

# **Redevelopment 101:**

## **Glossary of Selected Redevelopment Terms**

### **2 Percent Payments**

Pursuant to former Health and Safety Code ("HSC") 33676, involves "pass-throughs" to LEAs from County Auditor-Controller (not redevelopment agency) of 100 percent of LEA's share of tax increment that would have resulted under Proposition 13 (i.e., based on 2 percent maximum growth in assessed valuation) without new development or changes in ownership. Limited to redevelopment project areas ("Projects") adopted between Jan. 1, 1985 and Dec. 31, 1993, and only absent pass-through agreement per former HSC 33401.

Absent timely adoption of resolution by LEAs Board of Trustees formally electing to receive "2 percent" payments, entitlement to such payments was in dispute in most counties. However, in 2001 entitlement was subsequently confirmed by the Santa Ana Decision without need to adopt resolution.

### **AB 1290 (Isenberg)**

"Community Redevelopment Reform Act of 1993" (Chapter 942 of the Statutes of 1993). Sweeping redevelopment legislation. Also greatly modified process for receiving pass-throughs in new or amended Projects adopted on or after January 1, 1994.

### **AB 1290 New or Added Area**

New redevelopment project area established or added to pre-existing area after January 1, 1994. In such areas, LEAs have statutory entitlement to pass-through payments from RDA pursuant to Health and Safety Code ("HSC") 33607.5.

### **AB 1290 Financial Limitation Amendment**

Pre-AB 1290 Project subsequently amended on or after January 1, 1994 to increase financial limits (i.e., tax increment cap, date to incur indebtedness, and time limit of redevelopment plan). In such areas, District has statutory entitlement to pass-through payments from RDA pursuant to HSC 33607.7. Includes financial limit amendment to eliminate previous 20 year date-to-incur-debt time limit pursuant to SB 211 (minor amendment), or to extend effectiveness and tax increment time limits by 10 years (and increase LMI set-aside to 30 percent) per SB 211 (major amendment)

### **Affected Taxing Entities**

City, County, school and college districts, and special districts which receive property tax revenues within boundaries of redevelopment project area. Future tax increment is diverted to RDA from affected taxing entities based on their respective shares of property tax within the redevelopment project area. Same Project may be split between similar taxing entities (e.g., one elementary school district in portion of Project area and one or more other elementary school districts in remainder). AB 1290 and most pass-through agreements base District's pass-through entitlement on its property tax share within Project area (as set forth in statute).

### **City Boost**

Phrase coined by PEI to describe impact on property tax shares used to calculate portion of AB 1290 payments that City (or County) sponsoring Project is not eligible to receive. Arises from requirements in HSC 33607.5(a)(2) that redevelopment agencies must (i) pay fixed percentages of *total* tax increment to affected taxing entities as a group, regardless of number of entities, and (ii) allocate these payments "*in proportion to the percentage share of property taxes each affected taxing entity [eligible for such payments] receives*" (emphasis added). Among other things, this means that affected taxing entities (not the RDA) receive what would otherwise be portion of AB 1290 payments that City is ineligible to receive, which portion is allocated to those entities (including District) on a pro rata basis.

### **County Auditor-Controller**

Elected County official whose office is responsible for (among other things) (i) compiling, tracking, and reporting assessed valuation data within redevelopment project areas, and (ii) calculating and allocating tax increment to redevelopment agencies. In some counties, County Auditor-Controller ("A-C") apportions property tax increment to RDAs and provides RDAs with property tax shares used in calculating pass-through payments to District and other affected taxing entities. In other counties, County A-C also apportioned some, most, or all pass-through payments on behalf of RDAs.

### **DDAs/OPAs**

Negotiated agreement between RDA and developer or other third party (including LEA). Disposition and Development Agreements ("DDAs") deal with acquisition and development of real property by a third party. Owner Participation Agreements ("OPAs") deal with development of real property already owned by property owner within Project. These and similar agreements typically provide RDA subsidies to facilitate development of property, or to make reuse of property more profitable.

