

November 2006

EMINENT DOMAIN

Information about Its Uses and Effect on Property Owners and Communities Is Limited





Highlights of [GAO-07-28](#), a report to congressional committees

Why GAO Did This Study

In the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act, 2006, Congress mandated that GAO conduct a nationwide study on the use of eminent domain by state and local governments. This report provides information on (1) the purposes for and extent to which eminent domain can be and has been used; (2) the process states and select localities across the country use to acquire land, including by eminent domain; (3) how the use of eminent domain has affected individuals and communities in select localities; and (4) the changes state legislatures made to laws governing the use of eminent domain from June 2005 through July 2006.

To address these objectives, GAO reviewed relevant provisions in federal, state, and local laws; conducted site visits to various redevelopment projects where eminent domain was used; and interviewed multiple national associations of local and state government officials and planning professionals, national public interest groups, and national property rights groups to gain their perspectives on the use of eminent domain and its effect on communities and property owners.

The Department of Transportation provided technical comments on a draft of this report, which have been incorporated where appropriate.

www.gao.gov/cgi-bin/getrpt?GAO-07-28.

To view the full product, including the scope and methodology, click on the link above. For more information, contact William B. Shear at (202) 512-8678 or shearw@gao.gov.

EMINENT DOMAIN

Information about Its Uses and Effect on Property Owners and Communities Is Limited

What GAO Found

Officials from national organizations and state and local governments cited various purposes for which eminent domain can be or has been used, including the building or expansion of transportation-related projects; the elimination and prevention of conditions that are detrimental to the physical, social, and economic well-being of an area; remediation of environmental contamination; and economic development. However, no centralized or aggregate national or state data exist on the use of eminent domain, thereby precluding GAO from any national or statewide assessments of, among other things, how frequently eminent domain is used for private-to-public or private-to-private transfer of property and purposes of these transfers.

Multiple laws promulgated from federal, state, and local governments set forth how authorities can acquire land—including by eminent domain—and how compensation for property owners is determined. Some believe payment limits are too low. The initial step in a project that involves land acquisition is the public review and approval by a public body of a project plan, which is followed by a land valuation process during which title studies and appraisals are completed. During the land acquisition stage, authorities often make a formal offer to the owner and attempt to negotiate the purchase of the property. If the authority cannot locate the owner or the parties cannot agree to a price, among other circumstances, the authorities then begin the formal legal proceedings to acquire the property by eminent domain. Finally, once the property is acquired, authorities may provide relocation assistance that may include monetary payments to cover moving expenses.

Redevelopment projects for which eminent domain is used affect individuals and communities in a range of ways that cannot be quantified due to a lack of measures and aggregate data. According to authorities, areas selected for redevelopment could have been vacant and abandoned land or those that included residents and operating businesses. Local officials both described and showed us community benefits resulting from redevelopment projects, including additional employment opportunities and housing in an area. Also, property rights groups told us some of the negative effects of eminent domain, such as the dispersal of long-standing communities. Finally, these groups expressed concerns about how authorities implement procedures for using eminent domain, particularly the provision of public notice to owners about the risk of condemnation, and the process for designating an area as blighted.

From June 23, 2005, through July 31, 2006, 29 states enacted at least one of the following three general types of changes to their eminent domain laws: (1) restrictions on the use of eminent domain under certain circumstances, (2) additional procedural requirements, and (3) changes that defined or redefined key terms related to eminent domain including public use.

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Abbreviations

DOT	Department of Transportation
FHWA	Federal Highway Administration
HUD	Department of Housing and Urban Development
STIP	Statewide Transportation Improvement Program
URA	Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970

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United States Government Accountability Office
Washington, DC 20548

November 30, 2006

The Honorable Christopher S. Bond
Chairman
The Honorable Patty Murray
Ranking Member
Subcommittee on Transportation,
Treasury, the Judiciary, Housing and Urban
Development, and Related Agencies
Committee on Appropriations
United States Senate

The Honorable Joe Knollenberg
Chairman
The Honorable John W. Olver
Ranking Member
Subcommittee on Transportation,
Treasury, Housing and Urban Development,
The Judiciary, District of Columbia, and
Independent Agencies
Committee on Appropriations
House of Representatives

The protection of property rights plays a vital role within a market economy by allowing property owners to control their property and therefore benefit from its use, sale, or value. However, elected federal, state, and local government officials long have relied on eminent domain—the government’s power to take private property for a public use while fairly compensating the property owner—to assemble land needed to meet their constituents’ various public needs. The debate surrounding the use of eminent domain by state and local governments was invigorated by the 2005 United States Supreme Court decision in *Kelo v. City of New London* (*Kelo* decision), which involved the purpose for which a government authority can invoke its eminent domain power.¹ The decision allows private-to-private transfer of property for economic revitalization purposes pursuant to a city development plan.

¹545 U.S. 469 (2005).

In the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act, 2006 (2006 Act), Congress included provisions addressing the use of eminent domain for private-to-private transfers of property for economic development purposes.² The 2006 Act also mandated that we conduct a nationwide study on the use of eminent domain. Focused on state and local government use of eminent domain, this report provides information on (1) the purposes for and extent to which eminent domain can be and has been used; (2) the process states and select localities across the country use to acquire land, including by eminent domain; (3) how the use of eminent domain has affected individuals and communities in select localities; and (4) the changes state legislatures made to laws governing the use of eminent domain from June 2005 through July 2006.

To address these objectives, we reviewed constitutional provisions in all 50 states to determine whether states require a public use in order to invoke eminent domain and that “just” compensation (generally fair market value) be paid to property owners whose property is acquired through eminent domain. We conducted site visits to five cities—Baltimore, Chicago, Denver, Los Angeles, and New York—where we toured projects for which eminent domain was used; reviewed detailed project-specific documentation, and interviewed local officials, property rights groups, and property owners to document their respective positions and concerns about eminent domain use within their communities. In addition, we interviewed multiple national associations of local and state government officials and planning professionals, national public interest groups, and national property rights groups to gain their perspectives on the use of eminent domain and its effect on communities and property owners. From some of these national organizations, we solicited project examples in which eminent domain was used. We interviewed officials from 10 state-level departments of transportation on their land acquisition practices, including the use of eminent domain. Furthermore, we interviewed officials at the U.S. Departments of Transportation, Housing and Urban Development, and Justice, and the Environmental Protection Agency about how federal programs or funding may be involved in eminent domain proceedings undertaken by state and local governments. Finally, we monitored changes to provisions of eminent domain laws from June 2005 through July 2006 in 50 states. In addressing our objectives, the

²Pub. L. No. 109-115, div. A, title VII, § 726, 119 Stat. 2396, 2494 – 2395 (Nov. 30, 2005).

lack of comprehensive data on the use of eminent domain in states across the nation limited the scope of our work and our methodological options.

We conducted our work from January through November 2006 in accordance with generally accepted government auditing standards. Appendix I discusses our scope and methodology in further detail.

Results in Brief

Officials from national organizations, states, and cities with whom we spoke cited common public purposes for which eminent domain can be or has been used, but limited data preclude a determination of the extent to which eminent domain has been used nationwide. Purposes cited included building roads and other transportation-related projects, construction of state and municipal facilities, the elimination and prevention of blight, remediation of environmental contamination, and economic development.³ We obtained data on the specific instances and purposes for which eminent domain had been used from selected state departments of transportation and local authorities. For example, officials from state departments of transportation that we contacted reported collecting some information related to their use of eminent domain, such as the number of properties or portions of properties acquired through eminent domain. According to information provided by Baltimore city officials, their city most often invoked its eminent domain power to assemble land for redevelopment projects that involved blight removal, while Los Angeles officials said that the city most often used it for street improvements. Although some selected state departments of transportation and local authorities provided us data on their eminent domain use, no aggregate national or state data exist, thereby precluding us from any statewide or national assessments of (1) how frequently eminent domain is used, (2) how often private-to-public or private-to-private transfer of property occurs, or (3) the purposes for which eminent domain has been used by state and local governments. The data limitations result from factors such as multiple authorities within a state having power to invoke eminent domain and states not having central depositories to collect such data. For example, in Virginia, no state agency tracks the use of eminent domain by

³For purposes of this report, we generally defined blight as a condition of a property or area that is detrimental to the physical, social, or economic well-being of a designated area. We derived this definition from our review of specific blight definitions used by 10 states—California, Colorado, Florida, Illinois, Massachusetts, Missouri, New York, Texas, Virginia, and Washington.

the at least 40 types of authorities (such as school boards) that have the power.

