SUBSIDY LAYERING

USING TIF TOOLS FOR COMMUNITY ECONOMIC DEVELOPMENT

MARCH 22, 2017

goldfarb lipman attorneys

THE GAME PLAN

- Overview of Tax Increment Financing Tools for Community Economic Development
  - Community Revitalization Investment Authorities (CRIA)
  - Infrastructure Financing Districts (IFDs)
  - Enhanced Infrastructure Financing Districts (EIFDs)/ Seaport Infrastructure Financing Districts (SIFDs)
  - Infrastructure and Revitalization Financing Districts (RIFDs)
  - Annexation Development Plans
- Alternative Economic Development Tools
  - New Markets Tax Credits
  - Local Economic Development Ordinances
- Case Studies
  - Treasure Island (IFD)
  - Rumrill Soccer Fields (NMTC)
  - IFD Hypothetical

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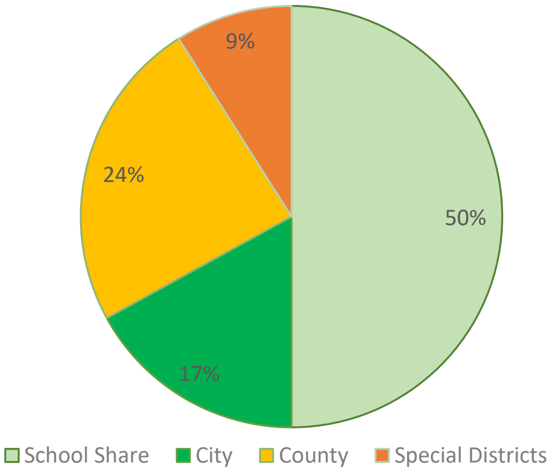
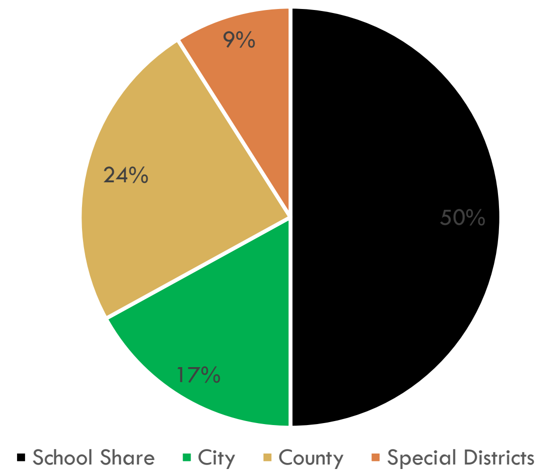
OVERVIEW OF TIF TOOLS FOR COMMUNITY ECONOMIC DEVELOPMENT

Pre-Dissolution Property Tax Distribution



Property Tax Distribution New TIF Tools



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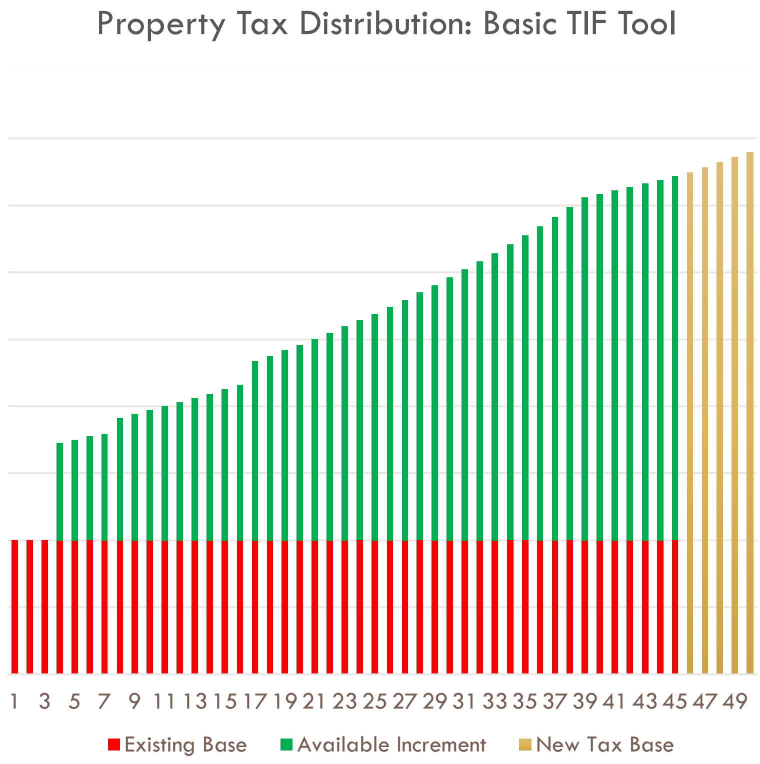

