

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

What Is To Be Done?
Legislators Look at Redevelopment Reforms

The Briefing Paper for the Joint Interim Hearing

Thursday, November 17, 2005
John L. Burton Hearing Room (4203)
State Capitol, Sacramento

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What Is To Be Done?

This briefing paper prepares the state legislators who are members of five policy committees for their joint interim hearing on redevelopment reform proposals in Sacramento on November 17, 2005.

The hearing is the legislators' third formal examination of the policy questions that surround how redevelopment officials use their eminent domain powers. This renewed interest occurred in the aftermath of the United States Supreme Court's ruling in *Kelo v. City of New London* in June 2005. Because of the intense and often fierce public reaction to the *Kelo* case, the Senate Local Government Committee held an informational hearing on August 17 to find out how the Supreme Court's decision affected California's local agencies. The joint interim hearing on October 26 in San Diego focused legislators' attention on the statutory "blight" definition which controls where redevelopment officials can use their eminent domain powers. In this third hearing, legislators will consider possible legislative changes to the Community Redevelopment Law and related statutes.

Joint Interim Hearings

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 identify public policy problems and explore possible statutory solutions.

A *joint hearing* allows two or more legislative committees to explore the same topic at the same time. Two Senate committees and two Assembly committees share policy jurisdiction over the bills that affect the Community Redevelopment Law. In addition, the Eminent Domain Law which applies to all public entities falls under the supervision of the Assembly Judiciary Committee.

The *joint interim hearing* on November 17 allows the legislators from all five policy committees 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' de-

velopment 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.

The Assembly Judiciary Committee, chaired by Assembly Member Dave Jones, hears and acts on the bills that amend the Eminent Domain Law, the statute that applies to all public entities, including community redevelopment agencies.

[The Appendix lists the members of these policy committees.]

To help concentrate public and legislative attention on possible redevelopment reforms, the briefing paper groups the suggestions into five clusters:

- Statutory definition of “blight.”
- Local redevelopment practices.
- State oversight of redevelopment.
- Litigation procedures.
- Using eminent domain.

For each of those topics, the briefing paper summarizes the current law, describes the perceived problem, and presents possible legislative solutions.

[All of the statutory references in this briefing paper are to the Health and Safety Code, unless otherwise noted.]

Reform the Statutory Definition of “Blight”

Legislators may wish to respond to the perceived problem that the “blight” definition is too lax. The first set of legislative proposals focuses on putting more precision into the statutory “blight” definition. The second set concentrates on the exception for antiquated subdivisions.

Tighten the “Blight” Definition

Current law: The Community Redevelopment Law says that 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.

(§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.

(§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.
(§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]).

Problem: Pointing to court rulings that went against redevelopment officials in Diamond Bar, Mammoth Lakes, Murrieta, and Upland, critics say that the statutory “blight” definition needs more precision. Although the “prevalent and substantial” test allows local officials to adapt a statewide law to local conditions, does not provide a measurable standard.

Further, state law does not link the list of physical characteristics and economic characteristics to specific, measurable conditions. One result is that property owners, residents, redevelopment officials, and the courts don’t know how much evidence is enough to support a finding of “blight.” Another result, critics say, is that the fiscal temptation posed by property tax increment revenues invites redevelopment officials to exploit this statutory imprecision.

Possible Changes: Legislators may wish to amend the Community Redevelopment Law to put more precision into the statutory definition of “blight.”

- Insert “metrics” into the blight definition --- that is, require redevelopment officials to document quantified blight conditions (§33030 & §33031).
 - To demonstrate the existence of “unsafe” residences, at least 60% of the residential units in the project area must have citations for serious building code violations (§33031 [a][1]).
 - To demonstrate the existence of “unsafe” commercial or industrial buildings, at least 60% of the buildings that contain at least 60% of square footage of commercial and industrial buildings in the project area must have citations for serious building code violations (§33031 [a][1]).
 - To demonstrate the existence of factors that hinder economical land uses, at least 60% of the parcels in the project area must be smaller than the minimum lot sizes that are allowed under current zoning (§33031 [a][2]).
 - Repeal the “lack of parking” condition (§33031 [a][2]).
 - Repeal the “or similar factors” condition (§33031 [a][2]).

