Senate Committee on Local Government
Senate Committee on Transportation & Housing
Assembly Committee on Housing & Community Development
Assembly Committee on Local Government

Redevelopment & Blight

Briefing Paper for the Joint Interim Hearing

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Redevelopment & Blight

This briefing paper prepares the state legislators who are members of four policy committees for their joint interim hearing on redevelopment and blight in San Diego on October 26, 2005.

Going From *Kelo* to "Blight"

Supreme Court's ruling. On June 23, 2005, the United States Supreme Court issued its ruling in *Kelo v. City of New London*. The court ruled on a 5-4 vote that the City of New London's taking of private, non-blighted property for the purpose of economic development satisfied the constitutional "public use" requirement.

Connecticut state law allows the use of eminent domain for economic development. The City of New London adopted an economic development plan for its waterfront, including a hotel and conference center, retail and office space, and new residences. The city government wanted this new development to complement an adjacent Pfizer research center and to reverse the community's economic slide. When some of the private property owners refused to sell, the City condemned their homes and rental properties.

The private property owners argued that New London's use of eminent domain for economic development --- creating jobs and boosting tax revenues --- did not satisfy the constitutional requirement for public use. Relying on several precedents, a divided Supreme Court disagreed and upheld the City's eminent domain powers.

Public reaction to the *Kelo* decision was intense and often fierce. Hundreds of articles, editorials, and speeches called for constitutional and statutory changes to states' eminent domain laws. California legislators introduced and amended nine measures to limit the use of eminent domain. [*Appendix A lists those bills.*]

Kelo and California. On August 17, 2005, shortly after the California Legislature returned from its summer recess, the Senate Local Government Committee held an informational hearing to examine how the *Kelo* decision affected California's local agencies. The Committee heard from five attorneys who are experienced in eminent domain topics. After the hearing, the Committee's staff summarized the results in four findings:

- None of the witnesses said that *Kelo* affected California's counties, cities, special districts, or school districts. All focused on how *Kelo* affected redevelopment agencies.
- The witnesses disagreed on how *Kelo* affected redevelopment agencies' eminent domain powers. One declared that a *Kelo*-like taking was impossible in California because of the "blight" requirement. Others claimed that California's situation is worse than Connecticut's.
- The witnesses also disagreed over property owners' protections under the existing statutes. Some called for legislative changes that would benefit property owners who oppose eminent domain. Others defended the existing statutory protections.
- State law limits redevelopment agencies' eminent domain powers to redevelopment project areas where the area must be blighted.

Transforming the debate. If *Kelo* didn't affect counties, cities, special districts, and school districts in California, then legislators should focus on how the Court's decision affects community redevelopment agencies. Redevelopment agencies use their eminent domain powers to advance their mission to eradicate blight. How they wield that power remains controversial and deserves legislators' attention. Redevelopment officials use their eminent domain powers only in designated project areas. A redevelopment project area contains property that is blighted and other property that is integral to the redevelopment project.

Once an area is declared blighted redevelopment agencies not only use their eminent domain powers, but they capture the revenues from the project area's growth in property values. Absent the redevelopment project, this "property tax increment revenue" would have gone to the other local governments that serve the area: the county government, special districts, and the schools. Redirecting the property tax increment revenues from other local governments elevates redevelopment projects above other uses of those revenues.

When redevelopment agencies take property tax increment revenues from other public services, they affect the budgets of the local governments that lose those property tax dollars. When redevelopment agencies redirect property tax increment revenues from schools, the State General Fund must backfill those lost revenues. Pages 10 and 11 explain these fiscal effects in more detail.

Although redevelopment's primary purpose is to eradicate blight, some observers note that redirecting property tax increment revenues is one of the few remaining

ways for local officials to increase their revenues without raising taxes. Critics argue that this fiscal temptation drives the pursuit of redevelopment to the point that some local officials designate redevelopment project areas primarily for their revenue potential and only incidentally to eradicate blight.

It follows, therefore, that if the Legislature is concerned about how redevelopment officials use their extraordinary powers of eminent domain and property tax increment financing, legislators should focus on where redevelopment agencies use those powers. Because the presence of blight is necessary before redevelopment officials can use those powers, legislators need to review the "blight" definition.

Joint Interim Hearings

The October 26 hearing is the first of two study sessions that will allow state legislators to focus their attention on how public officials and property owners use the statutory definition of blight to redevelop California's downtowns and neighborhoods. The hearing in San Diego on October 26 will concentrate on the "blight" definition, while the second hearing on November 17 in Sacramento will review possible statutory reforms.

An ***interim hearing*** is a special meeting that a legislative committee conducts during the California Legislature's fall (interim) recess. One of the central duties of any legislative body is to review how their statutes work and to determine if legislators should amend those laws. Oversight hearings allow legislators to study public policy issues before they become controversies.

