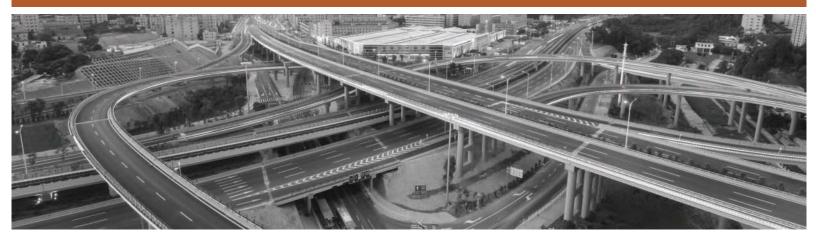


goldfarb lipman attorneys

Revitalizing Communities



Now, more than ever, local governments face unique challenges. Communities must continue to meet the increasing demands of maintaining infrastructure, providing affordable housing, eliminating blight and creating jobs. These needs must be addressed in one of the most economically uncertain and unstable times of our era. The task has been made even more difficult by the state of California's budgetary challenges. In the aftermath of the dissolution of the state's 399 redevelopment agencies, local governments have fewer financial resources to address these critical issues. Despite these obstacles, local governments still have effective options to improve their communities through the creative use of existing programs and powers. Here we provide a general overview of existing community economic development tools available to communities to continue to meet the ever growing challenges of stimulating sustainable growth, as well as brief descriptions of the economic development tools that they may utilize to promote and finance community economic development. We also offer case studies, based on real-world examples that highlight how communities can succeed using the community economic development tools still available.

Existing Tools for Community Economic Development

Over the past 60 years, community redevelopment has relied upon an expanding variety of techniques to address a range of local economic needs. Redevelopment agencies have played an essential role in reinvigorating communities through efforts such as the construction and assistance for public improvements, the provision of private development loans and grants; site preparation and remediation of contaminated property under the Polanco Act; and elimination of blighted areas. Community redevelopment, however, has comprised but one set of tools to achieve these objectives. After the dissolution of redevelopment agencies, communities still have access to various state and federal community economic development tools that can help achieve the same objectives. Using these tools cities, counties, private sector developers, and successor agencies can fill the void left by the elimination of redevelopment agencies. To maximize flexibility in meeting redevelopment challenges, communities are considering a range of strategies. These include adopting economic development ordinances or resolutions and establishing community-controlled non-profit economic development corporations to raise funds and administer specified community economic development programs. Virtually all of the programs and funding sources outlined here to facilitate community economic development and revitalization require the types of sophisticated public-private partnerships with which former redevelopment practitioners have become experienced and skilled.

Communities that take advantage of the public-private partnership skills and experiences honed through their former redevelopment programs will be well positioned to employ the programs and resources described and illustrated below.



INFRASTRUCTURE FINANCING DISTRICTS

Infrastructure Financing Districts can be created by communities to fund large scale infrastructure improvements, including highways, transit, water and sewer projects, flood control, libraries, parks, and affordable housing, provided these projects meet state law requirements (SB 310).

Such districts involve a limited version of the tax increment financing system that formerly characterized the much more robust redevelopment financing program. The district must be approved by either property owners or residents, depending on circumstances. The resulting tax increment financing applies only to the portion of the property taxes from those local taxing agencies that voluntarily agree to contribute their property tax share. School entities, however, are prohibited from making any contributions.

Local governments need to be aware of important restrictions that govern Infrastructure Financing
Districts. These districts can be formed only after the community develops an infrastructure financing plan
and follows strict procedural requirements to vet the plan with affected community constituencies and
obtain voter approval. While the formation of the district and the authority to issue bonds requires a
two-thirds voter approval, the fiscal limits on subsequent appropriations requires only a majority vote. The
community and specified tax entities, excluding schools, can pledge their share of the incremental tax
revenue for up to 30 years as security for the bonds issued by the district. Only a handful of such districts
have been formed to date, and while there are significant impediments and limitations on their application,
recent legislative efforts have been aimed at increasing their viability.



