

EXEMPT

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CENTRAL DIVISION

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CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

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8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SAN DIEGO

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11 COUNTY OF SAN DIEGO,
12 Plaintiff,
13 v.
14 THE COMMUNITY REDEVELOPMENT
15 AGENCY OF THE CITY OF SAN DIEGO,
16 THE CITY OF SAN DIEGO; THE
17 COUNCIL OF THE CITY OF SAN DIEGO;
18 ALL PERSONS INTERESTED IN THE
19 MATTER OF THAT CERTAIN
20 ORDINANCE ADOPTED BY THE CITY
21 OF SAN DIEGO ENTITLED ORDINANCE
22 NO. 19380: AN ORDINANCE OF THE
23 COUNCIL OF THE CITY OF SAN DIEGO,
24 APPROVING AND ADOPTING THE
25 REDEVELOPMENT PLAN FOR THE
26 GRANTVILLE REDEVELOPMENT
27 PROJECT, ADOPTED ON MAY 17, 2005,
28 AND DOES 1 - 50, INCLUSIVE;
Defendants.

No.: GIC 850455
Action Filed:
COMPLAINT BY COUNTY OF SAN DIEGO
TO DETERMINE VALIDITY OF
ORDINANCE NO. 19380 (GRANTVILLE
REDEVELOPMENT PROJECT); FOR
INJUNCTIVE AND DECLARATORY
RELIEF

24 Plaintiff the County of San Diego hereby brings this action challenging the validity of the
25 Redevelopment Plan for the Grantville Redevelopment Project in the City of San Diego (the
26 "Redevelopment Plan"), adopted by Ordinance No. 19380 by the City of San Diego on May 17,
27 2005, and alleges as follows:
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THE PARTIES

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2 1. Plaintiff is the County of San Diego (hereinafter the “County”), a political
3 subdivision of the State of California, and is authorized to exercise its statutory powers under
4 Section 23000 et seq. of the California Government Code. The County is an “affected taxing
5 entity” within the meaning of Health & Safety Code section 33353.2. The County estimates that
6 it will lose nearly \$200 million in property tax increment over the life of the Grantville
7 Redevelopment Project.

8 2. The County has exhausted its administrative remedies by timely raising objections
9 to the Ordinance that is the subject of this Action.

10 3. Defendant City of San Diego (hereinafter “City”) is a municipal corporation,
11 organized and existing under and by virtue of the laws of the State of California, and located in
12 the County of San Diego.

13 4. Defendant Community Redevelopment Agency of the City of San Diego
14 (hereinafter “Agency”) is a public agency, corporate and politic, organized and existing pursuant
15 to the California Community Redevelopment Law, Health & Safety Code sections 33000, et
16 seq. The Agency is the body charged by law with responsibility for the preparation and
17 implementation of the Redevelopment Plan for the Grantville Redevelopment Project within the
18 City of San Diego.

19 5. Defendant Council of the City of San Diego (hereinafter “City Council”) is the
20 duly constituted legislative body of Defendant City, and serves as the Agency. The City Council
21 is named in its official capacity only, so that the County may assert the jurisdiction of the Court
22 and be afforded full and complete relief on its claims. No damages or monetary liability is
23 claimed against individual members of the City Council.

24 6. Defendants named as “ALL PERSONS INTERESTED IN THE MATTER OF
25 THAT CERTAIN ORDINANCE ADOPTED BY THE CITY OF SAN DIEGO ENTITLED
26 ORDINANCE NO. 19380: AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN
27 DIEGO, APPROVING AND ADOPTING THE REDEVELOPMENT PLAN FOR THE
28 GRANTVILLE REDEVELOPMENT PROJECT, ADOPTED ON MAY 17, 2005” are joined

1 herein and will be served by publication pursuant to Code of Civil Procedure section 860 et seq.,
2 so as to effect service by publication of the summons, and to permit any party interested to
3 appear and contest the legality or validity of the matter sought to be determined in this validation
4 action.

5 7. Defendants Doe 1 through Doe 50, inclusive, are persons, firms, corporations and
6 public or quasi-public agencies that have been instrumental in or participated in the events and
7 proceedings herein alleged and that have wrongfully committed acts or omissions to the
8 detriment of the County. The County does not know the true names and capacities of the
9 defendants sued herein as Doe 1 through Doe 50, inclusive; the County will seek leave to amend
10 this Complaint to show their true names and capacities when the same have been ascertained.

