

December 12, 2013

New Tools for Economic Development

Stitching Together Strategies for Real Estate Development

in a Post-Redevelopment World

by:

- | | |
|------------------------------|--|
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- **Introduction**

- Toolbox #1 – Real Estate & Property (Larry Kosmont, CRE®)

- Toolbox #2 – Districts (John Lambeth, Esq.)

- Toolbox #3 – Taxes & Revenues (Don Hunt, Esq.)

BREAK – 10 MINUTES

- Toolbox #4 – P3, Land Use and Zoning (Seth Merewitz, Esq.)

- Q & A / Panel Discussion

2014: CA Cities/Economic Development – Status

1. Local budgets remain impaired due to pension costs, reduced revenues and lost tax-increment; yet property and sales tax coming back
2. Cities distracted by RDA dissolution activity. Property Management Plans (PMPs) to dispose of former RDA properties is next and final step:
 - Only 15 approved PMPs by DOF (427 Redevelopment Agencies)
 - 180+ PMPs on DOF's desk – waiting for approval
 - 80+ Cities in litigation with DOF – Cities fighting to hold on to assets
 - DOF must approve all PMPs by January 1, 2015 (per AB 1484)
3. Moody's downgrading CA redevelopment bonds to junk (avg. rate: Ba1)
4. Enterprise zones eliminated - replaced by AB 93
5. Multiple TIF bills introduced in 2013; all were vetoed by Gov. Brown
6. Jobs & Economic Development Initiative (JEDI): Hope for cities to recapture tax increment revenue for jobs & training – will City Mgrs. Fund research?
7. Approved Econ. Dev. Legislation for 2014 provides assistance for cities

New Economic Development Legislation

Approved Legislation - effective 1/1/14:

- **AB 440 (Gatto): “Hazardous Materials: Local Cleanup”**
 - RDAs used Polanco to clean-up / develop sites that suffered from environmental contamination; used to revitalize “blighted” areas
 - Renews Polanco Act – transfers power to cities, counties and SAs
 - Encourages infill development and cleanup of brownfields
- **SB 470 (Wright): “Community Development: Economic Opportunity”**
 - Allows City or County to sell real/RDA property for ED purposes with “findings” – can sell at “fair reuse value”
 - Applies to PMP properties sold as part of RDA Dissolution
 - No Eminent Domain for Economic Development
- **SB 684 (Hill): “Advertising Displays: Redevelopment Project Areas”**
 - Allows advertising display signs within former RDA boundaries to remain and be considered an on-premises display until Jan 1, 2023

New Economic Development Legislation (cont.)

Approved Legislation - effective 1/1/14:

- **AB 562 (Williams): “Economic Development Subsidies”**
 - Requires City or County to provide report to public before approving any ED subsidy of \$100,000 +
 - Report to include: subsidy public purpose, projected tax revenue, number of jobs created
- **AB 483 (Ting): “Tourism & BID Districts”**
 - New definition of specific benefits & government services to help TIDs/BIDs comply with Prop 26; assessments not a tax
 - BIDs are voluntarily formed by businesses to impose an assessment on themselves to privately fund tourism promotion efforts
 - Urgency bill: effective in October 2013 (when Governor signed)
- **SB 743 (Steinberg): “CEQA Reform Bill”**
 - Reduced CEQA analysis for Urban Infill projects: includes commercial development and mixed-use projects proximate to transit and consistent with Sustainable Communities Strategy

Governor's E.D. Program – Recap

- **Sales Tax Exemption**

- Existing sales tax credit for businesses in Enterprise Zones expanded to *statewide* sales tax exemption on purchase of manufacturing or R&D equipment
- Business allowed to exclude the first \$200 million equipment purchases from state share of sales tax (4.19%) from 7/1/14 through 6/30/22

- **Investment Incentive (attraction/retention credit)**

- Businesses compete for tax credits based on # of jobs to be created or retained
- Approval of any incentive by a five member committee composed Treasurer's office, Department of Finance, GO-Biz, the CA Senate and CA Assembly
- Approved credits may be recaptured if a business fails to fulfill contract

- **Hiring Credit**

- For businesses in census tracts with top 25% in unemployment & poverty
- Credit available for those who show a net increase in jobs
- Equals 35 percent of wages between 1.5 - 3.5 times minimum wage for five years
- Five pilot areas picked by GO-Biz, credit calculated on wages \geq \$10/hour

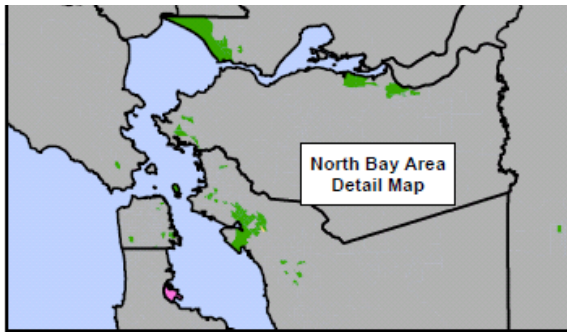
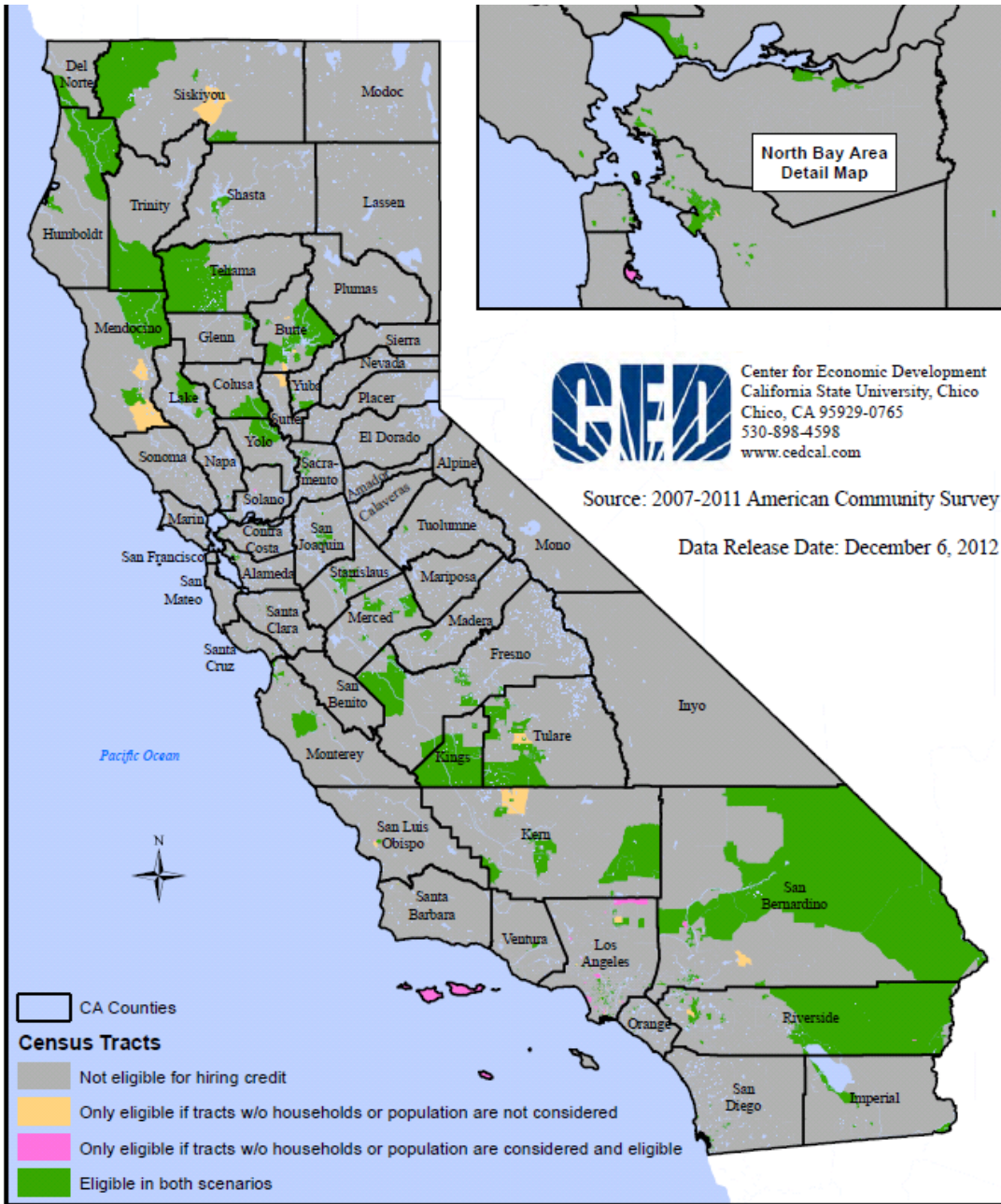
California's Budget: Good for Now; Needs Long-Term Fix

