

Preface

Since the third edition of *Redevelopment in California* was published in 2004, the practice and law of redevelopment in California have changed significantly. Annual supplements to the third edition, through 2007, noted these changes, and they are incorporated, together with changes from 2008, into this revised and expanded 2009 fourth edition.

For someone unfamiliar with the redevelopment process, understanding its evolution, complexity, and diversity can be difficult. Not only is the Community Redevelopment Law highly technical, but redevelopment is implemented by city and county officials and their consultants. Much of redevelopment practice, therefore, is administratively developed by local officials and cannot be found in the statutes, case law, or standard legal treatises. We have tried to incorporate the knowledge we gained over the last several decades and from our scores of clients and colleagues to fill this niche.

We hope that this book will be a useful and practical reference for city, county, and redevelopment agency staff; consultants and attorneys who work in the field; local public officials who are confronted with redevelopment decisions; and members of the public who seek a better understanding of redevelopment within their communities. While we have tried to be as comprehensive as possible, there inevitably will be issues that we could not address, either due to space limitations or because a discussion of law without specific facts would not be helpful. This book is not intended to be a substitute for seeking advice from legal counsel, but we hope it will assist in both framing the issues and formulating the answers about redevelopment.

The year 2008 was notable for the recession and global economic crisis that severely affected credit markets, housing prices, the building industry, consumer spending, and retailing, and caused massive fiscal intervention by the federal government on an unprecedented scale with the

promise of more to come in order to stimulate the economy. Budgets of the state and local governments were hit hard as public revenues fell from sources such as property taxes, sales taxes, income taxes, building permits, and development impact fees. This has resulted in staff reductions, service cuts, and deferral of major infrastructure and development projects. The City of Vallejo filed for bankruptcy. As this edition goes to press, the State of California faces a two-year budget shortfall of \$40 billion that the Governor and Legislature are struggling to resolve. State transportation and building projects were suspended as the state projected running out of money with very limited ability to borrow unless the state budget crisis is resolved, and even then, at higher interest rates. The municipal bond markets with few exceptions remained closed to redevelopment agencies and other public entities.

In December 2008 the California Redevelopment Association and others filed a major constitutional challenge to the Legislature's transfer of \$350 million for fiscal year 2008–09 of redevelopment tax-increment funds to the Education Revenue Augmentation Fund (ERAF), litigation that is not expected to be resolved until 2010.

While this book is not the place to examine these matters in detail, the practice of redevelopment will likely be changed as the economy recovers and the capital markets are restructured and restored. Among the changes for redevelopment agencies and their developers could be the following:

- A slower rate of growth in most markets, a contraction in the retail sector, and an increased emphasis on in-fill development in established urban markets
- Greater due diligence and underwriting criteria for proposed tax allocation bond issues by underwriters and bond purchasers; higher costs for bond insurance, if available
- Lender requirements for more substantial developer equity, higher pre-sales and pre-leasing commitments, and sustainable cash flows in projects to be financed
- Greater difficulty in obtaining land-secured financings without significant credit enhancements
- Reliance on more conservative economic projections for projects by redevelopment agencies and their financial advisors; greater assurances of public benefits from agency investments for gap financing of development projects; and
- Increased emphasis at all levels of government on public-private projects for infrastructure and public facilities, with risk shifting to the private sector of capital costs and ongoing operations and maintenance costs in connection with revenue-producing facilities financed through development fees, user fees, and so-called “availability payments” by the public sector

This book was primarily written by several shareholders in the Redevelopment Section of McDonough Holland & Allen PC. However, we have benefited from and very much appreciate the special contributions made by several others in the firm. G. Richard Brown, a partner in McDonough's Sacramento office, and Ben Stock, a partner in MHA's Oakland office, reviewed and revised the discussion on eminent domain. Erin Quinlan Riley, an associate attorney in McDonough's Sacramento office whose real estate practice focuses on environmental and hazardous waste issues, updated chapter 6 (Environmental Issues). In addition, Catherine dela Cruz, a former paralegal with McDonough and now a consultant who specializes in relocation matters, revised chapter 7 (Relocation).