- To demonstrate the existence of incompatible land uses, at least 60% of the parcels in the project area must have legal, nonconforming uses compared to current zoning (§33031 [a][3]).
- To demonstrate the existence of subdivided lots of inadequate size, at least 60% of the parcels in the project area must be smaller than the minimum lot sizes that are allowed under current zoning (§33031 [a][4]).
- To demonstrate “depreciated or stagnant property values,” the project area’s growth in assessed valuation must be less than 50% of the community-wide growth in assessed valuation (§33031 [b][1]).
- To demonstrate “impaired investments,” the property automatically qualifies if it meets the conditions for remedies under the Polanco Act (§33031 [b][1]).
- To demonstrate “abnormally high business vacancies,” the commercial and industrial vacancy rate in the project area must be greater than 200% of the community-wide vacancy rate (§33031 [b][2]).
- To demonstrate the existence of “abandoned buildings,” the percentage of abandoned buildings by type (e.g., residential, commercial, industrial), must be greater than 200% of the community-wide rates for the same type of building (§33031 [b][2]).
- Repeal the “excessive vacant lots” condition (§33031 [b][2]).
- To demonstrate “a lack of necessary commercial facilities,” the number of businesses (e.g., grocery stores, drug stores, banks) per 1,000 residents in the project area must be less than 50% of the number of similar businesses per 1,000 residents community-wide (§33031 [b][3]).
- To demonstrate “residential overcrowding,” the percentage of residential units with twice the number of occupants per bedroom in the project area must be greater than 200% of the community-wide percentage of residential units with twice the number of occupants per bedroom (§33031 [b][4]).
- To demonstrate an “excess of bars [or] liquor stores,” the number of on-site and off-site liquor licenses per 1,000 residents in the project area must be greater than 200% of the number of similar liquor licenses per 1,000 residents community-wide (§33031 [b][4]).
- To demonstrate an excess of “businesses that cater exclusively to adults,” the number of conditional use permits for adult-oriented businesses per 1,000 residents in the project area must be greater than 200% of the number of similar conditional use permits per 1,000 residents community-wide (§33031 [b][4]).

- To demonstrate a “high crime rate,” the crime rate in the project area must be greater than 200% of the community-wide crime rate, using the California Crime Index prepared by the Department of Justice (§33031 [b][5]).
- Require some percentage of the parcels (or acreage) in a proposed redevelopment project area to have both physical blight and economic blight (§33030). For example, require that 90% of the parcels (or acreage) must have both physical conditions of blight and economic conditions of blight.
- Require project areas to have more than one item from the list of physical blight conditions and more than one item from the list of economic blight conditions (§33030 & §33031).
- Require redevelopment officials to show that nonblighted parcels in proposed project areas are integral to the redevelopment activities described in the redevelopment plan (§33320.1 [b][3]).
- Require redevelopment officials to delete property owners from a proposed redevelopment plan unless they find that the property has both physical and economic blight, or that the property is integral to redevelopment activities (§33320.1 [b][3]).
- Expand the lists of physical blight conditions and economic blight conditions by listing them separately. For example, separate “residential overcrowding” from “an excess of bars” and adult businesses (§33031 [b][4]).

Limit the Antiquated Subdivision Exception

Current Law: When finding “blight,” redevelopment officials must show that the area is “predominantly urbanized.” That is, at least 80% of the land in the project area:

- Has been or is developed for urban uses (consistent with zoning)(§33320.1 [b][1]), or
- Has irregular and inadequately sized lots in multiple ownerships (§33030 [b][2] and §33031 [a][4]), or
- Is an integral part of an urban area, surrounded by developed parcels (§33320.1 [b]).

Problem: In 1993, when the Legislature enacted a new statewide statutory definition of blight, it created a significant exception to both the findings of physical and economic blight and the urbanized finding for “antiquated subdivisions.” Antiquated subdivisions cover parcels of land that are in irregular shapes or inadequate size. These parcels are usually too small, too remote, or too dangerous to support development. Indeed, a 1986 legislative study estimated that there were more than 400,000 parcels in antiquated subdivisions which frustrate planners, builders, landowners, and elected officials. There is a perception that redevelopment officials use the antiquated subdivision exception to avoid the more rigorous “blight” definition.