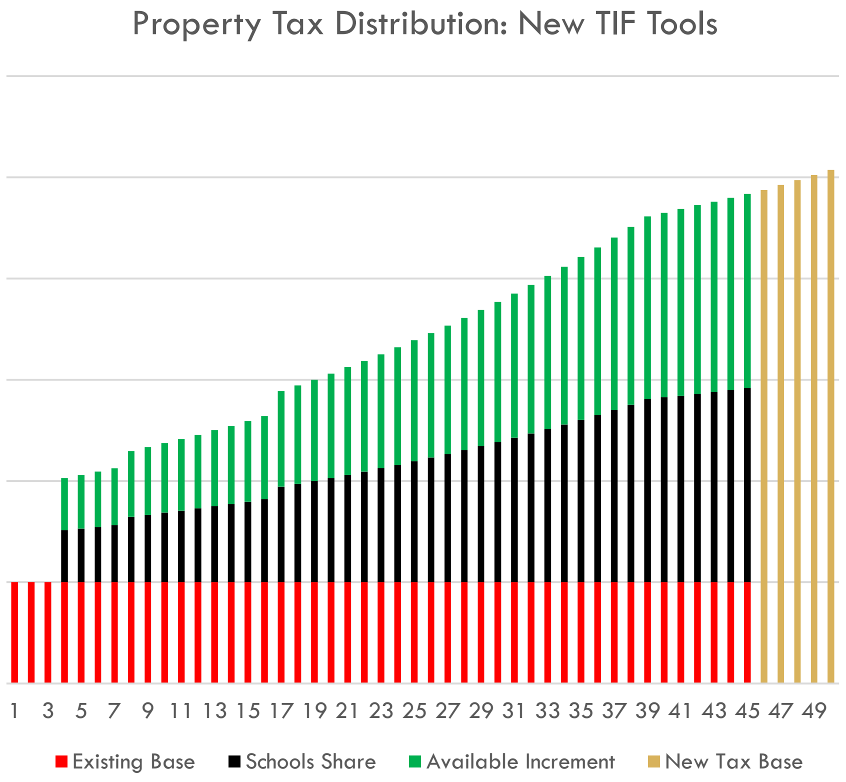

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COMMONALITIES BETWEEN TIF TOOLS

- Rely on percentage of growth in property taxes to be to fund activities
- Authority to pledge tax increment to issue debt
- Exclude participation of educational taxing entities
- Require voluntary pledge of tax increment by participating taxing entities
- No findings of blight are required
- Can fund similar economic development and infrastructure improvements
- Cannot financing routine maintenance, repair work, or costs of on going operation or service
- Effectiveness is dependent on participation of taxing entities

KEY DISTINCTIONS BETWEEN TIF TOOLS

- Formation
  - Initiation/participation
  - Voter approval requirements
  - Qualification criteria for inclusion of property
- Governing bodies
- Fund allocation and bonding requirements
- Purpose and allowable activities
- Affordable housing obligations
  - Mandatory housing set-aside
  - Replacement and production obligations
  - Requirement for recorded restrictions
- Reporting/Accountability requirements
- Term and time limits

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COMMUNITY REVITALIZATION AND INVESTMENT AUTHORITIES (CRIAs)

