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LAW ALERT – REDEVELOPMENT SB 93- CHALLENGES TO REDEVELOPMENT AGENCY FUNDING OF PUBLIC IMPROVEMENTS

On January 1, 2010, SB 93 will take effect, making it more difficult for redevelopment agencies to fund public improvements located entirely outside of and not contiguous to a redevelopment project area. At the same time, SB 93 makes such decisions much easier to challenge.

SB 93 amends sections of the Community Redevelopment Law (“CRL”) governing redevelopment agencies’ authority and procedural requirements to pay land acquisition and construction costs of, any building or other public improvements (collectively referred to as “public improvements”) inside and outside of a redevelopment project area. Specifically, SB 93 requires an agency and legislative body to make different findings and to follow additional procedural requirements when funding public improvements located entirely outside of and not contiguous to a redevelopment project area.

Under existing law, redevelopment agencies are authorized to provide funding for public improvements within or outside of a project area, with the consent of the legislative body. The agency and the legislative body are required to make findings that: (1) the public improvement is of benefit to the project area or the immediate neighborhood, (2) that no other reasonable means of financing the public improvement is available to the community, (3) that the funding for the public improvement will assist in the

elimination of one or more blighting conditions inside the project area or provide housing for low- or moderate-income persons, and (4) that the public improvement is consistent with the agency’s implementation plan adopted pursuant to Section 33490 of the CRL.

Under SB 93, an agency and legislative body must make the same findings made under existing law prior to funding a public improvement located: (1) in the project area, or (2) “contiguous to” the project area (property separated from the project area only by various rights-of-way), or (3) partially within the project area but that extends outside the boundaries of the project area.

If, however, the public improvement is located entirely outside of and not contiguous to the project area, but within the community, SB 93 requires that the agency and legislative body make findings, based on substantial evidence in the record, that: (1) the public improvement is of primary benefit to the project area, (2) that no other reasonable means of financing the public improvement is available to the community including but not limited to, general obligation bonds, revenue bonds, special assessment bonds, or Mello-Roos bonds, (3) that the funding for the public improvement will assist in the elimination of one or more blighting conditions inside the project area or provide housing for low- or moderate-income persons, (4) that the

public improvement is consistent with the agency's implementation plan adopted pursuant to Section 33490 of the CRL, and (5) that each public improvement is provided for in the redevelopment plan. Moreover, in making the determination regarding alternate means of financing, SB 93 suggests that the agency and the legislative body take into account legal, economic, political and other relevant factors.

The new findings required by SB 93 do not apply if the public improvement to be funded is an obligation of the agency under a contract existing on December 31, 2009, the public improvement is specifically described in the implementation plan prepared by the agency as of July 1, 2009, or the public improvement is specifically provided for in the redevelopment plan as of December 31, 2009.

Practical questions raised by the passage of SB 93 include: (1) what constitutes substantial evidence in the record to prove primary benefit to the project area, and (2) whether, as a consequence of SB 93, agencies are no longer authorized to fund public improvements that are located both entirely outside of the project area and outside of the community wherein the agency is located.

The answers to these questions are particularly important because SB 93 makes it easier to challenge the factual findings and determinations of the agency and the legislative body made in connection to

funding public improvements located entirely outside of and not contiguous to the project area, but within the community. Under SB 93, those findings and determinations can be challenged if an action is filed and served within sixty (60) days from the adoption of the resolution containing those findings.

Under SB 93, the findings and determinations made in connection with the funding of public improvements located entirely within the project area continue to be considered final and conclusive. The same standard of review applies to findings and determinations made in connection with funding public improvements located contiguous to the project area, and public improvements partially located within the project area but that extend outside the boundaries of the project area.

Lastly, SB 93 prohibits an agency and legislative body from authorizing or approving a settlement to any suit contesting the validity of a redevelopment plan adoption or amendment if the settlement requires the agency to spend funds outside of the project area, unless the agency and the legislative body have first held a properly noticed public hearing on the proposed settlement.

For more information, please call Karen Tiedemann, Lynn Hutchins, Jack Nagle, Thomas H. Webber, Polly Marshall or any other Goldfarb & Lipman attorney at 510-836-6336.

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