COMMUNITY FACILITIES DISTRICTS

Community facilities districts, formed pursuant to the Mello-Roos Community Facilities Act of 1982, can be created to levy special taxes and issue bonds to finance the purchase, construction, expansion, improvement, rehabilitation and maintenance of a wide range of community facilities. These districts require approval by a two-thirds vote of the qualified electorate of the district and are thus primarily used on previously undeveloped property. The special taxes levied by the district are not assessments and need not be apportioned on the basis of the benefit to each property within the district. The tax, however, cannot be ad valorem based. In addition, the services provided may not supplant existing services in a community, but the special taxes may be used for general benefit facilities.

ASSESSMENT DISTRICTS AND BUSINESS IMPROVEMENT DISTRICTS

To pay for public improvements or services benefiting properties or businesses within a given area, a majority of the property owners may form various types of districts to levy property assessments. Typically the assessments charged by the district are collected like a property tax, although for business improvement districts the unsecured assessments are charged to the benefited business. The amount levied by the district must be reasonable, fair and proportionate to the benefit received by the property or business owner. For this reason, the improvement or services funded by the assessment district cannot be of general benefit to the community. As a result of the adoption of Proposition 218, assessments charged by assessment districts are subject to repeal and reduction by referendum.



LOCAL GENERAL FUND GRANTS AND BOND FINANCING

A city or county's general funds may be used to finance public infrastructure improvements in support of private sector community economic development projects. While general fund budgets are tight and the need to fund basic municipal services is great, local communities will see an increase in property tax revenues from the wind-down of their former redevelopment agencies. Some of that revenue may be pledged to support cost-effective community economic development projects that produce jobs, expand the local tax base and achieve other local planning objectives.

Local governments have the legal authority to commit general funds for such purposes on an annual "pay-as-you go" basis through the normal community budget process, or to issue long-term debt, typically in the form of certificates of participation or lease revenue bonds, to enable early construction of public improvements in support of community economic development projects. Local public financial assistance in these forms can be backed with development agreements or owner participation agreements that commit the private sector sponsor of the project to complete and operate it in a manner that assures timely generation of the promised jobs, tax revenues and other planning benefits.





USE OF PUBLIC LAND

Some communities own properties, or may come into ownership, of properties that could be made available for community economic development activities consistent with applicable laws for use and disposition of public property. In addition, as a result of the dissolution of redevelopment agencies, sponsoring communities may be able to acquire former redevelopment agency property. Communities also may be able to transfer property to third-party developers for community economic development purposes and to have the value of the property conveyed considered as an equity contribution in exchange for subsequent repayment and profit participation. The community's share of revenue generated by the development would be incremental to increased sales and property tax receipts generated by the development.



GOVERNMENT CODE DEVELOPMENT AGREEMENTS

Local governments are allowed to enter into statutory development agreements with private developers, giving the developers vested rights to develop certain projects at particular locations in exchange for negotiated benefits for the community. These can include a wide range of public improvements and facilities and other public benefits beyond those required to mitigate the impacts of the development. For instance, development agreements have provided benefits as diverse as support for local schools, provision of affordable housing, operating costs for local services, and hiring of local workers as well as more typical public improvements such as parks and roads. Both the negotiated benefits and the private development itself may stimulate local economic development and directly generate jobs, housing and local tax revenue. These Government Code development agreements can only be adopted and amended by ordinance and are subject to a citizen referendum. Typically they are adopted concurrently with the approval of a major development project.

DENSITY BONUSES AND INCENTIVES

Communities may also make use of the state Density Bonus Law, under which they can allow developers to build more units if they include more affordable housing. Under the Density Bonus Law, cities and counties are required to provide density bonuses of 20% to 35% for housing developments in exchange for specified percentages of affordable housing units. Senior housing projects and developments with 5% very low income, 10% low income, or 25% moderate income units are entitled to a 20% density bonus, with a sliding scale allowing bonuses of up to 35% for more affordable housing.

In addition, project applicants may receive as many as three incentives or concessions, such as reductions in setback requirements or increases in height limits. Project applicants may also request waivers of local development standards if they would prevent construction of density bonuses and incentives the project is entitled to receive. A community may provide density bonuses in excess of the bonus allowed by State law, but must adopt a local ordinance if it wishes to do so.

