



COUNCIL RESOLUTION NO. 2010-301

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FRESNO ADOPTING FINDINGS PURSUANT TO HEALTH AND SAFETY CODE SECTION 33363 IN RESPONSE TO WRITTEN OBJECTIONS TO THE PROPOSED MERGER NO. 2 PLAN AMENDMENTS INCLUDING THE REDEVELOPMENT PLAN FOR THE FRUIT/CHURCH PROJECT AND THE SOUTHWEST FRESNO GENERAL NEIGHBORHOOD RENEWAL AREA PROJECT

WHEREAS, the Redevelopment Agency of the City of Fresno (“Agency”) is a community redevelopment agency organized and existing under the California Community Redevelopment Law, Health and Safety Code Section 33000, *et. seq.*, (“CRL”); and

WHEREAS, on January 14, 1969, by Ordinance No. 69-13, the City Council adopted the Urban Renewal Plan for the Southwest Fresno General Neighborhood Renewal Area and subsequently amended the plan eight (8) times by way of Ordinances 72-126, adopted on August 17, 1972, 83-32 adopted on March 1, 1983, 86-203 adopted on December 16, 1986, 94-114 adopted on December 6, 1994, 98-82 adopted on October 20, 1998, 2004-108 adopted on October 19, 2004, 2008-9 adopted on February 26, 2008, and 2009-15 adopted on April 7, 2009 (the “Southwest Fresno Plan”); and

WHEREAS, on October 7, 1971, by Ordinance No. 71-98, the City Council adopted the Fruit/Church Redevelopment Plan and subsequently amended the plan seven (7) times by way of Ordinances 86-205 adopted on December 16, 1986, 94-113 adopted on December 6, 1994, 95-48 adopted on June 13, 1995, 98-83 adopted on October 20, 1998, 2004-109 adopted on October 19, 2004, 2008-9 adopted on February 26, 2008, and 2009-15 adopted on April 7, 2009 (the “Fruit/Church Plan”); and

Adopted 12-16-10
Approved 12-16-10
Effective 12-16-10

2010-301



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WHEREAS, on March 31, 2009, the City Council and the Agency Board initiated the plan amendment process and proposed amendments to the Fruit/Church Plan and the Southwest Fresno Plan (together, the “Constituent Redevelopment Plans”); and

WHEREAS, the proposed amendments which apply to two of the project areas included in the Merger No. 2 Redevelopment Project Area, the Southwest Fresno General Neighborhood Renewal Area, and the Fruit/Church Redevelopment Project Area (together, the “Constituent Project Areas”), (1) extend the time limit on the effectiveness of the plan by 10 years; (2) extend the time limits on the payment of indebtedness and receipt of property taxes by 10 years; (3) extend the time limits for the utilization of eminent domain by 12 years; and (4) increase the tax increment limits (together, the “Amendments”); and

WHEREAS, on October 21, 2010, the City Council received from the Agency the Report to the City Council on the Amendments in accordance with Health and Safety Code Section 33352 (“Report to Council”); and

WHEREAS, the City of Fresno and the Agency, acting as co-lead agencies (together, the “Lead Agency”) under the California Environmental Quality Act (“CEQA”) have prepared a Final Subsequent Environmental Impact Report (“FSEIR”) to the existing 1998 Environmental Impact Report (“1998 EIR”) for the Constituent Redevelopment Plans relating to and assessing environmental effects of the Amendments, and the FSEIR is inclusive of the Draft Subsequent Environmental Impact Report (“DSEIR”) dated July 2010; and



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WHEREAS, the Agency Board and the City Council have reviewed and considered the FSEIR and have adopted a Statement of Findings, Facts, and Overriding Considerations applicable to the environmental impacts identified in the FSEIR; and

WHEREAS, on December 2, 2010, the City Council and the Agency held a joint public hearing on the Amendments; and