Although federal, state, and local laws and regulations direct how property owners will be compensated when eminent domain is used, the basic procedural requirements for invoking eminent domain exhibit similarities nationwide. Federal and state constitutions and laws outline how property owners whose land is being acquired through eminent domain should be compensated. In addition, federal and state laws establish relocation benefits for displaced residents and businesses. In particular, when authorities acquire property for a project in which federal funds are involved, states and localities become subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), which establishes relocation payment amounts and procedures.⁴ However, many state and local officials commented that the limits the URA places on certain relocation expenditures were too low and needed to be revised. State and local laws also set forth basic procedural requirements—which share certain similarities nationwide—for how authorities acquire land, including by eminent domain.⁵ These procedures can be divided broadly into four stages or steps. The initial step is project planning, during which a public body can consider and approve a redevelopment plan, which outlines the need for the project and identifies parcels required to complete the project. After such plans are approved, authorities typically begin the land valuation process, during which they conduct title studies to determine legal ownership of needed parcels and complete appraisals. During the third stage, land acquisition, authorities often make a formal offer to an owner and attempt to negotiate the purchase of the property. If the authority and the property owner cannot agree to a price or if an authority cannot locate an owner, the authority then begins the formal legal proceedings to acquire the property by eminent domain. Finally, once the property has been acquired, either through negotiated purchase or eminent domain, authorities must compensate the owner justly and provide relocation assistance that can include payments for moving and related expenses.

⁴Pub. L. No. 91-646, 84 Stat. 1894 (Jan. 2, 1971) codified at 42 U.S.C. § 4601, 4602, 4604, 4605, 4621 to 4638, and 4651 to 4655.

⁵Authorities acquire land in multiple ways, including through eminent domain. Another form of land acquisition by authorities is through negotiated settlement purchase. The steps addressed in this report that may precede the use of eminent domain also apply in cases of negotiated settlement purchase.

The projects in which eminent domain is used generate benefits and costs that affect, whether positively or negatively, a wide range of community interest and individuals. Furthermore, it is difficult to establish measures to quantify the wide range of costs and benefits to individual communities of projects involving eminent domain. In addition, aggregate data on eminent domain use and frequency, as well as costs and benefits, are not available, which would be necessary to examine the impact of eminent domain on a community. Based on the projects that we reviewed or visited, we noted that the areas slated for redevelopment exhibited a variety of conditions. For example, some areas contained vacant and unutilized land and structures and some contained operating businesses and occupied residences. For selected projects where eminent domain was used that we reviewed or visited, authorities described the previously existing conditions of the areas and they told us or we observed some of the benefits realized by communities after the projects were completed. Local officials and officials from most of the selected projects told us that the areas generally could be characterized by different conditions, such as modernized roadways, additional housing, and increased commercial activity. Meanwhile, property rights groups we interviewed described some of the negative effects of eminent domain use, such as assembled land going unused. Property rights groups and a national community organization also highlighted other negative effects, such as loss of small businesses and jobs, decreases in affordable housing, and the dispersal of communities. In addition to these losses, the groups also noted that the ways in which authorities implement procedures for using eminent domain also could adversely affect property owners. They cited examples such as lack of notice, blight designations that negatively impacted neighboring nonblighted properties, significantly undervalued appraisals, and inadequate compensation.

From June 23, 2005, through July 31, 2006, many states enacted changes to their eminent domain laws. According to our analysis, 29 states enacted at least one of three general types of changes to their eminent domain laws. First, 23 of the 29 states placed restrictions on the use of eminent domain, such as prohibiting its use to increase property tax revenues, transfer condemned property to a private entity, or assemble land for projects that are solely for economic development. Second, 24 of the 29 states established additional procedural requirements, such as providing further public notice prior to condemnation. Finally, 21 of the 29 states enacted changes that defined or redefined blight or blighted property, public use, or economic development. For example, some states established that economic development and the public benefits resulting from it, including increased tax revenue and increased employment, do not constitute a

public use. The remaining 21 states had not enacted changes to their eminent domain laws during that time period based on our analysis. Some state legislatures approved constitutional amendments restricting current eminent domain laws, which were placed on the ballot for voter consideration. In three states, citizen-initiated proposals to amend the state constitution obtained the requisite number of signatures to be placed on a ballot. Finally, some states, including those that did and did not enact any changes, and state associations commissioned studies to determine if any changes were needed to their eminent domain laws.

We provided a draft of this report to the Departments of Justice, Transportation and Housing and Urban Development for their review. The Department of Transportation provided technical comments, which have been incorporated where appropriate. The Departments of Justice and Housing and Urban Development did not have any comment.

Background

An inherent right of sovereignty, eminent domain is a government's power to take private property for a public use while compensating the property owner.⁶ Eminent domain is also referred to as "appropriation," "condemnation," and "taking." The Fifth Amendment of the United States Constitution expressly restricts the federal government's use of eminent domain; it requires that eminent domain be invoked only for a "public use" and "just compensation" be paid to those whose property has been taken. The Fourteenth Amendment extends the legal requirements of public use and just compensation to the states through its Due Process Clause. In addition, states have a number of constitutional provisions, statutes, and case law outlining the various permissible uses of eminent domain, recourse available to property owners, and procedures required to take or evaluate a property. State legislatures generally determine who may use eminent domain by delegating eminent domain authority to state or quasi-public entities, such as housing, transport, and urban renewal authorities, which may exercise that power only for the purpose for which it was established. States may also grant eminent domain authority to local governments, which may further delegate this authority to a designee, such as a development authority or community group. Finally, some states

⁶1-1 *Nichols on Eminent Domain* § 1.11 (2006); see also *Mississippi & Rum River Boom Co. v. Patterson*, 98 U.S. 403, 406 (1878) (eminent domain "appertains to every independent government [and] requires no constitutional recognition; it is an attribute of sovereignty").

authorize private companies to exercise eminent domain—for example, for the provision of utility services.

Courts have addressed the meaning and application of public use in numerous cases throughout the years. In 2005, the United States Supreme Court, in *Kelo v. City of New London*, upheld the City of New London’s authority to use eminent domain to condemn and acquire property located within an area designated as a “distressed municipality,” even though the condemned property was not blighted or otherwise in poor condition.⁷ This decision allowed for private-to-private transfers of property for economic development purposes, such as New London’s action in an area that had experienced decades of economic decline. According to some scholars, the use of eminent domain for such a purpose has been permitted since the “mill acts” of the colonial and pre-Revolutionary period that permitted the flooding of private property to allow the operation of mills downstream; mills were considered the main source of power and closely linked to economic development.⁸ The Supreme Court emphasized that the *Kelo* decision did not preclude states from placing further restrictions on the exercise of eminent domain. Many states have been reviewing the use of eminent domain and considering legislative changes or constitutional amendments to control its use.

In addition to the Constitution, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 sets the federal standard for acquisition of real property for public projects involving federal financial assistance, including prescribing specific benefits, treatment, and protections for those whose property is acquired.⁹ The act also contains requirements for property owner notification and property valuation, as well as prohibitions against offers to property owners being less than an approved appraisal value. In addition, the act addresses compensation and seeks to ensure the fair and equitable treatment and protection from

⁷545 U.S. 469 (2005).

