San Francisco’s Unique Replacement Housing Obligation under Redevelopment Dissolution Law

- Prior to 1977, the San Francisco Redevelopment Agency destroyed 6709 units that low- and moderate-income persons had occupied. The former agency did not replace these units. The California Department of Housing and Community Development (HCD) concluded, in 2003, that “14,207 units were demolished and 7,498 units have been replaced resulting in a net loss of 6,709 affordable units the Agency must replace.” (the “SF Replacement Housing Obligations”).

- Under Community Redevelopment Law and in other contexts, the Legislature has long recognized that a public entity’s destruction of affordable housing for public purposes harms the communities in which the housing is located and thus requires the public entity to take steps to replace the housing. Cal. Health & Safety Code § 33413 (a) (redevelopment); Government Code § 53395.5 (a) (infrastructure financing districts); Government Code § 14528.6 (d) (local alternative transportation improvement programs); Education Code § 35277 (schoolsite replacement housing).

- Community Redevelopment Law required that redevelopment agencies replace affordable housing that they destroyed on a one-for-one basis with the replacement units having a similar size and serving the same income levels as the persons displaced.

- The Redevelopment Dissolution Law prohibits the redevelopment successor agencies from entering into new obligations, but expressly provided that successor agencies, with oversight board approval, could use future property tax revenues (tax increment) to fulfill pre-dissolution enforceable obligations, which the law defines as including “obligations imposed by state law.” Cal. Health & Safety Code § 34171 (d) (1) (C).

- The Department of Finance (DOF) has taken the position that dissolution law does not allow, even with oversight board approval, successor agencies to fulfill the former agencies’ statutory obligations if those obligations require an allocation of future tax increment. DOF narrowly interprets enforceable obligations as requiring a contract, but the Legislature explicitly recognized certain statutory obligations as continuing after dissolution.

- Allowing a successor agency to fulfill a former agency’s statutory replacement housing obligation does not mean that all of the other affordable housing obligations under Community Redevelopment Law remain in effect. These other housing obligations, e.g. production (inclusionary) requirements, housing increment set-asides, were prospective in nature and dependent on the continuation of other redevelopment activities, which have been halted.

- A replacement housing obligation for the pre-dissolution destruction of affordable housing is different from the other redevelopment housing obligations. Replacement housing provides a remedy for a pre-dissolution injury, i.e. the reduction in housing opportunities for low- and moderate-income households in a particular community. This loss of housing has a specific and quantifiable effect for which a narrowly-tailored remedy is available.
A pre-dissolution replacement housing obligation survives the termination of redevelopment agencies where an oversight board has determined that the replacement of the units benefit the taxing entities and the community.

In 2000, Senator Burton authored SB 2113 (Statutes 2000, chapter 661, codified at California Health & Safety Code § 33333.7), which is special legislation applicable only to San Francisco. SB 2113 acknowledged the destruction of affordable units during urban renewal (1955-1975) and authorized the continuing receipt of tax increment for replacement housing.

SB 2113 initially protected public school funding by requiring the distribution of property tax revenues to schools prior to receiving any tax increment for the replacement housing, but state law subsequently changed this formula to allow redevelopment agencies full access to increment to fulfill housing obligations.

In SB 2113, the Legislature made the following findings, which remain applicable today:

- “San Francisco's housing situation is unique, in that median rents and sales prices are among the highest in the state even though it has consistently exceeded the housing production goals of the Community Redevelopment Law and has used local funds . . . to assist affordable housing development.”

- “San Francisco's early redevelopment activities, including the removal of previously existing dwelling units serving a lower income population, have compounded the effects of the private market that have led to the city's current affordable housing crisis.”

After the 2003 HCD certification of San Francisco’s unfulfilled replacement housing obligation of 6709 units, the City had to wait until older redevelopment plans expired and were amended to implement SB 2113. Between 2006 and redevelopment dissolution, the former agency funded and constructed 867 units of replacement housing.

Construction funding for the remaining 5842 replacement units is a key component of San Francisco’s solution to its current affordable housing crisis. State-authorized funding for these units will leverage approximately $1 billion in public and private resources for affordable housing.

The San Francisco Oversight Board has approved, by OB Resolution No. 5-2012 (April 10, 2012), the SF Replacement Housing Obligation, but the Department of Finance (DOF) recently denied project-specific funding on the grounds that the obligation did not survive redevelopment dissolution.