Select Committee to Protect Private Property Rights

Tuesday February 7, 2006
3:30 p.m.—6:00 p.m.
Morris Hall

Revised Meeting Packet

Allan G. Bense
Speaker

Marco Rubio
Chair

Assumptions

Select Committee to Protect Private Property Rights

Assumptions Considered by Interested Parties in Responding to Issues Addressed in Matrix #3

The following assumptions should be considered when answering the questions. The assumptions do not represent recommendations of the Committee at this time; rather, they are simply operating assumptions intended to facilitate further discussion of policy issues.

1. Private property should not be taken for the sole purpose of creating jobs and enhancing the tax base of a community.

2. The current definitions of "slum area" and "blight area" found in the Community Redevelopment Act are insufficient to support takings of private property by eminent domain. Therefore, a new set of conditions will be identified for the purpose of taking private property under the Act.

3. The current definitions of "slum area" and "blight area" should continue to apply for purposes of the Community Redevelopment Act, i.e., tax increment financing, creation of new CRAs, and expansion of existing CRA boundaries, but should not apply to takings of specific parcels of private property within a community redevelopment area.

4. A parcel of private property should not be taken under the Community Redevelopment Act unless that parcel meets the new conditions identified.

5. Any new conditions identified as necessary to support the taking of a specific parcel of property under the Community Redevelopment Act should apply to existing community redevelopment agencies in future attempts to take property.

6. Owners of homestead property should be compensated for the loss of the "Save Our Homes" protection.

7. A property owner should be provided an opportunity to defend against a taking by showing that the property owner has a practical and economically feasible plan to cure the conditions on the property leading to taking.

8. City and county procedures leading up to the creation of a redevelopment area do not adequately inform property owners that the power of eminent domain may be utilized to obtain property within the redevelopment area.

Procedural Proposal

SELECT COMMITTEE TO PROTECT PRIVATE PROPERTY RIGHTS
DRAFT PROCEDURAL PROPOSALS
January 27, 2006

I. SUMMARY OF CURRENT STATUTORY PROVISIONS

- Prior to the exercise of any powers under the Community Redevelopment Act, a county or city must adopt a resolution that makes a legislative finding that conditions in the area meet the criteria described in the statutory definitions of "slum area" or "blighted area". If adopted, the resolution establishes the boundaries of the community redevelopment area. All private property located within the area is subject to taking if taking the property is reasonably necessary to eliminate the slum or blight conditions.

- Prior to the public hearing at which the proposed resolution is adopted, notice of the meeting must be published at least once in a newspaper of general circulation 10 days prior to the meeting. The notice must state the date, time, and place of the meeting; the title of the resolution; and the place or places within the county where the resolution may be inspected by the public. The notice must also advise that interested parties may appear at the meeting and be heard. [s. 163.346. F.S.]

- Prior an expansion of a community redevelopment area's boundaries, the city or county must adopt a resolution that makes a legislative finding that conditions in the expanded area meet the criteria described in the statutory definitions of "slum area" or "blighted area" in accordance with the notice provisions summarized above. [s. 163.361(4), F.S.]

- Prior to adoption of a community redevelopment plan, a community redevelopment agency may acquire property by eminent domain if approved by the city or county. [s. 163.370(3)(a), F.S.]

II. DRAFT ENHANCED NOTICE PROPOSAL

A. Prior to city or county consideration of a resolution finding slum or blight conditions in the area

[Note: The notice procedures in 1. and 2. below are not identical but are substantially similar to those found in ss. 125.66 and 166.041, F.S., which relate to proposed county or city ordinances that change the actual list of permitted, conditional, or prohibited uses within a zoning category, and to proposed ordinances that change the actual zoning map designation of a parcel or parcels of land.]

1. At least 30 days prior to the date set for the first public hearing where a proposed resolution finding slum or blight conditions will be considered by the city or county, actual notice must be mailed via first class U.S. Mail to each fee owner whose property may be included within the community redevelopment area and to each business owner, including lessees, who operate a business located on the property that may be included within the community redevelopment area.

   Fee Owner Notice: Notice must be sent to the fee owner's last known address listed on the county ad valorem tax roll. Alternatively, the notice may be personally delivered to the fee owner of the property. If there is more than one owner of a property, notice to one owner constitutes notice to all owners of the property. The return of the notice as undeliverable by the postal authorities constitutes compliance with this provision. The condemning authority is not required to give notice to a person who acquires title to the property after the notice required by this section has been given.

Business Owner Notice: Notice must be sent to the address of the registered agent for the business located on the property to be acquired, or if no agent is registered, by certified mail or personal delivery to the address of the business located on the property to be acquired. Notice to one owner of a multiple ownership business constitutes notice to all business owners of that business. The return of the notice as undeliverable by the postal authorities constitutes compliance with these provisions. The condemning authority is not required to give notice to a person who acquires an interest in the business after the notice required by this section has been given.

At a minimum, the mailed notice to the fee and any business owner must:

a) Generally explain the purpose, effect, and substance of the proposed resolution;
b) Indicate that private property within the proposed redevelopment area may be subject to taking by eminent domain if the property meets the statutory criteria for taking;
c) Set forth the statutory criteria for taking property under the Community Redevelopment Act;
d) Indicate that private-to-private transfers of property may occur;
e) Contain a geographic location map that clearly indicates the area covered by the resolution, including major street names as a means of identification of the general area;
f) Provide the dates, times, and locations of future public hearings during which the resolution may be considered;
g) Identify the place or places within the county or city where the resolution may be inspected by the public;
h) Indicate that the property owner may file written objections with the local governing board prior to any public hearing on the resolution; and
i) Indicate that interested parties may appear and be heard at all public hearings at which the resolution will be considered.

2. In addition to mailing notice to property owners, the city or county must conduct at least two advertised public hearings prior to adoption of the proposed resolution. At least one hearing must be held after 5 p.m. on a weekday, unless the governing body, by a majority plus one vote, elects to conduct that hearing at another time of day. The first public hearing must be held at least 7 days after the day that the first advertisement is published. The second hearing must be held at least 10 days after the first hearing and must be advertised at least 5 days prior to the public hearing. The required advertisements must be no less than 2 columns wide by 10 inches long in a standard size or a tabloid size newspaper, and the headline in the advertisement must be in a type no smaller than 18 point. The advertisement must not be placed in that portion of the newspaper where legal notices and classified advertisements appear and must be placed in a newspaper of general paid circulation rather than one of limited subject matter. Whenever possible, the advertisement must appear in a newspaper that is published at least 5 days a week unless the only newspaper in the community is published less than 5 days a week. At a minimum, the advertisement must:

a) Generally explain the substance and effect of the resolution;
b) Include a statement indicating that private property within the proposed redevelopment area may be subject to taking by eminent domain if the property meets the statutory criteria for taking;
c) Provide the date, time, and location of the meeting;
d) Identify the place or places within the county or city where the resolution may be inspected by the public;
e) Contain a geographic location map that clearly indicates the area covered by the resolution, including major street names as a means of identification of the general area;

f) Indicate that any interested party may file written objections with the local governing board prior to the public hearing; and
g) Indicate that any interested party may appear and be heard at the public hearing.

B. Prior to consideration, at a public meeting, of taking private property by eminent domain

The city or county must formally adopt a resolution of taking at a public hearing in order to begin the process of taking a specific parcel of property under the Community Redevelopment Act. The city or county may not adopt the resolution of taking unless actual notice of the hearing was provided at least 45 days prior to the hearing to the fee owner of the proprety and to any business owner, including a lessee, who operates a business located on the property.

Fee Owner Notice: Notice must be sent by certified mail, return receipt requested, to the fee owner's last known address listed on the county ad valorem tax roll. Alternatively, the notice may be personally delivered to the fee owner of the property. If there is more than one owner of a property, notice to one owner constitutes notice to all owners of the property. The return of the notice as undeliverable by the postal authorities constitutes compliance with this provision. The condemning authority is not required to give notice to a person who acquires title to the property after the notice required by this section has been given.

Business Owner Notice: Notice must be sent by certified mail, return receipt requested, to the address of the registered agent for the business located on the property to be acquired, or if no agent is registered, by certified mail or personal delivery to the address of the business located on the property to be acquired. Notice to one owner of a multiple ownership business constitutes notice to all business owners of that business. The return of the notice as undeliverable by the postal authorities constitutes compliance with these provisions. The condemning authority is not required to give notice to a person who acquires an interest in the business after the notice required by this section has been given.

At a minimum, this notice to the fee and any business owner must indicate:

a) That the city or county governing body will determine whether to take the parcel under the Community Redevelopment Act and will formally consider a resolution of taking at a public hearing;
b) The statutory criteria for taking property under the Community Redevelopment Act;
c) The specific conditions on the property that satisfy the criteria for taking and that form the basis for taking the property;
d) That the property will not be subject to taking if the specific conditions that form the basis for the taking are removed prior to the hearing;
e) The date, time, and location of the public hearing at which the resolution of taking will be considered;
f) That the fee or business owner(s) may file written objections with the governing board prior to the public hearing at which the resolution of taking is considered; and
g) That any interested party may appear and be heard at the public hearing at which the resolution of taking is considered.

III. ADDITIONAL PROCEDURAL PROTECTIONS

1. The resolution finding slum or blight conditions, the community redevelopment plan, and any plan amendment must indicate whether property is subject to eminent domain and whether private-to-private transfers of taken property may occur.

2. The community redevelopment plan must specifically provide for the use of the power of eminent domain if the power may be exercised in the future.

3. The community redevelopment plan must be formally adopted prior to exercising the power of eminent domain to take any property that meets the criteria for taking under the Community Redevelopment Act.

Matrix 4

RESPONSES TO MATRIX 4

TAKINGS CRITERIA

Option 1

A parcel or property is eligible for taking if:
a. The parcel is impaired by reason of dilapidation, deterioration, age, or obsolescence of structures located on the parcel and the current condition of the property poses an immediate threat to public health or
b. The current condition of the parcel poses and immediate threat to surrounding property by fire or other causes; or
c. The parcel has been the subject of chronic violations of the municipal or county code and the current condition of the parcel poses an immediate threat to public health or safety or surrounding property by fire or other causes.

Respondent	Response to Option 1
Steve Lindorff, Director of Planning and Development, City of Jacksonville Beach	Legislation requiring local governments to "prove" that a specific parcel of land is "impaired" in order for a city or county to effectively deal with the problems of slums and blight on an areawide basis is not needed. It seems as though the Committee's work has gone beyond looking at curbing potential abuses of the use of eminent domain for economic development purposes to a movement to effectively eliminate the ability of cities and counties and their CRA's to work toward resolving the problems of slums and blighting conditions in their communities. If that is now the will of the Committee, then the Committee needs to also look into providing local government with alternative ways of dealing with those conditions. [b.] See response under "a" above. [c.] See response under "a" above.
Rick Stauts City of Homestead Assistant City Manager Executive Director, CRA	Should include that a taking is allowed if the property is and has been vacant for some period of time and is necessary for the assembly of sites under a plan adopted by the CR Agency that includes that site.
Wade Hopping and Butch Calhoun, Property Rights Coalition	No response
James Fintan Reilly - Sarasota County	It is absolutely necessary for the defense of our country.

Respondent	Response to Option 1
Florida Association of Counties	The condemning authority should not be statutorily required to prove that a specific parcel within a lawfully-created CRA meets the strict criteria of either Option 1, 2, or 3. These requirements, particularly Options 2 and 3, virtually ignore the duty that local governments have to protect the health, safety and welfare of their citizens. Some of that protection is provided through the vehicle of the community redevelopment agencies created and operated under law. In addition, with respect to all three options, outlined in this matrix, the condemning authority should not have to prove that a specific parcel in a CRA individually meets the proposed criteria. Such a requirement could thwart the purposes for which the CRA was created and undermine its ability to execute the plan for eliminating and preventing the recurrence of slum or blight. The Florida Association of Counties believes that requiring a condemning authority to prove that an individual parcel, lawfully a part of a CRA, meets the strict criteria of options 1, 2, or 3 is problematic. The Florida Association of Counties has consistently asserted that tightening the criteria for the purpose of creating CRAs would provide the appropriate balance between private property rights and the public's interest in eradicating slum or blight in a particular area. The proposed tightened conditions upon which an individual parcel could be taken would be difficult to ever meet, particularly at a heightened standard of proof. The concepts of slum and blight inherently connote an area-wide analysis and problem. A single building (or parcel), standing alone, would always have difficulty meeting a strict definition of slum or blight. The building (or parcel) is slum or blight, in large part, by reference to the parcels surrounding and adjacent to the one in question. The Florida Association of Counties has suggested that the Committee consider, specifically, tightening the statutory definition of blighted area for the creation of a CRA; reexamining the policy decisions underlying the factors that support a finding of blighted area; require that more factors be met in order to meet the definition of blighted area; return the concept of the area generating harm to the health, safety and welfare of the surrounding area and citizens; quantifying how many buildings/parcels must be present to meet the criteria; shortening the amount of time that the finding of blighted area could be used to support a taking; and considering a "surrounding area" test for taking for the purpose of slum or blight, rather than a parcel specific test. If the definitional/criteria changes were made to apply at the time of CRA creation, then the safeguards they promote (e.g., stricter scrutiny of the area and a constricting of the size of the geographic area in the CRA) would flow through ALL the powers lawfully exercised by the CRA, including the powers of taxation and eminent domain.

