

LEGISLATIVE ACTIONS

A bill that would have prohibited California public entities from condemning tax-exempt property used exclusively for religious worship recently died in the state legislature after languishing in the Judiciary Committee for a year. Assembly Bill 247, sponsored by Assemblyman Ken Maddox, was introduced on the floor in February 2001 in response to a situation in Cypress where the City tried to stop the Cottonwood Christian Center from building a church at a prime location by condemning the group's land for a Costco retail development. The bill never came to a vote.²⁶

PROPERTY OWNER LAWSUITS SEEKING TO OVERTURN LOCAL REDEVELOPMENT PLANS

In California, before a city can condemn land and then transfer it to another private party, it must approve a local redevelopment plan and designate the area as blighted.²⁷ After these two steps, eminent domain can be used against any and all properties within the area. Owners who do not want to be condemned in the future often challenge the redevelopment plans in what is called in California a "validation action." This action can challenge the lack of evidence of "urbanization," blight or other aspects of the approval process.²⁸ Under the state Community Redevelopment Law (CRL), the area must be predominantly urbanized and have substantial physical and economic blight in order to be properly designated.²⁹ Between 1998 and 2002, a number of owners successfully challenged redevelopment plans and thus successfully protected themselves against future condemnation for the benefit of private developers. Because there have been so many legal challenges to blight designations in California in the past five years, these situations are described in this separate section.

Diamond Bar

The affluent suburban City of Diamond Bar established a redevelopment agency to finance local development projects and improve traffic problems, even though commercial uses occupied only two percent of its land area. In 1995, the City Council approved a major 30-year redevelopment plan involving 1,300 acres of land, based on its findings that the project area suffers from blight that is "so prevalent and so substantial that it causes a reduction of, and lack of, proper utilization of the area to such an extent that it constitutes a serious physical and economic burden to the community."³⁰ However, the findings contained no specific instances of either physical or economic blight in the city. Several property owners whose land was targeted by the Diamond Bar redevelopment plan sued the City to have the redevelopment plan overturned. In a terse opinion, the trial court determined that substantial evidence supported the City's blight designation. However, the California Appellate Court reversed, noting that it viewed the plaintiffs' videotapes of the area in their entirety and "did not perceive anything remotely resembling blight. The videotapes depicted modern, well-maintained retail and office structures, amidst ample landscaping and open space in a partially rustic setting."³¹

²⁶ See A.B. 247, 2001-02 Sess. (Cal. 2001).

²⁷ See Cal. Health & Safety Code § 33000 et seq. (Deering 2001).

²⁸ Cal. Civ. Proc. Code §§ 860-70 (Deering 2003).

²⁹ See Cal. Health & Safety Code §§ 33030, 33031, 33320.1 (Deering 2001).

³⁰ *Beach-Courchesne v. City of Diamond Bar*, 95 Cal. Rptr. 2d 265, 269 (Cal. App.), rev. denied, 2000 Cal. LEXIS 6388 (Cal. 2000).

³¹ *Id.* at 270, n. 4.



Mammoth Lakes

In 1996, the Town of Mammoth Lakes and its local redevelopment agency adopted a 30-year redevelopment plan consisting of three separated areas of land totaling 1,100 acres. The redevelopment plan specifically authorized the town to undertake a laundry list of 72 different projects, including a new town hall, performing arts center, aquatic center, various airport renovations, new parking lots, commercial developments and approximately 400 new privately owned housing units. Another provision of the redevelopment plan proposed condemning various parcels of property to assist in developing new commercial and tourist-oriented uses.

An organization called Friends of Mammoth, along with three local property owners, filed lawsuits challenging the Town's plan. The plaintiffs alleged that the redevelopment area was "predominantly urbanized," as required by the Community Development Law. The trial court ruled in favor of the Town, but in July 2000 the Third Appellate District issued a stinging reversal in which it stated that "[t]he facts of this case exemplify the misuse of redevelopment power the Legislature sought to curb."³² Among its findings, the appeals court determined that the Town improperly sought to include in the plan large swaths of undeveloped land it had approved for extensive private development, with the threat of eminent domain attached. Also, the Town did not bother to determine what percentage of the targeted land was currently developed for urban use; it merely labeled it all urban (including a golf course known for its rustic, unspoiled natural landscape).³³

Murrieta

In 1994, the Murrieta City Council adopted a redevelopment plan, pursuant to the state Community Redevelopment Law, encompassing 3,588 acres at the juncture of Interstates 15 and 215. Riverside County filed suit to challenge the City's plan on the grounds that no substantial evidence existed to support the City's finding that the targeted area is a blighted, predominantly urbanized area. The trial court agreed with

³² *Friends of Mammoth v. Town of Mammoth Lakes Redevelopment Agency*, 98 Cal. Rptr. 2d 334, 355 (Cal. App. 2000).

³³ *Id.*

Legal Challenge Looms Over San Jose's Strong Neighborhoods Initiative

In June 2002, the San Jose City Council enacted the "Strong Neighborhoods Initiative," a massive redevelopment plan aimed at increasing retail development throughout the city. The plan includes 20 different neighborhoods, spread out over an area encompassing 180 square miles, including one-tenth of the city's geographic area and one-third of its population. Under the Initiative, the San Jose Redevelopment Agency, armed with the power of eminent domain, can condemn any property in the redevelopment area and hand it over to private developers. The City will spend an astounding \$120 million to buy or condemn properties, build infrastructure, and renovate supposedly dilapidated buildings.¹ The plan has the potential to affect 300,000 residents.²

Many local activists have opposed the blight designation or at least the inclusion of eminent domain in the project, forming citizen groups and speaking out against the project.³ The Burbank neighborhood submitted a petition with 700 signatures asking to be let out of the plan area, but the City Council included them anyway.⁴ Residents of the Naglee Park area also voted to be taken out of the plan, but that may or may not happen sometime in 2003.⁵ Eminent domain was the sticking point, and the City added supposed safeguards, like using eminent domain as a "last resort," but that's a meaningless protection. All it means is that someone will try to buy the property before condemnation proceedings start. The City could have chosen not to authorize eminent domain, thus alleviating everyone's fears. They authorized it.