CRIA

- A CRIA is a "public agency" created by adoption of an ordinance by sponsoring community's legislative body
- A CRIA implements a Revitalization Investment Plan that must meet the requirements in Govt. Code §62003
- Two types of CRIAs:
  - A single member CRIA consisting only of the city, county, or base reuse authority that initiates its creation
  - A multimember CRIA with one or more public agencies joining one or more special districts creating a Joint Powers Authority
- Formation of a CRIA is not subject to voter approval but is subject to a potential protest proceeding

CRIA

- At least 80% of property (calculated by census tract, census block group or a combination of both) within a CRIA area must be characterized by:
  - Annual median income (AMI) less than 80% of statewide, countywide, or citywide AMI; and
  - Three of four of the following conditions:
    - Unemployment rate at least 3% higher than the statewide average
    - Crime rates at least 5% higher than the statewide average for violent or property crimes
    - Deteriorated or inadequate infrastructure
    - Deteriorated or inadequate commercial or residential structures
- Alternatively, a CRIA can be carried out on property located on a former military base or census tracts, or census block groups that are within a "disadvantaged community“

CRIA

- A CRIA area can include properties in former RDA project area(s) if the sponsoring community of the Former RDA:
  - Has received Finding of Completion
  - Is not using any assets of the Former RDA subject to pending litigation to benefit the CRIA
  - Has complied with State Controller Asset Transfer Review orders
- CRIAs are governed by a separate governing body
  - Single member CRIAs are governed by 3 members from the sponsoring community's legislative body and 2 public members who live or work in the CRIA area
  - JPA CRIAs are governed by a majority of members from participating public agencies' legislative bodies and at least 2 public members who live or work in the area

CRIA

- A sponsoring community may make pledge of all or a portion of tax increment and RDA residual distributions
- Affected taxing entities affirmatively make revocable pledge all or a portion of their tax increment
- A CRIA can issue long-term debt without voter approval

CRIA

- Most flexible list of eligible activities
  - Can fund any project that IFD, EIFD/SIFD, IRFD can fund
  - Not limited to projects with "community wide significance"
  - No 15 years useful life requirement
- A CRI can only operate within its community revitalization and investment area.
- A CRIA can exercise the power of eminent domain to acquire property

CRIA

Housing Obligation	Description
Set-Aside Funding	25% of tax increment allocated to CRIA must be spend on low and moderate income housing, CRIA must plan for excess surplus
Require payment of relocation benefits	Yes
Replacement Housing Obligation	1:1 replacement for units inhabited by low or moderate income households Replacement required w/in 2 years of unit removal w/in CRIA area
Inclusionary Production Requirement	30% of units constructed or substantially rehabilitated *by CRIA* and not less than 50% of units made available to and occupied by VLI households 15% of units constructed or substantially rehabilitated by CRIA and not less than 50% of units made available to and occupied by VLI households
Recorded Restrictive Covenant	55 years for rental 45 years for owner-occupied units 15 years for self-help units

CRIA

- Subject to10-year protest proceedings
  - Terminate CRIA activities if 51% residents and property owners file protest
  - Require election if 25-50% residents and property owners file protest
- Required to produce annual report and an annual independent financial audit
- CRIAs are subject to the following time limits:
  - Establish debt (30 years)
  - Repay debts (45 years)
  - Complete Activities (45 years)

INFRASTRUCTURE FINANCING DISTRICTS (IFDs)

IFD

- An IFD is a "district" created by adoption of resolution by sponsoring community's legislative body
- An IFD implements an Infrastructure Financing Plan that must meet the requirements in Govt. Code §53395.14
- Formation of an IFD must be approved by 2/3 of eligible voters
  - If 11 or fewer registered voters live in prospective IFD, only property owners eligible to vote
  - If 12 or more registered voters live in prospective IFD, then those registered voters are eligible

IFD

- There are no blight findings or other specific requirements to form geographically-defined IFD areas but legislative intent is to limit creation to "substantially undeveloped" areas
- IFD areas can include properties in former RDA project areas if sponsoring community of former RDA has received Finding of Completion
- IFDs are governed and controlled by the legislative body of its sponsoring community