A ***joint hearing*** allows two or more legislative committees to explore the same topic at the same time. Because two Senate committees and two Assembly committees share policy jurisdiction over the bills that affect the Community Redevelopment Law, the ***joint interim hearings*** on October 26 and November 17 allow those legislators to prepare themselves to act on redevelopment bills when the Legislature reconvenes on January 4, 2006.

> The Senate Local Government Committee, chaired by Senator Christine Kehoe, reviews the bills affecting community redevelopment agencies' development and fiscal decisions, including the adoption and amendment of redevelopment plans and the allocation of property tax increment revenues.

The Senate Transportation and Housing Committee, chaired by Senator Tom Torlakson, acts on the bills that affect community redevelopment agencies' housing programs, including their Low and Moderate Income Housing Funds.

The Assembly Housing and Community Development Committee, chaired by Assembly Member Gene Mullin, is responsible for the bills that affect community redevelopment agencies' planning, development, and housing decisions.

The Assembly Local Government Committee, chaired by Assembly Member Simón Salinas, also reviews the bills that affect the governance and financing of community redevelopment agencies.

[*Appendix B lists the members of these policy committees*.]

The Committees' joint interim hearings will not take up amendments to the Eminent Domain Law which applies to all public entities, not just to the community redevelopment agencies. Adopted in 1975, the current Law resulted from a five-year study by the California Law Revision Commission that conformed scattered rules into a uniform statute. Eminent domain bills fall within the jurisdiction of the Senate and Assembly Judiciary Committees. During the Senate Local Government Committee's informational hearing on "*Kelo* and California" on August 17, two of the witnesses recommended increasing the Eminent Domain Law's public notice requirements and changing the burden of proof. Senator Kehoe forwarded a copy of the Committee's final report to Senator Dunn who chairs the Senate Judiciary Committee.

Reform Cycles

The California Redevelopment Law's statutory history shows that legislators engage in cyclical reforms, responding to perceived abuses with statutory amendments, followed by implementation phases, and then reactions to the next set of perceived abuses. Legislative support for the concept of redevelopment persists, but the Legislature has repeatedly worried over a statute that brings political controversies to Sacramento.

Affordable housing. In the mid-1970s, legislative concern over the loss of affordable housing to redevelopment projects prompted the first cycle of

redevelopment reforms. Responding to allegations that redevelopment agencies destroyed houses and apartments for low- and moderate-income families, the Legislature required redevelopment officials to replace the affordable housing that they destroy (AB 4473, Sieroty, 1976). Redevelopment agencies must also set aside 20% of their property tax increment revenues for the construction and rehabilitation of affordable housing (AB 3674, Montoya, 1976). At least 15% of all new and substantially rehabilitated dwelling units developed by builders other than the redevelopment agency must be affordable to low- and moderate-income households. Further, 30% of the dwelling units developed by the redevelopment agency must be affordable (AB 1018, Sieroty, 1975).

Fiscal practices. When the number of redevelopment agencies and project areas exploded after Proposition 13 (1978), county officials complained that cities were declaring agricultural areas and open space land blighted and then including the properties in redevelopment project areas. Legislators responded by banning so-called "bare land projects" and by requiring fiscal review committees to review proposed new project areas (AB 322, Costa, 1983).

Public works financing. A 1990 bill allowed local officials to set up Infrastructure Finance Districts (IFDs) to pay for public works projects with use property tax increment revenues in areas that are not blighted (SB 308, Seymour, 1990). IFDs do not have eminent domain powers. Bolstered by a 1998 Attorney General's opinion affirming the law's constitutionality, legislators passed bills tailoring the IFD law to the California-Mexico border (SB 207, Peace, 1999) and San Francisco's waterfront (SB 1085, Migden, 2005).

"Blight" defined. Stung by repeated criticisms and trying to stave off more radical challenges, the California Redevelopment Association sponsored the most important redevelopment reform bill in a decade (AB 1290, Isenberg, 1993). Echoing several of the concerns raised by legislators, the bill created the first statutory definition of "blight," and also:

- Repealed the fiscal review committee process.
- Set time limits on redevelopment projects and debts.
- Repealed redevelopment agencies' sales tax powers.
- Limited land disposition and public works financing.
- Created a "death penalty" if agencies failed to spend their housing funds.

Military bases. When the end of the Cold War forced the Pentagon to adjust its military power to meet new geopolitical and budget realities, California lost nearly

30 military bases and facilities. Between 1990 and 1994, legislators passed seven special bills that tailored local officials' redevelopment powers to accelerate the conversion of former military bases to civilian uses. Hearings by the Assembly Housing and Community Development Committee led to the passage of standard procedures for redeveloping closed military bases (SB 915, Johnston, 1993; AB 2736, Weggeland, 1996).

Hazardous substance clean-up. Realizing that landowners and local officials lacked a reliable way to clean-up property contaminated with hazardous wastes, legislators authorized redevelopment agencies to tackle those challenges. Using a portion of the Community Redevelopment Law known as the "Polanco Redevelopment Act," redevelopment officials can clean-up contaminated property, get immunity from liability if the clean-up is properly carried out, and recover the costs from the responsible parties (AB 3193, Polanco, 1990; SB 1898, Polanco, 1998; SB 1684, Polanco, 2002).