- State expects surplus 1st time in decade
 - \$2.4 billion by June 2014
 - \$5.6 B in 2015, \$9.6B in 2018 (when Prop 30 expires)
- 2012/13 Leg. Analyst est. \$1.9 billion deficit
 - S & P raised CA's credit rating to A- first boost since 2006
- Temporarily balanced from income & sales taxes (Prop 30 – expires in 2018)
- Cities still in trouble: Stockton, Mammoth Lakes, San Bernardino filed for BK in 2012-13
 - Desert Hot Springs and others looming

LAB RESULTS ARE IN...



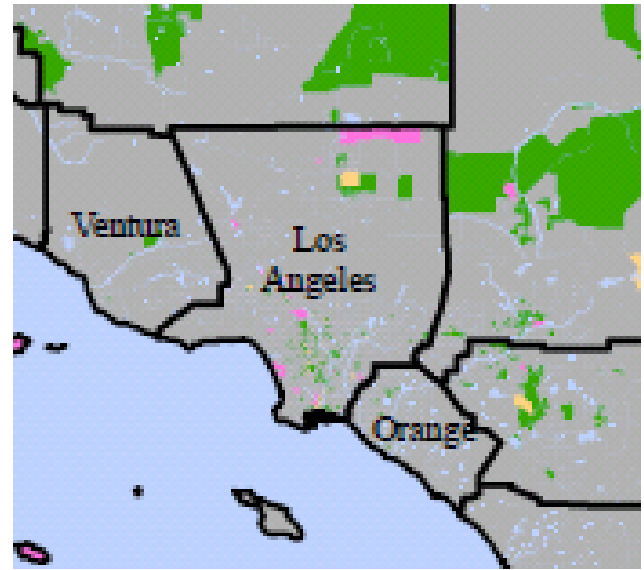
Census Tracts Where Businesses Would be Eligible for the Proposed Hiring Credit



Center for Economic Development
California State University, Chico
Chico, CA 95929-0765
530-898-4598
www.cedcal.com

Source: 2007-2011 American Community Survey

Data Release Date: December 6, 2012



Fiscal Diets Lead to Tax Binge

More....State Taxes (mostly temporary, expiring in in 2018-19)

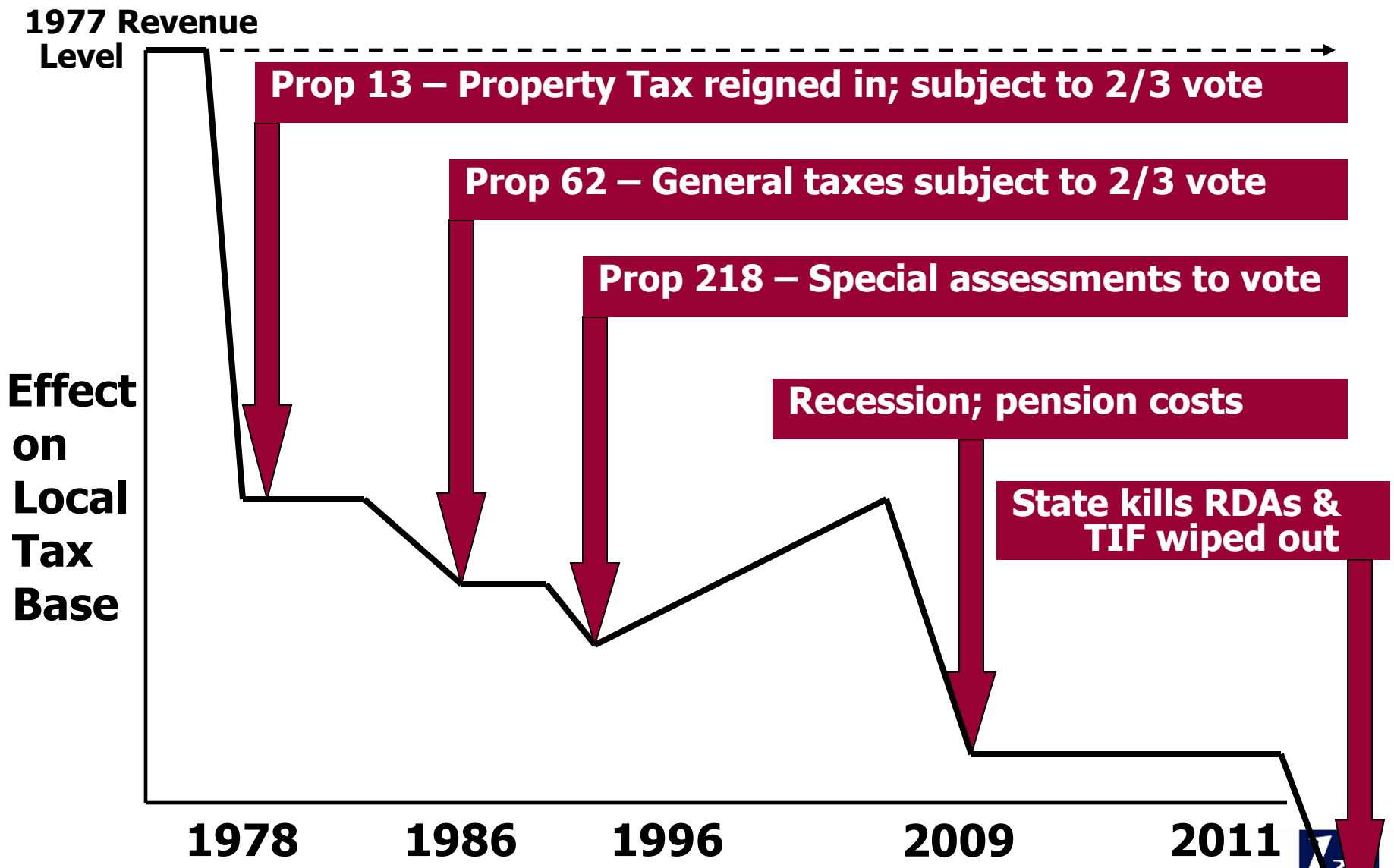
PROP #	SYNOPSIS	PASS / FAIL
30	Gov. Brown's Temporary Tax Increase for GF	PASS
39	Income Tax Increase for Multi-State Business	PASS

More....City & County Taxes (CA cities are already highest cost*)

Year	On Ballot	Passed	Failed	Pass Rate
2013	35	26	9	74%
2012	119	82	37	69%
2011	45	35	10	77%
2010	128	65	63	50%
2009	53	33	20	62%
5-yr Total	380	241	139	63%

* Kosmont-Rose Institute Cost of Doing Business Survey 2012
(Table includes local sales, business, utility user, parcel and hotel taxes)

Tax Diets, Pension Costs & RDA loss limit \$\$ choices



Note: Not to Scale

Unemployment is California's Blight



Cities in CA still have high unemployment rates:

<u>Los Angeles</u>	10.3%
<u>Fresno</u>	14.1%
<u>Riverside</u>	11.1%
<u>Imperial County</u>	26.1%



