Indian Wells
(760) 568-2611
Irvine
(949) 263-2600
Ontario
(909) 989-8584
Riverside
(951) 686-1450

BEST BEST & KRIEGER LLP
ATTORNEYS AT LAW

300 South Grand Avenue, 25th Floor, Los Angeles, CA 90071
Phone: (213) 617-8100 | Fax: (213) 617-7480 | www.bbklaw.com

Sacramento
(916) 325-4000
San Diego
(619) 525-1300
Walnut Creek
(925) 977-3300
Washington, DC
(202) 785-0600

Seth Merewitz
(213) 787-2567
seth.merewitz@bbklaw.com

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Prepared Remarks for the
Joint Hearing of the Senate Governance and Finance Committee
and the Senate Transportation and Housing Committee

Good morning Senators Wolk and DeSaulnier.

My name is Seth Merewitz. I'm a partner at the law firm, Best Best & Krieger LLP.

For almost 15 years, I have worked on issues affecting local governments, representing public agencies and private clients across California. I have been involved in urban redevelopment projects including commercial, industrial and affordable housing projects, as well as residential subdivisions and master planned communities.

My practice now involves issues for both “endangered species” (builders) as well as “extinct species” (redevelopment agencies).

As you know, the State Supreme Court’s decision in *California Redevelopment Association vs. Matosantos*, upholding AB 26 and invalidating AB 27 effectively ended tax increment based redevelopment in California. Since then many of us have been working to understand how we can finance much needed infrastructure, affordable housing, public amenities and catalyst projects at the local level.

In January 2011, Governor Brown committed to provide a “replacement tool” in connection with his desire to end redevelopment in California. I hope that your committees can produce some meaningful tools that communities can utilize to invest in needed projects and draw additional private investment.

I have provided the Committee with several articles that have attempted to start a discussion about certain opportunities that may exist in the wake of the *Matosantos* decision. These articles have laid out ideas for using existing tools in combination with new opportunities and potential new tools that may be developed either at the State or local level.[1]

[1] “Post-Redevelopment: What’s next for Local Economic Development,” Seth Merewitz, PublicCEO, January 19, 2012; “Sustainable Economic Development Policy Overview,” U.C. Berkeley, Institute of Urban and Regional Development, January, 2012; and “Viewpoint: Tools can help cities cope after redevelopment,” Bill Fulton, Sacramento Bee, February 4, 2012.

Let me use the concepts discussed in these articles as a jumping off point to discuss what I think are the critical elements for new and revised parts of that hoped for "replacement tool" for local economic development:

1. Infrastructure Investment is Needed at the Local Level.

In many communities, the basic local-serving infrastructure, such as roads, water and wastewater systems, is inadequate to serve modern development. This infrastructure suffers from insufficient capacity, deferred maintenance, and needed equipment replacement. Public investment in local infrastructure will strengthen the ability to secure more private investment in our urban areas.

Updated local-serving infrastructure will also make urban development less risky and at the same time promote the goals of AB 32 and SB 375. Infill development needs help in most areas if it is going to be successful as there are higher costs and greater risks when operating in a developed urban area than developing green-fields.

If we are really serious about increasing infill development as a policy goal, then we need to make investments in local infrastructure and have community-based funding, not just project-based funding, to correct the existing deficiencies in local infrastructure. If not, in many communities the projects will not be financed.

2. Focus on Local Economic Development Efforts for All Communities.

While many of us recognize the importance of "mega" projects (e.g. high-speed rail, major roads, and bridges), I suggest that we must also address local-serving projects and economic development efforts, which are critically important.

Any effort by the State to assist local economic development must be useful for both the smaller and more economically-challenged jurisdictions, not only the larger jurisdictions that benefit from tourism and coastal locations. Any new or revised tools must be useful statewide.

3. Enhance Project-Based Incentives for Builders.

Project-based incentives that allow builders and local agencies to share enhanced revenues resulting from new projects will stimulate more economic development. If we want to see more development, then we need to reward those who take the risk and allow them to share the "new revenue" generated by their project, while at the same time also generating new revenues for taxing entities.

Another potential approach, used effectively in Indiana and other states, is to create tax abatements that exempt from the property tax roll all or a portion of the new or increased assessed value resulting from new investment. Tax abatement can be granted on either real or personal property. Real property abatements can be granted for both new construction and rehabilitation, with the abatement limited to the increase in assessed value attributable to the new construction or rehabilitation.

Tax abatements do exist in California to promote public policy goals, such as farmland protection (Williamson Act) and maintenance of historic structures (Mills Act). Perhaps, this approach may also apply to goals of infill investment, economic development, and job creation.

4. Foster Public-Private Partnerships.

Public-Private Partnerships can serve as effective catalysts for investment in public and private projects that provide significant public benefits. By allocating expertise, risks, and rewards between public and private entities, this approach would potentially encourage more private investment in our local communities.

Senator Wolk, your work on AB 642 helped to authorize design-build as an accepted method of project procurement. We now need to foster more public-private partnerships and foster a more entrepreneurial spirit at the local level.

Efforts such as last year’s SB 475 (Wright) need to promote private investment in fee-producing infrastructure projects under Government Code Section 5956 and authorize more projects, specifically local projects that create local jobs.

5. Reform Tax Increment.

According to the Lincoln Institute of Land Policy, 48 of 50 states utilize some form of tax increment. California was the leader in 1952 when tax increment financing was created as an innovative way of raising local capital for needed public facilities. Tax increment financing should be reformed to promote focused statewide goals, but also allow for local control and implementation. Creativity and success comes when people are given the flexibility to innovate. Tax increment should not be lost as a tool in California.

To date, Infrastructure Financing Districts have not played a significant role in financing local projects. Reforms to the Infrastructure Financing Districts Act, as suggested by Senator Wolk in SB 214, will enhance the viability of Infrastructure Financing Districts, especially in the absence of tax increment financing for redevelopment.

6. Clarify that the Polanco Act Activities are Still Authorized.

The Polanco Redevelopment Act (AB 3193, 1990) was enacted to assist redevelopment agencies in responding to brownfield properties in their redevelopment areas. It prescribes processes to follow when cleaning up a hazardous substance release and provides immunity from liability for subsequent property purchasers for sites cleaned up under a cleanup plan approved by the appropraite State agency.

As the authority of local governments to use the Polanco Act has been called into question with the demise of redevelopment, the law should clarify that they may still use this tool as they pursue cleanup of brownfields.

7. Authorize Eminent Domain for Economic Development.

While there are many divergent views on eminent domain, there are situations that require local government to utilize eminent domain to further local economic development and revitalization efforts. This tool is important in the rare occasion in which it is needed. The Legislature should design an appropriate eminent domain mechanism to protect property owners, while still allowing for local economic development efforts.

8. Consider a CEQA Exemption for Repair and Replacement Projects.

The approval of SB 266 last year has promise to streamline infill development. It would also be worthwhile to consider an exemption from CEQA for any infrastructure project that merely repairs or replaces an existing facility. If an existing road, bridge or water system is being repaired or replaced, then there should be an exemption from CEQA to reduce the costs of the project, streamline the approval, and allow the infrastructure update that the community needs.

In Conclusion:

Let me close as I opened with the hope that your Committees can produce some meaningful tools that local communities can utilize to fund needed projects and draw additional private investment.

I think the opportunity of this moment is to look at our existing programs, consider revisions to these existing programs, consider the creation of new tools, and consider adopting tools used successfully in other states.

I am happy to take your questions. Thank you.