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ADVISORY
COMMISSION

SESSION FOUR:

CURRENT PRACTICES AND STRATEGIES – PART ONE:

FORMING DISTRICTS AND MANAGING TAX BURDENS

MAY 1, 2015

CONCORD, CA

Are Governmental Agencies Issuing AD or CFD Bonds?

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- Yes, on average over the last 12 years there have been approximately 58 Assessment District Bonds issued in California each year
- The average dollar amount of Assessment District Bonds sold in California over the last 12 years is approximately $.355 Billion per year
- Yes, on average over the last 12 years there have been approximately 115 Community Facilities District Bonds issued in California each year
- The average dollar amount of Community Facilities District Bonds sold in California over the last 12 years is approximately $1.4 Billion per year

Source: CDIAC Data-base

Why Do Public Agencies Issue AD or CFD Bonds?

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- It is a tool to finance infrastructure and to have the costs paid by those who benefit from the improvements
- In other words, infrastructure provided without City general tax dollars or existing residents' tax dollars
- And in most cases it allows the City to get more infrastructure sooner and at a lower cost than if it was built under the City's typically Capital Improvement Program and available funding sources

Items to be considered when deciding to form an AD vs CFD:

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- Existing Public Agency Policies
- Type of improvements to be funded (local vs. regional/owned by other public agencies)
- Size, scope and build-out of proposed development
- Development Agreement provisions (if any)
- Services to be funded (if any)
- Past Practices of your Public Agency

Major Factors Favoring an AD

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- ADs 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 Factor Favoring a CFD

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- CFDs are appropriate for:
  - General benefit “community facilities”
  - Projects with few property owners, or broad support
  - Projects requiring flexibility
    - Phased land development projects
    - Uncertainties about eventual land use
  - Projects needing targeted economic burden
    - Exempting publicly-owned parcels
    - Reducing burden on select categories of parcels/uses
  - Projects requiring funding for eligible services and maintenance & operation activities

Comparison of CFDs vs. ADs

	Community Facilities District	Assessment District
Statutory Authority:	Mello Roos Act	1915 Act
Tax Formula:	Spread of special tax lien just needs to be reasonable	Spread of special assessment must be proportional to "special benefit" => Proposition 218 shifted
	Dynamic lien: can change over time	*Static lien:* assessment fixed at time
Uses:	Broad array of infrastructure Maintenance and services	Narrower eligible facilities No services
Approval:	66.6% majority vote - If 12 or more registered voters reside in District, then electorate votes - Otherwise, landowners vote with their votes weighted by acreage	50+% majority protest -Weighted by assessment lien

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Local Goals and Policies

Legal Requirements

- Legal Requirement for CFDs – (Gov't code 53312.7)
- Good idea for ADs
- Why are they important? To provide:
  - Guidance
  - Consistency
  - Assurances

Key issues to cover in Policies

- Facilities Priority & Eligibility
- Disclosure to:
  - Prospective property owners
  - Bond Buyers
  - Financial markets
- Appraisal Criteria/Value to lien
- Application Process and Deposit requirements
- Credit Quality Requirements/ Criteria

Why update policies?

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- To deal with changes in the real estate market, legal environment and financial market
- Issues to think about in 2015 when reviewing your existing policies:
  - Do they deal with services or just facilities?
  - Do they reflect the increasing focus on continuing disclosure and the increased emphasis on the issuer being in conformance with their requirements?
  - When was the last time you had a study session with your Public Agency to review them?

Allocating Special Tax Capacity

CFDs allow for both facilities and services to be funded from special taxes levied

- In recent years the trend has been for more public agencies to utilize special taxes to pay for more services
- CFD can be used to fund the following services
  - Police protection services
  - Fire protection and suppression services
  - Ambulance and paramedic services
  - Recreation programs, Libraries, Schools *
  - Parks, parkways and open space maintenance
  - Flood and storm protection services
  - Street maintenance

  * Requires 2/3 registered voter approval

Case Study of a CFD:
Facilities Only vs. Facilities and Services

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- Assumptions:
- Base tax levy is 1.10%
- Estimated price per home is $500,000
- Estimated Effective Tax Rate is 2% and has no escalator
- No Homeowner Association
- 200 homes project absorbed over a 3 year period

Total Effective Tax Rate for a SFD Home: No Services Special Tax

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Based on Estimated Home Price of $500,000 [(1)]

Ad Valorem at 1.100% [(2)]	$5,500
Fixed Assessments • **City of Utopia CFD No. 2015-01 Special Taxes** [(2)]	**$4,500**
Total Taxes [(2)]	$10,000
Base Sales Price	$500,000
Total Effective Tax Rate [(2)]	**2.00%**