Respondent	Response to Option 1
	In addition, applying the definitional/criteria changes to the time of CRA creation ensures that the redevelopment plan, all the proposed projects, and all the financing stakeholders know, at the beginning, what statutory rules would apply to the future operations of the CRA. This approach, along with other substantive and procedural changes offered by the Florida Association of Counties during the Committee's deliberations, provides balance among the taxpayer investment in the redevelopment plan and individual property owners who may own property inside the CRA.
Glenn Vann, CRA Director, City of Port St. Lucie	Option 1 is somewhat inconsistent with reasonings defining "slum area" & "blighted area" under current CRA applicable State Statute. However, Option 1 is more inclusive of stated statutory reasonings than Option 2 or Option 3.
Florida League of Cities, Inc.	Object. The standard is nuisance abatement and will result in essentially no eminent domain in the CRA context.
Brigham Moore LLP (Andrew Prince Brigham, S. William Moore, John W. Little, D. Mark Natirboff)	Option 1 limits the use of eminent domain to improved properties, the condition of which, is harmful to the public requiring elimination. The context of such language is associated with the definition of "slum." The language is parcel specific, and not based on an area blight context. Of the language proposed in Options 1, 2, and 3, Subsection "a" (Option 1) is the most clear in terms of avoiding interpretive variance because of its specificity with regard to the adjectives used in describing the structures which pose a threat. Such objective criteria requires the property taken, itself, to be impaired. The use of the narrow terms "health" and "safety" are distinguished from the more broad term "welfare" which is not used. The proposed language will not authorized the use of eminent domain to assemble properties due to specific parcel or area context "blight" under the current definition of blight. Subsection "b" and Subsection "c" (Option 1) are less defined, and open the door for interpretive variance because of ambiguity. First, the use of the term "other causes" essentially removes all qualifying language other than threat to "health" or "safety." Second, because there is not reference to structures, subsections "b" and "c" may apply to vacant and improved properties alike. (For instance, forested lands may be "taken" because of insufficient fire breaks). This may provide impetus for a pretextual taking and subsequent third party transfer. Third, fire hazards or common law nuissances may result in a "condemnation" of structures under the police power. This results in the improvements being demolished at the owner's expense, but title is not vested in the public. This police power exercise is distinguishable from the proposed language authorizing a taking under the exercise of the eminent domain power, wherein title vests in government together with the obligation to pay compensation. Thus, Subsection "b" and "c" serve no purpose apart from what is already available to government under the police power if the public purpose is to remedy a harm or nuissance.

Respondent	Response to Option 1
William D. Van Allen, Jr.	[a.] "The parcel evidences neglect, unmitigated by the owner after two notices, resulting in dilapidation or an imminent threat to public health or safety" - the words "age" and "obsolescence" are too subjective, and allow too much room for abuse. [b.] delete - redundant if "safety" is included in definition "a" [c.] delete - unnecessary. Code violations are addressed by county ordinance, and the wording "chronic" is too subjective. Public health and safety addressed in previous clause.

Option 2

Property within a community redevelopment area may be taken by a county or city only for traditional public purposes such as roads, schools, parks, etc. Property within a community redevelopment area may not be taken, however, for the purpose of removing an immediate threat to public health and safety.

Respondent	Response to Option 2
Steve Lindorff, Director of Planning and Development, City of Jacksonville Beach	See response under "a" above.
Rick Stauts City of Homestead Assistant City Manager Executive Director, CRA	If property within a CRA may not be taken by the CRA to remove slum and blight, or to remove an immediate threat to public health and safety, the CRA is so shackled that it will probably never do a taking of any kind. If that is the intention of the committee, why not just draft legislation to forbid takings by a CRA.
Wade Hopping and Butch Calhoun, Property Rights Coalition	No response
James Fintan Reilly - Sarasota County	Property within a community redevelopment area may never be taken by the armed force of the government unless it is necessary for the defense of our country.
Florida Association of Counties	Please see the response to Option 1.
Glenn Vann, CRA Director, City of Port St. Lucie	Option 2 is inconsistent with reasonings defining "slum area" & "blighted area" under current State Statute.
Florida League of Cities, Inc.	Object. See response to Option 1. One concern with Option 2 is why grant property which is an "immediate threat to public health" greater protection simply because the property is located within a CRA area (rather then being in another part of a city or county)?
Brigham Moore LLP (Andrew Prince Brigham, S. William Moore, John W. Little, D. Mark Natirboff)	Option 2 seeks to achieve a policy objective of restricting the use of eminent domain within a CRA to traditional, public use takings only. The language in the first sentence expresses this intent, with the understanding that the property taken itself is not a nuisance, but is needed for the construction of a road, school, park, etc.. The second sentence seems to make such policy "airtight" by expressly prohibiting eminent domain in the context of eliminating slum and blight as currently defined and in the context of removing an immediate threat to "health" and "safety." While the most restrictive of the three options, the "airtight" language which prohibits eminent domain in the instance of removing an immediate threat to "health" or "safety" may run counter, or conflict with, existing law apart from the context of a CRA that provides for the use of either the police power or eminent domain to address a common law nuissance or public harm (ie. a building which poses a fire hazard, independent of any application of slum or blight statute).

Respondent	Response to Option 2
William D. Van Allen, Jr.	"Traditional public purposes" should be specified in total - "etc." opens the door to abuse. Second sentence should state "No property may be taken, either within or without a community redevelopment area, for the purpose of removing slum or blight condition except for the purpose of removing an immediate threat to public health or safety."

Option 3

A parcel of property is eligible for taking if taking the property is reasonably necessary to eliminate an immediate threat to public health or safety caused by the current condition of the property.

Respondent	Response to Option 3
Steve Lindorff, Director of Planning and Development, City of Jacksonville Beach	See response under "a" above.
Rick Stauts City of Homestead Assistant City Manager Executive Director, CRA	Should include that a taking is allowed if the property is and has been vacant for some period of time and is necessary for the assembly of sites under a plan adopted by the CR Agency that includes that site.
Wade Hopping and Butch Calhoun, Property Rights Coalition	The PRC would prefer Option 3 with a caveat that the particular parcel being taken should be reasonably necessary to eliminate slum or blight conditions caused by the current condition of the property. This answer contemplates a tightening and improvement of the definitions of slum and blight that currently appear in the CRA law. We also support the position that property may be taken within a community redevelopment area by a county or city for the traditional public uses such as roads, parks, schools, utilities, etc. We do not consider traditional takings to be a part of the current CRA debate.
James Fintan Reilly - Sarasota County	See above. The high dollar property of the barrier islands of central Florida were considered the slums of poor people only fifty years ago. Government entities have no business taking the future from people because they don't have big money today. Developers need to pay owners. The government shouldn't be taking it away.
Florida Association of Counties	Please see the response to Option 2.
Glenn Vann, CRA Director, City of Port St. Lucie	Option 3 is inconsistent with reasonings defining "slum area" & "blighted area" under current State Statute.
Florida League of Cities, Inc.	Object. See response to Option 1.
Brigham Moore LLP (Andrew Prince Brigham, S. William Moore, John W. Little, D. Mark Natirboff)	Option 3 seeks to avoid the vagueness or ambiguity of the current slum and blight factors by dropping all reference to any criteria other than a current condition which causes an immediate threat to public health or safety. While appreciating that this suggestion seeks to clean-up what the abuse associated with blight factors (such as small lots or diverse ownership), the lack of specificity as to any qualifying language modifying the term "condition" leaves it open to include the discarded factors (inclusive of small lots or diverse ownership) or any other imaginable criteria. This highlights the important issue in drafting which asks, "To what degree does the terms public "harm" or "safety" describe the boundaries of the use of the eminent domain power?" The proposed language of Option 3 invites too much interpretive variance wherein any ambiguity in Legislative intent allows a more broad application of the eminent domain power.

Respondent	Response to Option 3
William D. Van Allen, Jr.	A parcel of property may only be eligible for taking, except in a community redevelopment area, if the taking is the only remedy for an immediate threat to public health or safety caused by the current condition of the property.

ENHANCED NOTICE PROPOSAL

A. Prior to city or county consideration of a resolution finding slum or blight conditions in the area.

Respondent	Response to Enhanced Notice Proposal A.
Steve Lindorff, Director of Planning and Development, City of Jacksonville Beach	I don't have any particular problem with the proposal for enhanced notice to property owners prior to adopting the finding of slums or blight. The term "private to private" transfer is a misnomer. The power of eminent domain is reserved to a unit of government. When a parcel is acquired by eminent domain, title transfers to the government who may then convey the assembled site to a private entity for redevelopment in accordance with an adopted plan.
Rick Stauts City of Homestead Assistant City Manager Executive Director, CRA	I believe the notice to lessees is overkill and may be difficult to do. Owners of record and their addresses can be obtained through property records, but notice to the lessees/occupants of particular buildings is problematic. The inability to accomplish this in an efficient way may open the process up to an unavoidable challenge. Lessees of commercial buildings come and go over time, are not initially impacted directly by the establishment of a CRA. Over time, as redevelopment occurs, the lessees will see enhanced customer traffic and profits, but this is seldom immediate. The cost and effort of notifying these lessees can be better spent by government on other endeavors.
Wade Hopping and Butch Calhoun, Property Rights Coalition	II. Draft Enhanced Notice Proposal This section requires 30-day notice prior to the first public hearing where a proposed resolution finding slum or blighted conditions in an "area" will be considered. "Since this is the initial non-parcel specific Public Hearing, this language may be acceptable, nevertheless, we would suggest use of the additional procedural safeguard of posting a notice similar to rezoning notices within the area and on an individual property when the actual notice is not successfully delivered. We suggest that the "actual" notice be by first class mail, <u>return receipt requested</u>, so that the CRA may defend itself against a claim that the property owner received inadequate notice of this public hearing. In general, the procedural proposals seem adequate to protect private property owners within CRA areas. Nevertheless, there are some issues that we would like to present our views on.
James Fintan Reilly - Sarasota County	Fancy procedures to not justify the abuse.

Respondent	Response to Enhanced Notice Proposal A.
Florida Association of Counties	Response to A. and B.: The Florida Association of Counties believes that additional notice and hearing requirements for the CRA creation and exercise of powers is appropriate. The requirement of extraordinary notice to business owners who are different persons than the fee owners inside the proposed CRA area will be difficult to accurately identify. At this time, it is not known whether a reliable data source exists that identifies all business owners in a particular geographic location and facilitates the correlation of the owner to a particular building or location.
Glenn Vann, CRA Director, City of Port St. Lucie	Draft "A" is proceduraly elongated as compared to Draft "B."
Florida League of Cities, Inc.	Under Options 1, 2 or 3: Object to any enhanced notice if the takings standard is "immediate threat to public health." What pubic purpose is served (and justification for expenditures of public funds) by providing enhanced notice to all property/business owners if only "immediate threat to public health" properties can be taken by eminent domain. In essence what is being proposed is enhanced notice to owners of slum or derelict property that such property may be subject to takings (such property would be subject to nuisance abatement proceedings under current law). This proposal also must be clarified to state any enhanced notice should be required only in the context of exercises, or anticipated exercises, of eminent domain for CRA purposes. This is consistent with the position that CRA's may continue to be created under current law for all other purposes except eminent domain. Additionally, notice to "each business owner , including lessees" could prove to be nearly impossible to accomplish.

