The Fall of California's Redevelopment Agencies and the Rise of Sustainable Communities Investment Authorities: How SB 1 Can Maximize Fairness and Economic Growth

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The Fall of California’s Redevelopment Agencies and the Rise of Sustainable Communities Investment Authorities: How SB 1 Can Maximize Fairness and Economic Growth

Brandon Powell*

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* Thank you, Professor Malagrinò, for your insight care and guidance. Thank you, Roy Lesowitz. Without your direction, this entire area of law would remain a mystery to me.
I. INTRODUCTION

In 2011, California Governor Jerry Brown and the California Legislature began to dissolve California's Redevelopment Agencies ("RDAs"). RDAs were vested with eminent domain power and created to improve "blighted areas that constitute physical and economic liabilities ... in the interest of the health, safety, and general welfare."2

The dissolution was proposed by the Governor in the name of balancing the budget and upheld by the California Supreme Court.3 Incidentally, the Governor's decision has saved some California landowners from losing their property to governmental takings resulting from widespread eminent domain abuse.4 "Reverse-Robin Hood Takings" in which RDAs would take real property from its owners and give it to private development companies was, in the name of fiscally responsible politics, eliminated.5 Elimination of these controversial and corrupt practices may also contribute to a rise in Californian's institutional trust in state and local government, particularly in the Governor's office.

However, many of the benefits of RDAs, envisioned by the original California Redevelopment Law, have been lost.6 "[R]edevelopment activity increases jobs, incomes, and retail sales, all of which spawn fiscal benefits to the state or counties through increased business, income, property, and sales taxes." Cities such as Los Angeles are still reeling from blighted conditions caused by the foreclosure crisis8 and no longer have RDAs to address the situation.

5. Id.
7. Id.
Presently, California’s economic recovery stands on shaky ground.9 California Senate Bill 1 (“SB 1”), authored by Senator Steinberg, passed both houses of the California Legislature.10 SB 1 would create successor entities to the newly dissolved RDAs called Sustainable Community Investment Authorities (“SCIAs”).11 SB 1’s stated purpose is to “in the wake of stubborn unemployment and recession . . . stimulate economic development in a strategic manner.”12

Additionally, SB 1 was held back from the Governor’s desk for fear of veto,13 faced heavy criticism,14 and lacked the necessary two-thirds majority in the Assembly to override a gubernatorial veto.15 California Assembly Bill 2280, (“AB 2280”) authored by Assembly member Luis Alejo passed the Assembly floor on May 8, 2014 with a fifty-seven to twelve vote.16 AB 2280 does not face much, if any, criticism, and should garner enough support from the Senate to override any gubernatorial veto considering that AB 2280 is substantially similar to SB 1.17 It is very likely that either AB 2280 or SB 1 will become law.18 AB 2280 has enough votes to override a veto.19

This article will analyze the history, successes, and failures of California’s RDAs in improving “blighted areas” and make recommendations on how to improve SB 1 or AB 2280 in order to minimize SCIAs eminent domain abuse and “Reverse-Robin Hood Takings,” while maximizing SCIAs economic benefits and Californian’s institutional trust in the State Legislature.

First, this article will outline the early history and recent developments in Redevelopment Law and the policy reasons for the creation of RDAs while comparing California Redevelopment Law to Federal Redevelopment Law. This article will

12. Id.
14. See Lawrence J. McQuillan, Why Senator Steinberg’s SB 1 Deserves Defeat—or a Veto, (Aug. 13, 2013, 3:12 PM), http://www.independent.org/newsroom/article.asp?id=4689 (the Independent Institute is a Libertarian think tank and the commentary was quoted and reposted on multiple libertarian blogs); Katy Grimes, SB 1 Pushes High-Rises Over Suburbs, CALWATCHDOG.COM (Aug. 12, 2013), http://calwatchdog.com/2013/08/12/sb-1-pushes-high-rises-over-suburbs/ (CalWatchdog is a project of the Journalism Center at the Pacific Research Institute, which promotes free market and limited government policies); Beware CA SB 1- Sustainable Communities Investment Authority, CITIZENS JOURNAL (Jan. 3, 2014), http://citizensjournal.us/beware-ca-sb-1-sustainable-communities-investment-authority/ (posting listed as press release from “Citizen Reporter” and stamped by the SFBay CAPR – Citizen’s Alliance for Property Rights, a nonpartisan political action committee organized to “defend private property rights”).
15. See SB 1 Sustainable Communities Investment Authority, supra note 11; CAL. CONST. art. IV, § 10.
18. See CA S.B. 1; CA A.B. 2280; CAL. CONST. art. IV, § 10.
focus particularly on the blight requirement and Tax Increment Financing ("TIF") as two innovations developed to protect landowners and secure funding. Second, this article will explain Institutional Trust Theory and how it can be applied in the RDA context particularly evaluating the blight requirement and TIF. Third, this article will propose changes to SB 1 and AB 2280 consistent with Institutional Trust Theory and responsive to the concerns that influenced Governor Brown’s decision to dissolve RDAs.

The original purpose of Redevelopment Law was to give local government a tool to address housing shortages and replace substandard housing. Over time, Redevelopment Law also became a tool to address the need for low-income housing. The primary developments differentiating California Redevelopment Law from Federal Redevelopment Law are in the protections from eminent domain afforded to landowners by the blight requirement and the invention of TIF. The current state of California Redevelopment Law is uncertain following the dissolution of RDAs as a solution to the budget crisis. Additionally, attempts to revive redevelopment have met with public criticism. However, it is important that redevelopment continue provided that it continues in a manner that provides ample protection for landowners from eminent domain abuse and sufficient protection for other public services such as schools from losing tax revenue. In light of the benefits of allowing local government to replace substandard housing and to promote the construction of low-income housing, especially in the face of blighted conditions caused by the foreclosure crisis, losing redevelopment may be detrimental in the long run.

II. HISTORY OF REDEVELOPMENT

A. The Origin of California Redevelopment

Redevelopment Law in California was born out of the same post World War II climate as the federal law. Suburban sprawl left many cities, including Los Angeles, with fewer residents residing in the inner cities, resulting in a diluted tax base.

