



# POLICY BRIEF



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## **The Use and Abuse of Washington's Community Renewal Law**

by

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### Executive Summary

Following the *Kelo v. City of New London* decision by the United States Supreme Court in 2005, many public officials have strenuously argued that eminent domain reform is unnecessary in Washington State because the Washington Constitution protects property owners from the kind of abuse that occurred in *Kelo*. These officials are wrong.

Washington's Community Renewal Law (CRL) is a powerful tool that often tempts municipalities into large-scale blight designations for the purpose of land assembly and economic redevelopment. It is not moribund, nor has it fallen into disuse. **Indeed, since 2000, Washington local governments have applied or attempted to apply the CRL to take the property of over 71,000 Washington residents.** Of these, the homes, businesses and properties of over **48,000 Washingtonians** were threatened to be taken for projects that did not expressly foreclose the use of eminent domain for transfer to private entities.

Specifically, officials in the cities of Auburn, Bremerton, Renton, Seattle, Tukwila, and Walla Walla took significant steps to utilize the CRL for projects involving economic redevelopment. As a result of aggressive plans to redevelop large areas and eradicate so-called "blight," ordinary citizens in Renton and Seattle mobilized to thwart the municipalities' plans.

Across the nation eminent domain abuse disproportionately impacts poor, minority and other historically disenfranchised and comparably powerless communities. These inequities are demonstrated in Washington State as well. **In areas where the CRL has been used or contemplated, more residents are ethnic or racial minorities, have completed less education, live on significantly less income, and live at or below the federal poverty line than people living in surrounding communities.** Thus, those often least-equipped to represent their own interests in the face of eminent domain inequitably bear this burden.

**Some municipalities have used the CRL responsibly**, for instance to repair property with substantial physical dilapidation and hazardous soils or substances and for redevelopment through voluntary purchase and sale agreements without legal condemnation. Specifically, the City of Everett successfully used the CRL to remove and contain contaminated soil from the site of a former smelter plant. Following the cleanup, the site was fully redeveloped with 90 new homes. The City of Vancouver revitalized a large area of its city by using certain parts of the CRL, without resorting to mandatory condemnation or eminent domain.

**Recommendation: Given the findings detailed here and the demonstrated potential for abuse, Washington’s CRL should be substantially revised to cover only concrete, objective harms presented by truly blighted property.** The provisions that currently tempt local officials to abuse the power of eminent domain should be repealed, thereby ensuring that homeowners and business owners are protected to the full extent envisioned by the framers of the Washington Constitution, which plainly states, “[p]rivate property shall not be taken for private use . . . .”<sup>1</sup>

## I. Introduction

On June 23, 2005, the United States Supreme Court issued its notorious decision in *Kelo v. City of New London*.<sup>2</sup> This decision held that officials in the City of New London, Connecticut could take people’s private property and give it to a private company in order to promote “economic development,” increase the city’s tax base, and meet the “diverse and always evolving needs of society.”<sup>3</sup> The decision marked the first time the Supreme Court approved the use of eminent domain power for pure economic development under the public use clause of the Fifth Amendment to the United States Constitution. The Court’s decision removed any federal impediment to eminent domain abuse.

The public’s response to the *Kelo* decision was immediate, intense, and almost uniformly negative. Following *Kelo*, 43 states quickly passed new laws aimed at curbing the abuse of eminent domain for private use.<sup>4</sup> And recent polling data demonstrates that the vast majority of those surveyed believe that the government should not have the power of eminent domain for redevelopment and view private property rights as just as important as freedom of speech and religion.<sup>5</sup>

Both the U.S. and Washington constitutions provide that government officials may only condemn private property for a “public use.” The Fifth Amendment to the U.S. Constitution reads:

“[N]or shall private property be taken for public use, without just compensation.” Article 1, section 16 goes much further and explicitly declares: “Private property shall not be taken for private use . . . .”

Historically, public use meant things actually owned and used by the public, such as roads, courthouses and post offices. Over the last 50 years, however, the concept of public use has expanded to the point that the public use restriction is no restriction at all. Today, the term “public use” is commonly thought of as anything that creates a public benefit, which can be as tenuous as increased tax revenue and jobs. As a result, property is now routinely transferred by force from one private person to another in order to build luxury condominiums and big-box stores. Between 1998 and 2002, the Institute

<sup>1</sup> WASH. CONST. Art. I, sec. 16.

<sup>2</sup> *Kelo v. City of New London*, 545 U.S. 469, 125 S. Ct. 2655, 162 L. Ed. 2d 439 (2005).

<sup>3</sup> *Id.* at 2662.

<sup>4</sup> See Institute for Justice, 50 State Report Card Tracking Eminent Domain Reform Legislation Since *Kelo* (2008) (“Given that significant reform on most issues takes years to accomplish, the horrible state of most eminent domain laws, and that the defenders of eminent domain abuse – cities, developers and planners – have flexed their considerable political muscle to pressure the status quo, this is a remarkable and historic response to the most reviled Supreme Court decision of our time.”).

<sup>5</sup> Associated Press – National Constitution Center Poll (August 2008) (in a poll with questions about various constitutional issues, 87% of respondents said government shouldn’t have the power of eminent domain for redevelopment. Moreover, 75% of those surveyed opposed government taking private property and handing it over to a developer, and 88% said property rights are just as important as freedom of speech and religion) (available at <http://surveys.ap.org/data/SRBI/AP-National%20Constitution%20Center%20Poll.pdf>).

for Justice found that local officials used or threatened to use mandatory condemnations more than 10,000 times to promote private development across the country.<sup>6</sup> In the first year following the *Kelo* decision alone, local government officials threatened eminent domain action or actually condemned at least 5,783 homes, businesses, churches and other properties so that the property could be given to another private party.<sup>7</sup>

Following *Kelo*, many people wondered what effect the decision would have in Washington State. Some commentators argued that this decision is essentially meaningless in Washington because the state constitution prohibits state and local governments from using eminent domain to take property for purely economic development purposes.<sup>8</sup> While the Washington Constitution contains clear and unambiguous protections for private property, legal analysts acknowledge that Washington's blight laws, especially the Community Renewal Law (CRL), provide a broad exception to the general rule that eminent domain power should not be used for economic development.<sup>9</sup>

Washington's local government officials candidly acknowledge that they use eminent domain power for economic development in Washington. In a letter obtained from the City of Seattle addressing whether the CRL authorizes a municipality to acquire property by eminent domain and sell such property for private development, Seattle officials unambiguously respond in the affirmative:

“[I]f you read these statutory provisions together, the community renewal law authorizes acquisition via eminent domain and re-selling such property for private development.”<sup>10</sup>

This statement demonstrates that local government officials are aware that the CRL can be used to slap a bogus blight designation on a citizen's property, or can threaten such a designation, with the idea of transferring the property to private developers. The notion that “it can't happen here” has become “it can happen here with the use of the CRL.”

Local officials often claim they use eminent domain power only as a last resort. In fact, this phrase is used throughout the materials turned over by local officials in nearly every redevelopment project in which eminent domain is contemplated. Supposedly, eminent domain power is used only when taking someone's property is absolutely necessary for an important project. But in reality, the phrase “last resort” means that any property owner who refuses to sell “voluntarily” will have their land condemned to make way for a pre-planned redevelopment project that benefits private interests. Given the sweeping power of eminent domain authority, promises that eminent domain will only be used as a so-called last resort fall far short of protecting neighborhoods and homes from aggressive government leaders and developers who see property only for its exchange value.

<sup>6</sup> Dana Berliner, *Public Power, Private Gain* 2 (2003).

<sup>7</sup> Dana Berliner, *Opening the Floodgates; Eminent Domain in the Post-Kelo World* 1 (2006).

<sup>8</sup> See, e.g., Hugh Spitzer, “State's constitution, high court shields us from improper condemnation of property,” *The Tacoma News Tribune*, March 19, 2006, at Insight 1; Alan D. Copsey, *The Effect of Kelo v. City of New London in Washington State: Much Ado About Almost Nothing*, *Envtl. & Land Use Law* 3 (Nov. 2005).

<sup>9</sup> Sharon E. Cates, *Supreme Court Affirms Economic Redevelopment as “Public Use”*: *Kelo v. City of New London*, *Foster Pepper & Schefelman News* 4, 6 (Fall 2005) (available at [http://www.foster.com/pdf/FPN\\_Fall2005.pdf](http://www.foster.com/pdf/FPN_Fall2005.pdf)) (“Therefore, it is generally agreed that *Kelo* is likely to have little effect on the eight states that specifically prohibit the use of eminent domain for economic development (except to eliminate blight), including Washington State.”) (emphasis added).

<sup>10</sup> Letter from Steve Johnson, Acting Director, Executive Department – Office of Economic Development to Stu Weiss, Seattle resident referring to RCW 35.81.080, 35.81.015, and 35.81.090 of the Community Renewal Law (dated August 21, 2006) (on file with the Institute for Justice Washington Chapter).