WHEREAS on September 2, 2010 and again on October 5, 2010, notice of the joint public hearing was sent by first class mail to all property owners, residents and businesses and by certified mail to the governing body of each taxing agency which receives taxes from property in the Southwest Fresno General Neighborhood Renewal Area (the "Project Area"); and

WHEREAS, on October 21, 2010, notice of the joint public hearing, the date of the hearing, the Amendment and the reports required under CRL Section 33451.5 were sent by certified mail to each affected taxing entity, the Department of Finance, the Department of Housing and Community Development, and each individual and organization that submitted comments on the preliminary report; and

WHEREAS, notice of the joint public hearing was duly and regularly published in the *Fresno Bee*, a newspaper of general circulation in the City of Fresno, once a week for three successive weeks prior to the date of the hearing, on October 7, October 14, and October 21, 2010, and a copy of the notice and affidavit of publication are on file with the City Clerk and the Agency; and



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WHEREAS, the City Council has considered the Report to Council, the Amendments; has provided an opportunity to all persons to be heard; and has received and considered all public evidence and testimony presented for or against any and all aspects of Amendments, including written comments and objections attached hereto as Exhibit A; and

WHEREAS, the City Council has reviewed and fully considered both the written objections in Exhibit A and the draft Agency responses to objections, attached hereto as Exhibit B; and

WHEREAS, Section 33363 of the CRL requires the City Council, when considering redevelopment plan amendments, and after evaluating the report of the redevelopment agency, and all evidence and testimony for and against adopting the amendment, to make written findings in response to each written objection of an affected property owner or taxing entity that the legislative body receives before or at the public hearing.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF FRESNO DOES HEREBY FIND AND RESOLVE AS FOLLOWS:

Section 1. The foregoing recitals are true and correct and are made a part of this resolution.

Section 2. The City Council adopts as written findings the responses set forth in Exhibit B, attached hereto and incorporated by this reference.

Section 3. Having made these findings, the City has complied with its responsibilities pursuant to Health and Safety Code Section 33363.



CLERK'S CERTIFICATION

STATE OF CALIFORNIA
COUNTY OF FRESNO

SS. CITY OF FRESNO

I, REBECCA E. KLISCH, the Clerk of the City of Fresno, certify that the foregoing resolution was adopted by the City Council of the City of Fresno, California, at a regular meeting held on the 16th day of December 2010, and that the same was passed by the following vote:

AYES: Borgeas, Brand, Dages, Olivier, Sterling, Westerlund

NOES: None

ABSENT: Xiong

ABSTAIN: None

REBECCA E. KLISCH, City Clerk

By Rebecca E. Klisch
Clerk/Deputy 1-4-11

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

By: [Signature]
DOUGLAS T. SLOAN
Assistant City Attorney

Dated: December 24, 2010

SPECIAL COUNSEL

By: [Signature]
ADAM U. LINDGREN
MEYERS NAVE

Dated: December 9, 2010

City Council Resolution No. 2010-301
Adopting Findings in Response to Written Objections to
the Merger No. 2 Plan Amendments for the Including the
Redevelopment Plan for the Fruit/Church Project and
the Southwest Fresno General Neighborhood Renewal
Area Project



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Attachments:

Exhibit A – Written Comments and Objections

Exhibit B – Responses to Written Comments and Objections



LETTERS OF OBJECTION

- 1) OCTOBER 15, 2010, LETTER FROM ROSE M. HOWELL
- 2) OCTOBER 20, 2010, LETTER FROM THE HEAT FOR SOUTHWEST
FRESNO COMMUNITY

VII-B



October 15, 2010

RECEIVED
CITY OF FRESNO
Planning Dept.
Planning & Community Development Dept.
CITY OF FRESNO

Redevelopment Agency City of FRESNO

2344 Tulare Street, Suite 200

Fresno, CA 93721

Subject: Letter of Non-Support regarding The Proposed 2010 Amendments to the Redevelopment Plans GNRA for Fresno Merger No. 2 and the Subsequent Environmental Impact Report

As property owner of 863 Waterman, Fresno, California and as a concerned citizen of the City of Fresno, I am filing this letter as a statement against the approval, and any proposed actions and activities as documented in the Fresno Merger No.2 Redevelopment Plan Amendment Project Draft and Subsequent Environmental Impact Report and related documents SCH No. 2010041058, until further clarification on specific proposed project activities is provided.