9.0%
CALIFORNIA
UNEMPLOYMENT
RATE

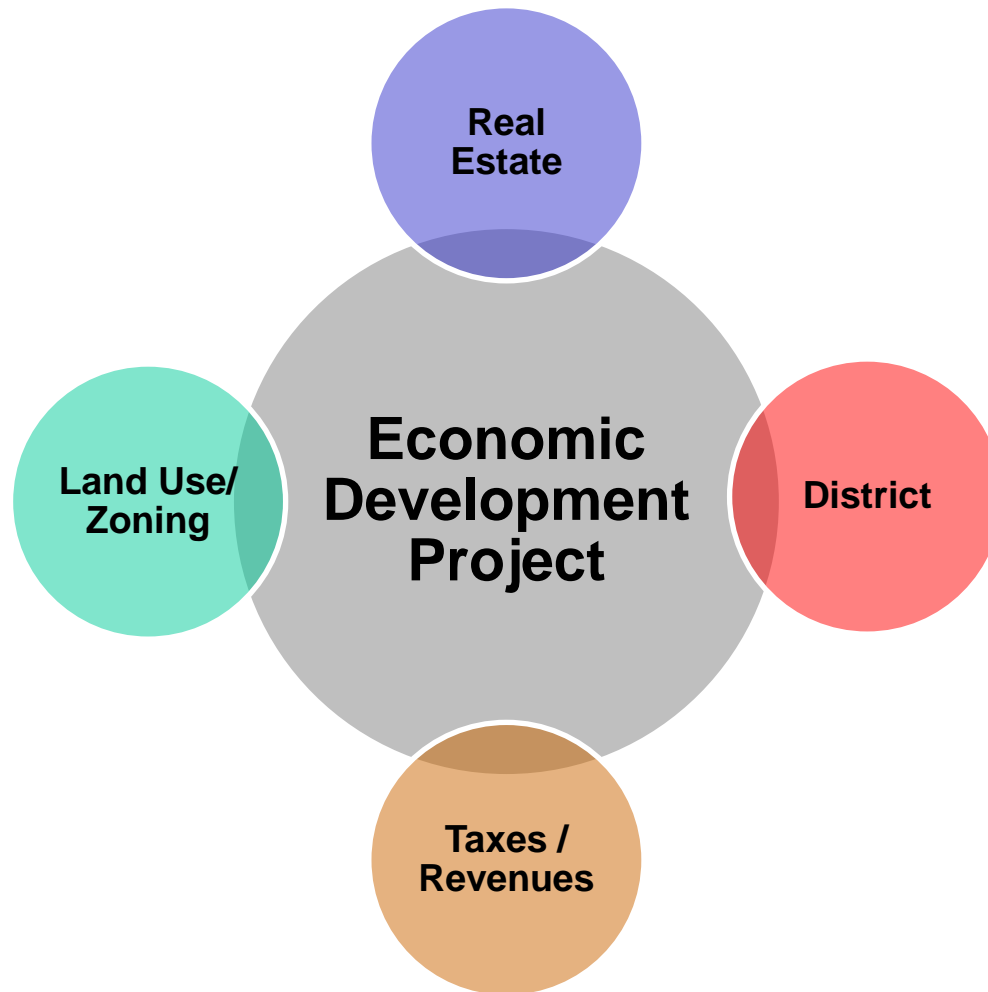
7.3%
U.S.
UNEMPLOYMENT
RATE

Taxes vs. Economic Development

- **Higher CA taxes make it difficult for businesses to compete**
 - California consistently rated least biz friendly by the CEO Roundtable
 - Without incentives, growth companies may look elsewhere
- **CA Over 175 cities & 36 counties at >9% unemployment; we need jobs**
- **Economic Development is the primary solution for CA Cities:**
 - ✓ Private investment = growth in real estate values and economic activity (local business spending, new wages, retail sales)
 - ✓ Cities help themselves & State by helping companies to invest
 - ✓ 320,000 new jobs yield \$1 billion dollars per year in State GF revenues

Economic development is tougher but possible without tax increment

Economic Development Tools often work best together



- Introduction
- **Toolbox #1 – Real Estate & Property (Larry Kosmont, CRE®)**
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Real Estate as an E.D. Resource

Typical Public Agency-Owned Real Estate Types:

- Former RDA real estate – PMPs
- Civic/Government Use real estate (civic centers, fire stations, recreation)
- Surplus Property (City, School District, Utility, other)
- Rights of Way / Streets / Alleys
- Parking Lots / Structures

Real Estate as an E.D. Resource

Government-owned real estate can be a valuable Econ. Dev. resource:

1. Land lends value to ED projects:

- High commuting costs and transit lines have increased the “location value” of in-fill sites (e.g. parking lots, city / utility yards)
- “Owned” land values can be propped up by zoning/use actions that add value (density, reduced parking, hours of operation, height, other)
- Utility hook-up and location valued by the private sector & end users
- Potential to increase value & property taxes (stable revenue source)
- Equity and/or lease revenue can be borrowed against

2. Many public agency-owned properties are under-utilized but need work to facilitate marketability or reuse

- Existing zoning may not support highest & best use
- Often needs work (entitlements, assemblage, env. remediation)

CASE A - Redondo Beach Waterfront Revitalization

The Challenge

- Redondo Beach's aging waterfront increasingly struggles to compete in SoCal, especially with neighboring South Bay cities
- City explored ways to revitalize pier, boardwalk & adjacent properties
- Cost of deferred maintenance best paid for by new private investment



CASE A - Redondo Beach Waterfront Revitalization



The NON-RDA Solution

- **TOOLS USED:** Kosmont structured Lease-leaseback financing for 15 acres of land acquisition to be paid back from tenant lease cash flow
- RFQ issued for 15+ Acres of Waterfront development
- CenterCal Development (w/ CalSTRS as JV) selected – CEQA review & DDA next

Case B: City of Redondo Beach – Marine Ave. Hotels

The Challenge

- City desired to utilize area near Metro station
- Odd lot size & shape; multiple ownership; and vacant condition has deterred private development
- Developer proposes 147-room Hilton Garden Inn, 172-room Marriott Residence Inn and 180 Room Extended Stay Hotel located adjacent to the Metro station

The Solution:

- ✓ *Ground Lease / Lease-Leaseback*
- ✓ *Site-Specific Tax Revenue Pledge (Prop & TOT)*
- Mezzanine Reserve Fund



The Outcome

- Site Specific Tax Revenue is key; without project does get financed
- Will add over \$3.5 million/year in TOT & create ~150 jobs
- Brings three quality hotel operations to the City's "front door"
- TOD project across street from Metro Green Line station

Case B: City of Redondo Beach – Marine Ave. Hotels



Case C: South Gate – “azalea” Retail Center

Challenge: 32-acre site, former pipe manufacturing plant, fallow & blighted for years– substantial clean-up before and during construction

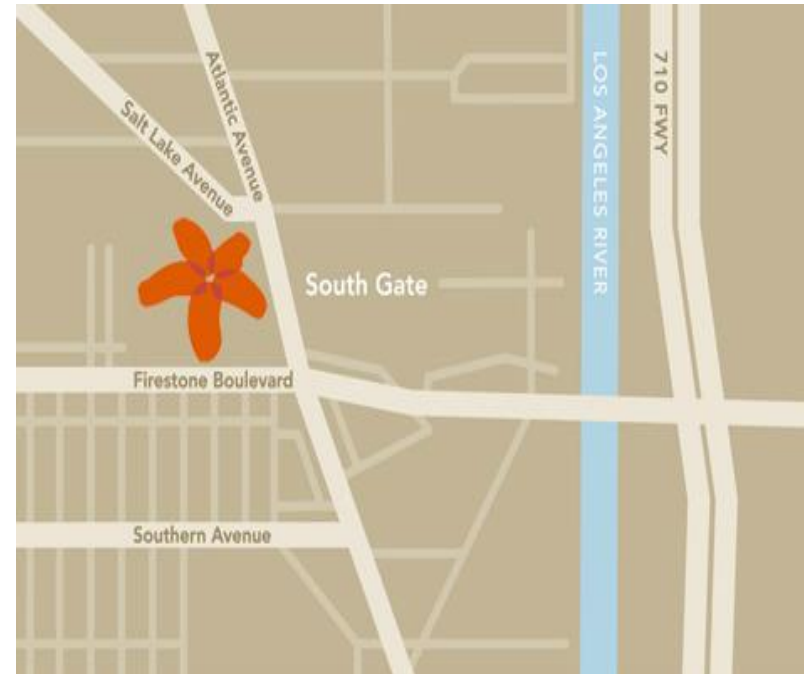
The NON-RDA Solution:

- Utility Bonds for off-sites
- Site Specific Tax Revenue (SSTR)
- New Market Tax Credits (NMTC)
- EDA Grants

The Outcome:

- 372K sf regional retail center (Walmart, Ross, Marshalls)
- Public Plaza & Events Center, City Services Annex
- **UNDER CONSTRUCTION:**
Opens Mid 2014

\$2M sales tax a year & 600 new jobs



Case C: South Gate – “azalea” Retail Center



AB1484: Property Management Plans (“PMPs”)

Primary opportunity is to use PUBLIC PROPERTY and ZONING tools together: “PMP” is best current opportunity of this type.