11 JURISDICTION AND VENUE

12 8. The jurisdiction of this Court is invoked under Code of Civil Procedure sections
13 863 and 1060. This action is in the nature of a proceeding in rem.

14 9. Venue in this County is proper under Code of Civil Procedure section 863, in that
15 the Agency and City are located in this County, and under Code of Civil Procedure section 394,
16 in that the property at issue is located here and the causes of action alleged in this Complaint
17 arose in this County.

18 GENERAL ALLEGATIONS

19 10. Defendants propose to place approximately 990 acres within the community
20 planning areas of Navajo, Tierrasanta and College Area into a redevelopment area entitled the
21 "Grantville Redevelopment Project."¹ Pursuant to the California Community Redevelopment
22 Law ("CRL"), a Redevelopment Project may be adopted only if substantial evidence exists
23 showing that:

- 24 ➤ The area is predominantly urbanized;
- 25 ➤ The area is characterized by both physical and economic conditions that cause
26 blight;

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28 ¹ A prior Report states the Area comprises 970 acres, but the Environmental Impact Report and the
March 18, 2005 Redevelopment Report state the acreage is 990.

- 1 ➤ The conditions of blight are so prevalent and substantial that they prevent proper
- 2 utilization of the area;
- 3 ➤ The blight conditions exist to such an extent that they constitute a serious physical
- 4 and economic burden on the community, i.e., the entire City; and
- 5 ➤ The burden cannot be resolved by the private sector or governmental action, or
- 6 both, without resort to redevelopment.

7 11. On or about March 18, 2005 Defendants published the proposed Redevelopment
8 Plan and Report to the City Council (“Redevelopment Report”) for public comment. The
9 Redevelopment Report proposed to include three areas in the Redevelopment Project Area
10 (“Project Area”), further identified as:

- 11 ➤ Sub-Area A, approximately 400 acres of commercial, office, industrial, park and
- 12 open space uses north of Interstate-8 and along Fairmount Avenue, Friars Road
- 13 and Mission Gorge Road north to Zion Avenue;
- 14 ➤ Sub-Area B, approximately 505 acres of commercial, office, industrial, and sand
- 15 and gravel extraction uses, and open space located along Mission Gorge Road
- 16 from Zion Avenue to Margerum Avenue, including a 425 acre sand and gravel
- 17 extraction operation; and
- 18 ➤ Sub-Area C, approximately 65 acres of retail uses, a shopping center and
- 19 community facilities adjacent to the intersection of Zion Avenue and Waring
- 20 Road. This Sub-Area is separated from the remainder of the Project Area by nearly
- 21 a mile, and is connected only by a road.

22 12. On April 19, 2005 the City and Agency held a Public Hearing on the proposed
23 Redevelopment Plan, during which the City Council considered adoption of the Plan. The
24 County and other members of the public lodged objections to the Redevelopment Plan. In its
25 April 19, 2005 Objections, the County objected to the Redevelopment Plan because the Project
26 Area is neither physically or economically blighted, as demonstrated by, among other
27 information, the following facts:

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- 1 ➤ The existing commercial and industrial uses in the Grantville Project Area are
- 2 thriving, and have extremely low vacancy rates and rising property values;
- 3 ➤ New development is occurring throughout the Project Area, demonstrating that the
- 4 extraordinary power of redevelopment is not needed to cure any burden that might
- 5 exist;
- 6 ➤ ‘Evidence’ cited by Defendants in the Redevelopment Report to demonstrate
- 7 blight do not constitute legitimate factors under the CRL, as Defendants do not
- 8 show that buildings are unsafe or unhealthy. (‘Evidence’ cited by the Agency to
- 9 show blight included lack of landscaping, virtually no architectural features, and
- 10 limited parking – conditions that are prevalent in many areas of every city.);
- 11 ➤ The proposed Redevelopment Plan would actually exacerbate rather than relieve
- 12 existing traffic concerns;
- 13 ➤ Non-blighted parcels with existing productive and economically viable uses were
- 14 improperly included in the Project Area;
- 15 ➤ The Project Area is not predominately urbanized, and
- 16 ➤ Rather than eliminating any burden on the community, creating a redevelopment
- 17 project here would burden the entire City by redirecting property tax revenues
- 18 away from the City’s general fund where they could be used for badly needed
- 19 services such as police, fire and infrastructure throughout the City.