Washington's CRL should be substantially revised to eliminate each of the provisions that tempt municipalities to abuse the awesome power of eminent domain. The CRL should cover only concrete, objective harm to the public presented by truly blighted property. An individual piece of property that has substantial physical dilapidation or deterioration, unsanitary or unsafe conditions, dangerous or unhealthful conditions, or hazardous soils or substances – like a rat-infested house, a crumbling warehouse or an old factory – arguably constitutes a menace to its surrounding community.

The CRL should provide cities with the ability to rehabilitate or tear down these properties and fix potential health and safety problems that may exist. The CRL should not, however, permit municipalities to declare entire neighborhoods “blighted” simply because certain government officials believe the people living there are impairing the “sound growth of the municipality.”<sup>11</sup>

## **II. The CRL is a Significant Vehicle for Eminent Domain Abuse in Washington**

Washington's CRL arises from a social attitude in post-War America that viewed poor people as a disease.<sup>12</sup> Indeed, the term “blight” is lifted from agriculture terminology and refers to diseases that slowly destroy crops. In 1963, this social fad found acceptance in our state when the Washington Supreme Court held that condemning “blighted areas” for redevelopment and transfer to private entities does not violate the prohibition against private takings in Article I, section 16 of the Washington Constitution.<sup>13</sup>

When most people think of blighted areas, they think of neighborhoods afflicted with objective, concrete problems so serious that the property itself harms the safety or health of the surrounding community. Included in this concept of blight are properties that are dangerously dilapidated, unsanitary, unsafe, vermin-infested, or hazardous. However, Washington's CRL does not limit the definition of “blighted areas” only to these types of problems. Indeed, the definition of “blighted area” used in the law is so broad that nearly every neighborhood in Washington could be designated a blighted area.

The CRL, Title 81 of Chapter 35, states that the exercise of the eminent domain power under that chapter is for a “public use” and grants to municipalities the power of condemnation for “community renewal of blighted areas.”<sup>14</sup> “Blighted area” is defined in RCW 35.81.015(2) to mean an area that is afflicted with a range of certain conditions, many of which are outside the control of residents. Under the CRL, any property that constitutes “an economic . . . liability” may be condemned and transferred to a private developer.<sup>15</sup> Almost any property can be described as an “economic liability” relative to some conceivable alternative that might produce greater economic growth. Combined with the purpose of the CRL – the elimination of areas that “contribut[e] little to the tax income of the state and its municipalities”<sup>16</sup> – the definition of blight effectively creates the same conditions that New London officials used to justify their taking of private homes in *Kelo*.

<sup>11</sup> RCW 35.81.015(2).

<sup>12</sup> See Brief for National Association for the Advancement of Colored People *et al.* as Amici Curiae Supporting Petitioners, *Kelo v. City of New London*, 545 U.S. 469, 125 S. Ct. 2655, 162 L. Ed. 2d 439 (2005) (No. 04-108),

<sup>13</sup> *Miller v. City of Tacoma*, 61 Wn.2d 374, 378 P.2d 464 (1963).

<sup>14</sup> RCW 35.81.080.

<sup>15</sup> RCW 35.81.015(2).

<sup>16</sup> RCW 35.81.005.

The “economic liability” standard is not the only vehicle for eminent domain abuse under the CRL. An attorney who regularly advises municipalities<sup>17</sup> has coined the terms “*Economic Blight*” or “*Planner’s Blight*” to describe the following conditions under which property may be labeled blighted under RCW 35.81.015(2) of the CRL. The conditions constituting “Planner’s Blight” in the CRL are not even based on the physical condition of the property but include:

- inappropriate or mixed uses of land or buildings;
- defective or inadequate street layout or lot layout, improper subdivision or obsolete platting;
- excessive land coverage;
- persistent or high levels of unemployment;
- diversity of ownership;
- tax or special assessment delinquencies; or
- any factor that “substantially impairs or arrests the sound growth of the municipality or its environs.”

Translated into plain English, these categories of so-called “blight” go far beyond anything that an ordinary person would consider blighted. For example, “mixed uses of land or buildings” means that homes and businesses are located near each other, as in a typical neighborhood business district. “Defective or inadequate street layout or lot layout, improper subdivision or obsolete platting” means – to a government bureaucrat – the lots are too small, the streets are too narrow, or there is insufficient green space. “Excessive land coverage” simply means that your house is too big and your yard is too small, while “diversity of ownership” means that different people own homes next to each other. Under these definitions any typical, traditional neighborhood in Seattle, Spokane, Bellingham or Vancouver could be designated as blighted.

Finally, almost any property can be described as an obstacle to “sound growth,” as it is possible to argue that replacing a private home with high-rise condominiums or a mom-and-pop store with a big-box store would more effectively advance economic growth.

As this detailed list makes clear, “blight” is defined so broadly under the CRL that no property is safe from a municipality that wants to use blight removal as a reason to take citizens’ land for redevelopment. In fact, cities that have attempted to utilize the CRL for economic redevelopment have recognized the breadth of the CRL, stating that its provisions defining blight are, as one Seattle official put it, “broad enough to drive a truck thru [sic].”<sup>18</sup>

Moreover, this threat is not limited to single properties. When the government designates an area as blighted, it has the authority to condemn all the properties in that area – even homes that do not possess a single one of the broad characteristics of blight.<sup>19</sup> Thus, one blighted house in an otherwise well-

<sup>17</sup> Hugh Spitzer, a partner at Foster Pepper PLLC, regularly advises municipalities and has prepared a handbook entitled *Land Assembly and Financing for Community Renewal Projects* (April 2002). In a PowerPoint presentation given to the City of Renton addressing the CRL, Mr. Spitzer characterized certain conditions of blight as defined in RCW 35.81.105(2) as “Planner’s Blight.”

<sup>18</sup> Contained in the materials provided to the Institute for Justice by the City of Seattle is an undated and untitled outline summarizing the CRL. In one of the first sections, the outline defines the term “blighted area” and then lists the potential reasons a municipality can determine blight under the CRL. Next to the factor “Inappropriate use of land or buildings” is the parenthetical notation “(broad enough to drive a truck thru) [sic].”

<sup>19</sup> In *Miller v. City of Tacoma*, Mr. Miller argued that his property should not be included in the area designated “blighted” because it was not substandard. The Washington Supreme Court rejected Mr. Miller’s argument, noting “[e]xperience has shown and the facts of this case indicate that the area must be treated as a unit and that a particular building either within or near the blighted area may have to be included to accomplish the purposes of the act. It is not necessary that every building in such [a blighted] area be in a blighted condition before the whole area may be condemned.” *Miller*, 61 Wn.2d at 392 (quotation marks omitted).

maintained, successful neighborhood can bring a blight designation upon all the homeowners in that neighborhood.

Not only does the CRL contain an expansive definition of “blight,” the CRL has been recently amended to enlarge the power of local governments to acquire and dispose of people’s private property.

Washington’s courts have been skeptical of the use of condemnation powers to take property from one owner in order to assemble and resell it to another, predetermined owner. Furthermore, community renewal property assembled by a city or county has in the past been required to be sold or leased at fair market value after a competitive process. These restrictions presented a challenge to a city that desired to select a developer at the beginning of the community renewal process in order to assure that the developer’s expertise and financial resources are available and that the community renewal project will proceed successfully. The 2002 amendments to the Washington Community Renewal law permitted developers to be selected either before or after property assembly. Early identification of a developer enables a community renewal agency to pinpoint property acquisition . . . .<sup>20</sup>

The so-called challenges municipalities previously faced in taking private property and transferring it to developers for economic redevelopment are described in a CRL handbook regularly utilized by municipalities. The CRL now provides that municipalities are explicitly authorized to select and contract with developers for the sale of property before it is condemned as blighted and taken by local officials. Thus, the CRL explicitly permits government officials to hand-pick developers in advance of a finding that a particular property or area is even blighted. As currently written, Washington law encourages municipalities to work hand-in-hand with preselected developers to capitalize on the “expertise and financial resources” of these private developers.

### **III. Washington Cities View the CRL as Providing a “Powerful Array of Tools” to Accomplish Economic Redevelopment**

This study ascertains whether Washington’s CRL is used or contemplated for use by municipalities for the purpose of land assembly and economic redevelopment. Its purpose is to answer important and timely policy questions: Is eminent domain reform necessary in Washington State following *Kelo*? Does the threatened use of eminent domain for private-to-private transfer disproportionately affect poor, minority, or other less-politically powerful populations?

To answer these questions, the Institute for Justice Washington Chapter (IJ-WA) sent public records requests to every city in Washington with a population over 5,000 and to every county and housing authority. IJ-WA asked each respondent to provide records dating from January 1, 2000 to August 1, 2008 “relating in any way to any actual, planned, or contemplated use of the Community Renewal Law.” The information contained in this study derives primarily from documentation provided by municipalities in response to IJ-WA’s request for information. However, in some instances, information was collected by reference to city Web sites and other similar sources.

