

DEVELOPMENT RIGHTS

WINTER 2006

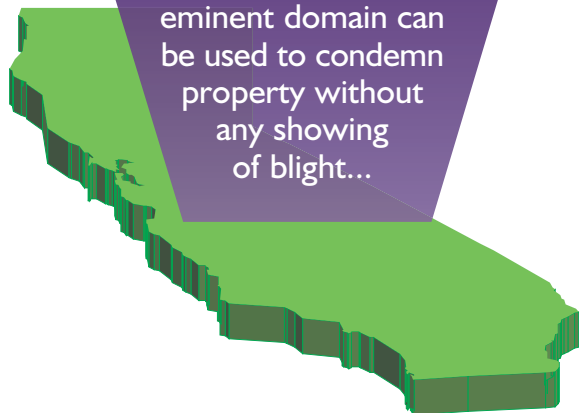
C O N D E M N A T I O N

The Effect of “Kelo” on California Property Owners

by Benjamin M. Reznik

On June 23, 2005, a bitterly divided U. S. Supreme Court upheld a local government’s use of eminent domain to seize private property “for the purpose of economic development.” Previously, courts had looked to the standard of whether property would be directly taken “for public use,” under the Fifth Amendment. However, in *Kelo v. City of New London, Conn.*, the Supreme Court expanded the right of municipalities to exercise eminent domain so long as the property in question was “serving a public purpose,” a seemingly much broader standard.

... *Kelo* represents the first time the Supreme Court has ruled that eminent domain can be used to condemn property without any showing of blight...



Historic Standards

The Fifth Amendment of the Constitution explicitly states, “private property [shall not] be taken for public use without just compensation.” Throughout history, government has “taken” property for such public uses as railroads, schools, hospitals, military bases, public utilities, government buildings, and, more germane to the Kelo case, to rectify urban blight. However, Kelo represents the first time the Supreme Court has ruled that eminent domain can be used to condemn property without any showing of blight, and such condemnation power can also be used to transfer condemned property from one private owner to another.

In California

Unlike Connecticut, California’s current laws only allow eminent domain to be used to acquire property for economic development in areas that are deemed to be “blighted.”

(continued from page 2)

D E V E L O P M E N T

Zen is Coming to Downtown Los Angeles

by John M. Bowman

JMBM is working on bringing Zen to downtown Los Angeles. Not the kind of zen with which we’re all familiar, but a 50-story high rise condominium project that will be by far downtown’s tallest residential project when completed.

Zen is being developed by Kawada Company of America, Ltd., whose principal Natsuo (“Nat”) Kawada, has been active in the downtown business community for many years. Mr. Kawada’s companies own or control several downtown properties, including the nearby Kawada Hotel.

The project is located on what is now a surface parking lot on the northeast corner of Third and Hill streets in downtown Los Angeles, near the famous Grand Central Market.

As contemplated Zen will incorporate 302 “soft-loft” and penthouse condominium units ranging from 580 to 2,420

(continued from page 2)



DEVELOPMENT RIGHTS

The Effect of "Kelo"... continued from page 1

As defined by the California Redevelopment Law, a "blighted" area must have two characteristics: 1) it must be located in an urban area; and 2) the blight must be so prevalent and so substantial that it causes a serious physical and economic burden on the community which cannot reasonably be reversed or alleviated by private enterprise or governmental action without redevelopment (i.e., condemnation). Following the Court decision, legislators in Congress and in 28 states, including California, have introduced legislation to greatly restrict the use of eminent domain process.

Conclusion

In the end, if the media and political backlash of the Supreme Court's ruling is any indication, the pen might be mightier than the gavel. Newspapers have reported that Pfizer, Inc., the pharmaceuticals manufacturer that started the whole controversy when it announced plans to build a global research facility in the City of New London, has halted development plans for the area and is awaiting a state decision on the proper use of eminent domain. In the future, local agencies may be reluctant to use eminent domain for fear that a small project might create a sizeable controversy—one that no amount of positive economic development can easily overcome. ■

Benjamin M. Reznik is Chairman of the Government, Land Use, Environment and Energy Group at Jeffer, Mangels, Butler & Marmaro LLP. Mr. Reznik's practice emphasizes real estate development entitlements, zoning and environmental issues, including frequent appearances before city planning commissions, city councils and other governmental boards and agencies on behalf of real estate development firms.