Communities can design their General Plans and zoning ordinances to provide incentives for certain kinds of development or to require additional amenities when increased densities are proposed. For instance, in mixed-use areas, cities and counties may allow higher floor area ratios for residences to encourage residential development. Another technique is to establish a base density for a site and to allow higher densities or floor areas if certain amenities are provided. Such amenities could include public open spaces, public access, or other features. Because cities and counties have wide discretion in the design of their local General Plans and zoning ordinances, this technique is very flexible and can be planned to fit the needs of each community.



SPECIFIC PLANS

Communities may enact a Specific Plan for a designated area, often a downtown or a large development area. The plan may be developed in sufficient detail to serve as the zoning ordinance for the area and can include design guidelines and development standards to demonstrate the desired quality of future development. The advantage to a developer is that the Specific Plan can provide assurance regarding what development will be acceptable to the community. Further, if an environmental impact report (EIR) is prepared on the Specific Plan, future projects consistent with the Specific Plan are able to proceed without further environmental review unless there are substantial changes in conditions. Residential projects consistent with the Specific Plan enjoy a statutory exemption from environmental review. The costs of preparing the Specific Plan and the environmental impact report can be recovered from future developers in the area.





TRANSFER OF DEVELOPMENT RIGHTS

Communities can establish transfer-of-development-right programs to encourage growth in specific areas while protecting other areas where lower densities are desired. This is akin to a cap-and-trade system, in which willing buyers and sellers negotiate the transfer of increased density development rights from one site to another. For the program to work well, there would optimally be a suitable number of sites to accommodate additional densities and sufficient developers. Communities that establish programs that allow for the transfer of development rights, however, must be willing to accept higher density uses in one site in exchange for lower density uses in the transferring site. Such a program also requires careful economic analysis to ensure that higher densities will be profitable to developers buying such rights and that the value of the development rights adequately compensates owners selling their rights. The community or a third-party "transfer development rights" bank, or clearing house, can serve as the conduit between buyers and sellers of development rights.



TRANSIT-ORIENTED DEVELOPMENT

Communities with major transit lines may develop land-use strategies that promote transit-oriented development and negotiate implementing agreements with transit agencies such as BART and the developers constructing transit-oriented development projects. Recently, funding to promote transit-oriented development has been made available through the California Department of Housing and Community Development Proposition 1C Infill Infrastructure Grant and Transit Oriented Development Implementation Programs.

INFRASTRUCTURE LOAN PROGRAM

The State of California has established an infrastructure loan program and infrastructure bank to provide loans to local governments for infrastructure projects. Local governments may apply for loans for specific projects, which are awarded on a competitive basis. Because these loans must be repaid, the local agency must show a source of revenue to pay future debt services, subject to pledge limitations.



HISTORICAL PRESERVATION

The Mills Act Historical Preservation Program allows communities to contract with property owners to encourage the preservation of qualified historic properties that are listed on federal, state, county or city registers as well as locally designated landmarks. Property owners who actively participate in the restoration and maintenance of historic properties enter into contracts with participating communities that provide property tax relief ranging from 40% to 60% each year for at least 10 years. Each community establishes its own criteria for program participation and each contract establishes the historic preservation standards and conditions with which the property owner must abide.





STREAMLINING ENVIRONMENTAL REGULATIONS

For urban areas, California has streamlined state environmental regulations for both public and private projects that meet the criteria. Under SB 226, environmental review for qualifying projects may bypass the analysis of impacts already examined at a programmatic level, thus creating cost savings and enhancing project delivery certainty for qualifying infill community economic development efforts of both the private and public sectors. To be eligible for streamlining, a project must meet specified performance standards. The streamlining is intended to augment the existing infill exemptions, and to provide a bridge between the current regulatory scheme and the supplemental California Environmental Quality Act relief that will become available pursuant to SB 375 over the remainder of the decade. The Governor's Office of Planning and Research has published its initial draft guidelines, which are expected to be released in spring 2012 and finalized for formal adoption later in the year.