Reacting to this situation, the California Legislature enacted the California Community Redevelopment Act of 1945. The Act declared the policy of the State to

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20. Statutes and Amendments to the Codes 1945 Ch.1326 pg. 2480.
21. CAL. HEALTH & SAFETY CODE § 33334.2 (West 2014) (setting forth the minimum required tax funding to be allocated for low to moderate income housing in a redevelopment project).
23. Id.; CAL. HEALTH & SAFETY CODE § 33670 (West 2014); CAL. CONST. art. XVI, § 16.
25. See McQuillan, supra note 15.
26. See, e.g., Khouri, supra note 9.
29. COOMES ET AL., supra note 28.
be “to protect and promote the sound development and redevelopment of blighted areas within this State and the general welfare of the inhabitants of the communities in which they exist byremedying such injurious conditions through the employment of all means appropriate for that purpose . . . .”30 The Act defined Redevelopment as “planning, development, replanning, redesign, clearance, reconstruction or rehabilitation . . . of a redevelopment area . . . and the provision of such residential, commercial, industrial, public or other structures or spaces as may be appropriate or necessary in the interest of the general welfare . . . .”31 The Act also defined a Redevelopment Area as an area that the Legislature deemed blighted.32 The redevelopment area could encompass individual buildings that were not themselves “detrimental or inimical to the public health, safety or welfare” but were within areas where such conditions predominated.33

RDAs were funded by loans from the federal government and bonds sold by the state government, vested with eminent domain power and land use controls, and permitted to develop and sell real property and relocate displaced families.34 “[T]he first California redevelopment projects occurred in cities that used funds available under the Federal Housing Act of 1949.”35

B. The Origin of Federal Redevelopment

The first federal RDAs were created by the Housing Act of 1949.36 The declaration of the act provided,

[T]he general welfare and security of the Nation and the health and living standards of its people require housing production and related community development sufficient to remedy the serious housing shortage, the elimination of substandard and other inadequate housing through the clearance of slums and blighted areas and the realization as soon as feasible of the goal of a decent home and suitable living environment for every American family, thus contributing to the development and redevelopment of communities and to the advancement of the growth, wealth, and security of the Nation.37

The original goal of the first RDAs was to promote low cost housing for families to ensure that supply kept pace with demand at the end of World War II, when many returning veterans and their families were encountering a housing shortage.38

30. Statutes and Amendments to the Codes 1945 Ch. 1326, 2480.
31. Id. at 2482.
32. Id. at 2481.
33. Id.
35. Id.
36. Lefcoe, supra note 7, at 992.
38. Maroon, supra note 29, at 454.
The Act encouraged the involvement of private developers along with local
governments to inexpensively develop residential neighborhoods and redevelop
communities, in accordance with a local redevelopment plan, by producing quality
housing for “adequate family life[.]” The act provided for government assistance, in
the form of federal loans and grants, to clear slums and “blighted” areas eliminating
substandard housing with the goal “to provide adequate housing needed for urban and
rural nonfarm families of low incomes where such need is not being met through
reliance solely upon private enterprise[.]” The Act vested the RDAs with the power
to acquire the “blighted” areas through purchase or condemnation. The Act also
provided for “decent, safe, and sanitary farm dwellings and related facilities where the
farm owner demonstrates that he lacks sufficient resources and credit to provide such
housing.” Further, receipt of federal aid was conditioned on the local government’s
provision of “decent, safe, and sanitary dwellings” to displaced families “at prices and
rents within the financial means of such families.”

C. California Redevelopment before A.B. 1290

Between 1949 and 1954, state RDA projects were generally shaped by federal
guidelines and restrictions resulting from the federal government being the primary
source of funding. The project areas were required to be “blighted” and
“predominantly residential.” In 1954, Congress authorized the use of ten percent of
grant funds for nonresidential purposes and gradually increased the figure up to thirty-five percent in 1965.

In 1951, California codified its law in section 33000 of the Health and Safety
Code and, most importantly, provided for the use of TIF. TIF was an original
concept in California RDA law that “allows redevelopment agencies to receive and
spend property tax revenues from the increase in assessed value that has occurred after
adopting a redevelopment project [and was] originally intended to provide the one-third matching funds required under the federal programs.” By 1978, TIF was the
primary financing tool of California RDAs.

In 1978, Proposition 13 was passed by voter initiative. The proposition,
embodied in Article XIII A of the California Constitution provides, “[t]he maximum
amount of any ad valorem tax on real property shall not exceed one percent (1%) of

40. Id.
41. Id.
42. Id.
43. Id.
44. COOMES et al., supra note 28, at 3.
45. Housing Act of 1949, supra note 38.
46. COOMES et al., supra note 28, at 3.
47. Id. at 5.
48. Id. at 5-6.
49. Id. at 7.
50. Id.
the full cash value of such property. The one percent (1%) tax to be collected by the counties and apportioned according to law to the districts within the counties.51 The practical effect of Proposition 13 was that property tax revenues to all local governments and RDAs were reduced by sixty percent.52 Dealing with the reduced property tax revenues resulting from Proposition 13, TIF became more widely used as the primary tool for redevelopment and RDAs became increasingly utilized in capital and infrastructure developments.53 Between 1983 and 1993, the primary developments in RDA law concerned increased disclosure of TIF information to taxing entities, establishing a minimum of twenty percent TIF funds to be used for low-income housing, a one-to-one requirement of replacing low-income housing demolished by RDAs, and restrictive covenants requiring that low-income housing remained accessible to persons of low-income.54

D. Kelo v. City of New London

In 2005, the United States Supreme Court limited Fifth Amendment protection from eminent domain in Kelo v. City of New London.55 The decision in Kelo has been criticized for writing state and local governments a “blank check to do anything they want.”56

In Kelo, a city’s proposed taking of private property executed pursuant to a “carefully considered development plan” that was not adopted “to benefit a particular class of identifiable individuals” was constitutional under the Takings Clause of the Fifth Amendment to the United States Constitution.57 In making its decision, the Supreme Court applied a test requiring that the development plan serve a “public purpose” and deferred to the city government recognizing the longstanding policy “affording legislatures broad latitude in determining what public needs justify the use of the takings power.”58 The Court stated that taking land for economic development was a “public use” even when there is no actual use by the public so long as the land taken would be used for a “public benefit.”

