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 Summary Report From
## The Joint Interim Hearing

Thursday, November 17, 2005
State Capitol, Sacramento

## Table of Contents

# What Is To Be Done? Legislators Look At Redevelopment Reform

On Wednesday, November 17, 2005, state legislators held a joint interim hearing that examined policy questions that surround how redevelopment officials use their eminent domain powers as well as recommendations for reforms to the state laws that govern community redevelopment agencies. The hearing began at 9:35 a.m. and continued until 3:20 p.m. Held in the John L. Burton Hearing Room (4203) of the State Capitol in Sacramento, the hearing attracted more than 150 people.

Thirteen state legislators attended some or all of the six-hour joint interim hearing:

Senator Roy Ashburn
Senator Dave Cox
Senator Christine Kehoe
Senator Alan Lowenthal
Senator Bob Margett
Senator Tom McClintock
Senator Nell Soto
Senator Tom Torlakson
Assembly Member Joe Baca, Jr.
Assembly Member Dave Jones
Assembly Member Gene Mullin
Assembly Member Simón Salinas
Assembly Member Alberto Torrico

The sponsors of the joint interim hearing were the Senate Local Government Committee (Senator Kehoe, chair), the Senate Transportation and Housing Committee (Senator Lowenthal, chair), the Assembly Housing and Community Development Committee (Assembly Member Mullin, chair), the Assembly Judiciary Committee (Assembly Member Jones, chair), and the Assembly Local Government Committee (Assembly Member Salinas, chair). Senator Kehoe chaired most of the hearing, followed by Assembly Member Jones.

This report contains the staff summary of what happened at the joint interim hearing [see the ***white*** pages], reprints the briefing paper [see the ***blue*** pages], and reproduces the written material provided by the 46 witnesses and eight other commentators [see the ***yellow*** pages]. Senate staff videotaped the hearing and it is possible to purchase copies of those videotapes by calling the Senate TV and Video Program office at (916) 651-1531.

## STAFF FINDINGS

It is a daunting task to distill the comments of almost 50 speakers and more than a dozen legislators that occurred during a six-hour hearing into a few, concise findings. Summaries, by definition, gloss over details and subtle nuances. Nevertheless, after reviewing their notes and reading the witnesses' written materials, the staffs of the five policy committees reached these findings:

- Community support for redevelopment projects is possible when redevelopment officials explain their motives and their methods. Public awareness and neighborhood understanding are essential ingredients for success.

- Although redevelopment remains controversial in some communities, it can be a tool that benefits residents by removing blight, reducing crime, and promoting affordable housing.

- Legislators showed interest in possible amendments to the statutory "blight" definition. Some proposals include adding metrics to the statutory criteria, eliminating the antiquated subdivision exclusion, and requiring more documentation.

- Legislators shared the concern that "blight" designations continue after redevelopment succeeds. Requiring officials to redesignate "blight" before they issue more bonds, use eminent domain, extend time limits, or merge project areas would be one response.

- Legislators expressed interest in increased enforcement of redevelopment laws. They did not agree on whether to create a new state oversight agency, as some recommended, or the alternative of improving litigation processes. There was interest in allowing the Attorney General to be more active, and in lengthening the referendum petition period.

- Most of the property owners who spoke at the hearing were opposed to redevelopment officials' use of eminent domain for economic development. Many were outright hostile to that idea, calling for constitutional changes.

## LEGISLATORS' OPENING REMARKS

**Senator Kehoe** called the joint interim hearing to order and invited suggestions for reforming the redevelopment laws. She said that she expected to see at least a half-dozen redevelopment reform bills --- including her own SB 53 --- when the Legislature reconvened in January 2006. "I support redevelopment when it's properly used," she said, referring to her own experience as a member of the San Diego City Council. "I know that redevelopment projects can be positive forces for improving neighborhoods and downtowns." Redevelopment can make life better for residents and property owners, Senator Kehoe explained, "but redevelopment needs to avoid the perception of being heavy-handed. Redevelopment must overcome the perception that big government and big business use their redevelopment powers to pick on the little guy. Redevelopment needs to be seen as fair and just --- especially when using the power of eminent domain."

**Senator Torlakson** encouraged legislators to look at both the benefits and abuses of redevelopment and to see "where cities and counties have gone too far." He drew attention to his own SCA 12 which would limit eminent domain powers. Senator Torlakson mentioned how Pittsburg officials used their redevelopment powers to clean-up a crime infested neighborhood. He then expressed concern over how some redevelopment officials use their eminent domain powers, particularly with property appraisals, damage awards, attorneys fees, and conflicts-of-interest.

**Senator Soto** pointed to the enormous impact that redevelopment programs can have on improving local economies, and pointed to the successes in Fontana. When considering redevelopment reforms, she said that legislators should "keep it flexible."

**Senator McClintock** repeated William Pitt's quotation that he offered at the Senate Local Government Committee's August 17 hearing on "*Kelo* and California." Skeptical of redevelopment's benefits, Senator McClintock pointed to the problems encountered by Oakland business owner John Revelli and others. He announced that Mr. Revelli was in the audience to tell his own story to legislators.

**Assembly Member Jones** cited examples from his service as a Sacramento City Councilmember when he said, "I have seen benefits from redevelopment," but "as a legal aid lawyer, I've also seen abuses" harm poor people. He noted the "desperate, desperate shortage of housing" and encouraged legislators to consider increas-

ing the requirement that redevelopment officials set aside 20% of their property tax increment revenues for affordable housing.

