison - Differences

Issue	AD's	CFD's
District Boundaries	1913 Act - Boundaries are generally fixed once assessment confirmed 1972 Act – Annexation permitted	May be expanded through future annexations
Land Use Changes	1913 Act - Lien apportionments cannot easily be modified 1972 Act – Annual assessment can adapt	Special taxes generally adapt to changes in land use
Assessment of Undeveloped Property	1913 Act - Assessments on undeveloped land is based on potential development 1972 Act – Annual assessments generally differ between undeveloped and developed parcels	Special taxes between undeveloped and developed land can differ

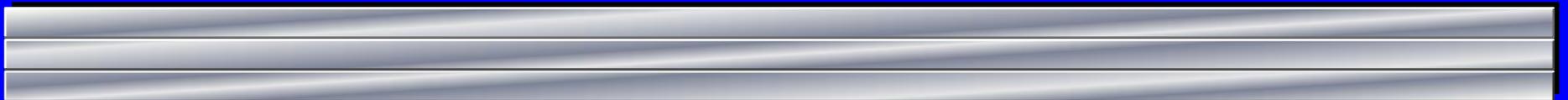
Major Factors Favoring an AD

- AD's are appropriate for:
 - Small, local infrastructure projects
 - Projects with multiple property owners
 - Large variable rate financing programs that anticipate multiple conversion of bonds to a fixed rate of interest over several years
 - Some maintenance programs and services



Major Factors Favoring a CFD

- CFD's are appropriate for:
 - General benefit “community facilities”
 - Projects with few property owners
 - Project requiring flexibility
 - Land development projects in phases
 - Uncertainties about eventual land use
 - Projects needing targeted economic burden
 - Exempting publicly-owned parcels
 - Reducing burden on select categories of parcels/uses



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Session II

Pre-Formation Considerations

Local Goals and Policies

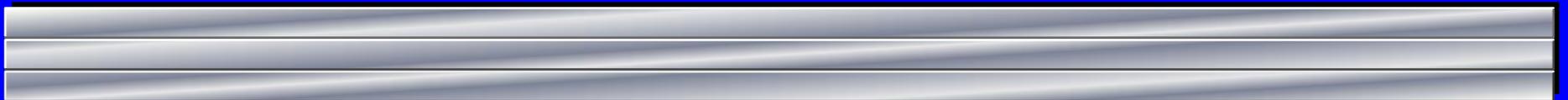
- Legal Requirement for CFD's
(Gov't code §53312.7)
- Good Idea for AD's
- Why important - to provide:
 - Guidance
 - Consistency
 - Assurances

Key Issues to Cover in Policies

- Facilities Priority & Eligibility
- Disclosure to:
 - Prospective Property Purchasers
 - Bond Buyers
 - Financial Markets
- Appraisal Criteria/Value-to-Lien
- Application Process
- Credit Quality Requirements/Criteria

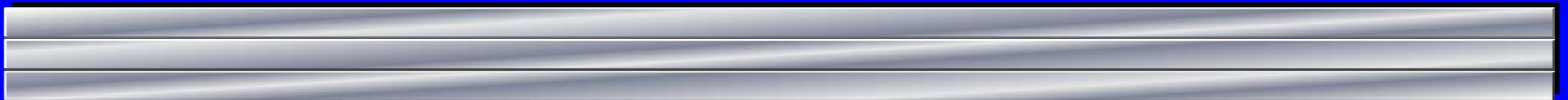
Acquisition vs. Construction

- ACQUISITION: Developer builds improvements and “sells” them
- CONSTRUCTION: Public Agency builds



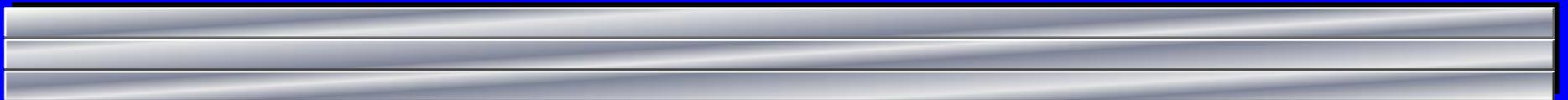
Selecting the Team

- Public Agency should choose consultants
- Financial Advisor can help
- RFP Process / Consultant Pool
- Mello-Roos / Assessment District
experience is a key



