REDEVELOPMENT
CORPORATION
CHULA VISTA

CVRC Board
Staff Report – Page 1
Item No. 6

DATE: December 14, 2006

TO: Redevelopment Agency Board of Directors
CVRC Board of Directors

VIA: Jim Thomson, Interim Executive Director/CEO

FROM: Ann Hix, Acting Director of Community Development
Ken Lee, Principal Community Development Specialist

SUBJECT: Year-End Legislative Report on 2006 Redevelopment Bills

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BACKGROUND:

On June 23, 2005, the United States Supreme Court issued its ruling in the case of *Kelo v. City of New London*, sending ripple effects through almost every state legislature in the country. In California, the topic of eminent domain heated up quickly as local government watchdogs and key members of the Legislature began a dialogue at the Capitol that would rapidly move eminent domain to the forefront of the Legislature's agenda during the 2005-2006 Two-Year Session. Key policy committees in the Senate quickly converged on the issue, calling for a series of special hearings that later spurred the introduction of several substantive redevelopment bills, and eventually opened the doors to a statewide ballot measure, Proposition 90.

While Proposition 90 failed at the ballot in November, just months prior, the Legislature passed eight separate bills that directly impact the powers and procedural requirements of California's 386+ redevelopment agencies. Seven of the eight bills were signed by Governor Schwarzenegger in September. The provisions of those seven bills will become effective on January 1, 2007, and are briefly described in the following table.

Bill No. & Author	Chapter No.	Bill Summary
Senate Bill 53 (Kehoe)	Chapter 591, Statutes of 2006	Requires redevelopment plans to spell out how, when, and where redevelopment officials will use their eminent domain powers, and requires redevelopment officials to document "blight" before extending the time period for using eminent domain.

Bill No. & Author	Chapter No.	Bill Summary
SB 1206 (Kehoe)	Chapter 595, Statutes of 2006	Tightens the statutory "blight" definition, increases oversight by the State Department of Finance, and makes it easier to challenge redevelopment decisions.
SB 1210 (Torlakson)	Chapter 594, Statutes of 2006	Requires redevelopment officials to document "blight" before extending the time period for using eminent domain, and changes the procedures for taking condemned property.
SB 1809 (Machado)	Chapter 603, Statutes of 2006	Requires local officials to add information about a redevelopment agency's possible use of eminent domain in the formal statements that current law requires officials to record about redevelopment project areas.
Assembly Bill 773 (Mullin)	Chapter 161, Statutes of 2006	Increases the referendum petition period for redevelopment decisions.
AB 782 (Mullin)	Chapter 113, Statutes of 2006	Repeals the subdivision exception to the statutory "blight" definition.
AB 1893 (Salinas)	Chapter 98, Statutes of 2006	Codifies the *Ruffo* decision, banning redevelopment spending on city halls.

The following Year-End Legislative Report provides a more detailed description and discussion of each of these bills, and the events in Sacramento that led up to their introduction and passage. This report is for informational purposes only.

RECOMMENDATION:

Staff recommends that:

a) The Chula Vista Redevelopment Corporation and Redevelopment Agency receive and file the 2006 Year-End Legislative Report.

DISCUSSION:

Different State, Different Rules

The Supreme Court's *Kelo* ruling affirmed that the City of New London's exercise of eminent domain to take private, non-blighted property for the purpose of economic development satisfied the constitutional "public use" requirement. To understand how the state laws of Connecticut and California differ, and how the *Kelo* ruling interacts differently with those state laws, several key policy committees in Sacramento initiated a series of hearings to explore these questions. On August 17, 2005, the Senate Local Government Committee, chaired by Senator Christine Kehoe of San Diego, held an informational hearing on *Kelo* and received testimony from five attorneys with extensive experience in eminent domain. An October 26, 2005 Briefing Paper written by the Committee's Chief Consultant, Peter Detwiler, summarized the hearing's results in four key findings:

- None of the witnesses said that *Kelo* affected California's counties, cities, special districts, or school districts. All focused on how *Kelo* affected redevelopment agencies.
- The witnesses disagreed on how *Kelo* affected redevelopment agencies' eminent domain powers. One declared that a *Kelo*-like taking was impossible in California because of the "blight" requirement. Others claimed that California's situation is worse than Connecticut's.
- The witnesses also disagreed over property owners' protections under the existing statutes. Some called for legislative changes that would benefit property owners who oppose eminent domain. Others defended the existing statutory protections.
- State law limits redevelopment agencies' eminent domain powers to redevelopment project areas where the area must be blighted.