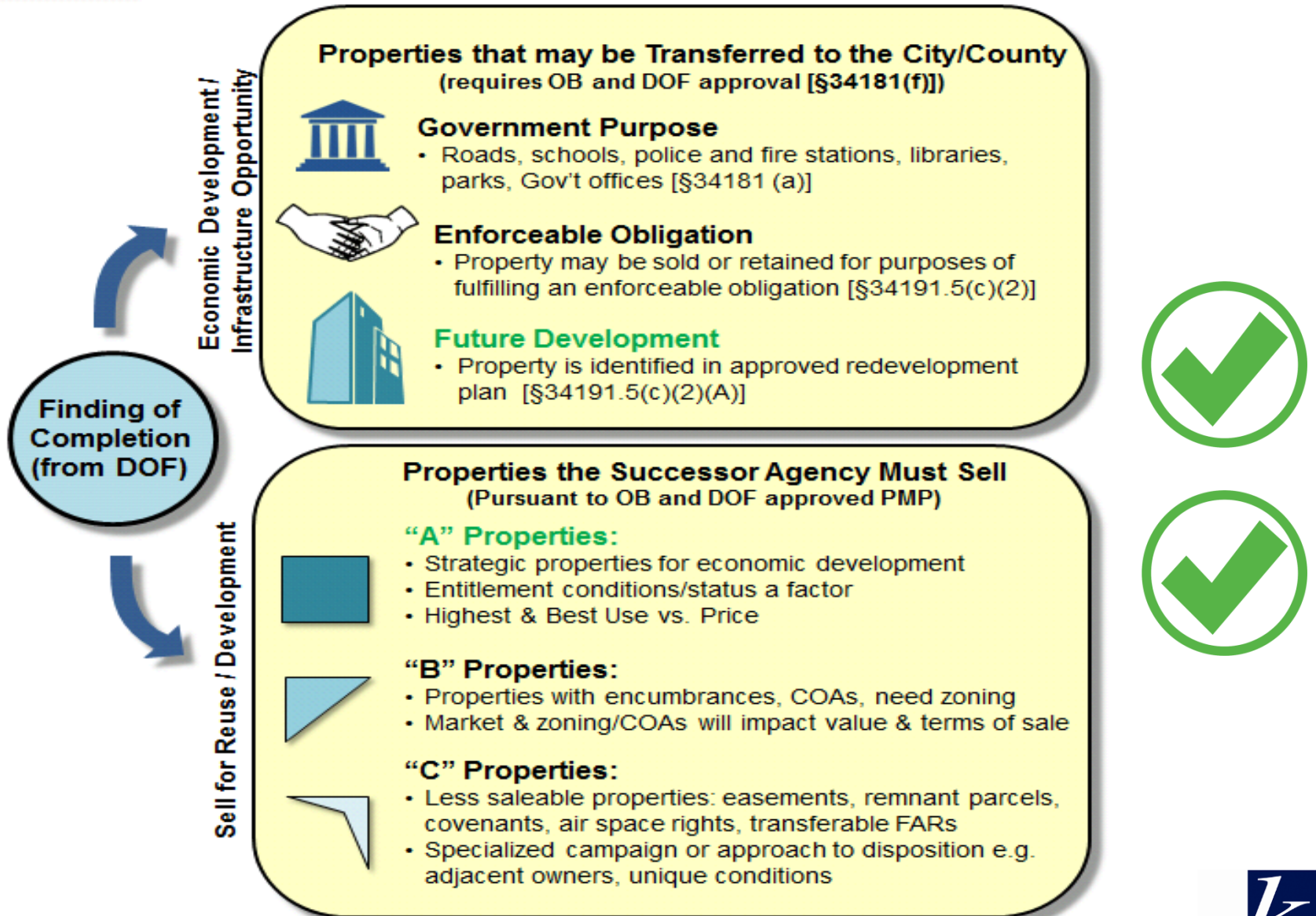
Here’s why:

Per AB1484, Successor Agencies must file Property Management Plans (PMPs) to dispose of former RDA property: **~3000 properties expected!**

AB1484 affords major opportunities for cities:

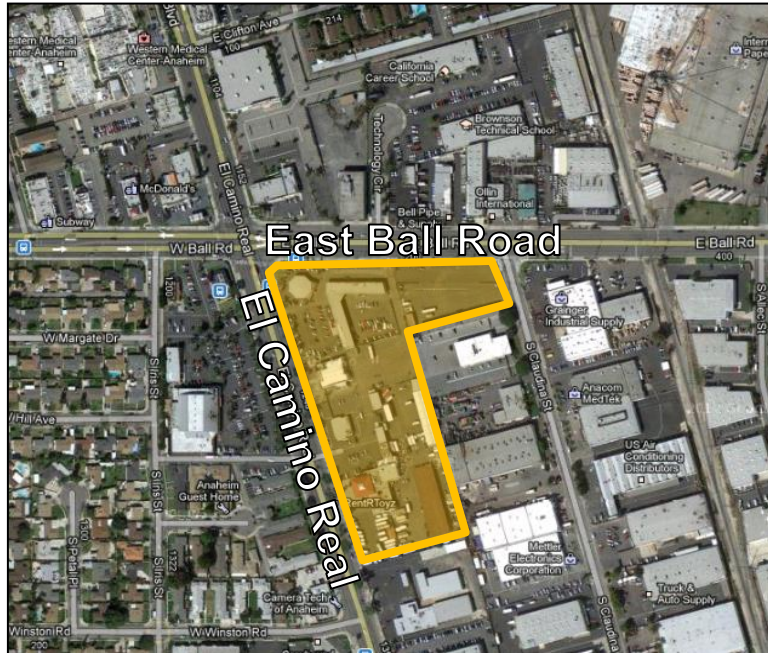
- Exception for future development (if included in prior RDA Plan) - City can rezone PRIOR to sale to realize highest and best use
- Properties that must be sold - sale can be structured and directed to an end user/use in city’s best interest
 - Some properties are ripe for tax and job creation
 - These properties and others can be a foundation for a City’s next economic development projects
- Some properties need remediation which may be achievable because of SB 470 (Wright); provides “Polanco” powers to cities

PMP's: Short-Term Opportunity



PMP's: Short-Term Opportunity

Case Study (Illustrative): 1234 South Anaheim Blvd, Anaheim, CA



Reuse Play

- City likely to support retail or hotel use

Entitlement / Development Observations

- Mitigated Neg. Dec. possible, but may require full CEQA review
- Good location / frontage on Ball Road

Complexity

- Low

Project Timeline

- Estimated one year (depending on CEQA process)

Public Financing (?)

- Possible SSTR for Hotel or Retail deal
- Potential CFD for Infrastructure
- Remediation Grants/Loans

Property Description	E. Ball Rd and S. Anaheim Blvd
City	Anaheim
Address	1234 S. Anaheim Blvd
Size	8.62 acres
Zoning	Industrial
General Plan Designation	Commercial
Current Use	Auto-dealership & misc bldgs

PMP Scorecard

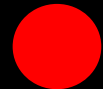
DEPARTMENT OF FINANCE PROPERTY MANAGEMENT PLAN SCORECARD

STATUS: 427 Successor Agencies (as of 12/10/2013)

PMP*
STOP
LIGHT

WHO'S ON FIRST?