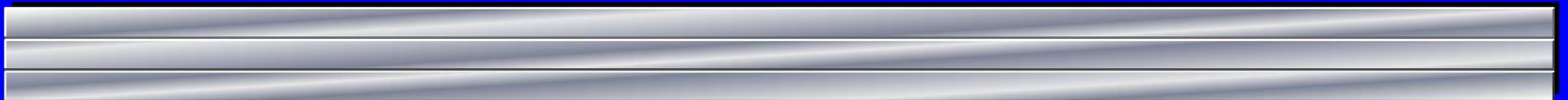
Consultant Roles

- Bond Counsel
 - Legal Opinion
- Financial Advisor
 - Guidance & market knowledge
- Special Tax Consultant
 - Tax Formula, Financing Plan &/or CFD Report
- Assessment Engineer
 - Benefit finding & Engineer's Report



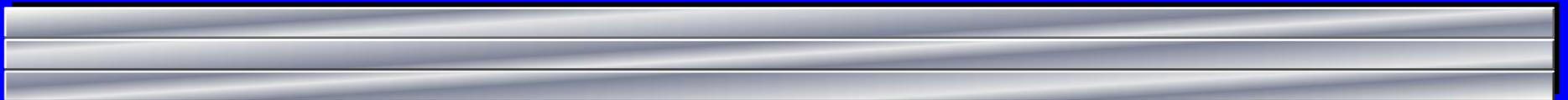
Consultant Roles (cont.)

- Market Consultant
 - Absorption Study
- Appraiser
 - Determines value of properties to be assessed / taxed



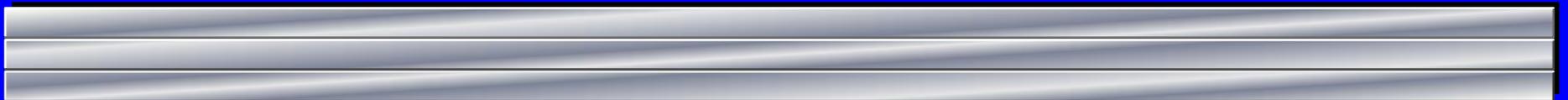
Important Considerations

- Communication among members
- Facilitation of meetings
- Involve Counsel - legal protection
- Understand structure and associated workload
(you will have to live with these decisions)



Other Agencies/Utilities Coordination

- Jurisdictional overlap
- Who will own and operate facilities?
- Joint Community Facilities Agreements required for CFD's
- Consent of legislative body required for CFD's and AD's



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Session III

District Formation Process

Formation Process

● LET'S GET MARRIED

- *Petition*

● I'LL THINK ABOUT IT

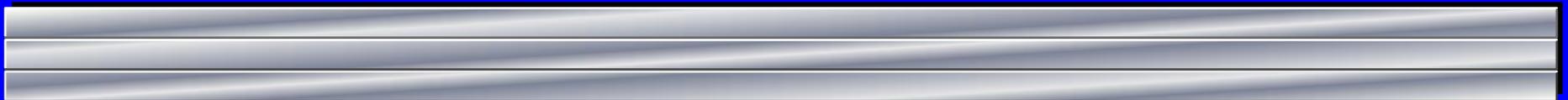
- *Resolution of Intention / Boundary Map*
- *CFD Rate & Method of Apportionment*
- *AD Engineer's Report (including assessment spread)*

● LET'S TALK ABOUT IT

- *Public Hearing*
- *AD Ballot Tabulation*

● THE WEDDING DAY

- *Resolution of Formation*
- *CFD Election*



Rate and Method of Apportionment

- Approved by public agency at ROF and by 2/3 vote of qualified electors
- Describes methodology used to calculate the annual special tax levy
- Must generate amount needed each year to pay bond debt service and admin expenses, to replenish reserve fund, and to pay directly for facilities and/or services.

CFD Special Tax Formulas: Developed Property Special Tax

- Applies to parcels after issuance of building permit, recordation of map, or other defined event
- Can be spread based on benefit or market considerations, not property value
- Categories based on: land use, size of home, type of home, lot size, density, etc.
- Total tax not to exceed 2% of home's sales price
- Should be stable; no fluctuation due to additional bond sales, changes in land use, delinquencies, etc.