Respondent	Response to Enhanced Notice Proposal A.
Brigham Moore LLP (Andrew Prince Brigham, S. William Moore, John W. Little, D. Mark Natirboff)	First, it is difficult to establish public policy as to the type and kind of notice that should precede the initial resolution of "slum" or "blight" (a general finding of necessity) until first deciding on predicate issues of proposed reform. Under the existing statute, it is the initial resolution of "slum" or "blight" that is given legislative deference in the judicial courts reviewing the local government's decision. If uncoupling eminent domain from the other redevelopment powers (creation of the CRA, preparing the Redevelopment Plan, establishing the Redevelopment Trust Fund for TIF), there would necessarily have to be a second resolution associated with "taking criteria" (a specific finding of necessity) for eminent domain use only. Thus, public policy concerns with notice for the initial resolution may be less in number or intensity than what may arise with the subsequent notice for the resolution associated with the "taking criteria" at the time of a proposed taking. Likewise, the type and kind of judicial review/burden of proof (which defines whether "legislative deference" is given to local government's decision) may also be uncoupled. As presently suggested, the specific language under the "Draft Enhanced Notice Proposal Part A" tracks the language for pre-suit negotiations when eminent domain is used under Chapter 73 & 74 and would result in the greatest amount of participation and protection for property and business owners throughout the process.
William D. Van Allen, Jr.	No response

B. Prior to consideration, at a public meeting, of taking private property by eminent domain.

Respondent	Response to Enhanced Notice Proposal B.
Steve Lindorff, Director of Planning and Development, City of Jacksonville Beach	No objections to the enhanced notice criteria, but oppose any change in legislation that would require the condemning authority to show that the conditions prevalent in the area apply to each separate parcel.
Rick Stauts City of Homestead Assistant City Manager Executive Director, CRA	The 45 day notice requirement relating to takings should probably be shortened. I would suggest dispatch of the notice 21 days prior to the meeting where the issue will be considered would be adequate.
Wade Hopping and Butch Calhoun, Property Rights Coalition	"We support Option B. If property is to be taken, the public entity doing the taking should act on a parcel by parcel basis. The fee owners and business owner notice provisions both provide that if there is more than one owner of the property, notice to one owner constitutes notice to all owners of the property. In a case where the CRA is aware of multiple owners, we believe that all owners should receive notice. " "For example, suppose the building is a condominium? All owners, including the ground lease owner if the property is on a ground lease, should be given notice that their property is in fact going to be taken. Further, the return of an undeliverable Notice should not constitute compliance with this provision. The taking authority should exercise all reasonable due diligence in attempting to notify the property owner(s) that there will be a hearing to take his/her particular parcel. This should include a requirement that the property be "posted" with a notice sufficiently in advance of the public hearing, much as properties to be rezoned are to be posted under Florida law. It should not be sufficient that return of notice as undeliverable constitutes compliance with the notice requirement. If in fact the condemning authorities become aware that the property has been conveyed to another, they should be required to give notice to whoever the new owner is prior to the date of the hearing. " "The same procedures should be followed with regard to business owner notice although it is more appropriate in that case to give notice to one of the active business partners.
	Because there is often a significant gap in time between the original creation of the CRA and when the property within the CRA is being taken, we continue to stress the importance of enhanced notice and procedural safeguards at the time of the proposed taking as opposed to the time of the creation of the CRA.
James Fintan Reilly - Sarasota County	No response

Respondent	Response to Enhanced Notice Proposal B.
Florida Association of Counties	Response to A. and B.: The Florida Association of Counties believes that additional notice and hearing requirements for the CRA creation and exercise of powers is appropriate. The requirement of extraordinary notice to business owners who are different persons than the fee owners inside the proposed CRA area will be difficult to accurately identify. At this time, it is not known whether a reliable data source exists that identifies all business owners in a particular geographic location and facilitates the correlation of the owner to a particular building or location.
Glenn Vann, CRA Director, City of Port St. Lucie	Draft "B" is procdeduarly less complex that Draft "A."
Florida League of Cities, Inc.	Under Options 1,2 or 3: Object
Brigham Moore LLP (Andrew Prince Brigham, S. William Moore, John W. Little, D. Mark Natirboff)	As presently suggested, the specific language under the "Draft Enhanced Notice Proposal Part A" tracks the language for pre-suit negotiations when eminent domain is used under Chapter 73 & 74 and would result in the greatest amount of participation and protection for property and business owners throughout the process.
William D. Van Allen, Jr.	No response

ADDITIONAL PROTECTIONS

1. The resolution finding slum or blight conditions, the community redevelopment plan, and any plan amendment must indicate whether property is subject to eminent domain and whether private-to-private transfers of taken property may occur.

Respondent	Response to Additional Protection 1
Steve Lindorff, Director of Planning and Development, City of Jacksonville Beach	No problem with notice that eminent domain may be used as one of the means by which a redevelopment plan will be implemented, nor do I object to stating that the local government may enter agreement(s) with private enterprise to redevelopment the assembled site. Again, note that the term "private to private transfer" is a misnomer, and is not possible under eminent domain law.
Rick Stauts City of Homestead Assistant City Manager Executive Director, CRA	If a CRA is doing a CR Plan amendment that does not expand the boundaries of the CR Area or modify the takings power of the CR Agency, language in the resolution about these issues may create emotional opposition to beneficial proposed changes to the CR Plan that would otherwise not happen. Please don't increase the difficulty to make simple and benign changes to a CR Plan.
Wade Hopping and Butch Calhoun, Property Rights Coalition	All 3 additional protections would seem to be appropriate and not unduly burdensome on the local government or CRA.
James Fintan Reilly - Sarasota County	If you want it to be better, invest in it, don't steal it.
Florida Association of Counties	As a concept, the Florida Association of Counties does not object to notifying affected property owners of these possible actions.
Glenn Vann, CRA Director, City of Port St. Lucie	Option 1 is unnecessary as its content is addressed in current State Statute concerning CRA operations.
Florida League of Cities, Inc.	Under Options 1, 2 or 3: Object
Brigham Moore LLP (Andrew Prince Brigham, S. William Moore, John W. Little, D. Mark Natirboff)	Yes.
William D. Van Allen, Jr.	No response

2. The community redevelopment plan must specifically provide for the use of the power of eminent domain if the power may be exercised in the future.

Respondent	Response to Additional Protection 2
Steve Lindorff, Director of Planning and Development, City of Jacksonville Beach	No objection to this proposed change.
Rick Stauts City of Homestead Assistant City Manager Executive Director, CRA	No response
Wade Hopping and Butch Calhoun, Property Rights Coalition	All 3 additional protections would seem to be appropriate and not unduly burdensome on the local government or CRA.
James Fintan Reilly - Sarasota County	No response
Florida Association of Counties	As a concept, the Florida Association of Counties does not object to including in a plan the potential for eminent domain in the future.
Glenn Vann, CRA Director, City of Port St. Lucie	Option 2 is unnecessary as its content is addressed in current State Statute concerning CRA operations.
Florida League of Cities, Inc.	Under Options 1,2 or 3: Object
Brigham Moore LLP (Andrew Prince Brigham, S. William Moore, John W. Little, D. Mark Natirboff)	Yes.
William D. Van Allen, Jr.	No response

3. The community redevelopment plan must be formally adopted prior to exercising the power of eminent domain to take any property that meets the criteria for taking under the Community Redevelopment Act.

Respondent	Response to Additional Protection 3
Steve Lindorff, Director of Planning and Development, City of Jacksonville Beach	No objection to this proposed change.
Rick Stauts City of Homestead Assistant City Manager Executive Director, CRA	No response
Wade Hopping and Butch Calhoun, Property Rights Coalition	All 3 additional protections would seem to be appropriate and not unduly burdensome on the local government or CRA.
James Fintan Reilly - Sarasota County	No response
Florida Association of Counties	As a concept, the Florida Association of Counties does not object to including in a plan the potential for eminent domain in the future.
Glenn Vann, CRA Director, City of Port St. Lucie	Option 3 is consistent with current State Statute relative to CRA operations.
Florida League of Cities, Inc.	Under Options 1, 2 or 3: Object
Brigham Moore LLP (Andrew Prince Brigham, S. William Moore, John W. Little, D. Mark Natirboff)	Yes.
William D. Van Allen, Jr.	No response

Matrix 3

RESPONSES TO MATRIX 3

ISSUE 1

What conditions must be associated with a parcel of private property to justify taking the property for the purpose of eliminating the existing conditions under the Community Redevelopment Act? Should the conditions pose an "imminent threat" to the health and safety of the community before the property may be taken?

Respondent	Response to Issue 1
Steve Lindorff, Director of Planning and Development, City of Jacksonville Beach	The property should be a part of a community redevelopment area in which a study of blight and blighting conditions, based on the current statuatory requirements, has been completed; adequate public meetings and hearings have been held and a finding that the area is blighted and in need of redevelopment has been approved by the local elected governing body; and a community redevelopment plan has been prepared and adopted following adequate public meetings and hearings.It is not necessary that each individual parcel in the community redevelopment area be "blighted" in and of itself.
Vince Cautero, Executive Committee Member, Florida Chapter of the American Planning Association	Do not agree
S. William Moore and John W. Little for Brigham Moore, LLP	In order to be taken by eminent domain in the context of Community Redevelopment, a parcel should either: (a) be necessary for an actual public use i.e., a school, road, or other publically used and owned facility, or (b) meet the traditional definitions of a public nuisance, pursuant to state common law. "Slum" or true "blight" should be re-defined to comport with those common law principles. Clearance of actual "slum" or true "blight," could be considered a valid reason for the exercise of eminent domain; but "prevention" of those conditions should not be a valid purpose, due to the inevitable mischievous expansion of the use of the term, "prevention."

Respondent	Response to Issue 1
Wade Hopping and Butch Calhoun, Property Rights Coalition	We believe that there should be a determination of necessity on a parcel by parcel basis for the taking of slum and blighted property. If the property is not slum or blighted, neither the CRA nor a local government under its home rule powers should be authorized to take this property for non-traditional public use purposes by eminent domain. The fact that a non-slum or non-blighted facility parcel sits in the midst of a truly slum and blighted area should make no difference in that determination. The specific property being taken must either be slum or blighted for it to be subject to a non-public use eminent domain proceeding. Properties such as Ms. Kelo's property should not be subject for taking pursuant to eminent domain by a CRA or by a local government exercising its home rule powers. It is our view that such a bright line is necessary in order to protect private property owners and that free market economic forces, careful negotiation, and strategic planning will allow for the redevelopment of an area notwithstanding the fact that one or more parcels within that area can not be acquired by eminent domain. We continue to support the use of eminent domain for the purpose of traditional takings for "public uses" and "public purposes" (e.g. roads, pipelines, transmission lines, public parks, etc.).
Douglas Sale, Harrison Sale McCloy & Thompson	With all due respect, I cannot accept the premise that each individual parcel in a slum or blighted area must itself exhibit the conditions found across that area. Community redevelopment is more encompassing and positive than mere nuisance abatement. This premise, alone, will deny many communities the opportunity to address significant economic and social evils. A hold out refusing to accept newly defined, extraordinary compensation should not be given a private veto over a legitimate, publicly sponsored project. The government should have to prove that the parcel being condemned is material or necessary to the elimination of slum or blight in the area, but the conditions qualifying the property as slum or blight must apply to the redevelopment area as a whole. Even Messrs. Moore, Little and Brigham in response to Issue No. 3 acknowledge that the focus must be upon the area, not the parcel. They argue, and I agree, that the threshold definition of blight for the area should be higher.

Respondent	Response to Issue 1
Florida League of Cities	The Florida League of Cities, Inc. (FLC) has proposed once an area is appropriately determined to be slum or blighted by a local governing body using set statutory factors and where the property is subject to an eventual private-to-private transfer, each parcel of property within the area should be subject to a taking if the parcel is "essential" (or another appropriate standard) to eliminate slum or blighted conditions or to achieve the goals and objectives of a community redevelopment plan. FLC's comprehensive proposal submitted to the Select Committee on November 3, 2005 and outlined in responses to Matrix 2, Questions 9-26, proposes enhanced notice to property owners of redevelopment plans and activities, additional processes for takings and additional compensation for takings; however, this comprehensive proposal is not based on the assumption that an individual parcel of property must meet a narrow definition of being either slum or blighted prior to a taking. (See response to Question 7). Conditions at a particular parcel of property should not be required to pose an "imminent threat" to community health and safety to take the property for redevelopment purposes. "Imminent threats" to community health and safety are subject to nuisance abatement under Ch. 60, FS.
Charlie Siemon, Siemon & Larsen, PA	No. The standard should be that the conditions are substandard and on a downward trajectory.