WHAT'S UP NEXT!



141 Waiting for FOC (incl. ~80 lawsuits filed)

Stopped at a red light – progress stymied



286 FOCs released between Feb. – Dec. 2013

Stuck in the middle – received FOC & working and/or submitted PMP



15 Approved PMPs

Moving forward – executing PMP (property sales/other)

*FOC = Finding of Completion, PMP = Property Management Plan

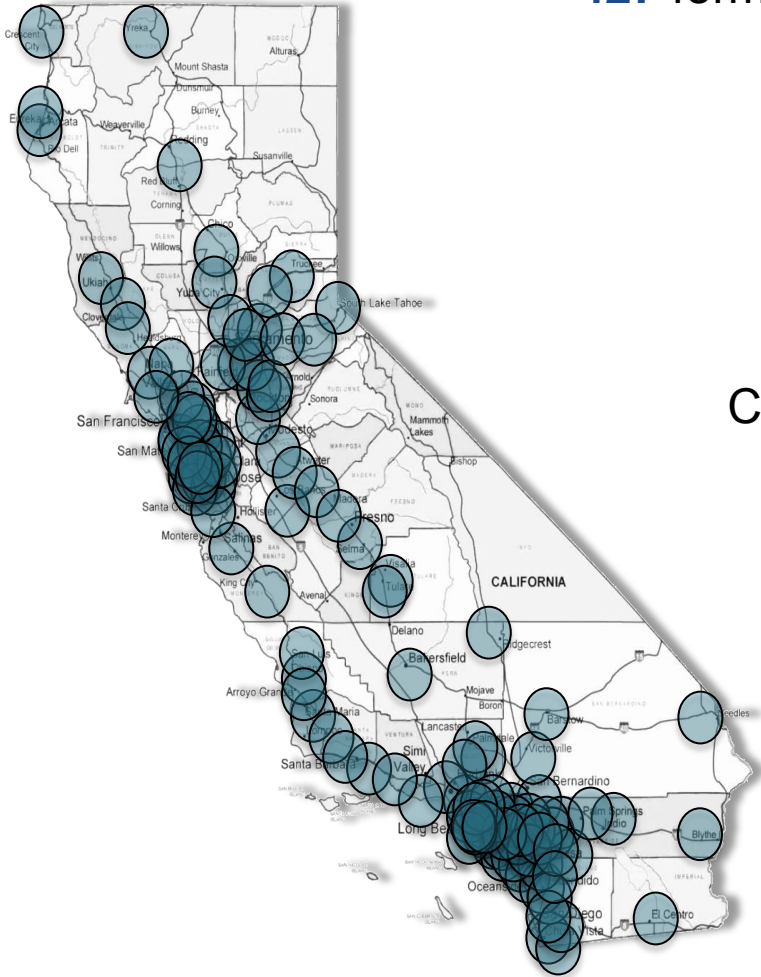
PMP's: Key Takeaways

427 former Agencies must complete PMPs by mid-2014

~**Over 3,000** former RDA properties must be disposed of starting in Q1 2014

Thousands of sizable properties located in California's **primary urban & suburban** markets

Economic development can materialize by strategically managing the tasks and assets in the Property Management Plan



IN 2014, ED is possible...just not easy

- **No support from Governor on Tax Increment Financing for Econ Development (jobs & tax revenue) or Infrastructure Financing (IFDs) if**
 - Uses any school increment
 - Opt-in provisions for other tax agencies omitted
- **State and Cities in California expensive and on a “new tax” binge**
 - CEOs already view California as costly and cumbersome
 - 47 States have TIF as a tool for E.D.
 - State Budget in better shape but largely due to expiring tax increases
- **Economic Development incentives needed to lure private sector investment**
 - Unemployment is California’s blight; among highest in nation
 - Cities do have “hand tools” left to use after loss of RDA “power tool”
 - Real Estate & Property
 - Districts (John Lambeth)
 - Leveraging taxes & revenues (Don Hunt)
 - Zoning & Land Use (Seth Merewitz)
 - P3 & Public Private Transactions (All)

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Overview

BIDs & PBIDs



TIDs



Mello-Roos

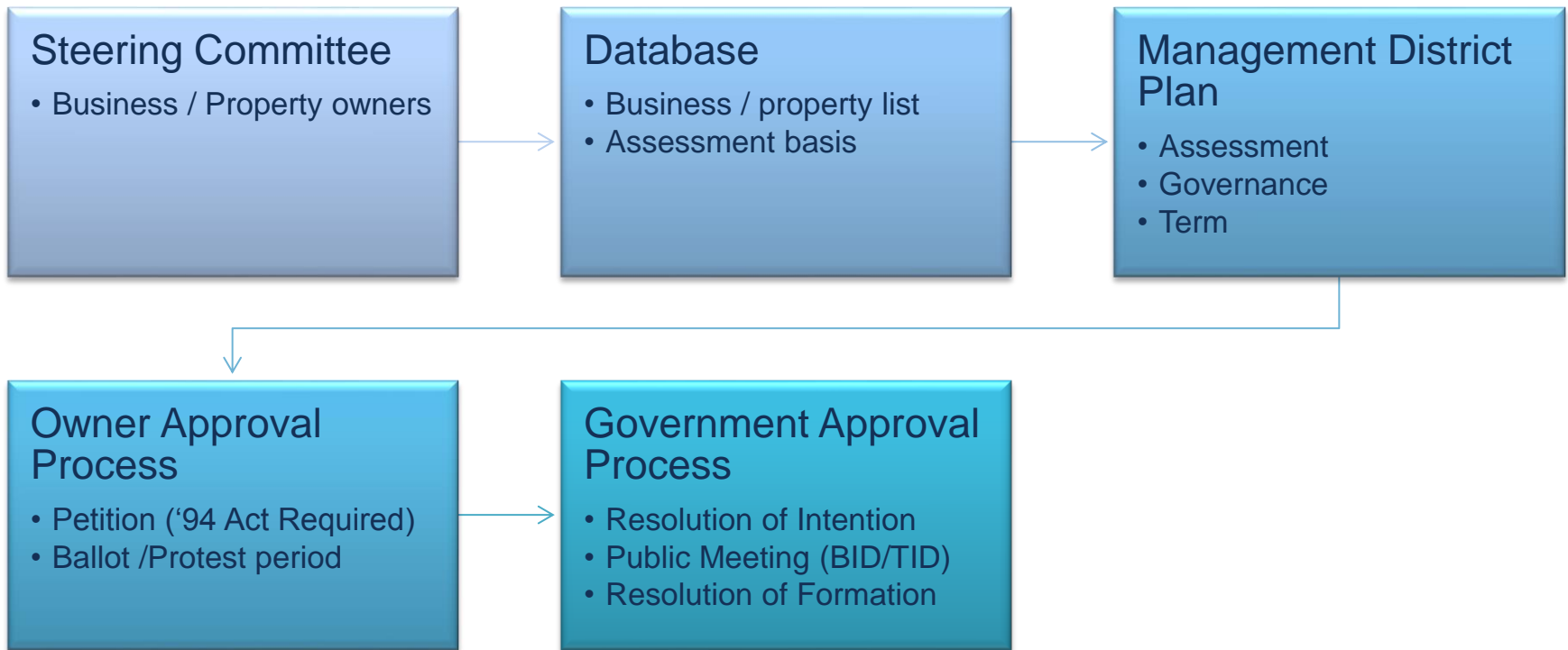


Future Districts

BID/PBID Characteristics

- Benefit assessment districts
- Assessment on parcels/businesses
- Managed by payors- usually a private non-profit corporation
- Term with sunset date
- Defined activities only provide special or specific benefit to payors
- Oversight by local government
- Formed under two state laws- 1989 Act and 1994 Act