IFD

- Community and specified tax entities can pledge their share of incremental tax revenue for up to 30 years as security for bonds issued by IFD
- IFDs authority to issue bonds requires 2/3 voter approval
  - If 12 or more registered voters live in prospective IFD, then those registered voters are eligible
  - If 11 or fewer registered voters live in prospective IFD, only property owners eligible to vote 1 vote per acre or partial acre
- Fiscal limits on tax increment appropriated for IFD uses requires only a majority vote
- Only handful of IFDs have been formed to date because of significant impediments and limitations on their application and availability of superior alternative (RDAs)

IFD

- Can only be used to finance facilities of "communitywide significance"
  - Commonly interpreted as large scale infrastructure improvements, including highways, transit, water and sewer projects, flood control, libraries, and parks, waste facilities
  - Must provide benefits beyond IFD boundaries
  - Should have useful life of at least 15 years
- An IFD can fund projects outside of the district boundaries
- Cannot be used for non-replacement affordable housing
- Cannot be used to pay developer until facilities are complete

IFD

Housing Obligation	Description
Set-Aside Funding	No
Require payment of relocation benefits	Yes
Replacement Housing Obligation	1:1 replacement for units inhabited by low or moderate income households 20% replacement obligation for market rate units Replacement required w/in 4 years of unit removal w/in IFD boundaries
Inclusionary Production Requirement	20% of units constructed or substantially rehabilitated by the IFD must be made available to and occupied by low and moderate income households
Recorded Restrictive Covenant	Not specified

IFD

- IFDs are not subject to 10-year protest proceedings
- No annual report and annual independent financial audit required
- IFDs are required to cease their existence 30 years from the adoption ordinance, subject to statutory exceptions

ENHANCED INFRASTRUCTURE FINANCING DISTRICTS (EIFDs) SEAPORT INFRASTRUCTURE FINANCING DISTRICTS (SIFDs)

EIFD/SIFD

- An EIFD is a new "district" created by adoption of resolution by public financing authority
- An SIFD is a new district created by adoption of resolution by public financing authority
- An EIFD implements an Infrastructure Financing Plan that must meet the requirements in Govt. Code §53398.63
- Adoption of an EIFD/SIFD is not subject to voter approval AND it is not subject to potential protest proceeding

EIFD/SIFD

- Two types of EIFDs/SIFDs:
  - A single member EIFD consisting only of the city, county, or base reuse authority that initiates its creation
  - A multimember EIFD with one or more taxing entities
- There are no blight findings or other specific requirements to form geographically-defined EIFD area (noncontiguous property ok)

EIFD/SIFD

- EIFD districts can include properties in former RDA project areas if sponsoring community of former RDA:
  - Has received Finding of Completion
  - Is not using any assets of Former RDA subject to pending litigation to benefit the CRIA
  - Must have completed and complied with State Controller Asset Transfer Review orders
- Single entity EIFDs are governed by a Public Financing Authority consisting of 3 members from the sponsoring community's legislative body and 2 public members chosen by legislative body
- Multimember EIFSs are governed by a Public Financing Authority consisting of a majority of members from participating entities legislative bodies and 2 public members chosen by legislative bodies of the participating entities
- SIFDs are governed by the Harbor Agency

EIFD/SIFD

- Sponsoring community may pledge all or a portion of tax increment and RDA residual distributions
- Affected taxing entities make affirmative decision to pledge all or a portion of their tax increment by revocable resolution
- EIFDs authority to issue bonds requires 55% voter approval
- SIFDs authority to issue bonds requires 2/3 voter approval
  - If 12 or more registered voters live in prospective EIFD/SIFD, then those registered voters are eligible
  - If 11 or fewer registered voters live in prospective EIFD/SIFD, only property owners eligible to vote 1 vote per acre or partial acre

EIFD/SIFD

- State Lands Commission must authorize SIFD bond issuances prior to vote
- Districts may also be funded through a combination of governmental or private loans, grants, bonds, assessments and fees (including among others, VLF, Mello-Roos)

