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EMINENT DOMAIN AND REDEVELOPMENT AGENCIES: THE DEBATE CONTINUES

The 2005 U.S. Supreme Court's *Kelo* decision generated a great deal of discussion in California about how redevelopment agencies—local agencies aimed at revitalizing blighted areas—use eminent domain.[1] A group of individual property owners, led by Susette Kelo, sued the City of New London, Connecticut, when the city condemned their unblighted properties as part of a plan to develop the waterfront. Under the Fifth Amendment of the U.S. Constitution, as well as under the California Constitution, a government cannot take private property for public use without due process and just compensation. By a narrow 5-4 margin, the U.S. Supreme Court ruled in favor of the city, deeming that economic development qualified as a "public use." This brief highlights some of the key questions in the *Kelo* debate.

WHAT IS EMINENT DOMAIN?

Eminent domain is the government's power to take private property for *public* use. Governments are not allowed to take private property for *private* use. While

redevelopment agencies often argue that an eminent domain "taking" is for public use (for example, to eliminate blight for public benefit), many property owners counter that the taking is actually for private use (such as benefiting a business that will be located on the redeveloped property).

Why Did the State Give Redevelopment Agencies Eminent Domain Power?

State law allows a city or county to form a redevelopment agency to eliminate blight in a designated project area. State law also allows redevelopment agencies to use eminent domain "when the redevelopment of blighted areas cannot be accomplished by private enterprise alone" and the law specifically states that the redevelopment of blighted areas constitutes a public use.[2] Redevelopment agencies were given eminent domain powers to enable them to acquire and merge small private parcels to create larger construction sites.

How Do Redevelopment Agencies Exercise Eminent Domain?

Every redevelopment plan must include a time limit for beginning an eminent domain proceeding, which generally must not exceed 12 years after adoption of the plan. The redevelopment agency can only extend the time limit if it amends the plan and finds that blight still exists and can only be eliminated through the use of eminent domain. For each property a redevelopment agency wants to condemn, it must adopt a resolution of necessity by a two-thirds vote and file documents in superior court. Eminent domain law allows property owners to challenge a redevelopment agency's right to take a property and requires any challenges to be settled by the court prior to determining just compensation. A property owner can contest the valuation and is entitled to a jury trial.

How Often Do Redevelopment Agencies Exercise Eminent Domain?

"Redevelopment officials see eminent domain as a powerful tool that accelerates property acquisition, even though formal condemnations are rare," states a report published by the California Senate Local Government Committee.[3]

Critics agree, arguing that just the threat of eminent domain can be enough to persuade property owners to sell to a redevelopment agency. According to the California Redevelopment Association, about 40 percent of redevelopment agencies have the authority to use eminent domain and 30 percent have self-imposed limits, such as not using eminent domain power to take owner-occupied residential property.[4]

Could *Kelo* Happen in California?

The *Kelo* case addressed an action taken under a Connecticut law that authorized the use of eminent domain for economic development purposes, whether or not the property was blighted.[5] In contrast, California law limits redevelopment agencies' eminent domain power to the designated project area within a redevelopment plan, which by definition must be blighted, and does not allow redevelopment agencies to exercise eminent domain until a redevelopment plan has been officially adopted. It is important to note that Justice Stevens' majority

opinion specifically states that "nothing in our opinion precludes any State from placing further restrictions on its exercise of the takings power."[6] Since the *Kelo* decision was handed down, 37 states have passed eminent domain legislation, primarily restricting eminent domain powers and defining public use.[7]

How Is the Legislature Addressing the Issue of Redevelopment Agencies and Eminent Domain?

SB 53 (Kehoe, Chapter 591, Statutes of 2006) requires every agency that adopted a final redevelopment plan before January 1, 2007, to adopt an ordinance describing its eminent domain policy by July 1, 2007. (Redevelopment plans adopted on or after January 1, 2007, must include a description of the eminent domain policy.) The plan can prohibit the redevelopment agency from acquiring specific types of property (for example, residential) by eminent domain.[8] While this bill does not restrict redevelopment agencies' eminent domain powers, it is intended to help boost public awareness and understanding of how redevelopment agencies use eminent domain.

In addition, several California bills addressing various aspects of eminent domain have been and are still being considered in the current legislative session. The following bills relate to redevelopment agencies:

- **SB 437 (Negrete McLeod, Chapter 90, Statutes of 2007)** requires redevelopment agencies to state in their annual reports and implementation plans their time limits for eminent domain, establishment of debt, debt repayment, and plan effectiveness.

- **AB 887 (De La Torre),** currently pending on the Senate Floor, requires redevelopment agencies to give more information to property owners before using eminent domain and increases the amount of relocation assistance redevelopment agencies must provide to a small business that is subject to eminent domain condemnation.

- **ACA 8 (De La Torre),** pending reconsideration on the Assembly Floor, limits the ability of redevelopment agencies to take certain properties by eminent domain if the purpose is to convey the property to a private person.

WHAT'S NEXT?

As of this writing, two eminent domain initiatives are pending for the June 2008 ballot:

- **The Homeowners and Private Property Protection Act,** sponsored by the League of California Cities and others, limits the authority of public agencies that want to use eminent domain to acquire single-family homes and transfer them to another private person or business.[9]

- **The California Property Owners and Farmland Protection Act,** sponsored by the Howard Jarvis Taxpayers Association, California Farm Bureau Federation, and others, limits public agency authority for exercising eminent domain and taking actions that might reduce a property's economic value.[10]

NOTES

[1] *Kelo v. City of New London,* 545 U.S. 469 (2005).
[2] California Health and Safety Code, Sections 33037(b) and 33037(c).
[3] California Senate Local Government Committee, et al., *Redevelopment and Blight: The Summary Report From the Joint Interim Hearing* (October 26, 2005), p. 2.
[4] California Senate Local Government Committee, et al., *What Is to Be Done? Legislators Look at Redevelopment Reforms: The Summary Report From the Joint Interim Hearing* (November 17, 2005).
[5] California Senate Local Government Committee, *Kelo and California: How the Supreme Court's Decision Affects California's Local Governments* (August 17, 2005).
[6] *Kelo v. City of New London,* 545 U.S. 469, 489 (2005).
[7] As of November 2007. Source: National Conference of State Legislatures.
[8] California Health and Safety Code, Sections 33342.5 and 33342.7.
[9] The secretary of state's deadline for signature verification is January 24, 2008.
[10] This measure has qualified for the June 2008 ballot.

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