BID/PBID & TID Formation Process



Formation time: Approximately 10-12 months

Downtown Sacramento PBID

- Formed in 1995
- Renewed in 2000 for a 5 year term
- Renewed in 2005 for a 10 year term
- Annual budget \$1.9M
- Assessment based on zone and calculation of lot square footage and building square footage combined
- Rates range from \$ 0.1379 - \$ 0.0429 per SF of lot and \$ 0.0690 - \$ 0.0214 per SF of building
- Funds support maintenance, safety and revitalization programs



Fulton Avenue PBID

- Formed in 1998
- Renewed in 2003, 2008 & 2013
- Annual budget: \$380,000
- Assessment: \$.02 per square foot plus \$8.50 per linear foot of street frontage



Fulton Avenue Accomplishments

Before:



After:



- Signage improvements
- Median landscaping
- Decorative street lighting
- Security and clean up services
- Leveraged budget into \$5.1M to successfully underground power lines and move water lines to the center of the street

Characteristics of TIDs

Assessment Mechanism

- % of room rental revenue or
- Fixed \$ per paid occupied room per night

Stability

- Cannot be diverted
- Varying terms – 1-40 years

Governance

- New or existing nonprofit
- DMO or hotel organization
- Local Government oversight

Yosemite Mariposa TID



- Includes the unincorporated areas of Mariposa County
- Formed in 2008, renewed 2013
- Assessment is 1% of gross revenue
- Raises approximately \$1,200,000 per year
- Results: In 2011, revenue grew by 9.6%
- \$10 million in new lodging business revenue

Los Angeles created a TMD in 2011.

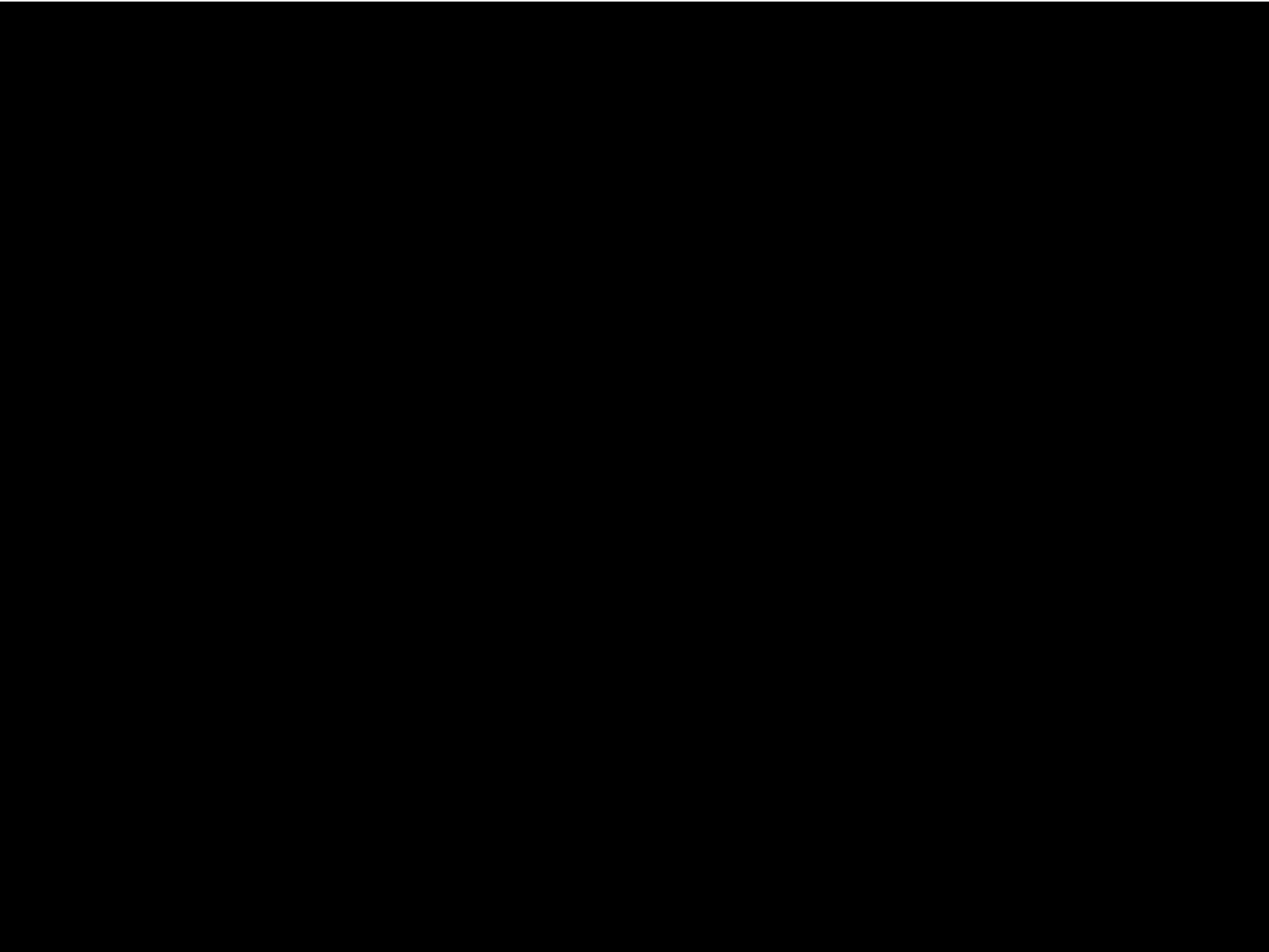


It raises over \$13 million annually

The total paid by guests, with TOT, is 15.5%

Management





Community Facilities Districts

- AKA Mello-Roos districts
- Special tax on real property
- Imposed for lifetime of bonds
- Limited purpose
- Formed by City with voter approval
- Charter cities may specialize

CFD Services

- **Improvements**
 - Public improvements w/ 5+ year useful life
 - Libraries, recreational facilities, museums, schools
 - Parks, daycare, utilities
- **Services**
 - Police, fire protection
 - Improvement maintenance
 - Park, light, and open space maintenance
 - Flood protection
 - Hazardous material removal

San Diego Convention Center CFD

- Charter city authority to modify CFD law
- Weighted property owner vote
- Vote based on hotel revenue
- Funds dedicated to convention center expansion

District Challenges

Property Assessment-
Prop 218 Special vs. General Benefit

Business Assessment-
Prop 26

AB 483 (Ting)

- Introduced 8/13/13
- Approved by legislature – 2/3 vote
- Signed by Governor 10/4/13
- Urgency legislation – effective immediately
- Adds two definitions:
 - Specific Benefit
 - Specific Government Service

More District Innovations



Restaurants



Golf



Attractions



Wineries



Auto



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Special Purpose Financing Authorities

Parking Authorities - (Parking Law of 1949)

- **Can be created by a City, County or City and County**
- **Exist in each city & county; activated by resolution declaring need for the Authority to function and for city to declare by resolution that there is need for the city to exercise powers of Authority**
- **Incidental uses of property may include commercial uses (not to exceed 25% of surface area)**
- **Authority shall lease surplus space to private operators**
- **Authority has borrowing power**
- **No voter approval required where project is to be leased to the City and paid from rentals paid by City**

Special Purpose Financing Authorities

Infrastructure Financing Districts (IFDs)

- **Established in 1990 to finance public works in suburban areas**
- **Uses Tax Increment Financing**
- **Requires public vote for district formation and bond issuance**
- **Can't be used in prior RDA areas**
- **Has been used infrequently (Legoland and Rincon Hill in San Francisco)**
- **Requires approval of taxing agencies to divert property taxes**

Special Purpose Financing Authorities

Proposed Modifications for Infrastructure Financing Districts prepared by Bizfed in 2012:

- **Expand from public works to include public-private transactions**
- **Apply to new construction and rehab of private facilities**
- **Allow high density development**
- **Include adaptive reuse**
- **Combine with existing P3 laws**
- **Provide for remediation of hazardous materials**
- **Include seismic and life safety improvements**
- **Include benefits in exchange for job creation**
- **Eliminate voter approval requirements**
- **Allow districts to include former redevelopment project areas**
- **Allow districts to include former military bases**
- **Eliminate affordable house requirements**

Lease Revenue Bonds

- **Government income stream (utility, parking) set up in a long term lease obligation and then borrowed against**
- **Creation of Utility Authority, lease of enterprise assets, apply lease revenues to infrastructure projects**
- **Example – leverage of utility lease revenues in City of South Gate for publicly owned infrastructure improvements to accommodate regional retail center**
- **Other cities have leveraged lease revenues for public infrastructure improvements**

Site-Specific Tax Revenue Pledge (SSTR)

- Tax revenues (e.g.: sales, TOT) generated by a specific project used to reduce gap by lowering project debt or equity
- City agrees to contribute an amount calculated each year based on actual incremental of public revenues produced that year by project to reimburse designated infrastructure costs
- Risk remains on Developer to generate verifiable annual public revenues from project
- Contribution may be made directly as a reimbursement or as a contribution to offset financing costs of infrastructure initially financed through a special purpose financing entity such as a community facilities district.