An example currently in litigation illustrates the controversy. In 2003, California City annexed 15,000 acres (26 square miles) and condemned part of it for a Hyundai auto proving ground. The City placed the annexed property within its redevelopment project area, arguing that the land --- mostly empty desert --- met the definition of predominantly urbanized and blight conditions because it was characterized by irregular lots and subdivisions. It also claimed that the lots were the result of land fraud because they were sold years ago without proper infrastructure. Redevelopment officials then invoked eminent domain, requiring 202 property owners to sell their parcels. A landowner sued, challenging the contention that the land is blighted and predominantly urbanized.

In July 2005, Attorney General Bill Lockyer raised the case’s profile when he filed a friend-of-the-court brief in support of the lawsuit claiming the blight statute designed to help revive decaying urban areas was instead being used to justify a rural land grab by California City officials. His brief asked the court to invalidate California City’s addition of the 15,000 acres because the Legislature’s intention in approving the redevelopment law was not to increase cities’ tax revenue by adding vacant land to their redevelopment areas. In addition, the brief said, vacant land should not be included in a redevelopment project area if it is as large as the 202 lots in question in California City. Most of those lots are 2½ acres or larger, some as big as 640 acres. The Superior Court judge ruled in favor of California City, but the case is under appeal.

Possible Changes:

- Remove the antiquated subdivision language from the blight definition.

- Require that antiquated subdivisions have conditions of economic blight in order to qualify as “blight.”
- Repeal the antiquated subdivision exception to the “predominately urbanized” definition, effectively limiting the redevelopment of antiquated subdivisions to urbanized areas.
- Limit the antiquated subdivision exception to project areas that are smaller than 100 acres in urbanized areas.
- Limit the antiquated subdivision exception to lots of 2 acres or less.
- Limit the antiquated subdivision exception to “postage-stamp” sized lots, those smaller than 40 feet by 85 feet (less than 3,400 square feet).
- Limit the antiquated subdivision exception to properties with steep topography (slopes greater than 45%).
- Allow the use of the antiquated subdivision exception in cases where clear title to the land is clouded.
- Allow property owners of irregular lots in newly reconfigured subdivisions to vote, by a 2/3 margin, on whether to be subject to eminent domain.

Reform Local Redevelopment Practices

Legislators may wish to respond to the perception that the problem with redevelopment projects may not be the statutory “blight” definition, but how local officials use the statutes.

Increase Voter Review

Current Law: Andrews v. City of San Bernardino (1959) explained that redevelopment agencies’ ordinances were not legislative acts by city councils and therefore not subject to referendum. The Legislature responded by permitting referenda on redevelopment agencies’ ordinances.

As a result, an ordinance by a city council or county board of supervisors declaring the need for a community redevelopment agency is subject to referendum. Refer-

endum procedures follow those for city or county ordinances (§33101). Ordinances adopting redevelopment plans for new redevelopment project areas are subject to referendum (§33365). Ordinances amending existing redevelopment plans are also referendable (§33450).

Redevelopment officials can merge their existing redevelopment project areas to merge plan and project areas for all purposes, or to pool property tax increment revenue but retain the separate plans. Mergers require plan amendments which are subject to referendum (§33485).

In most cities and counties, referendum petitions challenging a redevelopment ordinance must be submitted within 30 days of the adoption of the ordinance. In cities or counties with populations over 500,000, the petition period is 90 days after the ordinance's adoption (§33378). All registered voters in the city or county (not just those in the redevelopment project area) can vote on the referendum.

Problem: Other than lawsuits, a referendum is the only method to overturn redevelopment officials' key decisions. Qualifying a redevelopment petition can be a tough task for residents and property owners. Not only is the time short (30 days in most communities; 90 days in bigger communities), but the process is often costly. Legislators may wish to give voters easier ways to "opt in" to a proposal instead of "opting out" of a redevelopment decision.

Possible Changes:

- Require voter approval on redevelopment officials' decisions:
 - Creating new redevelopment agencies.
 - Adopting new redevelopment plans.
 - Major amendments to existing redevelopment plans.
 - Merging existing redevelopment plans.
- Alternatively, extend the referendum petition period from 30 days to 90 days for all communities, not just the bigger cities and counties.