We would like to thank Kevin Boyd in McDonough's Marketing department for his technical support and unfailing good nature in helping with the production of this book. Special thanks are due to the California Redevelopment Association for making available several photographs of successful redevelopment projects. We also must acknowledge the invaluable assistance provided by Marnie Prock, a paralegal in the Public Law Practice Group, whose organizational skills are legendary throughout the firm. Marnie's dedication to this project was inspiring and much appreciated. Finally, we especially thank our clients, without whom our practice, and this book, would not be possible.

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Note. This all-new fourth edition includes a revised Illustrative Time Schedule and Procedural Guide for the Adoption of a Redevelopment Plan, as well as the entire text of the Community Redevelopment Law as of January 1, 2009. The Community Redevelopment Law, Brown Act, and Public Records Act are all available on the McDonough, Holland & Allen website (www.mhalaw.commha/practicespublicLaw_pubs.htm).

About the Authors

Joseph E. Coomes, Jr. helped establish the redevelopment practice at McDonough Holland & Allen PC some 40 years ago. Joe's practice is concentrated in the area of redevelopment, land use, and planning law, including military base closure and reuse. Joe, in particular, also represents both public agencies and major developers in complex land use matters and in the negotiation of development agreements. He has successfully negotiated some of the largest, most difficult urban mixed-use redevelopment projects in California, including San Francisco's Yerba Buena Gardens, and downtown San Jose's Silicon Valley Financial Center, as well as closed military base reuse projects at Hamilton Field in Novato, Mare Island in Vallejo, the Dunes Project at Fort Ord in the City of Marina, and the East Garrison Project at Ford Ord in the County of Monterey. In 2008, he received a Lifetime Achievement Award from the California Redevelopment Association.

Iris P. Yang practices redevelopment, public, and land use law (both transactional and litigation). On the transactional side, Iris has helped numerous public agencies adopt and amend redevelopment plans, and has negotiated development agreements for affordable housing projects, shopping centers, mixed-use projects, and performing arts centers. In addition, she has represented clients on a variety of litigation matters, including land use and CEQA issues, First Amendment challenges, validation actions, and conflicts of interest. She serves as City Attorney of El Paso de Robles and special counsel to public agencies and private clients on a variety of issues including conflicts of interest, lobbying, economic disclosure, and campaign finance, and has represented both public and private clients before the state Fair Political Practices Commission. She has authored the California chapter of *Lobbying, PACs and Campaign Finance—Fifty State Handbook* each year since 1994.

T. Brent Hawkins practices redevelopment, land use, housing, and environmental law (both transactional and litigation). Brent represents clients in California and in other western states, including Nevada and Idaho. His practice emphasizes adoption and amendment of redevelopment plans, negotiation of development transactions, development agreements, asset management, and preparation and lobbying of redevelopment legislation. Brent's litigation experience includes practice before state and federal courts relative to eminent domain law and planning and zoning law, as well as the California Environmental Quality Act, the California Relocation Assistance Act, and the Community Redevelopment Law. Brent lectures frequently for organizations such as the California Redevelopment Association, the League of California Cities, and the University of California. He is chairman of the Legal Committee of the California Redevelopment Association.

Gerald J. Ramiza is a member of McDonough Holland & Allen's Oakland office, where his practice emphasizes transactional redevelopment matters, public agency law, and real estate law. Jerry's experience includes drafting and negotiation of leases, purchase and sale, owner participation, and disposition and development agreements. He represents developers on redevelopment agency-assisted projects and advises property owners and developers on leasing, acquisition, and land use entitlement processes. He is the lead attorney for the Emeryville, Pleasant Hill, Concord, San Bruno, Vallejo, and Foster City Redevelopment Agencies and the Alameda Community Improvement Commission, and provides special counsel services to the cities of Pacifica, Truckee, Clearlake, and Los Altos in connection with real estate and land use matters and the cities of Berkeley, Pleasant Hill, San Bruno, and Emeryville on affordable housing matters.

Ethan Walsh practices in the areas of affordable housing, redevelopment, and land use law. Ethan's practice includes assisting redevelopment agencies and developers in the structuring of transactions for commercial, residential, and mixed-use projects; negotiating and drafting disposition and development agreements and owner participation agreements for commercial, residential, and mixed-use projects; advising redevelopment agencies on adoption and amendment of redevelopment plans; and providing day-to-day advice on redevelopment law issues. Additionally, Ethan has substantial experience in advising public agencies and private developers on the potential impacts of prevailing wage laws as they relate to public-private transactions.