Assembly Committee on Housing and Community Development
Assembly Committee on Local Government

Background Paper:

Land Use and Community Development: What's Next in the Post-Redevelopment Era?

INTRODUCTION:

The demise of redevelopment agencies resulted from a variety of circumstances: very difficult state budget choices, the failure of communities to use tax-increment financing appropriately, and ballot measures that attempted to take away the Legislature's fiscal flexibility. Despite abuses, when used appropriately redevelopment provided a financing mechanism for a variety of community development activities, including infill development, infrastructure development, economic development, military base re-use, and brownfield clean-up. Tax increment also provided a source of funding for affordable housing production and rehabilitation. In addition, redevelopment provided policy tools that influenced the land use decisions made by communities in economically disadvantaged project areas. The dissolution of redevelopment agencies has raised questions both in the Legislature and in local communities about what comes next. The purpose of this hearing is twofold:

1) To identify opportunities to maximize existing tools for community development and affordable housing; and

2) To identify new tools that could be developed to accomplish the activities described above.

BACKGROUND:

In 1945, the Legislature passed the California Community Redevelopment Act to address the deteriorating conditions that existed in many American cities after World War II. The legislation gave cities and counties the authority to establish redevelopment agencies (RDAs), gave those agencies the authority to attack problems of urban decay, and allowed them to apply for grants and loans from the federal government. In 1952, voters approved a redevelopment financing program referred to as “tax-increment financing.” Under this process, a city or county could declare an area to be blighted and in need of urban renewal. After this declaration, most of the growth in property tax revenue within the “project area” was distributed to the RDA as “tax increment revenues” instead of being distributed as general purpose revenues to other local agencies serving the area. Under the law, tax increment revenues could be used only to address urban blight in the community that established the RDA.

Over time, the Legislature gave redevelopment agencies numerous powers that were essential to their operation, including the authority to acquire real property, including, if necessary, through eminent domain; the authority to develop property; the authority and obligation to relocate persons who have interest in property acquired by the agency; the authority to finance their operation by selling bonds; and the authority to impose land use and development controls pursuant to a comprehensive plan of redevelopment. For nearly 70 years, redevelopment was a powerful tool in addressing local blight, stimulating economic development, and creating affordable housing.

Beginning in the 1980s, the Legislature placed a series of limits on local governments' use of redevelopment, including tightening the definition of blight, imposing timelines on project areas, and prohibiting new projects on bare land. Concerned that RDAs were not using their authority to develop affordable housing, the Legislature enacted laws strengthening the statutory requirement that RDAs spend 20 percent of their tax increment revenues developing housing for low- and moderate-income households. The Legislature also restricted and standardized the amount of "pass-through" payments RDAs could provide to other local agencies in the hope that these other local agencies might provide more active oversight.

According to the Legislative Analyst's Office, based on reports submitted to the State Controller's Office by redevelopment agencies, in the 2009-10 fiscal year, RDAs were receiving over $5 billion in tax increment annually—a redirection of 12 percent of property tax revenues from general purpose local government use for redevelopment purposes. The state's costs to backfill K-14 school districts for the property taxes redirected to redevelopment exceeded $2 billion annually.

Citing a need to preserve public resources that support core government programs, the Governor's 2011-12 budget proposed dissolving RDAs. Under the Governor's plan, property taxes that otherwise would have been allocated to RDAs in 2011-12 would have been used to pay existing redevelopment debts, make pass-through payments to other local governments, and offset $1.7 billion in state General Fund costs. Any remaining redevelopment funds would have been allocated to the other local agencies that serve the former project area, with the allocations based largely on each agency's share of property tax revenues in the project area. The Governor's proposal failed to secure the necessary two-thirds vote. As an alternative, in June of 2011, the Legislature passed and the Governor signed ABX 1-27 (Blumenfield) [Chapter 6, Statutes of 2011 First Extraordinary Session], which created an Alternative Voluntary Redevelopment Program. There was also a companion measure, ABX 1-26 (Blumenfield) [Chapter 5, Statutes of 2011 First Extraordinary Session], which set up the process for the dissolution of redevelopment agencies if they chose not to opt-in to the voluntary program.

On July 18, 2011, the California Redevelopment Association (CRA) and the League of California Cities, along with other petitioners, filed suit against the state challenging the constitutionality of AB X1-26 and ABX 1-27 and asked for a stay of the measures. On August 17, 2011, the California Supreme Court issued a modified order that stayed almost all provisions of both measures except Part 1.8 of the Health and Safety Code, which suspended any new activities of all RDAs and prohibited the issuance of new debt.