CFD Special Tax Formulas: Undeveloped Property Special Tax

- Applies to parcels that do not yet meet definition of “Developed Property”
- Typically charged on a per-acre basis
- Must provide coverage under worst-case scenario prior to full development of the project
- Should absorb variability in special tax levy

CFD Special Tax Formulas: Additional Items to Consider

- Rate of Escalation (facilities vs. services)
- Order of Levy
- Backup Special Tax
- Cross-Collateralization
- Prepayment Formula

Engineer's Report

S&H Code §10204 (1913 Act)

- Plans & Specifications
- Estimate of Costs
- Assessment Diagram
- Assessment Methodology
- Assessment Roll
- Annual Administration Costs

Engineer's Report

S&H Code §2960 (1931 Debt Limitation Act)

- Total principal amount of Unpaid Assessments on parcels
- Total true value of parcels
- Total Lien / Value
(must be less than 50%, by Code)

Engineer's Report

- Key information document in a dispute
- Prepared by a Registered Prof. Engineer
- Proposition 218 requirements
 - Special Benefit should be clearly defined
 - General Benefit should be discussed
 - Assessment spread clearly detailed
 - Special treatment of public parcels should be discussed

CFD Special Election Process

- Conducted after Reso. of Formation
- This IS an election under the Elections Code
- Weighted by property area
(if fewer than 12 registered voters)
- 2/3 must vote “yes”
(registered voters or area)

Assessment Ballot Process

- Required by Proposition 218
- Mailed with Notice of Public Hearing
- This is *NOT* an election,
NOT a secret ballot
- Ballots opened and tallied after hearing
- Weighted by assessment amount
- More “no” than “yes”, no assessment

Assessment Process After Formation

- Recordation of Notice of Assessment
- 30-Day Cash Collection Period
 - Mailed Notice to Pay Assessment
 - Cash payment discount
 - Paid / Unpaid List

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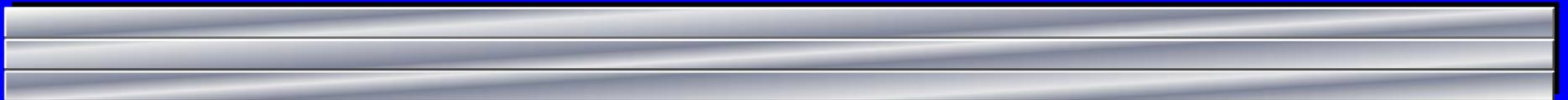
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Session IV

Project Implementation

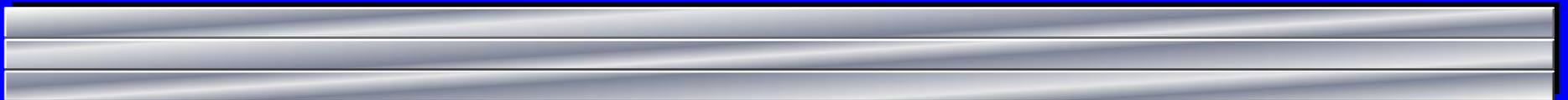
Construction or Acquisition ?

- Construction Project:
 - Issuer constructs project
 - Bond proceeds pay costs as needed
- Acquisition Project:
 - Developer/Owner constructs improvements (must front the costs)
 - Issuer to “purchase” (acquire) with bond proceeds



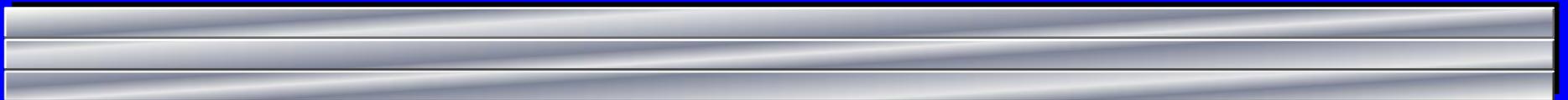
Developer Constructs Improvements

- Acquisition Agreement specifies how (construction and purchase processes)
 - Vertical vs. Horizontal
 - Completed Facility vs. Progress Payments
 - Other specifications and requirements
 - Competitive bidding
 - Prevailing wage
 - Inspection
 - Insurance
 - Local agency review of Plans & Specs



