THE CITY OF SAN DIEGO

DATE ISSUED: September 6, 2005 REPORT NO. RA-05-30

ATTENTION: Government Efficiency and Openness Committee
Agenda of September 12, 2005

SUBJECT: City of San Diego Redevelopment Agency Use of Eminent Domain

SUMMARY

THIS IS AN INFORMATION ITEM ONLY. NO ACTION IS REQUIRED ON THE PART OF THE COMMITTEE OR THE CITY COUNCIL

BACKGROUND

Redevelopment is a process specifically authorized under California law to help local governments turn around troubled communities. Redevelopment encourages new development, creates jobs and generates tax revenues in declining urbanized areas by developing partnerships between local governments and private entities.

The California legislature enacted the Community Redevelopment Act in 1945 to address problems common to older urban areas throughout the country. The Act gave cities and counties the authority to establish redevelopment agencies that in turn, were granted the authority to address problems of urban decay and apply for grants and loans from the federal government. In 1951, the Community Redevelopment Act was codified (Health and Safety Code 33000 *et seq*), renamed the California Community Redevelopment Law (CRL) and provided for tax increment financing of redevelopment activities.

CRL has gone through several amendments in response to concerns over the expansive authority conferred on redevelopment agencies. In the 1970s, provisions were added that required tax increment set asides for low-and moderate-income households; alleviated fiscal impacts of redevelopment plans on affected taxing entities; and placed limits on the amount of tax increment to be received, the total amount of outstanding bond debt, and the time period for incurring the debt. In 1993, CRL was further amended to expand the definition of blight; require statutory payments to affected taxing entities; impose new time limits on the life of project areas and debt; repeal the authority to receive sales tax revenue; and impose new requirements for land disposition and the financing of public improvements.

Redevelopment Agency
600 B Street, Suite 400, MS 904 • San Diego, CA 92101-4506
Tel (619) 533-4233 Fax (619) 533-5250

Community and Economic Development

The Redevelopment Agency of the City of San Diego was established by City Council ordinance in May 1958. All actions of the Redevelopment Agency have and continue to be governed by the CRL.

DISCUSSION

Listed below is a list and brief description of redevelopment activities relevant to the use of eminent domain.

Redevelopment Plan Adoption

A Redevelopment Plan provides the legal framework for planning and implementing revitalization activities in a redevelopment project area and can also establish a financing method to fund these activities.

Adoption of a redevelopment plan is defined under CRL. A sequential process must occur in chronological order which involves actions by the Planning Commission, City Council and Redevelopment Agency, and a project area committee, if required. The typical plan adoption process takes between twelve and eighteen months, depending upon the level of community interest, support and involvement. The process includes numerous public hearings and meetings, with at least two first-class mailings to every resident, business/property owner, and community organization within the proposed Project Area boundaries. Successful adoption must conform to rigorous standards demonstrating a preponderance of physical and economic blight within the proposed redevelopment project area, and be legally defensible to challenges by any individual or local taxing agency. A report to the City Council is submitted that describes the conditions of physical and economic blight, and an explanation of why the elimination of blight cannot be accomplished without the tools of redevelopment; a financing plan; a relocation plan; and owner participation plan; and an environmental impact report. The Council must adopt an ordinance to approve the redevelopment plan. In cities with populations of over 500,000, CRL provides a for a 90 day challenge period. Any person or individual may request that the Redevelopment Agency initiate adoption of a redevelopment plan. Redevelopment plans must afford participation opportunities for owners of property in the project area and must extend preferences to businesses located in the project area.

CRL requires the formation of a project area committee (PAC) in the event an agency proposes to adopt a redevelopment plan containing the authority to acquire residential property by eminent domain, and substantial numbers of low-or moderate-income persons reside within the project area, or the plan contains a public project that will displace a substantial number of low-or moderate-income persons. This also applies to plan amendments that include the grant of eminent domain authority for residential properties.

Legal Authority Related to Eminent Domain

The State Constitution provides that local governing bodies, including redevelopment agencies, have the authority to acquire and assemble private property for the purpose of accomplishing a necessary public benefit project. Cities, counties, schools, special districts, Cal Trans, utilities and others also have the authority to condemn property. Condemnation is often a necessary tool for public projects such as schools, street improvements, water storage facilities, civic buildings, parks, drainage facilities and even hospitals.

Eminent domain is one of the primary tools for assembling land available under redevelopment, however, several legislated restriction of limitations apply. The law of eminent domain (condemnation) may only be used for a public purpose and requires that the private property owner be justly compensated for their property - he or she must be paid fair market price for the property. The California Legislature has attempted to balance the needs of the government and property owners by incorporating procedural and substantive rights in the condemnation law to safeguard the property rights of private citizens. CRL limits the use of eminent domain to 12 years after the establishment of the redevelopment project area. The time frame for use of eminent domain can be extended by an amendment to a redevelopment plan through a thorough public hearing process defined in CRL. A redevelopment plan may limit the use of eminent domain as in the adopted redevelopment plans for City Heights and Grantville project areas.

Owner Participation

The Agency adopts Rules Governing Participation by Property Owners and Preference for Businesses to Reenter ("OP Rules") for each redevelopment project. Property owners are afforded a fair and reasonable opportunity to participate in the redevelopment of the project area. However, the primary purpose and duty of the Agency is to carry out and implement the redevelopment plans. The ultimate decisions as to the proper implementation of a redevelopment plan and the appropriateness of any particular activity always lies in the judgment and discretion of the Agency. Participation occurs by entering into and fulfilling a written agreement with the Agency for the rehabilitation, renovation or complete redevelopment of property pursuant to the applicable redevelopment plan, design standards and other standards established by the Agency. Participation may occur in many forms including development of additional properties purchased from the Agency or by the Agency acquiring land and improvements from an existing owner and offering other land within the project area for purchase and development.