## **ERAF (Educational Revenue Augmentation Fund)**

Permanent "tax shift" enacted by State statute in 1992 and 1993 (followed by additional one-time shifts in some years) to (i) decrease local property tax shares for cities, counties, and special districts (non-LEAs), and (ii) increase local property tax shares for LEAs. Intended to decrease State's funding obligations to LEAs by increasing share of property taxes relative to school revenue limits and college revenue levels. In addition, RDAs were also required to make "one-time" payments to ERAF to help balance the State budget in FYs 1992-93 through 1994-95, and again in FYs 2002-03, 2003-04 (per SB 1045), and 2004-05 and 2005-06 (per SB 1096). RDAs were also required to make "one-time" payments to Supplemental Educational Augmentation Fund ("SERAF") in FYs 2009-10 and 2010-11.

AB 1290 requires that AB 1290 pass-through payments "shall be allocated to the affected taxing entities *in proportion to the percentage share of property taxes each affected taxing entity receives during the fiscal year the funds are allocated* [emphasis added]." "Property taxes . . . each affected taxing entity receives" are net of reallocations to ERAF pursuant to Revenue and Taxation Code ("RTC") Section 97 *et seq.* Hence, AB 1290 payments should be based on "percentage share[s] of property taxes" which reflect these reallocations, i.e., on "post-ERAF" property tax shares.

Many counties implement ERAF at the tax rate area ("TRA") level, which is consistent with, but does not guarantee, use of post-ERAF property tax shares for AB 1290 payments. Some counties implement ERAF at the Countywide level, or at the TRA level but not within redevelopment projects, that must be adjusted in order to determine post-ERAF property tax shares for AB 1290 payments. LAUSD Decision requires that AB 1290 payments be allocated on a post-ERAF basis.

When AB 1290 was adopted, both the State and the California Redevelopment Association recognized that pass-through payments to schools were needed to mitigate the impact of redevelopment (i) on school facilities, and (ii) on the redevelopment backfill provided by the State through the schools. For this reason, AB 1290 provides for minimum payments to school districts (and the State) to fund both school facilities and the State backfill. To utilize pre-ERAF property tax shares undermines the very basis through which AB 1290 provides the minimum required payments to school districts (and the State).

## **Facilities Agreement**

Negotiated agreement pursuant to HSC 33445 between District and redevelopment agency. Typically represents direct disbursement by RDA to pay "all or a part of the value of the land for and the cost of the installation and construction of any building, facility, structure, or other improvement [owned by another public agency, e.g., District] either within or without the project area." May also be used by RDA to "reimburse" District for capital or operating expenses it has incurred at RDA's request, as long as proceeds of "reimbursement" are used for publicly owned improvements designated by RDA. Among other things, requires findings by RDA that improvements will alleviate blight and benefit RP area.

## **Health and Safety Code ("HSC")**

Contains "Community Redevelopment Law" in Part 1 of Division 24, including Sections 33000 through 33855. Important entitlement sections include: former 33401 (see Pass-Through Agreements), 33445 (see Facilities Agreements), 33445.5 (see Mitigation of Overcrowding), 33607.5 (see AB 1290 New or Added Area), 33607.7 (see AB 1290 Financial Limit Amendment), and former 33676 (see 2 Percent Payments).

## **LAUSD Decision**

*Los Angeles Unified School District v. County of Los Angeles et al (2010), 181 Cal. App. 4th 414* ("LAUSD Decision") requires AB 1290 payments to be allocated on a post-ERAF basis. LAUSD Decision is of precedential effect throughout the State. However, the Appellate Court remanded the case back to Superior Court to determine how to implement decision within LAUSD itself.

## **LMI Set-Aside**

RDAs are required to set aside 20 percent of tax increment to increase the supply of low-and-moderate-income ("LMI") housing. (Some RDAs voluntarily make LMI set-asides of more than 20 percent of TI.) For pre-1994 Projects amended pursuant to SB 211 (major amendment) to increase effectiveness and TI time limits, required LMI set-aside is 30 percent of TI.

## **Mitigation of Overcrowding**

Pursuant to HSC 33445.5, school districts can compel RDA to "conduct a public hearing within 45 days after receiving the findings [of the governing board of District] that conditions of overcrowding . . . exist in one or more attendance areas . . . located within or adjacent to a project area [resulting] from actions taken by the [RDA] in implementing the redevelopment plan, [to] consider amendments of the plan to alleviate or eliminate [current] overcrowding in the attendance area or areas caused by the implementation of the redevelopment plan." Specific means for alleviating overcrowding must be negotiated between District and RDA. However, this entitlement available only in Projects adopted or added by amendment prior to January 1, 1984.

