

Affordable housing initiatives and news in California

March 11 2016 | Contributed by [Katten Muchin Rosenman LLP](#)

Introduction

Redevelopment authorities again permitted

Los Angeles County: funding for affordable housing programmes

City of Los Angeles proposes developer linkage fees

Supreme Court declines to hear challenge inclusionary housing ordinance challenge

Introduction

Several recent developments in California and the Los Angeles region are affecting the funding of urban redevelopment and the creation of affordable housing. First, the new Community Revitalisation and Investment Authority Law once again allows for local governments to establish redevelopment authorities to fund improvements to infrastructure, promote economic revitalisation and address shortages in needed housing. In addition, the Los Angeles County Board of Supervisors recently voted to set aside up to \$100 million a year in a dedicated affordable housing programme budget. The Los Angeles mayor also proposed imposing new 'linkage fees' on developers to raise more than \$100 million a year for affordable housing. Finally, the US Supreme Court declined to review San Jose's inclusionary housing ordinance, allowing more than 170 such ordinances in the state to stand.

Redevelopment authorities again permitted

As part of the 2011 Budget Act, the California legislature approved the dissolution of the state's 400-plus redevelopment agencies. After a period of litigation, the agencies were officially dissolved as of February 1 2012. As a result of the elimination, property tax revenues are being used to make required payments on existing bonds, other obligations and pass-through payments to local governments. The remaining property tax revenues that exceed the enforceable obligations are being allocated to cities, counties, special districts and school and community college districts. To facilitate the winding-down process at the local level, successor agencies were established to manage redevelopment projects currently underway, make payments on enforceable obligations and dispose of redevelopment assets and properties.

Signed into law by Governor Brown on September 22 2015, the California Community Revitalisation and Investment Authority Law once again allows communities to establish redevelopment authorities to address urban blight and shortages in affordable housing using property tax financing. The law allows a city, county or special district – or any combination of these entities – to establish a community revitalisation and investment authority (CRIA) in specified 'revitalisation areas' to improve infrastructure, promote economic revitalisation and create and preserve needed housing. The stated intent of the law is to:

"invest property tax increment revenue to relieve conditions of unemployment, reduce high crime rates, repair deteriorated or inadequate infrastructure, promote affordable housing and improve conditions leading to increased employment opportunities."

Under the new law, 25% of all funds allocated to the authority must be placed in a low and moderate-income housing fund and be used solely for the purpose of increasing and preserving the supply of affordable housing.

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A revitalisation area must include at least 80% of land that has an annual household income that is lower than 80% of the state annual median income, as well as three of the following criteria:

- an unemployment rate at least 3% higher than the state median;
- crime rates at least 5% higher than the state median;
- deteriorated or inadequate infrastructure; and
- deteriorated commercial or residential structures.

Alternatively, a CRIA may carry out a community revitalisation and investment plan within a former military base that is principally characterised by deteriorated or inadequate infrastructure and structures. A CRIA must adopt a 10-year community revitalisation and investment plan which outlines its intended redevelopment activities. The plan must include a statement of principal goals and obligations. The CRIA must review its plan annually and prepare a publicly available annual report.

The authority of a CRIA is similar to that of the former redevelopment agencies and includes:

- acquiring and transferring real property through eminent domain;
- providing funding to rehabilitate, repair, upgrade and construct infrastructure;
- increasing the supply of affordable housing;
- remedying or removing hazardous substances;
- providing for seismic retrofitting;
- issuing bonds;
- borrowing money and receiving grants or accepting other financial assistance or investment;
- making loans or grants to owners and tenants;
- providing foundations for air rights; and
- providing direct assistance to businesses.

A CRIA will finance its activities by issuing bonds serviced by property tax increment revenues and will be subject to periodic audits by the controller. CRIA funds must be expended within the 10-year period of the revitalisation plan, although there are shorter time requirements for the expenditure of funds that qualify as 'excess surplus' and which must be separately accounted for and may be the subject of a separate plan developed by the CRIA.

As stated above, a minimum of 25% of all tax increments allocated to the CRIA must be deposited into a separate low and moderate-income housing fund. Among other related activities, these funds may be used to:

- acquire or improve real property;
- donate property;
- construct, acquire or rehabilitate buildings;
- provide subsidies to low-income households;
- pay principal and interest on bonds, loans, advances or other indebtedness;
- maintain the community's supply of mobile homes; and
- preserve the availability of existing affordable housing units.

The law requires the California Department of Housing and Community Development to review the calculation of surplus housing under these provisions periodically. Rental units assisted by the CRIA must remain affordable for at least 55 years. Owner-occupied units must remain affordable for at least 45 years. Any local agency that collects *ad valorem* property tax from property located within the revitalisation area may allocate its share of property tax increments to the CRIA.