On December 29, 2011, the Supreme Court issued its final judgment and denied CRA's petition for peremptory writ of mandate with respect to ABX 1-26. However, the Court did grant CRA's petition with respect to AB X 1-27, thereby throwing out all provisions related to the Alternative Voluntary Redevelopment Program yet maintaining the Legislature's ability to dissolve RDAs pursuant to the provisions of ABX 1-26. The Court also extended all of the statutory deadlines contained in Health and Safety Code Division 24, Part 1.85 (Sections 34170-34191) and arising before May 1, 2012, by four months, thus moving the effective date for the dissolution of RDAs from October 1, 2011, to February 1, 2012.

AFFORDABLE HOUSING AND REDEVELOPMENT:

The definition of “blight” within the Community Redevelopment Law changed over time but has always included substandard housing (Health & Safety Code §§33031, 33035). In 1976, in an effort to avoid gentrification in redevelopment project areas and avoid the displacement of low- and moderate-income residents, the Legislature directed redevelopment agencies to set aside 20% of the tax increment collected in a project area for the creation, preservation, and rehabilitation of affordable housing and required it to be used predominately within the project area.

Redevelopment agencies had relatively broad powers in using their Low- and Moderate-Income Housing Funds as long as the funds were used to increase, improve, and preserve the supply of low- and moderate-income housing. Funds could be spent inside and outside a project area. However, to spend the funds outside a project area a redevelopment agency had to make a finding as to why the housing would benefit the project area.

Redevelopment agencies had an obligation to ensure that the housing units created or substantially rehabilitated remained affordable by enforcing affordability covenants ranging from 15 to 55 years. Redevelopment agencies were required to spend monies in their Low- and Moderate-Income Housing Funds for very low- and low-income households in at least the same proportion as those income groups were represented within the housing needs identified in their community’s housing element.

Statewide, Low- and Moderate-Income Housing Fund dollars represented a significant source of funding for the construction, preservation, and rehabilitation of affordable housing. These funds were often used in combination with private financing, state housing bond funds, state and federal low-income housing tax credits, and local matching dollars to support affordable housing construction. According to financial reports that redevelopment agencies made to the Department of Housing and Community Development (HCD), in fiscal year 2009-10 redevelopment agencies reported having in excess of $1.4 billion in their Low- and Moderate-Income Housing Funds.

AB X 1 26 gives the city, county, or city and county that created the redevelopment agency the option of retaining the housing functions of the agency, excluding any balances on deposit in the Low- and Moderate-Income Housing Fund. There are two bills pending in the Legislature, AB

1585 (Pérez) and SB 654 (Steinberg) that would allow the city and/or county to retain these funds.

OTHER COMPONENTS OF REDEVELOPMENT:

Property contaminated by hazardous substances is common in urban areas in the state and often is a major impediment to development. In 1990, to give redevelopment agencies additional encouragement in addressing brownfield properties, the Legislature enacted the Polanco Redevelopment Act. This Act allowed a redevelopment agency, subject to certain restrictions, to take any actions that the agency determines are necessary to address a release of hazardous substances on, under, or from property within its project area. In return, the agency, the developer of the property, and subsequent owners received limited immunity from further cleanup liability.

Redevelopment law also established an alternative plan adoption procedure specifically for communities with military bases that have been designated for closure or realignment. Under the alternative procedure, cities and counties entered into a joint powers agreement for the purpose of adopting a project area encompassing the base. The blight threshold established for a military base plan was different than for a traditional redevelopment agency. Moreover, military base redevelopment agencies did not have to make pass-through payments until their tax increment reached $100,000 and did not have to prepare an environmental impact report prior to plan adoption. In addition, the documentation required for permits and specified reports needed only to be as complete as the currently available information and the agency could defer, for up to five years, its obligation to the Low- and Moderate-Income Housing Fund. These agencies worked with a plan in which the increment was capped on the amount received over the life of the plan. The United States, through its appropriate military department, is responsible for the remediation of hazardous substances on the former base properties to be transferred.

The following are some of the tools local governments currently have to address community development, economic development and affordable housing production.

CURRENT TOOLS FOR COMMUNITY DEVELOPMENT:

General Obligation (GO) Bonds: GO bonds are a form of debt in which the agency pledges its "full faith and credit" to collect enough money each year to repay the amount borrowed plus interest. Counties and cities can issue GO bonds, secured by ad valorem property tax revenues, with 2/3 voter approval.

Limited Obligation Bonds: To pay for public works, cities, counties, special districts, and school districts can issue limited obligation bonds backed only by the pledge of specified revenues. Local officials must pledge a specified amount of revenue from an identified source of revenue. These revenues may include property tax revenues or local sales tax revenues. The local agency's general fund, general credit, and taxing powers are not liable for these limited obligation bonds. Limited obligation bonds require 2/3 voter approval.

Revenue Bonds: Revenue bonds are a form of debt in which the agency pledges the income received from the operation of the facilities being financed with the debt to repay the amount borrowed plus interest. The debt created through the issuance of revenue bonds can be repaid by contract leases or rental agreements (a lease revenue bond).