As the Agency carries out specific activities to implement redevelopment plans, property owners are invited to participate pursuant to the OP Rules. Many property owners submit proposals and enter into formal owner participation, loan or development agreements with the Agency. In some cases, the existing property owner does not have the desire or ability to participate and the Agency may desire to acquire property in order to carry out and implement the redevelopment plan. The Agency makes every reasonable effort to acquire property by negotiated purchase, offering the owner just compensation, which is not less than the fair market value appraisal. Fair

market value is determined by an appraisal of the highest and best use of the property. Just compensation may include the fair market value of the property and damage to the goodwill of a business conducted on the property. The Agency has adopted rules and regulations to implement payments and relocation assistance to displaced occupants and businesses. The Agency often times may also purchase land that is available and marketed for sale for future redevelopment. Property owners often desire the tax or financial benefits associated with selling property to a redevelopment agency under the threat of eminent domain.

Agency Process for Use of Eminent Domain

Acquisition of property through the use of eminent domain is typically uses as a last resort when a redevelopment activity is proposed on non-Agency owned property. If efforts to encourage owners to participate or, if efforts to negotiate the purchase of property do not succeed, the Agency may seek to acquire property through its powers of eminent domain. The Agency follows an open, thorough public process to consider such action pursuant to Eminent Domain Law found in the Code of Civil Procedures.

The following provides a general outline of the major steps in the implementation process when a development activity is proposed for non-Agency owned real property.

1) A development project or activity is proposed.

2) Property Owner(s) are contacted in writing and provided the opportunity to participate pursuant to the OP Rules.

3) The property owner(s) may submit a development proposal for consideration which may result in a development agreement with the Agency, or the owner may not be interested in participation, or the owner may submit a development proposal that is unacceptable to the Agency.
   a) If the owner's proposal is not acceptable to the Agency, the Agency may elect to proceed with an alternative proposal from another entity or owner.
   b) The Agency may enter into an Exclusive Negotiation Agreement (ENA) with another entity and move toward Agency approval of a Disposition and Development Agreement (DDA) that could result in the Agency's consideration of the use of eminent domain to bring the DDA to meet its obligations under the terms and conditions of the DDA.
   c) The Agency may find it necessary to initiate the acquisition process in order to facilitate the development of a redevelopment activity or Agency development agreement.
   d) The Agency takes the following steps to acquire property not listed for sale.
      i) Obtain a highest and best use appraisal prepared by a qualified professional appraiser.
      ii) Make a fair market value offer to the affected property owner(s).
      iii) Prepare and approve a relocation plan if there is potential for residential displacement.
      iv) If the Agency and owner are successful at negotiating the purchase and sales of the property, the proposed project/activity moves forward.

v) If the Agency and owner are not able to negotiate the purchase and sale, the following occurs.
   (1) The Agency may decide not to proceed with the redevelopment activity, or
   (2) The Agency may desire to implement the activity requiring the purchase of the property and schedule a noticed public hearing to consider initiating eminent domain.
   (3) The Agency conducts a noticed public hearing and considers the adoption of a resolution of necessity.
      (a) The Agency may adopt the resolution of necessity (requires a two-thirds vote of the City Council sitting as the Redevelopment Agency) making findings required by California Eminent Domain Law.
      (b) The Agency files a complaint in court, deposits the probable compensation and requests an Order of Immediate Possession (OIP)
      (c) OIP is granted by the Court, property possession is given to the Agency 90 days later and the redevelopment activity moves forward.
      (d) The property owner many legally challenge the right to take the property. All challenges to the right to take property are resolved before the court who determines just compensation.
      (e) Mediation and negotiations between the Agency and the owner(s) on compensation may continue.
      (f) If not resolved, final compensation is determined through a court trial.
      (g) A Final Order of Condemnation is issued by the court.

The revitalization of a community requires the partnering of residents, public agencies and property and business owners. Beginning with the initial notion of the possibility for change, redevelopment in California provides an interactive public process affording opportunities to residents, businesses and land owners to participate and benefit from the revitalization program.

The public process for creating a redevelopment project area, together with the existence of the Agency's power of eminent domain within the project area, demonstrates the collaborative public-private commitment to improving the community through the creation of new housing, jobs, business opportunities and needed public infrastructure. This underlying sense and acknowledgement of change results in very few Agency acquisitions actually going through the entire eminent domain process. Most project area acquisitions are negotiated purchases from one private party to another or to the Agency. Redevelopment works in California, and San Diego serves as an example of the successful and fair application of California Redevelopment Law and the tools it provides.

The City Redevelopment Division, Southeastern Economic Development Corporation and Centre City Development Corporation will make a collective presentation discussing the historical and potential future uses of eminent domain within the City's 17 existing redevelopment project areas.

Respectfully submitted,

Debra Fischle-Faulk
Assistant Executive Director
City of San Diego Redevelopment Agency

Peter J. Hall
President and Chief Executive Officer
Centre City Development Corporation

Carolyn Y. Smith
President
Southeastern Economic Development Corporation

cc: P. Lamont Ewell, Executive Director, Redevelopment Agency