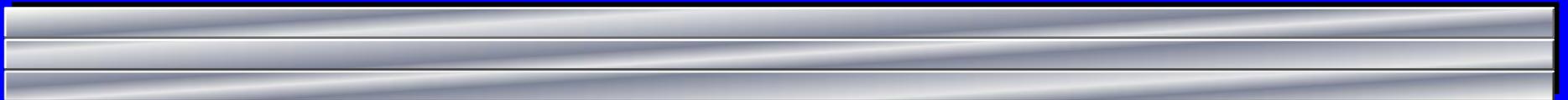
Developer Constructs Improvements

- Requirements for Developer to get paid:
 - Contracts, invoices & canceled checks
 - Evidence of transfer of title
 - Evidence of acceptance of improvements
 - Lien releases from contractor and subs
 - Amount within limits of Agreement



Issuer Constructs Improvements

- Expand working group to include:
 - Public Works staff
 - Representatives from other local agencies
 - Design engineer / environmental consultant
 - Contract administrator / inspectors
 - Real property appraiser



Issuer Constructs Improvements

- Project Design
- Property Acquisition
- Environmental Clearance
- Review and Approval of Plans & Specs
- Solicitation of Sealed Bids



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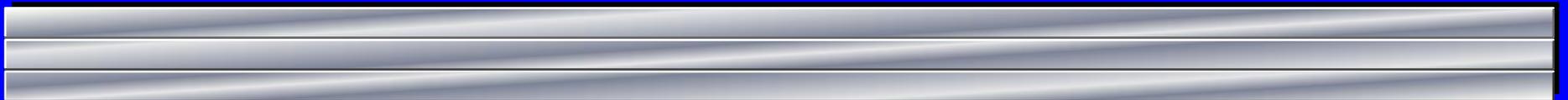
Session V

Bond Issuance

Bond Issuance

- LET'S HAVE A BABY!
 - *Deciding to sell bonds*

- CAN WE AFFORD TO HAVE ONE?
 - *Financial Feasibility*



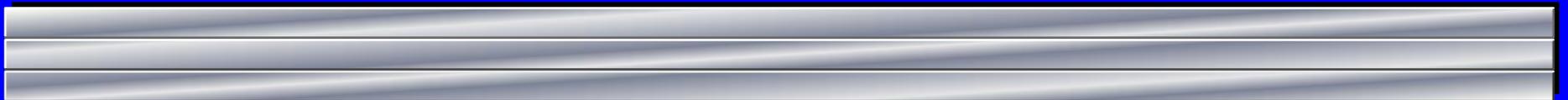
Bond Issuance (cont.)

- How do we do it?
 1. Financing team drafts legal and financing documents
 2. Bond Counsel prepares bond resolution
 3. Issuer approves financing documents
 4. Issuer sells bonds to underwriter
 5. Underwriter sells bonds to investors
 6. Issuer receives \$s in exchange for bonds
 7. Net proceeds used for capital projects

Expansion of Financing Team

Existing Financing Team & Staff, plus...

- Appraiser
 - Estimates value of liened property
- Underwriter
 - Structures and markets the bonds
 - (if negotiated sale)
- Disclosure / Underwriter's Counsel
 - Prepares bond sale financing documents
(Official Statement, bond purchase agreement, etc.)



Expansion of Financing Team (cont.)

- Trustee / Fiscal Agent

- Holds, invests and disburses funds at direction of issuer.
- Has trust obligation to bond owners

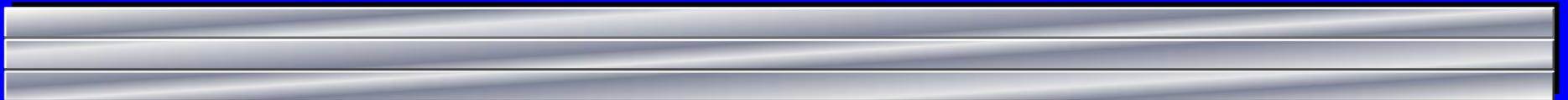
- District Administrator

- Assists Issuer in administering AD/CFD
(good practice to retain earlier in process)



Initial Bond Disclosure

- LET'S TELL OUR FRIENDS WE'RE HAVING A BABY!
 - *Preliminary Official Statement*
 - *Tell the truth, the whole truth, and nothing but the truth*
- So what do you tell our friends?



