

Office of
The City Attorney
City of San Diego

MEMORANDUM
MS 59

(619) 533-5800

DATE: September 22, 2008

TO: Honorable Mayor, City Council and Redevelopment Agency Board

FROM: City Attorney, Michael Aguirre

SUBJECT: *County of San Diego v. Redevelopment Agency of the City of San Diego, et al.*
San Diego County Superior Court Case No. GIC 850455
(Consolidated with San Diego County Superior Court Case No. GIC 850829)

As you may know, State Senator Christine Kehoe has requested that the California State Attorney General investigate the settlement of the validation action related to the adoption of the Grantville Redevelopment Plan [Grantville Settlement]. Specifically, Senator Kehoe questions the transfer of funds from Grantville to downtown to fund trolley improvements on C Street between Kettner Street and Park Boulevard. A copy of Senator Kehoe's letter is attached.

Senator Kehoe's concerns are justified. While Health & Safety Code section 33445 does allow for the transfer of funds outside a project area where the use of the funds is "of benefit" to the project area, section 33445 does not allow for the type of fund shifting that occurred in this instance. The Grantville Settlement is an abuse of section 33445 because it stretches the law well beyond what the California Legislature intended. Specifically, the intent of the section is to ensure expenditures benefit a project area, not merely facilitate settlement regardless of benefit to the project area.

At the City Attorney's request, the City Council and Redevelopment Agency conferred with the City Attorney regarding the filing of a validation action related to the Grantville Settlement on at least one occasion. The City Attorney noticed a closed session agenda item for September 2, 2008, which read:

The City Council and the Redevelopment Agency Board will confer with the City Attorney regarding the filing of a validation or other action related to the settlement of the case entitled *County of San Diego v. Redevelopment Agency of the City of San Diego, et al.* described above.

The City Council and Redevelopment Agency directed the City Attorney to not file a validation or any other action related to the settlement. However, in light of Senator Kehoe's request for an investigation, City Council and the Redevelopment Agency should reconsider that decision.

September 22, 2008

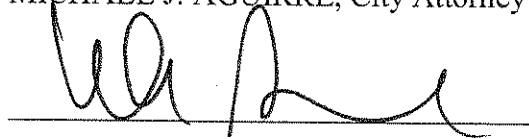
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Code of Civil Procedure section 860, *et seq.* (the Validation Statutes) enables a public agency to bring a validation action to validate by court judgment those official actions related to financial operations of the public entity. A key objective of a validation action is to limit the extent to which delay due to litigation may impair a public agency's ability to operate financially. A validation action also serves to fulfill the important objective of facilitating a public agency's financial transactions with third parties by quickly affirming their legality. In particular, the fact that litigation may be pending or forthcoming drastically affects the marketability of public bonds.

The public entity bringing the validation action is required to publish a summons to "all interested persons" in a newspaper of general circulation for three weeks to provide notice that all challenges to the actions must be brought by a certain date established by the public entity, which date must be at least 10 days after the three week publication period. If the action is not challenged within the stated period, the action is deemed validated and no longer subject to legal attack.

The City Attorney recommends the filing of a validation action related to the Grantville Settlement to resolve any uncertainty about the legality of the transfer raised by Senator Kehoe.

MICHAEL J. AGUIRRE, City Attorney

A handwritten signature in black ink, appearing to read "Michael J. Aguirre", is written over a horizontal line.

cc: Andrea Tevlin, Independent Budget Analyst

EXHIBIT "1"

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California State Senate

SENATOR
CHRISTINE KEHOE
THIRTY-NINTH SENATE DISTRICT



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FOR IMMEDIATE RELEASE

Sept. 12, 2008

Contact: Sean Wherley
(619) 645-3133

SEN. KEHOE ASKS ATTY. GEN. BROWN TO INVESTIGATE GRANTVILLE DEVELOPMENT

SAN DIEGO – Sen. Christine Kehoe (D-San Diego) has asked California Atty. Gen. Jerry Brown to investigate a decision by the San Diego City Council to transfer more than \$31 million in redevelopment funds slated for the Grantville neighborhood to downtown projects.