One San Jose property owner within the supposedly blighted area has taken the City to court. Elaine Evans, who owns two buildings and a vacant lot in downtown San Jose, filed a lawsuit on August 21, 2002 to invalidate the Strong Neighborhoods Initiative. Although she has no problem with the City working to redevelop troubled areas in the city; she objects to the City's use of flimsy criteria to reach a blight determination affecting properties like hers that are in no way substandard. Under the state's Community Redevelopment Law, for an area to be blighted, problems must be "so prevalent and substantial" that they cannot be remedied by private business or regular gov-

ernment workings.⁶ According to Evans' lawyer, "there are very specific findings that have to be made [to call an area blighted]. The redevelopment agency didn't even come close."⁷ Evans' suit identifies a number of problems with the blight designation, including the fact that the City failed to identify a single building that was actually unsafe or unfit for habitation, and the City used conditions like overgrown yards and broken sidewalks to label an area blighted. She also questions the notion that the area is economically stagnant when property values have increased 30 percent since 1996.⁸

This challenge to the Strong Neighborhoods Initiative is still in its early stages. However, based on recent successful challenges to similar redevelopment laws in Mammoth Lakes and Upland, in which California courts overturned blight designations that failed to meet the CRL's criteria, Elaine Evans believes that she has a good chance of defeating the redevelopment plan. By doing so, she hopes to prevent her buildings from being taken in the future for private developers.⁹

¹ Janice Rombeck, "City Eases Fears, OKs Renewal Project; S.J. Residents Wary of Eminent Domain," *San Jose Mercury News*, June 12, 2002, at B1.

² Janice Rombeck, "Neighborhoods Seek Safeguards," *San Jose Mercury News*, May 23, 2002, at B1.

³ "City Makes Offer on Tropicana as Owners Launch Legal Fight," *Silicon Valley/San Jose Business Journal*, Oct. 11, 2002, at 1.

⁴ Janice Rombeck, "Neighborhoods Seek Safeguards," *San Jose Mercury News*, May 23, 2002, at B1.

⁵ Janice Rombeck, "Vote Against Redevelopment Raises Questions," *San Jose Mercury News*, Oct. 21, 2002, at B1.

⁶ Cal. Health & Safety Code § 33030 (b) (1) (Deering 2001).

⁷ Kate Folmar, "S.J. Sued Over Blight Designations," *San Jose Mercury News*, Sept. 5, 2002, at A1.

⁸ Mike Zapler & Janice Rombeck, "Challenge to Criteria for San Jose Blight Plan," *San Jose Mercury News*, July 26, 2002, at A1; Kate Folmar, "S.J. Sued Over Blight Designations," *San Jose Mercury News*, Sept. 5, 2002, at A1.

⁹ *Id.*

the County and invalidated the Murrieta redevelopment plan. The Fourth Appellate District upheld the trial court's ruling, finding in July 1998 that "after sifting through the general commentary that comprises much of the redevelopment report, we discover there is little substantive material to be gleaned. Although the report speaks in the statutory language used to define blight, the report offers little concrete evidence of actual conditions of blight." Among other problems, the City classified rural residential land as urban and called the area blighted although less than five percent of its structures were unsafe.³⁴

Riverside County

In July 1999, the Riverside County Board of Supervisors passed an ordinance approving a 2,860-acre redevelopment plan encompassing the neighborhoods of Lakeland Village and Wildomar. The area consists mostly of a hodgepodge of quaint 1920s bungalows, mobile homes, upscale lakefront homes and some businesses. However, the County determined that the area was "blighted" and in need of subsidized improvement. The goal of redevelopment, according to the Board of Supervisors, would be to provide low-interest loans and grants for homeowners and small business owners to make needed improvements to their property. Many residents of the neighborhood took offense at the County's blight designation, though, and feared that the redevelopment plan would merely open the door to large retail establishments that might someday gobble up their property and force them out of their homes. So the residents banded together to challenge the County's redevelopment plan in court.³⁵

The Riverside County Superior Court granted summary judgment in favor of the County, and refused to grant the residents an injunction to stop the redevelopment plan. In March 2002, however, a California appeals court overturned the earlier decision. It noted that

³⁴ *County of Riverside v. City of Murrieta*, 76 Cal. Rptr. 2d 606, 612 (Cal. App. 1998).

³⁵ Vanessa Colon, "Appeals Panel Rules in Favor of Residents; The Court Says the County Didn't Show that Lakeland Village and Wildomar Were Blighted," *The Press-Enterprise (Riverside, CA)*, Mar. 15, 2002, at B3.

according to the evidence the County submitted on appeal, a large amount of the land it called urbanized was actually vacant. The appeals court sent the case back to the trial court for a final determination.³⁶

San Francisco

In October 2000, San Francisco approved an expansion of the Yerba Buena Center Redevelopment Plan to include a massive redevelopment project for the site of the former Emporium department store in downtown San Francisco. The 120-foot tall Emporium Building was originally built in 1896 and withstood the 1906 earthquake. The department store operated there from 1908 until 1996, when it closed because of declining business. Federated Department Stores, Inc., the current owner of the vacant building, tried to restore it, but structural and code deficiencies made the building not feasible for new retail use. Federated convinced the City to add the Emporium Building into the Yerba Buena redevelopment area, so that it could qualify for government financial assistance in restoring the building. In August 2000, the local redevelopment agency determined that the site was physically and economically blighted under the state Community Redevelopment Law, paving the way for the City's approval of the amended redevelopment area. A local citizens' organization and five individual residents of San Francisco filed a writ petition to invalidate the project, arguing that the redevelopment plan amendment was inconsistent with the San Francisco General Plan requiring a blight determination prior to altering or adding redevelopment zones. The local superior court denied the petition, and in September 2002 the First Appellate District affirmed the trial court's decision.³⁷ Citing the Emporium Building's many structural deficiencies and building code violations, the appellate court determined that the building meets the "substantial evidence" requirement for blight designation.³⁸ This decision allows Federated to petition the state and local governments for assistance in redeveloping the Emporium building, with the taxpayers' picking up the tab.

Sonoma County

In July 2000, Sonoma County adopted a redevelopment plan encompassing 1,830 acres of land along the Russian River, which passes through Guerneville, Rio Nido, Monte Rio, and several other small unincorporated communities. The area was once a popular tourist destination, but its popularity had been declining in recent decades, so the County pursued a redevelopment strategy that included the use of eminent domain to force the transfer of targeted private properties to other private parties. The County based its decision to establish the redevelopment zone on a blight study that determined the area to be "predominantly urbanized,"³⁹ and that found alleged instances of physical blight that rendered the area "a serious physical and economic burden on the community" as required by the state Community Redevelopment Law.⁴⁰ The Russian River Community Forum sought to overturn the redevelopment plan by challenging the County's findings of predominant urbanization and physical blight, but in October 2001 the county court denied the Forum's request and validated the County's action in adopting the redevelopment plan. The Forum appealed, but in December 2002 the First Appellate District upheld the lower court's ruling.⁴¹

³⁶ See *Lakeland Village/Wildomar Taxpayer Assn. v. County of Riverside*, No. 332217, 2002 Cal. App. Unpub. LEXIS 2459 (Riverside Cnty, Cal. Super. Ct. Mar. 29, 2002).

³⁷ See *San Franciscans Upholding the Downtown Plan v. City and County of San Francisco*, 125 Cal. Rptr. 2d 745, 784 (Cal. App. 2002).

³⁸ *Id.* at 777-79.