## **Pass-Through Agreement**

For pre-AB 1290 redevelopment project area adopted or amended before January 1, 1994, negotiated agreement pursuant to HSC 33401 between District and redevelopment agency. Typically involves a transfer or "pass-through" to District of portion of tax increment allocated to RDA. Intended to alleviate "financial burdens of redevelopment" associated with additional school facilities needed to accommodate RDA-induced growth.

### **Redevelopment Agency**

Community Redevelopment Agency ("CRA" or "RDA") is separate municipal corporation created by a City (within City limits) or County (in unincorporated area), or jointly by a City and County or Joint Powers Authority. The legislative body for an RDA is typically the City Council (for City RDA) or County Board of Supervisors (for County RDA). A Community Development Commission ("CDC") may also act as an RDA.

Among other things, primary purpose of redevelopment is to alleviate "blight"--often by providing infrastructure and other public improvements--as well as to encourage growth and expand supply of LMI housing. Except for affordable housing and some public improvements, RDA powers--including "tax increment financing"--typically limited to "redevelopment project areas."

### **Redevelopment Plan**

Most important of various RDA documents created for each redevelopment project or amendment thereto. Among other things, defines Project area boundaries and sets time limits for effectiveness of redevelopment plan, date to incur debt, date to repay debt, and (for pre-AB 1290 "Projects") dollar limitation on amount of tax increment that can be allocated to RDA from Project area. Redevelopment plan may be amended to annex added areas and increase financial limitations.

### **Redevelopment Project Area**

Geographic area within which RDA funds "redevelopment projects." Single RDA may have multiple redevelopment project areas, which may include non-contiguous subareas. Projects may be expanded to include "added areas" by amendment of redevelopment plan.

### **Santa Ana Decision**

*Santa Ana Unified School District v. Orange County Development Agency*, 90 Cal. App. 4th 404 (2001). Binding appellate court decision which confirms school and college district entitlement to 2 percent payments in project/amendment areas (i) adopted between January 1, 1985 and December 31, 1993, and (ii) for which the districts do not have a pass-through agreement per former HSC §33401. Decision states that "payment of [2 percent revenues] was mandatory, making [district] election automatic . . . or unnecessary."

## **SB 211 (Torlakson)**

Chapter 741 of the Statutes of 2001, effective January 1, 2002. Among other things, SB 211 allows RDAs to amend pre-AB 1290 redevelopment plans to *eliminate* the time limit on incurring new indebtedness, by City ordinance, without the consultation and public hearing requirements of normal redevelopment plan amendments. Because many pre-1994 Projects had time limits to incur new debts of January 1, 2004, almost all RDAs approved "SB 211 ordinances" in order to continue incurring indebtedness.

## **Tax Allocation Bonds and Notes**

Tax allocation bonds ("TABs") are the most common type of bond financing used by RDAs. TABs are in effect revenue bonds for which the only security is a pledge of future tax increment by the RDA. TABs may be issued in any maturity greater than one year. Maximum maturities of 25 or 30 years or more are not uncommon.

Tax allocation notes ("TANs") and bond anticipation notes ("BANs") are the most common type of interim financing to be repaid from a planned TAB issuance. TANs and BANs generally mature in one year or less.

TABs and TANs may be issued in separate series or tranches repaid from 20 percent of future TI set aside for LMI housing (e.g., housing bonds) and 80 percent of future TI for all other RDA purposes.

## **Tax Increment Financing**

Annual increase in property tax revenues in redevelopment project areas above "base year" amount. Tax increment ("TI") results from increases in assessed valuation ("AV") within Project areas due to new development and reassessments under Proposition 13 (for inflation--maximum of 2 percent per year--or certain changes in ownership). While "affected taxing entities" continue to receive 100 percent of property tax revenues in base year, TI is diverted to RDA. RDA uses future TI revenues to repay indebtedness incurred to fund "redevelopment projects," which encourage or lead to new development, thereby creating the TI revenues themselves.

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