FEE-PRODUCING INFRASTRUCTURE FINANCING

Under the California Infrastructure Financing Act, communities have the authority to utilize private investment capital to study, design, construct and operate publicly owned, fee-producing infrastructure projects. The revenues generated from persons benefited or utilizing the project can be pledged to repay financing costs for up to 35 years. Projects may include certain utilities, transportation facilities and buildings and structures.

FEDERAL NEW MARKET TAX CREDIT PROGRAM

The New Markets Tax Credit (NMTC) program is a tax credit program that promotes investment in businesses and public facilities located in low-income communities. In exchange for a qualified equity investment in a community development entity, an investor is provided a tax credit. The entity then provides a loan or an equity investment to a qualified active low income community business located in a qualified low income census tract. Some examples of projects financed with the assistance of the tax credit program include community centers, charter schools, medical facilities, child care facilities, historic live theater venues, supermarkets, business incubator facilities, shopping centers, office buildings for public agency use, clean technology research facilities, manufacturing plants, mixed use projects, hotels, public libraries, office parks serving nonprofit organizations, and affordable housing.



HISTORIC TAX CREDIT PROGRAM

The federal Historic Preservation Tax Incentive Program promotes urban and rural revitalization by encouraging private sector investment to rehabilitate historic buildings. A 20% tax credit is available to investors to help finance the rehabilitation of a historic building determined to be a "certified historic structure." A 10% tax credit is available to investors to help finance structures that have not been designated as historic, but were constructed prior to 1936. This credit may be combined with the New Markets Tax Credit and the Low Income Housing Tax Credit programs to facilitate community economic development. Examples of projects assisted with HTC include schools, warehouses, factories, churches, retail stores, apartments, hotels, agricultural buildings, live theater venues and office buildings.





COMMUNITY DEVELOPMENT BLOCK GRANTS

Many communities target a portion of their Community Development Block Grant (CDBG) payments from the U.S. Department of Housing and Urban Development for community development-related activities.

These grant funds may be used for activities related to specified affordable housing projects, but may also be used for the acquisition, construction, rehabilitation, or development of public improvements and facilities, and to fund the development and projects by community based development organizations.



HUD SECTION 108 FUNDING PROGRAM

Through the HUD Section 108 program, local governments may utilize a small portion of their Community Development Block Grants (CDBG) to obtain federally guaranteed loans large enough to pursue a wide variety of physical and economic revitalization projects. Section 108 loans can be paired with other public financing sources such as Brownfield Economic Grants. The local entities are required to pledge current and future CDBG allocations to cover the amount of the loan as security.

U.S. ENVIRONMENTAL PROTECTION AGENCY CLEAN-UP GRANTS AND BROWNFIELDS LOAN FUNDS

The Brownfields program, administered by the Environmental Protection Agency, furthers community revitalization efforts by funding environmental assessment, cleanup, and job training activities through a variety of grants. The cleanup and the environmental remediation of brownfields properties can augment a local tax base, spur job growth, and allow for the optimal utilization of existing infrastructure. Local governments are eligible to apply for Brownfields grants in an amount up to \$1 million.



FOREIGN CAPITAL INVESTMENT

Communities may seek foreign investment that stimulates the local economy and fosters job creation under the EB-5 Program. Through this program, foreign investors may purchase a green card by investing either \$1 million in a commercial enterprise that creates at least 10 full-time jobs or by investing \$500,000 in a Targeted Employment Area, an area where the unemployment rate is 150% of the national average rate. Through the program, 10,000 visas are reserved each year for EB-5 investors. In 2010, a total of 1,885 EB-5 visas were issued.





U.S. PUBLIC WORKS AND ECONOMIC ADJUSTMENT ASSISTANCE

Through the Economic Development Administration, the U.S. Department of Commerce administers Public Works and Economic Adjustment Assistance Programs. Grants made under these programs are used to leverage regional assets to support the implementation of regional economic development strategies designed to create jobs, attract private capital, encourage economic development, and strengthen America's ability to compete in the global marketplace. The EDA is allocating \$111,640,000 for the Public Works and Economic Development Facilities program in fiscal year 2012. The average amount of a Public Works investment was approximately \$1.7 million in fiscal year 2011; investments ranged from \$500,000 to \$2 million. The program will receive an allocation of \$50 million in fiscal year 2012. The average amount of an Economic Adjustment Assistance investment during fiscal year 2011 was approximately \$550,000; investments ranged from \$100,000 to \$1.25 million.