Lease Leaseback

- **Lease/sublease of existing asset between two public agencies enables lease payments to be leveraged (borrowed).**
- **With a Lease/sublease existing building/facility, lease payments can start immediately without the need to fund capitalized interest.**

Sale of Delinquent Ad Valorem Property Tax Receivables

- **In non Teeter Plan counties, cities and school districts may sell delinquent ad valorem, assessment, CFD, and LLMD on the property tax roll**
 - **go back 5 years with up-front cash payout in excess of 100% of delinquencies**

Private Placements

- **Tough/lengthy recession**
- **Loss of redevelopment**
- **Limited staff availability**
- **Credit downgrades/damage**
- **Municipal bankruptcies in California/U.S.**

Potential Benefits

- **Lender with existing relationship who understands the strengths and weaknesses of borrower**
- **Process = quicker & no public offering**
- **Simple documentation**
- **May not require rating**
- **Less expensive to implement**

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Public Private Partnerships: From Economic Development to Local-Serving Infrastructure Procurement

Seth Merewitz

Partner, Best Best & Krieger LLP

Urban Land Institute- Orange County

December 12, 2013



BEST BEST & KRIEGER
ATTORNEYS AT LAW

Outline of Presentation

- **Public Private Partnership Opportunities:**
 - **Public Assistance into Private Projects**
 - Economic Development / “Post-Redevelopment”
 - Land Use / Zoning
 - Real Estate Assets/ Long Range Property Mgt. Plan (DOF)
 - **Private Assistance into Public Projects**
 - Local Serving Infrastructure Opportunity
- **Keys to a Successful Public-Private Partnership**

Economic Development Realities

- **Fewer Tools**

- RDA's and Enterprise Zones are (almost) Gone.
- Legislation (or Statewide Initiative) Needed for any Useful Tax Increment Financing

- **State is “Not Focused” on Local Government**

- Almost all Economic Development Bills Died or Vetoed
- State attempting to “occupy field”

Local Infrastructure Realities

- **Deficient and Aging Infrastructure**
- **Lack of O&M Funding**
- **Lack of Capital Improvement Funding**
- **Unfunded Mandates**
- **Regulatory Changes**
- **Revenue Raising Obstacles**
- **Public Has Few Available Resources!**

Public Private Partnership Opportunities



Initial Thought on Econ Dev....

- **Clearly Stated Vision for Community**
- **Political and Staff Consistency**
- **Adopted Policies and Goals**
- **Positive Community Engagement**
- **Identification of Local Incentives**
- **Awareness of Regional and State Incentives**
- **City Staff as “Facilitator”**

1. P3 and Econ. Dev. Overview:

- **Revisiting “Hand Tools”**
- **Emerging Tools**
- **Statutory and Constitutional Authority**
- **State Limitations on City Authority**
- **Local Economic Development Programs**

Post RDA- Revisiting Existing Tools:

- **Special Districts**
 - CFD's, BID's, Parking Authorities, etc.
- **Municipal Tools**
 - Ground Lease, Lease-Lease Back, etc.
- **Public Finance Tools**
 - Lease Revenue, Industrial Development Bonds, Certificates of Participation, etc.
- **Misc. “Emerging” Tools**
 - IFD, NMTC, EB 5, Cal IEDB

New Statutory “Authority”

- **SB 470 (2013)**
- **Added New Section Gov’t Code 52200-52203:**
 - Intent Language to promote Economic Dev.
 - Creates definition of “Economic Opportunity”
 - Requires Public Hearing and Report Prior to Sale or Lease of Land under a Long Range Prop. Mgt. Plan
 - Authorizes a Loan Program (like Gov’t Code 51298)
 - Authorizes Land Write Down (“Fair Reuse Value”)
 - No Eminent Domain for Economic Dev.

New Statutory “Authority”

- **AB 440 (2013)**
- **Added New Section Gov’t Code 25403 et seq:**
 - Replacement for Polanco Act
 - Authorize Local Agency to investigate and clean up hazardous materials in “blighted areas”
 - Requires approval of “Clean-Up Plan” by the Regional Water Quality Control Board or Department of Toxic Substance Control
 - Provide Immunity to Local Agency

New Statutory “Requirement”

- **AB 562 (2013)**
- **Added New Section Gov’t Code 53083:**
 - Cities and Counties Provide Report and Hearing
 - For “Econ. Development Subsidies” of \$100,000
 - Report Contents to Include:
 - Description of the subsidy public purpose of the subsidy
 - Estimated number of jobs created
 - Projected tax revenue
 - Etc.

Constitutional Authority for Economic Dev.

- **Authority for City Economic Development:**
 - “Police Power”
- **California Constitution Article XI, Section 7:**
 - “A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.”

Constitutional Authority

- **A city's exercise of its police power must be:**
 - (1) reasonably related to a legitimate governmental purpose; and
 - (2) have a reasonable tendency to promote the public health, morals, safety, or general welfare of the community.

Constitutional Authority

- “Police Power” is not a Static Concept:
- Interpreted in the Modern Context:
 - “What was at one time regarded as an improper exercise of the police power may now... **be recognized as a legitimate exercise of that power. . . .**”
 - “is not a circumscribed prerogative, but is elastic and... **capable of expansion...**”
 - “[P]ublic welfare’ ... has been held to *embrace regulations ‘to promote the economic welfare...’*”
 - See, Miller v. Board of Public Works (1925)
195 Cal 477, 484

Limitations and Requirements

- **Limitations:**

- Prohibition on Relocating Big Box and Auto Dealers
- Prohibition on Sales Tax Sharing Agreements for Relocation
- Prevailing Wage
- Multi-Year Debt Limit
- Prohibition on Gift of Public Funds

- **Requirements:**

- CEQA, Prop. 218, Prop. 26

Best Practices - Econ. Dev. P3's:

- **Site Specific Revenue Sharing**
 - City of Los Angeles Community Taxing District

- **Joint Use Projects**
 - Los Angeles Unified School District

- **Local Economic Development Program**
 - City of Hawthorne

2. P3 and Land Use / Zoning

- **Flexibility in Zoning**
 - Form-Based Codes and Planned Unit Development
- **Pre-Zone/ Pre-Entitle Land**
 - Specific Plans
 - Transfer of Development Rights
- **Joint Planning Efforts**
 - “Area of Benefit” Districts
 - Integrated Finance Districts (the other IFD!)

