

California Scheming



Castle Coalition
March 2008

What Every Californian Should Know About Eminent Domain Abuse



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In the years since the 2005 *Kelo* decision, 42 states have passed eminent domain reform that in one form or another restricts this awesome power of government—the power to take away and destroy someone’s home or small business, farm or church, often for another private party’s benefit. Although many state reforms were meaningful, some were not. California’s reforms were among the weakest in the nation. With more than 700 redevelopment areas, hundreds of documented abuses of eminent domain since 2001, and tens of thousands of properties threatened by eminent domain, California is one of the states most in need of real eminent domain reform. In the Institute for Justice’s 2007 study, *50 State Report Card: Tracking Eminent Domain Reform Legislation since Kelo*, California’s eminent domain reform received a “D-” for the new laws’ ineffectiveness.

According to the report:

Senate Bills 53, 1206, 1210, 1650, and 1809 create a few additional procedural hoops for condemning authorities to jump through, such as requiring more details about the proposed use of the targeted property and additional findings of blight when renewing a blight designation. These bills are mostly cosmetic and will not prevent determined officials from taking private property for another private party’s benefit.

Senate Bill 1206 came the closest to substantive reform by trying to address California’s broad definition of blight, but it failed to make any significant changes. The state’s redevelopment statutes still leave almost any property at risk of condemnation. If Californians’ properties are truly going to be protected, the Legislature must ensure that properties may be taken only if they are an immediate threat to public health and safety, and that this assessment must be made on a property-by-property basis. (Each of the bills mentioned were signed into law on September 29, 2006.)

In November 2006, Californians considered Proposition 90, a ballot initiative that, if passed, would have addressed property rights protections in the state constitution. Unfortunately, even that proposed amendment lacked the strong public use language necessary to ensure the security of homes, businesses, farms, and houses of worship. Probably because of a highly controversial provision on regulatory takings, the measure narrowly failed.

The entire report is available at: www.castlecoalition.org/publications/report_card/.

This latest Institute for Justice report—*California Scheming: What Every Californian Should Know About Eminent Domain Abuse*—which summarizes the legal history and areas of contention within California’s eminent domain laws as well as previous reports and studies available on the issue of eminent domain in California, can serve as a resource for anyone who hopes to see things improve in California. Even though the laws that govern redevelopment and eminent domain procedures are extremely important for anyone who owns a home or small business or farm or any other piece of property in the state—and who wishes to protect what they rightfully own—California’s redevelopment laws are vague and open to manipulation by those who seek to abuse the power of eminent domain for private gain. Despite disappointing reform measures and the continued abuse of eminent domain, California has a few bright spots that can help lead not only to future reform but also to a new perspective on the concept of urban redevelopment.

Legal Overview

The California State Assembly enacted the state’s first blight law in 1945.¹ The purpose of what is now known as the Community Redevelopment Law² was to remedy unsanitary urban slums that posed a genuine threat to the public’s health and safety. Through this law, local governments received the authority to use eminent domain to seize private property and transfer it to another private party to rid the public health and safety threat caused by blight. Blight elimination has long been deemed a “public use” in California, but the first California case to consider the constitutionality of transferring “blighted” property to a different private owner came with a stark warning. In *Redevelopment Agency of San Francisco v. Hayes*, the California appellate court stated: “It [redevelopment power] never can be used just because the public agency considers that it can make a better use or planning of an area than its

present use or plan. . . . [I]t behooves the courts to be alert lest currently attractive projects impinge upon fundamental rights.”³

Despite this warning, local governments across California, assisted by deferential courts, expanded the definition of blight. In 1976, the California Supreme Court confronted what was in effect a *Kelo*-style taking for economic development. National City had declared an ordinary golf course “blighted” simply to transfer it to a new owner who promised to put it to a higher economic use. The California Supreme Court invalidated the taking, quoting a long-standing constitutional axiom from the *Hayes* decision: “[one] man’s land cannot be seized by the Government and sold to another man merely in order that the purchaser may build upon it a better house or a house which better meets the Government’s idea of what is appropriate or well designed.”⁴

That was the last time the California Supreme Court reviewed a case concerning the statutory and constitutional limitations of redevelopment. In 2000, however, a California appellate court threw out the city of Diamond Bar’s redevelopment plan because the city failed to provide the necessary evidence demonstrating blight. In 1997, the city of Diamond Bar declared a 1,300-acre area blighted based on chipped paint, a few broken windows and a few minor nonstructural defects.⁵ The judges concluded by defining the limitations of the Community Development Law: “The CRL is not simply a vehicle for cash-strapped municipalities to finance community improvements. If the showing made in the case were sufficient to rise to the level of blight, it is the rare locality in California that is not afflicted with that condition.”⁶ Despite a number of appellate decisions as good as *Diamond Bar*, municipalities

³ *Redevelopment Agency of San Francisco v. Hayes* (1954), quoting *Schneider v. District of Columbia*.

⁴ *Sweetwater Valley Civic Ass’n v. City of National City* (1976), quoting *Schneider v. District of Columbia*.

⁵ “Redevelopment is Diamond-barred,” *Orange County Register*, July 2, 2000, at G02.

⁶ *Beach-Courchesne v. City of Diamond Bar* (2000).

¹ Cal. Stats. 1945 Ch. 1326, § 1.

² Cal Health & Safety Code § 33000, *et seq.*

continue to ignore the law because they know how incredibly difficult it is for the average citizen to bring a challenge against a redevelopment plan.