At this time there are many unclear issues regarding the past programs of the Fresno Redevelopment Agency's financial transparency and accountability; The following concerns have been raised by a number of Southwest Fresno residents and property owners:

- A. How have allocated funds for the Southwest Fresno GNRA been spent to date? (The agency is herein requested to provide a detailed financial report of the RDA's financial disbursements over the last twenty years, showing that funds designated for specific projects were actually used in the respective areas or neighborhoods for which they were intended and specified for) .
- B. Regarding the specific projects and completion within the 93706 community: There have been some development activity since the completion of the Kearney Palms Shopping Center, however residents of the community have not been informed of the RDA's activity and progress from 1998 thru 2009.
- C. Fairness to the residents of the 93706 community would provide a forensic audit of all RDA expenditures including CDBG funds designated for use in the 93706 area.
- D. There is also concern that public information be disbursed on an ongoing basis after the planning process has been completed.



In conclusion, the proposed redevelopment plan amendments (the GNRA 2010 Amendments to Fresno Merger No.2) should not be approved or acted upon until these issues of accountability have been thoroughly addressed and made available to 93706 residents.

Please direct your responses to: Rose M. Howell


863 Waterman

Fresno, Ca 93706

(559) 579-6990

(559) 230-1455



The H.E.A.T for SouthWest Fresno Community

(Hope Effort Appropriately Thriving)

P O Box 12571

Fresno, CA 93778

e-mail:HEATSWFC@aol.com

RECEIVED

2010 OCT 26 AM 10:10

CITY CLERK, FRESNO CA

October 20, 2010

Fresno City Council
Fresno City Hall
2600 Fresno St.
Fresno, CA 93721

RECEIVED
NOV 02 2010
BY: RDA Rjc

Copies sent to Council
City Manager
City Attorney
RDA

To Whom It May Concern:

HEAT for SW Fresno Community objects to the approval by the City Council of the proposed amendments to Merger 2 Redevelopment Plans comprised of the Southwest Fresno General Neighborhood Renewal Area and the Fruit/Church Project Areas for the following reasons:

1. The meetings held in the community did not take in consideration the concerns of the residents at these meetings.
2. It was requested that "eminent domain" be removed from the proposed amendments changes.
3. The many questions as to where the "tax increment" dollars went for the last 30 years were not answered.
4. The residents at the meetings were not in favor of extending the timelines for the use of "tax increment" dollars because of the above mentioned unanswered questions.

It appears that the Redevelopment Agency did not present any of these concerns to the Planning Commission at the October 20, 2010 Planning Commission meeting. Once Again, the Redevelopment Agency is attempting to push through changes to the redevelopment plans without regard to the concerns of the residents of this area.

It should be noted that many of the projects in the SW Fresno area should not have been approved due to the lack of council representation. This



occurred when Councilmember Sterling recused herself because she owned property in the proposed project area. Any decisions made were made without community input or approval. If the other City Council members took it upon themselves to approve these projects, then community meetings should have been held in the community to address any concerns. **This was not done.**

Sincerely,

Members of HEAT for the SW Fresno Community

EXHIBIT "B"



RESPONSES TO WRITTEN OBJECTIONS



EXHIBIT B

RESPONSES TO WRITTEN OBJECTIONS RECEIVED AT OR BEFORE THE DECEMBER 9, 2010 PUBLIC HEARING RELATING TO THE 2010 PROPOSED MERGER NO. 2 PLAN AMENDMENTS INCLUDING THE REDEVELOPMENT PLAN FOR THE FRUIT/CHURCH PROJECT AND SOUTHWEST FRESNO GENERAL NEIGHBORHOOD RENEWAL AREA PROJECT