The results indicate that what was presented as a way to remove dilapidated, vermin-infested properties has become a powerful legal weapon that gives municipal officials the ability to take perfectly fine middle-and working-class neighborhoods and transfer them to private developers who promise increased tax revenues and jobs. As detailed below, a number of Washington cities have used –

<sup>20</sup> Hugh Spitzer, *Land Assembly and Financing for Community Renewal Projects*, A Handbook (April 2002) at 12.



or considered using – the CRL for economic redevelopment purposes against the wishes of local property owners. All told, since 2000, the CRL has been used or threatened against a total of 48,000 Washington residents for projects that did not expressly foreclose the use of eminent domain to take private land and transfer it to private entities.

### Case Study: Auburn

On September 18, 2006, elected officials in the City of Auburn designated a large portion of its downtown core as blighted and adopted a community renewal plan. They declared block after block blighted due to “inappropriate use of land or buildings,” “excessive land coverage,” and “obsolete platting or ownership patterns.”<sup>21</sup> In effect, Auburn’s Community Renewal Plan alleged that its downtown core suffered from “Economic Blight” or “Planner’s Blight,” as opposed to “real” blight that adversely impacted the health or safety of the surrounding community.

After adopting its community renewal plan, Auburn’s planning director candidly explained that a blight designation was required to “legitimize” the taking of private property and the transfer of such property to private developers. In an internal memo, he wrote, “as the City explores the acquisition and revitalization of multiple rather than individual downtown properties over the course of time, an urban renewal designation would appear to legitimize that activity and the process as well as provide a funding mechanism that would allow the City access to revitalization funds in excess of . . . annual general fund budgeted amounts.”<sup>22</sup>

In the earliest stages of its economic redevelopment planning, Auburn city officials stated that their economic development strategy was to “[c]onsolidate Property, whole blocks where possible.”<sup>23</sup> In addition to taking large chunks of property, Auburn became focused on the “[a]cquisition of strategically-located parcels downtown in an effort to facilitate redevelopment.”<sup>24</sup> Officials also acknowledged that the passage of Auburn’s community renewal plan provided “the City greater flexibility to assemble and sell land for the purposes of redevelopment . . . .”<sup>25</sup> As Auburn’s documents make clear, city officials were not focused on remedying specific, identifiably hazardous properties – that is, property that most would consider truly “blighted.” Rather, they used the CRL to assemble and acquire large segments of private property that the city considered most desirable and “strategically-located,” ignoring the rights of the property owners themselves.

The City of Auburn’s adoption of its community renewal plan provided the city with the authority to use the power of eminent domain to condemn private property for economic development.<sup>26</sup> As a result, four popular local businesses are now closed, including The Mecca, the Jade House, The Rail, and Main Street Pub. The owners of these properties reluctantly agreed to sell their properties after city officials threatened to take their land by force.<sup>27</sup> The City

<sup>21</sup> City of Auburn Community Renewal Plan (adopted by Ordinance No. 6049 on September 18, 2006).

<sup>22</sup> Interdepartmental memorandum from Paul Krauss, Auburn Planning Director, to Al Hicks regarding Urban Renewal (dated October 12, 2006).

<sup>23</sup> City of Auburn Economic Development Strategies at 9 (dated November 14, 2005).

<sup>24</sup> City of Auburn Downtown Revitalization Catalyst Area at 5 (dated June 7, 2007) (emphasis in original).

<sup>25</sup> *Id.*

<sup>26</sup> City of Auburn Resolution 4114 (dated November 15, 2006) noted that Auburn Ordinance No. 6011 authorized the acquisition by eminent domain of several properties, which includes the properties on which The Mecca and Jade House were located.

<sup>27</sup> *Id.*

of Auburn reportedly paid approximately \$650,000 to purchase The Mecca, the Jade House, and The Rail.<sup>28</sup> The fourth establishment, Main Street Pub, was purchased in spring 2006 by a local developer who had worked with the city on past redevelopment projects.<sup>29</sup>

Critics of Auburn's economic development plans observe that the closed businesses now look like blight, with their empty properties matching other planned developments that have been stalled.<sup>30</sup> Auburn officials used Washington's CRL to shut down viable businesses and destroy an important part of Auburn's rich history. Some residents now wish city officials had simply worked with these businesses to incorporate them into a revitalized downtown area.<sup>31</sup>

### **Case Study: Bellingham**

On May 17, 2001, the Mayor of Bellingham wrote a letter to the owner of a commercial property in order to gauge the owner's interest in selling his property to the city. In this letter, the Mayor wrote that the city "is interested in revitalization of Old Town, and we may be interested in purchase of the property as part of that endeavor."<sup>32</sup>

After the owner was apparently unwilling to sell his property voluntarily, the City of Bellingham adopted a resolution declaring the property "a neighborhood blight and part of an area designated for community renewal requiring acquisition in accordance with RCW 35.81.080."<sup>33</sup> Shortly thereafter, the City of Bellingham filed a petition for condemnation of this property, claiming that "the acquisition of the subject property is necessary to facilitate its Old Town Redevelopment Project."<sup>34</sup>

Rather than justifying the condemnation of this specific parcel of property on grounds of public health or safety, Bellingham utilized Washington's CRL in order to advance its economic redevelopment plans.

### **Case Study: Bremerton**

In 2002, the City of Bremerton adopted a community renewal plan and officially declared a portion of its lucrative downtown shoreline area as blighted.<sup>35</sup> The city declared that its community renewal plan would afford "maximum opportunity" to redevelop "the blighted area by the private sector."<sup>36</sup> Although it claimed that there were "few, if any, residents living in the Blighted Area," the city found that a residential displacement plan was "necessary for displacement of residents who might be replaced by the community renewal project . . . ."<sup>37</sup>

One year later, Bremerton reaffirmed its previous findings of blight and designated three new areas of blighted property in downtown Bremerton.<sup>38</sup> Bremerton's currently designated blighted area was expanded to include the

<sup>28</sup> Mike Archbold, *Belly up to the bar? Not any more*, The News Tribune, April 19, 2007, at <http://www.thenewstribune.com/news/local/v-printerfriendly/story/42768.html> (retrieved July 10, 2007).

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> Letter from Mayor of Bellingham to owner of commercial property located at 612 West Holly Street (dated May 17, 2001).

<sup>33</sup> City of Bellingham Resolution No. 2004-01 (dated January 12, 2004).

<sup>34</sup> City of Bellingham Petition for Condemnation (dated January 21, 2004).

<sup>35</sup> City of Bremerton Ordinance No. 4830 (dated November 2002).

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> City of Bremerton Ordinance No. 4873 (dated October 2003).

Proposed Maritime Park Area, the Westpark Area, and the Anderson Cove Area.<sup>39</sup>

After designating the Anderson Cove Area “blighted,” the City of Bremerton adopted the Anderson Cove Community Renewal Plan. This community renewal plan explains that Anderson Cove is a small neighborhood, consisting of fewer than 200 housing units in a half-mile area. The community renewal plan listed the following planning goals:

- “Remove all obsolete duplexes and replace with single family homes that are affordable.”
- “Turn the community around so that its strongest asset, the view of the cove and the water way, is the focus for community renewal.”
- “Add quality, garden apartments as a housing option.”<sup>40</sup>

Rather than attempt to eradicate true blight, Bremerton officials sought to replace homes they viewed as obsolete – that is, homes or lots they considered too small – with new, “affordable” homes and “quality, garden apartments.” And, most strikingly, the city planned to utilize Washington’s CRL to better orientate the neighborhood to maximize water views (and presumably to maximize a developer’s profit).

Bremerton’s coordination with private developers and planned private-to-private transfer of property is clearly spelled out in the following section of the Anderson Cove Community Renewal Plan:

**Housing Rehabilitation, Infill and New Construction** – Most of the houses are obsolete for today’s market, and the amount of rehabilitation could be prohibitive. Although demolition and new construction also are expensive, there are many models for financing as well as alternative building technologies that can foster redevelopment at this scale. This concept does not assume that a government agency will purchase all of the properties following condemnation, it does presume that there will be a partnership between the public sector, non-profit developers, property owners and potential residents for each scheme. Using a combination of public and private funding, sweat equity and self-help, condemnations, donations, and other incentives, each parcel can be addressed. Creating an Urban Renewal Area will significantly contribute to the utilization of these creative financing instruments.<sup>41</sup>

Nowhere mentioned is the rehabilitation of dilapidated, vermin-infested, or otherwise unsafe or unsanitary housing. Instead, Bremerton officials focused on condemning homes they considered “obsolete for today’s market.” Equally disturbing is Bremerton’s plan to condemn and assemble these parcels to transfer to other “partners” – code for private developers – for redevelopment.<sup>42</sup>

The City of Bremerton has continued to pursue redevelopment of large portions of the city to eradicate its ever-increasing areas of so-called “blight.” In late 2007, the city added a new sub-area plan delineating eight specific areas of the city as blighted and subject to community renewal plans under Washington’s CRL.<sup>43</sup>

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<sup>39</sup> *Id.*

<sup>40</sup> Anderson Cove Community Renewal Plan at 16.

<sup>41</sup> *Id.* at 18.