The California Community Revitalisation and Investment Authority Law has stringent establishment requirements. In order to create a CRIA, a local agency must ensure that any successor agency has obtained a finding of completion from the Department of Finance and has complied with all orders of the state controller's office regarding the transfer of former redevelopment agency assets. A local agency cannot create a CRIA if it or a successor agency is a plaintiff in active litigation against the state involving redevelopment assets. A school district cannot establish or participate in a CRIA, including in the funding of a CRIA. However, if an area meets the law's stringent establishment requirements, a CRIA's broad authority and methods to revitalise a blighted area are very similar to

the powers of the former redevelopment agencies.

Los Angeles County: funding for affordable housing programmes

To address growing homelessness and the extreme shortage of affordable housing in the region, on October 27 2015 the Los Angeles County Board of Supervisors voted unanimously to set aside up to \$100 million a year in a dedicated affordable housing programme budget unit within the county general fund to construct, maintain and subsidise affordable housing. The county will initially identify \$20 million in funds for fiscal year 2016 to 2017, with a goal of reaching \$100 million per year by fiscal year 2020 to 2021. A minimum of 75% of the funds will be dedicated to the preservation, rehabilitation and creation of affordable housing. The remaining funds will be used to cover administrative expenses and for rental and moving assistance.

Supervisors Sheila Kuehl and Mark Ridley-Thomas proposed the fund because prior affordable housing programmes were severely curtailed by the February 2012 dissolution of redevelopment agencies. Officials have showed heightened interest in homelessness since this year's county-wide count by the Los Angeles Homeless Services Authority showed a 12% jump in the number of homeless people over the last two years to 44,000.

Further, the county will establish an affordable housing coordinating committee to evaluate all county housing programmes, document progress on achieving regional housing needs and provide guidance on necessary policy changes. The committee will also be tasked with specifically evaluating the housing needs of priority populations, including:

- low-income families;
- seniors;
- the homeless;
- transition-age youth;
- people exiting jails;
- child welfare-involved families;
- extreme low-income persons with physical disabilities;
- veterans;
- domestic violence survivors; and
- users of county health and social service programmes.

Finally, the motion requires the community development commission to prepare a report within 150 days that provides the recommended policy or administrative actions to facilitate the effective use of its affordable housing programme resources.

City of Los Angeles proposes developer linkage fees

On October 23 2015 Los Angeles Mayor Eric Garcetti proposed imposing new fees on developers that could raise more than \$100 million a year to subsidise affordable housing. Speaking at a conference at the University of California Los Angeles hosted by the Los Angeles Business Council, Garcetti said that his administration will lead an effort to levy linkage fees on developers based on the size of new projects in the city. Such assessments are intended to offset upward pressure on housing costs from new commercial or residential development. According to the mayor's staff, the details of the proposal – such as the amount, how the fees would be calculated and the types of project that would be assessed – have not yet been worked out and will be the subject of a study by the city planning department. Any new fees would be subject to approval by the city council.

Linkage fees are already being levied or considered in such cities as San Francisco and Seattle. Cities can levy linkage fees only after demonstrating that a development will generate a spike in housing demand. City Controller Ron Galperin recently conducted an audit that found that Los Angeles could have potentially taken in \$15 million to \$91 million for fiscal year 2013 to 2014, given levels of construction. This is consistent with a 2011 study, which found that a linkage fee could generate up to \$110 million a year. The mayor's announcement comes as the region is experiencing a surge in homelessness and a severe shortage of affordable housing.

Supreme Court declines to hear challenge inclusionary housing ordinance challenge

On February 2, the US Supreme Court denied certiorari in *California Building Industry Association v City of San Jose*, 61 Cal 4th 435 (2015), and left standing a unanimous decision by the California Supreme Court upholding the city of San Jose's affordable housing ordinance. San Jose's ordinance compels all developers of new residential development projects with 20 or more units to reserve a minimum of 15% of for-sale units for low-income buyers and the price of those units cannot exceed 30% of the buyers' median income. The ordinance requires these restrictions to remain in place for 45 years. Alternatively, the developer can pay the city a fee in lieu.

The California Building Industry Association argued that the ordinance was an unlawful exaction in violation of *Nollan v California Coastal Comm'n*, 483 US 825 (1987), *Dolan v City of Tigard*, 512 US 374 (1994) and *Koontz v St Johns River Water Management District*, 133 S Ct 2586 (2013). In a June 15 2015 decision the California Supreme Court disagreed, concluding that the ordinance is not an exaction because it does not require a developer to give up a property interest, but instead is a typical zoning restriction subject to rational basis review. The denial of certiorari leaves in place similar 'inclusionary' affordable housing programmes that have been adopted in more than 170 California municipalities

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