As a point of distinction from California law, Kelo determined United States Constitutional limitations on a state’s power to take. The Connecticut statute at issue in Kelo did not contain a blight requirement as the California statute does and therefore California Redevelopment Law prior to the dissolution of RDAs provided greater protection for landowners against eminent domain than the United States Constitution and continued to do so until the dissolution of RDAs in 2011.59

51. CAL. CONST. art. XIII A, § 1.
52. COOMES et al., supra note 28, at 7.
53. Id.
54. Id. at 8.
57. Kelo, 545 U.S. at 478.
58. Id. at 479-483.
59. See id.
E. California Redevelopment Association v. Matosantos: The Dissolution of RDAs

In 2011, the California Legislature began to dissolve RDAs in response to a state fiscal emergency.60 The Legislature enacted A.B.X1 26 as the vehicle to carry out dissolution and A.B.X1 27 as an alternative allowing RDAs to continue operation on the condition that local governments agree to make payments into funds benefiting state schools.61

In *California Redevelopment Assn. v. Matosantos*, the California Supreme Court upheld A.B.X1 26, recognizing the Legislature’s power to abrogate existing laws as a corollary of the Legislature’s plenary power to make laws under Article IV, section 1 of the California Constitution.62 The California Supreme Court rejected contentions that Article XVI, section 16 and Article XIII section 25.5(a)(7)(A) of the California Constitution protect RDAs from dissolution recognizing first, the permissive language Article XVI, section 1663 does not create an absolute right to allocation of property taxes, and second, Article XIII section 25.5(a)(7)(A)64 does not imply a “constitutional guarantee of continued existence for redevelopment agencies” but instead conditionally protects RDAs provided they exist and have property tax increment allocated to them.65 The California Supreme Court found A.B.X1 27 unconstitutional and facially invalid as an impermissible levy on tax increment allocated to RDAs prohibited by Article XVI, section 16 of the California Constitution.66

The result of the California Supreme Court’s holding in *Matosantos* is that RDAs were dissolved and their assets and operations transferred to successor agencies responsible for maintaining payments on enforceable obligations pursuant to A.B.X1 26 without an option to continue operation subject to a conditional sharing of tax increment revenue with schools that would have been provided for by A.B.X1 27.67

While the Legislature intended to dissolve RDAs that did not agree to make remittances to other community entities, given the Legislature conditioned the enactment of A.B.X1 26 on the prior enactment of A.B.X1 27, it is unlikely that the Legislature intended RDAs be dissolved entirely as a result of *Matosantos*.68 The result of *Matosantos* is an effective gap in state and local government’s ability to carry

60. *Matosantos*, 267 P.3d at 587.
61. *Id.*
62. *Id.* at 596-597.
64. *Cal. Const.* art. XIII, § 25.5(a)(7)(A) (Prohibiting the legislature from diverting tax increments to third parties).
66. *Id.* at 603-606.
67. *See id.* at 587.
out redevelopment under the Health and Safety Code. RDAs should therefore be revived to give effect to the intent of the Legislature.\textsuperscript{69}

\section{III. Institutional Trust Theory}

In the sociological context, trust has different meanings.\textsuperscript{70} "Trust in institutions" refers to a person's belief that an entity is "competent, fulfills its obligations, and acts in responsible ways."\textsuperscript{71} Trust is essential to representative relationships in modern democratic society.\textsuperscript{72} Trust fosters political participation "enhancing the effectiveness of political institutions" and "gives representatives the leeway to postpone short term constituency concerns while pursuing longer term national interests."\textsuperscript{73} While a lack of trust is indicative of public desire for political change,\textsuperscript{74} insufficient trust may indicate a break-down of civil society.\textsuperscript{75} In short, institutional trust is important to any government because the more trust constituents have in an office, the more freedom the office has to execute policy. A government may pursue policies that have long-term benefits even while eliciting short-term criticism provided the government entity has a requisite level of trust.

On the other hand, when there is too little institutional trust, government entities are given very little freedom to execute policy. There is only so much corruption that a system can bear before people cease to participate in it. Distrust in the institution of RDAs may have played a role in Governor Brown's decision to dissolve them. Misuse of funds earmarked for affordable housing, excessive diversion of tax revenue from other local government entities, as well as limited transparency and accountability were cited as some of the justifications for dissolution.\textsuperscript{76}

\section{IV. Blight}

The protections against eminent domain abuse provided by the blight requirement are very robust. Developed over the course of nearly seventy years and generally increasing in the protection offered to landowners, the only thing that has not changed relating to the blight requirement is that it has almost exclusively been

\begin{footnotesize}

\textsuperscript{69} A.B.XI 26 (Ca. 2011).

\textsuperscript{70} \textsc{Bernard Barber, The Logic and Limits of Trust} (Rutgers Univ. Press, 1st ed.1983); \textsc{Niklas Luhmann, Trust and Power} (John Wiley \& Sons, 1980).


\textsuperscript{75} Mishler \& Rose, supra note 74.


\end{footnotesize}
enforced with the judicial system. The high cost of enforcement therefore falls on the landowners, against whom RDAs abuse the blight requirement. The lack of judicial enforcement resulting from the prohibitive cost of litigation has allowed RDAs to abuse the blight requirement with relative impunity.