Virtually Any Property Can Be Declared “Blighted”

The Community Redevelopment Law, which is found in the California Health and Safety Code, governs redevelopment in California.⁷ To be declared blighted, an area must meet two criteria set forth. First, it must be located in a “predominantly urbanized” area whose “physical and economic burden on the community... cannot reasonably be expected to be reversed or alleviated . . . without redevelopment.” Second, an area must contain evidence of one physical blight factor as well as that of one economic blight factor.⁸ These blight factors are set forth in completely subjective and vague terms that render them essentially meaningless; virtually any well-maintained home or business or other piece of property—including yours—could be declared blighted using these worthless standards.

It is through these vague criteria for blight that local governments in California are able to declare thousands of acres of property blighted. The scope of the California redevelopment machine is enormous. There are 395 active redevelopment agencies in California—about 80 percent of municipalities have one—overseeing 759 blight zones.⁹ In fiscal year 2005-2006, these redevelopment agencies owned \$12.9 billion worth of property (a \$1.5 billion dollar increase over the previous year) and had \$8.7 billion in revenues (up \$1.5 billion from the previous year).¹⁰ Although the California State Assembly passed a

package of five bills in 2006 aimed at combating eminent domain abuse, the changes did not go nearly as far as they should have, leaving almost any property at risk of condemnation.

Most of California’s 11 blight factors lend themselves to abuse by local officials because the unclear language contained in them leaves large loopholes for creative interpretation.¹¹ Four of the factors describe possible public safety problems: unsafe or unhealthy places to live or work, like non-earthquake proof buildings, property affected by hazardous waste, serious overcrowding that represents a health or safety threat and an excess of bars, liquor stores and adult-oriented businesses. However, the rest contain vague, undefined terms that local officials easily use to blight perfectly good properties because the law requires only one physical and one economic blight factor be found.

Properties can be deemed “blighted” because they do not meet the current day’s zoning standard or the city’s general plan. By holding the properties in question up to the standards of a plan approved by a city, this statute leaves any property that does not meet the subjective and often completely arbitrary liking of local officials vulnerable to being labeled “blighted.”

Local officials can also declare “nearby or adjacent” properties blighted if they do not fit in with a neighboring development. It would be bad enough if this provision included only “adjacent” properties, but the inclusion of the undefined “nearby” allows for a nearly unlimited expansion of a redevelopment area based on a property’s proximity to a project area, not to mention the fact that the rights of property owners, whose homes and businesses are perfectly fine, can be affected by those next door. The enormous size of some California redevelopment areas is evidence of the ease with which local officials can take advantage of this provision.

Another blight factor concerns the number of property owners in a given area and whether the

7 Cal. Health & Safety Code §33000, *et seq.*

8 Cal. Health & Safety Code §33030.

9 Redevelopment Agency Fact Sheet for FY 05-06 of the California Redevelopment Association, available at: http://www.calredevelop.org/AM/Template.cfm?Section=Facts_and_Reports1&TEMPLATE=/CM/ContentDisplay.cfm&CONTENTID=3109

10 *Id.*

11 See Appendix for California Health and Safety Code §33031.

shapes and sizes of properties conform to the “present general plan, zoning standards, and present market conditions.” Because this is another standard based upon the decisions of local officials, it is very easy for local officials to interpret it however they wish. For example, in 2002, California City declared 26 square miles of undeveloped land blighted based on this provision of physical blight. The “irregular” shapes of the lots were nothing more than squares and rectangles. Additionally, most lots were approximately 2.5 acres but some were as large as 640 acres—clearly large enough for any development.¹² Additionally, the “present market conditions” language adds an additional ever-changing, subjective layer of judgment for local officials to make. Furthermore, the very idea that many individuals own their own piece of property—what has traditionally been called the American Dream—is used against property owners.

There are also economic factors that officials use to determine blight. Depreciated property values may, indeed, be a possible indication of a problem for public safety, but alone should never be enough because such values could decrease based on factors completely unrelated to the state of the property itself—cyclical market changes, economic downturns or even a lack of city services like police protection or storm-water drainage. Certainly the 2007-2008 downturn in the real estate market could cause vast swaths of not only California but the entire nation to be declared “blighted” employing this definition. “Stagnant” also opens up the possibilities for local officials to get creative: Would stable property values be evidence of blight or would property values that local officials determine are not growing fast enough relative to other areas of the city be evidence of blight? Situations described later in this study indicate both to be the case.

An “abnormally” high amount of business vacancies, abandoned buildings or “abnormally low lease rates” is also an economic standard used to blight. This provision begs the question of what qualifies as “normal” business vacancies, low lease rates, and abandoned buildings. Nevertheless, government

officials may declare an area blighted because of its proximity to a project area and the fact that lease rates in that area are lower than those in the surrounding areas. Remember that the impetus behind blight laws in the first place was to remove properties that affected public health and safety, not properties in need of tenants.

According to California’s blight statutes, if a given neighborhood does not have as many grocery stores, drug stores and banks as a “normal” neighborhood, it could be a sign of blight. Although a few examples are mentioned in the provision, “necessary commercial facilities” is never defined. Presumably, a city may decide that it lacks the necessary number of big-box stores that surrounding municipalities have and therefore a chosen neighborhood will be deemed blighted in order to draw tax revenue from those surrounding cities into its own. And, again, regular property owners’ rights are based upon what other people are doing.

Finally, a high rate of crime is a factor that can be used as evidence of blight. If a property is connected in an immediate and obvious way to crime, then there is no problem designating the property blighted. However, cities often use crime rate to justify redevelopment and then redevelop in a way that will not affect the crime rate—replacing small businesses that in no way contribute to crime with a Wal-Mart, for example, does nothing to address the crime rate. National City’s targeting of the Community Youth Athletic Center (CYAC) is another example of this. City officials claim they need the property for a development that will reduce the crime rate, even though CYAC, by the very nature of its mission to provide opportunities for troubled youth, provides a concrete way that has helped reduce crime.