Limit Redevelopment Spending on City Halls

Current Law: Concerned that redevelopment agencies had strayed from their original purpose of eradicating blight, legislators prohibited them from paying for the construction or rehabilitation of city halls or county administration buildings

with tax increment funds (AB 1290, Isenberg, 1993). But legislators left three exceptions (§33445 [g]), that allow local officials to:

- Comply with federal and state seismic safety and accessibility standards.
- Rehabilitate or replace a city hall that was seriously damaged during an earthquake that was a presidentially-declared natural disaster.
- Use funds from debts issued before January 1, 1994.

Problem: Although current law prohibits redevelopment officials from building city halls and county administration centers, it does not explicitly ban them from buying the land for those projects. The unpublished case of Ruffo v. Redevelopment Agency of San Jose (2001) required the City of San José to repay its Redevelopment Agency for the property that the Agency bought for a new city hall. The court said that AB 1290 intended to prohibit all direct and indirect expenditures for the construction of city halls, including payments for land acquisition, site clearance, and design.

Possible Change: Codify the Ruffo decision and prohibit redevelopment officials from purchasing land to build new city halls or county administration buildings.

Give Buyers More Notice About Redevelopment

Current Law: When selling residential property with one to four dwelling units, the owners or their agents must disclose to prospective buyers information about the property’s conditions, including significant defects, even if the property is listed “as is” (Civil Code §1102, et seq.).

The *Real Estate Transfer Disclosure Statement* requires the seller to use a list to explain the property’s conditions, including any zoning violations, CC&Rs or other deed restrictions, or abatement citations (Civil Code §1102.6). Similar requirements apply to manufactured homes and mobilehomes (Civil Code §1102.6d). Sellers must also provide a *Natural Hazard Disclosure Statement* to buyers, telling them if the residential property is subject to flooding, fire, earthquake, or seismic hazards (Civil Code §1103, et seq., added by AB 248, Torlakson, 1999). Cities and counties may adopt a *Local Option Real Estate Transfer Disclosure Statement* that requires sellers to explain additional information (Civil Code §1102.6a).

Further, the Subdivided Lands Act requires sellers to disclose to a subdivision’s first-time buyers if the property falls within an “airport influence area” or within the jurisdiction of the San Francisco Bay Conservation and Development Commis-

sion (Business and Professions Code §11010 [b][12] & [15], added by AB 2776, Simitian, 2002 and SB 1568, Sher, 2004).

Problem: Eminent domain remains one of redevelopment's most controversial features. Homeowners and landlords fear the condemnation of their houses, apartments, and businesses. The California Redevelopment Association says that most recent redevelopment plans voluntarily limit the use of eminent domain to certain types of property (e.g., only commercial and not single-family homes) or to certain portions of project areas. Current law does not explicitly require sellers to tell buyers that the property is within a redevelopment project area or whether the property may be subject to eminent domain.

Possible Changes:

- Expand the Real Estate Transfer Disclosure Statement to require sellers to tell prospective buyers if the residential property is:
 - Within a redevelopment project area.
 - Subject to eminent domain.
- Require sellers of residential property with more than four dwelling units to tell prospective buyers if the property is:
 - Within a redevelopment project area.
 - Subject to eminent domain.
- Require sellers of nonresidential property to tell prospective buyers if the property is:
 - Within a redevelopment project area.
 - Subject to eminent domain.

State Oversight

Legislators may wish to protect the state government's dual interests (both substantive and fiscal) by requiring state oversight and approval of local redevelopment decisions.

Current Law: State officials do not supervise community redevelopment agencies, nor do they approve local redevelopment decisions. Redevelopment officials must file annual reports with their local legislative bodies (i.e., city council or county board of supervisors), the State Controller's Office (SCO) and the State De-

partment of Housing (HCD). These annual reports must contain independent financial audits as well as information relating to the agencies' activities (§33080.1). Both the SCO and HCD publish annual summaries of the information provided by redevelopment officials.

The SCO must compile a list of redevelopment agencies that have “major audit violations” based on the information in the agencies' own independent audits. The SCO then determines if local officials have corrected these major audit violations and, if not, the Attorney General may sue to force corrections (§33080.8).