³⁹ Cal. Health & Safety Code § 33030 (Deering 2001).

⁴⁰ *Id.* at § 33031.

⁴¹ See *Russian River Community Forum v. Sonoma County*, No. A097145, 2002 Cal. App. Unpub. LEXIS 11228, at *1 (Cal. App. Dec. 4, 2002).

On the issue of urbanization, the appeals court distinguished Sonoma County's plan from others that have recently been overturned by California courts on the basis of deficient urbanization findings (in Mammoth Lakes, Murrieta and Upland). The court determined that the Sonoma plan was based on a legitimate finding of 80 percent urbanization,⁴² as required by the CRL.⁴³ With regard to the County's alleged evidence of physical blight, the appeals court held that County's redevelopment plan contained adequate findings of "the widespread existence of severely deteriorated buildings, gravely deficient lot parcels, and extremely low assessed property valuations."⁴⁴

The city had treated faded paint and sagging screens as factors showing blight.

Upland

In June 1999 the Upland City Council amended an existing Town Center redevelopment plan by deleting 77 contiguous acres from the redevelopment area. It then approved a new redevelopment plan, designated as "Project 7," containing both the 77-acre parcel and 15 additional noncontiguous parcels. William Graber, owner of the 77 acres, and San Bernardino County filed separate validation actions to challenge the ordinances. Their contention was that the City failed to meet the state Community Redevelopment Law's statutory requirements because less than 80 percent of the area was urbanized, certain non-blighted property had been improperly included in the project area, and the City lacked sufficient evidence to support its blight designation. The trial court agreed with the challengers and invalidated the City Council's ordinances. On appeal, the Fourth Appellate District upheld the trial court decision and agreed that the "blight" designation was based only on vague, superficial surveys that could not demonstrate "substantial evidence" of blight. The city had treated faded paint and sagging screens as factors showing blight.⁴⁵

PRIVATE USE CONDEMNATIONS

Chula Vista

The Rados brothers owned a 3.2-acre piece of land located within a redevelopment zone established 30 years ago in Chula Vista. They had committed to razing the old buildings on the property, thus eliminating any blight. However, in the interim the B.F. Goodrich Aerospace Aerostructures Group (BFG) sought help from the City's redevelopment agency, hoping to use the Rados brothers' land as a parking lot for its adjacent manufacturing plant. Under an agreement between BFG and the City, BFG would pay \$3 million for the land and use it for parking for six years, during which time BFG would undertake additional development of its adjacent land. If after six years BFG had not developed the property, the agency could reacquire the land for \$1,052,409. In July 1999, the City condemned the property, and the Radoses challenged the taking.

⁴² *Id.* at *12.

⁴³ Cal. Health & Safety Code § 33320.1 (b).

⁴⁴ *Russian River Community Forum v. Sonoma County*, No. A097145, 2002 Cal. App. Unpub. LEXIS 11228, at *25 (Cal. App. Dec. 4, 2002).

⁴⁵ *Graber v. City of Upland*, 121 Cal. Rptr. 2d 649, 661 (Cal. App. 2002).



At trial, the brothers argued that the City lacked either a public use or a necessity for the taking. Additionally, they pointed out that since they already had plans to demolish the existing structures on the property, any “blight” that had existed would already be eliminated. The trial court agreed and dismissed the action. However, on appeal the Fourth Appellate District reversed the lower court’s ruling, holding that unblighted property may be taken for redevelopment to facilitate area-wide redevelopment, and that the provision allowing the City to buy back the land from BFG after six years would serve as a safeguard to ensure that the land was put to public use.⁴⁶

Claremont

The Claremont City Council, acting as a redevelopment agency, is planning to use eminent domain to bring about the expansion of the City’s borders to accommodate a mix of new residential units, retail shops and a hotel. The area is already popular, with high occupancy rates and many successful small and medium-sized shops. However, existing business owners are upset that the City appears resolved to shut them down by slapping the current shopping district with the “blight” label, while attempting to attract large and competing retail chains to anchor the City’s expansion. According to the owner of a veterinary hospital that would be demolished under the plan, “The City is trying to pick and choose businesses for the village rather than let the free market decide.” The Claremont City Manager claims that the City must improve its retail facilities or risk losing its competitive edge to other shopping destinations. In late 2001, the City was still in the process of formulating its plan for going forward.⁴⁷

Corona

In April 2000, the Corona City Council unanimously approved an agreement with a private developer that would pave the way for construction of Corona Main Place, a proposed 3-story office complex. As part of the deal, the City would attempt to buy four parcels surrounding land the developer already owned, then sell those parcels to the developer for \$1. In addition, the developer would receive \$1 million in tax rebates from the Corona Redevelopment Agency over 12 years. The four parcels were occupied by a Yum Yum Donuts franchise, El Rancho Tortilleria y Market, a single-family residence and a triplex. The City agreed that if it could not buy the parcels from the current owners, it would take the land through eminent domain. The odd thing about this proposal is that in 1998 the Redevelopment

⁴⁶ See *Redevelopment Agency of Chula Vista v. Rados Bros.*, 115 Cal. Rptr. 2d 234 (Cal. App. 2001).

⁴⁷ Joseph Ascenzi, “Building upon a Success Story: Claremont Officials Say it Takes an Expanded Village,” *The Business Press/California*, Nov. 19, 2001, at 1.

California Study Exposes the Myth that the “Public” Benefits from TIF Redevelopment

Throughout the country, local governments try to artificially spur redevelopment by using taxpayer-funded subsidies to lure large developers to the area. A favorite method of subsidized redevelopment is the use of tax-increment-financing (TIF), whereby redevelopment agencies pay to develop land, then keep any additional tax revenues in the project area. The “public” ostensibly benefits because of the additional sales tax revenue generated by the development and by the elimination of underutilized land. The developer, for its part, can avoid property taxes and sometimes even paying for the land, simply by agreeing to operate the development for a set period of time.

The prevailing argument in favor of TIF redevelopment is that it brings redevelopment to places where developers will not build, because the area is run-down or otherwise not profitable. However, in addition to the questionable logic behind subsidizing unprofitable development (there is usually a valid economic reason why certain land is not developed), recent data has done much to debunk the myth that government subsidies work as intended. In 1998, the Public Policy Institute of California (PPIC) published the most comprehensive study to date on the fiscal impact of such developments, concluding that TIF subsidies are neither necessary nor even desirable for achieving sound redevelopment.¹

The PPIC study compared areas in California with TIF-based redevelopments to other similar areas within the same city that did not utilize TIF financ-

ing. When the growth rate of the areas with TIF projects was compared to the areas without TIF projects (in terms of per capita income, population size, geographical area and “blight” conditions), the study found that the TIF projects were producing only minimal gains in terms of actual economic growth, but resulted in substantially higher allocations of tax revenue directed toward local redevelopment authorities.² To achieve those minimally higher rates of growth in TIF areas, cities spent two dollars for every dollar gained.³ About eight percent of all property taxes collected in California, or \$1.5 billion annually, ends up in redevelopment agency coffers.⁴ Moreover, the PPIC concluded that the problem of “no oversight authority to police redevelopment agencies” is a main source of concern regarding the potential waste of public money on TIF projects.⁵ Thus, redevelopment agency budgets, not cities, are the main beneficiaries of TIF projects.⁶

¹ See Michael Dardia, *Subsidizing Redevelopment in California*, Public Policy Institute of California (1998), available at <http://www.ppic.org/publications/PPIC108/PPIC108.pdf/index.html>.