EIFD/SIFD

- Can only be used to finance facilities of "communitywide significance"
  - Commonly interpreted as large scale infrastructure improvements, including highways, transit, water and sewer projects flood control, libraries, and parks
  - Must provide benefits beyond EIFD boundaries
  - Should have useful life of at least 15 years
- EIFDs can be used to fund affordable housing
- EIFDs can fund facilities outside the district if tangible connection to district is established
- SIFDs can be use to fund port and harbor infrastructure

EIFD/SIFD

Housing Obligation	Description
Set-Aside Funding	No
Require payment of relocation benefits	Yes
Replacement Housing Obligation	1:1 replacement for units inhabited by low or moderate income households *at any time 5 years prior to adoption of EIFD or SIFD* 25% replacement obligation for market rate units Replacement required w/in 2 years of unit removal w/in ½ mile of removed unit
Inclusionary Production Requirement	No
Recorded Restrictive Covenant	55 years for rental 45 years for owner-occupied units

EIFD/SIFD

- EIFDs/SIFDs are not subject to10-year Protest Proceedings
- EIFDs/SIFDs are not required to produce annual report
- If EIFD issues bonds, EIFD is required to have independent financial audits conducted every 2 years
- EIFDs/SIFDs must cease to exist w/in 45 years of controlling entity's approval of bond issuance or first loan issuance

INFRASTRUCTURE AND REVITALIZATION FINANCING DISTRICTS (IRFDs)

IRFD

- An IRFD is a new “district” created by adoption of a resolution initiated by city, county or base reuse authority
- An IRFD implements an Infrastructure Financing Plan that must meet the requirements in Govt. Code §53369.14
- Formation of an IRFD must be approved by 2/3 of eligible voters
  - If 11 or fewer registered voters live in prospective IRFD, only property owners eligible to vote
  - If 12 or more registered voters live in prospective IRFD, then those registered voters are eligible

IRFD

- There are no blight findings or other specific requirements to form IRFD
- IRFD areas can include properties in former RDA project areas if sponsoring community of former RDA has received Finding of Completion
- District area may contain noncontiguous parcels/project areas
- IRFDs are governed and controlled by the legislative body of its sponsoring community

IRFD

- Sponsoring community may pledge all or a portion of tax increment and RDA residual distributions
- Affected taxing entities make affirmative decision to pledge all or a portion of their tax increment by irrevocable resolution
- IRFDs authority to issue bonds requires 2/3 voter approval
  - If 12 or more registered voters live in prospective IRFD, then those registered voters are eligible
  - If 11 or fewer registered voters live in prospective IRFD only property owners eligible to vote; 1 vote per acre or partial acre

IRFD

- Can only be used to finance facilities of "communitywide significance"
  - Commonly interpreted as large scale infrastructure improvements, including highways, transit, water and sewer projects flood control, libraries, and parks
  - Must provide benefits beyond EIFD boundaries
  - Should have useful life of at least 15 years
- IRFD funds can be used to fund affordable housing
- IRFDs can fund facilities located outside the district boundaries
- IRFDs can supplant existing facilities if the facilities or services are essentially nonfunctional, obsolete, hazardous, or in need of upgrade or rehabilitation

IRFD

Housing Obligation	Description
Set-Aside Funding	No
Require payment of relocation benefits	Yes
Replacement Housing Obligation	1:1 replacement for units inhabited by low or moderate income households 20% replacement obligation for market rate units Replacement required w/in 4 years of unit removal w/in IRFD boundaries or anywhere on former military base consistent with base reuse plan
Inclusionary Production Requirement	20% of units constructed *by IRFD* must be made available to and occupied by low and moderate income households
Recorded Restrictive Covenant	55 years for rental 45 years for owner-occupied units

IRFD

- IRFDs are not subject to10-year protest proceedings
- IRFDs are required to produce annual reports and post those reports on the sponsoring community's website
- IRFDs must cease to exist w/in 40 years of controlling entity's approval of formation or later date specified by ordinance