Marks-Roos Bonds: The Marks-Roos Local Bond Pooling Act of 1985 provides local agencies with extremely flexible financing powers through participation in JPAs. Bonds issued through a JPA may finance any project that can be financed by a member of the JPA, typically including general administrative facilities; streets, bridges, and mass transit facilities; publicly owned or operated parking garages; park and recreation facilities or vehicles; public works facilities; public libraries; police and fire stations; and criminal justice facilities.

Transient Occupancy Tax (TOT): The TOT is imposed on occupants for the privilege of occupying a motel, hotel, or similar room. The tax represents an attempt on the part of many local governments to "export" a portion of the tax burden to nonresidents and/or to recoup the costs imposed by nonresidents. Cities and counties collected over $1 billion in TOT revenues in 2003-04.

Community Facilities Districts (CFDs): A CFD can be used to finance the purchase, construction, expansion, improvement, or rehabilitation of certain facilities, including, among others, child care facilities, undergrounding of water transmission and distribution facilities, and the cleanup of hazardous materials. Existing law specifies the requirements for the establishment of a CFD, including, among other things, a petition, a hearing, establishment of the boundaries of the CFD, and an election on the question of establishment. Since 1985, CFDs have issued over $18 billion in long-term bonds, mostly for capital improvements.

Infrastructure Financing District (IFD): Cities and counties can create IFDs and issue bonds to pay for community-scale public works such as highways, transit, water systems, sewer projects, flood control, child care facilities, libraries, parks, and solid waste facilities. Forming an IFD takes many steps. The city or county must develop an infrastructure plan, send copies to every landowner, consult with other local governments, and hold a public hearing. Every local agency that will contribute its property tax increment revenue to the IFD must approve the plan. However, IFDs are prohibited from diverting property tax increment revenues from schools. Once the other local officials approve, the city or county must have voter approval to form the IFD (requires 2/3 voter approval), issue bonds (requires 2/3 voter approval), and set the IFD's appropriations limit (requires majority voter approval). In 2010 and 2011, the Legislature passed AB 1199 (Ammiano) [Chapter 664, Statutes of 2010] and AB 664 (Ammiano) [Chapter 314, Statutes of 2011] which authorized the City and County of San Francisco to create an IFD for the restoration of Pier 70 and for the creation of a special waterfront district for the America's Cup venue, respectively. Due to the unique nature of the formation of these IFDs the Legislature authorized their creation without voter approval and removed the vote requirement for the bond issuance and appropriation limits as well.

Assessment Districts: Formation of an assessment district allows local officials to charge benefit assessments to property owners to pay for public works and public services. Business improvement districts are one model for how local governments use assessment financing to pay for projects to attract and retain businesses. For example:

- The Parking and Business Improvement Area Law of 1989 allows a city council or county board of supervisors to set up an "improvement area" and levy assessments on businesses to pay for several types of physical improvements or activities within the area.

- The Property and Business Improvement District Law of 1994 allows property owners to petition a city or county to set up an "improvement district" and levy assessments on property owners to pay for promotional activities and physical improvements. Local officials may also use the 1994 Law to assess business owners.

- The Multifamily Improvement District Law allows a city council to set up an "improvement district" and levy both property assessments and business assessments to pay for several types of activities and improvements in multifamily neighborhoods.

- Proposition 218 (1996) requires owners of real property to approve benefit assessments in a weighted ballot election; property owners vote in proportion to their proposed assessments, which reflect how much their property benefits from the proposed public works or public services. The courts have said that assessments on businesses, as opposed to real property, are not subject to Proposition 218's provisions.

Development Agreements: A development agreement is a contract. The parties are a developer and the city or county with regulatory authority over the developer’s land use project. The agreement spells out what the developer must do to develop the project. Developers typically like the certainty of development agreements. This allows them to get financing and move forward with the project. They have fewer worries that new rules will be adopted that change the project’s economics or practicality. Development agreements allow restrictions to be tailored to the project in question. In addition, developers usually agree to provide benefits beyond what the public could expect through the normal regulatory process. Examples include parks, school facilities, and other public improvements.

Fees and Exactions: New development may be conditioned on payment for installation of public infrastructure needed to support the project. Sometimes, the developer must actually do the public improvements: install the street or sidewalk or water lines, for example, to the specifications and approval of the local agencies. In other instances, the developer is required to contribute money toward the construction of the infrastructure.

STATE PROGRAMS SUPPORTING COMMUNITY AND ECONOMIC DEVELOPMENT:

Gas Tax Revenues: State and local agencies receive shares of the excise tax on gas dedicated to funding a variety of transportation purposes. Local shares of excise tax were recently increased

under the “gas tax swap” to offset losses from the repeal of the state portion of the sales tax on gas used for transportation purposes under Proposition 42. Local shares of the excise tax on gas are protected under Proposition 22.