⁸See Errol E. Meidinger, *The “Public Uses” of Eminent Domain: History and Policy*, 11 *Environmental Law* 1 (Fall 1980) and Jennifer M. Klemetsrud, *The Use of Eminent Domain for Economic Development*, 75 *North Dakota Law Review* 783 (1999).

⁹Pub. L. No. 91-646, 84 Stat. 1894 (Jan. 2, 1971) codified at 42 U.S.C. §§ 4601, 4602, 4604, 4605, 4621 to 4633, 4635, 4636, 4638, 4651 to 4655. For purposes of URA, federal financial assistance is defined as “a grant, loan, or contribution provided by the United States, except any federal guarantee or insurance, any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual, and any annual payment or capital loan to the District of Columbia.” 42 U.S.C. § 4601(4).

disproportionate injury of persons displaced from their homes, businesses, or farms in all projects involving federal financial assistance. The act requires that certain relocation funding be provided when a resident's property is acquired, such as reasonable out-of-pocket moving expenses and relocation advisory services. The relocation funding also includes payments to cover rent increases or downpayments on home purchases in order to assist tenants and owners in relocating to comparable housing, which, at a minimum, is decent, safe, and sanitary.

A number of federal government agencies have acquisition programs where the federal government acquires title to the land through proceedings in federal courts. However, this report focuses on land acquisitions by state or local governments, or their designees.¹⁰

States and Localities Used Eminent Domain for Various Purposes and to Varying Degrees, but the Extent of Eminent Domain Use Is Unknown Due to Limited Data

Officials from national organizations, states, and cities with whom we spoke cited various common public purposes for which eminent domain can be or has been used, but the lack of data precludes a determination of the extent to which eminent domain has been used across the nation. Purposes for which we received examples include the building or expansion of roads and other transportation-related projects; construction of state and municipal facilities; and the elimination and prevention of blight. In addition, officials from some of the national organizations we contacted, which represent state and local governments, property rights groups, urban planning, and home builders, also cited remediation of environmental contamination and economic development. Although we were able to identify some purposes for which eminent domain can be and has been used by certain authorities, we were unable to determine the number of times and the purposes for which eminent domain has been used across the nation because of a lack of centralized or aggregate data.

¹⁰In contrast to regulatory takings—in which government regulatory actions affect private property use—eminent domain as described in this report refers to direct takings of real property, where the legal title of the property is transferred.

National Organizations, State Agencies, and City Officials Cited Various Purposes for Using Eminent Domain

According to representatives from some national organizations representing state and local governments, property rights groups, farmers, and planning professionals, and state departments of transportation (DOT) and city officials, eminent domain could be and has been used for various purposes. In particular, many of these representatives and officials said that eminent domain was sometimes needed for the completion of transportation-related projects, such as the building or expansion of roads and highways. As an example, according to Texas DOT officials, from November 1996 through March 2005, the department invoked eminent domain to acquire 6 of the 26 properties needed to assemble land for the construction of an interchange that connected two major highways in central Texas. These officials explained that most of these acquisitions involved the taking of a small portion of the property (partial takings). Furthermore, Texas DOT officials said that because they were making improvements to existing highway facilities, the location of such improvements was limited to properties adjacent to the highway.

In addition, Florida DOT officials told us that the department used eminent domain in 1998 and 1999 to acquire 23 of 51 properties, most of which were partial takings, needed to reconstruct and widen an existing roadway from two to four lanes. City officials we contacted also provided examples of transportation-related projects in which eminent domain was used. For example, an official from a city in Texas told us that the city, in collaboration with the city's transit authority, used eminent domain to acquire 2 of the 9 commercial properties needed to assemble land for the expansion of the city's light rail system in October 1998. According to this official, the city's transit authority was seeking to extend its existing light rail system to provide a low-cost and energy-efficient means of mass transit for commuters.

Another purpose for which eminent domain can be or has been used is the construction or maintenance of state and municipal infrastructure, such as state and municipal buildings. For example, in January 2002, Los Angeles used eminent domain to acquire 2 of the 7 properties needed to assemble land for the construction of a public building that eventually accommodated state and city departments of transportation. In addition, officials from some of the national organizations we contacted said that eminent domain is also used for public utilities. For example, New York City used eminent domain to assemble land for the construction of a tunnel for the city's water system. To complete one phase of the project, the city used eminent domain to acquire 3 of the 10 properties needed to construct support facilities for the operation and maintenance of the water tunnel. Furthermore, the city condemned subsurface rights on more than

1,100 properties for the construction of the Manhattan portion of the tunnel and approximately 640 additional subsurface rights for the Brooklyn and Queens portions. According to a New York City Department of Environmental Protection report, the tunnel is expected to enhance and improve the city's water system and allow for inspection and repair of the city's existing tunnels.¹¹ In addition, an official from a county in California provided information about the condemnation of 40 parcels of property in June 2001 to assemble land for a flood control and protection project, most of which were partial takings. According to this official, the flood control and protection improvements were intended for public safety and public infrastructure protection.

Eminent domain also can be and has been used to eliminate or prevent blight. For example, according to an official from a community redevelopment agency in Florida, the agency used eminent domain in March 1998 to acquire 3 of the 39 parcels needed to eliminate slum and blighted conditions, stimulate private investment in the area, provide commercial opportunities, and enhance the area's tax base. This agency official said that the redevelopment of the area consists of commercial space and residential housing and was the first significant private investment made in the area in decades. In addition, New York City officials provided an example in which the city condemned property through eminent domain to eliminate blight. According to city officials, the city acquired 407 parcels to eliminate blight by constructing a major housing development.¹² The city's plan for the project indicated that the project was intended to accomplish several things, including providing new and rehabilitated housing for low-, moderate-, and middle-income residents and strengthening the tax base of the city by encouraging development.

Furthermore, officials of some national organizations representing state and local governments, property rights groups, planners, and home builders said that eminent domain can be used for brownfield remediation, which is the environmental cleanup of property that is or may be contaminated. According to officials from an organization representing

¹¹New York City Department of Environmental Protection, *New York City 2005 Drinking Water Supply and Quality Report* (New York, N.Y.: 2005).

¹²According to New York City officials, although the city already owned 190 of the 407 parcels, the city needed to begin eminent domain proceedings to acquire all of the parcels to ensure that it was the sole legal title holder on the property.

local government environmental professionals, oftentimes development of certain brownfield properties only occurs with the use of eminent domain because of the owners' unwillingness to transfer property or allow access for site inspections for fear of later being held liable for clean-up costs. Although the officials from the national organizations mentioned above also cited brownfield remediation as a purpose for which eminent domain could be used, we were unable to obtain sufficient project information to conduct any further analysis or provide examples in this report.

Finally, officials from some of the national organizations with whom we met cited economic development as a purpose for which eminent domain can be and has been used. However, according to an official from a national organization representing city governments, the use of eminent domain solely for economic development purposes is minimal compared with the use of eminent domain for other purposes, such as transportation-related projects. Officials from some authorities that have the power to use eminent domain said that some of their projects might be linked to economic development, but that economic development was not the primary purpose of the projects. In addition, all of the projects we reviewed in which eminent domain was used to eliminate blight were associated with projects intended to improve the economic condition of the area. For example, as we have previously described, the redevelopment agency in Florida used eminent domain to acquire three parcels of property to eliminate slum and blighted conditions by stimulating private investment in the area, providing commercial opportunities, and enhancing the area's tax base.