ANNEXATION DEVELOPMENT PLAN (ADPs)

ADP

- ADPs can be adopted as part of the formation or reorganization of a special district to improve or upgrade services to an unincorporated disadvantaged community
- Creation of an ADP is initialized by an applicant for an organization or reorganization of a local agency
- The ADP is adopted by the local agency that files an application with LAFCO and one or more consenting local agencies

ADP

- Adoption of a ADP is not subject to voter approval and is not subject to potential protest proceeding
- ADPs can only be created to invest in unincorporated "disadvantaged community" defined to mean a community with 12 or more registered voters with an annual median household income that is less than 80% of the statewide annual median household income
- No former RDA property may be included

ADP

- ADPs fund must be used to improve or upgrade of structures, roads, sewers or water facilities, or other conditions the local agency requires within the affected territory
- ADPs do not trigger any affordable housing obligations
- ADP authority set to sunset January 1, 2025

ALTERNATIVE ECONOMIC DEVELOPMENT TOOLS

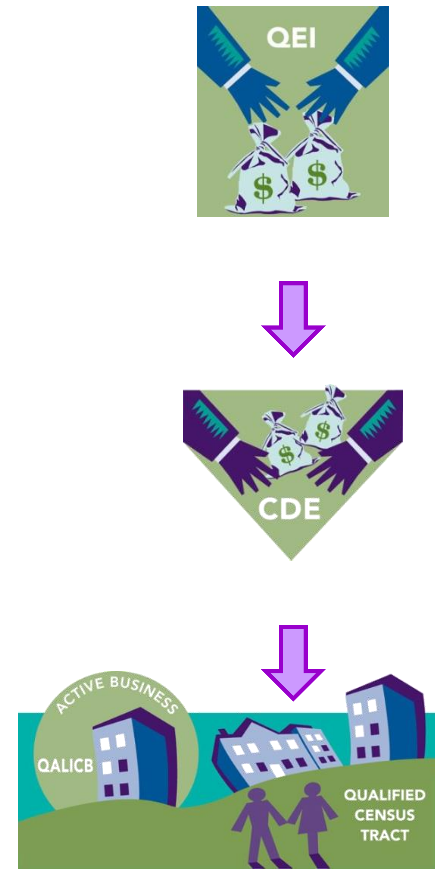
NEW MARKETS TAX CREDITS (NMTC)

NMTC

- A federal tax credit program designed to stimulate investment in low income communities or to assist low income “targeted populations”.
- In exchange for federal tax credits, individuals and corporation may make equity investments in designated Community Development Entity (CDE).

NMTC

- The NMTC financing facilitated by the CDE is generally a low interest loan, which is forgiven after 7 years.
- The loan typically is approximately 20% of the total financing necessary for a real estate project or operating business.
- The NMTC borrower is either a for-profit or nonprofit entity that is located in a “low-income census tract” as determined by the US Census or serves low income Targeted Populations.



NMTC

- Benefit to Borrower/Project
  - Low interest (approx. 1%) and interest only 7-year loan to help fund a project.
  - The NMTC financing provides a net benefit of approximately 20% of the funds necessary to finance the project or operate the business.
  - Ability to leverage existing project funds, prior incurred expenses and land value with NMTC financing through the “Leverage Structure”.
  - Forgiveness of B Note (NMTC Equity).

- Community Benefit
  - Develop a community facility or commercial project which will provide services to low income areas.
  - Retain and increase employment in low income areas.
  - Spur economic development and act as a catalyst for more development in economically challenged communities.