Redevelopment at Center Stage

The Committee's findings concluded that *Kelo* did not affect cities, counties, special districts, and school districts, and instead shifted Sacramento's focus to California's redevelopment agencies. Several of the Committee's witnesses confirmed that the California Community Redevelopment Law (Health and Safety Code §§33000 et seq.) already contains very stringent property owner protections and requirements for the inclusion of "blighted" properties in redevelopment project areas, and the use of eminent domain on those blighted properties. Other witnesses and members of the Committee, including Senator Tom McClintock (R-Thousand Oaks), however, cited specific cases of eminent domain "abuse" by certain redevelopment agencies in California. While the merits of these "abuse" cases were the subject of debate at the hearing, the Committee's discussions had clearly opened the door to much broader topics of redevelopment reform in California that went above and beyond just the issue of eminent domain.

Transforming Toward Reform

Discussions from the Senate Local Government Committee's hearing on *Kelo* spilled over into the Fall Recess, after adjournment of the 2005 legislative year. During October and November of 2005, four policy committees (two from the Senate and two from the Assembly) convened to hold Joint Interim Hearings and special study sessions on the specific topic of redevelopment in California. The four participating policy committees included: (1) Senate Committee on Local Government, (2) Senate Committee on Transportation & Housing, (3) Assembly Committee on Housing & Community Development, and (4) Assembly Committee on Local Government. Two Joint Interim Hearings were held by the Committees in San Diego and Sacramento, both of which attracted enormous amounts of attention from a diverse range of stakeholders from throughout the state.

The October 26, 2005 Hearing in San Diego focused specifically on *Redevelopment & Blight*, reopening decades of controversy and scrutiny over how public officials and property owners use the statutory definition of "blight" to redevelop California's downtowns and neighborhoods. The November 17, 2005 Hearing in Sacramento covered a much wider range of issues and topics, transforming the committees' discussions to broader talks about "redevelopment reforms." The combined effect of the two Joint interim Hearings revealed itself in January when the Legislature reconvened. A number of redevelopment bills quickly surfaced, indicating that Sacramento was ready for the next wave of redevelopment reforms.

The Next Wave of Reforms

The last comprehensive redevelopment reform bill, **AB 1290** (Chapter 942, Statutes of 1993), was passed by the Legislature more than a decade ago. AB 1290 made sweeping changes in the redevelopment law to increase redevelopment agencies' accountability to the state through increased reporting requirements, tax increment spending restrictions, and stricter requirements for findings of blight. As witnessed in the months of heated policy debate that followed the Supreme Court's ruling, *Kelo* provided the Legislature the perfect opening for the next wave of redevelopment reforms in California. The following section of this report provides summary descriptions and analyses of the seven redevelopment reform bills that were passed, signed, and chaptered in 2006.

2006 Redevelopment Bills

- **SB 53 (Kehoe) - Chapter 591, Statutes of 2006**

  Summary. When a city adopts a redevelopment project area, it is required to prepare a redevelopment plan that sets forth the goals and limitations of the Agency's activities for the area. One of these limitations is a time limit of 12 years

to commence eminent domain proceedings to acquire property. Existing law allows cities to extend that time limit through an amendment of the redevelopment plan. SB 53 (Kehoe) will establish the following new requirements.