It is important to remember that only *one* physical and *one* economic blight factor is necessary for local officials to deem an area in a California municipality blighted. The presence of vague and undefined terms leaves many of these provisions wide open to the very subjective interpretation of local officials. Even with the language added to the statutes by Senate Bill 1206, the blight statutes of the state of California remain wide-open targets for eminent domain abuse. Litigation is needed to clarify what some of these terms mean and just how expansive or limited the legislature was in its intent to define blight.

¹² Neilson v. City of California City (2007).

Objecting to a Blight Designation

Just as the redevelopment statutes heavily favor the actions of local officials over property owners, so do the procedural rules governing the process for redevelopment and property acquisition via eminent domain. Although the eminent domain reform package of 2006 added a few additional procedural hoops regarding paperwork, the rules governing the process of approving or renewing a redevelopment plan remain extremely discouraging for property owners.¹³ Property owners objecting to a blight designation have only one chance and only one method to object to the blight designation. The process is set up so that properties could be threatened by eminent domain for decades if citizens are not aware of this one chance to object *before* the area is declared blighted.

After a municipality has determined that an area contains the presence of one physical blight factor and one economic blight factor, the municipality must draw up a report (often based on the review of a consultant paid to find blight in the neighborhood) to be distributed to the public before holding a public hearing regarding the matter.¹⁴ The municipality is required by state law to publish once a week, for four consecutive weeks, the notice of a public hearing in a newspaper in general circulation in the community (usually a paper devoted to legal listings, not the newspaper generally read by the public). Property owners in the affected area can make written objections to the proposed plan up until the hour of the public hearing, or they must make oral objections during the public hearing on the plan.¹⁵ Once the hearing is held, there are no further opportunities to object until the plan comes up for renewal, which may be as long as 12 years later. There is no limit, however, on the number of times a renewal plan may be renewed.

Further, the only way to legally challenge a blight finding once this public hearing has been held requires the affected property owners to have submitted their written objections before the public hearing or voiced their oral objections during the hearing. Those who have done so have 90 days to file suit to test the legal validity of the ordinance or any of the findings contained in the ordinance finding blight.¹⁶ Additionally, the suit filed can address only those issues that the objecting property owner addressed in his written or oral objections submitted during the public hearing before the adoption of the redevelopment ordinance.

By design, these rules and procedures are stacked against the property owners and in favor of the government. These procedural rules require a knowledgeable alertness to municipal matters beyond the reasonable ability of any citizen of the state of California. What's more, in order to know to what they can object, affected property owners must be able to understand the report drawn up by the local municipality in the month before the public hearing is held. By law, municipalities must make the report available to the public, but even this provision can be abused. The case of the CYAC in National City, which the Institute for Justice is currently litigating, serves as a perfect example. Despite CYAC's timely formal request under the California Public Records Act for all documents concerning a possible private development involving its property, many critical documents were delivered to CYAC only *five days* before the public hearing. It is impossible for anyone, especially those of limited means and without the help of an attorney, to make intelligent and thorough objections to proposed blight designations in such a limited amount of time.¹⁷

One last provision makes the rules governing objections additionally burdensome to property owners: Individual property owners must object to the blighting of the entire area in question, not just his or her own property. *Babcock v. The Community Redevelopment Agency of*

13 For example, SB 53 of 2006 requires redevelopment plans that "describe the agency's program to acquire property by eminent domain." It also gives redevelopment agencies the choice of limiting their own eminent domain powers, rendering any "reform" meaningless.

14 See Cal. Health & Safety Code §§ 33451, 33454 and 33458.

15 See Cal. Health & Safety Code § 33362.

16 See Cal. Health & Safety Code § 33500.

17 Institute for Justice Complaint, filed September 25, 2007, in California Superior Court, available at: http://www.ij.org/pdf_folder/private_property/national_city/NationalCityComplaint.pdf.

Five Things You Must Know About Eminent Domain

- Once you receive notice of the blight designation, get all of the necessary information from the redevelopment agency, using the California Public Records Act if necessary, to prepare your objection properly.
- You must submit an official objection before the public hearing to discuss redevelopment plan, and your objection must address the entire project area, not just your own property.
- You have 90 days after the public hearing to file suit in court, if and only if you have submitted an official objection before or during the public hearing.
- Your court filing can address only what was in your original objection.
- If there are no filings within 90 days, a redevelopment area is considered valid and cannot be challenged until it comes up for renewal or amendment (often 12 years).

Los Angeles (1957) held that individual non-blighted properties cannot be exempted from a larger area deemed blighted by a local municipality. Affected property owners are burdened with confronting the entirety of the redevelopment plan and with proving that the municipality did not meet the substantial evidence requirement to declare the entire area blighted. This creates an absurd all-or-nothing situation in which a handful of property owners become responsible for the success or failure of the redevelopment zone. With these circumstances, local officials need only cite another decision, *Redevelopment Agency of San Francisco* to justify denying objections: "Where the interest of the individual conflicts with the interest of society, such individual interest is subordinated to the general welfare."¹⁸

¹⁸ *Redevelopment Agency of San Francisco v. Hayes* (1954), quoting *Pennsylvania Mutual Life Ins. Co. v. City of Philadelphia*.

TIFs: The Government-Developer Complex

Redevelopment has mutated into a multi-billion dollar profit machine in which hundreds of redevelopment agencies and thousands of private developers, lawyers, consultants and bankers continually strip valuable property from people of modest means and give it to big business. So-called "blight eradication" is often just a pretext for doing precisely what the federal and state constitutions were designed to prevent: taking property from one private owner only to give it to another private owner for their private use and profit.