² *Id.* at 64-66.

³ *Id.* at 66 (Figure 5.5).

⁴ *Id.*

⁵ *Id.* at 27.

⁶ For more information on eminent domain abuse in California, Municipal Officials for Redevelopment Reform (MORR) has published several editions of its study entitled *Redevelopment: The Unknown Government*. The 1998 edition of this report can be obtained from the MORR website at <http://www.redevelopment.com/norby/index.html>. Contact MORR to obtain the latest edition (published Sept. 2002).

Agency owned these same parcels of land, having purchased them from the state Department of Transportation for \$932,000. However, the Agency then sold the parcels for that same price to their current owner, whose plan to build an office building on the site subsequently fell through.⁴⁸

In the summer of 2001, the owners of the four parcels submitted and sold their properties to the City, for a combined \$2.1 million.⁴⁹ Based on the City’s actions, they had no choice. Yum Yum Donuts, a venerable local tradition, has since relocated, and its original location has been demolished to make way for the redevelopment.⁵⁰

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Corte Madera

The Paradise Shopping Center is an aging commercial property in Corte Madera. In 2000, Waterford Associates, a private developer, presented the Town with a redevelopment proposal to renovate the shopping center and add an assisted-living facility for senior citizens on a portion of the property. The plan also included a specialty grocery store. The owner of World Gym, one of the few thriving Paradise business tenants, balked at the idea of surrendering parking spaces for construction of the assisted-living facility and for the new grocery store’s customers. The opposition of World Gym, which owned a parking easement across from the shopping center’s parking lot, threatened to kill the entire project. World Gym suggested instead that the developer acquire a nearby tract of vacant land. Naila Yasin, who owned this parcel, refused an offer from Waterford to purchase the property. So the developer asked the Town to condemn the property, with the developer paying a substantial portion of acquisition costs. The Town Council agreed to condemn 5,575 square feet of

⁴⁸ Claire Vitucci, “Corona Agrees to Office Project: The Deal Calls for the City to Acquire Four Parcels Surrounding the Site on South Main Street,” *The Press-Enterprise (Riverside, CA)*, Apr. 20, 2000, at B1.

⁴⁹ Adriana Chavira & Jerry Soifer, “Tradition to Crumble with Shop: An Office Building Will Replace Corona’s Closed Yum Yum Donuts,” *The Press-Enterprise (Riverside, CA)*, June 28, 2001, at B1.

⁵⁰ “Clearing the Way,” *The Press-Enterprise (Riverside, CA)*, Aug. 14, 2001, at B3.

Yasin's property and an access easement across another portion of the property. Yasin fought the condemnation, rejecting the Town's finding that public interest and necessity required the acquisition on behalf of a private party. At trial, the court held in favor of the Town, awarding Yasin \$95,000 in compensation for the property. Yasin continued to fight the taking, but in July 2002 a California appeals court affirmed the lower court's decision.⁵¹

Cowan Heights

In California and other states, water companies and other privately owned utility companies have the power to condemn land in order to provide a utility service to the public. Recently, however, a California water company tried to use its power of eminent domain in order to sell the property access it condemned to another private party. The Southern California Water Company condemned an easement over land owned by Amrit and Hasu Patel in order to sell that access to private cell phone companies. The Patels sued the water company after they learned that it had entered into leases with Nextel Communications Co. and Cox Communications Co. that allowed the communications companies unfettered use of a driveway on the Patels' lot to reach the water company's adjacent property. The trial court found that these encroachments were mere trespasses onto the Patel land. However, the Fourth Appellate District held that the real issue in the case was whether a public utility has the power to take private property for a private purpose, such as making money, that is unrelated to the actual service the utility provides the public.⁵² After acknowledging that economic development is sometimes a legitimate reason to allow condemnations, the court declared "there comes a point at which a court must confront a trend, and yell halt... Providing water is a public use; enriching the coffers of a water company is not."⁵³

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Cypress

The City of Cypress has been trying to use the threat of eminent domain to wrest control over development of a prime piece of local real estate from the religious group that owns it. For years, the Cottonwood Christian Center tried to turn its 18-acre tract into a new \$50-million place of worship. However, the land is adjacent to the Los Alamitos Race Track, a large horse racing and off-track-betting facility. The City would prefer to see a Costco-based retail development in that location. Costco produces tax revenue; churches do not. Thus, according to Cypress, it is in the public interest to take the property for Costco.

After the church first acquired the site, it followed standard city procedures for obtaining the necessary permits to build the new facility. However, at every pass the City used whatever excuses it could find to delay or deny approval for the project, including the dubious explanation that the church's application forms were continually "incomplete." Meanwhile, the Cypress City Council established a redevelopment zone encompassing the site, and imposed a two-year moratorium on new developments within the zone. City officials made no

⁵¹ See *Town of Corte Madera v. Yasin*, No. CV 991355, slip op. at 10 (Marin County, Cal. Super. Ct. July 25, 2002).

⁵² *Patel v. Southern California Water Co.*, 119 Cal. Rptr. 2d 119, 120 (Cal. App. 2002).

⁵³ *Id.* at 122.

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effort to explain the moratorium, other than as a means to control the future use of the Cottonwood site. A political uproar erupted, in which the City portrayed the church as a sinister entity trying to deprive Cypress of its right to convenient shopping while creating the “blight” and “public nuisance” of a religious center.⁵⁴

On May 28, 2002, the City Council voted unanimously to condemn Cottonwood’s land. The Cottonwood Christian Center sought an injunction in federal court to prevent the condemnation from going forward.⁵⁵ The injunction was granted on August 6, 2002.⁵⁶ Cypress appealed. **Update:** In February 2003, Cottonwood agreed to swap its land for another site nearby.⁵⁷

East Palo Alto

In February 2000, East Palo Alto condemned 83 properties through eminent domain, as part of its plan to redevelop “Whiskey Gulch,” the town’s primary commercial district. The private developer behind the project, University Circle Partners, paid for the businesses’ relocation and related costs, and has plans to develop a 22-acre, \$170 million office/hotel/retail complex on the site.⁵⁸ As of early 2002, three office buildings have been built on the site, and by the end of the year ground will be broken on a 200-room Four Seasons Hotel.⁵⁹