20 13. The County also noted evidence that suggested an inappropriate use of the CRL,
21 including statements by a Council member that:

- 22 ➤ There “are no planned redevelopment activities;”
- 23 ➤ New “projects will come forward with or without redevelopment;” and
- 24 ➤ The redevelopment project presented the only method to “capture the additional
- 25 tax increment” – although case law provides that the CRL is not to be used simply
- 26 to gain additional monies to finance desired community improvements.

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1 14. Despite these and other objections, at the April 19, 2005 hearing Defendants
2 moved forward with the adoption of the Redevelopment Plan, including setting the date of May
3 17, 2005 to adopt Ordinance No. 19380.

4 15. On May 13, 2005 the County submitted to Defendants additional written
5 objections to the Plan, including evidence that:

- 6 > Property values in the Project Area increased 54.29% from Fiscal Year 2000 –
7 2001 to 2004 – 2005, significantly higher than the citywide property growth rate
8 of 45.36%;
- 9 > Multi-million dollar development is currently occurring on property identified by
10 Defendants as vacant or recently having lost neighborhood-serving businesses;
- 11 > The sand and gravel operation included the Project Area is a thriving business, is
12 described in the Navajo Community Plan as not needing redevelopment, and is
13 required to restore the site after quarrying use ceases – thus, no public funds will
14 be needed for that purpose;
- 15 > The Navajo Community Plan is being amended to allow for increased residential
16 activities and development in the area; and
- 17 > Since 1970, the City has terminated only one of its 16 existing redevelopment
18 projects (which include most of downtown San Diego), and has received over
19 \$495 million in tax increment since 1975.

20 16. On May 17, 2005 Defendants City and the Agency held a second reading for the
21 purpose of considering the adoption of the Redevelopment Plan. Ordinance No. 19380, adopting
22 said Redevelopment Plan, was approved and adopted by at this hearing.

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I.

FIRST CAUSE OF ACTION

(Violation of Health & Safety Code §§ 33367, 33030: No Substantial Evidence to Support Findings of Physical Blight – Against All Named Defendants)

17. Plaintiff incorporates the foregoing paragraphs as though fully set forth herein.

18. Health & Safety Code section 33367(d)(1) requires that the ordinance adopting the redevelopment plan contain a finding that the project area is blighted. Health & Safety Code section 33030 defines a blighted area as one that is characterized by both physical and economic blight. As required by Health & Safety Code section 33367, Ordinance No. 19380 did contain a finding of physical blight. Defendants failed to support that finding with substantial evidence.

19. The Project Area for the Redevelopment Plan is not a physically blighted area within the meaning of the CRL, including Health & Safety Code section 33030. ‘Evidence’ cited by Defendants in the Redevelopment Report to support a finding of physical blight includes:

- a. Small lot sizes with limited off-street or on-street parking;
- b. Use of temporary signage, tow away signs, and outdoor storage;
- c. Code violations such as outdoor display of merchandise, signs in the right of way, dumpsters in the alleys, and chairs on the sidewalk;
- d. “Dilapidated” buildings as evidenced by peeling paint, lack of weather protection, outdated or “obsolete” buildings, deferred maintenance, and limited vehicle access;
- e. Irregular sized lots; and
- f. Unsubstantiated statements that because commercial and industrial parcels are adjacent to each other, the uses are incompatible and this incompatibility hinders development of the lots.

20. Many of the conditions cited by Defendants are common characteristics of virtually every city or incorporated area in the County. Many of the conditions cited by Defendants cannot be substantiated, are incorrect, or if they exist, are not prevalent in the Project Area. To the extent any condition of physical blight exists, there is no evidence that such condition “prevents or substantially hinders the economically viable use” of the properties, as

1 required by the CRL. The cited conditions do not demonstrate that buildings in the Project Area
2 are unsafe or unfit for habitation. The 'evidence' cited fails in many regards to show that the
3 buildings are substandard, let alone pose a serious health or safety risk. Moreover, there is no
4 evidence that any physical blight condition cannot be remedied without resort to the CRL.
5 Further, the Report indicates the most serious problems facing the Area include traffic
6 congestion and lack of parking. If these conditions equal blight, then La Jolla is blighted.