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Zen is Coming... continued from page 1

square feet in area. The residential units will be contained within a slender tower that will rise 40 stories above a "podium" of above-ground and subterranean parking and ground floor commercial uses. Zen will feature about 10,000-square-feet of retail use at the street level, including a sports-themed restaurant and an upscale convenience store. Kawada Co. also plans to build a 52,000-square-foot spa and fitness center and pool on the top of the parking podium, according to John Bowman, GLUEE partner in charge of obtaining the entitlements for the project.

"Zen is located in the City Center Redevelopment area on a site planned for regional center commercial use," Bowman said. "However, the current zoning of the property, which effectively limits the site to a 6:1 floor area ratio, discourages mixed use and does not accommodate the development of new housing." For this reason, a site-specific land use ordinance will be requested, along with a number of conditional use permits and variances.

According to Bowman the entitlement process for Zen is in its preliminary stages, with the land use application being recently filed with the City's Expedited Approval Unit. The world-renowned architectural firm, Skidmore, Owings & Merrill is designing Zen. ■

John M. Bowman is a Partner in the Government, Land Use, Environment and Energy Group at Jeffer, Mangels, Butler and Marmaro LLP. Mr. Bowman draws upon his background as a city planner in representing a broad spectrum of clients involved in the real estate development process. He specializes in zoning, subdivisions, community redevelopment, historic preservation and the California Environmental Quality Act.

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JMBM WELCOMES

Two New Members to the GLUEE Group

The Government, Land Use, Environment and Energy Group (GLUEE) at Jeffer, Mangels, Butler and Marmaro LLP is proud to announce the addition of Associate **Frank Chimienti** and Of Counsel **David Cincotta** to its team.

A graduate of Fresno State University and UCLA's School of Law, **Mr. Chimienti** previously worked in environmental compliance for the wine industry and dealt with such issues as wastewater management and ethanol emissions. He will be located in JMBM's Century City office.

Mr. Cincotta recently joined JMBM's GLUEE Group in the Firm's San Francisco office. Mr. Cincotta served as Deputy Director of Housing and Community Development under San Francisco Mayors Alioto, Moscone, and Feinstein, and was responsible for developing housing policy issues and disbursing federal, state and local housing funds. His clients include publicly owned corporations, real estate investment trusts, individuals, small firms and foundations with a concentration on real estate developers and property owners. ■

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F O R U M

Bud Ovrom Speaks at Business Issues Forum

JMBM featured Robert (Bud) Ovrom, Los Angeles Deputy Mayor in charge of Housing and Economic Development. Mr. Ovrom coordinates the City's economic development efforts and oversees the Departments of Planning, Housing, Community Development, Community Redevelopment, the Port of Los Angeles, Building and Safety, and the Housing Authority.

In introducing Ovrom, Ben Reznik joked that when, earlier in the week, Mayor Villaraigosa had announced his plan to raise \$1 billion in bonds for affordable housing in Los Angeles, he turned to Ovrom and said, "now you figure out how to do it." But the reality is far from a joke. Bud Ovrom has been charged with the responsibility of putting into effect the Mayor's new ambitious and progressive vision for the future of housing in Los Angeles.

Background and Qualification

Ovrom had already proven himself over many years of public service. He has worked as City Manager of Downey, Monrovia and most recently Burbank. In 2003, Ovrom left to become Chief Executive Officer/Administrator of the Los Angeles Community Redevelopment Agency (CRA), a position he held until June of 2005.

It was at CRA, a resource oriented organization, that Ovrom first faced the frustration of working with Los Angeles' 44 city department heads. Disillusioned by the gross inefficiencies of the organization, Ovrom decided that once his time at the CRA was up, he would retire. That was the

plan until Antonio Villaraigosa successfully won his campaign for Mayor.

