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MEMORANDUM

**ATTORNEY-CLIENT COMMUNICATION
PRIVILEGED & CONFIDENTIAL**

DATE: July 6, 2011 **CLIENT/MATTER:** 1943-01
TO: Jeff Britz, City Manager
Judy Holwell, Redevelopment Project Manager
City of Lemoore
FROM: Jerome M. Behrens
Dale E. Bacigalupi
RE: AB X1 26 and AB X1 27

What Not To Do

On June 29, 2011, AB 1X 26 and AB 1X 27 went into effect. Effective immediately, redevelopment agencies are prohibited from incurring any new indebtedness, entering into new agreements, buying or selling property, or engaging in other redevelopment activities.

What To Do

However, the law does not interfere with a redevelopment agency's authority or responsibility, pursuant to "enforceable obligations", to make payments due, enforce existing obligations, or perform its obligations. Until successor agencies are authorized, redevelopment agencies should continue to make all scheduled payments for enforceable obligations, preserve all assets, minimize all liabilities, and preserve all records of the redevelopment agency.

Enforceable obligations include:

- Bonds, including the required debt service, reserve set-asides and any other payments required under the indenture or similar documents;
- Loans of money borrowed by the redevelopment agency for a lawful purpose, including, but not limited to, moneys borrowed from the Low and Moderate Income Housing Fund, to the extent they are legally required to be repaid pursuant to a required payment schedule or other mandatory loan terms;
- Payments required by the federal government, preexisting obligations to the state or obligations imposed by state law, other than passthrough payments that are made by the

- Payments required by the federal government, preexisting obligations to the state or obligations imposed by state law, other than passthrough payments that are made by the county auditor-controller, or legally enforceable payments required in connection with the agencies' employees, including, but not limited to, pension payments, pension obligation debt service, and unemployment payments;
- Judgments or settlements entered by a competent court of law or binding arbitration decisions against the former redevelopment agency other than passthrough payments made by the county auditor-controller;
- Any legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy; and
- Contracts or agreements necessary for the continued administration or operation of the redevelopment agency, including, but not limited to, agreements to purchase or rent office space, equipment and supplies, and agreements for professional services.

On October 1, 2011, all assets, properties, contracts, leases, books and records, buildings, and equipment of the former redevelopment agency will be transferred to the control of the successor agency, unless the redevelopment agency continues to exist by way of election of the city which created it, pursuant to AB 1X 27 as described below.

Heightened Scrutiny Over Transactions Occurring After January 1, 2011

The State Controller will review transactions between a city and its redevelopment agency occurring after January 1, 2011 and, if the city is not contractually committed to a third party for the assets which are the subject of the agreement, the Controller will order the available assets to be returned from the city to the redevelopment agency.

The statute of limitations to challenge certain redevelopment agency actions occurring after January 1, 2011 has been extended from 90 days to two years.

Enforceable Obligation Payment Schedule

No later than August 26, 2011, each redevelopment agency must adopt an Enforceable Obligation Payment Schedule that lists all of its enforceable obligations. After the Enforceable Obligation Payment Schedule is adopted, or after August 26, 2011, the agency shall not make a payment unless it is listed in an adopted Enforceable Obligation Payment Schedule.

We will work with your finance staff to compile a list of all of your obligations for inclusion in this list. We have also included a template for the schedule, attached as Exhibit "A". This schedule must be adopted by resolution at a public meeting and be posted on the agency's website. The schedule may be amended at any public meeting of the agency. Once adopted, the schedule must be transmitted to the county auditor-controller, the State Controller, and the State Department of Finance.

Successor Agencies - Housing Function

Prior to October 1, 2011, the city may elect to retain the housing assets and functions of the redevelopment agency, in which case all the rights, powers, duties, and obligations (excluding amounts in the Low and Moderate Income Housing Fund) shall be transferred to the city. If the

city does not elect to retain this responsibility, then those rights and obligations shall transfer to local housing authority(ies) or, where there is none, to the State Department of Housing and Community Development. Any unencumbered balances in the Low and Moderate Income Housing Fund, and other unencumbered balances, will be transferred by the successor agency to the county auditor-controller for distribution to other taxing entities (schools and special districts).