<sup>42</sup> See Anderson Cove Community Renewal Plan at 22 (noting that the immediate next steps include: “a. Community review and adoption of the plan b. Urban Renewal Area Designation c. Create Management Plan d. *Identify partners* e. Write Temporary Relocation Plan with Housing Providers f. Schedule priorities, conduct feasibility analysis g. *Condemn and assemble parcels.*”) Emphasis added.

<sup>43</sup> Bremerton Ordinance No. 5034 (dated December 19, 2007). The blighted areas now include the Westpark Sub-Area, the East Park Sub-Area, the Wheaton-Riddell Sub-Area, the Downtown

## Case Study: Renton

Throughout the spring and summer of 2006, residents of Renton's working class Highlands neighborhood fought to keep their homes and businesses from being declared blighted by the city. The Highlands neighborhood is a low-income, ethnically-diverse area close to the Boeing and Paccar plants that became part of Mayor Kathy Koelker's vision for the "next generation's new single-family housing."<sup>44</sup>

In an internal memorandum, Renton officials summarized their early thinking about their motives for using the CRL against Highlands residents:

After meeting with a focus group of developers about the Highlands Sub-area Plan, it became necessary to review the state statute in regard to the timing of declaring blight, adopting a community renewal plan, and selecting a developer, or developers, to complete the rehabilitation.<sup>45</sup>

Not surprisingly, the impetus for examining Washington's CRL for use in Renton originated from a "focus group of developers," who apparently anticipated a large financial gain from the city's use of this law against local residents.

Approximately six months later, the city laid out its plans for the Highlands neighborhood in a more concrete fashion in the Highlands Redevelopment Initiative. City officials explained they intended to:

**Make Declaration of Blight:** City would declare the North Harrington Community Renewal Area blighted based on analysis of deteriorating conditions in the neighborhood to trigger provisions of the Community Renewal Act.

**Use Community Renewal Act:** Implement the State Community Renewal Act to create a partnership with one or more private developers to create a redevelopment master plan and acquire an assemblage of property large enough to justify higher value new homes and investment.

**Select private homebuilder(s) to partner** in a master plan redevelopment.  
**Create opportunities for existing property owners to own and occupy new homes** in the redevelopment.

**Reserve the right to compel property owners to sell on a limited basis as a last resort** after all other tools and incentives have been exhausted.<sup>46</sup>

In mid-September 2006, the City of Renton issued an "Economic Development Neighborhoods & Strategic Planning – FAQ Sheet" to address growing citizen resistance to the city's plans to take property in the Highlands neighborhood. In response to whether the city planned to declare the Highlands as blighted, the city stated: "If an area is to be declared 'blighted,' the City Council must determine that conditions in the area warrant that designation. At this time, the City Council has not made a decision to proceed with a declaration of blight."<sup>47</sup>

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Regional Center Sub-Area, the Austin Drive Sub-Area, the Harrison Employment Center, the Northwest Corporate Campus Employment Center, and the Port Blakely Employment Center.

<sup>44</sup> Quoted in Dean A. Radford, *Highlands Face a Blight Future*, King County Journal, February 7, 2006, at <http://kingcountyjournal.com/apps/pbcs.dll/article?AID=/20060227/ARC/602270306&SearchID=73260965744629> (retrieved October 25, 2006).

<sup>45</sup> Memorandum to Alex Pietsch (Economic Development, Neighborhoods, and Strategic Planning Department) from Erika Conkling re: Community Renewal Law dated October 14, 2005 at 1-2.

<sup>46</sup> Economic Development Neighborhoods & Strategic Planning HIGHLANDS REDEVELOPMENT INITIATIVE dated April 13, 2006 (emphasis in original).

<sup>47</sup> Economic Development Neighborhoods & Strategic Planning - FAQ Sheet *Frequently Asked Questions*

Despite this assurance and according to their own internal documents, city officials six months earlier had already collected and analyzed all the data necessary to make a declaration of blight against Highlands homeowners.<sup>48</sup> Moreover, city officials were actively working to have a draft declaration of blight for the Highlands completed by June 30, 2006 in order to submit the declaration of blight and the community renewal plan to the city council for “consideration and subsequent adoption” by July 31, 2006.<sup>49</sup> In light of this timeline, the assertion in September 2006 that the city had not yet made a determination as to whether it would proceed with a declaration of blight appears disingenuous.

Despite attempts by city officials to push through the Highlands community renewal plan, residents and certain members of the city council fought back against the Mayor.<sup>50</sup> After a long and painful process, Mayor Koelker was forced to cancel her plans. She said, “the City will not pursue the use of eminent domain or a Designation of Blight under the State Community Renewal Act at this time.”<sup>51</sup> But she held the door open for future takings of private property: “In time, we may find that some of our original ideas will become necessary to bring about widespread improvements. At your direction, I will be happy to revisit these concepts.”<sup>52</sup>

Moreover, at a subsequent city council meeting, “Councilman Clawson stated that taking this action [that is, abandoning the use of eminent domain or a designation of blight under the CRL] does not prevent the Council from considering using the Community Renewal Act in the future.”<sup>53</sup> Residents in the City of Renton should be wary as some officials have expressly stated that a declaration of blight and the use of eminent domain under CRL may be pursued at some point in the future.

### Case Study: South Seattle

Much like their neighbors to the south in Renton, residents in Seattle’s Rainier Valley recently were forced to wage a political battle to prevent their vibrant minority community from being declared blighted by the City of Seattle. The earliest slated projects included the construction of “Town Center” and “urban village” developments with private residential and commercial uses around the sites of two planned Sound Transit light rail stations.

In October 2006, Mayor Greg Nickels released a study documenting supposedly “blighted” conditions in Southeast Seattle in order to condemn homes and small businesses for private development. Entitled “Southeast Seattle Determination of Blight Study,” the document purported to find that a 1,391-acre/2.17 square mile area – comprising at least 24,000 people in nearly 6,400 households and 38.3% of the overall Southeast Seattle area – is blighted.<sup>54</sup>

*tions About the Highlands Redevelopment Initiative*, at <http://www.ci.renton.wa.us/ednsp/faq.htm> (retrieved September 17, 2006) (emphasis in original).

<sup>48</sup> Economic Development Neighborhoods & Strategic Planning HIGHLANDS REDEVELOPMENT INITIATIVE dated April 13, 2006 (in section entitled “**Outline of Implementation Timing and Steps**” the following action item is listed: “Collect and analyze data needed to support declaration of blight under Community Renewal Act (**nearly complete as of 4/13/06**).” (Emphasis in original).

<sup>49</sup> *Id.*

<sup>50</sup> Jamie Swift, “Highlands residents fight against city’s plans: Some fear Renton will use eminent domain to make them leave,” *King County Journal*, June 24, 2006, at <http://kingcountyjournal.com/apps/pbcs.dll/article?AID=/20060624/NEWS/606240321&SearchID=73260966110248> (retrieved October 25, 2006).

<sup>51</sup> Renton City Council Minutes – Meeting June 26, 2006 at 224-25.

<sup>52</sup> *Id.*

<sup>53</sup> Renton City Council Minutes – Meeting July 17, 2006 at 249.

<sup>54</sup> City of Seattle, Office of Policy & Management, *Southeast Seattle Determination of Blight Study* at 6 (October 2006) (on file with the Institute for Justice Washington Chapter).

Demonstrating the power and the breadth of the CRL, Seattle’s “blight” study noted that:

“Although portions of the Study Area are in adequate or sound condition, there exists ‘conditions’ that substantially impair or arrest the sound growth of specific sub-areas within the Study Area.”<sup>55</sup>

Among those “conditions” are above average rates of unemployment, poverty, and crime.<sup>56</sup> The city’s blight study makes clear that Seattle officials viewed the economic and employment status of residents as a justification for condemning their homes and businesses, despite the fact that unemployment and poverty have nothing to do with the safety or habitability of real property. Moreover, the city’s failure to control crime in the area appeared to be another justification to deprive the area’s residents of their homes and businesses.

After determining that well over one-third of Southeast Seattle could be characterized as “blighted,” Seattle officials drafted a community renewal plan to outline its proposals for the supposedly “blighted” properties.<sup>57</sup>

- “A Community Renewal Designation . . . [, which] [a]llows for use of eminent domain to acquire property.”<sup>58</sup>
- “Significant barriers to private development remain, particularly for commercial and mixed-use projects. Small and narrow lots under separate ownership predominate along key commercial corridors. Private developers cannot assemble sites at scale needed to make a project feasible.”<sup>59</sup>
- “The community renewal agency will strive to acquire property voluntarily, integrate existing residents and businesses into new developments, and provide relocation assistance. In rare instances when eminent domain may be used, it will be as a last resort, only in the McClellan and Othello sub-areas, and will require approval from the community renewal board and the Seattle City Council.”<sup>60</sup> But later the plan makes clear that “[i]nitially, the use of eminent domain by the Community Renewal Agency will be restricted to the McClellan and Othello Sub-Areas” and “[e]minent domain powers can be extended to other commercial nodes only after approval of a Sub-Area plan approved by the Board and City Council.”<sup>61</sup>
- The McClellan and Othello sub-areas are the first two areas for “initial community renewal investment” as both have “current private market interest.”<sup>62</sup> Translated, this means that because private developers are interested in the McClellan and Othello areas, these areas will be the first targeted by the city and potentially subject to the power of eminent domain.
- Regarding “acquisition principles,” “[c]ommunity renewal efforts will focus on supporting private sector investments. The [Community Renewal] Agency will help assemble land in situations where significant barriers to feasible private sector development remain or individual property owners are acting in conflict with the goals of the Community Renewal Plan. As a

<sup>55</sup> *Id.* at 13.