Besides faithful adherence to state law, enforcement relies on lawsuits filed by:

- Other local governments (e.g., counties, special districts, school districts).
- The State Department of Finance (§33501 [b]).
- Local residents, property owners, and businesses.

Problem: Even though community redevelopment agencies carry out state policies and even though the State General Fund pays substantial indirect subsidies to redevelopment programs, there is no direct state oversight or approval of redevelopment plan adoptions or amendments.

The Legislative Analyst's Office, the Public Policy Institute of California, and other critical observers have recommended that state officials determine if redevelopment programs follow state law, with appropriate enforcement.

Possible Changes:

- Require state approval of local redevelopment actions by creating a unit within state government with sufficient staff expertise to review redevelopment plans and take enforcement actions.
- If the Legislature adds “metrics” (see pages 4 and 5) to some but not all of the “blight” characteristics, require redevelopment officials to notify a state agency if a “blight” determination uses one of the non-quantified characteristics.
- Require a state agency to approve all future redevelopment plans.
- Allow any state agency to sue redevelopment agencies.

- Require a state agency to review and approve redevelopment plans and amendments, similar to HCD's certification of housing elements, which could be the basis of a lawsuit if the plan fails to receive state approval.
- Require a state agency to approve any future project areas larger than 250 acres.
- Require a state agency to approve any significant amendments (e.g., size, time, debt, eminent domain) to existing redevelopment plans.
- Allow property owners to require a state agency to review proposed project areas. Specify that the state agency uses the same standard as the courts. The state agency's decision becomes a rebuttable presumption in any subsequent lawsuit.
- State agencies that might perform these functions include:
 - Creating a new unit within the Department of Finance.
 - Creating a new unit within the State Controller's Office.
 - Creating a new unit within the Attorney General's office.
 - Governor's Office of Planning and Research (OPR).
 - Department of Housing and Community Development (HCD).
 - Infrastructure and Economic Development Bank (I-Bank).

Litigation Procedures

Instead of creating a new state agency to oversee redevelopment decisions, legislators may wish to make it easier to put legal challenges in front of judges.

Current Law: Someone who wants to challenge the validity of a redevelopment plan has 60 days after the plan's adoption or amendment to file a lawsuit (§33500 and Code of Civil Procedure §860 and §863). Missing the 60-day deadline prevents a person from contesting several aspects of the plan, including a finding that an area is blighted or a finding that an agency needs to condemn real property in order to execute the plan.

Any action challenging the validity of the plan must be filed under special validation procedures (§33501 and Code of Civil Procedure §860, et seq.). In a validation action, a published notifies all interested persons that they can contest the validity of the redevelopment plan by a specified date (Code of Civil Procedure

§§860-862). Someone who doesn't intervene by the specified date can't join the validation action (Green v. Community Redevelopment Agency, (1979) 96 Cal.App.3d 491).

The Community Redevelopment Law includes provisions for challenging a redevelopment plan at a public hearing before its adoption (§§33360-33364). A person who does not participate in the hearing has not exhausted the available administrative remedies and can't sue to challenge the redevelopment plan's validity (Redevelopment Agency v. Superior Court, (1991) Cal.App.3d 1487).

Only "interested persons" can file validation suits, and the term has been narrowly construed in the redevelopment context (Torres v. City of Yorba Linda, (1993) 13 Cal.App.4th 1035). The court said that the plaintiffs lacked standing because they didn't reside in or own property in the city, didn't pay property taxes in the city, and didn't have a beneficial interest in the redevelopment area. Residing in the county and paying property tax in the county weren't enough to create standing.

The Community Redevelopment Law explicitly recognizes several specific entities, including the Department of Finance, as "interested parties" for validation suits (§33501). Although the Legislature has not explicitly recognized the right of the Attorney General to challenge the validity of redevelopment plans, that ability is presumptively included in the Constitution's broad grant of powers to the Attorney General (California Constitution, Article V, §13).

If a party meets all of the requirements for suit, a court will review an action challenging the amendment or adoption of the redevelopment plan using the "substantial evidence test" (In re Redevelopment Plan, (1964) 61 Cal.2d 21). The court will review the record of the agency's proceedings to see if local officials had substantial evidence to support the findings they made in adopting the plan.

