

Real Estate Advisory

April 6, 2011

Expediting Sales of Surplus Federal Property: The Government's New Property Disposition Program

The Obama Administration stated that it can save \$15 billion over the next three years by selling 14,000 excess buildings and undertaking consolidations for another 55,000 underutilized buildings held by the U.S. government. Traditionally, the U.S. government undertakes the disposition of property in accordance with the Federal Property Management Regulations ("FPMR"), codified at 41 U.S.C. Chapter 101. This process, however, takes time to manage, and there is always the likelihood of political intervention that delays or blocks dispositions of property. The FPMR generally entail a lengthy process in which the General Services Administration ("GSA") must first determine if another government agency needs the property. Once the GSA determines that no other agency can use the property, it must then ensure that no state or local government or nonprofit organization desires the property for a public use. The government cannot sell the property to a private entity under the FPMR until it completes these steps.

The Obama Administration, however, has proposed a different, faster way to sell the properties at issue based on the success the government has had with the Base Realignment and Closure ("BRAC") process. Now well into its fifth round of BRAC, the U.S. government has improved and refined the BRAC process over almost 30 years of experience. Under BRAC, the Secretary of Defense presents his recommendations for realignment and closure to a BRAC commission, which is an independent nine-member panel appointed by the President. The BRAC commission provides its recommendations to the President, who, in turn, provides his recommendations to Congress, which has a limited time (45 days) to disapprove. If the recommendations are not disapproved by a joint resolution of Congress, the recommendations go into effect.

For the surplus properties, which will function much like BRAC, President Obama stated that he plans to create an independent board of experts known as the Civilian Property Realignment Board ("CPRB"). The CPRB will make its property disposal/consolidation recommendations to Congress for a vote —up or down—within a limited time (likely the same 45 days used by BRAC). If Congress does not act, then the board's recommendations would be considered final. The Economic Development, Public Buildings and Emergency Management Subcommittee of the House Transportation and Infrastructure Committee is scheduled to hold a hearing today to assess the feasibility of President Obama's proposal.

Within the next two months, the White House expects to announce the sale of six acres that contain a one-million-square-foot warehouse in Brooklyn, N.Y., and five buildings in Fort Worth, Texas. The complete list of properties the government intends to sell will not be available until next month. According to a government official, however, these properties are located in downtown city centers, suburban shopping districts and outlying rural areas. The federal government currently owns offices, warehouses, laboratories, hospitals, schools, family housing and

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vacant land. In addition, GSA has identified 300 properties it no longer needs, which are located in 43 different states and the District of Columbia.

McKenna Long & Aldridge ("MLA") offers clients the benefit of deep experience across the range of real estate issues encountered when working with a government agency, and provides guidance through all aspects of federal, state and local real estate transactions. In addition, MLA has long been active in representing the private sector in acquiring and developing properties that the government closed through BRAC, as well as advising local redevelopment authorities and local governments who are working through the BRAC process.

MLA will host the Spring 2011 meeting of the National Federal Development Association ("NFDA") on May 24-25 in its Washington, D.C. office. The meeting will include a panel discussion on the CPRB. If you are interested in attending, please call NFDA at 813.963.5555 or one of the professionals listed on this advisory.

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