FOLLOWING IS A SUMMARY OF, AND RESPONSES TO, WRITTEN OBJECTIONS RECEIVED FROM AN AFFECTED PROPERTY OWNER OR TAXING ENTITY AT OR BEFORE THE DECEMBER 9, 2010 JOINT PUBLIC HEARING:

1. SUMMARY OF OBJECTIONS RAISED IN LETTER DATED OCTOBER 15, 2010 FROM ROSE M. HOWELL, DETERMINED/PRESUMED TO BE AN AFFECTED PROPERTY OWNER IN THE SOUTHWEST FRESNO REDEVELOPMENT PROJECT AREA.

On October 20, 2010, the Agency received a letter dated October 15, 2010, from Rose M. Howell a property owner in the Southwest Fresno Redevelopment Project Area. On October 20, 2010, the Agency received a letter dated October 15, 2010, from Rose M. Howell (see Appendix 14 of the Report to Council in Attachment "H"), a property owner in the Southwest Fresno Redevelopment Project Area. The letter states concerns about the past programs of the Redevelopment Agency and the need for financial transparency and accountability. Ms. Howell requests that detailed financial reports over the last twenty years be provided to show that funds designated for specific projects were actually used for the intended purposes; that residents have not been informed of the Agency's activities and progress from 1998 thru 2009; that a forensic audit of all Agency expenditures, including CDBG funds for the area be provided; and that public information be dispersed on an ongoing basis after the planning process for the Plan Amendments has been completed. Ms. Howell requests that the Plan Amendments not be approved or acted upon until the information in her letter is provided.

The following are Ms. Howell's specific objections followed by the Agency's response, including the disposition of the issues raised and the reasons for the Agency's response.

Objection 1-A: Detailed financial reports over the last twenty years need to be provided to show that funds designated for specific projects were actually used for the intended purposes.

Response 1-A: The requestor is seeking information beyond the scope of the Proposed Plan Amendments, which only seek to extend the time and financial limits of the existing Constituent Plans as they were last adopted in 1998. At the September 13, 2010 and October 11, 2010, public information meetings for the Proposed Plan Amendments, which were attended by Ms. Howell, staff provided information about the proposed Plan Amendments, their importance, and the public review process where interested parties could appear and offer testimony to the Planning Commission, Housing and Community Development Commission, the City Council and Agency Board. The information provided by staff about Agency accomplishments, the importance of the Proposed Merger 2 Plan Amendments, and the



Agency's Programs for the revitalization of the subject Constituent Project Areas were based upon and summarized the relevant information contained in the Preliminary Report prepared for the subject Plan Amendments, pursuant to the requirements of CRL Section 33333.11.

The necessary and pertinent background regarding the Proposed Plan Amendments has been provided. Nevertheless, staff informed citizens at the September 13th and October 11th Public Information Meetings, and Ms Howell specifically, in a letter dated October 22, 2010 where such further information, as it relates to the Proposed Plan Amendments, is located. Each year the Agency files with the State Controller's Office an annual audit conducted by an independent auditor, pursuant to requirements of the CRL. The State Controllers Report also includes all of the financial transactions conducted, on a fiscal year basis, as well as information on the use of the Housing Set-aside Funds. The Constituent Project Areas are included in this Report, which is provided to the City Council and Agency Board, and is also posted on the Redevelopment Agency Website. These documents are also available at the City Clerk's Office, and each Report prepared since 1997 is also available for review at the Redevelopment Agency Office.

Objection 1-B: Residents have not been informed of the Agency's activities and progress from 1998 thru 2009

Response 1-B: See response 1-A. Further, the background information presented at the September 13th and October 11th Public Information Meetings also included information about a number of community meetings in recent years where input was obtained from citizens regarding proposed project activities relating to the HOPE VI Master Plan, the West Fresno Vision Plan, infrastructure improvements, and housing activities.

Objection 1-C: A forensic audit of all Agency expenditures, including CDBG funds, should be prepared.