Problem: Some critics say that these procedural and jurisdictional requirements prevent affected persons from contesting redevelopment plans. They point to the exhaustion of remedies requirement, the stringent standing requirement, and the short statute of limitations period. Critics contend that these requirements effectively insulate agencies from lawsuits. By the time that redevelopment opponents realize that a redevelopment plan could harm them, it's too late to challenge it.

Others question the wisdom of barring parties from intervening in a lawsuit after the period specified by the summons. Generally, a shortened procedural schedule allows redevelopment agencies to have certainty as they proceed with their pro-

jects. However, if a validation action has already been filed, the interested parties have notice that there is a risk in proceeding with the plan.

Critics also say that the people who are most adversely affected by a redevelopment plan (e.g., those living in blighted areas) may not have the resources to challenge it. Similarly, there are allegations that redevelopment agencies are sometimes unduly influenced by businesses that benefit from redevelopment plans. Some even speculate that the intended beneficiaries of redevelopment plans may agree to reimburse redevelopment agencies for their defense costs.

Because private parties often have difficulty challenging redevelopment plans, some have suggested that state agencies, such as the Department of Finance and the Attorney General, should play a more active role in enforcing redevelopment laws. However, state agencies encounter many of the same obstacles faced by private parties.

Possible Changes:

- Extend the statute-of-limitations on lawsuits challenging the validity of redevelopment plans from 60 days to 90 days, matching the time limit for challenging general plans (Government Code §65009 [c][1]).
- Require redevelopment agencies to pay attorneys' fees to plaintiffs who successfully challenge the validity of a redevelopment plan. This change would be consistent with recent statutory changes that benefit affordable housing development projects (Government Code §65589.5 [k], §65863 [e], §65914 [b], and §65915 [e]).
- Clarify that a redevelopment agency bears the burden-of-proof on lawsuits challenging the validity of redevelopment plans. This change would be similar to the recent statutory change for low-income housing sites (Government Code §65589.5, amended by SB 575, Torlakson, 2005).
- Provide that anyone who lives or owns property in the same county as a redevelopment project area has standing to challenge the validity of the plan.
- Ban indemnity agreements for lawsuits challenging redevelopment plans.

- Require plaintiffs to notify the Attorney General when filing lawsuits that challenge redevelopment plans. This change would be similar to the notification provisions that currently exist for suits filed under the California Environmental Quality Act (Code of Civil Procedure §388 and Public Resources Code §21167.7).
- Clearly assign the Attorney General the explicit authority to sue for violations of the Community Redevelopment Law.
- Exempt the Attorney General and other state agencies, from the “exhaustion of remedies” rule. This change would be similar to the Attorney General’s current exemption from CEQA’s exhaustion requirements (Public Resources Code §21177 [d]).
- Allow a party to intervene in a pending suit after the date on the summons has run. This change would overturn the Green decision.

Use of Eminent Domain

Legislators may wish to respond to the perceived problem that redevelopment officials abuse their eminent domain powers.

Current Law: The Fifth Amendment of the U.S. Constitution states that a person's private property may be taken for a “public use” if the owner is paid “just compensation.” Similarly, the California Constitution provides that private property “may be taken or damaged for public use only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner” (California Constitution Article I, §19).

The Community Redevelopment Law allows a redevelopment agency to designate a redevelopment project area for the purpose of eradicating blight. The law provides agencies with the power to condemn real property within a designated redevelopment project area (§33342). The redevelopment plan must contain a time limit for commencing eminent domain actions. The deadline may not be more than 12 years from the plan’s initial adoption. The agency, however, can extend the deadline by amending the plan (§33333.2 [a][4]).

The state’s Eminent Domain Law establishes the standards and procedures for condemning property. Owners are entitled to fair market value of the property

taken (Code of Civil Procedure §1263.310). As a matter of practice, fair market value is generally determined through the use of an independent appraiser selected by the redevelopment agency. Agencies often use an MAI appraiser, the highest designation of the Appraisal Institute. An owner may contest the valuation in court and is entitled to a jury trial. Neither the plaintiff nor the defendant has the burden of proof on the issue of compensation (Code of Civil Procedure §1260.210).