RENEWABLE ENERGY TAX CREDITS

The Production Tax Credit (PTC) and Investment Tax Credit (ITC) are both administered by the Department of Treasury and Internal Revenue Service and provide tax credits for various qualified energy facilities. The PTC provides a tax credit based on the amount of energy produced over a 10- year period. The ITC provides a tax credit based on a fraction of the energy facility's construction cost, ranging from 10% to 30%. The PTC must generally be used by the builder or owner of the energy facility, while the ITC is more flexible and can be syndicated in a manner such that the taxpayer need not necessarily construct and own the energy facility. A program initiated under the American Recovery and Reinvestment Act of 2009 provided that PTC holders could swap them for ITCs or receive a cash grant for the value of the credits. The Act also provided that ITC holders could receive cash-in-lieu of credits. There are non-overlapping sunset dates, however, so it is important to understand whether a particular type of energy facility is eligible for a particular credit.

MILITARY BASE REUSE

For communities facing the challenge of transitioning decommissioned military bases, redevelopment represented one powerful tool for base reuse. The state legislature is considering re-activating redevelopment as a potential tool for base reuse. Regardless of whether or not redevelopment is available for military base conversion, there are a range of tools available to assist with this transition. These tools include special legislation, creation of joint powers authorities, reuse plans, negotiation and agreements with the military branches for hazardous materials clean-up and low-cost land conveyances for economic development and legally required homeless accommodation on closed military bases, and disposition and development agreements with developers for new development. Combined with other infrastructure development tools and hazardous materials clean-up tools discussed above, these properties represent significant potential economic generators for communities with closed military bases.



Community Development Successes

Goldfarb & Lipman has represented hundreds of cities, counties, and other public agencies in thousands of community economic development projects. Combining a thorough knowledge of the intricacies of various legal and regulatory requirements with years of practical experience structuring real estate development transactions enables our attorneys to provide our clients with innovative strategies to meet their goals.

Each case study below provides an example of Goldfarb & Lipman's experience in assisting a community to creatively use multiple programs or powers to make a complex project a reality.

Base Closures



THE DUNES AT MARINA

Goldfarb & Lipman is representing the Marina Redevelopment Agency and its Successor Agency in the negotiation and implementation of a disposition and development agreement and financing documents for a multi-use project being constructed on the former Fort Ord. The development includes approximately 1,235 residential units including a significant number of affordable housing units, two hotels, 700,000 square feet of retail uses, 300,000 square feet of office uses and community amenities including parks and other recreational facilities. The project involves the deconstruction of a significant number of former military buildings, including the hazardous materials remediation associated with the deconstruction. The former Fort Ord is subject to the jurisdiction of a regional state created governing body, the Fort Ord Reuse Authority, which along with the City has land use jurisdiction of the properties.

Photo Credit: Marina Community Partners



TREASURE ISLAND

Goldfarb & Lipman is representing Treasure Island Community Developers, the private developer selected by the City and County of San Francisco to redevelop Treasure Island Naval Base. The proposed development of the former Naval Base includes development of up to 8,000 residential units, approximately 150,000 square feet of retail space and related improvements. Because of the Island's unique location and the fact that a significant portion of the Island is land fill, the development includes significant infrastructure improvements necessary to stabilize the land, protect future developments from potential sea level rise and provide updated utilities and other infrastructure to serve the increased population expected with redevelopment of the Island. The developer originally expected to use tax increment financing resulting from the adoption of a redevelopment plan covering the development area, but as a result of the State legislature's actions dissolving redevelopment agencies, the developer and the City and County of San Francisco were able to agree on an alternative financing plan using an Infrastructure Financing District. Under the conditions of the special legislation, at least 25% of the housing units on the island will be affordable for low-and moderate-income households. Goldfarb & Lipman assisted the developer in crafting the housing program that met the City's goals for affordable housing in a financially feasible manner. In addition, Goldfarb & Lipman assisted in the development of a transition housing program providing opportunities to existing Island residents to secure housing in the new development.