The engine driving the redevelopment machine is debt and taxes. Under California law, once a local government declares an area "blighted," its redevelopment agency gets a property tax windfall. In a scheme known as Tax Increment Financing (TIF), redevelopment agencies get 100 percent of the property tax revenue from a blight zone over and above the "baseline" amount of property taxes the area generated when it was first declared blighted. For example, suppose that an area produced \$100 million in property taxes in 1990 when it was first declared blighted, but by 2007, because assessed property values have risen, was generating \$250 million in property taxes. The county would still be eligible for only \$100 million and the redevelopment agency would get \$150 million, even if there is no evidence the redevelopment agency had anything to do with the increase in property values.

California's redevelopment agencies now siphon off most of the property taxes from the hundreds of blight zones across the state. In fiscal year 2005-2006, for example, the total assessed value of property in California's blight zones was \$537 billion.¹⁹ Because of TIF, however, redevelopment agencies received 100 percent of the property taxes on \$381 billion of this total.²⁰ Overall, redevelopment agencies capture about

¹⁹ Redevelopment Agency Fact Sheet for FY 05-06 of the California Redevelopment Association.

²⁰ *Id.*

12 percent of all property taxes collected in California.²¹

A redevelopment agency, however, is entitled to its property tax windfall only if it goes into debt to implement the redevelopment plan. By 2006, redevelopment agencies in California had a total debt of \$81 billion, and historical trends show that agency debts double about every 10 years.²² The addiction to debt and property taxes has caused outright financial insanity in some communities. In fiscal year 2005–2006, for example, the redevelopment agency of La Quinta, Calif. (pop. 36,145), reported nearly \$2.7 billion in debt, nearly 75,000 for every resident, just for redevelopment.²³ Overall, in fiscal year 2005–2006, about 35 cents on every dollar spent by a California redevelopment agency went to debt payments.²⁴

The perverse financial incentives of California's redevelopment laws mean that redevelopment agencies: (1) want their blight zones to be as large as possible; (2) want their blight zones to last as long as possible; and (3) want to incur massive debt.

Cities, in this context, have perverse incentives of their own. They always want to replace low-tax land uses, such as single-family homes and small businesses, with tax-intensive uses, such as high-rise condominiums and big-box stores.²⁵

The absence of any concrete proof that redevelopment does any good makes California's redevelopment machine one of the greatest scams of all time. Although redevelopment advocates like to point out shiny new box stores, there are a few things they do not like to talk about. First, studies repeatedly

show that redevelopment projects are net economic losers once the true costs are tallied in terms of jobs and businesses destroyed, and tax breaks and other subsidies to big business.²⁶ They also do not talk about how the preference for sales tax-generating retail mega-stores creates low-skill service jobs and destroys small businesses that frequently require skilled labor, as is the case in National City where entrepreneur-operated businesses could be destroyed to make way for the same kind of homogeneous, humongous development one finds in a growing number of communities nationwide. With each of these developments, the character of individual communities is forever lost, and the opportunities created by market-based private enterprises are bulldozed in favor of government-dictated developments that often do not live up to the inflated promises of self-interested politicians, planners and developers. Redevelopment agencies also do not talk about the personal implications of taking away someone's cherished home or an entrepreneur's small business. Finally, the last thing redevelopment apologists don't want to discuss is the fact that redevelopment overwhelmingly targets the poor and minorities—those who have the least access to resources to defend their properties from eminent domain abuse.²⁷

21 *Redevelopment: The Unknown Government* by Municipal Officials for Redevelopment Reform (MORR) (2007) at 6.

22 *Id.* at 12.

23 *Id.* at 13.

24 *Community Redevelopment Agencies Annual Report, Fiscal Year 2005-2006*, California State Controller's Office at 247.

25 *Redevelopment: The Unknown Government* at 18 (describing a survey showing that city managers overwhelmingly prefer retail land uses and place residential land use at the bottom, down with heavy industry).

26 *E.g., Subsidizing Redevelopment in California*, Public Policy Institute of California (1998). This study compared 114 redevelopment project areas to similar areas not in redevelopment zones. The study concluded that the redevelopment effort was not responsible for any economic development and was a net drain on public resources. See also, *Redevelopment: The Unknown Government* at 22-25; *Redevelopment Wrecks: 20 Failed Projects Involving Eminent Domain Abuse* by the Castle Coalition (2006) <http://www.castlecoalition.org/publications/redevelopment-wrecks/index.html>.

27 *Victimizing the Vulnerable: The Demographics of Eminent Domain Abuse* by Dick M. Carpenter, Ph.D. and John K. Ross (a report of the Institute for Justice) (2007), available at http://www.ij.org/publications/other/demographic_study.html. California cities composed ten percent of the cities examined in the study, which found that areas in which eminent domain has been threatened or used for private development had majority minority populations, twenty-five percent of the population at or below property, and a median annual income of \$19,000, compared with \$23,000 in surrounding communities.

Eminent Domain Abuse Across California: Current Situations

The sheer size in acreage of some California redevelopment areas is mind-boggling and dwarfs the total number of acres of blight zones in some states. Because of the regulatory statutes in California, all of the properties within each redevelopment area are eligible to be seized by eminent domain at any point during a redevelopment plan's existence. Additionally, the situations listed below illustrate the effects of California's vague blight statutes. That local officials can blight just about any property is evidence that California's definition of blight is meaningless. Given the number of projects in California, it is impossible to include most of the situations, but here are the worst of the worst:

Baldwin Park – Eminent domain may be used to force property owners who refuse to sell out of a downtown “urban village” redevelopment area—the 130-acre Central Business District Redevelopment Project, which was created in 1982 and is one of six in the city. The amendment of 1994, which City Council members passed unanimously, re-authorized the use of eminent domain until 2016 and, although it “only applies to non-residential properties, the [Redevelopment] Agency has a feasible method and plan for the relocation of families and persons who might be displaced, temporarily or permanently from housing facilities in the Project Area.”²⁸ City officials are trying to get the project done as soon as possible before citizens have a chance to vote on the 2008 ballot initiatives regarding eminent domain.²⁹