Impressed by the new Mayor's energy, enthusiasm and vision, Ovrom committed himself to any task the Mayor had for him. On July 1, he was tapped as the Deputy Mayor for Housing and Economic Development. Both Villaraigosa and Ovrom agreed that the sprawling and inefficient city administration must be streamlined and that the executive powers granted to the Mayor's office in the City Charter provided the perfect tools to do so.

New Challenges

In his new role, Ovrom oversees a team of seasoned professionals committed to the immediate cause of stimulating the economy and providing housing. By streamlining and consolidating power under the Mayor's office, Ovrom feels that real progress can be made in stimulating development. Villaraigosa's commitment to supporting development does not come at the expense of his commitment to affordable housing and prevailing wages, Ovrom pointed out, continuing that the new administration "believes that affordability will be achieved by promoting economic incentives to developers to make their projects pencil."

To what degree working with the City Administration will change under new leadership is yet to be seen, but it is clear that in his short time as Mayor of Los Angeles, Antonio Villaraigosa has assembled a committed, devoted and heavily experienced team on which he can rely. Leading that team's effort is Bud Ovrom. ■

Ben Reznik welcomes Bud Ovrom at JMBM's Forum.



Ovrom addresses JMBM's Forum.



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C O N D O H O T E L S

TLC v. a Dose of Reality: San Francisco's Moratorium on Condo Hotel Conversions

by David P. Cincotta

In August 2005, San Francisco raced into action at a speed uncommon for most governmental bodies and adopted an ordinance that prohibits the conversion of hotel guest rooms to condominiums in any hotel of 100 or more guest rooms. This moratorium has been put into place for 18 months while the City studies the potential economic impacts of the conversion of hotel guest rooms on the economy of San Francisco.



Why a moratorium?

It became known early in the summer that the Fairmont Hotel was exploring a plan to convert 226 of its 591 rooms into 60 housing units. Although a number of high profile hotels in San Francisco have included a condominium component for many years, the notion that the City's Nob Hill landmark was considering reconfiguring its hotel rooms set off alarms throughout the City. San Francisco Supervisor Aaron Peskin compared it to "turning the Eiffel Tower into an office building." Ironically, the portion that was being considered for conversion was not the historic older portion of the Fairmont but the newer wing that was added in 1961. It may seem that an 18-month moratorium to prevent transient hotels from converting to condominiums is an overreaction. However, there is considerable history within San Francisco that will clarify the actions of the City. San Francisco is a strong union town. There is a continuing bitter labor battle between the hotel workers unions and 14 hotels in the City, which began in late 2004. To say that this moratorium arose out of this labor dispute is probably too simplistic a view.

Additionally, San Francisco's economy is based to a large extent on its tourism industry and the potential impact on the fiscal health of San Francisco is substantial. In 2004, San Francisco saw \$4.07 billion pumped into its economy from its hotel industry and one out of every seven jobs in the City is in leisure and hospitality services. The City is right to be concerned about any movement in the hotel industry that might threaten the City's well-being.

What are the issues?

Without completely understanding what condo hotels would mean to the City, it chose to impose a moratorium. It is now the obligation of the hotel operators and developers who are pursuing these conversions to clarify the picture of how these operate, generate property tax revenue, impact jobs and so forth. Should these rooms provide more parking? Should they be required to meet the open space requirements of a condo/apartment building? Will other programs be affected? For example, the City and County of San Francisco has a requirement for all new, rehabilitated or converted residential developments in excess of 10 units to create jobs for San Franciscans.

Most successful condo hotels have 80-90 percent of their condo owners participating in a rental program in which their units are used as hotel room inventory. This would still require the full range of services provided by hotel workers, and would continue to generate occupancy taxes for the City.

What should developers do?