Disaster redevelopment. Because the standard redevelopment law didn't always fit their needs, communities devastated by tidal waves, earthquakes, fires, and riots turned to Sacramento for seven special bills between 1964 and 1993. After the 1994 Northridge earthquake, some cities used the 1964 statute to set up redevelopment projects without having to document "blight." Responding to this perceived abuse, the Legislature replaced the old statute with the "Community Redevelopment Disaster Law" (AB 189, Hauser, 1995). To qualify for this special disaster redevelopment law, a predominantly urbanized area must have suffered substantial damage that caused serious physical and economic burdens that require redevelopment.

"Blight" reviewed. In 1995, just two years after the Isenberg bill created the statutory definition, legislators reviewed the reforms' effects in a joint interim hearing conducted by the Senate Housing and Land Use Committee and the Senate Select Committee on Redevelopment. Held in downtown San Diego, the hearing produced these staff findings:

- The definition of blight is so fundamental that it controls all other debates over where and how local officials use their redevelopment powers.
- Witnesses did not agree whether [the reforms] had made a difference in how local officials determined whether blight exists.
- Witnesses called for direct state oversight of local redevelopment decisions, but there was no consensus on which state agency should be responsible.

- Several landowners asked the Legislature to stop new redevelopment projects and to allow local referenda on existing projects. Others cautioned against legislative over-reaction.
- No one disagreed with the recommendation to statutorily ban the redevelopment of open space lands. Even redevelopment officials gave the idea cautious support.

A decade after the last oversight hearing on redevelopment and blight, it's time for legislators to once again turn their attention to the core topic in the debate over redevelopment.

Two Basic Questions

Every debate over redevelopment must begin by answering two basic questions:

- Does the public sector have a role in redevelopment?
- What is "blight"?

The answers to those two questions will shape how legislators may react in 2006 to bills that would amend the statutory definition of "blight."

Does the public sector have a role in redevelopment? More than 50 years ago, the Legislature and California's voters answered "yes" to that basic philosophical question. The legislative findings and declarations of state policy in the Community Redevelopment Law repeatedly underscore the need for the public sector's intervention when private enterprise cannot accomplish the redevelopment of blighted areas. When blight is so prevalent and so substantial, it causes a serious burden on communities which cannot be reversed by private enterprise or governmental action, or both, without the extraordinary powers of redevelopment.

Although California had a State Redevelopment Agency in 1947-49, state officials abandoned that approach in favor of a Community Redevelopment Act that allowed cities and counties to clear blight from their slums. Rewritten and renamed as the Community Redevelopment Law in 1951, the state statutes spell out the extraordinary powers of redevelopment officials. When matched with the voters' approval of the 1952 constitutional amendment that allowed property tax increment financing, there is a long record of statewide support for the public sector's involvement in redevelopment.

Over the last half-century, redevelopment agencies have become major features on the fiscal landscape. Basic facts from 2003-04 sketch the importance of redevelopment:

- There were 418 redevelopment agencies; 387 were active.
- All cities with populations over 250,000 had redevelopment agencies.
- 93% of the cities with populations over 50,000 had redevelopment agencies.
- 80% of all cities had redevelopment agencies.
- 50% of all counties had redevelopment agencies.
- Redevelopment officials ran 771 redevelopment project areas.
- 66 project areas covered 50 acres or less.
- 33 project areas covered 6,000 acres or more.

Time limits. Impatient with redevelopment projects that seem to never end, the Legislature required local officials to impose time limits on their redevelopment project areas (AB 1290, Isenberg, 1993). For older redevelopment projects adopted before 1994, these time limits are:

- For the effectiveness of the plan, 40 years from the plan's adoption or January 1, 2009, whichever is later.
- For receiving property tax increment revenues, 10 years after the redevelopment plan ends.

Relying on information provided by redevelopment officials to the State Controller, the California Redevelopment Association believes that 16 of the oldest project areas will end by 2009. About half of all of the pre-1994 project areas will end by 2023. The last of the pre-1994 project areas will end in 2036.

Redevelopment officials can extend the life of older project areas that have remaining pockets of blight by an additional 10 years, provided that they meet more restrictive statutory conditions and spend more of their property tax increment revenues on affordable housing (SB 211, Torlakson, 2001).

For redevelopment projects created in 1994 and in later years, the maximum time limit for the plan's effectiveness is 30 years. The time limit for receiving property tax increment revenues is 45 years after the plan's adoption. In other words, a redevelopment plan adopted in 2005 can operate until 2035 and can divert property tax increment revenues until 2050.

Property tax allocation. In 2003-04, redevelopment agencies' property tax increment revenues were just over $3 billion. As Table One shows, redevelopment agencies received 9.8% of property tax revenues statewide.