Land Use / Zoning

- **Transparent Review and Approval Process:**
 - Clear “beginning, middle and end of process”
 - Understood and Communicated by Staff
 - Expectation of Time to Process Entitlements
 - Efficient Process:
 - Dedicated Project Contact
 - “One-Stop”
- **Expedited Project Processing**
 - CEQA and Local Permitting

Land Use / Zoning

- **Exactions/ Development Impact Fees**
 - Citywide Waiver
 - Delayed Time for Collection
- **Potential Incentives:**
 - Public Amenities
 - Utilities
- **Vested Rights**
 - Development Agreements and Vesting Maps
- **Density Bonus Housing Law**

Best Practices Land Use/ Zoning P3's

- **Public Benefit Incentive Zoning**
- **Examples:**
 - Santa Ana Transit Zone
 - Culver City Mixed Use Ordinance
 - Burbank Media Overlay District Zone
 - Santa Monica Land Use and Circulation Element

3. P3 and Real Property Assets

- **Publically-Owned Assets**

- Prioritize Development Needs and Opportunities
 - Think strategically
 - Focus on Goals- Long Term and Short Term
- "Act Like a Facilitator, Not a Regulator!"
 - Assist the Process (Non-Adversarial, Work to Solutions)

- **Long Range Property Management Plans**

- Catalyst Opportunity

From Econ. Dev. to Infrastructure:

- **Public Assistance for Private Projects:**
 - Economic Development / Post-Redevelopment
 - Land Use / Zoning
 - Real Property / Long Range Property Mgt. Plans

- **Private Assistance for Public Projects:**
 - Local Serving Infrastructure (Gov't Code 5956)
 - Traditional P3... Infrastructure

4. What is an Infrastructure P3?

“A contractual agreement between a public agency and a private sector entity where the skills and assets of each sector are shared in delivering a service or facility for the use of the general public. In addition to the sharing of resources, each party shares in the risks and rewards potential in the delivery of the service and/or facility.”

-- National Council on Public-Private Partnerships

P3 for Infrastructure Procurement

- **Transportation**

- Roads, Bridges and Tunnels, Rail (urban and regional transportation)

- **Defense**

- Military housing, Utilities, and Reuse of former Military Bases

- **Health, Education and Rehabilitation**

- Hospitals, Schools and Prisons

- **Water**

- Collection, Desalinization and Distribution
- Wastewater Treatment

- **Social Infrastructure**

- Civic Centers
- Court Houses

Traditional Infrastructure Financing

- **Cities/Counties/Special Districts/Authorities**
 - Enterprise Revenue
 - Property Tax
- **Special Tax/ Assessment**
 - Community Facilities Districts
 - Assessment Districts
- **Redevelopment**
 - Tax Increment (**not in California!**)

P3 Infrastructure Delivery Structures

- **Lease Agreements**
- **Service Agreements**
- **Concession Agreements**
- **Operation and Maintenance Agreements**
- **Design- Build- Finance- O&M (DBFOM) Agmts**
- **Performance Based Contracts**

Authority for P3 in California

- **California Constitution**
 - Art. XI, Sec. 7 (“Police Power”)
- **Express Statutory Authority**
 - Cal. Government Code Section 5956 et seq.
 - Local Serving Projects (Not Statewide)
 - Fee Producing Infrastructure
 - Private Involvement / Investment
 - Public Contract Code Exemption

P3 Legal Issues in California

- **Legal Authority**
- **CEQA**
- **Procurement Issues**
 - Selection Criteria; Degree of Competition
 - Public Contracts Code
- **Prevailing Wage**
- **Property Tax Issues (if transfer of ownership)**

Benefits of P3 Structure

- **Shortened Procurement Cycle**
- **Deployment of Private Capital Resources**
- **Potential Reduction of “Life-Cycle” Costs**
- **Capital Replacement Reserves**
- **Profit Motive Allows Risk Transfer**
 - Cost
 - Schedule
 - Performance / O&M

Challenges of P3 Structure

- **Perceived Lack of Transparency**
- **Accountability and Oversight**
- **Public Employee Transition**
- **Education on DBFOM Delivery Method**
- **Institutional and Industry Bias Against Change**
- **Perceived Higher Cost of Capital**
 - Value for Money
 - “Life Cycle” Analysis

Private Financing Considerations

- Assurance of Payment Stream
- Divisions of Responsibility
- Verification of Investor / Lender Commitment
- Potential Tax Implications
- Any Public Entity / Regulatory Requirements
- Certainty (all crave as much as possible...)
- Allocation of Risks

Risk Allocation Chart

(Example- Waste Water Treatment Facility)

		Design-Bid- Build (DBB)	Design-Build (DB)	Design-Build- Operate (DBO)	Design-Build- Operate- Finance (DBOF)
Design/ Build	Initial Capital Cost	Public	Private	Private	Private
	Schedule/Completion	Public	Private	Private	Private
	Warranties	Public	Private	Private	Private
Asset Mgt	Performance	Public	Public	Private	Private
	Capital Replacements	Public	Public	Private	Private
	Power/Energy Performance	Public	Public	Private	Private
	Operation & Maintenance	Public	Public	Private	Private
Finance	Equity Risk	Public	Public	Public	Private
	Interest Rate Risk	Public	Public	Public	Private
	Future Cap Ex Funding	Public	Public	Public	Private

Best Practices Infrastructure P3

- **Santa Paula Water Recycling Facility**

<http://www.santapaulawater.com/>

Keys to Success for All Public Private Partnerships:

- **Understanding the 4P's First Before the P3**
- **Understand the Needs of the Parties**
- **Understand the Negotiation “Life-Cycle”**
- **Components of the P3 Deal**

Key to Success #1:

Understanding the 4P's First Before the P3:

- **Problem?** Needs of the Community?
- **Project?** Identified Solution to Problem?
- **Priorities?** Is there a Clear Vision and Goals?
- **Politics?** What's the Political Environment?

Key to Success #2:

Understand the needs of the Interested Parties

- **Public Agency Elected Officials**
- **Public Agency Staff / Legal Counsel**
- **Investor / Lender**
- **Members of the Public**
- **Interest Groups**
- **Regulators (State and Federal)**

Key to Success #3: Understand the Negotiation “Life-Cycle”

- **Problem Identification**
- **Analyze Options**
- **Due Diligence (Risks/Rewards)**
- **Business Plan**
- **Transactional Documents**
- **Implementation Issues**
- **Expect Changes**

Key to Success #4:

Components of the PPP Deal:

- **Statutory Authority**
- **Stakeholder Support**
- **Clarity on CEQA /Regulatory Processes**
- **Identified Revenue Stream**
- **Detailed Business Plan**
- **Partner Selection**
- **Renew the Partnership**
 - **Contract with Negotiated and Escalating Remedies**
 - **Regular Contact**

Summary of Local P3 Opportunities

- **Economic Development Programs**
- **Zoning / Land Use Authority**
- **Real Property Assets/ LRPMP**
- **Local-Serving Infrastructure**

Threshold Questions:

1. **What's the Authority?**
2. **Demonstrated Need?**
3. **Public Benefits?**

- Introduction
- Toolbox #1 – Real Estate & Property (Larry Kosmont, CRE®)
- Toolbox #2 – Districts (John Lambeth, Esq.)
- Toolbox #3 – Taxes & Revenues (Don Hunt, Esq.)

BREAK – 10 MINUTES

- Toolbox #4 – P3, Land Use and Zoning (Seth Merewitz, Esq.)
- **Q & A / Panel Discussion**

Top 5 Economic Development Take-Aways

1. Economic Development Projects w/o RDAs are more challenging

- More complex and will take longer
- Achievable BUT need well conceived strategy
- ED & Public Finance complexities demand a skilled team
- Key is to minimize public risk and maximize private investment

2. Basic Tool Kit = *Real Estate, Zoning, Districts & Revenue/Tax Streams*

- Can be mixed & matched
- Typically work best in combination

3. Step 1: Economic Development Inventory

- Identify Community Objectives
- Which of 4 tools can you use?
- Prioritize assets or projects or opportunities
 - *Seek highest value & return with least cost and risk*
 - *Expert Peer review can help select projects, strategies & tools*

Top 5 Economic Development Take-Aways

4. **RDA and Enterprise Zones are gone. Waiting for Tax Increment, like waiting for the Sandman!**

IN THE MEAN TIME...

- ***First opportunities: POST RDA properties***
- ***Next: create districts and/or identify projects & beef up zoning & DORs***
- ***New Bills: SB 470 & AB 440 may help***

5. **Economic Development post RDA requires new and creative approaches to projects that yield revenues and jobs**

- ***Keep abreast of new legislation that impact ED process & findings***
- ***Use other examples & populate ED Team with transactional expertise***
- ***It can be done!!***

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