Problem:

Some property rights advocates believe that eminent domain should only be used when the property to be taken will be owned and occupied by a public entity and used only for a stated public use. In other words, eminent domain should not be used for redevelopment purposes if it involves selling or leasing the property to a private entity.

Others believe that the eradication of blight through redevelopment is a legitimate use of the eminent domain power. Nonetheless, some pro-redevelopment partisans believe that this power should be more tightly controlled to ensure against its misuse. Concerns have been raised that current law allows for the following circumstances to occur:

- The finding of blight that accompanies the designation of a redevelopment area or an extension of the eminent domain power is conclusive for at least 12 years and possibly much longer. As a result, eminent domain could still be used long after redevelopment officials have eradicated the blight.
- The finding of blight covers the entire project area, even though the area may contain parcels that are not blighted or areas where blight has been cured. Eminent domain could be used to condemn parcels that are not needed to eradicate the remaining blight.
- Members of a public body voting on an eminent domain action may have received campaign contributions from an intended third-party beneficiary of the action or even hold an unpaid position with an intended beneficiary without triggering conflict of interest statutes.

In addition, many concerns have been raised that the appraisals ordered by the condemning agency significantly undervalue the property. It has been alleged that appraisers may have an incentive to undervalue property in order to continue doing business for the public entity. While the property owner has the right to a jury trial to determine the actual value, the time, expense, and uncertainty of going to court may deter many property owners from exercising their rights.

Possible Changes:

- Require that property taken by eminent domain be owned and occupied by the condemnor or another public agency only for the stated public purpose (see, for example, SCA 15, McClintock and ACA 22, La Malfa).
- Preclude the taking of owner-occupied residential property for private use (SCA 12, Torlakson).
- Require new redevelopment plans to specify where, when, and how redevelopment officials can use their eminent domain powers (e.g., only commercial and not single family homes, or only certain portions of project areas) (SB 53, Kehoe).
- Require redevelopment agencies for older project areas to adopt an ordinance specifying where, when and how redevelopment officials can use their eminent domain powers and limiting eminent domain authority to July 1, 2009. Adoption of the ordinance and later changes would require an amendment to the redevelopment plan (SB 53, Kehoe).
- Shorten the deadline for redevelopment officials to start condemning property from 12 years to 10 years from initial plan adoption (SB 53, Kehoe).
- Require voter approval of any future redevelopment plans that propose to use eminent domain.
- Prohibit the use of eminent domain by redevelopment agencies more than 12 years after the adoption of a redevelopment plan unless the agency makes a finding that blight still exists and the eminent domain action will directly and substantially assist in eradicating the remaining blight.
- Prohibit elected officials from accepting campaign contributions from entities that have received or are reasonably likely to receive land acquired through eminent domain. Officials who have already received contributions from such entities must recuse themselves from any vote on the eminent domain action.

- Make it a conflict of interest in an eminent domain action for a redevelopment official to be on the board of an organization with an existing or likely future financial interest in the property.
- Require redevelopment agencies to pay attorney fees and treble damages in cases where a property is illegally taken.
- Require redevelopment agencies, in cases where a court determines a higher value for the property than that offered by the public entity, to pay attorney fees and twice the difference in value.
- Require the Department of Real Estate to maintain a list of appraisers who are qualified and interested in performing appraisals in eminent domain cases. Require the public entity seeking an appraisal for purposes of an eminent domain action to obtain and use a randomly assigned appraiser from the list.
- Require the condemning redevelopment agency, if requested by the property owner, to pay for an independent appraisal to be picked by the owner.

Sources and Credits

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Appendix A: Policy Committee Memberships

The joint interim hearing on November 17, 2005 brings together the five of the policy committees that have jurisdiction over the bills that affect redevelopment agencies and eminent domain.

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

Assembly Judiciary Committee

Assembly Member Dave Jones, Chair
 Assembly Member Tom Harman, Vice Chair
 Assembly Member Noreen Evans
 Assembly Member Ray Haynes
 Assembly Member John Laird
 Assembly Member Tim Leslie
 Assembly Member Lloyd Levine
 Assembly Member Sally Lieber
 Assembly Member Cindy Montañez