Concord – In September 2006, officials approved a consultant's report that calls for an amendment to the city's redevelopment plan, which already

28 Nisha Gutierrez, “Baldwin Park to upgrade downtown,” *San Gabriel Valley Tribune*, December 13, 2006, at NEWS; City of Baldwin Park, Redevelopment Project Areas, at http://www.baldwinpark.com/index.php?option=com_content&task=view&id=52&Itemid=170 (retrieved October 16, 2006); City of Baldwin Park, Ordinance No. 1234, May 19, 2004 (on file at the Institute for Justice)

29 Tania Chatila, “Residents say appraisers on project too aggressive,” *San Gabriel Valley Tribune*, December 1, 2007.

California Fun Facts

The scope of the California redevelopment machine is enormous:

- 395 active redevelopment agencies
- about 80 percent of municipalities have a redevelopment agency
- 759 blight zones
- \$12.9 billion worth of property owned by redevelopment agencies in fiscal year 2005-2006 (a \$1.5 billion dollar increase over the previous year)
- \$8.7 billion in redevelopment agency revenues in fiscal year 2005-2006 (up \$1.5 billion from the previous year)
- \$537 billion in assessed property value in California blight zones for 2005-2006
- 12 percent of all property taxes in California go to redevelopment agencies

Sources: Redevelopment Agency Fact Sheet for FY-05-06 of the California Redevelopment Association; *Redevelopment: The Unknown Government* by Municipal Officials for Redevelopment Reform (MORR) (2007) at 6.

encompassed 672 acres. The amendment adds three new sub-areas totaling 400 acres to the project and exempts residences from the use of eminent domain—meaning many commercial and industrial properties now sit under the cloud of condemnation. Properties in the existing redevelopment area—residences included—are also subject to the use of eminent domain.

According to the Contra Costa County's Office of Assessor, the new sub-areas add 217 non-residential properties to the 603 properties already under threat. According to the report, the 123-acre Monument Corridor, which runs along Monument Boulevard from Victory Land to Walter's Way, is “home to a significant percentage of lower income households.” Further, the “neighborhoods and commercial businesses [there]

represent the greatest ethnic diversity of businesses and residents in Concord.” The 89-acre Willow Pass sub-area also supports a mix of retail and residential uses. The 188-acre North Concord sub-area is mainly commercial and heavy industrial with access to two major highways and the city’s downtown, making the property prime real estate. Properties surrounding the sub-area have been transitioning on their own from warehouses to business parks—without the threat of eminent domain.³⁰

Indio – In 1999, the city of Indio published the Indio Merged Redevelopment Project report. The plan calls for a redevelopment area of 5,260 acres, or nearly 35 percent of the city’s total area. The area includes most of the developed areas of Indio, as much of the area outside of the zone is undeveloped. The plan combines two previous redevelopment areas, the first of which city officials established in 1962, with a newly created redevelopment area. This, despite outside consultant Keyser Marston’s project report, that said nearly 40 years of city redevelopment efforts had resulted in “high levels of vacancy, excessive vacant lots, deterioration and dilapidation, and inadequate public improvements.” In other words, Indio’s decades-long plans to remediate blight had not only failed but had actually produced more blight. So far, the city has condemned only one property since the 1999 report, but the redevelopment agency has eminent domain authority until 2011, when the plan must be amended for renewal of that authority.³¹

Long Beach – The city of Long Beach currently has six redevelopment areas that encompass approximately 40 percent of the city’s land mass. Together the redevelopment areas extend over 17,000 acres of Long Beach. The Long Beach North redevelopment

area, the largest in the city, spans 12,507 acres, engulfing 15 percent of the city’s population. The massive project area contains 17,100 individual parcels of land, which the city in 1996 deemed “blighted” due to “multiple ownership,” “inadequate size,” and “excess of bars.”³²

National City – Between 1969 and 1978, National City created four redevelopment areas in the city that were later merged into one single area in 1981. Together, those four areas amount to nearly two-thirds of the city. City officials extended the blight zone again in 1995, expanding the redevelopment area to about 317 acres.³³ The eminent domain authority for the redevelopment area expired in July 2007, and city officials immediately began efforts to renew the authority over nearly 700 properties for another 10 years. The area includes numerous flourishing small businesses, churches and service organizations, including the Community Youth Athletic Center, a successful non-profit, all-volunteer youth boxing and mentoring program serving at-risk kids, on whose behalf the Institute for Justice filed an official complaint.

San Diego (Grantville) – In May 2005, city officials voted 7-1 to declare Grantville blighted and put it in a redevelopment area despite widespread opposition from property owners.³⁴ Consultants Rosenow Spevavek Group, Inc. (RSG) pointed to oddly-shaped lots, code violations and crime in some sections in order to justify blighting the whole area. Even properties RSG acknowledged were “non-blighted” were “intermixed with blighted parcels, making their

30 Central Concord Plan Amendment, August 2006, available at <http://www.ci.concord.ca.us/business/redev/rpt-redevplan.pdf> (retrieved December 21, 2007); Central Concord Redevelopment Plan, November 22, 2004, available at <http://www.ci.concord.ca.us/business/redev/Amendment/redevelopment-plan-1994.pdf> (retrieved December 21, 2007).

31 *City of Indio, Ca., Report to City Council for the Indio Merged Redevelopment Project*, November 1999 (on file at the Institute for Justice).