Respondent	Response to Issue 1
Andrew Prince Brigham and D. Mark Natirboff, Brigham Moore, LLP	First and foremost, the asserted purpose must be predominately motivated by a public purpose and not a private one. Traditional takings for a public use justify a taking, i.e. a school, road, or other publically used and owned facility. Common carriers such as utilities in the installation of linear facilities also justify takings for a traditional public purpose. In the instance of redevelopment, public purpose was historically seen as a prevention of public nussiance or harm, a response to an "imminent threat" to health, safety, morals, and welfare. Kelo seemingly validated a drifting jurisprudential definition of public purpose by including the notion of public desire or benefit (a "betterment"), not a response to a public nussiance or harm. Moreover, and an important secondary consideration, Kelo removes a judicial "check and balance" by providing a deferential standard of review to how the legislative/executive branches (including local government) define public purpose. It is advocated that the Florida Legislature (1) clarify and narrow the conditions that define slum or blight so that the public purpose justifying eminent domain be in response to public nuissance or harm, an imminent (not prospective) threat to health, safety, morals, and welfare, and (2) make certain that the form and substance of judicial review be that of an original jurisdictional question without "legislative deference" to the prior determination of slum and blight made by the executive/legislative branches (local government). By uncoupling tax increment financing from eminent domain, the Florida Legislature will allow CRA's to continue with the existing definitions of slum and blight for funding purposes. In the instance of eminent domain, it is a policy decision as to what the threshold conditions should be to justify eminent domain and the resulting private to private transfer. Under a traditional taking for public use or utilities, Chapter 163 provisions are not utilized. Chapter 163 comes into play when the local government desires to accomplish a private to private transfer. Therefore, the Florida Legislature must decide if the threshold for a taking be only associated with the existing definition of "slum" or whether the threshold for a taking also include a more clear and narrowed definition with a limited number of "blight" factors. Beyond this, the Florida Legislature must decide if the threshold for a taking applies to a parcel by parcel determination which requires a parcel to have conditions of slum and blight itself so as to be subject to a taking, or if the threshold for a taking applies to a identifiable, discretely defined area or neighborhood. Under exisiting law, the definitional threshold for eminent domain is coupled with tax increment, allows an "unblighted" property to be taken to cure an area-wide blight, and does not define what comprises an area allowing the boundaries to be expansive and over-inclusive. It is advocated that a broad threshold for tax increment financing allows the work of redevelopment to continue, while reserving eminent domain for only the most narrow of circumstances (those in which free enterprise has turned its back) so as to protect

Respondent	Response to Issue 1
Andrew Prince Brigham and D. Mark Natirboff, Brigham Moore, LLP continued...	private property and the right of individuals to use their property for their own private industry. Such will not stop assemblage of properties when driven by the market forces which attach to strategic locations and do not result in policital selection of who develops desirable redevelopment properties.
Bradley S. Gould, Esq., Akerman Senterfitt	A Property must be within a "Slum area", which means an area having physical or economic conditions that are proven to have resulted in disease, infant mortality, juvenile delinquency, poverty, or crime because there is a predominance of buildings or improvements, whether residential or nonresidential, which are impaired by reason of dilapidation, deterioration, age or obsolescence, and the Property must exhibit either of the following factors: (a) Inadequate provision for ventilation, light air, sanitation, or open spaces, which is proven to lead to health or safety dangers according to currently applicable state or local government codes; (b) The of existence conditions that endanger life or property by fire or other causes which constitute a public nuisance at common law. A Property must be within a "Blighted area" which means an area in which there area substantial number of deteriorated, or deteriorating structures, in which area conditions, as indicated by accurate government maintained statistics and other competent studies are proven to have caused measurable economic distress or to endanger life or property and the Property must exhibit two or more of the following factors: (a) Predominance of defective or inadequate street layout, public parking facilities, public roadways, public transportation facilities, in which the infrastructure element has substantially failed to achieve the purpose for which it was originally constructed and that rehabilitation efforts by the public entity charged with the maintenance of the infrastructure have failed. (b) Predominance of faulty lot layout in relation to size, adequacy, accessibility, or usefulness based upon the preexisting minimum lot standards set forth in the local comprehensive plan or local building codes. (c) Predominance of unsanitary or unsafe conditions proven by government-recorded violations of federal, state, or local health and safety laws. (d) A greater number of violations of the state or local building codes involving the property than the number of violations recorded in the remainder of the county or municipality except for purposes of eminent domain, in which case the demonstrated failure of local government to enforce its own codes in a reasonable manner shall defeat the use of this factors.

Respondent	Response to Issue 1
Florida Association of Counties	The Florida Association of Counties believes that the definitions of slum or blight should be tightened for the creation of CRAs. (Suggestions for such tightening have previously been submitted). Private property rights are most protected by changing the definitions of slum or blight for the creation of a CRA; the tightened definitions then apply to the CRA's powers for all purposes, including the power of taxation and of eminent domain. Once the CRA is created, the taxpayer investment in the CRA should not be thwarted or wasted by a change in the standards for exercising powers that would prevent the approved redevelopment plan from being implemented. A parcel-specific analysis for slum or blight in order to condemn could create such a problem. A parcel-specific slum or blight examination for purposes of eminent domain could completely undermine the public investment in the CRA by rendering the adopted redevelopment plan unattainable, particularly if the parcel is critical to the implementation of the plan. However, a "surrounding area" examination for slum or blight for purposes of eminent domain may strike an appropriate balance between protecting private property rights and allowing the public investment in the redevelopment plan to continue. The same definitions should, however, apply.
Dana Berliner, Institute for Justice	Property should not be taken under the Community Redevelopment Act that does not pose an "imminent threat" to public health or safety. That standard allows taking dangerous and dilapidated properties. Abandoned properties may also be taken. But viable properties will not be subject to eminent domain.

Respondent	Response to Issue 1
Carol Saviak, Coalition for Property Rights	Counties and municipalities do not require a specific set of conditions under the Community Redevelopment Act to cure blight or slum conditions and to protect the health, safety and welfare of Florida citizens. If their true aim is the elimination of blight or slum conditions, Florida's Counties and municipalities already a have a separate legal mechanism authorized under Chapter 162 of Florida Statutes which provides the full and complete authority to enforce their building and health and public safety codes. The failure of some local governments to properly enforce their existing codes, or to devote the financial and personnel resources necessary to do so, is insufficient rationale for the Florida Legislature to authorize additional taking opportunities under the Community Redevelopment Act. Every county and municipality already has a process in place to remedy or cure true slum or blight conditions which genuinely threaten the health or safety of tenants or the general public. Through their individual municipal code enforcement processes they have the ability to notify, issues citations, levy fines and liens, and even foreclose upon parcels of private property where the owner has failed to comply or refused to comply with their building and health and public safety codes. With these existing tools of blight and slum eradication readily available and in practice every day by counties and municipalities, it is very hard for the layperson to find any genuine necessity for providing additional takings authority under the Community Redevelopment Act - if the real goal is blight or slum eradication. It is the contention of the Coalition for Property Rights that the local government entities which desire these conditions and powers under the Community Redevelopment Act do not desire to eliminate genuine threats to the public's health and safety, but are using this politically-correct excuse to acquire and aggregate property for the purpose of changing the aesthetic look of the properties and creating increased tax revenue. However, for the purpose of Committee discussion, if the members of the Florida Legislature believe local governments should retain the ability to use eminent domain to aggregate properties for economic development purposes under the guise of slum and blight eradication, we suggest the definition of slum or blight for the purpose of eminent domain should be crystal clear, objective and should reference specific threats to the public's health and safety. Only three of the seventeen conditions currently used to define either slum or blight under the Community Redevelopment Act actually refer to health or public safety concerns: Item (7)(a) - the inadequate provision for ventilation, air, sanitation, or open spaces. Item (7)(c), the existence of conditions that endanger life or property by fire or other causes. Item (8)(d), unsanitary or unsafe conditions. As worded, even these conditions are overly

Respondent	Response to Issue 1
Carol Saviak, Coalition for Property Rights, Cont.	broad and open the door for highly subjective interpretation. For example, many well-maintained urban office towers and even some of Florida's historical structures might qualify as blight under (7)(a) if they lack inadequate open space which was not a requirement at the time of construction. The remainder of the conditions do not indicate the existence of true blight or slum conditions. Several reference market factors or areas of government responsibility which are beyond an individual property owner's responsibility and ability to remedy (i.e...deficient or inadequate roadways or public transportation infrastructure). For the purpose of Committee discussion only, a much better definition of blight or slum conditions might be: The existence of chronic violations of municipal code, which have been documented and found by accurate, government-maintained statistics and other competent studies to pose an imminent threat to the health or safety of the occupants or the general public, or endanger the structural integrity of buildings on the property.
Charlotte County as submitted by Carrie Roth	In the case of antiquated subdivisions, Charlotte County encourages the Committee to consider creating separate and unique conditions for the finding of blight for a largely undeveloped antiquated subdivision. Such standards should recognize the stagnant nature of such a subdivision by requiring a minimal amount of development to have occurred over a long period of time, and a finding of inadequate public services such as water, roads, drainage, and sewer across the redevelopment area. Charlotte County discourages statutory changes which will transform community redevelopment of such areas into an examination of every parcel for nuisance abatement elements. A parcel-by-parcel examination will undoubtedly frustrate any community redevelopment project for antiquated subdivisions. In such a case, protection of private property rights can be more efficiently and better accomplished by requiring that conditions underlying the use of eminent domain be addressed with extraordinary notice to each parcel owner well in advance of any decision by elected officials to embark on such a process. Early notice, public decision-making done on a local level, and judicial scrutiny before any parcels in any community redevelopment area are determined to be acquired and before local government expends a lot of funds for redevelopment purposes, would serve to protect both private property rights and the larger group of taxpayers.

ISSUE 2

Assuming a parcel meets the conditions identified in Question # 1, should the elected city or county governing body approve each specific taking of private property by the Community Redevelopment Agency under the Community Redevelopment Act or should only the elected governing body be authorized to take property under the Act?

Respondent	Response to Issue 2
Steve Lindorff, Director of Planning and Development, City of Jacksonville Beach	Only the elected governing body should have the power to exercise eminent domain for any purpose. A CRA may recommend this action to carry out a duly-adopted community redevelopment plan, but the actual authority to decide to use eminent domain should rest with local elected officials.
Vince Cautero, Executive Committee Member, Florida Chapter of the American Planning Association	I believe it would be wise to revisit this issue due to conflicting opinions that have been raised. One issue in particular is the current situation in an southeast coast town (I believe Riviera Beach) in which property owners claim that homes that are in very good condition are planned for purchase.
S. William Moore and John W. Little for Brigham Moore, LLP	Only the elected governing body with plenary eminent domain power i.e., the City or County, should authorize a specific seizure of private property. "Wholesale" condemnation authorization, without a specific parcel by parcel consideration, should be forbidden.
Wade Hopping and Butch Calhoun, Property Rights Coalition	PRC's answer to Question 2 is that it would be best if elected governmental officials actually made the decision whether or not to take a parcel of private property by eminent domain since eminent domain is such an extraordinary and coercive remedy. Therefore, we would support only the elected governing body be authorized to make the decision to take a specific parcel.
Douglas Sale, Harrison Sale McCloy & Thompson	The elected body should make the final decision in a public hearing with personal notice to the owner.
Florida League of Cities	See response to Question 1 to identify "conditions." The FLC has proposed that at an exercise of eminent domain proceeding, the elected governing body be required to determine that each specific property subject to an eventual private-to –private transfer is "essential" (or another appropriate standard) to eliminate slum or blighted conditions or to achieve the goals and objectives of a community redevelopment plan.
Charlie Siemon, Siemon & Larsen, PA	In my judgment it is important that the standard apply to the area not the individual parcel of land. There are often survivor buildings in really bad areas and not being able to acquire those properties if needed to improve the area would be a bad policy. If the concern is the unfairness of putting a viable business out just when things are going to get better, make rejection of a bona fide offer to incorporate the business in the redevelopment initiative in some defined way a condition precedent to using the power of eminent domain. Many local governments do not delegate eminent domain to their CRAs and retain responsibility for approving individual takings

Respondent	Response to Issue 2
Andrew Prince Brigham and D. Mark Natirboff, Brigham Moore, LLP	Only the governing body with the plenary eminent domain power should authorize the taking of private property. Such policy should also be formulated to require a resolution of taking to be adopted identifying the specific necessity for private property to be taken prior to the filing of a condemnation lawsuit. This avoids the intial designation of slum or blight adopted when considering the general necessity for redevelopment activities (tax increment financing and redevelopment planning) from being used to justify a taking many years subsequent to its adoption when conditions of slum and blight may no longer exist. In addition, "wholesale" condemnation authorization, without a specific parcel by parcel consideration, should be forbidden.
Bradley S. Gould, Esq., Akerman Senterfitt	The elected governing body authorized to take property under the Act.
Florida Association of Counties	The elected city or county governing body should approve the taking of any property, whether in the context of a CRA or not.
Dana Berliner, Institute for Justice	The Institute for Justice does not have a strong position on this issue. It is certainly important that there be a vote by elected officials to authorize each specific taking, but we do not have a position on which elected officials must vote.
Carol Saviak, Coalition for Property Rights	Yes. Only elected officials fully accountable to the voters on election day should have the power to approve takings and only on a parcel-by-parcel basis.
Charlotte County as submitted by Carrie Roth	Charlotte County has opted to conduct its community redevelopment affairs in a manner that the Board of County Commissioners acts ex-officio as the governing body of its community redevelopment agency. All eminent domain decisions made regarding community redevelopment are made by elected officials. The restriction that any authorization to use the power of eminent domain for community redevelopment purposes must be authorized by an elected governing body, either as such or ex-officio as the governing body of the community redevelopment agency, assures elector accountability which will further the protection of private property rights as well as the balancing of the need for community redevelopment – at a local level.