Officials from an organization representing state legislatures said that economic development is closely related to blight removal because authorities with eminent domain power may claim that blight removal will stimulate the community's economic conditions. In addition, representatives from some national organizations representing state and local governments, planning professionals, and officials from some cities we visited said that transportation-related projects might lead to an area's economic development. For example, New York City officials said that even acquisitions of property by eminent domain that are not primarily intended for economic development, such as the construction of a road or highway, would likely improve the economic condition in the area because of the improved access to businesses in the area, potentially increasing the profitability of the businesses. City officials from Chicago and Los Angeles told us that the construction of state buildings in their downtowns had positive economic impact on their cities because the projects attracted private development. Finally, an official from Denver Urban Renewal

Authority described the Authority's use of eminent domain to assist a developer complete refurbishing of a downtown property of architectural and historical significance, thus preventing the property from becoming vacant and potentially having a negative impact on its surrounding area.

We also obtained data on the use of eminent domain from selected state DOTs and local authorities.¹³ The data reflect that the amount of eminent domain activity and purposes for which eminent domain was invoked varied by states and localities. Officials from 9 state DOTs we contacted estimated that the number of individual properties they used eminent domain to acquire in the last 5 years for transportation-related projects ranged from approximately 200 to 7,800.¹⁴ As we previously discussed, according to the state DOT officials, because most of their projects involve improvements on existing transportation systems, the majority of the private properties they assembled for the projects consisted of partial acquisitions.¹⁵ In addition, according to information provided by Baltimore and Los Angeles city officials, Baltimore invoked its eminent domain power most commonly to assemble land for urban redevelopment projects that involved blight removal, while Los Angeles invoked its eminent domain power most often for street improvements projects. Similarly, according to New York City officials, the city invoked its eminent domain power most commonly to assemble land for parks and street widening. Officials from Chicago and Denver told us that they do not have complete data on the number and purposes for which they used their eminent domain authority, but provided us with some information on their use of eminent domain. Specifically, City of Chicago officials estimated that they acquired 2,000 parcels through eminent domain in the last 10 years. In addition, officials from Denver told us that the city used its eminent domain authority mostly for street improvement projects.

¹³According to Federal Highway Administration (FHWA) officials, state DOTs have been collecting and reporting to FHWA some data related to the use of eminent domain since 1991.

¹⁴The numbers include instances in which state DOTs used eminent domain to acquire entire and portions of properties. The variation in the range of the number of times eminent domain was used by the state DOTs we contacted may reflect differences in state law granting state DOTs eminent domain authority, the geographic size of the state, and traffic conditions within the state, among other factors.

¹⁵State DOT officials also referred to these instances as "partial takings" or "strip takings."

No Aggregate Data Exist
on the Number of
Instances and Purposes for
which Eminent Domain
Was Used

The lack of state or national data precluded objective statewide or national assessments on the use of eminent domain, including (1) how frequently eminent domain is used, (2) how often private-to-public or private-to-private transfer of property occurs, or (3) the purposes for which eminent domain has been used by state and local governments.¹⁶ Although we were able to collect limited data on the purposes and number of instances in which eminent domain was used, officials from some of the national organizations we contacted told us that state or national aggregate data on the use of eminent domain do not exist. At least two major factors account for the lack of aggregate data. First, officials from the U.S. Departments of Transportation and Housing and Urban Development, as well as the Environmental Protection Agency, told us that the federal agencies generally do not acquire private property through eminent domain directly, but may be indirectly involved through the different programs or agencies they administer or fund. Furthermore, officials from these Federal agencies told us that they do not formally track whether program participants use eminent domain.

Second, the lack of state data on the use of eminent domain may result from multiple authorities in a state having the power to invoke eminent domain and states not having central repositories to collect such data. As we have previously discussed, since states grant eminent domain authorities to local governments, which may further delegate this authority to a designee, such as a development authority, many entities have the power to invoke eminent domain. Of the 10 state legislative research offices we contacted, 5 provided us with information on the authorities that have eminent domain power within their states.¹⁷ For instance, according to information provided by the Virginia legislative research office, at least 40 different types of authorities can invoke eminent domain, including school board districts that can use it to acquire any property necessary for public school purposes. The legislative research office of Massachusetts listed 8 different types of authorities with eminent domain power. For example, the Armory Commission can use eminent domain to acquire land suitable for target practice ranges for the armed forces of

¹⁶We attempted to collect information about the use of eminent domain from multiple sources, such as national organizations and cities that have used eminent domain; however, we were unable to collect a significant amount of information on the use of eminent domain. See appendix I for more information on the methodology used to collect such information.

¹⁷Although multiple authorities within a state have the power of eminent domain, some may not have occasion to exercise this power.

Massachusetts, subject to the governor's approval.¹⁸ In addition to the 8 authorities, the information provided by the Massachusetts legislative research office states that Massachusetts' general statutes also grant the power to, among others, the governor and state council, county commissioners, and city aldermen. Furthermore, according to a Texas Legislative Council report, at least 90 different types of authorities have been granted the power of eminent domain in Texas, including agricultural development districts, railroad companies, and sports facilities districts.¹⁹ Finally, the legislative research offices of Illinois and Washington provided us with information on statutes that described the authorities that were granted eminent domain power. In particular, in Illinois, at least 168 types of authorities, including those dealing with transportation, such as the Chicago Transit Authority and the Kankakee River Valley Area Airport Authority, have the power to acquire property through eminent domain, and, in Washington, at least 78 types of authorities were granted this power.

Although Many Laws Govern Land Acquisition, Including Eminent Domain Use, Common Practices Exist Nationwide

Public authorities at the state and local levels acquire property, including by eminent domain, through processes set forth in various federal, state, and local land acquisition laws and implementing regulations. Federal and state laws, such as the URA, outline how much compensation authorities need to pay property owners whose land is being acquired and also direct authorities on what type of relocation assistance to provide to residents and businesses. However, local and state officials we met expressed some concerns about certain limits that the URA places on the amount and type of relocation payments to displaced residents and businesses. In addition to local laws and regulations, federal and state laws establish procedures for how authorities must undertake land acquisition, including the use of eminent domain. Although multiple laws address land acquisition, authorities we interviewed follow broadly similar steps. When acquiring land, which may involve the use of eminent domain, authorities generally follow a four-step process: (1) project planning; (2) property valuation; (3) property acquisition; and (4) relocation of displaced property owners, residents, and businesses. Sometimes these steps overlap.

¹⁸Mass Gen. Laws ch. 33, § 126.

¹⁹Texas Legislative Council, *Fact at a Glance: Texas Statutes Granting, Prohibiting, or Restricting the Power of Eminent Domain* (Austin, TX, 2006).

Federal and State Governments Set Compensation and Relocation Benefits, but Concerns Exist That Some Payment Limits Are Too Low

Land acquisition laws generally require compensation be paid to the owner of a property that a public authority has acquired, including acquisitions by eminent domain. All 50 state constitutions require that just or fair compensation be paid to those whose property has been taken through eminent domain.²⁰ Just compensation is a payment by the government for property it has taken under eminent domain, usually the fair market value, so that the owner theoretically is no worse off after the taking.²¹ As mentioned earlier, the United States Constitution stipulates that eminent domain use by a government authority must include just compensation to the property owner. Some state constitutions, including Georgia and Montana, provide for payment of expenses above the fair market value of the property such as, in certain circumstances, attorney's fees or litigation expenses incurred in determining adequate compensation.