A. The Definition of and Statutory Authority for the Blight Requirement

Blight is defined by section 33030 and section 33031 of California Health and Safety Code. In order for a redevelopment area to be blighted, the statutes require that the area be predominantly urbanized and that the area contain both physical and economic conditions that cause blight.77

Physical conditions include: (1) unsafe or unhealthy buildings caused by “serious building code violations, serious dilapidation and deterioration,” earthquake vulnerability, and faulty water or sewer utilities; (2) “[c]onditions that prevent or substantially hinder the viable use or capacity of buildings or lots;” (3) “[i]ncompatible land uses” preventing development of adjacent or nearby parcels; and (4) subdivided lots in multiple ownership, impairing development by irregular shapes and sizes in relation to present plans, zoning, and market conditions.78

Economic conditions include: (1) “[d]epreciated or stagnant property values;” (2) hazardous waste significantly impairing property value; (3) “[a]bnormally high business vacancies, abnormally low lease rates, or an abnormally high number of abandoned buildings;” (4) an absence of neighborhood commercial institutions like “grocery stores, drug stores, and banks and other lending institutions;” (5) “[s]erious residential overcrowding” resulting in “significant public health or safety problems;” (6) “[a]n excess of bars, liquor stores, or adult-oriented businesses that has resulted in significant public health, safety, or welfare problems;” and (7) [a] high crime rate that constitutes a serious threat to the public safety and welfare.”79 Further conditions include: inadequate public improvements, water or sewer utilities, and “[h]ousing constructed as a government-owned project . . . before January 1, 1960.”80

The United States Supreme Court upheld blight as an appropriate justification for eminent domain takings.81 “It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled.”82 The California Supreme Court agreed, provided the taking is necessary to “protect the public health, morals, safety or general welfare through the elimination of blighted areas.”83

78. Id. § 33031(a) (West 2014) (effective Jan. 1, 2008).
79. Id. § 33031(b).
80. CAL. HEALTH & SAFETY CODE § 33030(c) (West 2014) (effective Jan. 1, 2011)
82. Id.
Non-contiguous parcels of land may be included in a development plan however, "conditions of blight must ‘predominate’ and must ‘injuriously affect the entire area’ . . . . Consequently, while a project area was not required to consist of contiguous parcels or be blighted in all its portions, it was required to be blighted when considered as a whole."\(^84\)

An RDA must show that blight constitutes "a real hindrance to the development of the city and cannot be eliminated or improved without public assistance."\(^85\) An RDA does not meet its burden merely by showing that the proposed redevelopment area is not put to "optimum use."\(^86\) In support of this assertion, the California Supreme Court stated that "[o]ne man’s land cannot be seized by the government and sold to another man merely in order that the purchaser may build upon it a better house or a house which better meets the government’s idea of what is appropriate or well designed."\(^87\) "It never can be used just because the public agency considers that it can make a better use or planning of an area than its present use or plan."\(^88\) Ultimately, the decision on whether an area is blighted must be made on the basis of the existing use of the property and not a hypothetical better use.\(^89\)

Following the California Supreme Court’s decision in California Redevelopment Ass’n v. Matosantos, upholding the dissolution of RDAs, the Fourth and Sixth District Court of Appeals have reviewed existing RDA actions in the time frame they were conducted.\(^90\) Therefore, redevelopment projects started prior to RDA dissolution may continue, provided RDAs meet the standards for blight imposed by sections 33030 and 33031 of the Health and Safety Code.\(^91\)

B. Proof of Blight: The Evidentiary Burden and Reporting Requirement

From the creation of the blight requirement in 1945 until the dissolution of RDAs in 2011, the evidentiary burden on RDAs to prove a redevelopment area is blighted has steadily become more restrictive.\(^92\)

Currently, RDAs are required to submit reports that, among other things: (1) detail the physical and economic conditions making the area blighted, (2) establish a nexus between the conditions and serious harm to the redevelopment area as a whole,

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\(^{85}\) Sweetwater Valley Civic Ass’n v. City of Nat’l City, 555 P.2d 1099, 1103 (Cal. 1976).

\(^{86}\) Id. at 1103.

\(^{87}\) Hayes, 266 P.2d at 116.

\(^{88}\) Id. at 127.

\(^{89}\) Sweetwater Valley Civic Ass’n. 555 P.2d at 1103.

\(^{90}\) Matosantos, 267 P.3d at 588; see County of Los Angeles v. Glendora Redevelopment Project, 111 Cal. Rptr. 3d 104, 116 (Ct. App. 2010); see also Cnty. Youth Athletic Ctr. v. City of Nat’l City, 164 Cal. Rptr. 3d 644, 661-662 (Ct. App. 2013), review filed (Dec. 10, 2013).

\(^{91}\) See id.

\(^{92}\) Glendora Redevelopment Project, 111 Cal. Rptr. 3d at 116 (quoting COOMES et al., supra note 28, at 39).
(3) demonstrate how the plan will reduce the conditions, and (4) explain why blight cannot be eliminated by private enterprise.93

The reports are required to offer concrete evidence regarding specific properties demonstrating actual conditions of blight.94 The courts have invalidated RDA projects where assertions of blight conditions were conclusory, generalized, merely quoting statutory language, or lacking in tangible proof of specific problems.95

"In some instances, the statute requires a finding of a nexus, to borrow a term from takings jurisprudence, between a particular characteristic being reviewed and the actual condition being caused."96 The Third District Court of Appeal invalidated an RDA project where the RDA report failed to demonstrate a nexus between the report’s definition of “deterioration” and “dilapidation” and “buildings unsafe for human occupancy” because the definitions “included such factors as ‘[peeling] paint, dry rot, and other physical evidence of unmaintained structures.’”97 The court held the definition overbroad because peeling paint, dry rot, and lack of maintenance do not necessarily make buildings unsafe for human occupancy.98

The Sixth District Court of Appeal affirmed the Superior Court’s invalidation of an RDA project where the RDA failed to establish the required nexus between building code violations and risks to health and safety.99 Among the code violations cited in the reports were “dish antenna, back porch, carport, metal building, patio roof, patio structure, roof structure, storage building, pole sign, addition to building, roof mounted HVAC, converted garage . . . “100 as well as signage, damaged sidewalks, illegally parked vehicles, weeds and trash, and building violations.101 The court held “[t]he evidence in the cited reports does not demonstrate the existence of unsafe or unhealthy buildings . . . There is no showing how violations involving antenna, signs, or landscaping impact safety or health. . . . Evidence ‘of a factor that can cause blight can hardly by itself justify a blight finding.’”102 The resulting evidentiary burden is very high and requires real consideration of health and safety.