Among the businesses displaced by the development were a hardware store, a wig shop, a hair salon and several liquor stores, many of which had been located in Whiskey Gulch for decades. When faced with the prospect of finding scarce new commercial space in a market where rents were usually twice what they paid in Whiskey Gulch, some businesses simply closed their doors.⁶⁰ However, one enterprising barber shop owner came up with a unique solution to the problem of his skyrocketing rent: he used the money paid to him by the developer to purchase a Winnebago, in which he has established a successful mobile hair cutter.⁶¹

Garden Grove

Over the past five years, Garden Grove has gone on an eminent domain rampage as it tries to turn Harbor Boulevard into a hotel corridor. In 1998, the City condemned several properties so that a private developer could build a Hampton Inn. The project primarily displaced lower income residents and visitors. It destroyed three low-cost hotels, a mobile-home park occupied by fixed-income senior citizens, and the Sage Park Apartments, which consisted of 96 units that rented mainly to maids and busboys employed by the razed hotels.⁶²

⁵⁴ Steven Greenhut, “Freedom at Issue; Church vs. State; Cottonwood Christian Center Battles Cypress for the Right to Build on its Own Property,” *The Orange County Register*, Jan. 27, 2002.

⁵⁵ Paige Austin, “Cypress Invokes Eminent Domain to Seize Church Land; Development: Cottonwood Center Will Seek an Injunction to Stop the Forced \$14.6 Million Sale Meant to Make Way for a Costco Center,” *The Orange County Register*, May 29, 2002.

⁵⁶ See *Cottonwood Christian Center v. Cypress Redevelopment Agency*, 218 F. Supp. 2d 1203 (C.D. Cal. 2002).

⁵⁷ “Cypress City Council Approves Land Swap Ending Dispute with Church,” *AP Wire*, Feb. 25, 2003.

⁵⁸ Thaa Walker, “Closed for Business; Redevelopment in East Palo Alto Displaces 83 Stores,” *San Jose Mercury News*, Feb. 21, 2000, at 1B.

⁵⁹ Karen Alexander, “Jobs, Congestion at Issue; As Economic Development Slowly Comes to East Palo Alto, There is Still Controversy When a Big-Box Store Wants to Take Root,” *Los Angeles Times*, Jan. 14, 2002, at Cal. Metro 5.

⁶⁰ Thaa Walker, “Closed for Business; Redevelopment in East Palo Alto Displaces 83 Stores,” *San Jose Mercury News*, Feb. 21, 2000 at 1B.

⁶¹ K. Oanh Ha, “Forced to Move, Shop is in Winnebago,” *San Jose Mercury News*, Jan. 18, 2002, at 1C.

⁶² Nick Schou, “More Freebies for the Rich,” *OC Weekly*, June 29, 2001, at News 12.

Garden Grove

In July 2001, the Garden Grove City Council approved two new hotel projects along Harbor Boulevard, with at least \$4.2 million in public financial assistance, for McWhinney/Stonebridge Corp., a Colorado-based development group that previously received tens of millions of dollars in assistance for building other hotels in Garden Grove. For one of these new hotel developments, the City has threatened to condemn 11 homes and 14 businesses unless the targeted owners agree to sell at the City's prices. The City has already bought three other homes standing in the way of the hotel, and now is using heavy-handed tactics to force the other owners out. Assistant City Manager Matt Fertal takes an especially dim view of the right of property owners along Harbor to use the free market to determine what price developers should pay to take their land from them. According to Fertal, "[Owners] think that just because they're on Harbor and hotels are coming, that it increases the value of their property, but it doesn't. Commercial [developers] only care about the cost of the dirt on the land. We're offering to pay for the structure at the appraised value and the land."⁶³ In other words, the rightful owners don't deserve to profit from their investment; instead, any profit will go to the City's favored corporate developers. And for the people who actually want to keep their homes or businesses, at least one city leader couldn't care less.

Garden Grove

Until outraged local residents mobilized in opposition, Garden Grove officials were pushing hard to implement yet another redevelopment plan. This one would have turned 264 acres of land in this densely populated city into a theme park. Garden Grove has recently undertaken a number of objectionable redevelopment schemes utilizing eminent domain (see above) that have made the City one of the most land-grabbing in the nation. During a period of less than one year between 2000 and 2001 alone, the City paid out nearly \$3 million to property owners who sued the City over its condemnation tactics. The theme park proposal, however, had even the most ardent pro-development locals scratching their heads. More than 470 homes, as well as 300 mobile homes and dozens of apartments, were slated for condemnation. But following September 11, 2001, the tourist industry has been in a nationwide slump, making the construction of another theme park in theme park-heavy northern Orange County an extremely risky proposition for potential investors.⁶⁴

Seven hundred angry residents packed a public hearing on the matter, expressing near-unanimous opposition to the idea of their homes being taken in favor of a third-rate Disneyland. Apparently this outcry resonated with the City Council, which at its July 2002 meeting voted unanimously in favor of a

⁶³ Katherine Nguyen, "Selling—If the Price Is Right; Cities—As Garden Grove Seeks Property on Harbor for New Hotels, Some Owners Feel Exploited by Offers Based on Land Value," *The Orange County Register*, July 25, 2002.

⁶⁴ "Garden Grove Bulldozers," *The Orange County Register*, Apr. 16, 2002.

Huntington Beach Finds that Redevelopment Is Best Achieved Without Eminent Domain

The City of Huntington Beach has had a poor history with regard to eminent domain abuse. In the 1980s, this blue-collar beach community undertook a series of redevelopment projects that dramatically changed large parts of a city that had once been composed mostly of small beach bungalows, oil fields, tract homes and funky surf shops. Those buildings that had once defined Huntington Beach's character were gradually replaced by sterile high-rises made of stucco, as City officials tried to lure big developers with lavish public subsidies and condemnations that shut down the local businesses that once gave the city its unique character. However, many of these redevelopments failed. Other cities such as Newport Beach that did not establish redevelopment zones grew economically at rates that far outpaced Huntington Beach.¹

When the City proposed an idea in the late 1990s to condemn the Huntington Beach Mall and turn it over to private developers, discount retailers Montgomery Ward and Burlington Coat Factory, which owned stores at the mall, promised to fight any attempt to take their property and hand it over

to someone else. Ultimately, the Huntington Beach City Council voted against using eminent domain to force the retailers out of the mall.² So the City decided to approach redevelopment by including the discount retailers rather than replacing them. It did not take long for a developer to produce a winning proposal to reinvigorate the mall into a Mediterranean-themed shopping center, without using eminent domain. The result was a development plan that was consistent with Huntington Beach's flavor.³ Construction on Bella Terra, the long-awaited complex, began in summer 2002, and will include Burlington Coat Factory (Montgomery Ward has since gone bankrupt), as well as a large movie theater, restaurants and stores. This was all accomplished without taking a single property through eminent domain.⁴

¹ Jim Hinch, "In Surf City, Rebuilding Strategy Has Fans, Critics," *The Orange County Register*, Nov. 24, 2001.

