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August 15, 2005

To: Supervisor Gloria Molina, Chair
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Supervisor Michael D. Antonovich

From: David E. Janssen
Chief Administrative Officer

MOTION TO SUPPORT SCA 15 (MCCLINTOCK) – LIMITING THE USE OF EMINENT DOMAIN TO A STATED PUBLIC PURPOSE (ITEM NO. 65-B ON THE SUPPLEMENTAL AGENDA FOR AUGUST 16, 2005)

Item No. 65-B is a motion by Supervisor Antonovich to support SCA 15 (McClintock), a constitutional amendment which would preclude the use of eminent domain to acquire private property for private uses such as economic development, and to direct the Chief Administrative Office and the Executive Office to draft a five signature letter in support of SCA 15 to Governor Schwarzenegger and the Los Angeles County delegation.

Senate Constitutional Amendment 15 (SCA 15) and Assembly Constitutional Amendment 22 (ACA 22) (La Malfa), which is identical to SCA 15, would prohibit private property from being taken for private use. They would restrict the right of local governments to use eminent domain proceedings by requiring that property taken under eminent domain must be for a stated public use and can be taken only after an independent judicial determination that no reasonable alternative exists. The proposed constitutional amendments also provide that the property taken under eminent domain must be owned and occupied by the condemner (or entities that are regulated by the Public Utilities Commission) and must be used only for the stated public purpose. In the future, if the property ceases to be used for that purpose, it must be offered to the original owner or his/her heirs for the amount of compensation originally received, or the property's new fair market value, whichever is less.

Both Constitutional Amendments were introduced on July 14, 2005, and no hearing date has been set. According to the author's office, there are a large number of co-sponsors including Senators Florez, Hollingsworth, Aanestad, Ackerman, Ashburn, Battin, Campbell, Cox, Denham, Dutton, Maldonado, Margett, Morrow, and Poochigian and Assembly Members Aghazarian, Benoit, Blakeslee, Bogh, Cogdill, DeVore, Emmerson, Garcia, Haynes, Shirley Horton, Houston, Huff, Keene, La Malfa, La Suer, Leslie, Maze, McCarthy, Mountjoy, Nakanishi, Negrete McLeod, Parra, Plescia, Sharon Runner, Spitzer, Strickland, Tran, Umberg, Villines, Walters, and Wyland. SCA 15 is also supported by small business, agricultural interests, Orange County, and 4 or 5 other counties, but the office did not have the specific counties. SCA 15 is opposed by cities and redevelopment agencies.

Kelo v. City of New London

These proposed constitutional amendments are in response to the recent U.S. Supreme Court decision in Kelo v. City of New London. In that decision, the Court upheld the authority of local governments to use the power of eminent domain for the purposes of private development, however, the Kelo case does not, in and of itself, change the law of eminent domain in California or expand the existing condemnation authority of cities and counties.

The Kelo case involved a Connecticut statute which authorized municipalities to condemn private property for economic development unrelated to the elimination of blight. In affirming the City of New London's right to condemn private property under this statute, the Supreme Court ruled that economic development, unrelated to the redevelopment of blighted areas, constitutes a valid "public use" under the 5th Amendment of the United States Constitution.

California's Community Redevelopment Law authorizes condemnation of private property in the exercise of special powers to redevelop blighted areas. However, unlike Connecticut, California does not have a statute that authorizes a municipality to condemn private property for economic development unrelated to the redevelopment of blighted areas.

Accordingly, the Kelo case does not affect the current state of the eminent domain law in California and would impact eminent domain proceedings by cities and counties only to the extent that it prompts the Legislature to change state law.

According to the Community Development Commission (CDC), ACA 22 and SCA 15 would severely hamper its redevelopment efforts, which often require land assembly. To make a project viable, CDC will often purchase property and sell or transfer it to a private owner with an agreement to develop and manage the property. CDC often writes down the cost of the land in order to make projects financially feasible and to stimulate

private investment that would otherwise not occur. CDC has not used eminent domain for existing redevelopment projects, however, the possibility of its use often helps expedite negotiations with private owners who may be seeking an unjustified price for a property because they are aware of CDC's need to acquire it for a project. Pursuant to state law, CDC pays fair market value for the properties it acquires and offers substantial relocation assistance.

CDC indicates that ACA 22 and SCA 15 would effectively terminate its current proposed West Altadena redevelopment activities, and would cripple the planned Whiteside Redevelopment Area and any other future redevelopment activities throughout the County. At a minimum, both measures would increase CDC's operational costs.

Previous Board Action on Kelo

At the Board meeting of July 15, 2005, County Counsel and my office were instructed to review the Kelo v. City of New London (Kelo) decision to; determine if legislation is required at the Federal and/or State level to protect the rights of private property owners, research the impact of the Kelo decision on eminent domain proceedings in cities and counties in California, and determine if a County Charter amendment can be made to protect property owners.

Our response, which will be submitted in a separate memorandum, discusses the legal implications of Kelo, examines whether there are sufficient protections under existing California statute to protect private property owners, and analyzes legislation recently introduced in Sacramento and Washington, D.C. in response to Kelo. It also incorporates information and analyses from the Community Development Commission.

In our view, the issue in California is less the unlimited use of eminent domain to further private interests, than the pressures working to weaken AB 1290's protections related to blight, project size, and duration.

County Policy

The County supports legislation that continues or extends the redevelopment law reforms accomplished in AB 1290, which was passed in 1993. AB 1290, among its many provisions, attempted to narrow the definition of blight, thereby reducing the authority to use eminent domain. The County has opposed efforts to weaken AB 1290 over the years. In fact, its State Legislative Agenda contains long-standing policies to support measures to strengthen the blight findings requirement to prevent redevelopment abuse, and to support measures to close loopholes that allow agencies to extend the life of projects beyond the statutory timeframes established in AB 1290.

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While the County does not have specific policy on a Constitutional Amendment restricting the use of eminent domain, it has policy and an extensive history of trying to protect the reforms enacted in AB 1290. **Therefore, it is recommended that your Board instruct my office, County Counsel, and CDC to work with the Legislature to further the reforms of AB 1290 by tightening the definitions of blight outlined in AB 1290, limiting the use of eminent domain in non-blighted areas, and requiring a finding of blight for projects where an agency seeks to reinstate or extend the time limit for the use of eminent domain.**

DEJ:GK
MAL:JF:ib

c: Executive Officer, Board of Supervisors
County Counsel
Community Development Commission