C. Enforcing the Blight Requirement is an Undue Burden on the Landowner

Despite the increasingly strict blight requirements in California Redevelopment Law, few local residents and businesses pursue challenges in court or

95. See Diamond Bar, 95 Cal. Rptr. 2d at 276; see also Cnty. of Riverside, 76 Cal. Rptr. 2d at 610-614.
97. Id. at 360.
98. Id.
100. Id. at 122.
101. Id.
102. Id.
through the referendum process.\textsuperscript{103} In response to this finding, in 1994 the Legislative Analyst's Office recommended the development of a State Redevelopment Review Authority under the State Attorney General, funded by fees charged to RDAs in order to review "all proposed redevelopment plans, pass-through agreements, and five-year implementation plans to the state for a finding of consistency with the CRL."\textsuperscript{104} The proposal was not enacted and drew criticism based on the increased costs and delays that administrative review over RDAs would bring.\textsuperscript{105}

D. Proposal: Renewed Development of a State Review Authority

In light of the current dissolved state of RDAs, renewing the Legislative Analyst's recommendation to develop a State Redevelopment Review Authority might be feasible. Despite increasing the cost and time that RDAs would expend to seek approval from the Review Authority prior to dissolution, RDAs are currently powerless to carry out their mission altogether. The increased cost and time under the old regime is infinitesimal compared to not having the opportunity to carry out the RDAs mission at all resulting from their current dissolved status.

However, the current fiscal climate in Sacramento and the financial rationale behind dissolving the RDAs makes the establishment of a whole new office under the Attorney General a hard sell to the Governor. Therefore, local RDAs should pay a fee that covers substantially all of the costs associated with this office in order to minimize the effect on the state budget. Developing a State Review Authority with an attendant fee paid by each RDA is both sensitive to the budgetary concerns of the Governor's office while increasing oversight, transparency, and accountability. An increase in institutional trust should result from a more earnest system with greater checks and balances.\textsuperscript{106}

E. Proposal: Attorney's Fees Provision for Abuse of the Blight Requirement

An additional or alternative means of reducing the judicial enforcement cost borne by individual landowners against whom RDAs abuse the blight requirement is through an attorney's fees provision. Such provisions already exist in the RDA context relating to settlement of eminent domain litigation\textsuperscript{107} and relating to reporting low-income housing tax allocation.\textsuperscript{108} Section 25395.84 is intended to encourage the settlement of eminent domain cases.\textsuperscript{109} In order to be awarded statutory attorney's fees

\begin{thebibliography}{9}
\bibitem{104} Id.
\bibitem{105} Lefcoe, \textit{supra} note 7, at 1027.
\bibitem{106} Devos et al., \textit{supra} note 72, at 484.
\bibitem{108} Id. § 33334.2(c) (West 2014) (effective Jan. 1, 2005).
\bibitem{109} Id. § 25395.84.
\end{thebibliography}
under Section 225395.84, the property owner from whom the government takes property must prove that during settlement negotiations, the government offered an unreasonable price and the property owner demanded a reasonable price.\textsuperscript{110}

An attorney’s fees provision specifically related to the blight requirement would increase institutional trust by granting subjects of RDA eminent domain takings some recourse in an otherwise cost-prohibitive system. Additionally, if an attorney’s fees provision is used instead of State Review Authority, the increased cost would not burden the State budget, but would burden offending RDAs instead, generating a financial incentive for local governments to behave responsibly thus increasing institutional trust.\textsuperscript{111}

On the other hand, an overly generous attorney’s fees provision would open the floodgates to litigation and likewise increase the financial burden on the State’s already thinly stretched judicial resources.

A proposed attorney’s fees provision should therefore require a strict enough threshold showing of blight abuse to prevent the initiation of frivolous claims, but also be permissive enough to put RDAs on notice that abuse of the blight requirement will no longer go unchecked.

V. TAX INCREMENT FINANCING

A. Authority and Function of Tax Increment Financing

The authority for Tax Increment Financing (TIF) is codified in section 33670 of the California Health and Safety Code, pursuant to the California Legislature’s power outlined in Article XVI, section 16 of the California Constitution.\textsuperscript{112} Article XVI, section 16 provides the Legislature with the power to allow property taxes in a redevelopment area to be divided.\textsuperscript{113} The division is based upon the value of the redevelopment property at the time it is assessed.\textsuperscript{114} All taxes earned on the assessed value are paid in the same way as all other property taxes, to regular state taxing agencies.\textsuperscript{115} All taxes earned in excess of the assessed value are paid directly into a special fund of the RDA set up “to pay moneys advanced to, or indebtedness . . . incurred by the redevelopment agency to finance or refinance, in whole or in part, the redevelopment project.”\textsuperscript{116} The fund provides local governments with a way to secure loans to fund infrastructure and construction projects and requires that twenty percent

\textsuperscript{110} Id.
\textsuperscript{111} Devos et al., \textit{supra} note 72, at 484 (referencing responsible government activity as an indicator of institutional trust).
\textsuperscript{113} \textit{Cal. Const.} art. XVI, § 16.
\textsuperscript{114} Id.
\textsuperscript{115} Id.
\textsuperscript{116} Id.
of project funds be allocated to increase, improve, and preserve low and moderate income housing.  

B. Background of Tax Increment Financing

TIF operates under the basic causation rationale that the division of taxes is fair because taxing agencies receive what they would have received had redevelopment not occurred. But for the redevelopment project, the increase in property value would not occur. Therefore, the increase in property tax revenue as a result of increased property value directly caused by redevelopment should rightfully go to RDAs.  

Additionally, RDAs are constitutionally and statutorily limited in the property tax revenue they are authorized to receive through TIF while also required to pay a portion of property tax administration charges.  

There are also a number of protections included in the redevelopment statutes and case law that generally keep TIF centered around the core causation rationale. For example, there are limitations preventing lower assessed values resulting from property gaining tax-exempt status when a property becomes designated as public use, as well as requirements that excess TIF revenue only offset the same redevelopment projects from which it is earned.  

TIF has become increasingly important as funding options available to local governments to provide for infrastructure, development, and low-income housing has become limited as a result of property tax limitations imposed by Article XIII A of the California Constitution and California’s complicated web of education funding. Additionally, the decrease in federal assistance and the further tightening of tax revenues under Propositions 62 and 218 further limited local government’s infrastructure and development funding.  