32 *North Long Beach Redevelopment Project Area Five-Year Implementation Plan 2004-2009*, June 2004, available at <http://www.ci.long-beach.ca.us/civica/filebank/blobdload.asp?BlobID=4162> (retrieved December 20, 2007).

33 *Redevelopment Plan for the National City Redevelopment Project*, July 18, 1995, available at <http://www.ci.national-city.ca.us/Departments/CDC1/pdf/RDPLAN70.pdf> (accessed December 21, 2007).

34 Jeanette Steele, “Grantville redeveloping plan wins OK,” *San Diego Union-Tribune*, May 4, 2005, at LOCAL B1.

exclusion from the proposed project area imprudent.³⁵ The 970-acre district has 289 parcels.³⁶ In 2006, the president of the local planning commission described the area, which boasts several successful small businesses, as “sort of tired, a little worn out” and admitted that “‘blighted’ is in the eye of the beholder.” Brian Peterson, a veterinarian who owns the Friars Road Pet Hospital, disagrees: “This just is what it is, a business area . . . It’s just obviously not blighted.”³⁷

San Francisco (Bayview-Hunters Point) – In May 2006, the Board of Supervisors approved a plan that adds 1,400 acres of residential, commercial and industrial property in the Bayview-Hunters Point neighborhoods to the previously existing 137-acre Hunters Point redevelopment project despite vocal opposition from residents.³⁸ Indeed, in March 2006, the Coalition for San Francisco Neighborhoods, a civic group comprised of 38 neighborhood associations, voted unanimously to oppose the project.³⁹

Officials say the area is “blighted,” although it is clearly redeveloping naturally, without coercive government force. The area has the highest percentage of home ownership of any San Francisco neighborhood; property values have risen consistently; private development permits for residential, light industrial

and commercial developments are being issued; and people are buying property in the area and moving in.⁴⁰ The plan, which has the support of Mayor Gavin Newsom, also gives the redevelopment agency the authority to use eminent domain to seize commercial or industrial property in the redevelopment area during the next 12 years.⁴¹ There are at least 150 blocks included in the project, but it is not possible to identify how many properties are in each block.⁴²

Residents of Bayview-Hunters Point, one of the city’s last predominantly black neighborhoods, are wary of the rosy promises of revitalization proffered by city planners.⁴³ Although eminent domain is not currently authorized for residential properties, the plan does call for replacing existing housing units. That means residents may be forced to move. And, even moving beyond the threshold question of whether the government should force out such individuals in the first place, the plan promises that residents may not be moved unless clean and safe alternative housing is found for them first.⁴⁴ The Redevelopment Agency, however, has a sordid history of leveling property, promising new jobs and housing for residents and then failing to deliver.⁴⁵ The Defend Bayview Hunters

35 Proposed Grantville Redevelopment Project Area, Redevelopment Feasibility Study, July 10, 2003, available at <http://www.sandiego.gov/redevelopment-agency/pdf/grantvillefeasibilityfinal.pdf> (retrieved December 18, 2006).

36 “SD redevelopment area,” *City News Service*, May 4, 2005.

37 Kelly Bennett, “Finding blight in Grantville; The City says visible dumpsters and irregular-shaped lots, among other things, make one of San Diego’s oldest neighborhoods prime for redevelopment; But community members wonder how an area with a Starbucks, car dealerships and other businesses could be considered so downtrodden,” *Voice of San Diego*, December 18, 2006, available at <http://www.voiceofsandiego.org/articles/2006/12/18/news/01grantville.txt> (retrieved December 18, 2006).

38 Charlie Goodyear, “San Francisco; Bayview renewal approved,” *San Francisco Chronicle*, May 17, 2006, at B5; Defend Bayview-Hunter’s Point Committee v. The City and County of San Francisco, Petition for Writ of Mandate. On file with the Institute for Justice.

39 Willie Ratcliff, “San Franciscans unite to stop Redevelopment’s BVHP land grab,” *San Francisco Bay View*, March 22, 2006.

40 Defend Bayview-Hunter’s Point Committee v. The City and County of San Francisco, Petition for Writ of Mandate.

41 Cecilia M. Vega, “San Francisco; Bayview proposal is backed,” *San Francisco Chronicle*, March 8, 2006, at B10; Redevelopment Plan for the Bayview Hunters Point Redevelopment Project, available at: <http://www.sfgov.org/site/uploadedfiles/sfra/Projects/BVHP%20Redevelopment%20Plan%20Amendment%2002-27-06a%20Clean.pdf>

42 “Bayview Hunters Point Proposed Project Area Boundary – Area B Revised,” San Francisco Redevelopment Agency, 2006, available at: <http://www.sfgov.org/site/uploadedfiles/sfra/Projects/BVHPMap2006.pdf>

43 Justin Jouvenal, “Bayview-Hunters Point redevelopment plan,” *San Francisco Examiner*, April 20, 2006.

44 Redevelopment Plan for the Bayview Hunters Point Redevelopment Project, at 13 section 1.4.5, 36 section 4.1.1, available at: <http://www.sfgov.org/site/uploadedfiles/sfra/Projects/BVHP%20Redevelopment%20Plan%20Amendment%2002-27-06a%20Clean.pdf>.

45 Ebony Colbert, “Wake up and smell the conspiracy; What Redevelopment really plans for BVHP,” *San Francisco Bay View*, May 3, 2006.

Point Committee, a neighborhood group outraged by the Board of Supervisors decision to blight their neighborhood without their consent, gathered 33,056 Department of Elections-certified signatures opposing the project. In December 2006, they filed a writ of mandate in a San Francisco County Superior Court asking a judge to validate the petition.⁴⁶ As of March 2008, the petition dispute is still in the courts while residents continue to live under the cloud of eminent domain.