The land acquisition process often includes relocation of either the property owner or residents and businesses located in the property acquired by the authority; federal and state laws also address the costs involved in relocation. Requirements in the URA, the federal law governing the provision of relocation benefits to displaced parties, are applicable to all acquisitions—including voluntary acquisitions achieved through negotiated settlements and acquisitions through eminent domain—of real property for federal or federally assisted programs or projects. The URA provides benefits to displaced individuals, families, businesses, and nonprofit organizations. The types of benefits provided depend on factors such as ownership, tenancy, and use of property (commercial versus residential use). Local officials told us that they have provided benefits

²⁰The requirement in the Kansas Constitution for full compensation applies to corporations. However, Kansas courts have applied the federal constitutional requirement that just compensation be paid when private property is taken for public use by way of the Fourteenth Amendment's Due Process Clause. *See Lone Star Industries, Inc. v. Sec. of Kansas Dept. of Transp.*, 671 P.2d 511, 514-515 (Kan. 1983). Further, these requirements have been codified in Kansas statutory law. *Id.* (citing K.S.A. 26-513(a)). New Hampshire's Constitution does not expressly mention compensation, but just compensation is nevertheless required. *Thomas Tool Services, Inc. v. Town of Croydon*, 761 A.2d 439, 441 (N.H. 2000) (citing *Burrows v. City of Keene*, 432 A.2d 15, 18 (N.H. 1981)). The North Carolina Constitution does not expressly prohibit taking private property for public use without just compensation, but its courts have inferred such a prohibition as a fundamental right integral to the "law of the land" clause that is in its constitution. *Finch v. City of Durham*, 384 S.E.2d 8, 14 (N.C. 1989) (citing *Long v. City of Charlotte*, 293 S.E.2d 101, 107-108 (N.C. 1982)).

²¹This is also generally termed adequate compensation, due compensation, or land damages. *Black's Law Dictionary* (8th ed. 2004).

under the URA such as: actual moving costs for residents and businesses; comparable replacement housing; rental assistance for tenants; cost of personal property loss for businesses; expenses in finding a replacement site for businesses; and reestablishment costs for businesses up to \$10,000.²² In addition, some city and state officials with whom we spoke explained that their states have adopted legislation or policies with requirements similar to the URA, providing some or all of the same benefits to residents and owners displaced through nonfederally funded projects.²³

However, local officials, and redevelopment agency officials from four of the five cities we visited believed that payment amounts allowable under the URA might not be adequate to cover costs. For example, we were told that a \$10,000 cap on reestablishment costs for business relocation, unchanged since 1987, was too low.²⁴ Most officials noted that reestablishments costs exceed this cap. For example, Chicago officials described high reestablishment costs such as, replacing specialized fixtures, licensing and permitting, and differential payments for increased rent, insurance, and other needs. Furthermore, a Los Angeles city official noted that the URA requires lump sum payments to remain under a \$20,000 cap.²⁵ Los Angeles officials use these settlements frequently, but one official stated that the URA cap was too low.

Officials from 6 of the 10 state DOTs that we contacted remarked that various benefit limits in the URA are too low to properly compensate for business reestablishment costs. According to the U.S. Department of

²²Some authorities provide businesses with lump sum payments in lieu of those listed for all costs incurred from displacement.

²³According to FHWA officials, while the URA provides for limits on certain relocation expenditures that are eligible for reimbursement when federal financial assistance is involved, states may be eligible for additional federal reimbursement in excess of amounts required by the URA for certain types of transportation projects.

²⁴The URA permits payment for (1) actual reasonable expenses for moving, (2) actual direct losses of tangible personal property as a result of moving or discontinuing a business up to a reasonable amount that would have been required to relocate, (3) actual reasonable expenses in looking for a replacement business, and (4) actual reasonable expenses necessary to reestablish a business at a new site. 42 U.S.C. § 4622(a). However, the amount permitted to be paid for reestablishment is limited to \$10,000. 42 U.S.C. § 4622(a)(4).

²⁵The URA permits business and farm operations eligible for relocation benefits to elect a lump sum payment in lieu of the payments based on their actual reasonable expenses (see prior footnote). However, this payment cannot be more than \$20,000. 42 U.S.C. § 4622(c).

Transportation, the agency responsible for issuing regulations to implement the URA, the agency's Federal Highway Administration (FHWA) has received comments about the inadequacy of business reestablishment payments under the URA from states, other federal agencies, and affected businesses.²⁶ In response to these comments, FHWA undertook multiple activities to identify needed programmatic change in the URA, according to FHWA officials. In particular, in 2002 FHWA conducted a study to assess the adequacy of current URA provisions for business relocations and found that reestablishment payments were largely considered inadequate.²⁷ In 2005 FHWA made some revisions to the URA regulations, but the revisions did not raise the cap on reestablishment payments.²⁸ Such an increase requires a statutory change.²⁹

State and Local Laws Further Direct Authorities on How to Acquire Land, Including Eminent Domain Use

State and local laws further condition how land may be acquired, including through eminent domain (see fig. 1). Among the states that we reviewed, some states enacted additional laws concerning land acquisition, such as requirements for environmental assessments. For instance, according to City of Los Angeles officials, the California Environmental Quality Act requires that the environmental impacts of discretionary projects proposed to be carried out by public agencies, including in general publicly funded projects in the state involving land acquisition, be assessed at the earliest possible time in the environmental review process.³⁰ In New York, according to city officials, when a significant

²⁶The URA designates the U.S. Department of Transportation as the lead agency, which is responsible for developing, publishing and issuing regulations implementing the URA. 42 U.S.C. § 4601(12) and 4633. The U.S. Department of Housing and Urban Development and other federal agencies funding relocation and acquisition actions actively participate in this process. 42 U.S.C. § 4633(a)(1).

²⁷U.S. Department of Transportation, FHWA, Office of Real Estate Services, National Business Relocation Study, April 2002, Report No. FHWA-EP-02-030. According to FHWA officials, FHWA held two national symposia on the URA, conducted research projects, including reviews of similar laws in other countries, and held public listening sessions on regulatory and statutory reform in addition to the 2002 study.

²⁸70 Fed. Reg. 590 (Jan. 4, 2005). According to FHWA officials, one revision included re-categorizing several eligible expenses that previously counted towards the reestablishment limit set in the URA. This regulatory change, according to FHWA officials, addressed some of the concerns with the reestablishment limits by allowing additional actual, reasonable and necessary costs to be eligible for reimbursement.

²⁹42 U.S.C. § 4622(a)(4) and (c).

³⁰Cal. Pub. Res. Code div. 13.

adverse environmental impact is likely to result from a project, the State Environmental Quality Review Act requires an assessment in the form of an environmental impact statement of short and long term impacts, adverse environmental impacts, and mitigation measures.³¹ In addition, according to officials, residential and business displacement from a project is generally analyzed in the review conducted under New York State and New York City law.

Figure 1: Federal, State, and Local Laws Condition the Use of Eminent Domain

Law	Level of government agency		
	Federal	State	Local
U.S. Constitution			
Applicable federal law (e.g., Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970)			
State constitutions (e.g., state constitutional clauses related to just compensation)			
State law (e.g., California Eminent Domain and Relocation Assistance Laws)			
Local law (e.g., Uniform Land Use Review Procedures, New York City)			

Source: GAO.

Some states have laws outlining how authorities granted eminent domain authority within their state can invoke this power to assemble land for public projects. For example, in Illinois, Article VII of the Code of Civil Procedure sets forth procedures for use of the power of eminent domain by state and local governments including provisions regarding the determination of property value, negotiation with property owners, and the initiation of condemnation.³² Provisions in the Illinois Municipal Code authorize municipalities to take property for redevelopment based on a blight designation.³³ In New York, the Eminent Domain Procedure Law sets forth the procedure by which property is acquired and property owners are compensated.³⁴ This law also establishes the opportunity for public participation in the planning of redevelopment projects, which may

³¹N.Y. Env'tl. Conserv. Law ch. 43-B, art. 8.

³²See, for example, 735 Ill. Comp. Stat. 5/7-102.1, 5/7-104, and 5/7-121.

³³65 Ill. Comp. Stat. 5/11-11-1.