In carrying out its mandate to provide for free public education under Article IX of the California Constitution while complying with the State Equal Protection Clause, the California Legislature developed a system in which local school districts are required to use property tax revenues coupled with a state equalization payment to

118. See Redevelopment Ass’n v. Cnty. of San Bernardino, 578 P.2d 133, 135 (Cal. 1978).  
119. Id.  
120. See CAL. CONST. art. XVI, § 16 (preventing RDAs from receiving tax revenue resulting from voter-approved tax increases to pay bonded indebtedness for the purpose of acquiring or improving real property). See also CAL. HEALTH & SAFETY CODE § 33670 (West 2014) (providing for property tax revenues in excess of debts to be paid to taxing agencies). But see CAL. HEALTH & SAFETY CODE § 33676 (West 2014) (allowing inflationary tax increases to be received by RDAs).  
122. CAL. HEALTH & SAFETY CODE § 33677.5 (West 2014).  
123. Id.  
124. See generally Wells v. One2One Learning Found., 141 P.3d 225, 238-239 (Cal. 2006).  
125. COOMES, ET AL., supra note 28.  
126. CAL. CONST. art. IX, § 5.  
achieve a rough per student revenue equivalency. The educational mandate and the property tax limitations substantially stripped away local governments’ ability to fund projects other than education. This led to an increase in Local Government’s use of RDAs’ TIF as one of the few alternatives available to fund construction projects. The key component that makes RDAs’ TIF such a useful tool to local governments is that the creation of redevelopment areas do not require voter approval. The flexibility of administrative decisions without the need for voter approval allows local governments to address problems quickly and definitively. Conversely, the lack of voter approval has also been referenced as a key criticism of TIF.

C. Lack of Voter Approval of Public Indebtedness

Because the State has a mandated duty to provide funding for public schools, maintaining a balanced budget requires predicting revenues and expenses. Predicting expenses becomes problematic for the State when RDAs are able to siphon increased tax revenues off to pay redevelopment debt. For most other local agencies, entering into bonded indebtedness requires voter approval which is generally more predictable. In the case of RDAs, much of the predictability is lost. Additionally, because RDAs operate as an outlier in relation to other government agencies in their sole power to incur debt without taxpayer oversight, they naturally appear less transparent and therefore lose a degree of institutional trust.

D. The Wasteful Use of Tax Increment Financing

The court in Matosantos described TIF as a “Shell Game . . . among local government agencies for property tax funds. The only way to obtain more funds was to take them from another agency. Redevelopment proved to be one of the most powerful mechanisms for gaining an advantage in the shell game.” The court’s language demonstrates how the competition for tax revenue led to irresponsible conduct that drained revenue from other local entities like schools. The court’s criticism is demonstrative of a decrease in institutional trust.

The Legislative Analyst’s Office released a report in support of Governor Brown’s proposal to eliminate RDAs in 2011. Wasteful use of TIF was cited as one of the primary reasons for Governor’s Brown’s decision to eliminate RDAs. From

128. Wells, 141 P.3d at 239.
129. COOMES ET AL., supra note 28.
130. TAYLOR, supra note 77, at 8.
131. Id.
132. CAL. CONST. art. IX, § 5.
133. Devos et al., supra note 72, at 481, 484 (stating that transparency would very likely be an example of a representative government fulfilling its obligations of informing the electorate and behaving responsibly overall).
134. Matosantos, 267 P.3d at 592.
135. Devos et al., supra note 72, at 484.
136. TAYLOR, supra note 77, at 8.
137. Id.
the inception of TIF until the dissolution of RDAs, the gross tax revenues allocated to RDAs through TIF grew from two percent of all tax revenue to twelve percent with some RDAs reported as high as twenty-five percent of all tax revenues for their locality. The diversion of tax funding away from other crucial state government functions by TIFs was cited as a major downfall of RDAs. Comparing tax allocation between areas not under redevelopment with tax allocation in areas under redevelopment, local taxing agencies (e.g. schools) cease to receive the increase in tax revenue above the base assessment value established at the adoption of the redevelopment plan. Elimination of RDAs was projected to provide $3 billion in TIF revenue to the state General Fund. To date, evaluation of the exact fiscal impact of RDA dissolution on the General Fund is yet to be completed.

One issue that was left unaddressed by Legislative Analyst Office’s report supporting RDA dissolution was what type of sustained benefits toward other taxing entities would actually be realized. The core assumption that, but for the redevelopment plan, the increased tax revenues would not be generated, was not rebutted. If the assumption is true, then the increase in revenues for other taxing entities is only due to the increase in property value already effectuated through redevelopment. Because future development is not being subsidized by RDAs, property values will only rise and fall with the market. Local government will be limited in their power to affect blighted areas in which property values will remain depressed resulting in likewise depressed property tax revenue.

E. Lack of Substantial Benefit to Property Value

Although the report noted that “property values within project areas increase more than comparable areas within a region” it discounted this benefit by also stating, “[t]his is not surprising as we would expect areas receiving public subsidies to outperform those that do not.”

Problematically, the report failed to take into account the blight requirement under section 33030 of the California Health and Safety Code. Except for cases involving abuse of the blight requirement, RDAs are intended to provide rejuvenation to otherwise depressed areas. Assuming the RDA was employed in this capacity, the property values would originally be much lower than comparable areas. The
greater than average increase in property values as a result of “receiving public subsidies” from RDAs should be recognized as an accomplishment precisely in line with the policy and goals of RDAs.

F. Proposal: Maximum Cap on Percentage of Total Tax Revenue

In response to the Legislative Analyst Office’s report supporting Governor Brown’s proposal to dissolve RDAs, a bill proposing to revive RDAs should place a cap on the maximum percentage of total tax revenue that can be received by RDA special funds through TIF. This cap would deter RDAs from overextending the scope of redevelopment for the sole purpose of grasping for greater tax revenues and would refocus the organization on the task of remedying blight with deliberate precision, diverting less revenue from schools and other taxing entities. A cap on percentage of total tax revenues would also increase institutional trust because RDAs would be restrained to take tax revenue proportionately to the benefits they are intended to provide. While the need to protect health and safety through redeveloping dilapidated urban structures is a worthy cause, in comparison to education, police, fire, and other local services, it is an untenable position that twenty-five percent of total tax revenue is representative of the actual need for redevelopment.