**Assembly Member Salinas** recalled the testimony from the October 26 joint interim hearing in San Diego in which some of the "initial naysayers" said that they had become redevelopment supporters. If local officials want to use redevelopment's "awesome power," they need to be "fair and open" in their dealings with neighborhood residents, property owners, and business operators.

**Assembly Member Mullin** noted that this hearing was the fifth formal hearing on eminent domain in which he had participated. He told the invited witnesses and the audience that he wanted to hear specific proposals for redevelopment reform.

## THE WITNESSES

The five policy committees had invited 14 witnesses, organizing them into five panels to talk about five types of redevelopment reform proposals. Each panel featured three invited witnesses. Legislators invited the speakers to provide more detailed written materials to supplement their brief remarks. The witnesses whose names are marked with asterisks (* and **) provided written materials. The appendix reprints those materials. [See the ***yellow*** pages.]

### Reform the Statutory Definition of "Blight"

The invited witnesses on the first panel discussed the policy questions associated with amending the statutory "blight" definition, including the suggestions that appear in the briefing paper. [See the ***blue*** pages.]

Honorable Chris Norby*
Orange County Board of Supervisors

R. Bruce Tepper*
R. Bruce Tepper, ALC

T. Brent Hawkins**
McDonough Holland & Allen

"Blight makes right," declared Orange County Supervisor **Chris Norby**, citing what he called "the 50-year story of redevelopment agency abuse." Norby listed five problems that he wanted legislators to address:

- The definition of blight is too broad.
- Blight designations become "virtually permanent."
- Blight designations divert taxes "into private interests."
- Blight designations let redevelopment agencies "rob" other governments.
- Blight designations justify eminent domain for "private gain."

Norby recommended requiring redevelopment officials to renew their findings of blight every five years as a condition of continuing redevelopment activities. Citing redevelopment agencies' diversions of property tax increment revenues, he gave the legislators a chart showing county governments' losses. The U.S. Supreme Court's *Kelo* decision challenged the state governments to impose their own limits on eminent domain practices, Norby said.

As a litigator who represents both property owners and redevelopment agencies, **Bruce Tepper** explained that blight is the "jurisdictional basis" for redevelopment. He disagreed with the staff briefing paper, telling legislators that the lack of statutory "precision is not as grave as you might be led to believe." The conditions of physical blight and economic blight "must predominate" before local officials can declare an area "blighted." Legislators would be "hamstringing" redevelopment agencies if the Legislature quantifies the "indicia" of blight. He rejected these "arbitrary percentages." Once litigators break through redevelopment consultants' dense reports, they can reveal "almost brazen honesty," which is why redevelopment agencies lost the four reported court decisions. But there have been many other unpublished opinions in recent years which shows that the courts use the current statutory "blight" definition to overturn bad projects. Regarding the exception for antiquated subdivisions, Tepper asserted that redevelopment officials have used that characteristic of blight only once on its own since 1954. This focus on defining "blight" does not answer the questions raised by the *Kelo* decision. Instead, legislators should follow the approach used by the federal courts in the *99 Cents Only Stores, Inc. v. Lancaster Redevelopment Agency* (2001) and *Cottonwood Christian Ctr. v. Cypress Redevelopment Agency* (2002) and look at parcel-specific requirements.

**Brent Hawkins** represents redevelopment agencies and is general counsel to the California Redevelopment Association. He too cautioned legislators to maintain statutory "flexibility" because cities face many types of problems: declining downtowns, historic properties, brownfields, and the "grayfields" of obsolete shopping

centers. "California cities have been well-served" by this statutory flexibility. Hawkins said that there is a misrepresentation in the staff briefing paper that the courts have a hard time applying the statutory "blight" definition, but that's not so. "AB 1290 appears to be working," Hawkins said, because the current law already requires "concrete measurable data." He called the proposals to require that a fixed percentage of parcels to be blighted "not workable" and "not realistic" because usually there is a mix of conditions. However, the California Redevelopment Association is willing to sponsor legislation to remove the "urbanized" exception from the antiquated subdivision provision. Hawkins asked legislators to keep "flexibility and local control."

In the legislators' discussions that followed these presentations, **Assembly Member Jones** raised his concern about "entry barriers" such as short deadlines for filing lawsuits. "How do we ensure that aggrieved property owners and residents" can raise their issues in court? **Assembly Member Mullin** called the 60-day statute of limitations "too short." **Senator Kehoe** said that there is a "disconnect" between what average people experience and what the redevelopment professionals say. There is a lack of understanding at the neighborhood level. "The statute of limitations is a problem," she declared. **Brent Hawkins** responded that short deadlines are needed to reassure private investors and to make redevelopment agencies' tax allocation bonds sellable. **Bruce Tepper** reminded legislators that property owners get written notices long in advance of redevelopment decisions, as do the project area committees. The exhaustion of remedies rule and the current deadlines are consistent with other validating actions.

Legislators also asked the speakers about the statutory "blight" definition, including the exception for antiquated subdivisions. When **Assembly Member Mullin** asked how often redevelopment agencies use that exception, **Bruce Tepper** said that five cases since 1954 have used antiquated subdivisions in conjunction with other conditions of blight. **Brent Hawkins** explained that most downtowns have small and irregular lots. **Bruce Tepper** agreed that small lots impair effective economic uses.