Disclosing Information to Investors

● Official Statement includes:

• Description of the Bonds

- Authority for issuance
- Debt service schedule
- Redemption provisions
- Sources and uses, etc.

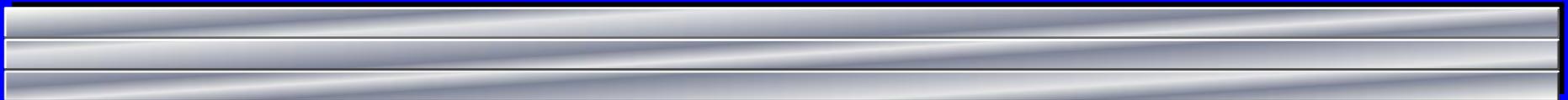
• Project Information (what is being financed)

• Security for the bonds

- Special taxes / assessments
- Land value estimates
- Foreclosure provisions, etc.
- Reserve fund
- ability to issue additional debt

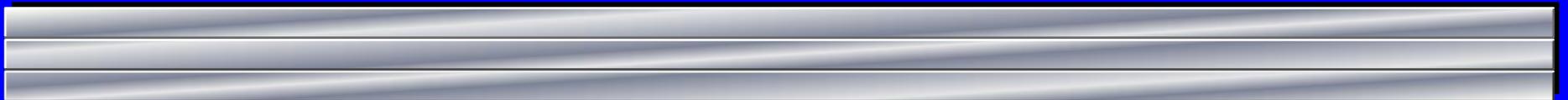
• The CFD/AD Development Plan and Status

- Project pro-forma
- Developer information



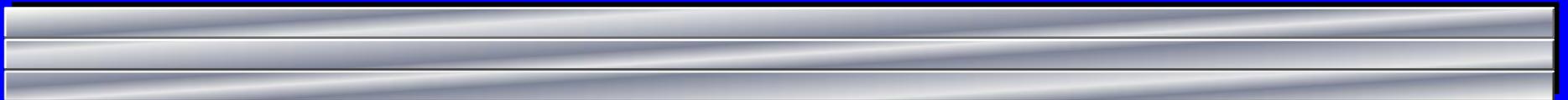
Disclosing Info to Investors (cont.)

- Official Statement also includes:
 - Bondholder Risks
 - Special Tax Formula (RMA) /
Assessment Spread (portions of Engr's Report)
 - Appraisal
 - Market Absorption Report
 - Summary of key legal documents
 - Continuing disclosure agreements



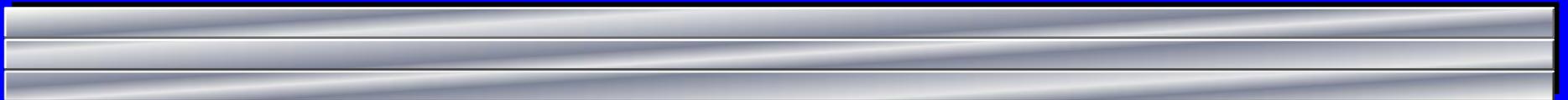
Bond Issuance Considerations

- Bond Sizing / Financial Feasibility
 - How much is needed now?
 - How much can we afford?
 - Special tax revenue coverage -
how many bonds can be supported?
- Timing of Property Tax Bill submittals relative to bond sale
 - Capitalized interest for initial period (“stub period”) or longer



Timing of Bond Sale

- Status and progress of development
- Placing annual levy on Property Tax Bills
- Status of infrastructure funded by CFD/AD
 - need for funds to pay for or reimburse for facility costs
- Market Conditions

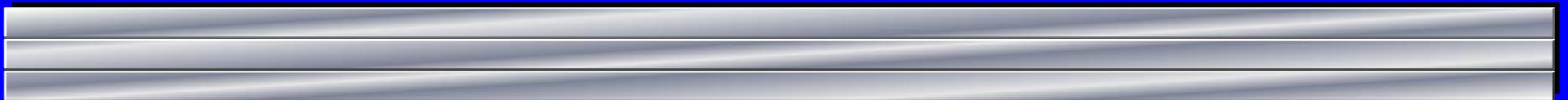


Bond Sale Overview

- Must have all required legal documents completed and approved
 - Issuer adopts all necessary resolutions
- Issuer approves Resolution of Issuance
- Issuer approves final legal documents
 - Official Statement (preliminary)
 - Continuing Disclosure Agreement(s)
 - Bond Purchase Agreement (parameters) or Notice of Sale
 - Bond Indenture or Fiscal Agent Agreement

Bond Sale Overview (cont.)