Table One: The Allocation of Property Tax Revenues, 2003-04

Schools	51.6%
Counties	18.2
Cities	10.7
Redevelopment agencies	9.8
Special districts	8.6
Less-than-countywide programs	1.1
Total:	100.0%

Source: State Board of Equalization.

The growth of redevelopment agencies' shares of property tax revenues has been nothing short of dramatic, as reported in Table Two.

Table Two: Growth of Redevelopment's Share of Property Tax Revenues in Selected Counties

	1982-83*	1997-98*	2003-04**
Riverside	4.0%	19.9%	25.2%
San Bernardino	4.6	17.8	22.3
Solano	3.0	17.4	22.2
Santa Cruz	0.5	8.7	15.8
San Benito	0	14.4	14.2
Yolo	0	11.1	14.2
Imperial	1.7	9.1	12.8
Butte	1.9	10.0	12.5
Santa Clara	5.1	11.1	12.0
Kings	0.8	6.8	11.8
Los Angeles	6.7	9.2	10.7
Contra Costa	5.9	8.4	10.6
Statewide average	3.6%	7.9%	9.8%

Source: State Board of Equalization.
* Prepared by the California Research Bureau, California State Library, 1999.
** Prepared by the Senate Local Government Committee, 2005.

In some counties, the redevelopment agencies collectively receive more property tax revenue than the county governments themselves. For example, the redevelopment agencies in Riverside County get 25.2% of all of the property tax revenues, while the county government receives just 9.8%. There are similar effects on city governments. In San Benito County, the Cities of Hollister and San

Bautista get 2.2% of all of the property tax revenues generate in San Benito County, while the Hollister Redevelopment Agency receives 14.2% of all property tax revenues. Table Three shows these relationships for selected counties.

Table Three: Property Tax Allocations in Selected Counties, 2003-04

	Cities	County Gov't.	Schools	Less than Co-wide	Special Districts	Redevelopment Agencies
Riverside	6.6%	9.8%	47.4%	2.8%	8.4%	25.2%
San Bndino	7.4	11.9	44.7	0.7	13.1	22.3
Solano	13.1	15.7	42.6	1.6	4.8	22.2
Santa Cruz	4.8	11.5	57.0	1.6	9.4	15.8
San Benito	2.2	11.6	63.6	2.2	6.2	14.2
Yolo	17.8	8.4	55.7	1.4	2.6	14.2
Imperial	8.0	13.3	58.9	4.0	3.0	12.8
Butte	5.9	7.4	62.9	5.4	5.9	12.5
Santa Clara	9.2	12.1	60.8	0.6	5.2	12.0
Kings	6.4	16.5	51.2	8.1	6.0	11.8
Los Angeles	15.3	25.8	39.9	0.6	7.6	10.7
Contra Costa	8.1	11.8	48.6	1.3	19.5	10.6
Statewide Averages	10.7%	18.2%	51.6%	1.1%	8.6%	9.8%

Source: State Board of Equalization.

Pass-through payments. Redevelopment agencies don't keep all of their property tax increment revenues because they must make pass-through payments to other local governments, including school districts. For project areas formed before 1994, redevelopment officials negotiated these pass-through payments with the other local governments. For project areas formed or amended after 1994, the pass-through payments follow a complex set of statutory formulas.

Redevelopment agencies' pass-through payments to other local governments were $565 million in 2003-04. County governments benefited from nearly 60% of the redevelopment agencies' pass-through payments. K-12 schools received $114 million and community colleges received $16 million. The pass-through payments to schools eased redevelopment's fiscal burden on the State General Fund. In addition to the pass-through payments, K-12 schools enjoyed an additional $405 million in other financial or construction aid from redevelopment agencies.

State subsidies. The success of property tax increment financing also relies on an automatic indirect subsidy from the State General Fund. As Table One showed,

just over half of all property tax revenues go to schools which means that just over half of all property tax increment revenues come from schools. The State General Fund backfills the difference so that schools never lose money. In 2003-04, the backfill to schools cost the State General Fund about $1.5 billion.

How much of that state subsidy did redevelopment agencies earn? A Public Policy Institute of California study concluded that about half of redevelopment agencies' property tax increment revenues was because of the effect of redevelopment activity on property values within project areas. The other half resulted from subsidies provided by local governments and the State General Fund (via the schools) because of increases in property values that occurred because of market forces. In other words, the unearned subsidy that the State General Fund provided to redevelopment agencies in 2003-04 may have been about $750 million. Although redevelopment officials have criticized the study's methodology, it remains the only independent, long-term evaluation of property values within redevelopment project areas.

As troubling as these fiscal data may appear, legislators should also recognize redevelopment agencies' accomplishments. In 2003-04, redevelopment officials reported completing over 29.5 million square feet of new construction and 6.4 million square feet of rehabilitated construction in their project areas. These construction projects created 32,803 jobs. Redevelopment officials also spent $538 million from their Low and Moderate Income Housing Funds to build, rehabilitate, and support affordable housing in 2003-04.