Enterprise Zone Program: The Enterprise Zone Program offers tax credits and regulatory incentives to encourage the hiring of disadvantaged individuals and business investment in certain economically distressed areas designated by the state. Enterprise zones also offer sales-tax breaks, increased deductions for expenses, and preference for companies bidding on state contracts, among other benefits.

Infrastructure State Revolving Fund (ISRF) Program: This program from the I-Bank provides low-cost loans up to $10 million per project to local municipal governments for a wide variety of public infrastructure that provide local economic development benefits.

State Water Resources Control Board: The Water Board offers financial assistance programs that include loan and grant funding for construction of municipal sewage and water recycling facilities, remediation for underground storage tank releases, watershed protection projects, non-point source pollution control projects, etc. The Clean Water State Revolving Fund (CWSRF) program offers low-interest financing agreements of up to $50 million for city water quality projects. Annually, the program disburses between $200 and $300 million to eligible projects, including the construction of water, storm water, and wastewater facilities. The Cleanup and Abatement Account (CAA) provides public agencies with grants for the cleanup or abatement of a condition of pollution when there are no viable responsible parties available to undertake the work. The CAA is funded by court judgments and administrative civil liabilities assessed by the State and Regional Boards.

Department of Public Health (DPH): DHP provides funding opportunities to public water systems, including the Safe Drinking Water State Revolving Fund to correct public water system deficiencies based upon a prioritized funding approach that addresses the systems' public health risks.

Energy Efficiency Financing Program: The California Energy Commission provides three percent interest loans of up to $3 million to cities, counties, and public agencies to fund energy saving improvements to buildings, facilities, and processes (e.g., lighting, insulation, HVAC, LED streetlights/traffic signals, wastewater treatment equipment, energy generation).

Green Manufacturing Sales and Use Tax Exclusion Program: SB 71 of 2010 established an exclusion from both the state and local portions of sales and use tax for eligible projects related to the design, manufacture, production, or assembly of renewable energy equipment, combined heat and power equipment, and alternative transportation equipment.
Current Tools for Affordable Housing:

SOURCES OF FUNDING FOR AFFORDABLE HOUSING

Federal Sources:

Department of Housing and Urban Development (HUD) Housing Funding: HUD offers primarily rental assistance to lower-income residents via the Section 8 program. While construction assistance programs like HOME and BEGIN still exist, the federal government has largely withdrawn from funding the development of affordable housing, except via the Low-Income Housing Tax Credit Program

Community Development Block Grants (CDBG): CDBG has long been one of the most stable and flexible funding sources for local community development efforts. In recent years up to $4 billion annually has been distributed nationally to entitlement jurisdictions (cities with populations over 50,000). HUD allocates money to state housing agencies for distribution to smaller jurisdictions. In California, the Department of Housing and Community Development is responsible for allocating CDBG funds to small cities (those with populations under 50,000) and rural counties and does so via a competitive grant process. The federal government is poised to cut domestic spending and CDBG is targeted for reductions.

Low-Income Housing Tax Credits: Congress created the federal Low-Income Housing Tax Credit Program in 1986. It replaced traditional housing tax incentives, such as accelerated depreciation, with a tax credit that enables low-income housing sponsors and developers to raise project equity through the sale of tax benefits to investors. Two types of federal tax credits are available and are generally referred to as nine percent (9%) and four percent (4%) credits. These terms refer to the approximate percentage of a project's "qualified basis" a taxpayer may deduct from their annual federal tax liability in each of ten years. The aggregate annual amount of these credits and the state credits is capped and allocated to specific projects by the Tax Credit Allocation Committee under the State Treasurer's Office.

State sources:

State Housing Bonds: In 2002, voters approved Proposition 46, the Housing and Emergency Shelter Trust Fund Act of 2002, which authorized $2.1 billion for various affordable housing programs. In November 2006, voters approved Proposition 1C, the Housing and Emergency Shelter Trust Fund Act of 2006, which authorized an additional $2.85 billion for various affordable housing programs. There is approximately $201 million from Proposition 1C that has not been awarded.

Low-Income Housing Tax Credits: Recognizing the extremely high cost of developing housing in California, the state legislature authorized a state low-income housing tax credit program to augment the federal tax credit program. Authorized in 1987, the state credit is only available to a project that has previously received, or is concurrently receiving, an allocation of federal credits. Thus, the state program does not stand alone but instead supplements the federal tax credit program. The law requires that a portion of state low-income housing tax credits be set aside for farmworker housing projects. These projects can receive state credits without also receiving federal credits.

Local Sources: Some jurisdictions have created local housing trust funds which are used to support affordable housing priorities. Funding for local trust funds comes from a variety of sources and locals can receive a match from the state Housing Trust Fund Program if they raise at least $500 million from local sources.