- Interest rates on the bonds
 - Market's perception of credit quality of CFD/AD
 - Developer's strengths & ability to perform
 - Prevailing overall market interest rates
 - Demand for land-secured debt



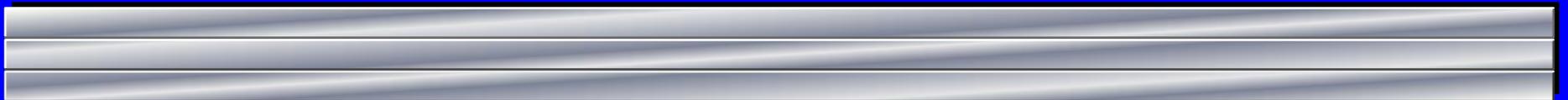
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Session VI

*Administration of Liens
and Management of
Delinquencies*

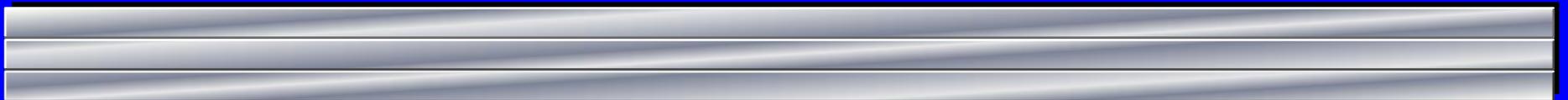
Administration - Basic Steps

- Know your CFD / AD
 - Indenture or Trust Agreement
 - Payments to Bond Holders
 - Special Tax Formula (CFD)
 - Determine applicable special taxes (development status)
 - Allocate parcels to tax categories
(record release of special tax lien for prepayments)
 - Engineer's Report (AD)
 - Debt service + administrative costs = Annual Payments
(record release of assessment lien for prepayments)



Administration - Basic Steps

- Manage the funds
 - Bond funds per indenture / trust agreement (flow of funds and reconcilements)
 - Permitted investments
 - Requisition of construction funds
- Meet administrative obligation
 - Annual disclosure requirements and deadlines
 - IRS arbitrage compliance
 - Levy preparation and submittal to Co. Auditor



Delinquency Management

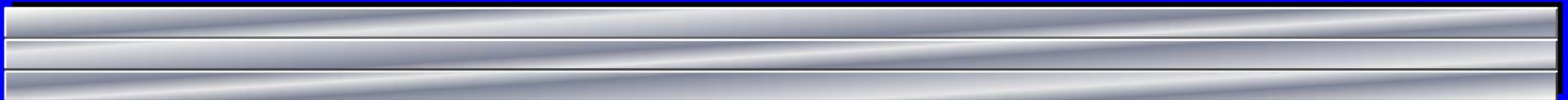
Tax Collector Process

- Tax Bills sent out around October
 - “Delinquent” on December 11 and April 11
 - 1st Installment missed
 - February - notice to pay tax collector may be sent *
 - 2nd installment missed
 - May - notice to pay may be sent (some counties send both) *
- “Defaulted” July 1
 - Lists available of all parcels that have not paid
 - Provided in July
 - List of delinquent properties can be obtained earlier *

* Not all Counties do this

Delinquency Management

- Delinquency list is separated by district
- Local jurisdictions can send out their own notices
- Notice of Intent to remove delinquent CFD/AD installments from the secured tax roll
 - 1st week in August (varies by jurisdiction)
 - Notice of Intent is recorded
- Recorded copy of notice to Auditor
- Auditor “strips” delinquent amounts