ISSUE 3

The Committee has taken the preliminary position that amendments to eminent domain authority in ch. 163, F.S., should apply to future takings of private property by existing community redevelopment agencies. Should the amendments also apply to takings cases that have been initiated but have not completed the judicial review process?

Respondent	Response to Issue 3
Steve Lindorff, Director of Planning and Development, City of Jacksonville Beach	Can the Legislature interfere with a legal proceeding once it is already in the judicial system? I'm not an attorney, but this seems like Government 101 separation of powers stuff to me.
Vince Cautero, Executive Committee Member, Florida Chapter of the American Planning Association	More analysis of the definitions is needed prior to effectuation of this change.
S. William Moore and John W. Little for Brigham Moore, LLP	The amendments to Chapter 163 which protect the private property of individual citizens should be applied to all exercises of eminent domain power under the Act, even those already initiated. The amendments should be applicable to all cases in which there has been no final judicial ruling; including those matters on appeal where no final appellate decision has been rendered.
Wade Hopping and Butch Calhoun, Property Rights Coalition	We believe that any amendments made in 2006 to correct the existing CRA law should also apply to takings that have been initiated but have not completed the judicial review process. Our recommendation here is subject to further discussion which may lead to a Bert Harris-type approach to the problem. In the Bert Harris statutory enactment, a date was picked so that everyone would know when the Bert Harris Act became applicable, but the date selected was fixed so that it would prevent "races to the courthouse," and precipitous enactment of regulatory ordinances. In this case it is likely to be sufficient to simply make this law applicable in takings initiated after March 1, 2006.
Douglas Sale, Harrison Sale McCloy & Thompson	No.
Florida League of Cities	No. Changes to current law should not impact cases currently within the judicial review process.
Charlie Siemon, Siemon & Larsen, PA	No. There should be a transition period where prior plans under the existing standards should be implemented under the standards in effect when condemnation was initiated..Otherwise of the logic of a coherent plan as the foundation of community redevelopment will be undercut.

Respondent	Response to Issue 3
Andrew Prince Brigham and D. Mark Natirboff, Brigham Moore, LLP	The Florida Legislature is not addressing a "prospective" problem. The problem is present day upon us. There are private property owners who presently seek to retain their private ownership who desparately need legislative relief and it is not too late. These cases include some of those matters which illustrated the need for legislative reform before the House Select Committee to Protect Private Property Rights. Legislative reform should be retroactive to all CRA's, whether formed under slum and blight designations of many years standing, more recently after the 2000/2001 legislative revisions, and hereafter under further legislative reform. Legislative reforem cannot practically apply to those takings where judicial proceedings are now closed; however, Legislative reform can practicably apply to all judicial proceedings yet pending under the Act, including those cases on appeal, upon enactment of any Legislative reform. Again, legislative reform does not affect any past, present, or future slum or blight designations for tax increment financing, only present and future contemplated uses of eminent domain.
Bradley S. Gould, Esq., Akerman Senterfitt	Any amendments to ch. 163 should apply to all cases in which the Court has not entered an Order of Taking.
Florida Association of Counties	No.
Dana Berliner, Institute for Justice	Yes, property right protections should be available to all citizens, including those whose property is currently being taken. If the law will not apply to all those in the judicial condemnation process already, it should at least apply to cases that entered the process since the Kelo decision. Cities across the country, including in Florida, have been trying to take property before legislative reform can be passed. Exempting recently-filed condemnations from the new law will invite a flood of "11th Hour" flood of condemnations before new laws take effect.
Carol Saviak, Coalition for Property Rights	The Legislature should make every effort to ensure that amendments become effective as quickly as possible and apply to as many property owners potentially impacted, including those within existing community redevelopment areas where takings cases have been initiated but have not completed the judicial review process.
Charlotte County as submitted by Carrie Roth	Charlotte County has in good faith followed the dictates of Florida's Community Redevelopment Act and since 2003 has borrowed and expended approximately $80 Million to date in assembling over 2,500 of the 3,000 parcels to enable the area to be replatted with modern infrastructure. It is critical that any changes to the CRA law should operate prospectively only, and not impact eminent domain actions which have been initiated prior to the effective date of the new law. It would, quite simply, be an economic disaster for the taxpayers and citizens of Charlotte County for the Legislature to apply any modification to the law to any eminent domain case that has been initiated, but has not completed the judicial review process.

ISSUE 4

If a governmental entity proposes to take property for the purpose of eliminating the conditions identified in Question # 1, should the governmental entity be required to demonstrate:

a. That the property meets the conditions identified in Question # 1?

b. That the public purpose of the taking is to eliminate the conditions identified in Question # 1?

c. That the taking is "necessary" to eliminate the conditions identified in Question # 1?

Respondent	Response to Issue 4
Steve Lindorff, Director of Planning and Development, City of Jacksonville Beach	[a.] The legislature should not require each separate parcel to meet the conditions identified as being present in the community redevelopment area as a whole. [b.] Yes. [c.] Yes.
Vince Cautero, Executive Committee Member, Florida Chapter of the American Planning Association	What are the conditions? It is premature to to assume what conditions will apply.
S. William Moore and John W. Little for Brigham Moore, LLP	a. The potential condemnor should prove to the circuit court by "clear and convincing" evidence that the parcel to be condemned meets the criteria set out in #1, above. [b.] The condemnor should likewise bear the burden of proof with regard to (b) public purpose and (c) necessity.
Wade Hopping and Butch Calhoun, Property Rights Coalition	[a.] Yes. [b.] The public purpose of the taking should solely relate to the elimination of slum or blight conditions of the property being taken. [c.] Local governments or the CRA should be required to establish that the taking is necessary to eliminate the conditions described in Question #1.
Douglas Sale, Harrison Sale McCloy & Thompson	Community redevelopment is necessarily an area wide effort. The conditions the area must meet should be tightened, but requiring every parcel to meet area wide conditions is unrealistic and limits redevelopment to mere nuisance abatement. [a.] Not the individual parcel, but the area. [b.] Yes, and to prevent recurrence of the conditions. [c.] Yes, or "material" to the community effort to eliminate and prevent recurrence of the conditions.
Florida League of Cities	a. Yes, that the property is "essential" (or another appropriate standard) to eliminate slum or blighted conditions or to achieve the goals and objectives of a community redevelopment plan. b. Yes, see response to Question 4.a. c. Yes, see response to Question 4.a.

Respondent	Response to Issue 4
Charlie Siemon, Siemon & Larsen, PA	[a.] No. IT should be sufficient that the area which the property is located generally meets the standard. [b.] The standard should be that the primary purpose of the taking is to elminate the condition so that incidental private benefit will not defeat the taking. [c.] Necessary is a difficult standard because it involves second guessing the importance of eliminating the offending condition, which has always be sbject to considerable judicial deference.

Respondent	Response to Issue 4
Andrew Prince Brigham and D. Mark Natirboff, Brigham Moore, LLP	Note: The matrix responses to 4(a), (b), and (c) below apply to the facts and circumstances when the private property owner subject to a proposed acquisition makes a judicial challenge to the condemning authority's justification for a taking when questioning either the public purpose asserted or the specific necessity for taking e a particular parcel to accomplish the public purpose asserted. Such a matter arises from direct or indirect condemnation, a proposed physical taking. (This is distinguished from an appellate review sought by any person or entity with standing when challenging the general necessity behind an initial slum or blight designation when questioning the basis for tax increment financing or redevelopment planning. It is advocated that such an appeal seeks to challenge a quasi-legislative determination of local government associated with the general policies behind the proposed use of public funds or matters associated with regulatory comprehensive planning). a. First, the condemning authority must prove that the any applicable definitional threshold of slum or blight is met under an evidentiary standard for judicial review of clear and convincing evidence. The trial court has original jurisdiction to hear evidence before it, including the prior record of testimony and evidence before the local government; however, the review is not limited to this prior record and legislative deference is not given. The Florida Legislature will need to establish its policy of whether the definitional threshold is met by each individual parcel or an identifiable, discretely defined area or neighborhood. The conditions should exist at the time of taking. b. Second, the condemning authority must prove that it is a public purpose for which private property is to be involuntarily taken. The trial court should apply a heightened scrutiny to this constitutional question regarding a fundamental right. Public benefit or desire is not enough to justify a taking. It must be a public purpose to eliminate an immenent threat associated with public nuissance or harm. Thus, the resulting private to private transfer is motivated by the specific necessity of taking private property as a means to eliminate the slum or blight conditions. The public purpose should predominate, and not be merely incidental to, any private purpose. This assures that the proposed taking is not pretextual and the motivation for a taking is predominately to advance a public, not private, purpose. c. Third, the condemning authority must prove that the specific necessity for the taking is reasonable and that alternatives to the taking of private property were considered. The trial court should apply a heightened scrutiny to this constitutional question regarding a fundamental right. Futher, the private property owner should be provided a defense which would require the trial court to deny a taking if the owner can show a possible, practicable, and economically feasible plan to cure or rehabilitate slum or blighted conditions without the necessity of a taking. The trial court may weigh the persuasiveness of the owner's defense, either accepting or rejecting it based upon its merit.

Respondent	Response to Issue 4
Bradley S. Gould, Esq., Akerman Senterfitt	[a.] Yes. [b.] Yes. [c.] Yes.
Florida Association of Counties	A governmental entity must show public purpose and necessity for any parcel that is taken by eminent domain. These tests and standards have been thoroughly analyzed and discussed in previous submissions to the committee. A parcel-specific requirement in a CRA context to meet a statutory definition of slum or blight may thwart the purpose of the CRA. However, the parcel can only be taken for a public purpose and only if necessary for that purpose. In order for a purpose to meet the constitutional standard of "public purpose," the purpose must predominately be public and any private gain must only be incidential. [a.] See 4 above. [b.] See 4 above. [c.] See 4 above.
Dana Berliner, Institute for Justice	[a.] Yes. The government should be required to prove by clear and convincing evidence that the specific property poses an immediate threat to public health or safety at the time of the taking. [b.] Yes. [c.] Yes. The standard for taking property should be that the parcel is "essential" to eliminating slum or blight.
Carol Saviak, Coalition for Property Rights	4a. Yes. 4b. Yes. 4c. Yes.

Respondent	Response to Issue 4
Charlotte County as submitted by Carrie Roth	A parcel-by-parcel analysis transforms a redevelopment effort into a nuisance abatement process that will render Florida's Community Redevelopment Act ineffective in many instances. The definition of blight should be determined for the area as a whole, and each parcel's taking evaluated by the importance of the parcel to the realization of the goals of the redevelopment area. [a.] A better and more efficient way to protect private property rights will be to shift to the initial stages of the community redevelopment exercise extraordinary individual mailed notice to any affected landowner while a local government is considering whether the area is blighted. A determination to utilize eminent domain would include an articulation of why the acquisition of lands within the area will serve to eliminate or remediate the slum or blighted area conditions, including the general purpose for such acquisition (of which clearance would be a specific purpose), and why such acquisition is necessary to eliminate or remediate such conditions. It is imperative that this process occur at the outset of any community redevelopment initiative so that not only are private property owners alerted and involved, but to also bring certainty to the acquisition process before the public treasury is exposed to substantial costs of acquisition. [b.] Yes. [c.] If the definition of blight for an area is raised, then the issue for each parcel within the area should be whether the parcel is necessary or material to the community's effort to eliminate slum or blight.