Response 1-C: The request is not necessary or pertinent to the consideration of the proposed Amendments. See response 1-A describing the annual audits conducted by an independent auditor, and the availability of such information for each fiscal year since 1997. The Agency does not administer Community Development Block Grant (CDBG) Funds, which are the responsibility of the City of Fresno.

Objection 1-D: Public information be dispersed on an ongoing basis after the planning process for the Plan Amendments has been completed.

Response 1-D: Staff agrees with this comment. Community outreach and input have always been, and will continue to be very important in the review and consideration of the Agency's Programs for revitalization of the Constituent Project Areas. Following the adoption of the proposed Plan Amendments, the Agency expects to continue to be available for citizen input. This includes the public review of the Agency's annual Budget which contains a report on Agency accomplishments for the previous fiscal year, and a proposed work program for the following fiscal year. On specific projects the Agency typically follows a public process where area residents are given the opportunity for public input in the approval of Requests for Proposals for development, negotiation of any development agreements, owner participation agreements, etc.

Objection 1-E: Ms. Howell requests that the Plan Amendments not be approved or acted upon until the information in her letter (i.e., Questions 1 – 4 above) is provided.



Response 1-E: Necessary and pertinent information about the Proposed Plan Amendments and the Constituent Project Areas has been provided in the Report to Council pursuant to the CRL, as discussed in the December 9, 2010 staff report for the Joint Public Hearing, and in the staff presentation at the Joint Public Hearing. Therefore, it is not necessary for the Council and Agency to postpone or not consider the adoption of the Proposed Plan Amendments, as Ms. Howell has requested.

2. SUMMARY OF OBJECTIONS RAISED IN LETTER DATED OCTOBER 20, 2010 SIGNED BY MEMBERS OF HEAT FOR THE SW FRESNO COMMUNITY, DETERMINED/PRESUMED TO REPRESENT AN AFFECTED PROPERTY OWNER(S) IN THE MERGER NO. 2 CONSTITUENT PROJECT AREAS.

On October 26, 2010, the City Clerk's Office received a letter dated October 20, 2010 from H.E.A.T. for Southwest Fresno Community (HEAT). The letter stated an objection to the approval by the City Council of the proposed amendments to the Merger 2 Redevelopment Plans, comprised of the Southwest Fresno General Neighborhood Renewal Area and the Fruit/Church Project Areas. The letter stated the following reasons for the objection:

1. The meetings held in the community did not take in consideration the concerns of the residents at these meetings.
2. It was requested that "eminent domain" be removed from the proposed amendments changes.
3. The many questions as to where the "tax increment" dollars went for the last 30 years were not answered.
4. The residents at the meetings were not in favor of extending the timelines for the use of "tax increment" dollars because of the above mentioned unanswered questions.

Objection 2-A: The letter further, generally stated that staff did not present these concerns to the Planning Commission at the October 20, 2010 Planning Commission meeting. The letter further states that "...many of the projects in the SW Fresno area should not have been approved due to the lack of council representation... which had occurred when Councilmember Sterling recused herself because she owned property in the proposed project area..." representatives offered testimony to the Planning Commission at the October 20, 2010, Commission Hearing and the HCDC on November 10, 2010, on the proposed Plan Amendments.

Response 2-A: As indicated in the Preliminary Report for the Plan Amendments, and in the staff presentations at the September 13, 2010, and October 11, 2010 public information meetings, staff has conducted a number of community meetings in recent years regarding proposed project activities relating to the HOPE VI Master Plan, the West Fresno Vision Plan, infrastructure improvements, and housing activities. During the September 13, 2010, and October 11, 2010 public information meetings described above, information was provided about the proposed Plan Amendments, their importance, and the public review process where interested parties could appear and offer testimony to the Planning Commission, Housing and Community Development Commission, the City Council and Agency Board. Also, see above response to Rose M. Howell regarding the availability of documents regarding Annual Audits, Agency Budgets, and the Preliminary Report that contained background information on Agency projects, achievements, and expenditures of tax increment funds.