Delinquency Management

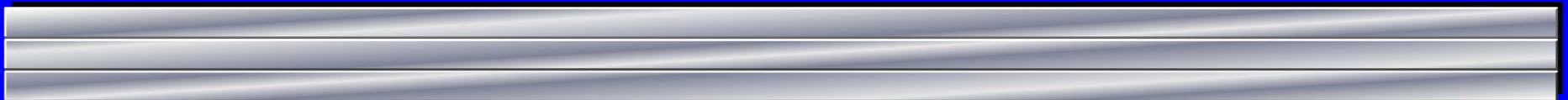
Recommended Practice

- Direct collection of delinquent amounts by districts (after July 1st)
 - Specifies amount due and timeframe
 - Includes penalties, interest, and admin fees
 - 10% of delinquent amount + interest
(1.5% per month starting July 1 after delinquency)
no compounding
 - Advises this is for the stripped CFD/AD installment only
 - Provides information regarding the accelerated foreclosure process

Delinquency Management

Thresholds (Parameters set forth by agency discretion in Indenture)

- Examples of thresholds:
 - Total amount less than 5%
 - Reserve fund fully funded
 - \$1,000 to \$2,000 per parcel
 - Common owners totals from \$2,000 to \$5,000
- Common in new districts, not likely in old ones
- Can avoid or create sticky political situations



Delinquency Management

The Foreclosure Covenant: What it is

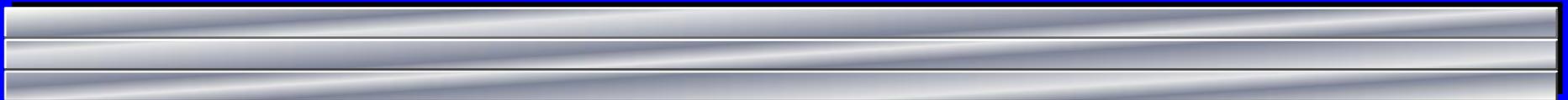
- “COVENANT” = PROMISE

- From District to Bondholders
 - Resolution authorizing bond issuance (1915 Act AD)
 - Fiscal Agent Agreement/Indenture (CFD)
- To “Commence Foreclosure” within a set time & under set circumstances
 - often also to send demand letters

“COMMENCE FORECLOSURE” = TERM OF ART

- What you must do and when

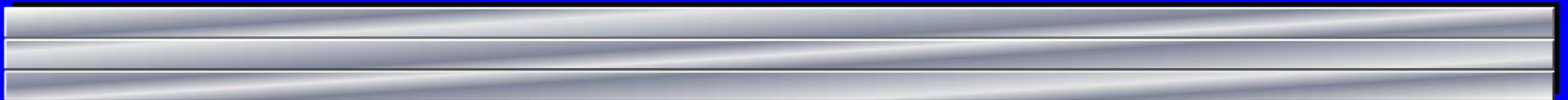
- but you can do more



Delinquency Management

Foreclosure Advantages:

- Faster than “standard” tax collector’s sale
 - 5-6 years after the first delinquency
- Delinquencies can be redeemed without paying the entire secured tax bill



Delinquency Management

Judicial Foreclosure: What it is and isn't

- It is not a foreclosure of a deed of trust
 - only requires sending/recording a notice of default,
 - waiting 3 months, then sending/recording notice of trustee's sale
- It is a lawsuit, like any other
 - Expensive
 - Time consuming – can take years
 - Dependant on how those sued respond
 - Once a “Judgment of Foreclosure and Order of Sale” is issued by the court, it must be implemented by the sheriff under additional expensive and time consuming procedures
- Best suited to large delinquencies

Delinquency Management

Basic Principles

- The goal:
 - obtain delinquency payment as soon as possible
 - not to sell property
- Delinquent amounts are secured by the lien
 - Notice of Special Tax Lien (CFD)
 - Notice of Assessment (AD)
- The lien is co-equal to general taxes and superior to all private liens, regardless of time
 - The property owners probably are not going to pay
 - Lenders probably can be convinced to pay
 - but some take more pressure than others
- Attorney's fees and costs are added