**Senator McClintock** challenged the speakers to explain the claim that there are few eminent domain cases involving redevelopment agencies. "It's a joke," said **Christ Norby**, who added that the threat of using eminent domain is often enough to force property owners to sell to redevelopment agencies. **Senator McClintock** likened the practice to a robber who shows off a gun, but never needs to pull the trigger. He asked those in the audience who had been threatened with eminent domain to stand. **Assembly Member Jones** responded that for every anecdote,

there are hundreds of other examples of property owners who don't invest in their communities and let their properties become blighted.

## Local Redevelopment Practices

The second panel explored several suggestions raised by the briefing paper, including increasing voter review of redevelopment decisions and providing property owners with more notice about redevelopment activities. [See the ***blue*** pages.]

Christine Minnehan, Legislative Advocate*
Western Center on Law and Poverty

Pete Kutras, County Executive*
County of Santa Clara

Anne Moore, Executive Director**
Sacramento Housing and Redevelopment Agency

As someone whose organization represents poor people, the Western Center on Law and Poverty's **Christine Minnehan** said that "eminent domain is not the problem that brings people into our offices." Redevelopment agencies that provide affordable housing --- Sacramento, San Francisco, Los Angeles --- enjoy public support because their efforts reduce crime and improve neighborhoods. She recommended that legislators:

- Increase the housing set-aside requirement from 20% to the "highest feasible level," perhaps 30% to 50%.
- Retain the affordability of housing produced through redevelopment efforts by requiring better recording and enforcement of deed restrictions.
- Adopt the "metrics" approach for defining blight. If code violations constitute blight, then redevelopment efforts should improve those conditions.
- Establish meaningful oversight by restoring the redevelopment audit division of the State Department of Housing and Community Development.

Better state oversight would have averted what Minnehan called a "travesty" with Fontana's redevelopment spending and bonding capacity. The State Department of Housing and Community Development should not have overstepped its statutory authority and exempted Fontana's redevelopment agency of its obligations, she said.

Santa Clara County Executive **Pete Kutras** decried what he termed "fiscal eminent domain," by which redevelopment officials divert property tax revenues without voters' approval or the county supervisors' consent. The redevelopment agencies in Santa Clara County collectively receive more property tax revenues than the County government, leaving the County without enough money to deliver state mandated services. Kutras recommended that legislators:

- Hold counties harmless by either backfilling them with money from the State General Fund or by exempting counties from property tax increment revenue shifts.
- End or limit the practice of merging project areas unless redevelopment officials spend the resulting revenues on the remaining blight.
- End older redevelopment project areas.
- End funding affordable housing with property tax increment revenues and provide another funding source.

Kutras said that he was enthusiastic about many of the suggestions in the briefing paper, "without reservation," mentioning using "metrics" in the statutory "blight" definition, increasing voter review, extending state oversight, and making litigation easier.

**Anne Moore** is not only the executive director of the Sacramento Housing and Redevelopment Agency, she is also the president of the California Redevelopment Association. In both capacities, Moore said that she is committed to affordable housing because, next to federal programs, redevelopment agencies' Low and Moderate Income Housing Funds are the most important source of funding for affordable housing. Moore said that the briefing paper's proposals go beyond what is needed for the California Legislature to respond to the *Kelo* decision. More specifically, Moore said that:

- There "is no evidence" that the processes for adopting and amending redevelopment plans is flawed --- there is no need for voter review.
- Extending the time for circulating redevelopment petitions would be "problematic." The current 30 days is "ample" because of the extensive hearing requirements.
- Her Association is willing to clarify that redevelopment officials cannot fund city halls, although there is no clear link to *Kelo*.
- Requiring sellers to tell prospective buyers that property is within a redevelopment project area duplicates the requirement to record notices that title reports already disclose.

Moore pointed to her Phoenix Park redevelopment project area as an example of the essential need to take private residential property by eminent domain. The crime rate went down by 45% after eminent domain removed slumlords.

In the legislators' discussions that followed these presentations, **Senator McClintock** told Anne Moore that he did not disagree with the use of eminent domain for traditional public works projects, but he opposed taking private residential property and selling it to other private owners. **Assembly Member Mullin** told Moore that "*Kelo* is the burr under the saddle" that causes legislators to look at redevelopment, even beyond eminent domain.

**Assembly Member Mullin** asked Pete Kutras what kind of oversight he wanted, assuming that legislators are "probably not going to create a new state agency." Kutras recommended allowing county supervisors or school districts to approve diversions of property tax increment revenues. **Senator Soto** called an independent review agency a "really good idea." **Senator Kehoe** asked if the State Department of Housing and Community Development should play that role.

**Senator Torlakson** was interested in extending the time period for collecting signatures on referendum petitions, given what he called the "gravity" of eminent domain. He said that referenda help people believe that redevelopment is fair.

**Assembly Member Salinas** asked the speakers for advice on how to help tenants get more involved in redevelopment decisions because public participation is hard to legislate. Christine Minnehan agreed that outreach "is absolutely key" and that litigation occurs when communities are unaware of what redevelopment officials propose. "Anger and foment" results from poor communication, Minnehan said. She added that "in many cases it's not eminent domain" that causes strife, but the "tertiary effects" of other programs. Minnehan noted Stockton's stringent code enforcement program.