<u>The key is "blight</u>." The Community Redevelopment Law focuses local officials' attention on blighted areas. Before redevelopment officials can wield their extraordinary powers of property tax increment funding and property management (including eminent domain), they must determine if an area is blighted. As the *Emmington* decision noted:

> *In fact, the blighted condition of the area is the very basis of the redevelopment agency's jurisdiction to acquire the property by eminent domain and expend public funds for its redevelopment.*

The more recent *Beach-Courchesne* decision held that:

> *A determination of blight is a prerequisite to invoking redevelopment.*

The definition of "blight" and how redevelopment officials apply it in specific local settings is the pivot around which the redevelopment debate turns.

From its enactment until 1993, the state redevelopment statute did not explicitly define blight. Instead, the statute described the "characteristics" of blight. This lack of statutory precision had the benefit of allowing local officials to adapt a statewide law to fit local circumstances. It also allowed local officials to find blight where critics and the courts did not. These local decisions were frequently controversial and sometimes led to lawsuits. In nine reported appellate decisions, the courts explained what "blight" was --- and wasn't. [*Appendix C summarizes those cases.*]

"Blight" Defined

Because the statutory language defining "blight" is not simple, it requires careful reading to unlock its meanings. [*Appendix D reprints the relevant sections of the Health and Safety Code.*] One way to understand the language is to paraphrase the definition and then look at its components.

A blighted area must be ***predominantly urbanized*** with a combination of conditions that are so ***prevalent and substantial*** that they can cause a ***serious physical and economic burden*** which can't be helped ***without redevelopment***. In addition, a blighted area must have either:

- At least one of four conditions of ***physical blight*** and at least one of five conditions of ***economic blight***, or
- Subdivided lots with ***irregular shapes and inadequate sizes*** for proper development.

Predominantly urbanized means that at least 80% of the land in the project area:

- Has been or is developed for urban uses (consistent with zoning), or
- Has irregular and inadequately sized lots in multiple ownerships, or
- Is an integral part of an urban area, surrounded by developed parcels.

Health and Safety Code §33320.1 (b).

The four ***conditions of physical blight*** are:

- Unsafe or unhealthy buildings.
- Factors that hinder economic use of buildings and lots.
- Incompatible uses that prevent economic development.
- Irregular and inadequately sized lots in multiple ownerships.

Health and Safety Code §33031 (a).

The five **conditions of economic blight** are:

- Depreciated or stagnant property values or impaired investments.
- High business vacancies, low lease rates, high turnover rates, or excessive vacant lots.
- Lack of neighborhood commercial facilities.
- Residential overcrowding or an excess of adult businesses.
- High crime rate.

Health and Safety Code §33031 (b).

Without redevelopment means that the community's physical and economic burden can't be reversed or alleviated by:

- Private enterprise, or
- Governmental action, or
- Both private enterprise and governmental action.

Health and Safety Code §33030 (b).

The Exception for "Antiquated Subdivisions"

Called California's "hidden land use problem," antiquated subdivisions cover parcels once carved out of larger holdings, but are now too small, too remote, or too dangerous to support development. A 1986 report for the Senate Local Government Committee's Subcommittee on the Redevelopment of Antiquated Subdivisions estimated that there were more than 400,000 vacant parcels in antiquated subdivisions. These parcels remain a source of frustration to landowners, builders, planners, and elected officials.

Land readjustment --- the resubdivision of antiquated subdivisions into usable parcels --- was one of the earliest uses of redevelopment. Using their extraordinary powers, redevelopment officials buy up the substandard lots and use their eminent domain to condemn the parcels of any hold-out landowners. Then they resubdivide the property into new (usually fewer) parcels which conform to current development standards. Selling the new lots unlocks the property's development potential.

Reacting to "bare land" redevelopment projects, the Legislature required areas to be at least 80% urbanized (AB 322, Costa, 1983). When some observers thought

that it was no longer possible to redevelop antiquated subdivisions, a Legislative Counsel's opinion explained that the redevelopment statute was still available for that purpose. The Legislature clarified that local officials could still redevelop antiquated subdivisions (SB 444, Bergeson, 1987).

The 1993 statutory reforms retained this provision, carving out an exception to the "blight" definition. "The existence of subdivided lots of irregular form and shape and inadequate size for proper usefulness and development that are in multiple ownership" are considered blighted. Local officials do not have to document any other physical or economic conditions of blight before they can redevelop antiquated subdivisions. Some redevelopment critics say that local officials have taken advantage of the antiquated subdivision exception.

Court Decisions After 1993

Six appellate court rulings in the last 12 years have interpreted the statutory "blight" definition set by AB 1290 (Isenberg, 1993). Opponents won five of the six cases; San Francisco officials successfully defended their project.

County of Riverside v. City of Murrieta (1998) 65 Cal.App.4th 616. The first judicial interpretation after AB 1290 said that the project area was neither urbanized nor blighted. Local officials failed to provide enough evidence to support their findings.