At the October 20, 2010 Planning Commission hearing HEAT representatives appeared and



offered testimony to the Planning Commission. The HEAT letter, dated October 20, 2010, was not submitted to the Planning Commission at or during the Commission's October 20, 2010 Hearing. The HEAT letter was submitted to the City Clerk on October 26, 2010, and subsequently provided to staff by the City Clerk on November 2, 2010.

The staff report to the Planning Commission provided summary information about the September 13, 2010, and October 11, 2010 Public Information Meetings as follows: "...At both public information meetings, Agency staff and KMA, the Agency's redevelopment consultant, provided an overview of redevelopment activities in the Merger No. 2 Area, reasons why the proposed updates of the redevelopment plans are necessary, an overview of the public review process and an overview of the proposed changes to the Redevelopment Plans. Staff provided attendees a schedule of public meetings for review of the Plan Amendments, with revised dates as follows: Planning Commission on October 20, 2010, the Housing and Community Development Commission on October 27, 2010, and the Joint Public Hearing of the Fresno City Council and Agency Board on December 9, 2010. Agency staff and KMA responded to questions from the audience. The public's questions were about the purpose of the public information meetings, an explanation about blight, how the City and Agency work together, the property acquisition/condemnation process, an explanation about tax increment, affordable housing and the need for market-rate housing, and other City issues outside the jurisdiction of the Agency..."

Staff responded to the oral testimony provided by HEAT to the Planning Commission, providing an explanation of the proposed Plan Amendments, the information provided to the public at the two Public Information Meetings, and the information contained in the Preliminary Report prepared for the Plan Amendments. Staff further explained, as described in the written responses to objections to the above Rose Howell letter and the HEAT letter where citizens can obtain and review the detailed, historical information about Agency expenditures and activities in the Agency's annual audits, budgets, and Five Year Implementation Plans.

Further, the decision of one member of the City Council or Agency Board to recuse himself or herself from a proceeding based upon an economic conflict of interest does not invalidate the actions of any of the other individual decision-makers or the body as a whole. With respect to conflicts of interest and the appropriate actions of City and Agency public officials regarding conflicts of interest, the City Attorney's Office has previously provided advice to members of the City Council and the Agency Board.

The following are the more specific objections stated in the October 20, 2010 letter from HEAT, followed by the Agency's response, including the disposition of the issues raised and the reasons for the Agency's response:

Objection 2-B: *The meetings held in the community did not take into consideration the concerns of the residents at these meetings.*

Response 2-B: At the September 13, 2010 and October 11, 2010, public information meetings for the Proposed Plan Amendments, which were attended by HEAT representatives, staff provided information about the proposed Plan Amendments, their importance, and the public review process where interested parties could appear and offer testimony to the Planning Commission, Housing and Community Development Commission, the City Council and Agency Board. Background information was presented about a number of community meetings in recent years where input was

obtained from citizens regarding proposed project activities relating to the HOPE VI Master Plan, the West Fresno Vision Plan, infrastructure improvements, and housing activities.



At the October 20, 2010 Planning Commission hearing HEAT representatives appeared and offered testimony to the Planning Commission. The HEAT letter was provided to the Housing and Community Development Commission (HCD) in their packets for the November 10, 2010 HCD Commission meeting, and HEAT representatives appeared and offered testimony to the HCD Commission.

Staff does not agree with HEAT. The intent of staff in its presentations at the two Public Information Meetings, as well as responses to questions from citizens in attendance at the Public Information Meetings was to provide information about the proposed Plan Amendments, their importance, and the public review process where interested parties could appear and offer testimony to the Planning Commission, Housing and Community Development Commission, the City Council and Agency Board.