³⁴N.Y. Em. Dom. Proc. Law §§ 101, 104 and 501.

necessitate eminent domain use. Through these procedures, the state acknowledges that the need for public land acquisition should be balanced against the rights of private property owners and local communities, encourages the settlement of claims for compensation, and reduces related litigation. California's Eminent Domain and Relocation Assistance Laws implemented by the Relocation Assistance and Real Property Acquisition Guidelines governs private property acquisition by a public authority not involving federal funds.³⁵ The guidelines are designed to ensure equitable treatment for persons displaced from a home or business, reduce related litigation, and require comparable replacement dwellings.³⁶ The Colorado Urban Renewal and Eminent Domain Laws contain procedures for using eminent domain to eliminate or prevent blight or slum conditions.³⁷ To govern the relocation of displaced residents, Maryland, New York, and Washington, like California, have established laws that provide certain state relocation benefits.³⁸ Therefore, a mixture of federal and state laws directs how local authorities use their eminent domain power, provide compensation, and other required benefits.

In addition to the federal and state laws that authorities must follow when invoking eminent domain, some of the cities that we visited had additional local laws or city agency regulations that governed urban redevelopment, as well as relocation of displaced residents and businesses (see fig. 1). For example, in New York City, the Uniform Land Use Review Procedure Charter, approved in 1975, standardizes how applications affecting land use in New York City, including projects involving eminent domain, are publicly reviewed.³⁹ Another law sets forth the rights of residential and commercial tenants displaced by urban redevelopment in New York City.⁴⁰ The Los Angeles redevelopment agency has also established an appeals

³⁵Cal. Civ. Proc. Code pt. 3, tit. 7; Cal. Gov't. Code § 7260 et seq.; and Cal. Code Regs. tit. 25, § 6000 et seq. The guidelines expressly recognize the priority of federal law and that California law only applies when the federal rules are not imposed. Cal. Code Regs. tit. 25, § 6018.

³⁶Cal. Code Regs. tit. 25, § 6002.

³⁷Colo. Rev. Stat. § 31-25-101 et seq. (urban renewal) and Colo. Rev. Stat. 38-1-101 et seq. (eminent domain).

³⁸See, for example, Md. Code Ann., Real Property § 12-206; N.Y. Gen. Mun. Law § 74-b; and Wash. Rev. Code § 8.26.065.

³⁹New York City Charter § 197-c.

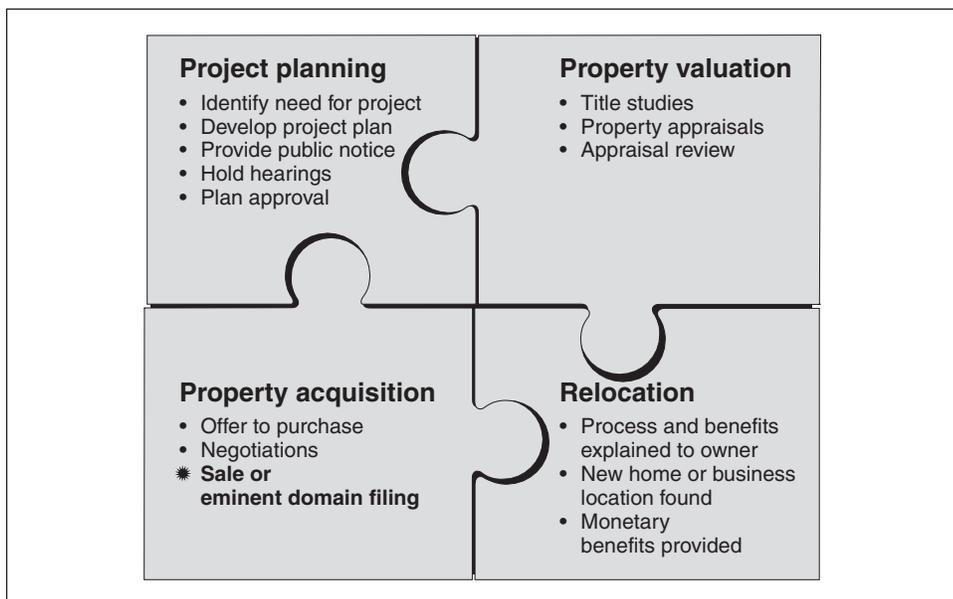
⁴⁰28 RCNY § 18-04.

procedure for relocation decisions which is supplementary to federal and state law, according to information provided by Los Angeles city officials.

Authorities Follow Several Similar Steps in Projects that Can Involve Eminent Domain

The complexities associated with land assembly have led to numerous approaches for acquiring land and providing just compensation. However, when state and local authorities acquire land, either through negotiated purchase or eminent domain, they follow some common procedural practices. The land acquisition process generally occurs in four stages, including (1) project planning; (2) property valuation, during which appraisals are conducted; (3) property acquisition; and (4) relocation, during which authorities may provide residents and businesses replacement housing or commercial property (see fig. 2). Sometimes these stages are concurrent, with some variation across the localities we visited. The views that property owners and property rights organizations we interviewed have on these stages are discussed in a later section of this report.

Figure 2: Common Real Estate Acquisition Stages in Visited Localities



Sources: GAO (analysis); Art Explosion (images).

Project Planning Stage

The project planning stage may begin by identifying the need for a project. Depending on the type of project, city departments of engineering or planning, city redevelopment or renewal authorities, or state departments of transportation with whom we spoke, conduct work at this stage. For example, 23 U.S.C. § 135 (section 135), as amended by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, mandates that states carry out a statewide transportation planning process that involves both a long-range statewide transportation plan, which identifies transportation needs over roughly a 20-year horizon, and a Statewide Transportation Improvement Program (STIP), which is a listing of potential projects to be constructed in the near term, covering a 4-year period.⁴¹

FHWA and the Federal Transit Administration jointly administer the statewide planning program. During these planning processes, according to FHWA officials, state DOTs work with other state agencies and local authorities within a cooperative, continuous, and comprehensive framework to make decisions on the need for new state highways or interchanges, among other transportation-related public improvements. Section 135 requires public notice during the planning process, which for the long-term plan includes public meetings at convenient and accessible locations at convenient times, use of visualization techniques to describe plans, and provision of public information in an electronically accessible format, such as the Internet.⁴² The STIP also requires states to provide interested parties with a reasonable opportunity to comment on the proposed program.⁴³ According to state DOT officials in New York, project managers will attend local board or council meetings before a design for a new transportation project is proposed. After the project proposal, New York officials hold informational meetings for property owners and allow time for individual question and answer sessions. New York officials consider alternative site selections proposed by the property owners, although the state DOT eventually selects the least intrusive and safest alternative by weighing social, economic, safety, and technical considerations. Other states that we contacted, including Missouri, Illinois, California, Colorado, and Texas, also described their adherence to the federal requirements in conducting their statewide transportation

⁴¹Pub. L. No. 109-59, § 6001(a), 119 Stat. 1144, 1851 (Aug. 10, 2005).

⁴²23 U.S.C. § 135(f)(3).

⁴³23 U.S.C. § 135(g)(3).

improvement plans and providing public notice of the project design process.

In cities or localities, the project planning stage may generally involve developing, publicly vetting, and approving a project plan by a public body, such as a city council. Redevelopment where eminent domain may be used in the five cities we visited may involve the creation and approval of an urban renewal or redevelopment plan, which establishes such things as the need for the project, lists the parcels required to complete the project, and creates a timeline. In some localities, such planning processes may involve the completion of impact studies of the potential effects from the proposed redevelopment project on the neighborhood and the environment. Multiple public hearings or meetings may occur when localities are vetting a redevelopment plan. Chicago officials told us that the public may attend hearings or meetings held by the city's planning department, city council, and an appointed body known as the Community Development Commission, at which redevelopment plans and takings are approved. In addition, local alderman may also sponsor public meetings on proposed redevelopment plans. In New York City, the Uniform Land Use Procedure Law provides for review before four city entities: the local community board, borough president, city planning commission, and the city council. Property owners and the community, in New York, Chicago and in other localities, are notified about hearings through letters sent to their mailing addresses.