ISSUE 5

What burden of proof should apply when a governmental entity attempts to take private property for the purpose of eliminating conditions identified in Question #1? Competent and substantial evidence? Preponderance of evidence? Clear and convincing evidence?

Respondent	Response to Issue 5
Steve Lindorff, Director of Planning and Development, City of Jacksonville Beach	Preponderance of evidence.
Vince Cautero, Executive Committee Member, Florida Chapter of the American Planning Association	Do not agree.
S. William Moore and John W. Little for Brigham Moore, LLP	The burden of proof should be on the potential condemnor (see 4a, b, & c, and as in the test for valid exactions found in Dolan v. City of Tigard, 512 U.S. 374 (1994)). The standard should be a new, stand-alone showing , in the nature of an origianl action not merely a "review," made to the circuit court by "clear and convincing" evidence.
Wade Hopping and Butch Calhoun, Property Rights Coalition	The burden of proof which a local government entity should be required to bare for the purposes of eliminating slum and blight on the property in question is clear and convincing. Elected local government boards being collegial bodies are not usually equipped to deal with legal issues and full blown evidentiary hearings. It is recommended that after they take the necessary testimony or information from the property owner, their staff and consultants, and others at a public hearing, that their decisions should be subject to a "de novo" hearing before a circuit court judge as other eminent domain proceedings are. At such a judicial hearing, the CRA or local government should have the burden of proof by clear and convincing evidence to establish that the specific property being proposed to be taken is in fact slum and blighted property. Thus, our answer to this question is that the judiciary would not be reviewing the record before the Commission, but would be taking testimony as it does in other cases and making the initial "judicial" decisions as the initial fact finder. The record from the proceedings before the local government would be available and should be admissible in the de novo proceeding. But additional witnesses and testimony should be taken there with the initial decision being made by the finder of fact and the prior decision by the local government or the CRA not having any presumption of correctness attached to it.
Douglas Sale, Harrison Sale McCloy & Thompson	Slum or blight: Competent and substantial evidence. Necessity of taking parcel to address slum or blight: preponderance of the evidence. See No. 6.

Respondent	Response to Issue 5
Florida League of Cities	For slum or blighted determinations, the governmental enity should make its determination based on competent and substantial evidence. The burden of proof of the governmental entity to take should be a preponderance of the evidence that the specific property is "essential" to eliminate slum or blighted conditions or to achieve the goals and objectives of the community redevelopment plan.
Charlie Siemon, Siemon & Larsen, PA	Preponderance of the evidence.
Andrew Prince Brigham and D. Mark Natirboff, Brigham Moore, LLP	PLEASE TAKE NOTICE THAT THE MATTER AT HAND INVOLVES AN ADJUDICIATION OF CONSTITUTIONAL LAW REGARDING A PHYSICAL, NOT A REGULATORY, TAKING. Interested parties questioning a land use regulation are required to appeal to the circuit court (trial court) which sits in an appellate review capacity over a prior quasi-legislative (comprehensive plan) or quasi-judicial (zoning) decision of local government. This kind of appellate review is de novo of a prior record before the local goverment and is typically accompanied by legislative deference and an "easy" burden of proof -- a fairly debatable standard of review attaches to quasi-legislative decisions while a substantial competent evidence standard of review attaches to quasi-judicial decisions. It is advocated that any Florida Legislature reform recognize that a slum or blight designation may be challenged by an interested party by appeal of a quasi-legislative policy decision under the fairly debatable standard of review when questioning the use of public funds or a matter of redevelopment planning separate and apart from local government's petition for a taking. HOWEVER, A TAKING IS A TAKING. As such, it is advocated that any Florida Legislature reform provide that, in the instance of a taking, the substance and form of a property owner's defense be under the original jurisdiction of the circuit court. The trial court should not sit as an appellate court reviewing a prior record, but should hear evidence before it under its original jurisdictional powers. This may include consideration of testimony and evidence which was presented before the local government, but also allows a private property owner to cross-examine or impeach such testimony and evidence in a judicial proceeding. Further, if any Florida Legislative reform requires a more clear or narrow threshold of slum or blight, then the local government is not limited to only that evidence presented before it when making the initial slum or blight designation, but may supplement its testimony or evidence at the time of taking. The burden of proof for proving that conditions of slum or blight exist should be clear and convincing. Because a Chapter 163 taking results in a private to private transfer of private property ownership, unlike traditional takings for public use, it is advocated that the burden of proof upon the condemning authority in proving that the threshold definition of slum or blight is met be clear and convincing.
Bradley S. Gould, Esq., Akerman Senterfitt	Clear and convincing evidence

Respondent	Response to Issue 5
Florida Association of Counties	The current burden of proof is sufficient: preponderance of the evidence. Any legislative declarations of public purpose and necessity must be based upon competent and substantial evidence. The condemning authority must always show public purpose and necessity and must prove each by a preponderance of the evidence. To the extent that legislative declarations are a part of that proof, such declarations must be based upon competent and substantial evidence. The property owner has the opportunity to prove that the findings are arbitrary.
Dana Berliner, Institute for Justice	The burden of proof for taking private property should be "clear and convincing evidence."
Carol Saviak, Coalition for Property Rights	The seizure of private property is the second highest burden a government entity can impose on its citizenry, and second only to death or physical harm to one's person or family. Governmental entities should be required to meet the highest legal burden of proof – clear and convincing evidence.
Charlotte County as submitted by Carrie Roth	Agree with the statement of the Florida Association of Counties. The focus of reform should be on the initial determinations of the local government and all potentially affected property owners granted enhanced ability and forums to raise issues with the potential determination of a slum or blighted condition. The determination to proceed with any of the tools to improve slum or blighted conditions is alegislative decision. Raise the standard for that determination, but don't encourage judicial activism in a legislative matter by allowing a court to start anew and insert itself in the place of an elected local government body. The Courts's appropriate role is contained in current statute and case law.

ISSUE 6

Should the decision by a governmental entity to take private property for the purpose of eliminating the conditions identified in Question #1 be subject to heightened judicial review? In other words, should the "fairly debatable" standard currently applicable to local government decisions to take private property be replaced with a more stringent standard of judicial review?

Respondent	Response to Issue 6
Steve Lindorff, Director of Planning and Development, City of Jacksonville Beach	I don't have a particular problem with a heightened level based on the preponderance of evidence.
Vince Cautero, Executive Committee Member, Florida Chapter of the American Planning Association	Agree.
S. William Moore and John W. Little for Brigham Moore, LLP	Yes, the court should make a "heightened review" of a CRA attempt to seize private property. See Dolan, supra, explaining why the standard is different when the decision is "adjudicative" versus "legislative." The "fairly debatable" standard is still valid under Florida law for legislative decisions, but when the government acts to deprive a specific owner or parcel of property rights, the higher standard should apply.
Wade Hopping and Butch Calhoun, Property Rights Coalition	The fairly debatable rule should definitely be replaced for CRA taking purposes. It should be replaced with a more stringent standard of review and thus should not be applicable to these proceedings. See our answer to Question #5 above, which is also applicable here.
Douglas Sale, Harrison Sale McCloy & Thompson	The original determination that an area contains conditions so adverse that public intervention is needed is the setting of legislative policy which the court should not disturb unless arbitrary or capricious. However, once the policy has been set, it is appropriate for the court to examine more closely whether, over the objection of the owner, the government can prove, perhaps years later, that a parcel is needed to implement that policy. Before filing a condemnation, the government should find by a preponderance of the evidence in a quasi-judicial hearing that the parcel is necessary to address the adverse conditions in the area. In the subsequent condemnation action, the court will conduct a de novo review of the necessity of that take. In that case, the law could be changed to require the government to prove by a preponderance of the evidence that, at the time of the take, the parcel is material or necessary to address the adverse conditions in the area. An owner could defeat the take by showing that its use of the property will be as likely to address the adverse conditions of the area.

Respondent	Response to Issue 6
Florida League of Cities	The governmental entity should be required to show at the time of the take that the specific parcel is "essential" to eliminate slum or blighted conditions or to achieve the goals and objectives of the community redevelopment plan. The underlying determination that the redevelopment area is either slum or blighted, and the plan to eliminate and then prevent the recurrence of slum or blight, are legislative matters which the court should not disturb unless arbitrary or capricious.
Charlie Siemon, Siemon & Larsen, PA	Not if just or full compensation is to be paid
Andrew Prince Brigham and D. Mark Natirboff, Brigham Moore, LLP	PLEASE TAKE NOTICE THAT THE MATTER AT HAND INVOLVES AN ADJUDICIATION OF CONSTITUTIONAL LAW REGARDING A PHYSICAL, NOT A REGULATORY, TAKING. Interested parties questioning a land use regulation are required to appeal to the circuit court (trial court) which sits in an appellate review capacity over a prior quasi-legislative (comprehensive plan) or quasi-judicial (zoning) decision of local government. This kind of appellate review is de novo of a prior record before the local goverment and is typically accompanied by legislative deference and an "easy" burden of proof -- a fairly debatable standard of review attaches to quasi-legislative decisions while a substantial competent evidence standard of review attaches to quasi-judicial decisions. It is advocated that any Florida Legislature reform recognize that a slum or blight designation may be challenged by an interested party by appeal of a quasi-legislative policy decision under the fairly debatable standard of review when questioning the use of public funds or redevelopment planning separate and apart from any challenge to the local government's petition for a taking. HOWEVER, A TAKING IS A TAKING. As such, it is advocated that any Florida Legislature reform provide that, in the instance of a taking, the substance and form of a property owner's defense be under the original jurisdiction of the circuit court. It is a constitutional inquiry tht invokes the original, not appellate, jurisdiction of the court. If challenged in court, the circuit judge sits with original jurisdiction over a consitutional question, applies the ruleds of civil procedure and evidence, and considers a record not created before the local government, but consists of the testimony and evidence immediately presented to the court in a judicial (not quasi-legislative, or quasi-judicial) forum. The trial court should apply heightened judicial review to the questions of public purpose (predominance of public purpose over private purpose) and specific/reasonable necessity for the taking of a particular parcel to achieve the public purpose (including whether alternatives were considered or whether the owner has a possible, practicable, and economically feasible plan to cure or eliminate slum or blight conditions). What is in need of protection is not government's power, but the constitutional rights of the individual who may have his or her private property taken.
Bradley S. Gould, Esq., Akerman Senterfitt	Yes. The standard should be strict scrutiny as set forth in the Baycol decision of the Florida Supreme Court.

Respondent	Response to Issue 6
Florida Association of Counties	No. The current law should remain as the standard. The judicial deference that is afforded legislative declarations, including declarations of public purpose and reasonable necessity are grounded in the separation of powers doctrine. The legislative body has the duty to make choices. Those choices are entitled to deference. The deference afforded, however, cannot make something a public purpose that is only a private purpose. The judicial inquiry will include an examination of the anticipated ownership interest the taken property but the focus of the inquiry is, and should be, on the public purpose to be achieved and on whether the property is reasonably necessary for that purpose.
Dana Berliner, Institute for Justice	Yes. Deference to the legislative and executive entities involved in taken private property should be withdrawn and replaced with a higher standard of judicial review.
Carol Saviak, Coalition for Property Rights	Given the recognized deference to the legislative decision-making, the highest standards of judicial review should be required.
Charlotte County as submitted by Carrie Roth	No. Charlotte County agrees with the statement of the Florida Association of Counties.

ISSUE 7

If property may be taken under the Community Redevelopment Act only for the public purpose of eliminating the conditions identified in Question # 1, are additional procedural requirements, such as enhanced notice, necessary to protect property owners?

