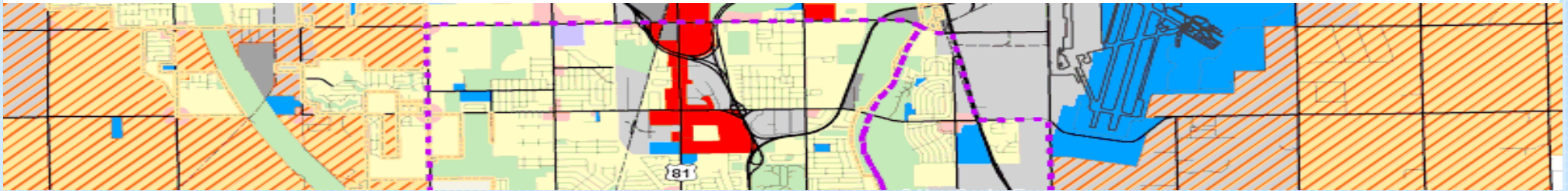


Real Estate Development Law Update



February 15, 2012

*Shady Canyon Golf Club
Irvine, California*

What You Need to Know

- Redevelopment
- Climate Change and SB 375
- CEQA
- Wetlands and Water Quality Permitting
- Fully Protected Species
- Map Act Extension

RIP, RDAs Topics

- Redevelopment 101
- AB 1X 26
- Application of AB 1X 26

RIP, RDAs

- Redevelopment Basics
 - Property Tax Dollars are Diverted Via Tax Increment Funding
 - Tax Increment Funding to Facilitate Redevelopment
 - 20% of Tax Increment Funding was to be Set Aside for Affordable Housing
 - 15% of all New and Significantly Rehabilitated Dwelling Units must be Affordable

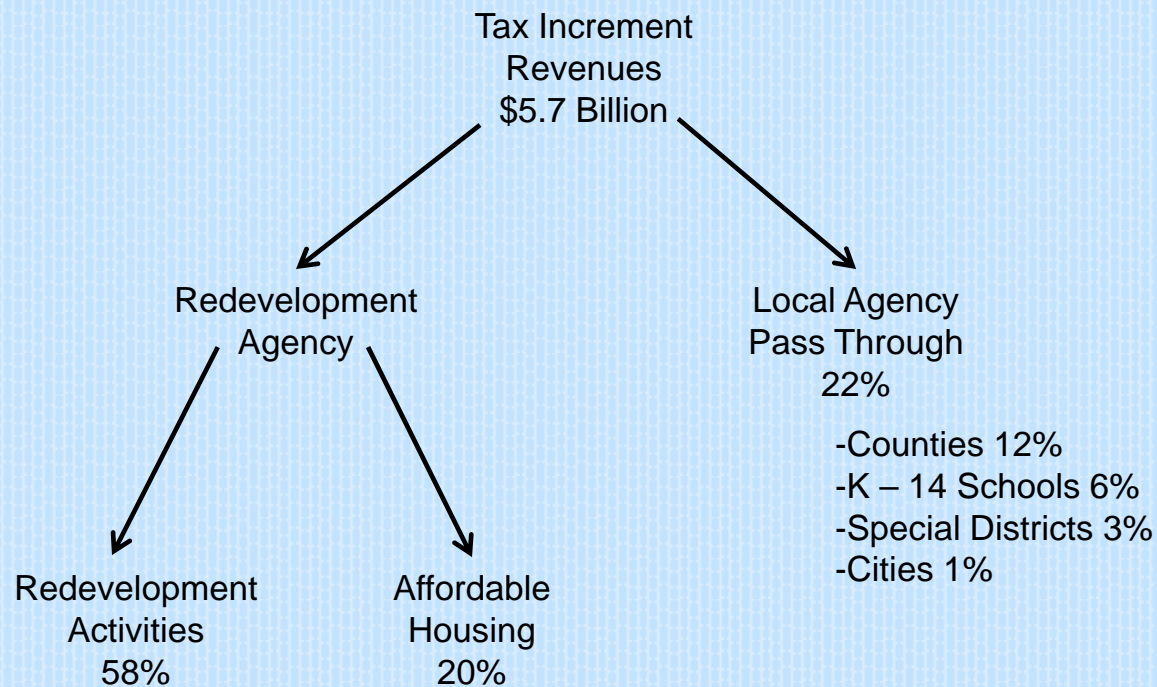
RIP, RDAs (cont.)

- In 2009-2010, Cities received, on average, 20% of property taxes, and Counties averaged 10%, with a range from 1% to 65%

Source: State Board of Equalization

RIP, RDAs (cont.)

- In 2008-2009, \$5.7 billion in property taxes were Tax Increment Generated



Source: Legislative Analyst's Office

RIP, RDAs (cont.)