"I want to know how redevelopment funds scheduled for Grantville could instead be spent on trolley and parking improvements more than 15 miles away in downtown," said Kehoe. "I have asked the Attorney General to review compliance with state redevelopment laws, because I am contemplating new legislation to tighten loopholes such as this."

In Kehoe's Sept. 5 letter to Brown, she questioned the City Council's July 29 legal settlement with the County of San Diego. Under the agreement, \$31.36 million in Grantville redevelopment funds will be used to improve the trolley along C Street in downtown, and in exchange the City Redevelopment Agency will spend a similar amount to build a parking structure and waterfront park on County-owned property downtown.

The City insists that Grantville benefits from the reallocation because an improved trolley on C Street would encourage more Grantville residents to take the trolley downtown. Kehoe asserts that such rationale stretches the intent of state redevelopment laws, and wants any new legislation to ensure funds are spent directly on eliminating blight in areas like Grantville.

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(Kehoe letter sent to California Atty. Gen. Jerry Brown)

September 5, 2008

The Honorable Jerry Brown
Attorney General State of California
1515 Clay Street, Suite 2000
Oakland, CA 94612

Dear Attorney General Brown:

I am requesting that you look into a questionable redevelopment decision.

On July 29, 2008, the San Diego City Council, and also in its role as the City of San Diego Redevelopment Agency, approved a legal settlement with the County of San Diego regarding the validity of the City Council's adoption of the Grantville Redevelopment Plan, Ordinance No. O-19380, in 2005. At the time of the adoption of the plan, the County opposed the blight designation for the Grantville area, citing specific examples of why a blighted designation was inappropriate (Attachment A).

In settling the lawsuit, \$31.36 million in Grantville redevelopment funds has been set aside to improve the trolley along C Street between Kettner Street and Park Blvd. in downtown San Diego. In turn, the Redevelopment Agency has agreed to fund the same amount of money (\$31.36 million) for a waterfront park on County-owned parking lots on either side of the County Administration Building, and to fund the construction of a parking structure on County-owned property at Cedar and Kettner Streets to replace the parking lots at the County Administration Building.

According to the findings made by the City Council/Redevelopment Agency, the nexus that allows this use of the funds is the fact that a Green Line trolley station is located within the Grantville community, and the tracks ultimately connect to the Blue Line trolley system that serves the downtown area. The rationale cited is that improvements to the Blue Line trolley would encourage more Grantville residents to ride the trolley, thus easing congestion in the Grantville community.

The settlement agreement (Attachment B) includes \$7.84 million for joint projects in the Grantville community. It also includes \$9.8 million for affordable housing credits so that the County can satisfy its share of the Regional Housing Needs Allocation (RHNA) established by the San Diego Association of Governments (SANDAG) to comply with State of California's Housing and Community Development Department requirements.

I would appreciate your looking into the actions in this matter, as it appears that the City and the County failed to base their findings on substantial evidence in the record as required in state redevelopment law, and merely restated statutory language.

— more —

City and County officials appear to be relying on Health & Safety Code Section 33445 (a) which allows a redevelopment agency to spend money on improvements outside the project area if they make certain findings. It may be that under current statute (Section 33445), such general findings may be satisfactory, in which case perhaps legislation may be necessary to tighten up the requirements so that the findings are more substantive.

One possible approach might be to require local officials to find that the improvements will directly benefit the project area by helping to eliminate specific conditions of blight and require specific links between the public works to be completed and the identified blight within the project area. In this particular case, if Grantville's blight is the presence of run-down residential or commercial properties, then trolley improvements cannot be directly linked to remedying that problem.

Members of the public who live and work within a redevelopment project area have the expectation that tax increment funds generated within that area will directly improve identified blighted conditions. I would appreciate your review of this matter and any insights you might offer on how to improve current statute.

Sincerely,

/s/

CHRISTINE KEHOE
Senator, 39th District

cc: The Honorable Jerry Sanders, Mayor, City of San Diego
The Honorable Greg Cox, Chair, San Diego County Board of Supervisors
The Honorable Jim Madaffer, Councilmember, City of San Diego

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