7 21. The Project Area for the Redevelopment Plan is not a blighted area within the
8 meaning of the CRL, including Health & Safety Code section 33030. Defendants have not cited
9 facts that evidence physical blight. Since there is a lack of substantial evidence in the record to
10 support a finding of physical blight, Defendants abused their discretion by making such a
11 finding.

12 22. Accordingly, Ordinance No. 19380 is null and void and of no effect.

13 II.

14 SECOND CAUSE OF ACTION

15 (Violation of Health & Safety Code §§ 33367, 33030: No Substantial Evidence to Support
16 Findings of Economic Blight – Against All Named Defendants)

17 23. Plaintiff incorporates the foregoing paragraphs as though fully set forth. herein.

18 24. Health & Safety Code section 33367 requires that the ordinance adopting the
19 redevelopment plan contain a finding that the project area is blighted. Health & Safety Code
20 section 33030 defines a blighted area as one that is characterized by both physical and economic
21 blight. As required by Health & Safety Code section 33367, Ordinance No. 19380 did contain a
22 finding of economic blight. Defendants failed to support that finding with substantial evidence.

23 25. The Project Area for the Redevelopment Plan is not an economically blighted area
24 within the meaning of the CRL, including Health & Safety Code section 33030. 'Evidence' cited
25 by Defendants in the Redevelopment Report to support a finding of economic blight includes:

- 26 a. "Depreciated" property values;
- 27 b. Properties suffer from 'excess garbage;
- 28 c. Lease rates are lower than surrounding markets; and

1 d. Crime rates are higher than in other areas.

2 26. The evidence cited by Defendants in support of economic blight is incorrect or, if
3 correct, fails to demonstrate economic blight. To the contrary, the County's evidence shows that
4 property values in the area have actually risen 54.29%; in the last five years – significantly
5 higher than other areas in the City. Moreover, the County's evidence showed the Project Area
6 has very low vacancy rates, demonstrating significant private interest in the area. If anything, the
7 low vacancy rates demonstrate that lease rates are too high in other areas, rather than too low in
8 the Project Area. The County's evidence further showed that cited crime rates were skewed by
9 inclusion of crimes reported at the Kaiser Hospital instead of the actual site of the crime.

10 27. To the extent that evidence cited by Defendants could be corroborated, it failed to
11 show that conditions of economic blight actually exist, and predominate in the Project Area. To
12 the extent any condition of economic blight exists, there is no evidence that such condition
13 “prevents or substantially hinders the economically viable use” of the properties, as required by
14 the CRL. Moreover, there is no evidence that any such conditions could not be alleviated by
15 private enterprise or governmental action other than resort to the CRL.

16 28. The Project Area for the Redevelopment Plan is not a blighted area within the
17 meaning of the CRL, including Health & Safety Code section 33030. Defendants have not cited
18 facts that evidence economic blight. Since there is a lack of substantial evidence in the record to
19 support a finding of economic blight, Defendants abused their discretion by making such a
20 finding.

21 29. Accordingly, Ordinance No. 19380 is null and void and of no effect.

22 **III.**

23 **THIRD CAUSE OF ACTION**

24 (Violation of Health & Safety Code §§ 33367, 33030, 33320.1: No Substantial Evidence That
25 Project Area is Predominantly Urbanized – Against All Named Defendants)

26 30. Plaintiff incorporates the foregoing paragraphs as though fully set forth herein.

27 31. Health & Safety Code section 33367 requires that the ordinance adopting the
28 redevelopment plan contain a finding that the project area is blighted. Health & Safety Code

1 section 33030 defines a blighted area as one that is primarily urbanized. Health & Safety Code
2 section 33320.1 provides that “predominantly urbanized” means not less than 80% has been or
3 is developed for urban uses or is characterized by existence of subdivided lots of irregular form
4 and shape and inadequate size for proper usefulness. As required by Health & Safety Code
5 section 33367, Ordinance No. 19380 did contain a finding that the Project Area is predominantly
6 urbanized. Defendants failed to support that finding with substantial evidence.