LOCAL ECONOMIC DEVELOPMENT ORDINANCES

LOCAL ECONOMIC DEVELOPMENT ORDINANCE

- Cities and counties can enact local economic development strategies to increase jobs, create economic opportunity, and generate tax revenue.
- SB 470 declares that it is in the public interest for local communities to advance or expend public funds for specified economic development purposes and to adopt means by which economic opportunity could be created
- AB 562 requires that before a local agency approves any economic development subsidy of $100,000 or more within its jurisdiction, the local agency is required to provide written information to the public (including on the local agency's website), a description, schedule beneficiary, public purpose, and public benefits (including job creation) of the economic development subsidy
- Establish clear land disposition requirements

ADDITIONAL CED TOOLS

- Assessment Tools- CFDs, BIDs
- Land Use Tools- Density Bonus, Zoning, Development Incentives, Specific Plans, CEQA Documentation, Transfer of Development Rights
- Financing Tools- General Funs, Bonds, COPs, Infrastructure Loan Programs, Fee Producing Infrastructure, Tax Credits
- Real Estate Tools- Land, Government Code Development Agreements, Historical Preservation
- Remediation Tools- Gatto Act, US EPA Clean Up Grants Brownfield Loan Fund

CASE STUDIES

TREASURE ISLAND

- Treasure Island Development Proposal
  - Up to 8,000 new residential units
  - 140,000 sq ft of retail
  - 100,000 sq ft of office
  - 500 hotel rooms
  - Open space
  - Community facilities
  - New and upgraded infrastructure

- Financing for Development originally proposed mix of public and private funds including:
  - Formation of Mello Roos District
  - Tax increment financing from adoption of redevelopment plan
  - Grants
  - Private equity

- Redevelopment Plan for Treasure Island was slated for adoption in May 2011

- Rather than adopt a redevelopment plan with potential for dissolution shortly thereafter, project explored use of IFDs to fund shortfall from loss of tax increment

COMPARISON OF REDEVELOPMENT VS. IFD

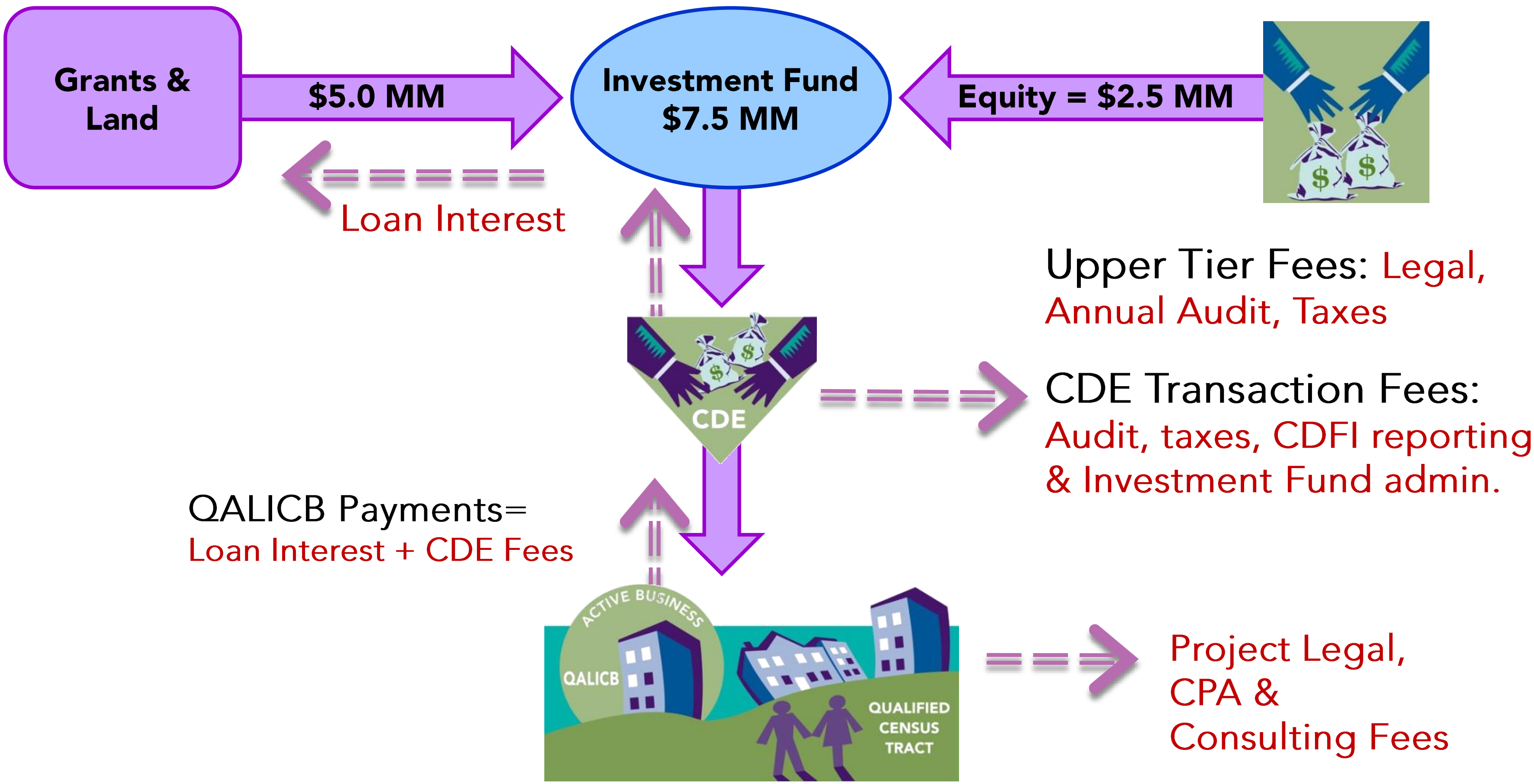
	Redevelopment	IFD
Affordable Housing Set Aside	Yes (20%)	No
Infrastructure Eligible?	Yes	Yes (more limited)
% of taxes Available for Project	60% General 20% Affordable	57% General 0% Affordable
% of taxes Available for taxing agencies and ERAF	20%	43%
Tax Increment Collection Period	45 years	30 years