<sup>56</sup> *Id.*

<sup>57</sup> *DRAFT Southeast Seattle Community Renewal Plan* (September 4, 2006) (on file with the Institute for Justice Washington Chapter).

<sup>58</sup> *Id.* at 3.

<sup>59</sup> *Id.* at 7.

<sup>60</sup> *Id.* at 4.

<sup>61</sup> *Id.* at 19 (emphasis added).

<sup>62</sup> *Id.* at 12, 14.

last resort, the Agency will consider the use of eminent domain.”<sup>63</sup>

- A section entitled “Implementation” includes a sample flow diagram for property acquisition by the Community Renewal Agency with “condemnation” listed as one of the methods. Most striking is the notation of one of the steps in the condemnation process: “Developers asked to quantify public benefit and land purchase price.”<sup>64</sup>

Contained in city documents is an undated and untitled outline summarizing Washington’s Community Renewal Law. The outline defines the term “blighted area” and then lists the legal reasons a municipality can determine blight under the CRL. In recognition of the power the CRL gives to local officials, the outline provides, “Inappropriate use of land or buildings (broad enough to drive a truck thru) [sic].”<sup>65</sup>

Throughout this process, the City of Seattle candidly acknowledged that Washington’s CRL provides municipalities with the authority to use eminent domain solely for economic redevelopment. In fact, in a letter from the Office of Economic Development to a Seattle resident, the Acting Director wrote:

During our conversation, you asked whether the community renewal law authorizes a city to acquire property by eminent domain and re-sell such property for private development. Please refer to RCW 35.81.080 which states in part that a “municipality shall have the right to acquire by condemnation . . . any interest in real property, which it may deem necessary for a community renewal project.” RCW 35.81.015 defines a “community renewal project” as including the “redevelopment . . . in a community renewal area.” Moreover, RCW 35.81.015 defines “redevelopment” as including “making the land available for development or redevelopment by private enterprise.” Finally, RCW 35.81.090 contemplates the disposition of “real property in a community renewal area, acquired by the municipality . . . to private persons.”

As a result, if you read these statutory provisions together, the community renewal law authorizes acquisition via eminent domain and re-selling such property for private development.<sup>66</sup>

The city’s views could not be clearer or more correct. The current state of the law appears to authorize the “acquisition via eminent domain and re-selling such property for private development” in Washington State.

Once Rainier Valley residents learned of how Mayor Nickels planned to “renew” their vibrant neighborhood, community organizers mobilized to prevent him from using eminent domain power to take their homes and businesses. Their efforts paid off. In early 2007, the City of Seattle was forced to back away from its plan to use condemnation to transfer private property to developers for retail and condo development.<sup>67</sup> Many observers – including city officials – credit vocal citizen opposition for the city’s belated change of heart.<sup>68</sup>

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<sup>63</sup> *Id.* at 19.

<sup>64</sup> *Id.* at 20.

<sup>65</sup> Document on file with the Institute for Justice Washington Chapter.

<sup>66</sup> Letter from Steve Johnson, Acting Director, Executive Department – Office of Economic Development to Stu Weiss, Seattle resident (August 21, 2006) (on file with the Institute for Justice Washington Chapter).

<sup>67</sup> Cydney Gillis, *Condemnation: Putting Renewal at Risk, Neighbors Reject City Proposal*, *The Stranger*, January 16, 2007, at <http://www.thestranger.com/seattle/Content?oid=137394> (retrieved February 6, 2007).

<sup>68</sup> *Id.* (noting that opposition from property owners who say the city has no business taking land for private developers deserves credit for overwhelming rejection of any renewal plan involving condemnation).

## Case Study: Tukwila

In August 1998, the City of Tukwila enacted its “Pacific Highway Revitalization Plan.” The Pacific Highway Revitalization Plan was updated by the “Tukwila International Boulevard Plan” in January 2000.<sup>69</sup> After first noting that the CRL’s definition of blight is “expansive,” Tukwila’s updated plan concluded that “instances of poor appearance, crime statistics, and small and irregular parcel sizes” supported a finding of blight within the urban renewal area in the city.<sup>70</sup>

Tukwila’s plan for revitalization provided assurances that eminent domain power would be used against residents only in “unique situations.”

When acquiring property within the urban renewal area, the City shall use an approach that encourages private enterprise and public/private partnership. The City will conduct transactions in the private real estate market and acquire property through freely negotiated purchases. The power of eminent domain shall be reserved for that unique situation where other acquisition methods have failed and the City Council determines it is necessary to ensure the success of a specific urban renewal project.<sup>71</sup>

But later, the city detailed a specific urban renewal project whereby the city would “maximize opportunity for private enterprise” and “further assist private redevelopment by assembling nine smaller lots into one larger more visible site and rearranging street right of way to create a more functional arrangement.”<sup>72</sup> Apparently, this specific project was one such “unique situation” where eminent domain – commonly known as property assembly – would be required.

Pursuant to its revitalization plans, the City of Tukwila acquired two separate commercial properties under the threat of condemnation. Specifically, the City purchased a car wash establishment<sup>73</sup> and the Xtra Car Park and Fly Lot,<sup>74</sup> obtaining both properties by using its power of eminent domain as a tactic to make the owners sell their property before city officials took it by force.

## Case Study: Walla Walla

On December 15, 2004, City of Walla Walla officials adopted a Downtown Master Plan to revitalize portions of its downtown area.<sup>75</sup> Through this plan, Walla Walla officials said they intended to make full use of the provisions of Washington’s CRL in order to “revitalize” the city.

For example, Walla Walla’s Downtown Master Plan touted the benefit of the “tools” made available to it through Washington’s CRL.

The Community Renewal Area is a special provision of Washington State law for improvements that will result in increased property or excise taxes as a result of the added value to the property. In a Community Renewal Area, the City can acquire land, make improvements to the infrastructure, and provide incentives to attract users. With this tool, the city can acquire

<sup>69</sup> Tukwila International Boulevard Plan, January 2000, at A3.

<sup>70</sup> *Id.* at A3-A4.

<sup>71</sup> *Id.* at A9.

<sup>72</sup> *Id.*

<sup>73</sup> Tukwila Village – Property Exchange Agreement (September 17, 1994) (document on file with the Institute for Justice Washington Chapter).

<sup>74</sup> Real Estate Purchase and Sale Agreement between the City of Tukwila and the Ben Carol Land Development, Inc. (June 11, 2003) (document on file with the Institute for Justice Washington Chapter).

<sup>75</sup> Downtown Master Plan, City of Walla Walla, Washington (December 15, 2004).



property, make improvements to it and then turn it over to a private entity to further develop the land.<sup>76</sup>

Moreover, Walla Walla officials, like those in other cities profiled in this study, showed they were fully cognizant of the broad power to declare blight given to them by the CRL.

The property involved must be determined to be “blighted,” which may mean that it is deteriorated, or obsolete in terms of real estate definitions. Blight also may simply be a condition in which the property is irregularly configured or improperly utilized with respect to the goals of a renewal plan. (This Downtown Plan can serve as that plan.) As an example, some of the property abutting Mill Creek is in fragmented ownership and irregularly shaped such that efficient use is currently impossible and could potentially meet the definition of the statute.<sup>77</sup>

Conveniently, Walla Walla officials used their renewal plan to conclude that certain property was improperly utilized and therefore “blighted” under the CRL. In this respect, the city itself created the so-called blight by its own design.

Although the downtown master plan initially states that “[c]ondemnation or eminent domain will only be used as a last resort and only for the most vital of projects,”<sup>78</sup> the plan later makes clear that Walla Walla officials will establish a working renewal agency in order to preserve the tool of condemnation to assist with land acquisition and assembly.<sup>79</sup>

Most striking is the city’s disdainful view of its own citizens who – despite bureaucrat’s grand plans for revitalization – simply wish to stay in their homes and businesses.

An unfortunate side effect of successful planning can be the bidding up of land prices based upon future expectations, resulting in ‘hold-out’ owners waiting for market improvement. In many communities, the condemnation process is used to limit speculation and assure that market value is provided.<sup>80</sup>

Because of the potential for a city to become the victim of its own success, Walla Walla explains it needs to preserve the “tool” of eminent domain to effectively accomplish its redevelopment. Local officials labeled people who wanted to keep their property as “hold-outs,” and disapproved of the idea that these citizens might benefit from improvements made in their neighborhood.