State Community Economic Development Projects

FORD ASSEMBLY BUILDING

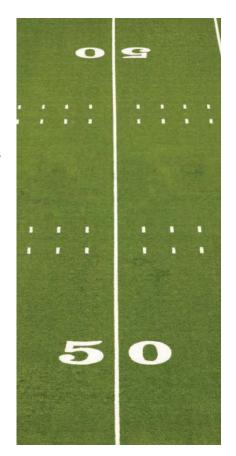
Goldfarb & Lipman assisted the City of Richmond and the Richmond Community Redevelopment Agency with the rehabilitation and adaptive reuse of the historic but unused and earthquake-damaged Ford Assembly Building. The renovated property contains approximately 500,000 square feet of mixed use development including manufacturing, R&D lab, office and restaurant uses, a 40,000-square-foot event center known as "The Craneway", a portion of the Bay Trail, and, in conjunction with the National Park Service, the Rosie the Riveter Memorial/World War II Home Front Historic Park.

This innovative project, which sits on the edge of San Francisco Bay, required a range of regulatory approvals from the State Historic Preservation Office, Federal Emergency Management Agency, San Francisco Bay Conservation and Development Commission, State Lands Commission and National Park Service. The financing for the project involved layering of many sources: Section 108 loan funds, Brownfields Economic Development Initiative grant, Federal Emergency Management Agency grant, redevelopment agency assistance with public improvements and property acquisition assistance, and various private financial sources. The project transformed a highly visible blighted structure on the San Francisco Bay into a beautifully rehabilitated building occupied by a range of commercial and public entities.



SANTA CLARA 49ERS STADIUM

Goldfarb & Lipman worked with the City of Santa Clara to create a Mello-Roos district as part of the Santa Clara Stadium Project. The new community facility district encompassed eight existing hotels and contains provisions to add new hotels within an annexation area. The eight hotel owners voted unanimously to form the district. A special tax equal to 2% of the City's transient occupancy tax will be imposed on the hotels for up to 40 years. The proceeds of the special tax will be used to fund public improvements related to the new stadium and in later years to fund Stadium operations, if funds are available. The district will capitalize its projected income stream through the use of bond anticipation notes which will later be replaced with tax exempt and taxable bonds.



State Community Economic Development Projects



THE DAVID BROWER CENTER

Goldfarb & Lipman represented the City of Berkeley in the negotiation of a disposition and development agreement, and related documents, with Oxford Street Development, LLC for a mixed-use development in downtown Berkeley, consisting of a city-owned subterranean parking garage, retail space, 100 units of affordable housing, and the David Brower Center, an environmental resource and community center and office building. All of the components of the David Brower Center, other than housing, were financed, in part, with New Markets Tax Credits (NMTC). Goldfarb & Lipman assisted in the complicated structuring and drafting of a HUD Section 108 Loan and Brownfields Economic Development Initiative grant from the City to an upper tier investor, which were in turn used by the investor to make qualified investments in three separate Community Development Entities. The entities then provided funding to the developer for the construction of the David Brower Center. Since the City's funding was not directly provided to the developer, but flowed through the NMTC structure, we negotiated all of the NMTC documents on behalf of the City including pledge agreements and guaranties in favor of the City, and an intercreditor agreement between the City and other leveraged lenders.

