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# NAVIGATING THE CHALLENGES OF COASTAL- AND HARBOR-ORIENTED DEVELOPMENT

## COASTAL from page 1

and social issues are revisited. The availability of a longer term at the outset, consistent with the governing laws, provides a developer with an increased incentive to enter into the lease transaction.

A good example of the impact of the lease term issue can be seen through the recently approved rehab of the 379-unit apartment complex and anchorage Mariners Bay project in Marina del Rey, Calif., which is owned by a joint venture between Legacy Partners

and Prudential Real Estate Advisors. The original, approximately 60-year lease with the County of Los Angeles was executed by the original lessee in the early 1960s, along with most of the development leases in Marina del Rey. It became clear in the mid-1980s that the developers, as well as the county, were interested in redevelopment, but were constrained by the remaining approximate 40-year term. A template for lease extensions was negotiated, but never agreed to by the county; however, the bones of the mid-1980s

deal formed the basis for individual lease extensions for projects like Mariners Bay. These have given, and will continue to give, Marina del Rey the opportunity for second-generation redevelopment, offering its stakeholders, including the county, extended profit opportunities.

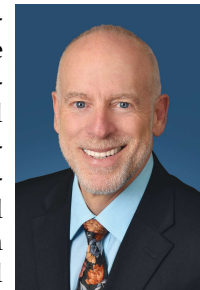
Another key factor is the profit motive for the government entities, who view the development as a partnership, sharing opportunity with little of the development risk. So the lease structures involve a complex mix of

minimum rent, percentage rent, sale and financing proceeds sharing and periodic renegotiation of rent. Sophisticated financial analysis on both sides is required to negotiate a fair deal, with a necessary consideration of the interest of prospective lenders who demand clarity and predictability in the rent structure to underwrite a leasehold loan.

Certain land-use approvals may be required, and, in California, a California Environmental Quality Act (CEQA) process must be concluded before a binding lease or lease extension contract can be executed by the public entity. This presents additional challenges, as it forces developers to spend considerable time and money on the land-use process, negotiating the lease terms and construction contracts, and lining up potential sources of debt and equity — all with no contract in place. Although a developer may have a nonbinding understanding of the basic economic and development transaction with the public entity from a proprietary standpoint, in order to secure a binding contract, the developer must then spend even more money to secure land-use entitlements and complete the CEQA process, often from the same public entity. The pressure on a developer can be further exacerbated, and the time to enter into a contract lengthened, by litigation brought by opponents of the project.

Ultimately, public entities must consider projects from two perspectives: (1) a governmental perspective pursuant to which the project is approved from a physical standpoint, and entitlements are sought and provided by one or more governmental authorities with jurisdiction, including the entity that owns the land; and (2) a proprietary perspective weighing the financial benefit of the project to the public coffers. Too often these two perspectives can be in conflict. The public entity must avoid any perception that it is contracting away its governmental authority by entering into and approving a development project in its proprietary capacity while it has yet to hold hearings and approve the project in its governmental capacity.

These time-consuming leasing documentation, CEQA and entitlement processes, coupled with the extraordinary length of time to secure public-entity approvals, necessitate that developers partner with legal counsel that can help them navigate the sometimes tricky waters of coastal and harbor development.



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