- AB 1X 26 and 27 were Approved in June 2011
- AB 26: Winding down and Dissolution of RDAs
- AB 27: RDAs could Continue Operating if they “Paid to Play”
- California Redevelopment Association and others Sued
- In *California Redevelopment Association v. Matosantos*, the California Supreme Court Upheld AB 26 and Invalidated AB 27
- Due to the Litigation, AB 26 Deadlines were Delayed

AB x1 26 Timeline as modified by *California Redevelopment Association v. Matosantos**

By January 13	If city does not want to serve as the “successor agency” to its redevelopment agency, then it must submit a resolution to that effect to the County Auditor-Controller by this date. If a city wishes to serve as the “successor agency,” no action is required.
February 1	Redevelopment agencies are dissolved.
On or after February 1	Successor agency must create Redevelopment Obligation Retirement Fund.
By February 1	The City must decide whether to retain affordable housing function of the redevelopment agency. If successor agency does not elect to retain this function, it is transferred to the housing authority or, if no housing authority exists, to the State Housing and Community Development Agency.
By February 1	Successor agency must review the enforceable obligation payment schedule (EOPS) adopted by the redevelopment agency last fall, modify it if necessary, and readopt. The EOPS is subject to review and approval by the Oversight Board once that board has been formed. The successor agency may only make payments for those obligations identified in the EOPS until a Recognized Obligation Payment Schedule (ROPS) is approved.
By March 1	Successor agency must adopt a Recognized Obligation Payment Schedule (ROPS). This is a permanent schedule of obligations that replaces the interim EOPS once the ROPS has been approved. The County Auditor-Controller will allocate property tax increment to successor agencies to pay debts listed on ROPS.
By April 1	Successor agency reports to the County Auditor-Controller whether the total amount of property tax available to the agency will be sufficient to fund its ROPS obligations over the next six-month fiscal period.
By April 15	Successor agency must send the adopted ROPS to the State Controller and the State Department of Finance for approval. The ROPS is also subject to approval by the Oversight Board.
By May 1	Oversight Boards begin operations, files report of membership with State Department of Finance.
Starting May 1	Successor agency may only pay those obligations listed in the approved ROPS. The approved ROPS replaces the EOPS.
By May 16 and continuing thereafter as specified	The County Auditor-Controller transfers property tax to the successor agency in an amount equal to the cost of the obligations specified in the ROPS. This amount is transferred into the successor agency’s Redevelopment Obligation Retirement Fund, and payments from this fund are used to satisfy the obligations identified in the ROPS.

* This timeline does not represent a complete list of deadlines imposed by AB x1 26 as modified, but rather, it is list of the most relevant and time-sensitive deadlines and milestones for cities that will be opting to become the successor agency to their redevelopment agency. Please consult with your city attorney or your redevelopment agency counsel for more information.

Summary of AB 26

- RDAs Dissolved as of February 1, 2012

Summary of AB 26 (cont.)

- AB 26 Players
 - Successor Agencies
 - Housing Successors
 - Oversight Board
 - County Auditor-Controller
 - State Department of Finance
 - State Controller

Summary of AB 26 (cont.)

- If a City did not want to be the “Successor Agency” or the “Housing Successor,” City had to notify the County Auditor by January 13, 2012
- Most Cities Chose to Act as Successor Agency (exceptions: city of Los Angeles and at least 6 other small cities, none in southern California)
- Successor Agencies to Wind Down RDAs
- Housing Successors to Own and Operate all Affordable Housing Assets
 - Unclear whether Housing Successors need to comply with the 15% Affordable Housing Requirements of the California Redevelopment Law

Summary of AB 26 (cont.)

- Oversight Board Composition (must be created by May 1, 2012)
 - 2 members appointed by the County Board of Supervisors, one a member of the public
 - 2 members appointed by the Mayor of the City, one a representative of the former RDA
 - 1 member appointed by the County Superintendent of Education
 - 1 member appointed by the largest Special District
 - 1 member appointed by the Chancellor of the California Community Colleges
- County Auditor-Controller
 - Various Audit Functions, including auditing each RDA, by July 1, 2012

Successor Agency Obligations

- Make Payments and Perform Obligations of Former RDA
- Obligations include “Enforceable Obligations”
 - Contracts necessary for continued operation of Successor Agency
 - Bonds
 - Loans
 - Legally Binding Agreements
 - Judgments or Settlements

Successor Agency Obligations (cont.)