7 32. The Redevelopment Report submitted by the Agency to the City in support of the
8 Redevelopment Plan does not contain a section demonstrating that the Project Area is
9 predominantly urbanized.

10 33. The Redevelopment Report fails to support a finding that the area is
11 predominantly urbanized. For example, 420 acres of the site is devoted to a sand and gravel
12 extraction operation. Such an operation is more likely associated with a rural rather than an
13 urban use. Moreover, prior to its use as an extraction site, all 420 acres were vacant and in an
14 undeveloped condition – the same as the surrounding Areas. Further, the extraction site is
15 currently surrounded primarily by open space and parkland. Since the sand and gravel extraction
16 operation constitutes approximately 43% of the total acreage of the Project Area, categorizing
17 this operation as a non-urban use leaves only 57% of the Project Area to be considered as
18 urbanized – clearly not enough to support a finding under Health & Safety Code section 33367
19 that the Project Area is predominantly urbanized.

20 34. Additional acreage in the Project Area consists of open space, parks, golf courses,
21 or riverbed property. 117 acres are part of the San Diego River. These uses do not demonstrate
22 that the Project Area is predominantly urbanized.

23 35. The Project Area for the Redevelopment Plan is not predominantly urbanized
24 within the meaning of the CRL, including Health & Safety Code section 33030. Since there is a
25 lack of substantial evidence in the record to support a finding of predominant urbanization,
26 Defendants abused their discretion by making such a finding.

27 36. Accordingly, Ordinance No. 19380 is null and void and of no effect.

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IV.

FOURTH CAUSE OF ACTION

(Violation of Health & Safety Code §§ 33367, 33030: No Substantial Evidence That Any Burden Could Not Be Alleviated By

Private Enterprise Or Government Action -- Against All Named Defendants)

37. Plaintiff incorporates the foregoing paragraphs as though fully set forth herein.

38. Health & Safety Code section 33367 requires that the ordinance adopting a redevelopment plan contain a finding that redevelopment is necessary to effectuate the public purposes declared in the CRL and to remediate blight. Health & Safety Code section 33030 defines blight as an area where the blighting conditions are so prevalent that the elimination of blight and the redevelopment of the project area could not reasonably be expected to be accomplished by private enterprise acting alone, or by governmental action, or both, without declaring a Redevelopment Project. As required by Health & Safety Code section 33367, Ordinance No. 19380 did contain such a finding. Defendants failed to support that finding with substantial evidence.

39. The Project Area does not require redevelopment in order to eliminate blight. As noted above, the Project Area does not have a prevalence of economic or physical blight. To the extent that such blight does exist, there is no evidence that private enterprise, or governmental action, or both, could not alleviate any such condition. The 'evidence' cited by Defendants to support the finding that redevelopment is required to eliminate blight and alleviate the burden posed by the blight includes the following:

- a. Incompatible adjacent commercial and industrial uses;
- b. 72% of the industrial properties are less than 2 acres in size, therefore making lot consolidation necessary for new uses;
- c. Many commercial and industrial properties have inadequate parking; and
- d. State and San Diego City budget shortfalls – Defendants cite to the City's unfunded pension liability and increase in worker's compensation costs, which they claim would prohibit sufficient revenue to remedy infrastructure or other problems.

1 40. The ‘evidence’ cited by Defendants in support of the need for redevelopment is
2 irrelevant. For example, Defendants did not produce evidence showing why adjacent industrial
3 and commercial uses are incompatible. Certainly there is no evidence that such conditions create
4 any health or safety problems, as required under the CRL, and does not show either a
5 predominance of blight or the need for the extraordinary power of redevelopment.

6 41. To the extent evidence cited by Defendants is relevant to the CRL, it fails to either
7 show blight or the need for redevelopment. To the contrary, the evidence cited by Defendants
8 shows a bustling commercial and industrial area, with new developments, and dozens of “brand
9 name” or national chain retailers in the area. Parcels have been newly developed and existing
10 uses have been improved without redevelopment assistance, showing that any burden from the
11 Project Area could be expected to be alleviated by private enterprise acting alone.