Photo Credit: Michael Mees via flickr



OAKLAND FOX THEATER

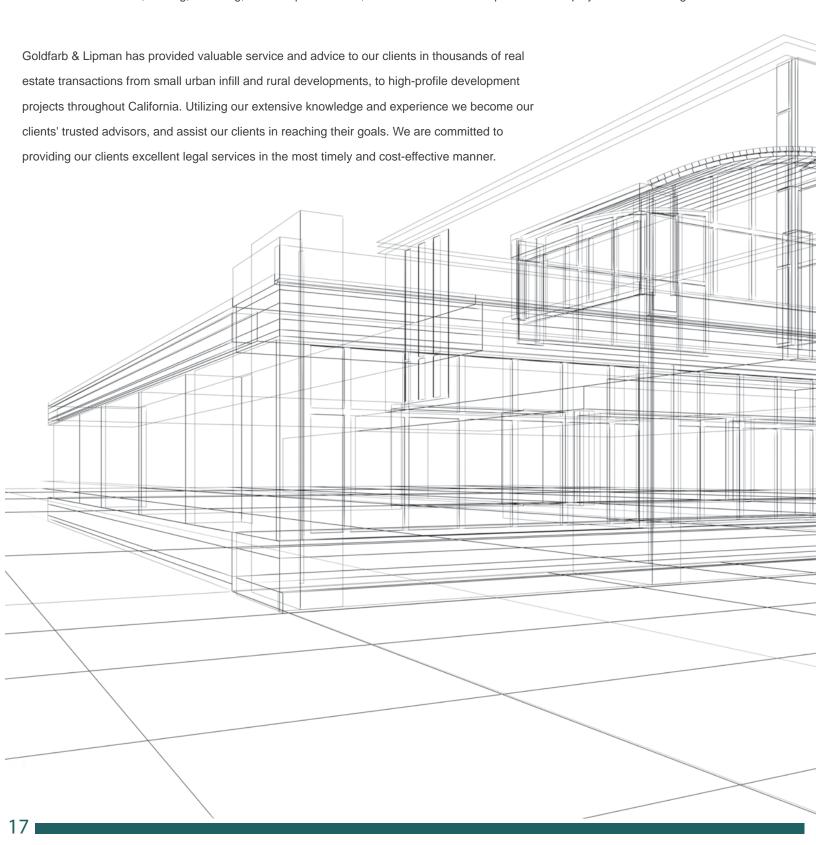
Goldfarb & Lipman provided representation for the Redevelopment Agency of the City of Oakland in connection with the rehabilitation of the Oakland Fox Theater, a federally recognized historic building in the Uptown area of Oakland. We assisted the Agency in the drafting of the disposition and development agreement which provided for the disposition of the Fox Theater to an Agency controlled nonprofit public benefit corporation, as well as providing for the leverage loan financing to assist with the costs of rehabilitating the Fox Theater. We also formed the private entities involved in the development, including the limited liability companies that were formed specifically to be Qualified Active Low Income Community Businesses, as required under the NMTC program. Since this project also utilized Historic Tax Credits, our firm reviewed or drafted the transactional documents to ensure that they complied with both tax credit program requirements.

Currently, a charter school for the arts, a restaurant and a live theater operator are tenants of the Fox Theater. Once a dilapidated and abandoned building, the Fox Theater now serves as the cultural, educational and entertainment hub of a once economically disadvantaged community.