Beach-Courchesne v. City of Diamond Bar (2000) 80 Cal.App.4th 388. The court overturned local officials' findings of urbanization and blight because they failed to document those conditions.

Friends of Mammoth v. Town of Mammoth Lakes (2000) 82 Cal.App.4th 511. An attempt to declare nearly the entire community blighted failed when the court said that local officials failed to document their findings of blight and urbanized land.

Graber v. City of Upland (2002) 99 Cal.App.4th 424. Local officials wanted to set a new base year for obtaining property tax increment revenues by creating a new project area that deleted some property from an existing project area while adding new areas. The court said that they used overly broad information and so failed to show how the project area met the blight definition.

San Francisco Upholding the Downtown Plan v. City and County of San Francisco (2002) 102 Cal.App.4th 656. Relying on extensive surveys and descriptions to document their findings, local officials convinced the court that the property in the proposed project area was blighted.

Boelts v. City of Lake Forest (2005) 127 Cal.App.4th 116. When city officials attempted to add eminent domain powers to an existing project area they had to find that blight still existed, but failed to document those conditions.

What Is To Be Done?

In 2005, legislators authored six bills that would have affected the "blight" definition. None of the six passed, but they demonstrate legislators' continuing interest in having the state government give fiscal support to local redevelopment activities. [*Appendix E describes the 2005 bills.*]

When the Legislature reconvenes in January 2006, many observers expect legislators to author bills that affect the "blight" definition. The policy options available to legislators cover a wide range of choices. For example, USC law professor George Lefcoe has recommended eliminating the requirement to document physical blight so that communities would have easier access to property tax increment revenues to promote infill development. Stricter statutory limits on redevelopment agencies' spending come from Orange County Supervisor Chris Norby and the Municipal Officials for Redevelopment Reform.

These and other recommendations for redevelopment reforms will be the topic of the next joint interim hearing on Thursday morning, November 17 at the State Capitol in Sacramento.

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Appendix A: Eminent Domain Bills

Eminent domain is the inherent power of sovereign governments to take private property for public purposes. Both the United States Constitution and the California Constitution limit eminent domain powers. Governments must give due process to property owners. Governments must pay just compensation. Governments can only take private property for public purposes.

After the U.S. Supreme Court's *Kelo* ruling, legislators introduced or amended nine bills to limit the use of eminent domain:

SCA 12 (Torlakson & Kehoe) declares that public use does not include taking owner-occupied residential property for private use. Status: Senate Judiciary Committee; two-year bill.

SCA 15 (McClintock, et al.) prohibits eminent domain from taking or damaging private property for private use. Status: Failed passage in the Senate Judiciary Committee; two-year bill.

ACA 15 (Mullin & Nation) prohibits redevelopment agencies from using eminent domain unless they first find that the property contains conditions of both physical and economic blight. Status: Assembly Government Organization Committee; two-year bill.

ACA 22 (La Malfa, et al.) prohibits eminent domain from taking or damaging private property for private use. Status: Assembly Rules Committee; two-year bill.

SB 53 (Kehoe) requires redevelopment plans to explain where, when, and how officials will use eminent domain. Later plan changes are referendable. Status: Assembly Local Government Committee; two-year bill.

SB 1026 (Kehoe, et al.) imposes a two-year moratorium on redevelopment agencies' use of eminent domain on owner-occupied residential property to transfer the property to another private owner. The bill requires studies by the California Research Bureau and the California Law Revision Commission. Status: Amended to be Senator Kuehl's highway construction bill.

SB 1099 (Hollingsworth) prohibits eminent domain on agricultural property for public use, with exceptions. Status: Senate Agriculture Committee; two-year bill.

AB 590 (Walters, et al.) declares that public use does not include taking or damaging private property for private use, including economic development. Status: Assembly Housing and Community Development Committee; two-year bill.

AB 1162 (Mullin & Salinas) imposes a two-year moratorium on redevelopment agencies' use of eminent domain on owner-occupied residential property to transfer the property to another private owner. The bill requires studies by the California Research Bureau and the California Law Revision Commission. Status: Senate Rules Committee; two-year bill.

Appendix B: Policy Committee Memberships

The joint interim hearing on October 26, 2005 in San Diego involves the four policy committees that share jurisdiction over the bills that affect community redevelopment agencies.