**Assembly Member Jones** asked if there was evidence to support the assertion that redevelopment undermines property values. Anne Moore replied that, to the contrary, data show that the assessed valuations in redevelopment project areas grows faster than in non-redevelopment areas.

Is the threat of eminent domain "almost always" used by redevelopment officials, asked **Senator Cox.** Anne Moore said no, and pointed to the protections that property owners have under law --- just compensation, fair appraisals, and public

disclosure. Moore added that the California Redevelopment Association is willing to work on improving those processes in 2006.

## State Oversight of Redevelopment

The next two panels explored the related questions of whether there should be more oversight of redevelopment decisions and, if so, who should be responsible. This panel looked at suggestions to assign the oversight function to a state agency; an institutional approach. [See the ***blue*** pages.] A process approach was the subject of the next panel.

Marianne O'Malley, Principal Analyst*
Legislative Analyst's Office

Carol Evans, Vice President*
California Taxpayers Association

Lee Rosenthal**
Goldfarb & Lipman

Speaking for the Legislative Analyst's Office, **Marianne O'Malley** explained to the legislators how the redevelopment agencies' share of property tax revenues has grown from 2% before Proposition 13 (1977-78) to nearly 10% (2003-04). Because local property taxes generally offset the state government's funding obligations to K-14 education under Proposition 98, redevelopment agencies' diversion of property tax revenues increase the State General Fund's education costs. How much does redevelopment cost the state? O'Malley answered her own question by saying, "At least in the range of hundreds of millions of dollars annually." The state should make sure that this funding source is not overused. She reminded the legislators that the State Department of Finance has standing to sue redevelopment agencies to protect the state's fiscal interests. O'Malley gave the legislators five options for increasing the state government's oversight of redevelopment:

- A state agency to review proposed projects.
- Issuing binding state findings or subject to local challenge.
- Oversight by the State Department of Finance or the Attorney General.
- Charge fees to redevelopment agencies to pay for the state's oversight.
- Create an alternative form of redevelopment --- without the schools' share of the property tax increment revenues --- exempt from state oversight.

**Carol Evans**, California Taxpayers Association vice president, urged the legislators to refocus redevelopment activities on eliminating blight and providing affordable housing. Evans also testified at the October 26 joint interim hearing in San Diego and repeated her call for limits on redevelopment activities that compete with the private sector. She recommended reforms to require local officials to:

- Make a documented finding that private enterprise cannot, on its own, alleviate the blight.
- Make that finding for each parcel, not "one vague general finding."
- Consider offers from private firms that are ready to abate the blight.

Regarding condemnation of private property, Evans endorsed reforms to require:

- Reducing the time period to less than 12 years.
- Finding that blight still exists and that eminent domain is needed to cure it.
- Finding that blight exists for each parcel, not just in an entire project area.

As an attorney who represents both redevelopment agencies and counties, and speaking on behalf of the California Redevelopment Association, **Lee Rosenthal** declared that the "biggest problem" with the proposals for state review of redevelopment is that the state government is not a "disinterested party." Richmond and Oakland are examples of communities where the state funds schools the most and where redevelopment projects have the greatest blight. Keeping local control over redevelopment is important, he said. There is no advantage to state review compared to judicial review. "We already have a system of review," Rosenthal said, in which the courts rely on precedents to enforce the law.

In the legislators' discussions that followed these presentations, **Senator McClintock** and **Senator Torlakson** asked about the Legislative Analyst's views on the Public Policy Institute of California's 1998 redevelopment study. **Marianne O'Malley** called it "interesting," but noted that no one has tried to replicate PPIC's findings.

**Assembly Member Jones** said that if redevelopment were as negative as claimed, "you wouldn't do it." The U.S. Supreme Court said "quite clearly" that California's redevelopment law passes constitutional muster; California law provides more protection than Connecticut law. He then asked that if there are problems, shouldn't the challengers have better opportunities to get into court rather than rely on state officials' reviews? **Lee Rosenthal** responded by noting that the statute of limitations on redevelopment lawsuits is similar to the deadlines for filing suits under the Planning and Zoning law.

**Senator Kehoe** praised the Legislative Analyst's recommendations, calling them "very good as always" as a starting point for legislators' reform discussions. "I think there is a legitimate role for state oversight," Senator Kehoe said. But she found it troubling that under current law the State Department of Finance had filed only one challenge and the Attorney General only two. She worried that state officials might not be showing enough interest in redevelopment activities. **Lee Rosenthal** suggested that legislators require redevelopment officials to notify the State Department of Finance when they already notify the State Board of Equalization, and let Finance decide about the state government's interests.

## Litigation Procedures

These panelists talked about the procedural suggestions to make it easier to put legal challenges to redevelopment decisions in front of judges, instead of creating a new state oversight agency. [See the ***blue*** pages.]

Daniel Siegel, Supervising Deputy Attorney General
Department of Justice

R. Bruce Tepper*
R. Bruce Tepper, ALC

Murray Kane**
Kane Ballmer & Berkman

"We believe that there have been some abuses in making blight determinations," declared Supervising Deputy Attorney General **Dan Siegel**. Because state law offers redevelopment officials fiscal incentives to find blight, he recommended six changes to litigation procedures:

- Extend the statute of limitations from 60 days to 90 days.
- Exempt the Attorney General and other state agencies from the exhaustion rule.
- Allow the Attorney General and other state agencies to intervene in redevelopment lawsuits after the statute of limitations has passed.
- Require redevelopment officials to notify the Attorney General when plaintiffs file redevelopment lawsuits.
- Affirm the Attorney General's authority to enforce redevelopment law.
- Shift the burden of proof to the redevelopment agencies.