Photo Credit: Simon Carrasco via flickr

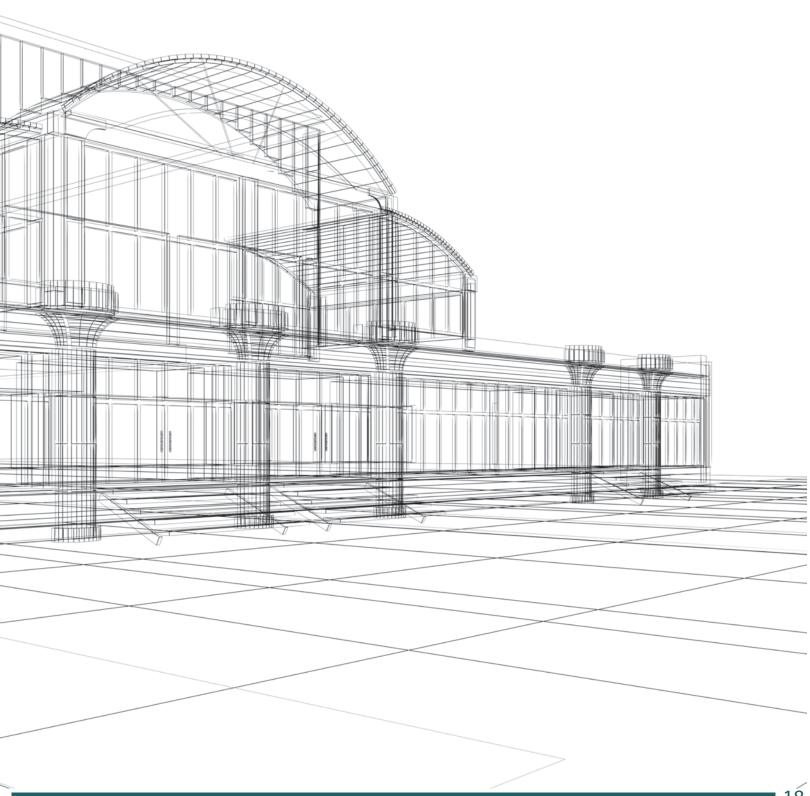
About Goldfarb & Lipman LLP

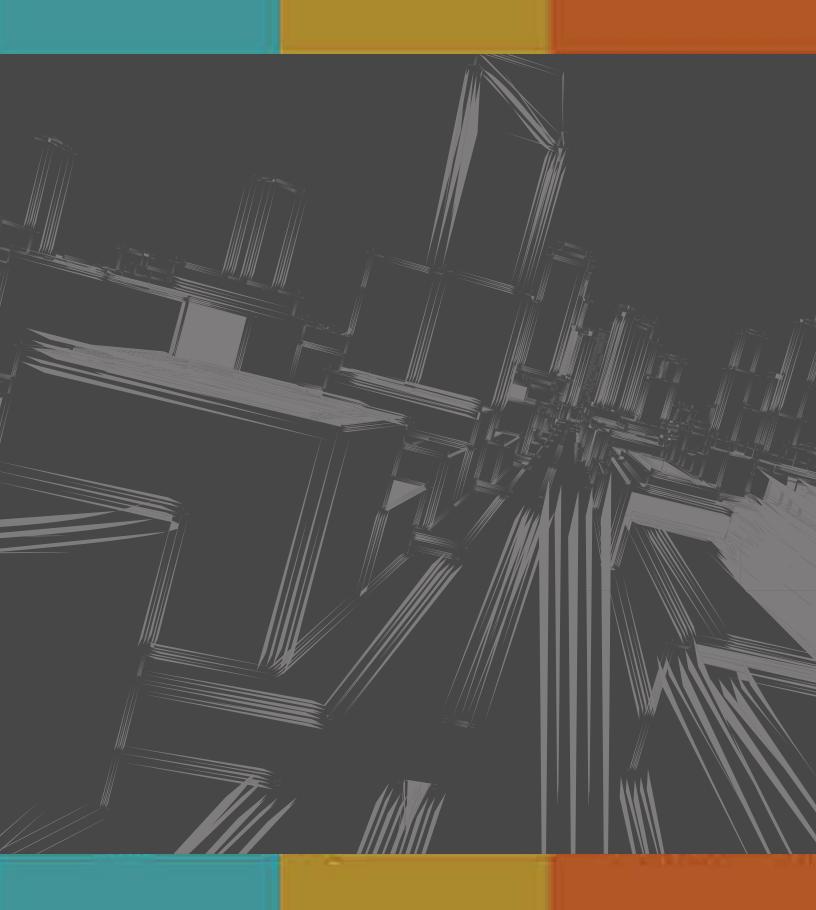
Goldfarb & Lipman LLP is one of California's leading firms in the fields of community economic development, municipal law, and affordable housing. Our practice is focused on all aspects of real estate law including housing, community economic development, public finance, land use, environmental law, relocation law, eminent domain, real estate syndications, fair housing, cooperatives, condominium and other subdivisions, leasing, financing, lender representation, and related areas of corporate and employment law and litigation.



About Goldfarb & Lipman LLP

Since the founding of Goldfarb & Lipman in 1971, we have developed an extensive practice focused on providing superior legal representation to both public entities and private developers. This diverse combination of clients includes cities, counties, public housing authorities, special districts and other public agencies, as well as private developers. We have particular expertise representing nonprofit developers engaged in community economic development, and representing public agencies acquire and dispose of real property. Our broad public and private client base provides our attorneys an unmatched ability to understand complex real estate development from multiple perspectives.





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