Respondent	Response to Issue 7
Steve Lindorff, Director of Planning and Development, City of Jacksonville Beach	I don't have any problem with additional notice requirements when preparing to use eminent domain as a tool to carry out an approved community redevelopment plan.
Vince Cautero, Executive Committee Member, Florida Chapter of the American Planning Association	Agree, but this is unlikely to happen.
S. William Moore and John W. Little for Brigham Moore, LLP	Yes, the affected owner should be given actual, not merely "published," notice of any and all workshops and/or hearings wherein the decision to declare his/her property slum/blighted is discussed by the CRA and/or local government body. Also, particularly significant is timely, actual notice of the hearing in which the actual condemnation resolution is to be voted upon.
Wade Hopping and Butch Calhoun, Property Rights Coalition	Yes. We believe that prior to initiation of activities to take a specific parcel, the property owner should receive written notice of such hearings, an opportunity to appear and contest the proposal, and other procedural safeguards to ensure that the CRA or local government makes an informed, initial decision as to the necessity for taking the specific parcel.
Douglas Sale, Harrison Sale McCloy & Thompson	Yes. The potential for condemnation and additionally the potential to transfer condemned property to a private party should be disclosed at every public hearing in the process of formulating a redevelopment plan, and personal notice of each hearing should be given to every potentially affected property owner.

Respondent	Response to Issue 7
Florida League of Cities	Under the FLC's comprehensive proposal submitted to the Select Committee on November 3, 2005 and outlined in responses to Matrix 2, Questions 9-26, the FLC proposes enhanced notice to property owners of redevelopment plans and activities, additional processes for takings and additional compensation for takings; however, the entire FLC comprehensive proposal is grounded on the basic premise that takings of property are permitted to occur when the parcel is determined to be "essential" (or another appropriate standard) to eliminate slum or blighted conditions or to achieve the goals and objectives of a community redevelopment plan. See response to Question 1. The FLC comprehensive proposal is not based on the assumption that an individual parcel of property must meet a narrow definition of being either slum or blighted prior to a taking. If an individual parcel of property must meet a narrow definition of being either slum or blighted prior to a taking (which is essentially a nuisance abatement process), the FLC proposes no further changes to current statutes on notice, process or compensation for redevelopment activities. The FLC comprehensive proposal must be viewed as a complete proposal, not as a "cafeteria plan" with bits and pieces of the proposal being selected for discussion and inclusion in recommendations, but the overall fundamental aspects of the proposal being rejected.
Charlie Siemon, Siemon & Larsen, PA	All property subject to a CRA Plan should be given written notice of a plan which includes the use of eminent domain as an implementation tool
Andrew Prince Brigham and D. Mark Natirboff, Brigham Moore, LLP	Yes, the affected owner should be given actual, not merely "published," notice of any and all workshops and/or hearings wherein the decision to declare his/her property slum/blighted is discussed by the CRA and/or local government body. Because the boundaries of a proposed redevelopment area are initially defined by the area of purported slum or blight that is subject of a local government's study, notice is easily accomplished. Notice also furthers early consideration of alternatives to the use of eminent domain to eliminate slum/blight if more private property owners participate in the process. Also, particularly significant is timely, actual notice of the hearing in which the actual condemnation resolution is to be voted upon.
Bradley S. Gould, Esq., Akerman Senterfitt	Yes.
Florida Association of Counties	The Florida Association of Counties believes that notice to affected property owners in a proposed CRA that eminent domain may be used to achieve the purposes of eliminating slum or blight and preventing their recurrence could be enhanced.
Dana Berliner, Institute for Justice	Yes, before the government condemns private property for public safety reasons, it should provide enhanced notice to the property owner. If possible, notice of the health or safety threat and an opportunity to cure would be preferable.

Respondent	Response to Issue 7
Carol Saviak, Coalition for Property Rights	Additional procedural requirements, such as enhanced notice (which is specific to the property to be taken and the process of eminent domain*), would provide property owners with greater awareness of a muncipal intent to pursue a taking and to more effectively challenge takings which they believed were not justifiable. (* i.e. notification of bond validation would not be sufficient.)
Charlotte County as submitted by Carrie Roth	See #1 above. Individual mailed notices at the same address as shown for tax purposes on the most recently certified tax roll will provide a reasonable and efficient means to enhance notice to affected landowners.

ISSUE 8

If property may be taken under the Community Redevelopment Act only for the public purpose of eliminating the conditions identified in Question # 1, in addition to providing compensation for the loss of "Save Our Homes" protection, is other compensation, such as relocation expenses and business damages for total takings, necessary to protect property owners?

Respondent	Response to Issue 8
Steve Lindorff, Director of Planning and Development, City of Jacksonville Beach	No problem with "Save Our Homes" or other compensatory protection measures.
Vince Cautero, Executive Committee Member, Florida Chapter of the American Planning Association	This is an assumption. What is the question?
S. William Moore and John W. Little for Brigham Moore, LLP	Yes, complete relocation reimbursement for either home or business should be afforded. Compensation for all business losses caused by the taking should be available for any business taken, in whole or in part, when that business is in actual operation as of the date of the slum/blight designation. Negative project influence should be disregarded in the valuation of the taking; and the owner should be given the opportunity, if true, to demonstrate that the slum/blight conditions were at least, in part, caused or contributed to by the local government entity. The condemned owner should also be permitted to prove any enhancement in value that may be attributable to the assembled project for which his/her property is being taken.
Wade Hopping and Butch Calhoun, Property Rights Coalition	This is a complicated question because of the potential that if special compensation is paid to those whose property is taken by eminent domain and such special compensation (e.g. relocation costs) is not paid to those who voluntarily sell their property to a CRA, such a process will encourage everyone to insist their property be taken by eminent domain. While recognizing that eminent domain is an extremely coercive tool against private property owners, it would seem that special compensation should be paid to all whose property is acquired by CRAs. For instance, it would be appropriate to have relocation costs and perhaps other special compensation, such as protection under the Save Our Homes property provision, apply to all persons in a CRA who are compelled to leave, either by voluntary acquisition or through eminent domain takings. With regard to special compensation in takings cases, we would recommend that business damages for total takings be provided, as well as relocation expenses and replacement cost adjustments.
Douglas Sale, Harrison Sale McCloy & Thompson	Yes. However, business damages for a total taking may be tricky. Perhaps the business should be required to establish something extraordinarily unique about its location or its building, beyond the fact that all real estate is unique. Otherwise, a business could relocate with a windfall. An alternative would be to limit business damages to business interruption (temporary) damages.

Respondent	Response to Issue 8
Florida League of Cities	See response to Question 7.
Charlie Siemon, Siemon & Larsen, PA	If the standards are fair and reasonable, additional compensation is not neededl, nor is it appropriate. The purpose of change is to avoid abuse, not disable meritorious governmental

Respondent	Response to Issue 8
Andrew Prince Brigham and D. Mark Natirboff, Brigham Moore, LLP	Yes. BUSINESS DAMAGES: At present, business damages are only provided to an owner in the instance of a partial taking pursuant to Chapter 73, Florida Statutes. The premise that upholds not paying business damages on a whole taking is the notion that the business enterprise is portable in the event an entire property is taken. This is inequitable to those owners who find their entire business enterprise wiped out by virtue of private property being taken for public purpose. It is advocated that in any taking context, this is bad policy in that it forces one citizen to bear a disproportional cost for the public good. Such policy also sacrifices long term economic benefits associated with private enterprise of an established business for short term savings on a condemnor's cost of acquisition. The context of redevelopment only heightens inequity as a private developer who is tranferred the title of property taken is rewarded for industry, while the business owner whose property is taken receives nothing for his or her industry in the destruction of a business without compensation. MOVING/RELOCATION/RE-ESTABLISHMENT EXPENSES: At present, there is conflicting case law as to whether moving expenses are compensable as part of full compensation. In the context of redevelopment, relocation expenses (including moving costs) and re-establishment expenses should be provided in such measure as to make the property or business owner whole. (If a business can be relocated within the same market area, then payment of moving, relocation, and re-establishment expenses may mitigate business damages paid for the complete destruction of a business). PROPERTY VALUATION/REPLACEMENT/SUBSTITUTION: If the market value of the property is insufficient to purchase a "replacement" or "substitute" property , then the legislative intent should be made clear to include "replacement" or "subsitution" as proper methods of determining compensation. There should not be a distinction between homestead property or other residential property. Likewise, there should not be a distinction between residential or business property. PROPERTY VALUATION/HIGHEST AND BEST USE: The highest and best use of property taken may, in fact, be premised upon its suitability to be assembled to other adjacent properties and not on the property's existing use. Thus, market value may include consideration of assemblage or plottage value. In this context, compensation is not an addition to market value; however, expressed language as to the legislative intent to support such theory is neeed as part of reform to existing Chapter 163. Such value in the marketplace is not speculative, but is based on a land residual method of valuation that may recognize the underlying land value exceeds the value of any existing improvements. It is the same value that is negotiated in voluntary transactions considering the highest and best use of land as demonstrated by other similarly situated properties assembled for like-kind developments where eminent domain is not at issue.

Respondent	Response to Issue 8
Bradley S. Gould, Esq., Akerman Senterfitt	Yes. Property owners, which includes tenants, must receive as compensation business damages and relocation benefits, otherwise they are not being compensated for their losses caused by the taking of their property.
Florida Association of Counties	The Florida Constitution guarantees property owners the right to "full compensation" for their property that is taken by eminent domain. The "full compensation" guarantee includes payment for the fair market value of the property, severance damages where appropriate, moving costs, attorneys' fees, expert witness fees, and prejudgment interest. The amount of the full compensation is one of only two proceedings in Florida that is determined by a 12-member jury. Accordingly, these elements of compensation should not be mandated to be a specific discrete element of full compensation to the extent that they are not already recognized under the law in Florida for establishing full compensation. However, compensation for the loss of the constitutionally-granted "Save Our Homes" protection may be an appropriate component of full compensation.
Dana Berliner, Institute for Justice	The Institute for Justice does not generally comment on specific compensation issues. However, in general, it is our position that owners who lose their property should be in no worse position than they were before the taking. They should be able to have similar homes, functioning businesses, and they should be able to reap the benefits of their investment in their property.
Carol Saviak, Coalition for Property Rights	The realization that property takings can create economic impacts beyond the market value of the property is very important. Property owners should be provided a process in which they can petition for compensation for these additional economic impacts, which may include, but should not limited to, the three elements provided in this question.
Charlotte County as submitted by Carrie Roth	The Charlotte County Board of County Commissioners has been at the forefront of addressing this issue with its affected landowners. In the negotiating process for the acquisition of the relatively few homesteads in the Murdock Village Community Redevelopment Area, the County early on authorized its Real Property Department to include the value of the 'Save Our Homes' protection in compensation negotiations with its affected landowners. A codified approach which provides guidance to local government and landowners would certainly be helpful. Charlotte County, as would most local government's, can support the payment of reasonable additional compensation to improved landowners in community redevelopment areas. The authorization of payment of additional compensation in community redevelopment areas for homesteads and business (improved properties) in the way of relocation or business expenses under limited circumstances should be tied to causing the parties to more effectively settle valuation as to any properties taken. Unreasonable positions or positions designed to enhance attorney fees paid should not be rewarded.

ISSUE 9

Should the Legislature limit the home rule powers of cities and counties to prevent takings of private property for economic development purposes?

Respondent	Response to Issue 9
Steve Lindorff, Director of Planning and Development, City of Jacksonville Beach	Yes, as to the use of eminent domain where economic development is the original intent of the taking, but not where "economic benefits" are a result of a project being carried out to implement an adopted community redevelopment plan
Vince Cautero, Executive Committee Member, Florida Chapter of the American Planning Association	[No response received.]
S. William Moore and John W. Little for Brigham Moore, LLP	Yes, there should be **no condemnation permitted for the purpose of economic redevelopment**. However, if another purpose qualifies under the Constitution as "public," such as a road, school or necessary public utility, any incidental economic benefits from that qualified project would not vitiate the taking. The point to be made is that the public purpose supporting the exercise of eminent domain must be "stand alone" sufficient as a matter of constitutional law, separate and apart from any residual economic benefit.
Wade Hopping and Butch Calhoun, Property Rights Coalition	Yes.
Douglas Sale, Harrison Sale McCloy & Thompson	See 10.
Florida League of Cities	The FLC believes that Florida's constitutional restriction on exercising eminent domain for a "public purpose" and its well-established body of case law, which requires a predominant public benefit while permitting an incidental private benefit, prohibits takings of private property for the sole purpose of "economic development." Any restriction in addition to the current constitutional restrictions should apply equally to all entities authorized to exercise the power of eminent domain, including the state and its agencies and private entities, and "economic development" must be narrowly defined. See response to Question 10.
Charlie Siemon, Siemon & Larsen, PA	No.
Andrew Prince Brigham and D. Mark Natirboff, Brigham Moore, LLP	Yes.

