Senate Bill 1

In February of 2012, Governor Jerry Brown succeeded in initiating the dissolution of redevelopment agencies (RDA's) with the passage of ABX1 26 ("AB 26"), guaranteeing ". . . more than a billion dollars of ongoing funding for schools and public safety". [1] The successor agencies (cities & counties) continue to wind down the operations of the former RDAs. However, Senators Steinberg and DeSaulnier are attempting to resurrect the functions of the former RDAs and strengthen the authority by which they would operate through Senate Bill 1 ("SB 1") called the Sustainable Communities Investment Authority.

It is important to understand the cause and purpose of AB 26 and why passage of SB 1 would undermine AB 26's RDA dissolution and cede control of city development to special interest groups, business entities, and unelected bureaucrats - all of whom stand to retain and regain monumental profits at the expense of California taxpayers.

What Lies Beneath

Californians pay over $45 billion in property taxes annually, not including an additional 12 billion from other special assessments on the property tax bill. By 2009-10, RDA's were receiving over 5 billion in property taxes annually, a redirection of 12% of property tax revenues from general purpose local government use. The state's costs to backfill K–14 school districts for the property taxes redirected to redevelopment exceeded $2 billion annually.

What began in 1945 as a means to address blighted urban areas with small projects that did not seriously compete for tax dollars, which communities wished to reserve for education and county funded social services, expanded significantly in the 1970s & 1980s. Projects spanning thousands of acres, including farmlands and privately-owned land came under "redevelopment", and received increasing shares of property taxes. Local programs, and especially schools, saw decreasing funds and increasing state costs to support education. State lawmakers, recognizing and citing abuses in the use of redevelopment funds, attempted to restrain their use by tightening the definition of blight to be: *An area that is predominately urbanized and where certain problems are so substantial that they constitute a serious physical and economic burden to a community that cannot be reversed by private or government actions.* (AB 1290 1993 Isenberg) A further tightening of the definition through SB 1206 (Kehoe, 2006) deleted many of the variables of blight, including defective design or physical construction, lack of parking, impaired investments, and abandoned buildings.

Nonetheless, RDAs continued to find ways of establishing large new project areas despite the increasingly narrow statutory definitions of blight. As stated above, by 2010, RDA's were receiving over 5 billion in property taxes annually. That same year, redevelopment advocates (along with transportation entities) sponsored Prop 22 to limit

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[1] Gov. Jerry Brown statement after CA Supreme Court ruling in favor of AB 26

the Legislature's authority over redevelopment and prohibit the State from enacting new laws that require RDAs to shift funds to schools. [2] The proposition passed, effectively barring the state's authority over property tax increments.

In 2011, Governor Brown initiated two Bills, AB 26 dissolving RDAs and AB 27 (Blumenfield) offering an alternative to RDAs' dissolution. AB 27 allowed RDAs to voluntarily agree to make annual payments to K-12 districts ($1.7 billion in 2011-12 and $400 million in future years) to offset the fiscal effect of redevelopment programs. A lawsuit against both AB 26 and AB 27 was filed by redevelopment program advocates. The CA Supreme Court ruled in favor of the state's authority to dissolve RDAs but ruled against the state's authority to shift RDA's property tax revenues. Dissolution of RDAs thusly commenced since the state recognized it does not have the financial resources to support redevelopment programs while meeting school and county obligations and accountability to California taxpayers.

The end of RDAs, contrary to some reports, does not "lose" any funds. Instead, schools and other local governments will receive significantly more property tax revenues—and fewer funds will be reserved for redevelopment purposes. Redevelopment programs bear little resemblance to the small, locally financed program the Legislature authorized in 1945. Statewide, the RDAs received more property taxes by 2011 than all of the state's fire, parks, and other special districts combined and, in some areas of the state, more property taxes than the city or county received.

The Challenging Provisions of SB 1
What Is Blight?

The basis for redevelopment agencies to both acquire tax increment financing ("TIFs") and claim areas for building projects has relied on the definition of "blight". [3] The definition of blight in California - a condition of substandard housing - has seen numerous revisions from its original version often being tightened to curtail abuses by elastic and imaginative interpretations or loosened as redevelopment agencies and the state fought for control over tax revenues. Tax increment financing laws added ". . . economic development clauses, essentially allowing local governments to add slow economic growth or the threat of future economic decline to their working definitions of blight . . . Therefore, while TIFs generally require a finding of 'blight', they often turn that notion on its head . . . TIF subsidies are sought because the property in question is too

[2] A recent CA Supreme Court decision ruled against ABx 1 27, 2011 Blumenfield requiring RDAs to make payment to schools as a condition of these agencies' continuation.