In the words of the now infamous Chief Administrative Officer of the City of Bell, Robert Rizzo, “Pigs get Fat . . . Hogs get slaughtered . . . .” Following the proverbial “slaughter,” if RDAs are revived they should take care not to get too greedy to avoid being placed on the chopping block should another budget crisis arise in the future.

G. Proposal: Provide State Review Authority with the Power to Approve or Deny Indebtedness

As proposed in the blight section, supra, a State Review Authority could also be given power to approve or deny indebtedness. Power to approve or deny indebtedness is important to temper arbitrary activity and provide greater transparency especially when cities and counties continue to shoulder the debt for periods of thirty years or more. Temperance of arbitrary activity on the part of local governments should go a long way toward increasing institutional trust.

150. Devos et al., supra note 72.
VI. SB 1

A. Purpose

SB 1 was originally introduced by Senator Steinberg on December 3, 2012.151 SB 1 recited the following reasons for the bill: revitalization of the construction industry and restoration of construction jobs, attainment of environmental objectives, implementation of growth plans identified by Metropolitan Planning Organizations, ("MPO")152 development of Transit Priority Projects, ("TPP")153 continued production of low-income housing, and the reduction of transit and housing costs created by inefficient development.154

B. SB 1 is an Appropriate Vehicle to Revive RDAs because it is Sensitive to the Budgetary Concerns Created by Wasteful TIF

SB 1 adds additional prerequisites to the receipt of TIF funds that are responsive to concerns justifying their dissolution in 2011.155 Section 34191.26(a-b) of SB 1 encourages the use of public transit by restricting parking in TPP Areas156 and requires SCIAs to “[i]mplement a program for community outreach, local hire, and job training that includes disadvantaged California residents, including veterans of the Iraq and Afghanistan wars, people with a history in the criminal justice system, and single-parent families.”157 Section 34191.27(a)(7) protects school district tax revenues by preventing SCIAs from receiving TIF that would have been taken from school districts as a result of section 33670(a) of the California Health and Safety Code.158

Sections 34191.26(a-b) of SB 1 increase the benefits of SCIAs beyond redevelopment alone, and add a social welfare provision to both increase the use of public transit and increase the benefit to local workers, especially disadvantaged California residents.159

Section 34191.27(a)(7) responds to the court’s concerns in Matosantos by removing some of the RDAs advantages in the “Shell Game” of competing for tax revenues.160
Overall, the provisions increasing the value of SCIAs both socially and economically should prove beneficial if SB 1 reaches Governor Brown’s desk and faces a possible veto.

C. Criticism

In the run up to Steinberg’s request to transfer SB 1 to the inactive file, libertarian groups and one Bay Area political action committee criticized the bill’s alteration of the blight requirement and predicted widespread eminent domain abuse as a result. Some blogs and commentaries deemed SB 1 a “Soviet” centralized planning measure, while some others decried the bill as evidence of a conspiracy furthering the United Nation’s Agenda 21 based upon the similar language of “Sustainable Communities” used in Agenda 21.

Hyperbole and conspiracy theories aside, redefining blight as proposed by SB 1 would be disastrous for institutional trust in state and local government, because long established protections against eminent domain abuse would be stripped away. As discussed in the blight section, supra, the blight requirement provides greater protection to landowners from eminent domain abuse than the United States Constitution. The historical increase in protection provided by the statutory blight requirement demonstrates the California Legislature and court’s policy to restrict redevelopment to circumstances objectively demonstrating blighted conditions. Removing the blight requirement in the case of SCIAs would undermine the longstanding policy and very likely lead to arbitrary takings tempered only by the limits set forth by the United States Constitution and Kelo. AB 2280, although substantially similar to SB 1 has not received nearly as much criticism. Part of AB 2280’s relative success may be attributable to dropping the sustainable communities label and adopting Community Revitalization and Investment Authority (“CRIA”) instead.

D. Redefining Blight

Although neither SB 1 nor AB 2280 repeal the blight requirement codified in sections 33030 and 33031 of the California Health and Safety Code nor exempt SCIAs or CRIAs from compliance with sections 33030 or 33031, SB 1 and AB 2280

161. See SB 1 Sustainable Communities Investment Authority, supra note 11.
162. See McQuillan, supra note 15; Grimes, supra note 15; Beware CA SB 1- Sustainable Communities Investment Authority, supra note 15.
drastically reduce protection afforded by the blight requirement by declaring the same circumstances recited as the purpose for the bill are a form of blight which SCIAs and CRIAs can address.\textsuperscript{165} SB 1 references the "manipulation of the definition of blight"\textsuperscript{166} as an aspect of the former redevelopment program that "created so much controversy"\textsuperscript{167} while moving well past manipulation to turn the blight requirement on its head as AB 2280 does in near identical fashion.

Section 34191.20(c) of SB 1 provides, "an authority created pursuant to this part may rely on the legislative determination of blight and shall not be required to make a separate finding of blight or conduct a survey of blight within the project area."\textsuperscript{168} Section 34191.51(f) of AB 2280 provides, "[t]he conditions described in subdivision (d) and (e) shall constitute blight within the meaning of the Community Redevelopment Law. The authority shall not be required to make a finding of blight or conduct a survey of blight within the area."\textsuperscript{169} Additionally, section 34191.12 of SB 1 provides, "[t]he Legislature finds and declares that the interrelated problems identified in this chapter are a form of blight that can be addressed through a new Sustainable Communities Investment Program."\textsuperscript{170}

The language of SB 1 sections 34191.20(c) and 34191.12 as well as AB 2280 section 34191.51(f) is ambiguous, allowing a SCIA or CRIA to bypass the blight requirement altogether. One reading of section 34191.20(c) is that a SCIA is only allowed to bypass making its own finding of blight, as required by section 33352 of the California Health and Safety Code, if there is a legislative determination that the specific project area is blighted. The requirement of a legislative determination that a specific project area is blighted would provide more protection against a SCIA bypass of the blight requirement than a requirement of a general legislative finding, because SCIAs would not be able to rely on a blanket finding that particular circumstances constitute blight. Section 34191.12 of SB 1 may be construed as a blanket finding of circumstances that constitute blight. Section 34191.51(f) eliminates ambiguity by simply removing the requirement of a blight finding all together.\textsuperscript{171}

It is uncertain whether the State Legislature may make a legislative determination that an area is blighted. If the State Legislature may make such a determination of blight, then it is possible for a court to construe section 34191.12 of SB 1 as a finding of blight. Such construction would be the blanket finding of blight allowing all SCIAs to bypass section 33352(b) blight reporting and finding requirements entirely resulting in drastically reduced protections from eminent domain takings.