Respondent	Response to Issue 9
Bradley S. Gould, Esq., Akerman Senterfitt	Yes. Neither the Florida Legislature or Supreme Court has authorized takings of property for the public purpose of "economic redevelopment". The Florida Supreme Court has prohibited local governments from acquiring land by purchase or eminent domain and then leasing the property to a private business for a private use involving commercial and industrial development even if the project would benefit a community's growth, progress, development and prosperity. See State v. Town of North Miami, 59 So.2d 779 (Fla. 1952); City of WPB v. Williams 291 So.2d 572 (Fla. 1974). Eminent domain cannot be used to take private property for a predominantly private use, rather it can only be incidental. Baycol, Inc. v. Downtown Dev. Auth. of Ft. Lauderdale, 315 So. 2d 451, 455 (Fla. 1975).
Florida Association of Counties	No. The current law already requires public purposes for takings of private property. The cases in Florida indicate that incidental benefits like increased job rates and enhanced tax bases are not sufficient to support the taking of private property.
Dana Berliner, Institute for Justice	Absolutely. Local governments have many different kinds of incentive, zoning, and code enforcement tools to promote economic development. Eminent domain should be a rarely exercised power, thus it would be best left in the hands of state rather than home rule.
Carol Saviak, Coalition for Property Rights	Yes. The Legislature can either choose to ignore the impact of the Supreme Court ruling in Kelo v. City of New London and the Court's egregious misinterpretation of the words "public use" as stated in the Fifth Amendment to the Constitution and continue to watch local governments misuse the overbroad definitions of blight and slum contained in the Community Redevelopment Act to seize the private property in Florida for the purposes of redevelopment, or the Legislature can act and provide extraordinary clarity as to the extremely limited set of circumstances where the power of eminent domain can be used in Florida.
Charlotte County as submitted by Carrie Roth	Charlotte County adopts the statement of the Florida Association of Counties. Eminent domain may not be used to further economic development as a primary purpose, but incidental benefits to the economy and the tax base are natural and supportable.

ISSUE 10

Should the statute define "economic development" and prevent takings for the purpose of "economic development" or is there an alternative means of preventing takings for that purpose?

Respondent	Response to Issue 10
Steve Lindorff, Director of Planning and Development, City of Jacksonville Beach	I have no objection to defining "economic development", and providing a specific prohibition, provided that it is not so broadly written that economic benefits can never result from a project being carried out in furtherance of the approved redevelopment plan.
Vince Cautero, Executive Committee Member, Florida Chapter of the American Planning Association	[No response received.]
S. William Moore and John W. Little for Brigham Moore, LLP	Yes, "economic development" should be defined in the Redevelopment law as: "the enhancement of the community or redevelopment area by means of any or all of the following: increased tax base, more opportunity for employment, greater attractions of the area for tourists or businesses, or for an higher and better use." Not only should Chapter 163 be revised to reflect a prohibition of takings for "economic redevelopment," but all relevant local government statutes as well. For e.g.., Chapter 127.01 and 166.401 should contain the prohibition.
Wade Hopping and Butch Calhoun, Property Rights Coalition	We do not believe it is necessary at this time to have the CRA statute define economic development.
Douglas Sale, Harrison Sale McCloy & Thompson	Not legally necessary, especially if slum and blight conditions are narrowed for eminent domain. If politically needful, suggest codifying language from existing constitutional case law to reduce the risk of unintended consequences. For example, an economic development project could be defined as "A project dedicated to a private use without serving a predominately public purpose through that use, regardless of any public benefit derived."
Florida League of Cities	If takings for purely "economic development" purposes are to be restricted, the phrase "economic development" must be defined narrowly and in the context of current constitutional standards. For example, "economic development project" could be defined as: "A project dedicated to a private use without serving a predominantly public purpose through that use, regardless of any public benefit derived." See response to Question 9.
Charlie Siemon, Siemon & Larsen, PA	Yes. Economic development is implicit in many public initiatives and in the absence of a clear and limiting definition, a prohibition would "chill" and affect many legitimate undertakings.

Respondent	Response to Issue 10
Andrew Prince Brigham and D. Mark Natirboff, Brigham Moore, LLP	Yes. "Economic development" should be defined as: "the enhancement of the community or redevelopment area by means of any or all of the following: increased tax base, more opportunity for employment, greater attractions of the area for tourists or businesses, or for an higher and better use." Not only should Chapter 163 be revised to reflect a prohibition of takings for "economic redevelopment," but all statutes authorizing eminent domain as part of a general delegation of government powers, including home rule. For e.g.., Chapter 127.01 and 166.401 should contain the prohibition.
Bradley S. Gould, Esq., Akerman Senterfitt	The Florida Legislature should adopt a statute that defines and prohibits takings for economic development. However, the Constitution should be amended to prohibit takings for economic development.
Florida Association of Counties	No. Florida law contains no specific constitutional or statutory section that either authorizes or prohibits the use of eminent domain for "economic development". While there is no reported appellate decision in Florida that has analyzed the issue of using the power of eminent domain for "economic development" purposes, the general status of the law in Florida is quite clear. Eminent domain can only be validly exercised for "economic development" if (1) the "economic development" was a public purpose; if (2) the property is reasonably necessary for the public purpose; and if (3) full compensation is paid to the property owner. The Florida courts have commented on several occasions that "public benefits" like job creation and increased tax bases alone are not the same as "public purpose." Without a valid public purpose, any taking of private property infringes on the Florida Constitution.

Respondent	Response to Issue 10
Dana Berliner, Institute for Justice	An effective statute could forbid condemnations for economic development and define economic development. Alternatively, the statute could define "public use." Either approach could work and would involve almost identical language, because the definition of "economic development" would exclude public uses, and the definition of "public use" would exclude economic development. For an appropriate definition of public use, please consider the following language: Notwithstanding any other provision of law, neither this State nor any political subdivision thereof nor any other condemning entity shall use eminent domain unless it is necessary for a public use. Public use: The term "public use" shall only mean the possession, occupation, and enjoyment of the land by the general public, or by public agencies; or the use of land for the creation or functioning of public utilities; the acquisition of property to cure an immediate threat to public health or safety caused by the current condition of the property, including the removal of public nuisances, structures that are beyond repair or that are unfit for human habitation or use, and the acquisition of abandoned property. The public benefits of economic development, including an increase in tax base, tax revenues, employment, general economic health, shall not constitute a public use. For a prohibition on economic development takings, please consider the following language: Notwithstanding any other provision of law, neither this State nor any political subdivisions thereof nor any other condemnor shall use eminent domain to take private property without the consent of the owner to be used for economic development. Economic Development--The term "economic development" means any activity to increase tax revenue, tax base, employment, or general economic health, when that activity does not result in (1) the transfer of land to public ownership and occupation; (2) the transfer of land to a private entity that is a common carrier, such as a railroad or utility; or (3) the transfer of property to a private entity when eminent domain will remove a public nuisance or structures that are beyond repair or that are unfit for human habitation or use; (4) the acquisition of abandoned property; (5) the lease of property to private entities that occupy an incidental area within a public project.
Carol Saviak, Coalition for Property Rights	No. Takings for the primary purpose of economic development should be prohibited in Florida through a separate and distinct statute. It would also be highly appropriate to prohibit takings for the primary purpose of economic development via Constitutional Amendment.
Charlotte County as submitted by Carrie Roth	As the Committee has noted, this is a difficult area. Charlotte County believes that the better approach is to more narrowly define slum and blight, i.e. the conditions of the when the authority may be used, rather than try to narrowly define when conditions do not warrant the determination. See answer to Question 9.

ISSUE 11

If it is appropriate to take private property for the purpose of eliminating the conditions identified in Question #1, is it appropriate for government to transfer ownership or control of the taken property to another private entity for redevelopment? If so, under what circumstances?

Respondent	Response to Issue 11
Steve Lindorff, Director of Planning and Development, City of Jacksonville Beach	Yes, when the local elected governing body has prepared and adopted a community redevelopment plan that proposes using private entites in partnership with the local government to carry out that plan. This is a vastly better method than the government assuming on the role of "developer" and carrying out projects which may be in competition with other private development projects.
Vince Cautero, Executive Committee Member, Florida Chapter of the American Planning Association	[No response received.]
S. William Moore and John W. Little for Brigham Moore, LLP	Yes, if clearance of existing, true slum/blight is the genuine, proven purpose of the taking, then the ultimate transfer of condemned property to another private entity should not invalidate the condemnation. The court must be convinced that the true purpose of the taking is clearance of actual (re-defined) slum/blight, and that the ultimate private transferee is not "behind" the condemnation for his/her ulterior private motive.
Wade Hopping and Butch Calhoun, Property Rights Coalition	Assuming the conditions are met for the taking initially, we believe it is appropriate for a local government to transfer ownership or control of the taken property to another private entity or redeveloper. This position makes it absolutely essential that the condition of the taking be limited to taking of property which is in fact truly slum or blighted, and that those definitions have been corrected, clarified, and sufficiently narrowed.
Douglas Sale, Harrison Sale McCloy & Thompson	Yes. When transfer is necessary or material to the elimination and prevention of slum or blight. Perhaps the intent to transfer, and the justification for the transfer (again, elimination of slum or blight) should be part of the necessity findings made by the local government in its quasi-judicial hearing, and proved to the court by a preponderance of the evidence.
Florida League of Cities	Yes, if the private-to-private transfer will eliminate the slum or blighted conditions or will achieve the goals and objectives of the community redevelopment plan.
Charlie Siemon, Siemon & Larsen, PA	Yes. What difference does it make to the condemnee who ends with the property -- government should be able to decide what institution of action makes the most sense and it would be a matter of biting off the nose to spite the face to confine responsible public initiatives to public sector iimplementation.

Respondent	Response to Issue 11
Andrew Prince Brigham and D. Mark Natirboff, Brigham Moore, LLP	Yes, if slum and blight are genuine, it is understood that the means to achieve such end is a private to private transfer. The problem has been that the definition of slum and blight has become so vague or ambiguous that any subdivision of land not utlized to its maximally productive use meets the existing, faulty definition. If the conditions identified in Question #1 are proven to exist by clear and convincing evidence, if under heightened judicial scrutiny it is shown that a predominance of public, not private, purpose motivates the taking, and if under heightened judicial scrutiny there is shown to be a specific, reasonable necessity for the taking of private property to achieve the public purpose under review, then a subsequent private to private transfer is justified as a means to achieving a constitutionally valid end of eliminating a public nuissance or harm.
Bradley S. Gould, Esq., Akerman Senterfitt	Transferring ownership of private property is permissible if such is necessary to achieve the elimination of blight or slum.
Florida Association of Counties	Depending on the circumstances, yes. When the bona fide primary purpose of the taking is to eradicate the slum or blight and to then prevent its recurrence, the fact that the redevelopment activities in furtherance of that purpose are carried out by private entities is incidental to the primary public purpose. Such a circumstance would not negate the primary and valid public purpose of slum or blight eradication and subsequent prevention. For example, if a CRA sought to eradicate bona fide residential slum conditions and uses the power of eminent domain to fully achieve that purpose, whether the land is ultimately rebuilt with a publicly-owned and controlled facility, like a public housing agency or whether the same facility is provided by a private housing provider could be incidental to the purpose of slum eradication.
Dana Berliner, Institute for Justice	If the government must acquire private property to avoid "imminent harm to public health or safety," it may make sense to allow subsequent transfer of ownership or control to a private entity. However, eminent domain statutes should exclude the transfer of ownership or control of private property taken by eminent domain to another private entity except in very limited circumstances. See response to Matrix Issue 10.
Carol Saviak, Coalition for Property Rights	No. When government has made the claim that there is a valid public use which necessitates taking the private property from one of its citizens, the property should remain both in public ownership and under full government control. This is a very important safeguard and the ultimate check on the abuse of eminent domain.

Respondent	Response to Issue 11
Charlotte County as submitted by Carrie Roth	Absolutely. There is a legitimate need for local government to not only acquire lands for community redevelopment purposes, but local governments should be obligated to dispose of those lands as quickly as possible to the private sector in conformance with a publicly vetted community redevelopment plan and with the powerful controls for accountability in Florida's Community Redevelopment Act. Florida's Community Redevelopment Act currently makes it abundantly clear that government can not so dispose of land until a community redevelopment plan is first adopted. It is unnecessary, and sometimes impractical, to entangle the disposition process with the acquisition process. However, it is imperative that the lands acquired for community redevelopment purposes be disposed of in a manner to advance the purposes articulated in the Florida Community Redevelopment Act. One of the most significant means to do so is the private sector. There are often positive opportunities to use the private sector as a means to eliminate slum and blighted conditions.