² "Property Rights Victories," *The Orange County Register*, Nov. 26, 2000.

³ Jim Hinch, "Mall Project Seen as a Winner; Development—Huntington Hopes to Reverse a History of Plans Falling Through," *The Orange County Register*, Mar. 8, 2002.

⁴ Curt Seeden, "The Huntington Beach Mall Is Officially on its Way to Becoming Bella Terra, the Long-Awaited Mediterranean-Themed Shopping Center," *The Orange County Register*, July 18, 2002.

less sweeping redevelopment plan than the theme park proposal it had once championed. The approved plan will still allow the City eventually to condemn 47 acres for redevelopment.⁶⁵

Garden Grove

In 1990, the Goia family paid \$778,000 for a parcel of land, on which they invested an additional \$100,000 to open a small auto repair shop. Seven years later, the City Council condemned the Goias' business to make way for a 72-home upscale residential development. Adding insult to injury, the trial judge set the Goias' "just compensation" at a mere \$640,000, less even than what they paid for it. The family challenged, and in 1998 a jury said the City's compensation was not sufficient, and awarded the Goias \$1.07 million. After three years of litigation, another jury in November 2000 awarded the Goias an additional \$620,000 in attorney fees.⁶⁶

Imperial Beach

The Imperial Beach City Council voted 4-0 on September 20, 2000 to use eminent domain to condemn a long-established Mexican food restaurant and give the land to the Sterling Development Corp., a private developer who plans to transform the existing shopping center on the site. This was the first time the City Council had voted to condemn part of an existing development to make way for new development of a similar kind, but City officials say they are eager to explore more such redevelopment opportunities in the future. While many of the businesses located in the shopping center were able to stay put, the developer removed the restaurant in order to build a large Sav-On Drug store on the site.⁶⁷

Lancaster

In July 2000, the City of Lancaster attempted to use eminent domain to force a 99 Cents Only, another discount store, out of its Valley Central Shopping Center store location, so that a Costco discount store next door in the shopping center could expand its warehouse. Although Costco could have expanded in another direction, the store insisted that its expansion had to be onto the 99 Cents Only site. Costco even threatened to leave town if the City would not meet its demand that 99 Cents Only be condemned.⁶⁸ After the City began eminent domain proceedings, 99 Cents Only filed suit to block the condemnation.⁶⁹

⁶⁵ Katherine Nguyen, "City Won't Raze Homes; Redevelopment—Garden Grove Vows Not to Touch 470 Homes in Bid for Tourist Dollars," *The Orange County Register*, July 3, 2002.

⁶⁶ "Property Rights Victories," *The Orange County Register*, Nov. 26, 2000.

⁶⁷ Janine Zuniga, "Imperial Beach Council OKs Redevelopment Plan," *The San Diego Union-Tribune*, Sept. 22, 2000, at B1.

⁶⁸ Andrew Blankstein, "Store Could Be Ousted to Make Room for Costco; Lancaster Officials Consider Use of Eminent Domain to Force 99 Cents Only Out of Center and Let Warehouse Expand," *Los Angeles Times*, June 18, 2000, at B1.

⁶⁹ "99 Cents Store Sues City Over Eviction," *Los Angeles Times*, July 25, 2000, at B4.

In the end, this condemnation for the benefit of one of two rival discount stores proved too much for the court: On June 25, 2001, the federal district court held that the condemnation was not for public use and that any claimed public purpose was just a pretext for the real purpose of transferring the land to Costco.⁷⁰ According to the court, “the very reason that Lancaster decided to condemn 99 Cents’ leasehold interest was to appease Costco. Such conduct amounts to an unconstitutional taking for purely private purposes.”⁷¹

The City decided to press on with an appeal even though it claims that it no longer has plans to take the property.⁷² The Institute for Justice filed an amicus brief in support of the 99 Cents store. **Update:** In March 2003, the U.S. Court of Appeals for the Ninth Circuit held that the case had become moot when the City began building Costco another store.⁷³

Modesto

In June 2002, Stanislaus County supervisors voted unanimously to condemn a strip of land for an access road to Diablo Grande, a privately owned residential and resort community slated for construction nearby. The County has acquired most of the land for the 3.4-mile road, but reached an impasse over the northernmost 1.2-mile parcel. The public road would belong to the County, but the resort’s developer is covering the land acquisition costs. Included in the targeted land are 18.5 acres for the road corridor, 27.9 acres for temporary use during construction and 6.7 acres for a wetland preserve. The County has so far offered only \$38,000 for the land. Much of the land is used for cattle pastures, a use which would be significantly disrupted by the presence of the road and its concomitant traffic. Current owners of the land include a partnership, a trust, and several individuals in Santa Cruz and Santa Clara counties, all of whom oppose the taking on the ground that the road serves to benefit another private property owner, rather than the public.⁷⁴ Another cause for concern is the fact that much of the taken land is needed only temporarily, which means that the county could sell it later for other private development.

North Hollywood

Developer Jerome Snyder has plans for building a 1.2 million square foot, \$160 million project that will include 500 apartments, 242 artist’s lofts, an office complex, a supermarket, retail stores, parking lots and a community center. As part of the plan, Snyder has pledged to build approximately 100 low-income apartments. This huge project is contingent upon the developer’s receipt of City subsidies and the use of eminent domain by the North Hollywood Community Redevelopment Agency.⁷⁵ As of October 2002, the Snyder project is still in the development phase,⁷⁶ but some private use condemnations have already been made for the redevelopment of North Hollywood. For instance, eminent domain was used to acquire a brake shop, a gas station and a small apartment building to make way for Carl’s Jr. and El Pollo Loco fast food outlets.⁷⁷

⁷⁰ See *99 Cents Only Stores v. Lancaster Redevelopment Agency*, No. CV 00-07572, 2001 U.S. Dist. LEXIS 9894 (C.D. Cal. June 25, 2001).

⁷¹ *Id.* at *15-16.

⁷² Karen Maeshiro, “99 Cents Ruling Faces City Appeal,” *The Daily News of Los Angeles*, July 18, 2001, at AV1.

⁷³ *99 Cents Only v. Lancaster Redevelopment Agency*, No. 01-56338, 2003 U.S. App. LEXIS 4197 (9th Cir. Mar. 7, 2003).

⁷⁴ John Holland, “Road to Planned Resort OK’d; Stanislaus Supervisors Condemn Strip Leading to Diablo Grande,” *The Modesto Bee*, June 12, 2002, at B2.

⁷⁵ Beth Barrett, “Future Vision in NoHo; It Takes a Village to Recapture Area,” *The Daily News of Los Angeles*, June 1, 2001, at N1.