[(1)] Assumes Home Price of $500,000

[(2)] Amounts calculated to achieve a 2% effective tax rate

Total Effective Tax Rate for a SFD Home: Facilities and Services Special Taxes

Based on Estimated Home Price of $500,000 [1]

Ad Valorem at 1.100% [2]	$5,500
Fixed Assessments • **City of Utopia CFD No. 2015-01 Special Taxes Facilities A** [2] • **City of Utopia CFD No. 2015-01 Special Taxes Services B** [2]	 **$3,500** **$1,000**
Total Taxes [2]	$10,000
Base Sales Price	$500,000
Total Effective Tax Rate [2]	**2.00%**

[1] Assumes Home Price of $500,000

[2] Amounts calculated to achieve a 2% effective tax rate

Services and Facilities Special Tax: Effect on CFD Bonding Capacity

- Annual revenue stream to support bonds:
  - No Services Tax = $820,000
  - With Services Tax = $640,000
- Net proceeds from CFD Bonds:
  - No Services Tax = $10.6 million
  - With Services Tax = $8.3 million
- Decrease in capacity due to services tax = $2.4 million

What is right mix of Facilities vs. Services?

- Answer is based on the facts and circumstances of your public agency
  - What do your Local Goals and Policies state?
  - What are your current levels of services?
  - How does your local housing market view CFDs?
  - What does the property owner/developer want?

- It is the Public Agency's decision to determine whether to fund Facilities and/or Services!

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Negotiating Commitments with Developers

5 Things to remember before starting negotiations!

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1. Adopt Local Goals and Policies or update them
2. Get a deposit to cover City staff time and consultants
3. Get a completed application from the Developer
4. Make sure you know the status of the project's entitlements
5. Hire a good consulting team

Developers' Objectives

- Certainty that bonds will be issued to finance public infrastructure
- Certainty about the amount of special taxes that will be levied against their property
- Limits on future discretionary actions of the Public Agency that could affect project feasibility
- Flexibility in legal documents to deal with future changes in land use, infrastructure plans, etc.
- Limits on special tax capacity going to fund services to maximize capacity for facilities
- Escalating special tax to increase capacity

Documentation of deal points

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- Development Agreement
- Implementation Agreement
- Funding and Acquisition Agreement
- Rate and Method of Apportionment

Developer proposals in post-recession California

- Extended-term CFDs
  - Special taxes levied for 45-60 years
  - Defer funding certain facilities or impact fees
  - Pay-as-you-go or bond issuance after first bonds retire
- Conversion from facilities tax to services tax
  - Maximizes infrastructure proceeds in early years
  - Requires deferral of maintenance by public agency
  - Adds certain complexities for prepayments
- Levy of maximum tax throughout life of CFD
  - Any excess used to fund facilities or reimbursements
  - Maximizes capacity from tax disclosed to homebuyers

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Forming a CFD to Accommodate Current and Future Development

Key Issues

- Development timing and build-out
- Current and future product mix
- Current and future pricing
- Timing of required infrastructure
- Ownership of property

Sample Development

- Phased project containing 5 separate phases to be built-out over a 10 year period. Only Phase 1A (392 units) ready to be developed in 2015
- Approximately 127 net acres
- 1,671 residential units consisting of single family and multi-family for-sale units (No apartments or commercial property anticipated)
- Residential units range in size from 1,500 sq. ft. to 2,400 sq. ft. and are estimated to costs $654,000 to $1,016,000
- Public agency capped special taxes at 1.75%, but allows for a 2% escalator and has no services tax
- Developer has a Development Agreement

Two ways to structure the CFD for the Proposed Development

- **<u>Approach #1</u>**
- Form CFD over Phase 1A now and allow for future annexations of remaining phases of the property
- Identify future annexation areas now and create a unanimous consent form to facilitate future annexations
- Allows for special taxes to be updated in future annexations
- Require future discretionary actions of public agency

- **<u>Approach #2</u>**
- Form CFD over all Phases now by approving RMAs for 5 separate improvement areas
- No future annexation areas identified
- Special taxes are set now and cannot be updated
- No future discretionary actions of public agency

Discussion of Approaches and what works best for your Public Agency

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- Which approach provides the most flexibility for the Public Agency?
- Which approach provides the most bonding capacity?
- Which approach provides the most protection from the changing political environment?
- Which approach provides the most protection to the future homeowner/resident/voter?