In addition to this cavalier approach to land assembly, the City of Walla Walla suggests developing a “vacant land and derelict building inventory” on the city’s Web site so the city can “remain competitive in attracting potential developers” and “out-of-state investors” who might be interested in “development in Downtown Walla Walla.”<sup>81</sup> One can only hope that the out-of-state investors who consider buying property in Walla Walla are first warned of the city’s views of private property rights and the ease with which municipalities may disregard such rights in Washington.

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<sup>76</sup> *Id.* at 119.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.* at 117.

<sup>79</sup> *Id.* at 124-15

<sup>80</sup> *Id.* at 124-25.

<sup>81</sup> *Id.* at 128-29.

#### IV. Examples of Washington's CRL Used Responsibly

While the CRL often leads local officials into taking property from their citizens on a large scale, some cities have resisted this improper temptation and used the law for appropriate reasons and in appropriate ways. As the following two examples demonstrate, the CRL can be used responsibly in Washington.

##### Case Study: Everett

The Everett Smelter Site is located in northeast Everett, Washington. The site was contaminated with lead, arsenic and other metals from a smelter that operated on the site from 1894 to 1912. The smelter was built by the Puget Sound Reduction company and was subsequently sold to Asarco Incorporated in 1903. Asarco operated the smelter until 1912, and then demolished it between 1912 and 1915.<sup>82</sup>

The smelter site property was sold in various parcels, with the last parcel owned by Asarco sold in 1936. Residential homes were built on many of the parcels and the highway interchange between East Marine View Drive and State Route 529 was built on site in the 1950s.

In October 1990, the Washington Department of Ecology discovered the former smelter site was contaminated.<sup>83</sup> The Department officials determined the soil at the Everett Smelter Site had higher than normal levels of arsenic, lead, cadmium and other metals. The contaminated area included both the former smelter plant property (which contained the smelter debris) and the surrounding area that was affected by air emissions from the smelter smoke stacks. Areas next to the property were also contaminated by smelter operations, including spilled products and smelter waste.

In June 2004, the Everett Housing Authority agreed to purchase the site from Asarco, subject to Asarco's cleanup of the site to meet residential environmental standards.<sup>84</sup> The City of Everett designated the Housing Authority as its community renewal agency solely for purposes of carrying out the Everett Smelter Site cleanup project.

Shortly thereafter, the City of Everett adopted a community renewal plan for the smelter site area. The plan provided for the voluntary purchase of the Asarco property only and did not permit the use of eminent domain.<sup>85</sup> The plan also provided for the redevelopment of the site as attached single family homes, in accordance with the City of Everett's zoning and comprehensive plans.

In July 2004, the Everett Housing Authority purchased fifteen homes that were owned by Asarco and were located outside of a fenced remediation area. Six of these homes abutted the fenced area and were demolished and added to the fenced property for purposes of cleanup and later redevelopment.<sup>86</sup> The remaining nine homes were cleaned up to Department of Ecology residential standards, partially renovated, and sold by the Housing Authority to private purchasers between July and September 2005.

In August 2005, Asarco filed for bankruptcy and was unable to finish the Everett smelter site cleanup. In response, the Everett Housing Authority and the

<sup>82</sup> Background to the Everett Smelter Site Community Renewal Plan at 1 (document on file at the Institute for Justice Washington Chapter).

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> Community Renewal Plan for Everett Smelter Redevelopment Area, Section 6.

<sup>86</sup> *Id.*

City of Everett proceeded with the cleanup using a new contractor. The cleanup of the site was completed in March 2006.<sup>87</sup>

Following a public solicitation of proposals for development of the former smelter site, the Everett Housing Authority agreed to sell the cleaned area to a private developer. The sale was completed in May 2006. The expanded fenced area has since been fully redeveloped with ninety private homes.<sup>88</sup> Government officials never used eminent domain power, but the CRL allowed Everett to remediate a truly hazardous area and provide a benefit to the community in the form of safe, clean, habitable homes.

### **Case Study: Vancouver**

Approximately five years ago, the City of Vancouver recognized a need for neighborhood revitalization of certain areas outside of the Vancouver core. As a result, city officials became interested in pursuing the concept of developing underutilized areas through the purchase of properties offered by voluntary sellers without resorting to the use of eminent domain powers.

Once the Vancouver City Council designated the Vancouver Housing Authority a Community Renewal Agency,<sup>89</sup> the housing authority was permitted to undertake economic development strategies not normally available to a housing authority (such as commercial development and market-rate housing). At the same time, the Vancouver Housing Authority learned that Kyocera International was interested in selling 38.5 acres of their 45-acre site located on Fourth Plain Boulevard.

In November 2005, the Vancouver City Council found that the Central Fourth Plain Boulevard/Stapleton area was experiencing a number of characteristics of a “blighted area” as the term is broadly defined in the CRL.<sup>90</sup> The persistence of blight within the area, combined with the opportunity to act immediately to stem that blight through the purchase of the Kyocera International Inc. property, prompted the City of Vancouver to develop a Community Renewal Plan for the area known as Kestrel Crossing.<sup>91</sup> Importantly, the Central Fourth Plain/Stapleton Community Renewal Plan provided a clear policy against the use of condemnation and eminent domain:

As lead agency with respect to the redevelopment of the area known as Kestrel Crossing and the surrounding vicinity of Fourth Plain and Stapleton Roads, the [Housing] Authority has committed not to employ the use of condemnation or eminent domain in the furtherance of the community renewal plan for the area. All sales of property shall be voluntary. If unsanitary or unsafe building conditions are found which require public action to protect health[,] safety and welfare then, and only after consultation with the City of Vancouver and after a public hearing on the matter would condemnation or eminent domain be considered.<sup>92</sup>

As this provision makes clear, the City of Vancouver firmly committed to implement its community renewal goals and objectives of the housing authority without resorting to the use of eminent domain or condemnation.

<sup>87</sup> Background to the Everett Smelter Site Community Renewal Plan at 5-6.

<sup>88</sup> *Id.* at 6.

<sup>89</sup> Vancouver City Council Ordinance M-3704 (dated May 23, 2005).

<sup>90</sup> Vancouver City Council Resolution No. M-3518 (dated November 7, 2005).

<sup>91</sup> Vancouver City Council Ordinance M-3721 (dated November 7, 2005). This ordinance adopted the community renewal plan for the Fourth Plain/Stapleton Community in the Fourth Plain Subarea and appointed the Vancouver Housing Authority to implement and administer the plan.

<sup>92</sup> City of Vancouver Central Fourth Plain/Stapleton Community Renewal Plan at 5.

Ultimately, the City of Vancouver and the Vancouver Housing Authority worked to develop the Kestrel Crossing project to fit the demographics of the area. The project area is more diverse than the rest of Vancouver, with 36 different languages spoken.<sup>93</sup> A number of Eastern European, Latin American, and Asian immigrants and their descendents reside in this area. Moreover, the project area is less affluent than the remainder of the city, with a significantly lower median income level.<sup>94</sup> As a result, Vancouver’s revitalization plans were designed to provide businesses, services, and housing to fit the needs of the existing population and to boost the economic activity of the area in a way that would not displace the existing population.

## V. Officials Using Eminent Domain Power Disproportionately Target Poor and Minority Property Owners

In their dissents in *Kelo*, Justices Sandra Day O’Connor and Clarence Thomas predicted dire consequences as a result of the Supreme Court’s decision: Poor, minority and other historically disenfranchised and comparably powerless communities would be disproportionately hurt through eminent domain abuse.<sup>95</sup>