- New redevelopment plans adopted on or after January 1, 2007 must contain a "program to acquire real property by eminent domain." The program may include self-imposed restrictions on the use of eminent domain to acquire specified types of properties (e.g., owner-occupied residences, single-family residences).
- For all redevelopment plans adopted prior to January 1, 2007, cities must adopt an ordinance by July 1, 2007 containing a description of their "program to acquire real property by eminent domain," as described under #1.
- To extend the 12-year time limit for the commencement of eminent domain proceedings in a project area, cities must amend the redevelopment plan for the subject project area *and* make both of the following findings, based on substantial evidence:
    1) That significant blight remains within the project area.
    2) That this blight cannot be eliminated without the use of eminent domain.

Analysis. The adoption of any new project areas, or the expansion of existing ones, in the City of Chula Vista will require the City to adopt the newly mandated eminent domain program. By July 1, 2007, the City will also be required to adopt ordinances for existing project areas that describe the City's eminent domain program, including any restrictions on the use of eminent domain to acquire specified types of properties. Because the City has already adopted local restrictions prohibiting the use of eminent domain to acquire residentially zoned/used property, these new state requirements are generally consistent with existing local policies. The new blight findings required by SB 53 will also apply to any future plan amendments that include the extension of the Agency's time limit to commence eminent domain proceedings.

- **SB 1206 (Kehoe) - Chapter 595, Statutes of 2006**

Summary. Of all the redevelopment bills passed in 2006, SB 1206 (Kehoe) made the broadest sweep of changes to the law, amending twelve existing sections of the Health and Safety Code and adding seven new sections. SB 1206 was also the most controversial of the seven, receiving attention from a wide array of stakeholders at the local, regional, and state levels. By the end of August 2006, 14 organizations and individuals were listed in support of SB 1206; 71 were listed in opposition,

many of which included individual cities and redevelopment agencies. The provisions of SB 1206 are generally summarized below.

Topic	Changes
Blight Findings	Tightens the requirements for making findings of "blight" by eliminating the looser requirements ("antiquated subdivision conditions") and modifying the statutory definitions of physical and economic blighting conditions. ***Also see AB 782 (Mullin).***
Blight Findings	New requirement that blight surveys/inventories must include specific, **quantifiable** evidence that documents specified physical and economic blighting conditions (e.g., crime rates, calls for service, lease rates).
Blight Findings	Increases requirements for blight findings in ordinances adopting redevelopment plans, including "clearly articulated and documented evidence."
Blight and Tax Increment	An unblighted parcel may not be included in a redevelopment project area when the only substantial justification for including the parcel is to obtain the allocation of taxes from the area.
Use of Tax Increment	Clarifies that the existing prohibition of using tax increment funds to pay for city hall facilities includes: land acquisition, site clearance, and design. ***Also see AB 1893 (Salinas).***
Financial Mergers of Project Areas	Requires that findings be made for the financial merging of project areas that: (1) significant blight remains in one of the project areas; and (2) the blight cannot be eliminated without the merger.
Referendum	Establishes a consistent 90-day time limit for voters to circulate and submit a referendum petition for the adoption or amendment of a redevelopment plan. ***Also see AB 773 (Mullin).***
Statute of Limitations	Extends the 60-day statute of limitations for actions challenging the validity of a redevelopment plan to 90 days. Requires copies of such challenges of validity to be served on the Attorney General. Increases the ability of the Attorney General to intervene.

In summary, SB 1206 accomplishes three primary goals: (1) tightens the statutory "blight" definition; (2) makes it easier for interested parties to challenge redevelopment decisions; and (3) increases state oversight of redevelopment takings.

Analysis. The last redevelopment project area expansion that was adopted in the City of Chula Vista occurred in 2004, after a multi-year effort involving hundreds of thousands of dollars in consulting costs, extensive public outreach and education, and several rounds of studies and plans designed to support the City's required findings of "blight." Under SB 1206, all future efforts to expand the City's project areas will become significantly more challenging, costly, and limiting. Earlier this year, the Redevelopment Agency approved a 2005-2009 Five Year Implementation

Plan that contained a work program establishing the expansion of the City's redevelopment project areas as a priority during the next two to three years.