[3] The exception being SB 1156 (Steinberg 2011-12) in which a redevelopment plan for a project area could be developed without the determination of blight. Section 34191.15. Bill was vetoed by Governor Brown.

expensive for developers to assemble on their own . . . This leads, as one observer notes, to 'the odd phenomenon of blight selling for top dollar.'" [4]

SB 1 breaks new ground in its expansion of the definition of blight as "inefficient land use patterns". These *inefficiencies* purportedly stem from "inefficient transportation infrastructure", which in turn supposedly impacts the following:

Economic cost of housing and transportation for California residents;
Declining property values and foreclosures;
Loss of critical farmland;
Increased air pollution;
Energy consumption;
Greenhouse gas emissions, which in turn:
    Impose costs on business;
    Damage public health;
    Inefficient consumption of water [5]

This definition can and would apply to any property, public or private, that was arbitrarily assessed as not meeting its fullest potential. A blight designation makes all properties within a redevelopment area, such as a "transit priority project area", subject to eminent domain. And once defined, the blight designation becomes virtually permanent. Designation of blight justifies what essentially results in private gain for corporate welfare programs, enriching big-box retailers (Walmart, Costco), auto dealers (Hyundai test facility), NFL owners, and investors in affordable housing real estate. These subsidies create an uneven playing field by financially benefiting some businesses while placing others that are less politically connected at a disadvantage. Further, the designation of blight has a depressive effect on local property owners, changing the character of vibrant neighborhoods and locally-owned business districts that fall under the threat of eminent domain. [6]

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[4] Fordam Urban Law Journal Volume 31, Issue 2 (2003), page 318-19: "Blighting the Way: Urban Renewal, Economic Development and the Elusive Definition of Blight"

[5] SB 1: Section 34191

[6] Kelo vs. City of New London, which upheld that the city of New London's proposed disposition of petitioners' property qualified as as a "public use" within the restrictions of the Fifth Amendment's Taking Clause. Per Wikipedia, as of June 2012, 44 States had enacted some type of reform legislation in response to the Kelo decision. Of those States, 22 enacted laws that severely inhibited the takings allowed by the Kelo decision, while the rest enacted laws that place some limits on the power of municipalities to invoke eminent domain for economic development. California was not among them, albeit Prop 99 of June 2008 amended the State Constitution to prohibit Sate and local governments from using eminent domain to acquire an owner-occupied residence [if the owner has occupied the residence for at least one year], as defined, for conveyance to a private person or entity.

How Would SB 1 Re-invent and Restore RDA Power?

"Under AB 26, the former RDA's housing functions and most of its housing assets are transferred to a *successor housing agency*. (Italics added) The unencumbered balance in the former RDA's Low and Moderate Income Housing Fund, however, does not transfer to the successor housing agency. AB 26 directs the county auditor-controller to distribute the unencumbered balance in the the housing fund as property tax proceeds to the affected local taxing entities . . . as local tax revenue." [7] With the funding trough for California's 400 RDAs eliminated, Senate Bill 1 virtually revives all the policies and financing mechanisms of former RDAs by establishing a Sustainable Communities Investment Authority that creates a Plan for provision of tax increment funds. The Bill relies upon and references the Sustainable Communities Strategies ushered in with the adoption of SB 375 (2008) for the purposes of curbing so-called urban sprawl and reduction or greenhouse gas emissions from transportation. SB 375 supports regional governance over that of local municipalities and was the impetus for One Plan Bay Area. While the Bill pays homage in Chapter 1, Section 34191.10, Section (f) to the necessity of adequate school funding, it appeals to the State Constitution Article 16 to remind that the CA Supreme Court ruled that redevelopment agencies' existence is not contingent upon redevelopment agencies setting aside their portion of future property tax revenues for school funding, once again placing the burden upon the State's General Fund (State Prop 98 guarantee [8]) to compensate for monies lost to redevelopment projects. [9]