These procedural changes will have a "deterrent" effect, Siegel claimed. If the purpose of a statute-of-limitation is to achieve certainty, then there's no reason to prevent the Attorney General's intervention after the deadline; someone else has already filed the suit. Siegel noted that exempting the Attorney General from the exhaustion rule and requiring local officials to notify the Attorney General about pending cases have precedents in the California Environmental Quality Act (CEQA). But he cautioned legislators not to expect lots of lawsuits. "Procedural changes such as these will not automatically result in changes in our office's level of enforcement," Siegel explained.

Redevelopment agencies already carry the burden of proof, responded **Bruce Tepper**, an attorney who represents both redevelopment agencies and their challengers. Plus, the Attorney General already has the authority to enforce redevelopment laws. Nevertheless, Tepper agreed with Siegel that it would be "viable and reasonable" for the Legislature to require redevelopment officials to notify the Attorney General when they're sued, just like CEQA. Tepper disagreed with Siegel over the recommendation to exempt the Attorney General from the exhaustion rule, saying that it would be a "waste of resources" to allow the Attorney General to raise new issues after local officials have closed the administrative record. But "improvements can be made and should be made" to these litigation procedures, according to Tepper.

**Murray Kane** spoke on behalf of the California Redevelopment Association based on his experience as an attorney who has represented nearly 30 redevelopment agencies. Litigation has invalidated redevelopment abuses, including projects in Hidden Hills, Mammoth Lakes, Industry, and Diamond Bar. Giving notice to the Attorney General about pending lawsuits "is a good idea," but if the Attorney General gets this notice, then there is no need to give the Attorney General an exemption from the exhaustion rule. Kane said that the current 60-day statute-of-limitations was adequate. There's no need for the Legislature to change the law and automatically grant attorneys fees to plaintiffs who win redevelopment suits because the current law already allows judges to award fees and they do. Statutorily shifting the burden of proof is "dangerous to tinker with," and besides, the existing substantial evidence test means that the burden is already on the redevelopment agencies. Kane also disagreed with granting standing to sue to any resident of the county. He had no objection to clarifying the statute and naming the Attorney General as someone who has standing to sue. The recommendation that redevelopment officials notify the State Department of Finance about the adoption of redevelopment plans works well in Kane's view along with the recommendation for redevelopment officials to notify the Attorney General of pending suits.

In the legislators' discussions that followed these presentations, **Senator Torlakson** asked how much it would cost the State Department of Justice to undertake more active oversight. Dan Siegel explained that it depended on the structure that the Legislature picked, but that he would give legislators some estimates.

How do property owners get access to the courts in eminent domain cases, **Senator McClintock** asked, referring to Mr. Revelli's problems in Oakland. Murray Kane and Bruce Tepper explained that eminent domain attorneys often work on contingencies, an arrangement which motivates redevelopment agencies to avoid high litigation costs and large awards. If agencies really were offering only pennies on the dollar, Kane said, there would be an enormously wealthy eminent domain bar, "which you don't have." Tepper explained that public officials do not deposit funds to compensate for the "loss of good will" when they acquire business property through condemnation. Answering a follow-up question from **Senator Torlakson**, Tepper said that a property owner who challenges a redevelopment agency's eminent domain right to acquire property cannot get access to the money that the agency deposits with the court.

**Senator Cox** added to the conversation by asking if offering judicial relief was an adequate response to property owners' concerns. He wondered if there was a way to resolve problems before filing lawsuits. The average property owner is "so threatened and menaced" by eminent domain, Senator Cox said. **Senator Soto** recounted how property owners and Pomona city officials worked together to have the Phillips Ranch declared blighted. "Somebody made a lot of money" by putting houses on that property, she said.

## Using Eminent Domain

The U.S. Supreme Court's *Kelo* decision sparked the Legislature's renewed interest in redevelopment reforms. [See the ***blue*** pages.] Three speakers gave their advice regarding what the legislators should do about eminent domain.

Timothy Sandefur, Staff Attorney*
Pacific Legal Foundation

Lawrence E. Martin, Principal*
Martin Land Company

John Shirey, Executive Director**
California Redevelopment Association

The Pacific Legal Foundation's **Timothy Sandefur** called the Legislature's delay in responding to the *Kelo* decision "troubling," especially since he testified at the legislative hearings in August. According to Sandefur, there were 223 incidents of eminent domain in 1998-2003 that transferred private property to private developers. Eminent domain allows bureaucrats to be "sculptors of neighborhoods." Because redevelopment officials' designation of blight remains indefinitely, "like a time bomb," Sandefur recommended that legislators require redevelopment officials to redesignate "blight" after every five years. He said that the briefing paper's proposal to exempt owner-occupied residential property from eminent domain was a "bad idea" because nonresidential property owners also need protection against eminent domain that results in transferring ownership to other private parties. Amending the California Constitution is the "only effective way to protect property owners," Sandefur declared.