Successor Agencies - All Other Redevelopment Functions

As to all other redevelopment functions, the successor agency will be the county, city, or city and county that authorized the creation of the redevelopment agency unless the local agency elects not to serve as a successor agency by filing a duly authorized resolution of its governing board with the county auditor-controller no later than September 1, 2011. If no local agency elects to serve as a successor agency for a dissolved redevelopment agency, then a public body, referred to as a “designated local authority” will be immediately formed to serve as a successor agency. The Governor will appoint three residents of the county to serve as the governing board of the designated local authority.

Oversight Board

The actions of the successor agency will be subject to review by a seven-member oversight board which will be formed by January 1, 2012. The oversight board will generally consist of:

1. One member appointed by the county board of supervisors;
2. One member appointed by the mayor for the city that formed the redevelopment agency;
3. One member appointed by the largest special district, by property tax share, with territory in the territorial jurisdiction of the former redevelopment agency;
4. One member appointed by the county superintendent of education, if the superintendent is elected; or, if the superintendent is appointed, then the member shall be appointed by the county board of education;
5. One member appointed by the Chancellor of the California Community Colleges;
6. One member of the public appointed by the county board of supervisors; and
7. One member representing employees of the former redevelopment agency, appointed by the mayor or the chair of the board of supervisors, from the employee organization representing the largest number of former redevelopment agency employee employed by the successor agency at that time.

Voluntary Alternative Redevelopment Program (AB 1X 27)

A redevelopment agency may continue to exist if the **city** which created it enacts an ordinance to comply with the provisions of AB 1X 27 by November 1, 2011. This ordinance may be enacted right away. If a city intends to enact such an ordinance after October 1, 2011, it must enact a nonbinding resolution of intent and notify the county auditor-controller, the State Controller, and the State Department of Finance that the city agrees to comply with AB 1X 27 prior to October 1, 2011. Doing so will delay the dissolution of the redevelopment agency until November 1, 2011. In order to continue redevelopment, a city must agree to remit revenues to school entities and special districts. For the 2011-12 fiscal year, a **city** must remit its redevelopment agency’s share of \$1.7 billion as determined by the Director of Finance who will notify each city and county of the amount due by August 1, 2011. The amount due for future years will be a lesser

amount. For example, the amount due for the 2012-13 fiscal year will be each city's share of \$400 million. For each fiscal year, one half of the amount due shall be paid on or before January 15 with the remainder due on or before May 15.

The California Redevelopment Agency has calculated estimated amounts due for each redevelopment agency. Agencies should consider whether it is financially feasible and/or financially beneficial to remain in existence.

For the 2011-12 fiscal year only, a redevelopment agency may be exempt from making its full allocation to the Low and Moderate Income Housing Fund, provided it makes findings that there are insufficient other moneys to meet its debt and other obligations, current priority program needs, or its obligations to make the remittance (agency's share of \$1.7 million) required by AB 1X 27.

Litigation

The League of California Cities and the California Redevelopment Association have announced their intention to file a lawsuit in the California Supreme Court to invalidate the legislation. We will provide updates on the effect of such a lawsuit and any other new information as it becomes available.

Recommendations

Redevelopment agencies (and the cities that formed them) will need to do the following:

1. Adopt by resolution an Enforceable Obligation Payment Schedule (on or before August 26, 2011)
2. Decide whether to remain in existence (on or before October 1, 2011)
3. If the redevelopment agency will dissolve, the city must decide whether it wants to become the successor agency for the housing function and all other redevelopment functions (on or before October 1, 2011)
4. If the city opts to pay the AB 1X 27 remittance and continue to exist, then it must enact an ordinance to that effect (on or before November 1, 2011)

Conclusion

These bills are very complex and contain specific prohibitions and mandates for redevelopment agencies with varying deadlines. Please schedule a call with your attorney to review your agency's individual needs.

If you have any questions regarding the status of redevelopment agencies or this memorandum, please contact Jerome Behrens, Dale Bacigalupi, Jeffrey Kuhn, David Wolfe, Scott Cross, or Laurie Avedisian. Thank you.

Exhibit "A"
Enforceable Obligation Payment Schedule

Project Name	Payee	Description of Enforceable Obligation (i.e., agreement, bond, etc.)	Description of nature of the work, product, service, facility or other thing of value for which payment is to be made	Payments to be Made (payments for issued bonds and to employees may be aggregated)
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