Delinquency Management

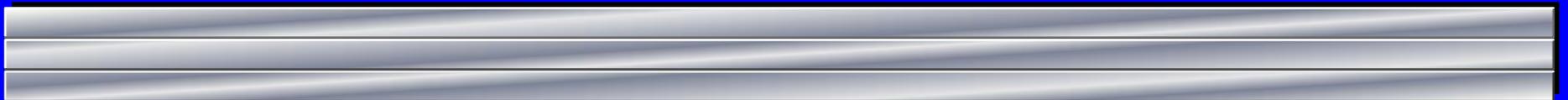
The Challenge of the Subprime Mortgage Meltdown

- Built out individually owned residential property each with a relatively small delinquent amount
- The constant moving target: Owners, lenders servicers
- Attorney letters to owners
- Title searches
- Locate lenders, servicers for lenders
- Intensive phone and letter campaign to obtain payment from lenders
- Recent Experience:
 - Approx 75% Payment In 5 Months
 - Approx 95% Payment In 9 Months

Delinquency Management

The “Classic” Foreclosure

- For:
 - large delinquent amounts,
 - developers, and
 - stubborn smaller delinquencies
- Payment at any time in the process stops the procedure
 - limits the costs to be paid by the redeeming party



Delinquency Management

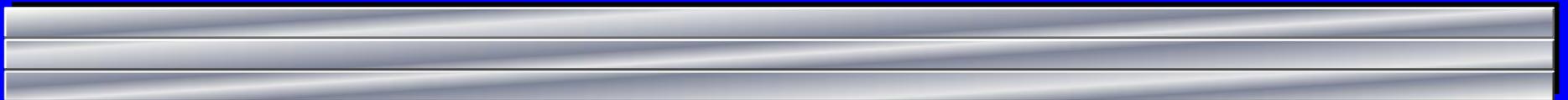
● Pre-judgment Procedures

- Demand letter to owner and lender (preliminary title search)
- Obtain “litigation guaranty”
- Draft and file foreclosure lawsuit
- Draft and record “lis pendens” (notice of pending action)
- Locate and serve the lawsuit on each defendant
 - Each defendant has 30 days to respond
- If no defendant responds, can apply default judgment
- If any defendant responds, must be further litigated
- Obtain judgment of foreclosure and order of sale

Delinquency Management

● Post-judgment Procedures

- Prepare writ of sale, submit to court for issuance
- Obtain certified copies of judgment
- Transmit to sheriff: sale instructions, writ, certified copy of judgment, sheriff's fees
- Sheriff levies on property, requests title update from attorney
- Obtain litigation guaranty update, send information to sheriff
- Sheriff notices sale of property
- Sale (typically “failed”)



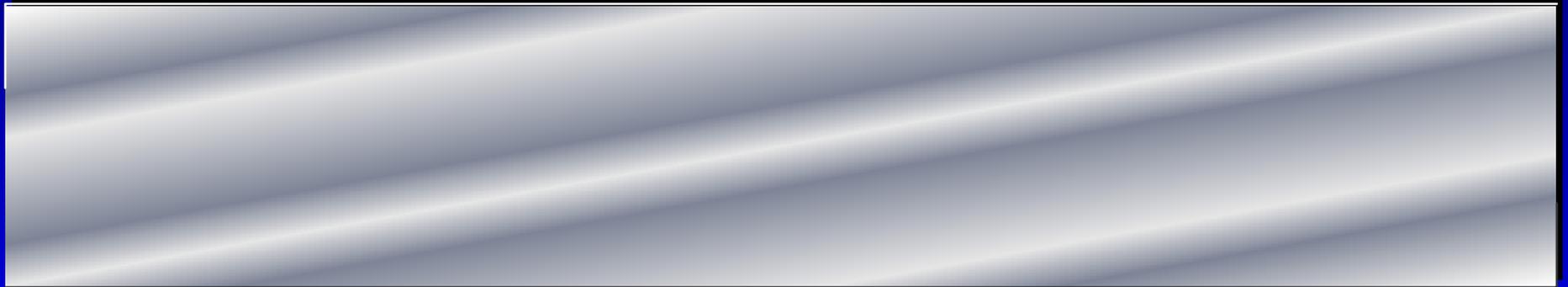
Other Administrative Items

- Annual Special Tax Reports
- Prepayment calculations
- Changes of ownership in the bonds
- Special issues related to Teeter Plan districts



**California Debt and Investment
Advisory Commission
Fundamentals of Land Secured Financing**

February 2008



***Workshop Conclusion
and Evaluation***