Objection 2-C *It was requested that "eminent domain" be removed from the proposed amendments.*

Response 2-C: At the September 13, 2010 and October 11, 2010, public information meetings for the Proposed Plan Amendments, which were attended by HEAT representatives, staff provided information about the proposed Plan Amendment for extension of the authority for the potential use of eminent domain, and the limitation on the use of the eminent domain authority, except that the Agency will not have the authority to acquire by use of eminent domain any property on which persons lawfully reside. Staff identified the importance of the eminent domain tool as a tool of last resort that had only been used since 1998 in the Kearney Palms Project. Staff also identified the applicable public review process for the proposed Plan Amendments. The public review process was also stated in the mailed and published public notices for the Plan Amendments, indicating where interested parties could appear and offer testimony to the Planning Commission, Housing and Community Development Commission, the City Council and Agency Board, as well as submit written comments.

Neither the Agency nor the City is seeking to exercise eminent domain in the current proceedings. The timeline for use of eminent domain, as one possible redevelopment tool, is being extended pursuant to the CRL. Adoption of the proposed Plan Amendments, will allow the Agency to continue to carry-out the revitalization of the Constituent Project Areas and to continue eliminating blight within the subject Project Areas.

The proposed Plan Amendments extend the Agency's authority of eminent domain over the Constituent Project Areas for an additional 12 years. This authority is a necessary redevelopment tool only when there is a recognized public purpose, for site acquisition and assembly in the overall Project Areas. Extending the Agency's authority of eminent domain will place the Agency in a better position to respond to development proposals, to implement the Redevelopment Plans, and continue its work in the revitalization of the Constituent Project Areas. Through the power of eminent domain, the Agency is positioned to be more responsive to market and economic demands of property owners and developers. The courts have routinely held that use of eminent domain to eliminate blight is a public use and is constitutionally permitted. (See, e.g., *Redevelopment Agency v. Hayes* (1954) 122 Cal. App. 2d 777, *In re Redevelopment Plan for Bunker Hill* (1964) 61 Cal. 2d 21, and *Berman v. Parker* (1954) 348 U.S. 26.) However, the mere possession of the power of eminent domain does not



constitute a risk or a threat that the Agency will ultimately acquire specific properties, or within the Constituent Project Areas as a whole.

Moreover, the Agency must comply with legal requirements prior to acquiring a property through eminent domain. First, the Agency must comply with its own owner participation and business preference rules, for which the property in question would be eligible. These rules require the Agency to give property owners the opportunity to propose participation in the redevelopment process, and to give preferences to business owners, such as the objector, within the Project Areas. On a landowner's initiative, the landowner may propose to expand or improve the landowner's property through an owner participation agreement or a redevelopment project involving the owner's land and/or other lands within the Project Areas. The Agency may require that the owner enter an owner participation agreement. Under such agreements, the Agency may agree that it will not exercise the power of eminent domain against the property if the owner operates and maintains the property within the Redevelopment Plan requirements.

Furthermore, the Agency cannot, without owner consent, acquire property on which the existing building will continue on its present site, in its present form, and its present use, unless: (a) the building requires structural alteration, improvement, modernization, or rehabilitation; (b) the lot on which the building is located requires modification in size, shape, or use; or (c) the owner fails or refuses to enter an owner participation agreement under applicable provisions of the law. An owner may further request a determination that their property conforms to the Redevelopment Plan and the property owner may remain without an owner participation agreement if the owner continues to operate and use the property within Redevelopment Plan requirements.

Finally, the Agency may not use eminent domain to acquire any property without first complying with procedural and substantive requirements that Federal and State law, including constitutional law, provide to protect a property owner's rights, and prevent discrimination. These requirements include the Agency first negotiating with the property owner for a voluntary sale. In all instances, the Agency must pay fair market value for the property.

Objection 2-D: *The many questions as to where the "tax increment" dollars went for the last 30 years were not answered.*

Response 2-D: See Responses 1-A and 1-B for the preceding Rose Howell letter.

Objection 2-E: *The residents at the meetings were not in favor of extending the timelines for the use of "tax increment" dollars because of the above mentioned unanswered questions.*

Response 2-E:

See response 2B above, and Response 1E from the preceding Rose M. Howell letter.