

Quite a Pickle

California Supreme Court Ruling Spells End to Redevelopment Funds for Housing

The California Supreme Court has issued a ruling backing state legislation abolishing local redevelopment agencies and ending a dedicated funding stream used for years to help finance affordable housing.

The ruling prompted reactions of disappointment in the redevelopment and affordable housing communities and has created confusion on many fronts.

Last summer, the California legislature passed and Governor Jerry Brown signed two bills (AB 1x 26 and 27) terminating local redevelopment agencies (RDAs) but permitting them to continue if the city or county government that created them made payments to a state fund benefiting schools and special districts. The California Redevelopment Association and California League of Cities sued to challenge the acts as unconstitutional, and the California Supreme Court held a hearing and released its decision on December 29th.

The Court held that the law to abolish the RDAs was valid but that the second bill's alternative payment mechanism was unconstitutional.

'Worst Possible Outcome'

"Effectively the decision, from our perspective, was the worst possible outcome," said Jim Kennedy, interim executive director of the California Redevelopment Association. "Which was that the agencies could be dissolved and payment to the [state] program would not be permitted."

Kennedy indicated that February 1st is the deadline for California's 399 active RDAs to be dissolved. But he said that his association and the League of Cities were working to seek the passage of new legislation to (1) postpone the deadline to April 15th, and (2) to "create a new form of redevelopment or jobs and neighborhood renewal programs that would be sort of a successor to redevelopment in California." He said the second part, to establish a "reformulated model," would authorize state funding for six types of activities, many of which have been funded by RDAs: affordable housing; job creation; transit-oriented development; remediation of contaminated property; military base conversion; and basic infrastructure needs. As of press time, some bills

had been introduced, including one to preserve RDAs' unencumbered redevelopment funds for housing.

"The ruling has a huge impact throughout the state of California on a variety of levels," says Laura Archuleta, president of Jamboree Housing Corporation, a nonprofit headquartered in Irvine that has developed more than 6,000 units of affordable housing throughout the state – over 95% rental.

"On the housing front it's huge," she noted. "Next to the federal government, the [RDAs'] housing set-aside funds are the next largest source of affordable housing finance here in California."

The RDAs had received tax increment funds, which Kennedy said in the aggregate averaged about \$5.4 billion a year. Of this, each RDA was required to use at least 20% of its annual redevelopment funds to help finance low- and moderate-income housing. The state legislation ended this stream of tax-increment funds to RDAs and the housing set-aside.

Archuleta said that redevelopment funds have been a crucial subsidy in many of Jamboree's projects, which include numerous low-income housing tax credit (LIHTC) developments. Of Jamboree projects assisted with redevelopment funds, these funds have averaged about \$25,000 per unit, she noted.

Geoffrey Brown, president of USA Properties Fund, Inc., a for-profit affordable housing and LIHTC

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developer/owned based near Sacramento, also said a number of his company's affordable rental projects have received redevelopment funds.

Archuleta pointed out that the Court's ruling and state legislation will have a far broader and harmful impact in California than just for affordable housing. "To have a whole industry of redevelopment go away, it's just going to have a dramatic huge, huge impact on cities. Redevelopment financing was funding much more than your big box retailers or your auto malls or shopping centers and affordable housing. In our blighted neighborhoods, it was funding crime prevention, crime control, code enforcement – a whole list of things to make a difference in our very low, poverty-stricken neighborhoods."

Beyond the potential longer-term impact, affordable housing industry participants were trying to figure out the near-term effects as well in the wake of the Court's ruling.

"Right now everyone's trying to take a deep breath and a long pause to try to understand what the impacts are," says Michael Novogradac, a CPA and managing partner of the San Francisco office of Novogradac & Company LLP, a national accounting, consulting, and business advisory firm.

Archuleta was trying to find out for certain about whether RDA redevelopment funding commitments received for a few pending LIHTC projects will ultimately be honored and the monies come through, a situation that many developers in the state are experiencing and that syndicators are monitoring. Brown had one such project. The pair noted they also have other current projects where the redevelopment funding is safe. Yet even for safe deals, Brown said there is uncertainty for the moment about which specific "successor" agencies will be designated by cities and counties to take over the duties once handled by their local redevelopment agency, in order to execute the various documents and take other actions needed for projects with valid funding commitments to be able to move forward.

Funding Gap, LIHTC Program

Affordable housing industry participants say it's unclear how funding gaps will be closed in new LIHTC

projects in California going forward without the set-aside of redevelopment funds.

"California is going to be hit really hard with no soft funds," said Santa Ana-based Ronne Thielen, with LIHTC syndicator R4 Capital Inc. "And in the whole country, there has been cutback in HOME and CDBG funds, so it's going to be harder to make these deals feasible."

Several sources said the most vulnerable will be tax-exempt bond-financed projects, which require larger amounts of gap financing than 9% credit projects.

When interviewed on January 11th, William Pavão, executive director of the California Tax Credit Allocation

Committee (CTCAC), didn't anticipate that CTCAC will propose any additional changes to its rules for its 2012 LIHTC program because of the Supreme Court ruling. CTCAC expected to finalize these rules on February 1st and plans two application rounds in 2012.

Pavão noted that of the projects receiving housing credit awards from CTCAC in 2011 that had commitments of redevelopment funds, CTCAC will be seeking to determine which have commitments

that will be honored, enabling the projects to move forward, and which have commitments that may not be honored. He noted CTCAC may give 2011 recipients some extra time to determine the status of their commitments. CTCAC made 9% credit awards to 107 projects in 2011.

"We're not proposing [in California's 2012 LIHTC program] to back off on our emphasis on other public resources," Pavão said. "But I recognize fewer resources are going to come in, and we're probably going to end up doing fewer 9% deals in 2012 than we did in 2011."

He indicated that in 2012 CTCAC will probably need to award more credits to many projects that no longer will get redevelopment funds to close the funding gap. Pavão also anticipated many 2012 applicants won't state a lower eligible basis than they are entitled to when applying for credits – a common practice in the past to maximize points in the scoring – because of the funding gap issue. He also indicated that approving a 30% basis boost for more projects isn't really an option, since most projects awarded credits each year are in high-cost areas and already eligible for the 30% basis boost. **TCA**

(Supreme Court opinion:
<http://tinyurl.com/8a8wgyd>)

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