Success Stories

Given the massive burden property owners bear in defending their own properties in California, it should be no surprise that successful battles against eminent domain are few and far between. Nevertheless, they stand as a testament to the power knowledgeable and passionate ordinary citizens can have in combating California's redevelopment machine.

Auburn – Earl Easley's mother started what is now Easley Nursery during the Great Depression as a way to make extra money. Seventy-five years later, the business continues after facing down a new hardship: eminent domain. In May 2007, the city of Auburn expanded by 480 acres its original redevelopment area that was approved in 1987 to now include the Easley Nursery. The Nursery was one of dozens of businesses deemed "blighted" by the city. The Eisleys fought city hall and won. They communicated with local officials, gained the support of the community—as demonstrated by the 2,500 signatures they earned for a protest letter—and made enough noise that the City Council voted unanimously in July 2007 to remove eminent domain from the redevelopment plan.

Hollywood – Bob Blue, a second-generation owner of Bernard's Luggage Building on Hollywood and Vine, just wouldn't take "eminent domain" for an answer. He was proactive and creative with his fight against the

city, using billboards and media interviews to make people aware of the abuse occurring in the historic section of one of America's most well-known cities. Bob also attended the Castle Coalition's regional eminent domain conference in Newport Beach, Calif., and stayed persistent so he could keep his building. His efforts paid off: In September 2006, the city and developer backed off, and agreed to simply build around his building.

Martinez – Voters narrowly approved Measure M, an ordinance supporting the City Council's efforts to redevelop downtown and a marina in 2004. But a sizable and vocal minority did not sit back and take it. In response, they forced a binding vote on redevelopment by council members and sought their own legal advice. Finally, in January 2007, the Martinez City Council voted unanimously to rescind the 2004 redevelopment ordinance.

Moorpark – In April 2005, City Council members, acting as the Redevelopment Agency, commissioned consultant Urban Futures, to prepare an amendment to the Moorpark Redevelopment Plan that would restore the Agency's ability to seize businesses and industrial property via eminent domain. The Redevelopment Agency's eminent domain authority had expired in 2001. In June 2006, the officials voted to recommend excluding residential properties from the threat of eminent domain. By August 2006, it emerged that one of the amendment options being discussed allowed for the use of eminent domain against homes anyway. In November 2006, residents and property owners organized several protest rallies and posted "Say No to Eminent Domain Abuse" promotional material throughout the city. Finally, in September 2007, after unceasing opposition from local residents, city officials voted 5-0 against reinstating the plan's eminent domain authority.

National City – Overcoming an alliance between City Hall and a multi-millionaire developer, one landowner prevailed in his fight to save his property from the government's wrecking ball. Daniel Ilko, who owns an 11,500-square-foot property on the corner of 12th Street and National City Boulevard, used grassroots activism to defeat the government's plans to take his property and give it to an Australian developer building high-end condos. By proposing a competing development project of his own, Ilko cornered the city council into approving his redevelopment plan

⁴⁶ Defend Bayview-Hunter's Point Committee v. The City and County of San Francisco, Petition for Writ of Mandate

Anaheim: Developing Without Eminent Domain

The city of Anaheim, led by Mayor Curt Pringle, wanted to see a new downtown area developed in an admittedly underutilized area of the city. Instead of taking the “easy path to development,” as Mayor Pringle calls eminent domain, city officials were guided by market forces. The area, known as the Platinum Triangle, would have been ripe for a blight declaration in almost any other municipality due to its proximity to Angel Stadium, Arrowhead Pond, the Anaheim Convention Center and Disneyland, but city officials decided early on that eminent domain would not be an option.

City officials made zoning requirements more flexible to meet market demands. Among other commonsense solutions, the city rezoned the area to allow easier development, took responsibility for clearing environmental impact statements, simplified the permitting process and reduced arcane building requirements. The simplified process made the area more attractive to developers. As a result, the Platinum Triangle has flourished, with 7,000 new homes and a wide variety of restaurants and retail outlets that all resulted from billions of dollars of private investments—not government force.

Source: Curt Pringle, *Development Without Eminent Domain*; Foundation of Freedom Inspires Urban Growth (2007), available at: <http://www.castlecoalition.org/publications/Perspectives-Pringle>.

instead of condemning the property. With an April 2006 vote, city officials scrapped their plan to abuse eminent domain—a victory for the Golden State landowner.

Local Legislation

Although many local officials take advantage of the state’s vague statutes, several California municipalities have in nearly three years passed their own measures limiting their power of eminent domain. Additionally, residents have passed ballot measures to restrict their municipalities’ eminent domain authority. However, even these measures are no guarantee to local residents because they can be easily revoked in the future by government officials who are less concerned with the rights of their constituents. Without protections and safeguards at the state level, local residents in California are left in the hands of local officials, who, especially when blinded by the glimmer of new prospective tax dollars, will have little issue taking private property for private gain. As with eminent domain at the state level across the nation, reform measures in California have varied in quality.

Meaningful reform on the local level has come in the form of ballot measures as well as ordinances passed by city councils. In 2006, residents in following municipalities passed ballot measures eliminating eminent domain for private economic development:

- Chula Vista⁴⁷
- Dana Point
- Orange County
- San Bernardino

Also in 2006, local officials passed ordinances prohibiting the use of eminent domain for private development in the following municipalities:

- Anaheim
- Newport Beach
- Porterville
- Siskiyou County

Other cities have passed more tepid reforms. Simi Valley no longer allows eminent domain to be used to seize residential properties for eminent domain.

⁴⁷ Chula Vista’s measure also requires any land seized for public uses be held by the city for 10 years before it can be sold to a private party.

