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Proposal to Eliminate Redevelopment Agencies Creates Uncertainties for Some California Projects

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Governor Brown's initial budget proposal includes the elimination of redevelopment agencies so that current uncommitted agency funds and future property tax increment revenues may be diverted from redevelopment to other uses.

If adopted by the California Legislature, the Governor's budget proposal would affect developers and property owners who own or are considering owning property in a current redevelopment project area. Of course, because redevelopment agencies provide cities with a way to divert property tax revenue from state and county governments, resistance to the Governor's proposal may be expected from existing redevelopment agencies and municipalities. However, because the Governor's proposal may succeed – and even if it does not succeed it will add uncertainty – below is a brief review of the Governor's proposal and its implications together with ideas to consider in determining and mitigating risk.

The Governor has proposed that California redevelopment agencies stop making new commitments after the budget is adopted and be disestablished by July 1, 2011. Redevelopment agencies' responsibilities for ongoing contractual obligations (such as bond payments or ground leases) made prior to the date on which the budget is adopted would be assigned to successor local agencies, and all affordable housing funds held by redevelopment

agencies on the date of their disestablishment would be transferred to local housing authorities for use in support of low- and moderate-income housing. All funds (other than affordable housing funds) held by the agencies and all future tax increment revenues would be diverted to other governmental uses, and all redevelopment agencies would cease to exist.

If the Governor's proposal is adopted, developers and property owners negotiating or considering agreements with a redevelopment agency or who are otherwise relying on the continued existence of a redevelopment agency, but to whom such redevelopment agency is not contractually bound, will be affected. Some examples of the types of projects that would be affected are pending or intended projects in which a redevelopment agency will (a) act as a buyer, seller, landlord, or tenant, (b) provide a grant, loan or other funding or (c) grant discretionary approvals. Consequently, if a developer or an owner is currently engaged in discussions or negotiations that require a redevelopment agency to enter into an agreement of any sort, consideration should be given to attempting to finalize the agency's commitment prior to the date on which the proposed budget is adopted. Additionally, if a developer or an owner is currently seeking review, approval or some other entitlement action pursuant to a redevelopment agency's authority, consideration should be given to attempting to receive such agency's final approval prior to July 1, 2011, or such earlier date on which such redevelopment agency will be disestablished.

Of course, with the exception of a redevelopment agency providing funds for anything other than affordable housing, many of the activities described in the preceding paragraph may be undertaken by a successor local agency. However, the switch in authority should be expected to add political and delay risk, as other decision makers will need to be identified and empowered by municipal action and code amendments, and new decision makers may bring new points of view, concerns or agendas.

Contrarily, if a California property is located within a current redevelopment project area in which restrictions (such as streetscape or design standards) or discretionary approvals (such as a review of conformance with streetscape or design standards) are imposed by decision makers who are different from and expected to be more demanding than those who are expected to have authority after the disestablishment of the redevelopment district, then developers or property owners may desire to delay entitlement action to see if such redevelopment agency is disestablished. However, because local governments will need to take action and amend municipal codes to empower successors to redevelopment agencies, delay should be expected.

While the risk of the Governor's budget proposal being adopted is unknown, developers and property owners negotiating or considering agreements with redevelopment agencies or who are otherwise reliant on redevelopment agency activities or entitlements should consider whether they may finalize the intended agreement or matter during the next few months. If it does not appear reasonably possible to finalize the desired arrangement or activity in the next few months, consideration should be given as to whether a successor agency can and will take the desired action and whether the expected delay in such action is acceptable.

For example, an affordable housing developer expecting to receive a grant or loan from existing redevelopment agency funds in a city in which the city council acts as the redevelopment agency may not be perturbed by the potential elimination of that redevelopment agency, while a developer expecting to receive funds for affordable housing from a future bond issuance or funds to assist in commercial development may be highly perturbed by the potential elimination of redevelopment agencies.

Consequently, developers or owners who think that one of their projects may be affected by the elimination of redevelopment agencies in California may desire or more to engage in a consideration of mitigation strategies and a determination of delay or project failure risks.