\textsuperscript{165} See S.B. 1, 2013 Leg., Reg. Sess. § 34191.12 (Cal. 2013); CA A.B. 2280 § 34191.51.
\textsuperscript{166} See CA S.B. 1 § 34191.13.
\textsuperscript{167} Id.
\textsuperscript{168} Id. § 34191.20(c).
\textsuperscript{169} CA A.B. 2280 § 34191.51(f).
\textsuperscript{170} See CA S.B. 1 § 34191.12.
\textsuperscript{171} CA A.B. 2280 § 34191.51(f).
Furthermore, “legislative determination” is not defined in SB 1 nor is it defined anywhere else in the California Health and Safety Code. The legislature that would make the proposed determination in lieu of the SCIA remains unidentified. The most likely candidate is the “Legislative Body” defined in section 33007 of the California Health and Safety Code as “the city council, board of supervisors, or other legislative body of the community.”\textsuperscript{172} The “Legislative Body” is the entity to which RDAs were required to submit reports pursuant to section 3335.

Assuming the “legislative determination” is intended to be made by the “Legislative Body” defined in section 33007, the protection afforded by section 3335\textsuperscript{2}(b) requiring “[a] description of the physical and economic conditions specified in section 33031 that exist in the area that cause the project area to be blighted”\textsuperscript{173} would be lost because section 33352 only imposes requirements on RDAs and not on the “legislative body” to which RDAs were required to submit reports.\textsuperscript{174} Essentially the “legislative body” would be able to make arbitrary decisions on eminent domain takings with no accountability.

E. Proposal: Striking Sections 34191.20(c) and 34191.12 from SB 1 or 34191.51(f) from AB 2280.

Lack of accountability and arbitrary decision making regarding eminent domain takings are examples of irresponsible government activity that would likely result in reduced institutional trust.\textsuperscript{175} Therefore, I propose that sections 34191.20(c) and 34191.12 be stricken from SB 1 altogether. Striking sections 34191.20(c) and 34191.12 would eliminate the ambiguity discussed \textit{supra} and eliminate the opportunity for the “legislative body” or the successor RDAs from making arbitrary decisions while increasing accountability by continuing the requirement of blight findings approved by the legislative body and reviewable by the court.\textsuperscript{176}

Additionally, once the ambiguity is removed from SB 1 by striking sections 34191.20(c) and 34191.12, the bill can be used as a framework to add provisions to carry out my previous proposals regarding blight and TIF in order to increase institutional trust while bringing back RDAs to allow local government to continue to address blight in a more responsible manner.

F. Uncertain Future

Ultimately, Senator Steinberg held back the bill from Governor Brown’s desk for fear of a veto.\textsuperscript{177} The bill was substantively the same as Steinberg’s 2011 bill, SB 1156 which Governor Brown vetoed stating, “new investment programs, like the one

\textsuperscript{172} \textit{CAL. HEALTH & SAFETY CODE} § 33007 (West 2014).
\textsuperscript{173} \textit{Id.} § 33352(b) (West 2014) (effective Jan. 1, 2007).
\textsuperscript{174} \textit{Id.} § 33352.
\textsuperscript{175} \textit{Devos et al., supra} note 72, at 481, 484.
\textsuperscript{176} \textit{CAL. HEALTH & SAFETY CODE} § 33352.
\textsuperscript{177} \textit{Editorial, supra} note 14.
proposed by SB 1156, should be considered after the winding down of redevelopment is complete and General Fund savings are achieved." It is uncertain whether Steinberg will renew his efforts to pass SB 1; however, if he does, the blight requirement should not be bypassed in order to avoid damaging what institutional trust might remain in local and state government to carry out redevelopment. In any case, AB 2280 may pick up where SB 1 left off and be the ultimate vehicle for redevelopment’s reincarnation.

VII. CONCLUSION

Using SB 1 as a framework and revising it to remove ambiguity regarding the blight requirement, California’s RDAs can be revived. However, increasing the protections provided to landowners through the blight requirement by renewing development of a State Review Authority and providing for attorney’s fees against RDAs that abuse the blight requirement would increase institutional trust in the newly revived RDAs by reducing the capacity for RDAs to act arbitrarily. Reducing the fiscal drain on other public services by imposing a maximum cap on tax revenue on TIF available to RDAs proportionate to the benefits RDAs provide would likewise temper the division of funds in a responsible manner. Granting the aforementioned State Review Authority the power to approve or deny indebtedness would further temper the lack of voter approval for indebtedness to promote fiscally responsible development thus increasing institutional trust.

Regardless of whether some or all of the aforementioned proposals would be adopted in SB 1 or AB 2280, it is critical to remove sections 34191.20(c) and 34191.12 from SB 1 and section 34191.51(f) from AB 2280 to remain consistent with the history of California Redevelopment Law in striving to provide more protection for landowners from eminent domain takings. In light of the heavy criticism of SB 1’s redefinition of blight and the well-founded fear of eminent domain abuse, assuming sections 34191.20(c) and 34191.12 are not removed, it may be better that SB 1 remains shelved indefinitely. However, in light of the fact that AB 2280 has not encountered much criticism at all, it is important that section 34191.51(f) be removed before the bill is signed into law.

In light of the benefits of allowing local government to replace substandard housing and to promote the construction of low-income housing, especially in the face of blighted conditions caused by the foreclosure crisis, provided the protection afforded to landowners by the blight requirement remains as robust as it was prior to dissolution, it is important that redevelopment continue.


179. See, e.g., Khouri, supra note 9.