In addition to securing funding from property taxes at the expense of other community interests, [10] SB 1 effectively eliminates how our ruling institutions are defined by divisions of power between state and local governments. The new form of government under Senate Bill 1 is authorized to determine the conditions by and in which citizens must live, disguised in the language of economic development, to meet political goals as determined by administrative agencies and entities under an "investment authority", whose own self-interests and ideologies are served. "This bill would authorize certain public entities of a Sustainable Communities Investment Area, . . . to form a Sustainable Communities Investment Authority (authority) to carry out the Community

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[7] Legislative Analyst's Office: "The 2012-13 Budget: Unwinding Redevelopment" February 17, 2012, page 15, *Successor Housing Agency*

[8] Legislative Analyst's Office: Proposition 98 Primer, February 2005

[9] See: In the Supreme Court of California: CA Redevelopment Association et al., v. Ana Matosantos, S194861: The CA Supreme Court ruled that ABx1 27 was unconstitutional, violating State constitutional language that prohibits the state from "[r]equir[ing] a community redevelopment agency (A) to pay, remit, loan, or otherwise transfer, directly or indirectly, taxes on ad valorem real propety and tangible personal property . . . to or for the benefit of the State, any agency of the State, or any jurisdiction . . ."

[10] SB 1 is backed by unions, low-income advocacy groups, and various business associations

Redevelopment Law . . ." [11] "It is the intent of the Legislature in establishing the Sustainable Communities Investment Program to create a new, collaborative structure for the creation of a governing board for a Sustainable Communities Investment Authority . . ." [12](underline added) "The authority shall be deemed to be an 'agency'. . . " [13] With the establishment of such an "authority" to invest tax increment revenue at its discretion to relieve the conditions of blight (as newly defined in SB 1 and adjudicated by the investment authority), Senate Bill 1 effectively assigns to an "authority" the functions of the executive, legislative and judicial branches of government. In so doing, the Bill further states, "An authority created pursuant to this part may rely on the legislative determination of blight and shall not be required to make a separate finding of blight or conduct a survey of blight within the project area." [14] The "authority" is created by a city and/or county by entering into a joint powers agreement under and in accordance with Government Code, sections 6500-6536. The board members of the authority are then appointed by the City and/or County and not directly elected by voters. [15]

Restrictive Features of the Investment Authority Plan

SB 1 has dotted the i's and crossed the t's of the Sustainable Communities Strategy that flowed from SB 375, which provided how California would meet its green house gas reduction targets through integrated land use, housing and transportation planning. Once a metropolitan planning organization ("MPO") creates a Strategy, it is incorporated into that specific region's transportation plan. One Plan Bay Area is for all intents and purposes that Strategy. Hence one can state that SB 1 essentially funds Plan Bay Area. However, with the favorable CA Supreme Court ruling on AB 26, the dissolution of the housing redevelopment agencies have lost the future financing ability and housing provision components that ushered in all the attendant programs, such as Complete Streets, under its umbrella. To sweeten the Bill for Governor Brown's signature, SB 1 included provision for a 50% tax increment revenue in an Investment Area that included high speed rail to support construction of the rail station and infrastructure .

SB 1 Chapter 4 Sustainable Communities Investment Plan, Section 34191.26 states:

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[11] SB 1: "Legislative Counsel's Digest", Paragraph 4

[12] SB 1: Section 34191.14

[13] SB 1: Section 34191.20 (2)(b)

[14] SB 1: Chapter 2. Sustainable Communities Investment Authority, Section 3419.20 (2)(c)

[15] Nonetheless, Government Code Section 54950-54963 (Ralph M. Brown Act) stipulates that " . . . the Legislature finds and declares that the public commissions, boards and councils and the other public *agencies (italics added)* in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly. *The people of this State do not yield their sovereignty to the agencies* (italics added) which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may *retain control (italics added)* over the instruments they have created. This conforms to the

"A Sustainable Communities Investment Plan (created as the Sustainable Communities Strategy by SB 375) may include a provision for the receipt of tax increment funds according to Section 33670, provided that the local government with land use jurisdiction has adopted all of the following:"
The subsequent list includes:

- Restricted parking in project areas to encourage use of public transit over cars;
- A jobs plan that
  - Furthers construction careers and "permanent jobs";[16]
  - Selective recruitment for local hire and job training that includes "disadvantaged", "veterans of Iraq & Afghanistan wars", "people with a history in the criminal justice system" and "single-parent families";
- A building "intensity" and "density" consistent with Regional Housing Needs Allocations that the Sustainable Communities Strategy incorporates into its requirements.
- Residences of minimum 20-unit density per acre in neighborhood communities *outside* (italics added) a metropolitan planning organization ("MPO")
- An ordinance that:
  - Prohibits reduction of extremely low - low income housing while Investment Plan is in effect, and
  - Replacement of above if removed from Investment area (within 2 years)

In addition to the above requirements, other construction projects are permissible:

- Farmworker housing
- **Transitional and supportive housing, e.g. foster youth, mental treatment needs, substance abuse needs, and offender populations.** (embolden added)
- Health & safety infrastructure (for disadvantaged & rural communities)
- Infrastructure for countywide services

Conclusion - The Unsustainability of Redevelopment

The dissolution of redevelopment agencies was a necessary decision by Governor Brown to put California's budget on a sound financial path and to save schools from the increasing share of property taxes that redevelopment agencies appropriated. This represents a major change that will allow local communities and their schools to receive significantly more tax revenue. The most compelling - and possibly only - statement in SB 1 that cogently addressed the issue of California's economic growth was, "California cannot afford a redevelopment program that causes schools to lose revenue at a time when investing in education is also key to the state's economic prosperity." [17]

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[16] "The State department of Industrial Relations would ensure project union labor would be used for construction, and living wages be in place for those workers who would be employed once projects are completed." Halfway to Concord: *SB-1 threatens local control of urban planning process in Concord*, August 7, 2013, Richard Eber

[17] 34191.10(f)

Legislators, who - not unlike the Senators Steinberg and DeSaulnier who introduced SB 1 - are responding to the clamor of former redevelopment agency advocates, developers, trade unions, special interest groups and business that have heretofore reaped financial benefits, are complicit in the greed and rampant corruption, characteristic of RDA s. "Redevelopment in 2011 bore little resemblance to the small, locally financed program the Legislature authorized in 1945. Statewide, the RDAs received more property taxes in 2011 than all of the state's fire, parks, and other special districts combined and, in some areas of the state, more property taxes than the city or county received." [18] Other Bills in concert with SB 1 (five at this writing) seek to knit together provisions that essentially reinstate RDA authority and funding. None of these Bills seek to ensure that funds are available to pay bonded indebtedness or restrict tax increment revenues to affordable housing purposes. SB 1 stipulates that not less than 25% of revenues are under obligation for affordable housing purposes; that is, it need not be more,[19] obviously in service to continuing corporate welfare subsidies. Further, the legislature is also making changes to its existing infrastructure financing district ("IFD") program to allow issuance of bonds and increase the types of projects IFSs can fund.[20]

A cost benefit analysis of most projects would prove that costs far outweigh the benefits. An example is Eden Housing's Orinda project for 67 total units. Each unit costs $326,970, and the estimated total project cost is $21,907,012. Low-income and middle-income housing quite simply does not match the immense costs or economic potential of regional redevelopment. One cannot help but think of all the teachers that these billions of dollars could, and now may, hire, all the library books that could be purchased, and all the streets that could see repair. Considering that the interpretive abuses of blight that resulted in eminent domain takings to benefit private interests are as widespread as they are tragic, [21] the expressions of concern for the poor by redevelopment advocates lack sincerity; the legislators that write Bills to support the revival of redevelopment agencies have some 'splanin' to do! There is no assurance that SB 1 (and other Bills to curtail redevelopment dissolution) won't prevail. The Assembly and Senate both passed SB 1, after which it was withdrawn ("Inactive") to be brought back, according to a Senate Consultant, in January. Will Governor Brown hold firm on his decision and veto SB 1? If the governor vetoes the bill, a two-thirds vote in each house is needed to override the veto.

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[18] Legislative Analyst's Office: "The 2012-13 Budget: Unwinding Redevelopment" , February 17, 2012 *Few Practical Alternatives to Ending Redevelopment,* page 24

[19] SB 1 34191.27, (8)(e)

[20] "California Redevelopment Agencies Are Really, Really Going Away. Also, They're Coming Back!" Scott Shackford June 1, 2012

[21] See result of Kelo v. City of New London wherein the properties of displaced residents ended up as a dump