RUMRILL PARK SOCCER FACILITY

BEFORE

AFTER

CASE STUDY
RUMRILL PARK SOCCER FACILITY



CASE STUDY
RUMRILL SOCCER PARK, SAN PABLO

Tax Credit Breakdown

Total QEI (Tax Credit Allocation by NCCLF)	**$ 7,500,000**
Tax Credit over 7 yrs.	39%
Total Credits to Investor: Bank of America	$ 2,925,000
Price per credit	$ 0.86
NMTC Gross Equity for Project	**$ 2,515,500**

CASE STUDY
RUMRILL SOCCER PARK

Leveraged NMTC transaction fees:

NMTC Equity	$2,500,000
- CDE Fee (3% of QEI)	$225,000
- Legal, Accounting, Consulting Fees (2.9% of QEI)	$390,000
- Annual Asset Mgmt. & Tax/Audit Fees (Spread over 7 years)	$372,500
Net Project Benefit (17% of Project Cost)-varies with size of project	$1,512,500

LEVERAGED SOURCES

- Leverage Public Funds:
  - California Parks and Recreation Prop 84 Funds
  - County Measure WW Funds
  - EPA Brownfield Grant Funds
  - City Funds

- Leveraged Land and Prior Incurred

HYPOTHETICAL IFD

IFD FINANCING ILLUSTRATION

- Envision a mixed use private development
  - With a $200 million completed value
  - A project entitlement requirement to construct a $5 million infrastructure improvement of community – wide significance
  - A private debt and equity funding gap of greater than $5 million

IFD FINANCING ILLUSTRATION (CONT.)

- Net IFD bond proceeds that could be raised to fund infrastructure improvement cost (and reduce private sector funding gap):

  - With 15 % voluntary property share pledge – about $2.4 to $3 million
  - With 30% voluntary property tax share pledge – about $4.8 to $6 million
  - With 50% property tax increment pledge (typical under former redevelopment system) – about $8 to $10 million

IFD FINANCING ILLUSTRATION (CONT.)

- Net IFD bond proceeds that could be raised to fund infrastructure improvement cost (and reduce private sector funding gap):
  - With 15 % voluntary property share pledge – about $2.4 to $3 million
  - With 30% voluntary property tax share pledge – about $4.8 to $6 million
  - With 50% property tax increment pledge (typical under former redevelopment system) – about $8 to $10 million