Encinitas now requires a two-thirds majority on a public ballot for every taking for private development. Riverside does not allow the seizure of owner-occupied single-family residences for economic development, unless there is a lien on the property because of code violations, or the property has been unoccupied or boarded up for more than a year or has become a public nuisance. The new law also requires the city's Redevelopment Agency to pay fair market value for any property taken through eminent domain. The city of San Diego passed some token reforms improving notification requirements but did nothing to limit actual eminent domain. San Diego County no longer allows eminent domain to be used on "non-blighted" owner-occupied residences, but considering the definition of blight, the reform may be meaningless.

2008 Ballot Initiatives

In June 2008, Californians will consider two competing eminent domain ballot measures. The Institute for Justice has analyzed the contents and effects of both.

"California Property Owners and Farmland Protection Act"—Prop. 98

The California Property Owners and Farmland Protection Act (CPOFPA) is a proposed constitutional amendment that simply states: "Private property may not be taken or damaged for private use." This includes all private property in California: all homes, farms, small businesses and houses of worship would be safe from the use of eminent domain for private economic development. This ballot measure would not, however, affect governments' abilities to acquire property for traditional public uses, such as bridges and roads, water projects, schools, post offices, sewers and electric lines. In addition to barring eminent domain for private uses, CPOFPA includes compensation and procedural reforms. CPOFPA would provide broad protection for all California property owners.

How to Bust the Scheme: Some Ideas for Reform

- Restrict eminent domain to traditional public uses such as schools, roads, utilities and government buildings
- Clarify the blight statute so that "blight" means an immediate threat to public health and safety
- Abolish the TIF system that creates the incentives for massive, long-lasting blight zones
- Allow property owners to challenge eminent domain in court, even if a third party, over whom the owner has no control, claims part of the government's compensation deposit
- Ease the procedure for ordinary Californians to challenge blight designations

"Homeowners and Private Property Protection Act"—Prop. 99

The "Homeowners and Private Property Protection Act" is a ballot initiative supported by, among others, the League of California Cities that would amend the state constitution for the purpose of protecting homes from eminent domain abuse. Unfortunately, however, the Act would still allow a considerable amount of abuse to continue. The proposed amendment would protect only "owner-occupied residence[s]" from being acquired by eminent domain and subsequently transferred to another private party for private development. The Act, however, specifically excludes all small business owners, all renters and even all new homeowners if they have

lived in their residences for less than 12 months. The large portion of properties left unprotected by the Act is the Act's fatal flaw. Additionally, the Act contains a provision that would nullify any other attempts to amend Article I, section 19 of the California Constitution—a clear attack on CPOFPA. Should both ballot measures pass, this specific provision would erase CPOFPA's protections.

Conclusion

In a state where thousands of properties have been threatened and continue to be threatened, California is in desperate need of meaningful eminent domain reform that will respect the rights and property of its residents. The preceding legal overview in California demonstrates just how difficult it is for private property owners to defend themselves against California's redevelopment machine, which siphons billions and billions of dollars into a closed economic system that benefits private parties and hurts not only property owners, but all taxpayers as well. It is, therefore, essential for property owners to know the complex procedural regulations governing their own right, albeit limited, to protest redevelopment projects in municipalities across the state. Residents lucky enough to live in municipalities that enacted some type of local reform have some protection, and those examples of local reform demonstrate what can be done should statewide reform not come into existence. More importantly, political leaders like Mayor Curt Pringle of Anaheim have provided an invaluable example for all local officials in California who can now look at Anaheim's Platinum Triangle and be assured that development is indeed possible without eminent domain.

Genuine eminent domain reform would allow private development to occur across California, but not in such a way that gives developers the land, taxpayers the bill, and rightful property owners the boot.

Appendix: California Health and Safety Code §33031

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

- (1) Buildings in which it is unsafe or unhealthy for persons to live or work. These conditions may be caused by serious building code violations, serious dilapidation and deterioration caused by long-term neglect, construction that is vulnerable to serious damage from seismic or geologic hazards, and faulty or inadequate water or sewer utilities.
- (2) Conditions that prevent or substantially hinder the viable use or capacity of buildings or lots. These conditions may be caused by buildings of substandard, defective, or obsolete design or construction given the present general plan, zoning, or other development standards.
- (3) Adjacent or nearby incompatible land uses that prevent the development of those parcels or other portions of the project area.
- (4) The existence of subdivided lots that are in multiple ownership and whose physical development has been impaired by their irregular shapes and inadequate sizes, given present general plan and zoning standards and present market conditions.

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

- (1) Depreciated or stagnant property values.
- (2) Impaired property values, due in significant part, to hazardous

wastes on property where the agency may be eligible to use its authority as specified in Article 12.5 (commencing with Section 33459).

- (3) Abnormally high business vacancies, abnormally low lease rates, or an abnormally high number of abandoned buildings.
- (4) A serious lack of necessary commercial facilities that are normally found in neighborhoods, including grocery stores, drug stores, and banks and other lending institutions.
- (5) Serious residential overcrowding that has resulted in significant public health or safety problems. As used in this paragraph, "overcrowding" means exceeding the standard referenced in Article 5 (commencing with Section 32) of Chapter 1 of Title 25 of the California Code of Regulations.
- (6) An excess of bars, liquor stores, or adult-oriented businesses that has resulted in significant public health, safety, or welfare problems.
- (7) A high crime rate that constitutes a serious threat to the public safety and welfare.

ABOUT THE CASTLE COALITION

The Castle Coalition, a project of the Institute for Justice, is a nationwide network of citizen activists determined to stop the abuse of eminent domain. The Coalition helps property owners defeat private-to-private transfers of land through the use of eminent domain by providing activists around the country with grassroots tools, strategies and resources. Through its membership network and training workshops, the Castle Coalition provides support to communities endangered by eminent domain for private profit.