⁷⁶ Beth Barrett, “Land Use Hot Issue in Valley; Secession Backers Believe with Breakup Comes Control,” *The Daily News of Los Angeles*, Oct. 23, 2002, at N1.

⁷⁷ Municipal Officials for Redevelopment Reform, *Redevelopment: The Unknown Government*, July 2001, at 29.

Oxnard

In June 2002, the Oxnard City Council began condemnation proceedings on 1.4 acres of vacant land wanted for the proposed \$750-million RiverPark, a privately owned residential/commercial development. The three parcels comprising the targeted area lie within the bounds of the Historic Enhancement and Revitalization of Oxnard (HERO) redevelopment area, which allows Oxnard to use eminent domain to transfer land to developers. The City previously tried to negotiate with the owner of the three parcels, but talks were fruitless, although the City separately purchased an adjacent fourth parcel after reaching agreement with that parcel's owner. The proposed RiverPark project, which is slated for completion by 2012, will supposedly someday have as many as 2,805 residential units, for which a total of 15 properties may eventually be condemned.

Oxnard resident Ventura Fernandez, who is the chairman of the local Inter-Neighborhood Council Forum, attended the meeting at which the City Council passed its resolution allowing the condemnations to go forward. Fernandez told City officials that eminent domain is a dangerous tool, whose only purpose in this case is "to make the developer rich." He believes that RiverPark could be built without the City having to condemn land for the project, but the City is so eager to serve the interests of the developer that it is willing to take other peoples' land.⁷⁸

San Bernardino

The City of San Bernardino used eminent domain in 2002 to acquire about 24.5 acres of land near the former Norton Air Force Base for a Sam's Club warehouse store. The targeted land consisted of 34 properties, mostly single-family homes and also a motel and several other small businesses.⁷⁹ The local redevelopment agency came to terms with 11 of the 34 property owners, but many others rejected the City's offers because they believed the City deliberately offered less than the land was worth.⁸⁰ Eventually, the City approved the use of eminent domain to force out the remaining owners.⁸¹

San Diego

In an effort to cash in on San Diego's plan to build a new baseball stadium in the East Village area of that city's downtown, Centre Development Corp., the local redevelopment authority, has undertaken a project to develop the 26-square block area surrounding the new stadium. The East Village was once a warehouse district occupied by entrepreneurs and "urban pioneers," until the City decided in 2000 to condemn all the properties. In total, 67 East Village businesses and 20 residents are being displaced. According to Leslie Wade, executive director of the East Village Association, a group that represented businesses in the ballpark/redevelopment district, the entire condemnation process was painful for area landowners. She says that "people got 60-day notices to pick up their businesses and part with their property." While some businesses were happy with the City's buyout offers, many others have had trouble succeeding in their new locations. A few have left San Diego altogether, in search of a more hospitable business climate.⁸² These displaced property owners and entrepreneurs were instrumental in revitalizing the urban core of San Diego,

⁷⁸ Raul Hernandez, "Oxnard to Use Eminent Domain to Get Land," *Ventura County Star*, June 6, 2002, at B2.

⁷⁹ "IVDA Could Take Land to Make Way for Project," *The Business Press/California*, Dec. 17, 2001, at 10.

⁸⁰ Adam Eventov, "Landowners Call City Offers Too Low; A Residential Area is Being Acquired for a Major Retail Center," *The Press-Enterprise (Riverside, CA)*, Jan. 24, 2002, at B3.

⁸¹ Adam Eventov, "Sam's Club Up for Key Approval," *The Press-Enterprise (Riverside, CA)*, June 25, 2002, at D6.

⁸² Frank Green, "Fair or Foul? Many Former East Village Merchants Still Feeling Effects of Displacement by Ballpark Project," *The San Diego Union-Tribune*, Mar. 10, 2002, at H1.



only to have the City reward them by taking their property, destroying their businesses, and turning their land over to favored developers and chain retail stores.

San Jose

One of San Jose's many redevelopment projects is a planned downtown 10.5-acre mixed-use retail and residential development that will include 1 million square feet for residential use with 350,000 square feet for retail use. The project is expected to cost between \$750 million and \$1 billion to complete.⁸³ The development's initial phase called for the City to condemn a 1.4-acre parking lot owned by Al Schlarmann and then give the land to the project's developer, the CIM Group. When the City first announced its plan to redevelop the lot, Schlarmann sued, claiming that he held the development rights to the parking lot under a 1997 legal settlement with the San Jose Redevelopment Agency. The agency responded in April 2002 by filing a lawsuit to condemn the development rights. A Santa Clara County Superior Court judge ruled in July 2002 that the agency may use eminent domain to take Schlarmann's parking lot. In other words, even a written promise from the government won't protect someone from eminent domain. The City's redevelopment plans call for it to condemn four additional downtown properties.⁸⁴

San Jose

The San Jose Redevelopment Agency also proposed in May 2001 that approximately 40 parcels of land be converted into high-density housing. While six of the parcels are vacant and nine are owned by the City, the others contain privately owned houses, warehouses,

⁸³ "Developer Seeking 'Critical' Properties," *Silicon Valley/San Jose Business Journal*, Apr. 13, 2001, at 1.

⁸⁴ Rodney Foo, "Redevelopment Agency Wins Right to Key Property; Court Rules S.J. Can Use Eminent Domain," *San Jose Mercury News*, July 23, 2002, at B1.



Jose Mendoza, one of the Tropicana merchants, protests in San Jose, CA. Photo by Ben Garza.



Design for renovation or Tropicana Shopping Center, approved and permitted in 1995, at the sole cost and initiative of the owners. The redevelopment agency staff called the above design "a Taco Bell look," and insisted on a redesign. The redesign process included completion of the "Story Road Revitalization Agreement" and a more Mediterranean look for the completed buildings. Total Time Elapsed—3 years.