12 42. Defendants fail to explain why governmental assistance, other than in the form of
13 redevelopment, cannot alleviate any existing burden. Defendants cite to the economic plight of
14 the City to justify resort to redevelopment. Reliance upon the City’s current economic plight
15 contradicts the purpose of the CRL. There is no prevalent blight in the Project Area that requires
16 diversion of tax funds to the Area. Conversely, the remainder of the City would be burdened by
17 the loss of tax increment from a thriving area that could be used for public services in other parts
18 of the City.

19 43. The Project Area is not predominantly blighted. There is no substantial evidence
20 of a serious physical and economic burden on the greater community of San Diego from the
21 Project Area, that cannot be reversed by private enterprise, or governmental action, or both.
22 Since there is a lack of substantial evidence in the record to support a finding that the area is so
23 blighted that it cannot be remedied by private enterprise or governmental action, or both,
24 Defendants abused their discretion by making such a finding.

25 44. Accordingly, Ordinance No. 19380 is null and void and of no effect.

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V.

FIFTH CAUSE OF ACTION

(Violation of Health & Safety Code §§33352, 33433, 33490: Lack of Nexus Between Proposed
Redevelopment Activities and
the Elimination of Claimed Blight – Against All Named Defendants)

45. Plaintiff incorporates the foregoing paragraphs as though fully set forth herein.

46. The purpose of redevelopment is to alleviate blighting conditions which have been found to exist, based upon substantial evidence, in a redevelopment project area. The State Legislature has repeatedly indicated, through various provisions in the CRL, that a redevelopment agency must demonstrate that its actions will alleviate blighting conditions, and how such actions will alleviate blight. For example, Health & Safety Code sections 33352, 33433, and 33490 each require a redevelopment agency to make a showing of how its proposed activity or activities will eliminate blight.

47. Defendants fail to demonstrate an adequate nexus between the claimed blighting factors and Defendants' proposed redevelopment activities. First, there is no substantial evidence to show physical or economic blight is prevalent in the Project Area, and thus the existence of conditions requiring redevelopment has not been shown. To the extent any such conditions could exist, the proposed projects will not improve or alleviate them. Indeed, the Redevelopment Report fails to include sufficient information to even ascertain what project, if any, will be funded through the redevelopment project. The Report uses such generalizations as "it is ... recommended that the area be promoted for community serving retail." When viewed in the context of a council member's admission that "there are no proposed redevelopment activities, [a]ll that is being considered is to designate the area as a redevelopment area," it appears Defendants seek to use the Project to retain increased tax revenues for community improvements in the Project Area, contrary to the spirit and letter of the CRL.

48. To the extent proposed projects are described with specificity, Defendants fail to show any nexus between such projects and the alleviation of blight. For example, the Environmental Impact Report for the Project states that project activities will result in

1 significant and unavoidable additional traffic congestion. It therefore appears that the
2 Redevelopment Project would actually worsen traffic conditions, rather than alleviate them.
3 Other projects are designated for flood control. However, Health and Safety Code section 33032
4 was specifically amended to delete flooding as a characteristic of blighted land. Thus, flood
5 control or traffic mitigation may be desirable in any community, but they are not characteristics
6 of blight and do not necessitate the extraordinary powers of redevelopment to implement them.

7 49. By adopting Ordinance No. 19380 without demonstrating an adequate nexus
8 between the claimed blighting factors and the proposed redevelopment action, Defendants acted
9 in an unlawful manner.

10 50. Accordingly, Ordinance No. 19380 is null and void and of no effect.

11 VI.

12 SIXTH CAUSE OF ACTION

13 (Violation of Health & Safety Code § 33367: No Substantial Evidence That Including
14 Unblighted Area Is Necessary for Effective Redevelopment – Against All Named Defendants)

15 51. Plaintiff incorporates the foregoing paragraphs as though fully set forth herein.

16 52. Health & Safety Code section 33367(d)(10) requires that the ordinance adopting a
17 redevelopment plan contain a finding that the inclusion of any lands, buildings, or improvements
18 which are not detrimental to the public health, safety, or welfare is necessary for the effective
19 redevelopment of the area of which they are a part; that any area included is necessary for
20 effective redevelopment and is not included for the purpose of obtaining the allocation of tax
21 increment revenues from the area pursuant to section 33670 without other substantial
22 justification for its inclusion.