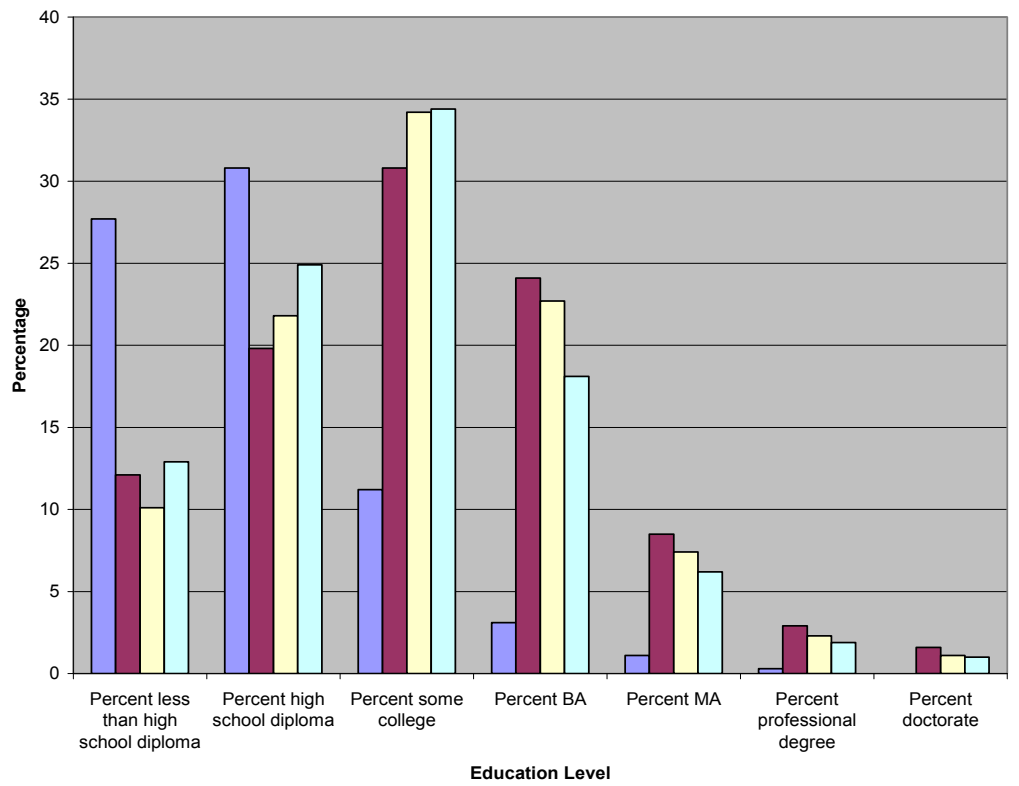
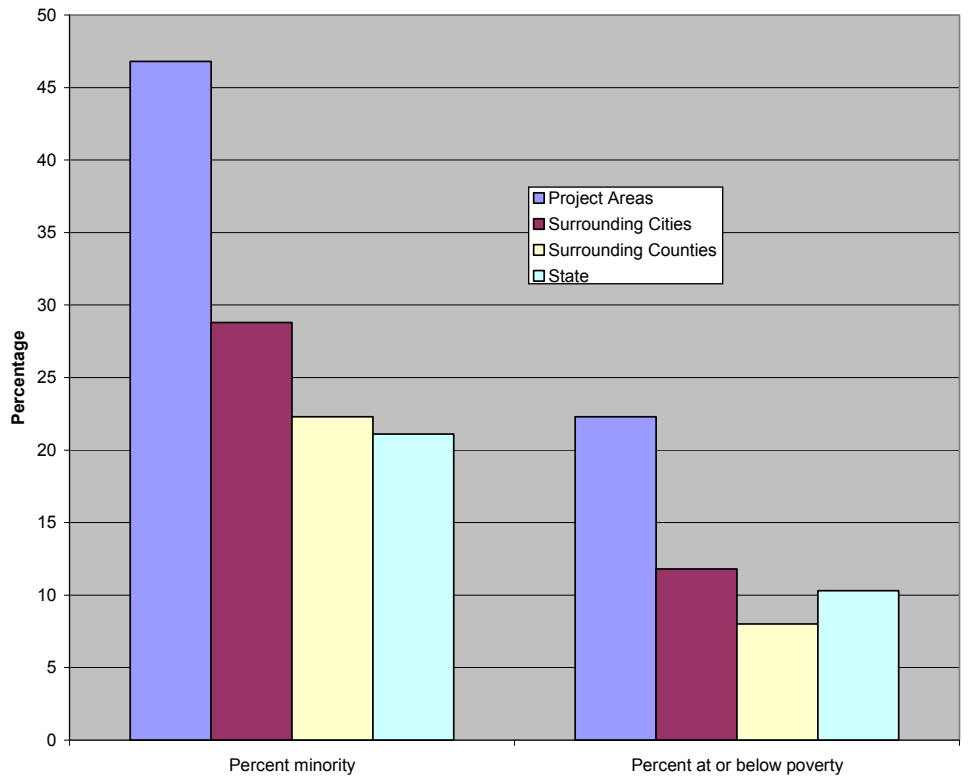
As demonstrated by the charts below and the data shown in Appendix A, results in Washington State unfortunately confirm the Justices’ predictions. Specifically, in areas in which the CRL has been used or has been contemplated, more residents are ethnic or racial minorities, have completed less education, live on significantly less income, and live at or below the federal poverty line, than residents in the surrounding communities.

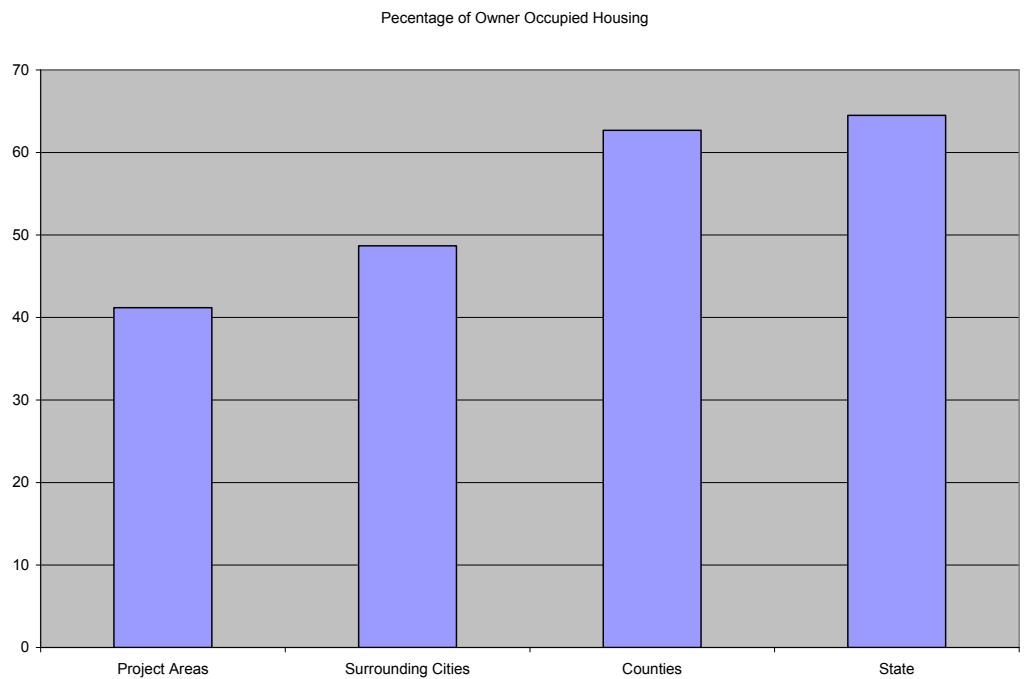
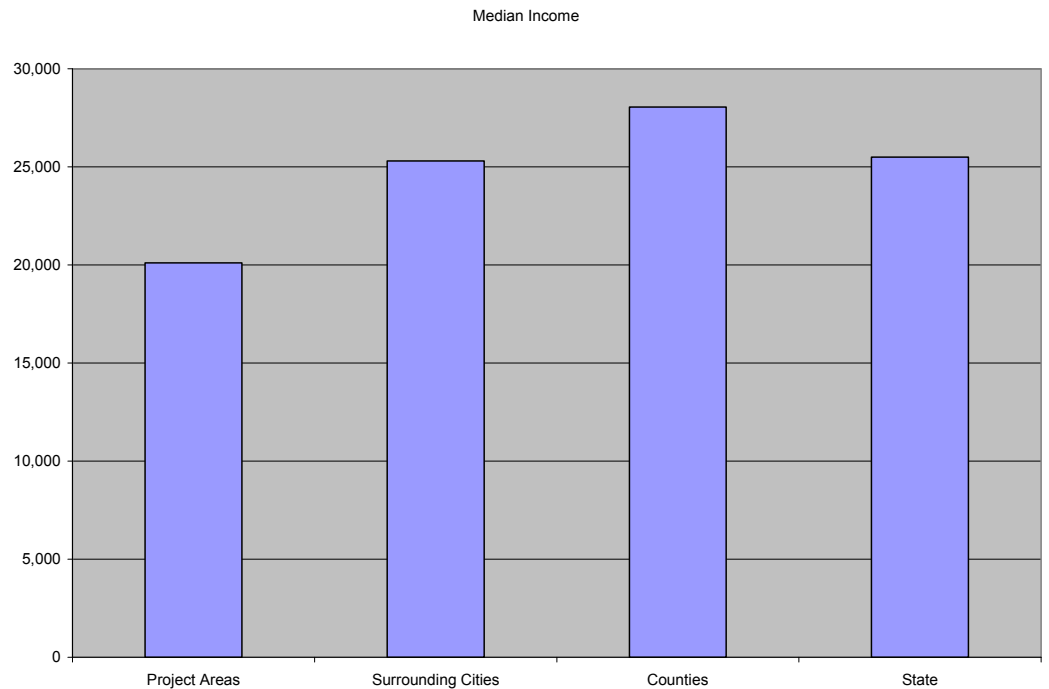
	Project Areas	Cities	Counties	State
Percent minority	46.8	28.8	22.3	21.1
Percent children	27	19.4	24.5	25.6
Percent seniors	10.6	11.5	10	11.2
Percent less than high school diploma	25.5	12.1	10.1	12.9
Percent high school diploma	27.7	19.8	21.8	24.9
Percent some college	30.8	30.8	34.2	34.4
Percent BA	11.2	24.1	22.7	18.1
Percent MA	3.1	8.5	7.4	6.2
Percent professional degree	1.1	2.9	2.3	1.9
Percent doctorate	0.3	1.6	1.1	1
Median income	20,109	25,307	28,054	25,498
Percent at or below poverty	22.3	11.8	8	10.3
Percent owner occupied housing	41.2	48.7	62.7	64.5
Median numbers of years in house	12.5	12	13	13
Median number of years in house—owner	17	16	16	17
Median number of years in house—renter	11	10	10.5	10
Percent of cities identified as project areas	7.7			

<sup>93</sup> Summary of [Vancouver Housing Authority] Community Renewal Activities at 3 (document on file at the Institute for Justice Washington Chapter).