Additional Comments. Specified sections of SB 1206 mirrored provisions from the three Assembly Bills identified in this report. This is a common practice in Sacramento to prevent one bill from "chaptering out" another when the same sections of the law are affected. SB 1206 was signed and chaptered into law after AB 773 (Mullin), AB 782 (Mullin), and AB 1893 (Salinas) and is, therefore, the operative legislative vehicle for those statutory changes.

- **SB 1210 (Torlakson) - Chapter 594, Statutes of 2006**

Summary. SB 1210 (Torlakson) makes several changes to the Code of Civil Procedure which governs the procedural requirements for condemnation proceedings. Specifically, the bill:

- Revises the provision in existing law that permits a plaintiff to make ex parte application to the court for pre-judgment possession of land and instead allows the issuance of pre-judgment possession orders only when the property owners has been given notice and an opportunity for a hearing.
- Allows the property owner or occupant, within 30 days of receiving the notice, to submit to the court written opposition to the taking, signed under penalty of perjury, and containing a brief description of the hardship that would be caused by the taking.
- Allows the court to grant an order of possession (i.e. to authorize a taking) if denying the order would create a "substantial hardship" to the plaintiff and the hardship to the plaintiff outweighs the hardship to the property owner.
- Requires a public entity seeking to exercise eminent domain to pay the reasonable costs of an independent appraisal, not to exceed $5,000.

Analysis. SB 1210 tries to "level the playing field" between condemning entities and property owners during condemnation proceedings. Specifically, SB 1210 makes changes to the provisions in the Code of Civil Procedure that currently allow condemning entities to make ex parte applications to the court for **pre-judgment** possession of land before property owners have received notice and an opportunity to be heard. SB 1210 tries to tip the scales back in the favor of the property owner by placing the burden of proof back on the condemning entity to show why immediate possession of the property is urgently necessary, and how it would avoid a substantial hardship. These new requirements will force redevelopment agencies and developers to slow down and reevaluate their timelines for development projects that could involve condemnation.

- **SB 1809 (Machado) - Chapter 603, Statutes of 2006**

  Summary. Existing redevelopment law requires redevelopment agencies to record with the County Recorder a legal description of any land that is contained within a redevelopment project area. This ensures that title reports disclose to property owners and prospective homebuyers whether property is within a project area. SB 1809 expands these requirements as follows:

  - Recordation must occur within 60 days of the adoption or amendment of a redevelopment plan. There is currently no time limit.
  - If the redevelopment plan authorizes the Agency to use eminent domain, the recorded statement must also contain: (a) a prominent heading in boldface type that the property is located in a project area; and (b) a description of Agency's power of eminent domain, including any restrictions.
  - Requires, by December 31, 2007, that cities re-record all legal descriptions of any previously adopted or amended redevelopment plans in accordance with the new requirements, if those plans authorize the use of eminent domain to acquire property.
  - Prohibits the Agency from commencing eminent domain proceedings until the required statement and description are recorded.

  Analysis. SB 1809 seeks to increase protections for property owners and prospective homebuyers by ensuring that owners and buyers have full disclosure that a property is in a project area and may be subject to eminent domain. According to the author, homebuyers should be informed when there is a risk that a home might be taken by a redevelopment agency under eminent domain, "thereby allowing the risk to be quantified in the final selling price of the home." By December 31, 2007, the Chula Vista Redevelopment Agency will be required to record revised statements with the County Recorder for all applicable redevelopment plans, if any, in accordance with the requirements of SB 1809.

- **AB 773 (Mullin) - Chapter 161, Statutes of 2006**

  AB 773 (Mullin) was mirrored and chaptered out by SB 1206 (Kehoe). Please refer to the SB 1206 table on Page 6 of this report.

- **AB 782 (Mullin) - Chapter 113, Statutes of 2006**

  AB 782 (Mullin) was mirrored and chaptered out by SB 1206 (Kehoe). Please refer to the SB 1206 table on Page 6 of this report.

- **AB 1893 (Salinas) - Chapter 98, Statutes of 2006**

  AB 1893 (Salinas) was mirrored and chaptered out by SB 1206 (Kehoe). Please refer to the SB 1206 table on Page 6 of this report.