23 53. Defendants have failed to provide evidence that is necessary to include non-
24 blighted parcels in the Project Area. The Agency claims that redevelopment activities take years
25 to accomplish, and that the condition of non-blighted properties can change during this
26 timeframe and become blighted. Speculation about future conditions cannot form the basis for a
27 redevelopment plan – only existing conditions can be considered under the CRL. Further, there
28 is no explanation as to why non-blighted areas would need redevelopment tools at all.

1 Health & Safety section 33321 states that properties “shall not be included for the
2 purpose of obtaining the allocation of tax increment revenue ... without other substantial
3 justification for its inclusion.” These statements, coupled with the lack of blighting conditions,
4 show that Defendants have an improper purpose of including Sub-Area C – to obtain the
5 allocation of more tax increment.

6 60. In its response to the County’s Objections, the Agency denied that any non-
7 contiguous area is included in the Project Area. The Agency did not specifically respond to the
8 County’s evidence showing that the shopping centers in Sub-Area C are thriving and not
9 blighted.

10 61. Upon receiving the Agency’s response claiming that all areas were contiguous, the
11 County re-checked the maps included with the Redevelopment Report, the Environmental
12 Impact Report, and the Notice of Joint Public Hearing. Each of these maps – including maps
13 revised as late as April 12, 2005, one week before the hearing before the City Council – showed
14 that Sub-Area C was separated from the remainder of the Area by approximately one mile. In an
15 effort to understand the basis for Defendants’ claim that all areas were contiguous, the County
16 was finally able to obtain electronic versions of the maps directly from the engineering firm that
17 created the maps. The electronic version showed that Sub-Area C had been connected to the
18 remainder of the Project Area by inclusion of one mile of Waring Road. Other areas believed to
19 be non-contiguous were joined by inclusion of portions of Mission Gorge Road.

20 62. In its May 13, 2005 Objections, the County noted that arbitrarily including parts of
21 a street as a connector is an obvious attempt to circumvent CRL requirements for inclusion of a
22 non-contiguous area. Moreover, the fact that many maps published by Defendants showed Sub-
23 Area C and other areas to be non-contiguous was misleading to the public and to the County
24 specifically.

25 63. Thus, there is no substantial evidence in the record to support the findings required
26 by section 33367(d)(9), in that (1) all of the Sub-Areas are non-blighted, (2) Sub-Area C is
27 particularly thriving, (3) Defendants have stated that the primary reason to include Sub-Area C
28 is to obtain increased tax revenues, and (4) the public and County were misled by confusing and

1 deceptive maps that failed to show the arbitrary inclusion of a one-mile section of street for no
2 apparent purpose other than to capture as much commercial uses as possible in the Project Area.

3 64. Accordingly, Ordinance No. 2145 is null and void and of no effect.

4 **VIII.**

5 **EIGHTH CAUSE OF ACTION**

6 (Inadequate Health & Safety Code § 33352 Report – Against All Named Defendants)

7 65. Plaintiff incorporates the foregoing paragraphs as though fully set forth herein.

8 66. Health & Safety Code section 33352 requires that every redevelopment plan
9 submitted by a redevelopment agency to a legislative body for adoption be accompanied by a
10 report (referred to in this complaint as the Redevelopment Report), which must contain, inter
11 alia, the following information:

12 a. The reasons for the selection of the project area, a description of the specific
13 projects proposed by the agency, and a description of how these projects will improve or
14 alleviate blight conditions;

15 b. Facts showing that the project area is at least 80% urbanized;

16 c. A description of the physical and economic conditions specified in section 33031
17 that exist in the area that cause the project area to be blighted, including a list of the
18 conditions described in section 33031 that exist within the project area and a map
19 showing where in the project the conditions exist;

20 d. An implementation plan that describes the specific goals and objectives of the
21 agency, specific projects then proposed by the agency, including a program of actions
22 and expenditures proposed to be made within the first five years of the plan, and a
23 description of how these projects will improve or alleviate the conditions described in
24 section 33031;

25 e. An explanation of why elimination of blight and redevelopment of the project area
26 cannot reasonably be expected to be accomplished by private enterprise acting alone or
27 by the legislative body's use of financing alternatives other than tax increment financing;

28 f. An environmental assessment of the proposed project;

1 g. A neighborhood impact report; and

2 i. An analysis of the report submitted by the county as required by section 33328,
3 including a summary of the consultation by the agency with each affected taxing entity,
4 including responses to concerns raised by affected taxing entities, additional information
5 and proposed or adopted mitigation measures addressing the concerns of affected taxing
6 entities.