<sup>94</sup> *Id.*

<sup>95</sup> *Kelo*, 545 U.S. at 505 (O’Connor, J., dissenting) (“[T]he fallout from this decision will not be random. The beneficiaries are likely to be those citizens with disproportionate influence and power in the political process, including large corporations and development firms. As for the victims, the government now has license to transfer property from those with fewer resources to those with more.”).





As Justices O'Connor and Thomas predicted, government officials are most likely to use eminent domain power against people who are politically weak. People often least equipped to represent their own interests in the face of eminent domain and their eventual displacement through this power, inequitably bear not only an economic burden, but also pay a socio-cultural price through the loss of neighborhoods, communities, small businesses, and churches.

## VI. Washington’s CRL Should be Reformed to Protect Citizens from Eminent Domain Abuse

Given the overwhelming power of eminent domain and its inequitable effects, promises of using eminent domain as a “last resort” fall far short of protecting citizens who value their property as a home and a community from government leaders and developers who see property only for its exchange value.

To prevent government officials from using eminent domain power to take property from citizens and give it to private developers, lawmakers should enact the following changes in the Community Renewal Law:

- **Restrict “blight” designations to properties that pose a threat to public health and safety.** The definition of blight should be revised to eliminate each of the “economic blight” or “planner’s blight” provisions that currently exist to tempt municipalities to use eminent domain for economic development. “Blight” should be defined and limited to unsanitary or unsafe conditions, the existence of hazardous soils, substances, or materials, or conditions that endanger life or property. Without dramatically revising the definition of blight in the CRL, working-class neighborhoods will continue to be designated as “blighted areas” because cities view these areas as impairing the “sound growth of the municipality or the environs.”
- **End the practice of designating healthy neighborhoods as officially “blighted.”** The determination of blight must be made on a parcel by parcel basis when permitting condemnation to remedy blight. A municipality should not be permitted to categorize an entire area as blighted – and subsequently use eminent domain to transfer the property to a developer – simply because a few isolated parcels within the area may be considered blighted.
- **Ensure officials use eminent domain power only as a last resort.** The CRL should provide individuals and cities with the ability to rehabilitate blighted properties and remedy potential health and safety conditions before condemnation is permitted. While an individual piece of property with physical dilapidation or unsanitary conditions might truly constitute a menace to the surrounding community, government officials should be encouraged to work with property owners to remedy such conditions. As government officials so often claim as their true intention, eminent domain should always be used as a last resort.

The current formulation of the CRL leads to confusion on the part of municipal officials. It tempts them erroneously to think their actions are lawful, and can – in the worst cases – serve as a pretext by which economic development takings are effectuated through the device of blight removal.

Those who advise municipalities are not even certain whether a city’s use of condemnation powers to address “economic blight” will withstand a constitutional challenge in court.<sup>96</sup> Retaining a law that is unconstitutional provides no benefit to municipalities. It consumes taxpayer money and resources to pursue an outcome that may never come to fruition.

Moreover, the possibility that these provisions are unconstitutional offers little solace to property owners who are victims of the CRL. Even if courts eventually strike down portions of the CRL, the property owners’ victory will be of little comfort following many years and hundreds of thousands of dollars in litigation.

<sup>96</sup> Jay Reich & Deanna Gregory – Preston Gates Ellis, *Land Assembly and Disposal by Cities*, at 8.

## VII. Conclusion

Washington's CRL remains a loaded weapon aimed at Washington citizens. The Washington Constitution reflects the belief of the founders of our state that all Washingtonians should be treated with dignity and respect by their government, particularly when it comes to the use of the awesome power of eminent domain.

The CRL directly undermines this constitutional principle of respect for citizens and reflects the notion that the government may move citizens around like pieces on a game board – particularly those who have fewer resources to fight back – in order to achieve a bureaucrat's notion of how cities are supposed to look. So long as the CRL remains in force as currently written, Washington will remain a state where the law permits government officials to take middle-and-working-class homes and small businesses for transfer to private entities. Until the CRL is reformed to remove economic blight or “planner's blight” as a justification for condemnation and to limit the use of eminent domain power to specific properties demonstrating concrete evidence of blight, this law will continue to be abused by local governments and Washingtonians will face the very real threat of losing their homes to eminent domain.

## Appendix A

	Project Areas	Cities	Counties	State
Percent minority	46.8	28.8	22.3	21.1
Percent children	27	19.4	24.5	25.6
Percent seniors	10.6	11.5	10	11.2
Percent less than high school diploma	25.5	12.1	10.1	12.9
Percent high school diploma	27.7	19.8	21.8	24.9
Percent some college	30.8	30.8	34.2	34.4
Percent BA	11.2	24.1	22.7	18.1
Percent MA	3.1	8.5	7.4	6.2
Percent professional degree	1.1	2.9	2.3	1.9
Percent doctorate	0.3	1.6	1.1	1
Median income	20,109	25,307	28,054	25,498
Percent at or below poverty	22.3	11.8	8	10.3
Percent owner occupied housing	41.2	48.7	62.7	64.5
Median numbers of years in house	12.5	12	13	13
Median number of years in house—owner	17	16	16	17
Median number of years in house—renter	11	10	10.5	10
Percent of cities identified as project areas	7.7			

### *Methods*

This analysis compared the demographic profiles of those living in redevelopment areas designated under the Community Renewal Law (CRL) to the cities and counties in which the project areas are located and to the entire state. To do so, we used decennial census data at the block group level for each project area and at the city, county, and state levels.

The project areas were drawn from information voluntarily provided by respondents to public records act requests issued by the Institute for Justice, Washington Chapter. In July 2008, IJ-WA transmitted public records requests to every county and housing authority as well as every city with a population over 5,000 individuals in the State of Washington. IJ-WA asked each respondent to provide all records dating from January 1, 2000 to August 1, 2008 “relating in



any way to any actual, planned, or contemplated use of the Community Renewal Law.”

All projects analyzed here used project maps to ensure alignment between project areas and census block groups, as described below. Specific cities included Bremerton, Renton, Tukwila, Vancouver, Everett, Auburn, and Seattle and their respective counties: Kitsap, King, Clark, and Snohomish.

The project areas vary in size from several blocks to those encompassing multiple neighborhoods. Likewise, the communities in which these project areas reside range in size from small cities to large metropolitan areas. Table X includes population statistics for the project areas and surrounding cities and counties.

*Table X Population Statistics for Project Areas and Surrounding Cities and Counties*

	Mean	Standard Deviation	Minimum	Maximum
Project areas	10,195	7213.7	3,765	22,695
Surrounding cities	134,617.4	193,720.9	17,204	563,375
Surrounding counties	730,066.2	689,338.8	231,969	1,737,034

### *Data*

Of the variables used in this report, percent minority represents all ethnic/minority groups other than white. The renter/owner percentages represent those living in occupied housing units. Education levels were aggregated into seven categories: less than a high school diploma, high school diploma, some college, bachelor’s degree, master’s degree, professional degree and doctorate. Poverty status was measured using the federal government’s official poverty definition. The definition of all other variables should be self-evident.

The data were collected from the SF-3 Census 2000 sample dataset, which includes detailed population and housing data collected from a 1-in-6 sample and weighted to represent the total population. Data for the project areas were constructed using the lowest level possible from the sample data—the block group, which is an area encompassing multiple census blocks. This means, of course, that a block group may not align perfectly with a project area, which could lead to inaccurate estimates of the variables. To test for that possibility, we duplicated the analyses herein using block level data for overlapping variables from the 100 percent census data. Variables in this study that were common between 100 percent census and sample datasets include race, age, and owner versus renter. Results indicated percentages were within just a few points of each other. Thus, project areas are sufficiently represented by block groups.

## About the Author

**Jeanette M. Peterson** is an Adjunct Scholar with Washington Policy Center. She has been a staff attorney with the Institute for Justice Washington Chapter (IJ-WA) since January 2003. IJ-WA engages in constitutional litigation to secure economic liberty, school choice, private property rights, freedom of speech and other vital individual liberties in Washington State. Prior to joining IJ, Jeanette clerked for Judge David Armstrong of the Washington State Court of Appeals, Division II, Justice Richard Sanders of the Washington State Supreme Court, and Judge Ronald Gould of the United States Court of Appeals for the Ninth Circuit. Following her clerkships, Jeanette practiced with Wilson Sonsini Goodrich & Rosati, P.C. in Kirkland, Washington. Jeanette received her law degree from the University of Washington School of Law in 1998, graduating with honors and Order of the Coif. She received her bachelor's degree in Political Science from the University of Washington in 1994, graduating cum laude and Phi Beta Kappa. Jeanette is a member of the Washington State Bar Association and the Puget Sound Lawyers Chapter of the Federalist Society.



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