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Real Estate and Land Use

The Continued Wind Down of Redevelopment: Two Key Opportunities for Public-Private Partnerships

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As we previously reported, the Redevelopment Dissolution Act (AB x1 26) dissolved all California redevelopment agencies as of February 1, 2012, and provided a complex scheme to wind down the affairs of the dissolved redevelopment agencies.

On June 27, 2012, Assembly Bill 1484 (AB 1484), a lengthy budget trailer bill, was adopted. This legislation imposes new requirements on successor agencies to the former redevelopment agencies and implements new rules of conduct with respect to the redevelopment dissolution process.

While critics of AB 1484 have identified a number of flaws in the legislation, there are certain valuable features of AB 1484 that present potential opportunities for public-private partnerships and should not be overlooked.

For example, after successful completion of certain payment, audit and asset transfer processes required under AB 1484 and receipt of a "finding of completion" (FOC) from the Department of Finance (DOF), successor agencies and their communities may be entitled to retain or dispose of certain real estate assets of the former redevelopment agencies (RDAs) consistent with a property management plan, use excess RDA bond proceeds for additional projects and receive repayments of community loans to former RDAs. This is a significant departure from the original legislation that required the successor agencies to dispose of assets "expeditiously," which gave rise to visions of fire sales of agency assets coming onto the market in short order. (*See* Health and Safety Code § 34177(e)).

The creation of long-range managements plans for real property as required under AB 1484 easily lends itself to potential public-private partnerships. The intended purpose of the long-range property management plan is to more realistically address the disposition and use of the real properties of the former RDAs. Such plan must be submitted by a successor agency to the oversight board and DOF for approval no later than six (6) months following the issuance of a FOC (*see* § 34191.5(b)), but in any case no later than January 1, 2015 (*see* § 34191.3).

Given the limited time frame and specific requirements of the long-range property management plan, successor agencies are likely to seek assistance from private entities in connection with the preparation of such plans. Pursuant to AB 1484, long-range management plans must include, among other things, an inventory of all properties, the proposed use or disposition of each of the properties and information regarding such properties (*see* § 34191.5). More specifically, such plans must include:

1. the date of acquisition of the property, the value of the property at the time of acquisition, and the purpose for which the property was acquired;

2. parcel data, including address, lot size, current zoning;

3. an estimate of the current value of the property (and any appraisal information, if available);

4. an estimate of any lease, rental or other revenues generated by the property, and a description of the contractual requirements;

5. a history of environmental contamination, including designation as a brownfield site, any related environmental studies, and history of any remediation efforts;

6. a description of the property's potential for transit-oriented development and the advancement of the planning objectives of the successor agency; and

7. a description of previous development proposals and activity, including rental or lease of property.

It is anticipated that many successor agencies will solicit proposals from the development community for assistance in preparing these plans. Interested developers and land use professionals should monitor the activities of successor agencies within their areas of geographic interest and be prepared to respond quickly to any such proposals. Once adopted, the long-range plans are likely to present significant opportunities for private participation. Public agencies are typically not comfortable with the profit side of real estate investments.

To the extent that successor agencies do not elect to pursue the long-range management option, the requirement for the expeditious disposition of the real property assets remains. Similar monitoring of the agendas of the successor agencies will afford early access to information as to when real estate assets may come on the market and the procedures that will be followed by the successor agency charged with disposing of them.

The second opportunity that presents itself is in the area of affordable housing. One of the unintended impacts of the dissolution of RDAs was the loss of funding for affordable housing projects that redevelopment provided through the set aside of a portion of the tax increment into a Low and Moderate Income Housing Fund. The Legislature so far has failed to provide an alternative source of funding for these projects. The one thing that AB 1484 did do was to provide more flexibility for the successor agencies in identifying and managing assets that are considered to be housing assets. One potential opportunity results from the inclusion of housing bond proceeds from bonds issued prior to January 1, 2011, among the housing assets to be used by the successor housing agency for affordable projects, provided the bonds were secured by a pledge of Low and Moderate Income Housing funds, even though they are not otherwise encumbered. Certain procedures must be followed, however, to qualify these funds as housing assets. To the extent that excess bond funds are available, affordable housing developers should be proactive in assisting the successor agencies in complying with these requirements so that this valuable funding source can be preserved.