When the moratorium expires, whatever regulatory scheme that is being proposed will need to a) be responsive to the concerns of various community interests; b) preserve the opportunity for new real estate investment activity; and c) be economically viable for developers, hotel operators, hotel workers, and the city's coffers. Developers who are pursuing hotel-condo conversion opportunities will need to take the lead in this process by providing each community with accurate information and work with all stakeholders so that a reasonable compromise proposal can be reached. ■

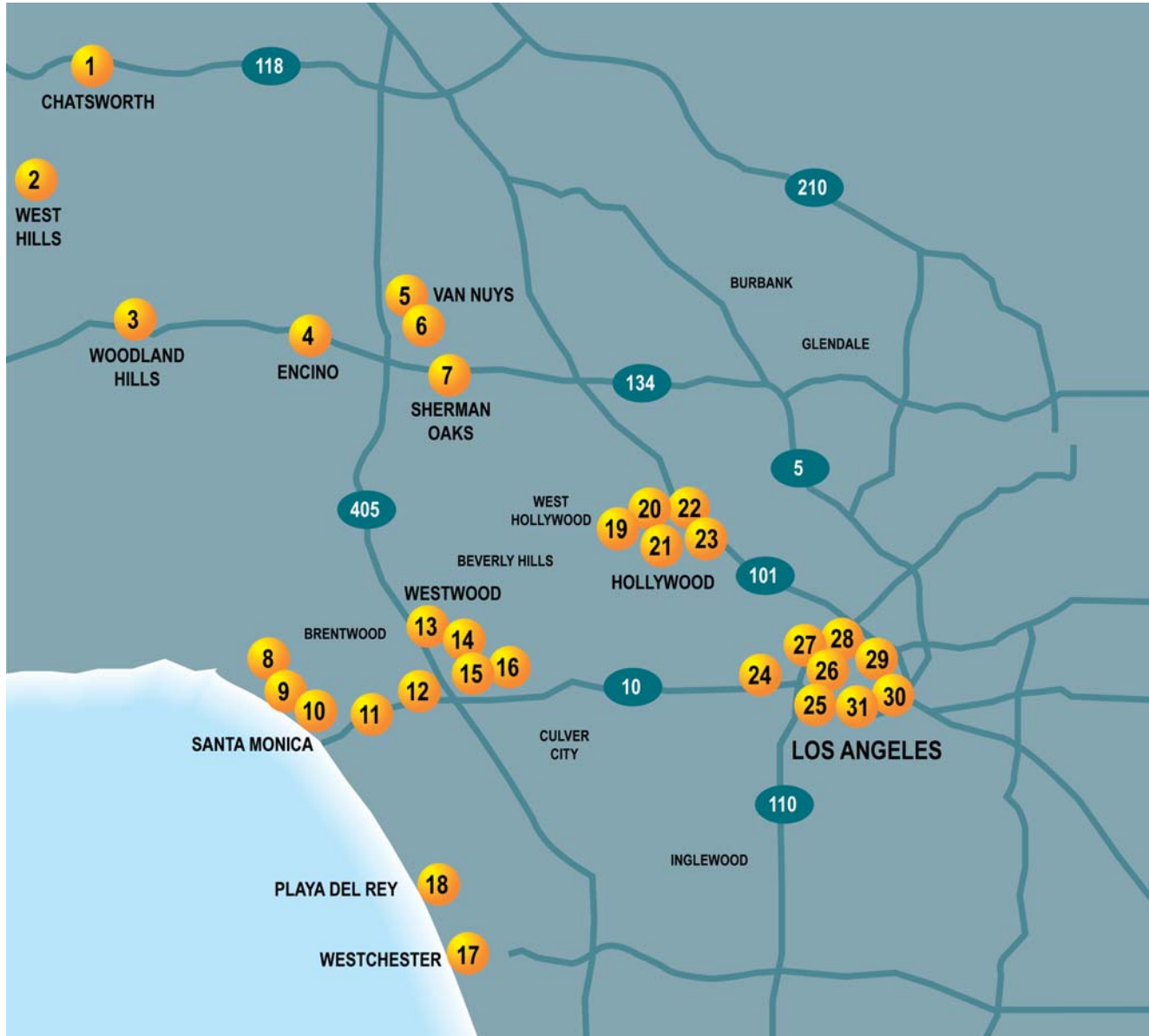
David P. Cincotta is Of Counsel in the Government, Land Use, Environment and Energy Group at Jeffer, Mangels, Butler and Marmaro LLP. He specializes in obtaining land use entitlements for commercial, mixed use and residential developments in San Francisco and the Bay Area.