**Lawrence Martin** described his family's current dispute with the City of Visalia over its condemnation of a downtown theater. Most property owners opt to accept the compensation that public officials offer them and give in to eminent domain, he said. He worried about public officials' conflicts-of-interest in eminent domain acquisitions. Martin recommended that legislators restructure the valuation process and require public officials to have two blind appraisals of a property's fair market valuation. Property owners should get a "Miranda warning" so they know their constitutional rights, Martin said. Public agencies should provide more help and counsel to property owners.

**John Shirey**, the California Redevelopment Association's executive director, spoke on behalf of the Association, telling legislators that his group would respond in writing to each point in the briefing paper. Blight "is the central issue … that's why we're here," Shirey said. "The *Kelo* decision didn't change California redevelopment law." Legislators should remember that redevelopment agencies are run by local elected officials who are reluctant to use eminent domain. About 40% of the 771 redevelopment agencies have no eminent domain powers, and 30% have self-imposed limits; most ban the use of eminent domain on residential property. The Association's survey shows that in the last five years, there were only three cases of redevelopment agencies using eminent domain against single-family dwellings; two of those involved clouded titles. Redevelopment agencies acquire about 560 parcels a year, mostly as the result of negotiated purchases. Disagreeing with Sandefur about banning eminent domain on single-family residences, Shirey

told legislators that they "ought to leave that on the table." He said that current law requires redevelopment officials to redesignate "blight" when extending the time to use their eminent domain powers, but legislators should clarify the law. Responding to Martin, Shirey said that current law already prohibits conflicts-of-interest, but if the law is unclear legislators should clarify the statute. When property is taken illegally, then "give it back to the rightful owner," he declared. As for the idea that redevelopment agencies should pay for appraisals by licensed appraisers, Shirey said, "we like that." In the *Kelo* case, there was an absence of blight, but "that is not the case in California." Legislators should make it clear that the use of eminent domain for economic development purposes requires a "blight" finding.

In the legislators' discussions that followed these presentations, the Visalia controversy attracted the attention of **Senator Torlakson** who explored the situation with Lawrence Martin. Martin said that a private seller offered to buy the property for $600,000; the City offered $334,000 based on an old appraisal that didn't reflect the rising real estate market. **Senator McClintock** asked if Martin had access to the money that Visalia officials had deposited with the court. Martin explained that by challenging the City's condemnation, he could not touch that money. **Assembly Member Jones** asked attorneys to respond in writing to Martin's recommendations.

**Senator Cox** asked John Shirey about Yolo County's proposed eminent domain acquisition of the Conaway Ranch. Shirey demurred, explaining that the property is not in a redevelopment project area and that the *Kelo* decision was about Connecticut's local economic development powers. Responding to points raised by **Senator McClintock**, Shirey called comparisons to Connecticut "ridiculous." **Assembly Member Jones** agreed that there had been "overblown and superheated rhetoric" at the hearing.

## PUBLIC COMMENTS

Following the five organized panels, **Senator Kehoe** called for public comments from the audience. Because of the large number of people who wanted to speak, Senator Kehoe asked them to limit their remarks to two minutes each. Of the 32 speakers, those whose names are marked with an asterisk (*) provided written materials that appear in the appendix. [See the ***yellow*** pages.]

**Jean Heinl*** is a South Gate resident and co-director of Californians United for Redevelopment Education. She told legislators that Long Beach officials forced

her to sell 10 units and their offer was an "insult." She wanted legislators to adopt the replacement-value standard.

**Dana Smith*** of Daly City is a member of Neighbors for Responsible Development who was concerned about eminent domain by BART and high-rise redevelopment. She opposed the use of the "underutilized" criterion in the statutory "blight" definition. Redevelopment and infill project threaten working class neighborhoods.

**Loraine Wallace Rowe*** chairs the Coalition of Redevelopment Reform in San José. She received three certified letters in 2001 as requests for qualifications for private development in a redevelopment project area. Legislators should limit eminent domain to "true public projects," not economic development efforts.

**Judith Christensen** is a Daly City Councilmember who told legislators that eminent domain abuses can stay hidden no more. Legislators need to end the use of eminent domain that gives private property to another private owner. Sacramento must fix this problem or "the voters will fix it for you."

**Annette Hipona*** is the president of the Original Daly City Protective Association and owns property in a redevelopment project area. She recommended that legislators repeal the use of eminent domain by redevelopment officials.

**Art Calderon*** is a San José merchant and property owner who said he was forced into a redevelopment agreement. He now has health problems because of the threat of eminent domain.

**John M. Revelli*** owns Revelli Tire Company in Oakland. Redevelopment officials took his property by eminent domain in July 2005 so that a developer could build apartments. Redevelopment officials made a low offer for the property, gave him 90 days to vacate, and made only a "weak attempt" to relocate his business. At election time, he intends to ask candidates for political office their stance on eminent domain.

**Orna Sasson*** is an Oakland resident and member of the Lakeside Apartments Neighborhood Association. There has been a ripple effect in her neighborhood because of eminent domain. When she visited a redevelopment project area it was "clean, but it did not feel safe." She recommended eliminating the threat of eminent domain and requiring voter approval before public officials can use eminent domain.