7 67. The primary purpose of the Redevelopment Report is to provide the legislative
8 body, as well as the public, including affected taxing entities, with substantial evidence to
9 support findings required to be made as part of the redevelopment plan adoption process.

10 68. The Redevelopment Report prepared for the Grantville Project Area does not
11 adequately address the items required by Health & Safety Code section 33352. It is vague and
12 conclusory, lacking in sufficient detail to provide any, much less substantial, evidence to support
13 required findings of blight, economic feasibility, inclusion of non-blighted parcels and
14 properties. The Report fails to show why any condition of blight cannot be remediated without
15 resort to redevelopment. The Report fails to show how planned redevelopment activities will
16 eliminate the purported blight. Moreover, the Report fails to address adequately the purported
17 consultations with the County regarding its objections to the project, and it is misleading. As
18 noted above, deficiencies in the Redevelopment Report include:

19 a. No substantial evidence to support a finding of a predominance of either economic
20 of physical blight;

21 b. No substantial evidence (or even a section in the Report) to support a finding that
22 the Area is predominantly urbanized;

23 c. Misleading information delineating the Project Area, including publication of
24 various maps showing the areas to be non-contiguous;

25 d. No specific description of redevelopment activities planned, and how those
26 activities will alleviate any blighting condition; and

27 e. No substantial evidence to show a consultation with the County regarding its
28 objections.

1 divert it from the applicable and appropriate affected taxing entities, including Plaintiff,
2 and to apply it to the provision of City services, public improvements, and infrastructure,
3 which should properly be paid for and financed by defendant City.

4 b. Taxes derived from increases in assessed valuation of unblighted property which
5 would otherwise have been developed by private enterprise acting without redevelopment
6 assistance will be diverted to Defendants rather than to the applicable and appropriate
7 affected taxing entities, including the County, thereby reducing the amount available to
8 provide essential, necessary and beneficial services to County residents and businesses.

9 73. Thus, an order is needed from this Court to enjoin Defendants from further
10 violations of the Health and Safety Code and specifically the CRL, as set forth above.

11 X.

12 **TENTH CAUSE OF ACTION**

13 (Declaratory Relief – Against All Named Defendants)

14 74. Plaintiff incorporates the foregoing paragraphs as though fully set forth herein.

15 75. An actual controversy has arisen and now exists between Plaintiff and Defendants
16 in that the County contends that adoption of the Grantville Redevelopment Plan was unlawful
17 and Ordinance No. 19380 is null and void and of no effect, whereas Defendants dispute this
18 contention.

19 76. Thus, a declaration is needed from this Court to determine whether the Grantville
20 Redevelopment Plan may go forward or should, as the County submits, be declared null and
21 void.

22 WHEREFORE, Plaintiff respectfully prays:

23 1. For an Order of this Court prescribing notice and directing the publication of a
24 Summons against All Persons Interested in the manner provided by Code of Civil Procedure
25 sections 861-863;

26 2. That all persons interested in the Ordinance No. 19380 be required to appear
27 herein and set forth any reasons they may have, and any defects which they or any of them
28 claim, which render the proceedings and the adoption of Ordinance No. 19380 valid or invalid;

1 3. For a judgment of this Court declaring that Ordinance No. 19380 is invalid, void
2 and of no force or effect;

3 4. For a judgment of this Court declaring that Defendants are not entitled to
4 implement Ordinance No. 19380 or to demand or receive tax increment revenues attributable
5 thereto, and that Defendants are not entitled to expend any funds to carry out Ordinance No.
6 19380;

7 5. For an Order preliminarily and permanently enjoining Defendants from taking any
8 action to implement Ordinance No. 19380;

9 6. For costs of suit, including reasonable attorney's fees and litigation expenses
10 incurred herein; and

11 7. For such other and further relief as this Court deems just and proper.

12 DATED: July 8, 2005

JOHN J. SANSONE, County Counsel

13 By *Laurie Orange*
14 LAURIE J. ORANGE, Senior Deputy
15 Attorneys for Plaintiff County of San Diego
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