MORE INFO ON SUPREME COURT DENIAL OF CRA & LEAGUE REQUEST TO MODIFY STAY

On August 22, 2011, CRA and the League of California Cities requested the Supreme Court to modify its stay of AB1X 26-27 in order to clarify:

1. That the stay did not undo the effect of continuation ordinances enacted prior to issuance of the stay; and
2. That communities that did not enact a continuation ordinance prior to the stay should be permitted to do so while the case is pending.

On September 14, 2011, the Court issued an order denying this request . Consequently, until the Court rules on the merits of the case:

1. Agencies that adopted continuation ordinances prior to the stay should consider the effect of those ordinances suspended. More specifically, except as necessary to carry out enforceable obligations, the limitations on agency actions found in Sections 34161 -34167 will apply to even those agencies that adopted a continuation ordinance prior to issuance of the stay; and
2. Some communities have adopted continuation ordinances that will only become effective if AB1X 26-27 are upheld by the Supreme Court and the stay is lifted. However, the Court has indicated that, in that event, it may extend the period for adoption of continuation ordinances and other actions that agencies/communities were prevented from taking because of the stay. Hence, adoption of a "conditional" continuation ordinance may be unnecessary.

The Supreme Court's latest order still leaves some issues ambiguous. As always, **this bulletin is intended to provide general information and agencies should consult their own attorneys as to the meaning of the Court's order for their individual circumstances.**

CRA/League Legal Team Issues Digest Regarding ROPS

A number of questions have arisen concerning the adoption of a Recognized Obligation Payment Schedule (ROPS), a preliminary draft of which is to be prepared by redevelopment agencies no later than September 30, 2011. This communication is intended to provide general guidance only on those questions and is posted on CRA's website. As always, **individual cities and agencies should consult with their own attorneys concerning the ROPS**.

Health and Safety Code (HSC) Section 34169(h), enacted by AB 1X 26 and not stayed by the Supreme Court of California's partial stay of AB 1X 26-27, requires redevelopment agencies to prepare a preliminary draft of the initial ROPS, no later than September 30, 2011 and provide the preliminary draft to the redevelopment agency's successor agency, if a successor agency is established pursuant to AB 1X 26.

HSC Section 34169(i) provides that the State of California Department of Finance (DOF) may review the ROPS.

- Pursuant to HSC Section 34169(i), by September 30, 2011, redevelopment agencies should send the DOF an email or letter stating that it has prepared the preliminary draft of the initial ROPS in order to start the review period running.
- The communication should provide the name, telephone number and email address of the redevelopment agency official the DOF could contact regarding the ROPS.

We believe that this preliminary draft of the initial ROPS may be prepared administratively, and does not require adoption by the redevelopment agency's governing board.

- As a precaution, some agencies have had the draft ROPS approved by the Agency Board.

The content of the ROPS is set forth in HSC Section 34177(l)(1). Similar to the enforceable obligation payment schedule (EOPS), the ROPS sets forth the redevelopment agency's enforceable obligations and scheduled payments for such enforceable obligations on a monthly basis. However, the ROPS differs from the EOPS in that it requires the payments to be set forth for the upcoming six-month fiscal period. The ROPS to be prepared by redevelopment agencies should set forth the enforceable obligations for the period between January 1, 2012 and June 30, 2012.

(NOTE: The DOF has indicated that it believes the initial draft ROPS should project the dates and amounts of scheduled payments for each enforceable obligation over the entirety of the time it would have received tax increment. We believe this is a misreading of the statute, but agencies may wish to list both as a precaution. Click here for their website on AB 1X 26/27.)

The ROPS also differs from the EOPS in that it is required to identify one or more of the following sources of payment for each enforceable obligation:

1. Low and Moderate Income Housing Fund;
2. Bond proceeds;
3. Reserve balances;
4. Administrative cost allowance;
5. The Redevelopment Property Tax Trust Fund, but only to the extent no other funding sources are available or when payment from property tax revenues is required; or
6. Other revenue sources, including rents, concessions, asset sale proceeds, interest earnings, and any other revenues derived from the redevelopment agency, which will require the eventual approval of the oversight board.

The preliminary draft of the initial ROPS prepared by the redevelopment agency differs from two later versions of the same document, to be prepared by the successor agency. Preparation of these subsequent documents is currently stayed by order of the California Supreme Court. If the constitutionality of AB 1X 26-27 is upheld by the Supreme Court, communities opting to continue their redevelopment program will not be required to prepare these subsequent ROPS.

- Draft ROPS due by November 1, 2011 (HSC § 34177(l)(2)(A)-(C)); and
- Draft ROPS due by December 15, 2011 (HSC § 34177(l) (3).)

Lawsuit Updates Posted on CRA Website

The advisories regarding the Supreme Court denial of CRA and the League's motion for clarification and the Recognized Obligation Payments Schedule are posted on CRA's website along with other information and documents related to the lawsuit on its website under AB 1X 26/27 INFORMATION.

Supreme Court Schedule for Hearing Challenge of AB 1X 26-27

The California Supreme Court set an expedited briefing schedule for CRA v. Matosantos designed to facilitate reaching a decision before January 15, 2012, the date when redevelopment agencies are required to make their first payment. Here are the remaining key deadlines as laid out in the court's order:

- September 24, 2011: CRA and the League must file their response to the State's filing.
- September 30, 2011: Amicus curiae briefs must be filed with the court.
- October 7, 2011: Replies to individual amicus briefs must be filed.

The court states it does not anticipate extending any of these deadlines and intends to set a hearing for oral arguments before the end of the year.

This Message is from the California Redevelopment Association

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CRA's CapWiz-Legislature Connection is a good resource for communicating with your state and federal elected officials.
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