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DEVELOPMENT RIGHTS

JMBM is Entitling Projects Throughout Los Angeles



SAN FERNANDO VALLEY

- 1 WAMU Corporate Campus
- 2 West Hills Corporate Center
- 3 Warner Center Apartment Project
- 4 Encino Mixed-Use
- 5 Best Buy Department Store
- 6 Industrial Condo
- 7 Belmont Village/Sherman Oaks

WESTSIDE

- 8 Palisades Landmark Condos
- 9 145 Unit 18 Building Apartment Project

10 Ocean Avenue Hotel

- 11 Pico Apartments
- 12 EZ Storage Pico, Ltd.
- 13 UCLA/Hillel
- 14 Westwood Sav-On
- 15 Belmont Village Assisted Living (Wilshire)
- 16 Condo High Rise Wilshire/Club View Drive
- 17 Furama Hotel Redevelopment
- 18 Sea Glass Townhomes

HOLLYWOOD

- 19 Adaptive re-use/7060 Hollywood Blvd.
- 20 Mixed-Use at Pantages Theatre

21 The Broadway at Hollywood & Vine

- 22 W Hotel & Condos
- 23 Belmont Village/Hollywood

CENTRAL LOS ANGELES

- 24 Koreatown Condo hotel & office
- 25 The Coliseum Center
- 26 Molina Street Lofts
- 27 5th & Bixel Apartments
- 28 The Medici, Visconti & Orsini
- 29 Beaudry Apartments
- 30 Meta Senior Housing Project
- 31 Zen Tower

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I N T H E N E W S

John Bowman was quoted in the *Riverside Press-Enterprise's* Oct. 21, 2005 story, "Firm Dealt Setback on Metal Shredder" and was mentioned in the *San Bernardino Sun's* Oct. 5, 2005 story, "Colton Environmental Study on Shredder Challenged."

David Cincotta was mentioned in the May 23, 2005 Pacesetters column of the *California Real Estate Journal* as having joined JMBM in the San Francisco office. His move to JMBM was also included in the May 16, 2005 edition of *CalLaw* and the May 16, 2005 issue of *The Recorder*.

Ken Ehrlich was quoted in *LBReport's* Oct. 6, 2005 article, "California Public Utilities Commission—Retained Expert Says Three Mile LNG Hazard Distance From PoLB Site Is Minimum Credible In Terrorist Attack" and in *The Legal Intelligencer's* Sept. 6, 2005 story, "Day at the Beach Can Mean a Day in Court."

Ben Reznik was quoted in the *Los Angeles Times's* Sept. 16, 2005 story, "School is Still Out at LA Charter Campus" and in *The*

Argonaut's Aug. 25, 2005 story, "City Council Wants Staff to Negotiate Development Agreement for 75-Room Ocean Ave. HotelProject." He was also mentioned in the *Long Beach Press Telegram's* Aug. 24, 2005 story, "LNG Remains a Contentious Issue." On Oct. 11, 2005, he spoke on Housing at the Jonathan Club Breakfast Club.

Malcolm Weiss spoke at the UCLA Ziman Center's Residential Real Estate Conference on Sept. 15, 2005.

Malcolm Weiss and **David Cincotta** gave a presentation, "Executive Briefing for Rental Housing Executives," to a number of industry executives at the BRE Properties' REIT Roundtable in San Francisco on July 13, 2005.

Michael Yaki appeared on San Francisco's KTVU Channel 2 on Sept. 2, 2005 as part of their coverage on Hurricane Katrina. He was interviewed about FEMA's role and response efforts to the disaster. ■

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Our experience ranges from individual properties to billion dollar portfolios. Large or small, routine or complex, if a legal matter has your attention, it deserves ours too.

FORWARDING SERVICE REQUESTED

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