Senate Local Government Committee

Senator Christine Kehoe, Chair
Senator Dave Cox, Vice Chair
Senator Dick Ackerman
Senator Sheila James Kuehl
Senator Michael J. Machado
Senator Tom McClintock
Senator Don Perata
Senator Nell Soto
Senator Tom Torlakson

Senate Transportation and Housing Committee

Senator Tom Torlakson, Chair
Senator Tom McClintock, Vice-Chair
Senator Roy Ashburn
Senator Gilbert Cedillo
Senator Denise Moreno Ducheny
Senator Christine Kehoe
Senator Alan S. Lowenthal
Senator Michael J. Machado
Senator Abel Maldonado
Senator Bob Margett
Senator Kevin Murray
Senator George C. Runner
Senator Joe Simitian
Senator Nell Soto

Assembly Housing and Community Development Committee

Assembly Member Gene Mullin, Chair
Assembly Member Bonnie Garcia, Vice Chair
Assembly Member Joe Baca, Jr.
Assembly Member Loni Hancock
Assembly Member Jay La Suer
Assembly Member Simón Salinas
Assembly Member Alberto Torrico

Assembly Local Government Committee

Assembly Member Simón Salinas, Chair
Assembly Member Bill Emmerson, Vice Chair
Assembly Member Hector De La Torre
Assembly Member Guy Houston
Assembly Member Sally Lieber
Assembly Member Joe Nation
Assembly Member Lois Wolk

Appendix C: Court Decisions Before 1993

Before 1993, without a precise definition of "blight," redevelopment officials used the statutorily recognized characteristics to place property within redevelopment project areas. In nine reported appellate decisions, the courts explained what "blight" was --- and wasn't.

Redevelopment Agency v. Hayes (1954) 122 Cal.App.2d 777. Upholding the constitutionality of the Community Redevelopment Law, this case was the first appellate decision on redevelopment. The Court approved of San Francisco's decision to redevelop a slum and a deteriorated area; both met the statutory characteristics of blight. The court also explained its deference to local officials' findings, as long as they provided substantial evidence.

Berman v. Parker (1954) 348 U.S. 26. The U.S. Supreme Court upheld the constitutionality of the District of Columbia Redevelopment Act. With later application in California, the Court explained that the concept of blight applies to an area as a whole, and not just to particular properties.

Fellom v. Redevelopment Agency (1958) 157 Cal.App.2d 243. Relying on *Hayes* and *Berman*, the Court upheld the constitutionality of using redevelopment on "nonslum 'blighted' areas."

In re Redevelopment Plan for Bunker Hill (1964) 61 Cal.2d 21. The Court reviewed the inclusion of nonblighted areas within a Los Angeles project area and said, "Hence, even though the challenged area may not itself be blighted, but its 'inclusion is found necessary for the effective redevelopment of the area' of which it is a part, it is properly includable in the redevelopment project."

Sweetwater Civic Association v. City of National City (1976) 18 Cal.3d 270. Reviewing an attempt to redevelop a private golf course into a regional shopping center, the Court determined that blight findings must be made on the basis of existing conditions, not by comparing current conditions to the property's alternative uses. Further, the use of land as open space does not constitute an economic liability that meets the statutory characteristics of blight.

Regus v. Baldwin Park (1977) 70 Cal.App.3d 968. The Court agreed with opponents who challenged a project area with two, noncontiguous parts. Although state law didn't require contiguity, unblighted, noncontiguous can't be in the same project area if the purpose is to capture property tax increment revenues.

National City Business Assn. v. City of National City (1983) 146 Cal.App.3d 1060. Downtown businesses challenged a two-part project. The Court concluded that there was "ample evidence of blight in the downtown acquisition area," but "blight in the neighborhood improvement areas [was] a closer question." Nevertheless, the Court upheld the project.

Emmington v. Solano County Redevelopment Agency (1987) 195 Cal.App.3d 491. The Court ruled against the County, spelling out a two-part test. First, there must be a serious physical, social, or economic burden. Second, the statutory characteristics must exist. The court

concluded that county officials were using redevelopment to attract industry to an undeveloped agricultural area, not to overcome blight.

Gonzales v. City of Santa Ana (1993) 12 Cal.App.4th 1335. Officials must explain why they placed such a significant amount of nonblighted property into the project area. There must be a specific connection between the inclusion of the nonblighted property and the effective redevelopment of the area.

Appendix D: Excerpts from the Community Redevelopment Law

Health and Safety Code

"Blight" declaration and definition.

33030. (a) It is found and declared that there exist in many communities blighted areas which constitute physical and economic liabilities, requiring redevelopment in the interest of the health, safety, and general welfare of the people of these communities and of the state.

(b) A blighted area is one that contains both of the following:

(1) An area that is predominantly urbanized, as that term is defined in Section 33320.1, and is an area in which the combination of conditions set forth in Section 33031 is so prevalent and so substantial that it causes a reduction of, or lack of, proper utilization of the area to such an extent that it constitutes a serious physical and economic burden on the community which cannot reasonably be expected to be reversed or alleviated by private enterprise or governmental action, or both, without redevelopment.

(2) An area that is characterized by either of the following:

(A) One or more conditions set forth in any paragraph of subdivision (a) of Section 33031 and one or more conditions set forth in any paragraph of subdivision (b) of Section 33031.

(B) The condition described in paragraph (4) of subdivision (a) of Section 33031.

(c) A blighted area also may be one that contains the conditions described in subdivision (b) and is, in addition, characterized by the existence of inadequate public improvements, parking facilities, or utilities.

Characteristics of blight.