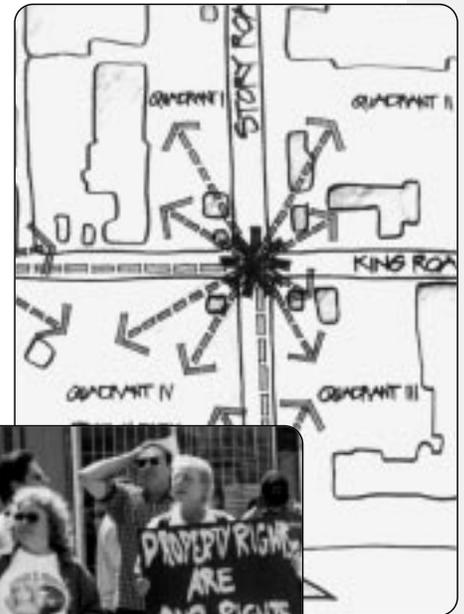


churches and parking lots. Under the proposal, property owners could either present their own housing plans to the City, or join forces with a developer. In addition, developers could present housing proposals using other peoples' property. If the City liked a developer's plan, it would ask the developer to work out a plan with the current owner.⁸⁵ However, faced with opposition from residents and business owners who feared being forced from their property, San Jose officials in August 2001 backed off the initial plan and promised to only consider redeveloping either parcels owned by the City or those whose owners are willing to sell to the City.⁸⁶

San Jose

City leaders have decided to redevelop the Tropicana Shopping Center, a popular Latino-themed shopping plaza in East San Jose. The proposed \$50 million plan would use eminent domain to acquire the Tropicana's current buildings, then raze some of them and transfer the 26-acre tract to private developers who would build a new, upscale version of the Tropicana. San Jose's plan came as a surprise to Dennis Fong, the Tropicana's main owner, who has been in the middle of his own \$9 million dollar renovation.⁸⁷ Fong was upset to learn that the City's redevelopment plan includes his property, as if condemnation were a fait accompli. He opposes the City's effort to take his property, especially in light of the fact that he is improving it for less than the City plans to pay and without using condemnation. Additionally, an upscale, watered-down version of the shopping center might ruin the authentic flavor and ethnic charm of the plaza it replaces.⁸⁸ The dozens of Hispanic merchants that rent space in the Tropicana also oppose the condemnation. Right now, they have great locations at reasonable rents.

Foreground: protests at the Tropicana Shopping Center in San Jose, CA.
Background: Sketch from the "Story Road Revitalization Strategy," completed in 1997 by the Redevelopment Agency of the City of San Jose



⁸⁵ Edwin Garcia, "Remaking Downtown San Jose; City Targets 40 Properties for Development as Housing, Landowners Who Refuse Plan Could Be Forced to Sell Sites," *San Jose Mercury News*, May 12, 2001, at 1A.

⁸⁶ Edwin Garcia, "San Jose Softens Plan for New Housing....," *San Jose Mercury News*, Aug. 29, 2001, at 1B.

⁸⁷ Edwin Garcia, "Shopping Center Caught in Middle with S.J. Agency; Tropicana Owner Proceeds with Remodeling Even Though Redevelopers May Tear It Down," *San Jose Mercury News*, Mar. 15, 2002, at B1.

⁸⁸ Kate Folmar, "S.J. Approves Plan to Move Mall Merchants; Council Tries to Meet Objections," *San Jose Mercury News*, Oct. 23, 2002, at B1.

Under the City's plan, they will have to move for years during renovation and then move back. And the rents will be much higher, so many of the merchants will only be able to afford space in the new Tropicana with the help of government subsidies.⁸⁹

On June 25, 2002, the San Jose City Council voted to go forward with its Tropicana redevelopment plan.⁹⁰ Five months later, the City Council authorized the condemnation of the Tropicana, a move which Fong and three other owners have been fighting in court.⁹¹ In the midst of the ongoing controversy, someone from city hall sent an anonymous email message insulting both Fong and several of the merchants who have opposed the plan, suggesting that they earn their money illegally.⁹² Several lawsuits will no doubt be progressing during 2003.

San Leandro

As part of a redevelopment plan aimed at increasing tax revenue, in 1996 San Leandro passed a law creating special zoning regulations for an "auto row" on Marina Boulevard. Three years later, the City tried to condemn 76 parcels of land so that it could hand the property over to private developers seeking to build car dealerships, but public outcry erupted and prevented the takings from happening. Eventually, the City initiated eminent domain proceedings to acquire three parcels. Those parcels were owned by two longtime local used car dealers, who had planned to build used car lots within the auto row, and who believed that their desired use met the spirit of the City's zoning regulations. The City, on the other hand, insisted that only new car dealerships would be suitable for the auto row, so it took the land and sold it to developers willing to build the preferred type of car lots.⁹³

Yorba Linda

The Yorba Linda Planning Commission has been quietly buying property in the Old Towne area, hoping it can undertake a major downtown redevelopment plan that will include 300 affordable-housing units, a 70,000 square-foot retail center, a large parking structure, a museum and a pedestrian bridge over Imperial Highway. Part of the effort entails preserving or moving some historic structures in the area, while some cur-

⁸⁹ Kate Folmar & Mike Zapler, "\$50 Million Plan for Shopping Center in East S.J. Unveiled," *San Jose Mercury News*, June 18, 2002, at A1.

⁹⁰ Kate Folmar, "Council Backs Rebuilding of East S.J. Retail Centers; Redevelopment Plan Passes by 8-2 Vote Despite Protests," *San Jose Mercury News*, June 26, 2002, at A1.

⁹¹ Kate Folmar, "S.J. Votes to Acquire Tropicana; Shopping Center Owners Vow Legal Battle," *San Jose Mercury News*, Nov. 20, 2002.

⁹² Kate Folmar, "San Jose City Hall Email Message Creates Latest Tropicana Controversy," *San Jose Mercury News*, Oct. 11, 2002.

⁹³ Chip Johnson, "Auto Row Troubles in San Leandro, Dealers Don't Deserve Special Consideration" *San Francisco Chronicle*, Jan. 25, 2001, at A13.

Local Homeowners Rally to Defeat City's Attempt to Repeal Eminent Domain Ban

About 275 acres of land in the town of Placentia are situated within a redevelopment area. Since 1983 the City has had a ban on the use of eminent domain for taking residential properties for acquisition by other private parties. However, in July 2002 that prohibition expired, and the City Council considered eliminating the ban altogether. At the next council meeting, more than 100 angry residents packed City Hall to voice their opposition. After hearing 90 minutes of speeches from outraged homeowners in the targeted area, the City Council voted unanimously to extend the eminent domain ban for another 12 years.¹

¹ Patrick Vuong, "Ban Extended on Eminent Domain Use," *The Orange County Register*, Aug. 22, 2002.

rent businesses might be forced to sell to the City, or have their land taken through eminent domain proceedings, to accommodate the private developer behind the project.⁹⁴ Alex Mikkelson, longtime owner of an auto repair shop that will have to relocate under the plan, asked the Planning Commission to consider including his shop in the mix of businesses planned for the development. Though Mikkelson received support from some on the Commission, the developer, Downtown/Main Street Visions, said that an automotive shop is not the type of business Yorba Linda wants to attract to its new downtown. As Ron Cano, president of Downtown/Main Street Visions, says of Mikkelson's desire to reap the benefit of redevelopment on his own property, "Satisfying everyone's needs would be detrimental to the area."⁹⁵

⁹⁴ Jerry Hicks, "Yorba Linda's Old Town: New Visibility in Store," *Los Angeles Times*, Jan. 14, 2002, at B3.

⁹⁵ Zaheera Wahid, "Panel Reviews Plan to Extend Old Towne Space, Hours," *The Orange County Register*, Jan. 24, 2002 (emphasis added).