**Jody Carey** is a San Diego resident who is "not against eminent domain at all," but told legislators that they need to "close up flaws" in the process. He gave legislators four recommendations: (1) create a state oversight agency for redevelopment, probably the Attorney General, (2) require redevelopment officials to redocument the existence of "blight" every five years, (3) eliminate the use of spot bills, and (4) Senator Kehoe should drop her SB 53 because it doesn't go far enough. He said that he intended to support Senator McClintock's proposed ballot initiative.

**Aaron Epstein*** owns the Patio Property Company in Sherman Oaks. He showed legislators a color photo of his property on Hollywood Boulevard and said that it looks the same now as in 1988 when redevelopment officials declared that it was "blighted." The Robert Bass Group has not been able to build in the area. He said that eminent domain violates the 10th Amendment.

**Kathy Vlahov*** is a Saratoga resident whose immigrant parents' property is being taken by eminent domain. She asked legislators to return to the original intent of eminent domain, and thanked Senator McClintock for his efforts.

**Marilynne L. Millander*** is an elected member of the El Sobrante Municipal Advisory Council. She said that Contra Costa County officials have imposed a blackout on information about her area's redevelopment plans. She recommended that legislators require voter approval of redevelopment plans. She also thanked Senator McClintock.

**Ed Blackmond*** is a San José resident who told legislators that eminent domain is not just about property owners. The San José Redevelopment Agency built the Pavilion Shops which failed, was converted into an office building, and then used as a "server-farm" by the tenant. In comparison, the privately built Santana Row is a commercial success.

**Captain Sam Sommers** of the Sacramento City Police Department supports the Franklin Villa redevelopment project which falls within his South Patrol Command. The neighborhood used to have the City's highest homicide rate and second highest ranking for service calls. After redevelopment officials used eminent domain to remove the absentee slumlords, crime went down by 37% and service calls by 45%. **Assembly Member Jones** responded that he was on the Sacramento City Council during those times and remembered that many property owners could not be found. **Senator Soto** told the Captain that no one is talking about getting rid of eminent domain, but legislators need to make it work better.

**Ken Hambrick** of Walnut Creek, a member of the Alliance for Contra Costa Taxpayers, spoke against the abuse of eminent domain. He told legislators that redevelopment laws are not being enforced and there is no oversight of redevelopment agencies. An independent oversight group is needed, he said.

**Sherry Curtis*** is a Pioneer resident and the Northern California Chairman of Californians for Redevelopment Reform. She called redevelopment a "fairytale" because redevelopment agencies have accumulated massive debt that they cannot pay off. Citing the 1982 case, *Pasadena Redevelopment Agency v. Pooled Money Investment Board*, she said that if there are defaults of redevelopment bonds, the state must pay. She recommended requiring: (1) voter approval of the adoption and amendment of redevelopment plans, (2) redevelopment officials to report the number of jobs and property destroyed, (3) redevelopment agencies to keep records of the book-value of land taken off of the tax rolls, (4) longer public hearings for property owners in redevelopment project areas, (5) elimination of the antiquated subdivision exemption, and (6) declaring a redevelopment agency's transfer of property to other private owners a gift of public funds.

**Mary Phelps*** of the Walden Homeowners Association in Walnut Creek told legislators that they should reform eminent domain or expect to face a voter initiative.

**Errolyn Blank*** is a San José resident who told legislators that immigrants come with three expectations: freedom of religion, freedom of expression, and the chance to own private property. Developers may desire the mobilehome park where she lives, so the threat of eminent domain undermines the value of her mobilehome.

**Yolanda Reynolds** of San José is a member of the Coalition for Redevelopment Reform. She endorsed the comments of Supervisor Norby and Pete Kutras, agreeing that "redevelopment perverts the revenue stream." She also endorsed Dan Siegel's reform recommendations. She opposed Senator Torlakson's idea to use redevelopment for transit corridors and hubs. A disinterested party must oversee redevelopment, she said.

**Kathryn Mathewson**, also of San José, also expressed her concern for the expansion of redevelopment into transit corridors. She told legislators that she was amazed by the changes in redevelopment since she worked for HUD in the 1970s. Redevelopment has moved away from its focus on downtown renewal and helping low-income people. Redevelopment officials don't work well with small inde-

pendent businesses. She spoke about her concern that schools are now blighted and that local officials are moving trailers onto open space.

**Fred Wright** is a Sacramento attorney who said that it is "unfair" to take private property for economic development. Because he worried that property appraisers give "low-ball" values, he endorsed the proposed reform for funding independent appraisers. Attorneys fees are unfair, he said.

**Julian Frazer** is a former Martinez City Councilmember who recommended a moratorium on redevelopment projects. He also recommended a monitor who would follow what redevelopment agencies do. He agreed with many of the recommendations in the briefing paper.

**Georgianna Reichelt** of Manteca said that 90% of her city is under redevelopment, including almond orchards. The resulting revenues go to WalMart and the Big League Dream Ball Park. She was concerned with poor environmental reviews on annexations and development projects. She could not get redevelopment law enforced in Riverbank. The result is that redevelopment diverts revenues from bigger needs.

**Eunice Frederick** is a Lodi resident who was concerned about poor public notice on redevelopment projects. She recommended giving opponents a longer time to circulate referendum petitions. She also noted how hard it is to sue public agencies.

**Tom Burris** is commissioner on the Sacramento Housing and Redevelopment Agency who told legislators that "we take eminent domain very seriously." SHRA supports the use of eminent domain because it helps in places like Franklin Villa and Del Paso Nuevo. Where absentee landlords are a problem, eminent domain is a tool.