- Dispose of Former RDA Assets and Property “expeditiously and in a manner aimed at maximizing value,” “as directed by the Oversight Board”
- Prepare Recognized Obligation Payment Schedule (ROPS) every 6 months, for approval by Oversight Board
- If Obligation not listed on ROPS, then questionable whether Agreement, etc., will be recognized
- Payments only can be made if the obligation is specified on the ROPS

Housing Successor Obligations

- Affordable Housing Assets not subject to Oversight Board Control
- Housing Successor may enforce affordable covenants and other agreements
- Housing Successor must Comply with the 15% Affordable Housing Requirements?
- SB 654 (Steinberg):
 - Would allow Housing Successors to retain existing unencumbered affordable housing fund balances
 - Would require Housing Successors to enforce affordable housing covenants

Oversight Board Duties

- Actions Subject to Brown Act–Public Notice Required
- “Direct” disposal of Assets by Successor Agencies
- Oversight Board Actions not effective for 3 business days, pending a request for review by the Department of Finance
- If Department of Finance Requests a Review of Action, the Department must act within 10 days of the request

Oversight Board Duties (cont.)

- Oversight Board must approve ROPS
- Oversight Board can determine whether agreements, arrangements, etc., between the former RDA and private parties should be terminated or renegotiated to decrease liabilities and increase net revenues to taxing entities
- Oversight Board may approve an amendment or renegotiate such agreements, including early termination, if in the “best interest” of the taxing entity

Other Noteworthy Provisions

- Contracts between former RDA and city are invalid and not binding on the Successor Agency; Successor Agency can enter or re-enter into such contracts if Oversight Board approves the contract
- Exceptions:
 - Written Agreement of Indebtedness entered into before December 31, 2010, created an indebtedness obligation solely for purpose of securing or repaying the indebtedness obligation
- Clean up of California Redevelopment Law: by January 2013, California Law Revision Committee is to “clean up” CRL

Other Noteworthy Provisions (cont.)

- “Clawback”: State Controller has the authority to review an asset transfer which occurred after January 1, 2011 between an RDA and a city
- State Controller can order transfer of the asset to the Successor Agency, unless the Governmental Entity is contractually obligated to a third party for “expenditure” of an asset
- Department of Finance, Controller or a Taxing Entity can file a lawsuit to contest an “Enforceable Obligation”

Real World Applications

- Developer – RDA in Negotiation, but no Agreement by June 28, 2011
 - Unlikely to be considered an “Enforceable Obligation”
- Developer – RA Entered into an Exclusive Negotiation Agreement
 - Possibly an “Enforceable Obligation” if ENA has deal specificity
- Existing Agreement between Developer and RDA
 - Enforceable obligation, but subject to review by Oversight Board, Auditor Controller, State Department of Finance, or State Controller
 - Insure Agreement is on ROPS
- Existing Agreement involving Affordable Housing with no financed impact to RDA
 - Housing Successor can enforce or modify – no Oversight Board involvement

Climate Change and SB 375 Issues

- SCAG RTP/SCS and EIR
- Addressing Greenhouse Gas Emissions Under CEQA
- BAAQMD Significance Thresholds

SB 375 Implementation – SCAG RTP/SCS

- Use of TAZ's
- Downzoning
- EIR Mitigation Measures
- Anticipated AG Issues
- Environmental Group and AG Litigation

GHG Emissions and CEQA

- CREED v. City of Chula Vista – acceptable significance threshold – “conflict with or obstruct the goals or strategies of the California Global Warming Solutions Act of 2006 or its governing regulations”
- SCOPE v. City of Santa Clarita – unreasonable to require City to explore and explain why it did not adopt each of the laundry list submitted by the AG
- CREED v. City of San Diego – GHG emissions is not new information or changed circumstances triggering a need for CEQA supplemental analysis

CEQA Update

- Traffic Baseline Cases – Sunnyvale Cases
- CEQA Streamlining Legislation and Guidelines – SB 226

Traffic Baseline Cases

- Sunnyvale West Neighborhood Association v. City of Sunnyvale (Sunnyvale I) – traffic baseline of 2020 conditions is not acceptable baseline
- Madera Oversight Committee v. County of Madera – traffic baseline must be a time prior to certification of the project EIR
- Pfeiffer v. City of Sunnyvale (Sunnyvale II) – traffic baseline may include multiple baselines as long as one is current

CEQA Streamlining Legislation/Guidelines

- AB 900 – Environmental Leadership Projects – governor and legislature approval, 100 Million+, LEED Silver or better infill project, minimum 105 trip reduction, prevailing wages
- SB 292 – Downtown LA football stadium
- SB 226 – Urban infill projects that satisfy statewide performance criteria

Hot Topics



Key Hot Topics

- AB 208 – Extension of Maps
- SB 618 – Fully Protected Species
- Honchariw v. County of Stanislaus, 200 Cal. App. 4th 1066 (2010) (need for specific health and safety impact findings for housing projects)
- Avenida San Juan Partnership v. City of San Clemente, 201 Cal. App. 4th 1256 (2010) (invalid spot zoning)

Key Hot Topics (cont.)

- State Board Wetland Area Protection Policy
- Nationwide Permit Program Expiration
- New EPA/Corps Wetland Guidance
- Guidance Re CWA 404(b)(1) Alternatives Analysis

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