This planning process often ends with the approval of a project plan by a public body. In all five cities we visited, officials told us that the city council approves the redevelopment or urban renewal plan, at times granting the appropriate public authority the specific power to acquire properties necessary to complete the project. Sometimes the development of these plans involves organizations outside the local or state government, such as community groups or developers. Officials from some of the cities we visited explained that the city may work with the developer by exercising its power of eminent domain to complete the site assemblage necessary for a developer's project. This collaboration typically occurs after the developer has acquired as many parcels in a redevelopment site as it can through private market transactions.

During project planning, city authorities often may have to demonstrate blight or slum conditions in the area slated for redevelopment. States allowing the use of eminent domain for blight removal generally establish criteria to determine blight. These criteria may consider conditions of blight that impose a physical or economic burden on a community.

Examples of physical blight in some state laws include buildings in which it is unsafe or unhealthy for persons to live or work. Indications of physical blight may include building code violations, structural dilapidation and deterioration, defective building design or physical construction, or faulty or inadequate utilities. Blight also may include neighboring or nearby property uses that are incompatible with one another and prevent the economic development of the respective parcels, such as the existence of irregularly sized lots. Depreciated or stagnant property values, high vacancy or turnover rates of commercial property, or increased abandonment of buildings and lots can be indications of economic blight, as can high crime rates or residential overcrowding.

While state laws often determine blight factors, authorities may have some latitude in applying them to properties and areas. The City of Chicago, following Illinois law, must apply a 13-factor test to determine blight for a redevelopment project area. To classify an entire area, such as a city block, as blighted, five or more of the factors must be clearly present and reasonably distributed throughout a project area. City officials explained that this standard means that at least a third to one half of the properties in a designated area meet at least 5 of the 13 blight factors. Officials in Los Angeles informed us that in order to adopt a redevelopment plan an area must generally be characterized by one condition of physical blight and one condition of economic blight. According to officials at the Denver Urban Renewal Authority, in order to undertake any redevelopment project, a blight designation must precede any redevelopment action. In addition, the officials explained to us that early in the project development stage, the authority conducts a study, pursuant to Colorado state statute, to determine that a minimum of 4 of the 11 blight characteristics in state law are present in the designated area. These criteria include unsanitary or unsafe conditions, deteriorated or deteriorating structures, environmental contamination, and the existence of conditions that endanger life or property.

Property Valuation Stage

The property valuation stage may involve title studies and property appraisals that city, state, or contract appraisers often conduct. Several state and city officials with whom we met or spoke described the need to conduct title studies to determine legal ownership of a property and ascertain any lien holders. To determine the fair market value of the property, which is generally the amount of the first offer made by public authorities, city officials described using an independent, certified appraiser. According to officials in New York City, fair market value is determined by valuing the highest and best use of the property on the date of acquisition. In Los Angeles, city officials explained that state law

defines fair market value as the highest price that a willing buyer and willing seller would agree to, neither being compelled to buy or sell and each having full knowledge of all of the uses, and restrictions on use, to which the property may be put.⁴⁴ In other words, officials from the Los Angeles authority are required to pay owners not less than the amount for which their property would sell privately on the open market if it were unaffected by a possible eminent domain action. Massachusetts Highway Department officials described having all appraisals exceeding \$175,000 in value reviewed by a real estate review board appointed by the state's transportation commissioner for accuracy and then submitted for final approval to the transportation commissioner. Some transportation authority officials also described using in-house appraisers at their agencies. During this stage, owners also may obtain appraisals of the fair market value on their property, although sometimes at their own expense.

Property Acquisition Stage

The property acquisition stage may involve a formal offer, negotiation by the city, state, or redevelopment authority officials, and at times, an impasse leading to an eminent domain filing by an authority's legal counsel. Multiple authority officials described using eminent domain after many attempts at a negotiated settlement had been unsuccessful. If the owner does not agree with an authority's initial offer, then some authorities may provide additional offers above the appraised value. In some localities, this sort of negotiation involves the owner identifying special circumstances that justify a higher level of compensation. Denver authorities told us that their initial offer to purchase is typically based on an appraisal. Any settlement that can be reached at the midpoint between the city's appraisal and the property owner's appraisal when the latter is higher is considered an appropriate settlement. The Denver official stated that it is the city's practice to pay more than the fair market value on the property to compensate for inconvenience or intangible difficulties caused by condemnation. When seeking a negotiated settlement, the authorities we contacted had different limits on the percentage amount over the appraised value that they could offer prior to invoking their power of eminent domain. For example, the Community Redevelopment Agency of Los Angeles cannot make an offer of over 120 percent of the appraised value of the property without agency board approval. A higher offer by the redevelopment agency may be considered a gift of public funds, which the agency, by law, cannot make, according to officials. In New York City, based on agency protocols, the Department of Citywide Administrative

⁴⁴Cal. Civ. Proc. Code § 1263.320(a).

Services may pay no more than 110 percent of the original appraisal prior to the use of eminent domain. Similarly, the city's Department of Housing Preservation and Development has established rules to pay no more than 120 percent of the original appraisal prior to the use of eminent domain. In Chicago, a city official estimated that within 1 year, 75 percent of owners settle at an amount between 100 and 150 percent of the original offer.

Once authorities are certain that the owner will not settle or that the legal owner cannot be located, they may file to condemn the property with eminent domain in the appropriate court.⁴⁵ However, the manner in which authorities can invoke eminent domain differs. For example, two state DOTs we contacted have established policies to invoke eminent domain for each acquisition undertaken, including acquisitions involving willing sellers, to ensure that the authority is the sole legal title holder on the property. Multiple cities and state departments of transportation told us they also had the statutory authority to use a procedure known as "quick-take," which refers to the ability to petition a court for immediate vesting of a property's title. If the petition is granted, the court transfers the property to the authority and the final compensation is determined at a later date. The authority must deposit the estimated compensation with the court, which owners may withdraw without relinquishing their ability to argue for more compensation. Local officials have noted that for most eminent domain filings, the authority and the owner come to a settlement without the need for a trial. For instance, officials from three authorities we contacted estimated that 90 percent of all eminent domain filings were settled prior to trial.

Although few eminent domain cases go to jury trial, authority officials stated that eminent domain is the most effective tool they have to acquire needed property from owners who hold out for a higher purchase price or refuse to sell. Officials in one city explained that they also use eminent domain to void leases on property while other officials explained that they use it to obtain abandoned property when no owner can be located. For example, city officials with whom we spoke stated that eminent domain is needed to acquire properties from owners that purchase and hold on to property after an area is slated for redevelopment. Officials stated that they generally believe these owners are speculating that land values will

⁴⁵Prior to an authority filing in court to condemn a property, owners may have negotiated with authorities under the threat of eminent domain. Once the authority files to condemn a property through eminent domain, the threat of eminent domain becomes the actual use of the tool. Nevertheless, owners and authorities may still continue to negotiate.

increase because of the expected public investment in the redevelopment project.

Relocation Stage

The relocation stage may involve outreach by the condemning authority and the provision of relocation benefits by agency or contracted relocation specialists to displaced residential or commercial owners or tenants. For instance, New York City defines displaced party as any family, individual, partnership, corporation, or association that is displaced or moves from real property, or who moved his or her personal property from such real property, on or after the date of acquisition of the real property for a public improvement or urban renewal site or project.⁴⁶ The URA's definition of a "displaced person" covers anyone who moves because they received a written notice that a program or project undertaken by a federal agency or with federal financial assistance intends to acquire his or her property (including a rental property).⁴⁷ Some authorities, such as the cities of Los Angeles and Chicago, have dedicated offices within the condemning agency to manage the provision of relocation benefits. Other localities, including New York City, sometimes contract out this responsibility to private relocation firms, for example when undertaking larger projects involving multiple displaced parties.