**Tom Sumpter** is a self-described citizen activist from Sacramento's Oak Park neighborhood where he served on the redevelopment project area committee. In 16 years, redevelopment officials used eminent domain only once to turn a blighted corner into a community resource. He said that he was "in favor of the judicious use of eminent domain, as long as it's transparent and community driven."

**Karen Klinger*** is a Sacramento resident who expressed her concern that the Sacramento Area Council of Governments is trying to control land use with its Re-

gional Blueprint Plan and extend redevelopment into business corridors and transit villages.

**Doug McNea** of San José is a member of the Silicon Valley Taxpayers' Association. Legislators should take the power of eminent domain away from San José officials. He told Senator McClintock about the condemnation of a packing house and PG&E substation.

**Christopher Sutton**, a Pasadena attorney who represents property owners in redevelopment cases, gave the legislators advice on five topics: (1) they should reform property owners' due process rights by amending Health and Safety Code §33368 which establishes a conclusive presumption of blight, (2) the timing of compensation is key in condemnation cases because attorneys fees don't occur until the end of a case, (3) there is a large number of unpublished appellate cases including the 1991 *Chadwick* decision that plaintiffs can't use, (4) tenants have no right to be informed about eminent domain decisions, and (5) he supports Senator McClintock's efforts to limit eminent domain. **Assembly Member Jones** asked the legislative staff to look into the questions of unpublished cases and notice to tenants faced with eminent domain.

**José Mendoza** is a San José business owner who said that redevelopment officials have moved him four times. He called redevelopment officials "heartless," and said that they "don't care" and "can't be trusted." When Salinas redevelopment officials wanted his property, they paid $209,000 when he wanted $500,000. Public officials should follow the Constitution.

**Ross Signorino**, a San José resident, asked the rhetorical question, what is the importance of a written constitution? Redevelopment agencies should respect property rights and legislators should limit the use of eminent domain to public works projects.

**Jim Lohse** of San José runs Operation Eminent Shame, a website that collects stories about eminent domain abuses. Instead of redevelopment, local officials should use code enforcement as a better way to eliminate blight.

The joint interim hearing ended at 3:20 p.m., nearly two and a half hours after its scheduled closing time.

## ADDITIONAL ADVICE

After the November 17 hearing, the legislators received additional written comments from eight people. These summaries appear in alphabetical order.

**John Paul Bruno*** is vice president of Cadence Design Systems who wrote to the legislators on behalf of the Silicon Valley Housing Leadership Council. He called redevelopment agencies an "integral partner" in the creation of jobs and housing. "San José's Redevelopment Agency is a model of a public private partnership." He urged the legislators to "take a balanced view" of redevelopment reforms.

**Ron Gonzales*** is the Mayor of the City of San José. He sent the legislators a five-page response from Harry S. Mavrogenes, the executive director of the San José Redevelopment Agency. The City's response included detailed reactions to the briefing paper and the County of Santa Clara's comments.

**George Lefcoe*** is a Professor of Real Estate Law at the University of Southern California. He expressed his disappointment that the briefing paper "didn't acknowledge the structural incompatibility" within redevelopment. He was also surprised that the briefing paper didn't mention his 2001 article, "Finding the Blight That's Right for California Redevelopment Law," (52 Hastings L.J. 991-1033, July 2001). [The briefing paper for the October 26, 2005 joint interim hearing in San Diego mentioned and cited Lefcoe's article.]

**Jyl Lutes*** is the Mayor Pro Tem of the City of Salinas. Her two-page letter challenges José Mendoza's description of how the Salinas Redevelopment Agency acquired his property, including the property's condition, the Disposition and Development Agreement, and the appraisals. She wrote that "Mr. Mendoza received more than fair compensation for his abandoned property."

**Christopher Mohr*** is the executive director of the Housing Leadership Council of San Mateo County. He cited three local projects, calling them "successful examples … of affordable and inclusionary housing funded by redevelopment agencies." He told the legislators that redevelopment reforms should focus on property rights after the *Kelo* decision, without interfering with redevelopment efforts.

**Steve Nolan*** is a Councilmember in the City of Corona. In his opinion, redevelopment has a legitimate role in "ensuring the health, safety and welfare of the <u>people living in blighted communities</u>" [his emphasis]. Nevertheless, the "blight"

definition "is the area in need of reform." Legislators should require redevelopment officials to clearly document "blight."

**Alex Peltzer*** is the Assistant City Attorney for the City of Visalia. His letter and the accompanying materials respond to Lawrence Martin's comments regarding the City's eminent domain action against family-owned property. His three-page letter challenges Martin's description of Visalia's actions, including the judge's decision, the property appraisal, and acquisition negotiations.

**Steve Rogan*** is the deputy director of the Housing & Community Development Agency for the City of Oakland. He explained that Oakland has "a well thought out process of checks and balances" for using eminent domain in redevelopment project areas. He urged legislators to avoid restricting eminent domain that is needed for "comprehensive revitalization programs."

---

* = See the written materials reprinted in the ***yellow*** pages.

** = See the written materials reprinted in the ***yellow*** pages, submitted by the California Redevelopment Association in lieu of individual statements from Brent Hawkins, Anne Moore, Lee Rosenthal, Murray Kane, and John Shirey. Also see the December 9, 2005, supplemental letter from John Shirey.