33031. (a) This subdivision describes physical conditions that cause blight:

(1) Buildings in which it is unsafe or unhealthy for persons to live or work. These conditions can be caused by serious building code violations, dilapidation and deterioration, defective design or physical construction, faulty or inadequate utilities, or other similar factors.

(2) Factors that prevent or substantially hinder the economically viable use or capacity of buildings or lots. This condition can be caused by a substandard design, inadequate size given present standards and market conditions, lack of parking, or other similar factors.

(3) Adjacent or nearby uses that are incompatible with each other and which prevent the economic development of those parcels or other portions of the project area.

(4) The existence of subdivided lots of irregular form and shape and inadequate size for proper usefulness and development that are in multiple ownership.

(b) This subdivision describes economic conditions that cause blight:

(1) Depreciated or stagnant property values or impaired investments, including, but not necessarily limited to, those properties containing hazardous wastes that require the use of agency authority as specified in Article 12.5 (commencing with Section 33459).

(2) Abnormally high business vacancies, abnormally low lease rates, high turnover rates, abandoned buildings, or excessive vacant lots within an area developed for urban use and served by utilities.

(3) A lack of necessary commercial facilities that are normally found in neighborhoods, including grocery stores, drug stores, and banks and other lending institutions.

(4) Residential overcrowding or an excess of bars, liquor stores, or other businesses that cater exclusively to adults, that has led to problems of public safety and welfare.

(5) A high crime rate that constitutes a serious threat to the public safety and welfare.

“Project area” definition.

33320.1. (a) "Project area" means, except as provided in Section 33320.2, 33320.3, 33320.4, or 33492.3, a predominantly urbanized area of a community which is a blighted area, the redevelopment of which is necessary to effectuate the public purposes declared in this part, and which is selected by the planning commission pursuant to Section 33322.

(b) As used in this section, "predominantly urbanized" means that not less than 80 percent of the land in the project area:

(1) Has been or is developed for urban uses; or

(2) Is characterized by the condition described in paragraph (4) of subdivision (a) of Section 33031; or

(3) Is an integral part of one or more areas developed for urban uses which are surrounded or substantially surrounded by parcels which have been or are developed for urban uses. Parcels separated by only an improved right-of-way shall be deemed adjacent for the purpose of this subdivision.

(c) For the purposes of this section, a parcel of property as shown on the official maps of the county assessor is developed if that parcel is developed in a manner which is either consistent with zoning or is otherwise permitted under law.

(d) The requirement that a project be predominantly urbanized shall apply only to a project area for which a final redevelopment plan is adopted on or after January 1, 1984, or to an area which is added to a project area by an amendment to a redevelopment plan, which amendment is adopted on or after January 1, 1984.

Contiguity and eminent domain.

33320.2. (a) The area included within a project and a project area may be either contiguous or noncontiguous. All noncontiguous areas of a project area shall be either blighted or necessary for effective redevelopment. An unblighted, noncontiguous area shall be conclusively deemed necessary for effective redevelopment if that area is being used predominantly for:

(1) The relocation of owners or tenants from other noncontiguous areas in the same project area or from other project areas in the community.

(2) The construction and rehabilitation of low- or moderate-income housing.

(b) An unblighted, noncontiguous area shall be deemed not necessary for effective redevelopment if that area is included for the purpose of obtaining the allocation of taxes from such area pursuant to Section 33670 without other substantial justification for its inclusion.

(c) The redevelopment agency shall not use the power of eminent domain for acquisition of property, other than vacant land, in noncontiguous, unblighted areas.

Appendix E: Bills on Redevelopment and Blight in 2005

In 2005, legislators authored six bills that would have affected the "blight" definition. None of the six passed, but they demonstrate legislators' continuing interest in having the state government give fiscal support to local redevelopment activities.

SB 521 (Torlakson) adds the lack of high-density development around rail transit stations to the list of economic characteristics of blight, and waives the "urbanized" requirement for those project areas. Status: Assembly Housing and Community Development Committee; two-year bill.

AB 350 (Matthews) allows officials in Alameda, Contra Costa, and San Joaquin counties to divert property tax increment revenues to unblighted jobs-housing opportunity zones. Status: Senate Local Government Committee; two-year bill.

AB 517 (Hancock) allows Berkeley officials to extend their existing redevelopment project areas without documenting remaining blight, so they can spend the property tax increment revenues on affordable housing. Status: Assembly Housing and Community Development Committee; two-year bill.

AB 1167 (Chu) allows El Monte officials to extend an existing redevelopment project area without documenting any remaining blight, so they can finance a mixed-use transit centered development. Status: Assembly Housing and Community Development Committee; two-year bill.

AB 1330 (Karnette) allows Los Angeles officials to create a redevelopment project area without documenting blight at the Port of Los Angeles. Status: Assembly Local Government Committee, failed passage but reconsidered; two-year bill.

AB 1472 (Coto) allows San José officials to extend their existing redevelopment project areas without documenting remaining blight, so they can spend the resulting revenues to tackle unemployment. Status: Assembly Housing and Community Development Committee; two-year bill.