Multiple relocation specialists with whom we spoke, whether they were authority officials or contracted specialists, reported contacting the property owner as soon as the public entity received the authority to take the owner's specific property or soon thereafter and providing relocation support for the duration of the settlement or condemnation. For example, Chicago officials told us that within five days of the city's first offer letter, relocation specialists will contact the property owner and tenant to set-up a face-to-face interview to determine their needs. Relocation specialists may meet with displaced residents at numerous steps of the land acquisition process. They may explain the residents' rights, benefits, and obligations and may interpret legal notices received from the authority. According to some relocation specialists, residential tenants and owners are to be relocated to comparable replacement housing that is decent, safe, sanitary, and functionally equivalent to the displaced dwelling. Relocation specialists from two localities described making every effort to house residents in neighborhoods of their choice, including their current neighborhood if possible, and finding rental housing for residents who

⁴⁶28 RCNY 18-04(b).

⁴⁷42 U.S.C. § 4601(6)(A).

were renters. City officials from four of five cities we visited showed us new residential apartment buildings, one of which included services, such as child care and computer centers, into which they moved displaced residents.

For business occupants, relocation specialists may conduct comprehensive analyses of the business' location requirements, fixtures, moving costs, and other relevant considerations to find a comparable site for business relocation. In one city we were told that relocation specialists work with the business owners to address all commercial issues, including negotiating all comparable square footage costs and rent and getting the same phone number transferred to a new location. Some relocation specialists are associated with local retail and office landlords and attempt to negotiate a price which, combined with relocation funding under the URA, initially can keep the rental costs similar to the previous location. According to all of the relocation specialists who we interviewed, relocated commercial occupants generally have done better financially in other, more economically stable neighborhoods.

Relocation benefits under the URA and many local and state laws include some or all of the following payments to residential and commercial tenants:

- Actual moving expenses, which may include packing and moving expenses, storage of personal property, the cost of dismantling, disconnecting, and reconnecting machinery and utilities, loss of personal property caused by the move, the expense of searching for a substitute business site, moving insurance, advertising related to the move, or other related expenses (or a fixed moving allowance in some locations);
- Compensation over the acquisition cost of the property for an owner to purchase a comparable replacement home, pay increased mortgage costs, or pay closing costs;⁴⁸
- For tenants, a monthly rental subsidy to rent a comparable dwelling for a period of 42 months that is equal to the differential between what the tenant was paying at the displaced dwelling and the payment at the comparable dwelling (many localities also allow this payment to be made

⁴⁸The URA limits this payment to \$22,500. 42 U.S.C. §4623(a)(1).

in a lump sum so that renters may use it as a down payment to purchase a home); and

- A payment in lieu of moving and related expenses in nonresidential moves, which may be made to a commercial owner when relocation would result in substantial loss of business.

Use of Eminent Domain Generates Benefits and Costs Affecting a Wide Array of Community Interests and Individuals

For selected projects where eminent domain was used that we reviewed or visited, authorities described the previous conditions of the selected areas and they told us or we observed some of the benefits realized by communities after the projects were completed. Examples of benefits to the community included increased job opportunities and modernized or safer infrastructure. Property rights groups told us about the negative effects that the use of eminent domain could have on property owners, community residents, and businesses, such as the loss of small businesses or the dispersal of residents who relied upon each other in informal networks. In addition to the losses to the community, the property rights groups noted that the manner in which authorities implement procedures for using eminent domain also affects property owners. For example, national and local property rights groups identified problems with how some authorities communicate with property owners, designate areas as blighted, and value property.

In Cases We Reviewed, Conditions of Condemned Property Varied

The use of eminent domain generates benefits and costs that could affect various parties—such as property owners, businesses, authorities, and city officials—whose interests may diverge. The great variety in benefits and costs makes it difficult to establish objective measures to examine the overall impact of projects involving eminent domain. In addition, the lack of aggregated data on the purpose and frequency of eminent domain use further limits this effort. However, for selected projects where eminent domain was used that we reviewed or visited, authorities described the previous conditions of the selected areas and they told us, or in some instances we observed, some of the benefits realized by communities after the projects were completed.

Prior to condemnation, according to local and state officials, a variety of conditions existed in selected areas in which eminent domain was used. For example, according to city officials, some of the urban areas slated for redevelopment included buildings in substandard condition. Many buildings were vacant or abandoned with few or no improvements made for multiple years; some properties had missing window glass, collapsed

roofs, accumulated debris on the parcel, and other conditions that created a public health hazard. However, in some cases that we reviewed, authorities acquired occupied residences and operating businesses to redevelop an area. In one area, a building occupied by long-standing businesses providing retail services to the neighborhood was under threat of condemnation by eminent domain. Although this building was not unusually dilapidated, it was within a redevelopment area designated as blighted, and thus subject to acquisition by eminent domain.

According to local and state officials, road conditions in some projects reviewed included inadequately sized or dilapidated streets, sidewalks, or curbs. Traffic flow and access in some neighborhoods were poorly planned. For example, industrial traffic reportedly moved through residential areas in one project we reviewed. In other road or highway projects, according to state transportation officials, conditions included operable, but older roads requiring modernization, such as new interchanges to better handle traffic. Other roads required new safety features, such as turning or deceleration lanes, or straightening of tight curves in the road. We also reviewed other types of infrastructure projects, such as the New York City water tunnel previously discussed. According to city officials, the condition of the original water tunnels servicing the metropolitan area was questionable because they had not been inspected since being built in the early twentieth century.

Characteristics of Selected Redeveloped Areas Varied, with Local and State Officials Often Reporting Resulting Community Benefits

Condemned property is often redeveloped as part of a larger redevelopment or improvement project. City officials considered outcomes of these projects as benefits to the community, and emphasized that they could not have completed the projects without the use of eminent domain. However, authorities told us they often obtain much of the land for projects, including urban redevelopment projects, transportation projects, utility projects and others, through negotiated purchases and condemn a small number of the needed properties. Therefore, benefits to the community cannot be attributed solely to the use of eminent domain and are more likely the result of the redevelopment projects for which eminent domain was used.

According to local and state officials and based on some of the projects we observed, the redeveloped areas have a variety of characteristics. In urban areas, redevelopment led to additional housing stock (including affordable housing set asides), new commercial centers with additional local job opportunities, reduced crime in some areas, and modernized infrastructure. For example, in Chicago, the downtown redevelopment of

a sparsely occupied block produced a 27-story municipal building, which city officials described as fully leased with retail stores and office space, including a parking garage and a mass transit station serving many parts of the city, including both airports. In New York City, the Department of Housing Preservation and Development used eminent domain to assemble land for the Melrose Commons project in the South Bronx. The agency is working with several private and nonprofit developers to construct over 3,200 affordable housing units to turn what a high-level official characterized as one of the most blighted areas in the city into a thriving neighborhood.

Officials cited benefits from transportation projects that include safer, more efficient roadways and traffic patterns. In Los Angeles, the widening of a street from two lanes to four lanes with center left turn lanes alleviated what officials described as perennial congestion, provided additional parking, and reduced accidents on a major artery in the western part of the city. Additional improvements resulting from this project included new curbs, gutters, street lighting, traffic signals, sewers, and storm drains.

City officials cited other types of improvements resulting from redevelopment, such as less contaminated land and new public green space or parks. According to Baltimore officials, sometimes vacant lots are acquired and provided to community groups for gardens. New York City officials explained that eminent domain could be an important tool to acquire brownfields in the city for remediation, although authorities there have yet to do so. Much of the 581 miles of waterfront in New York City has been contaminated in the past. According to officials, many developers are not interested in developing contaminated waterfront properties because they do not want to be liable for cleaning up the contamination. Property owners also may be unable or unwilling to sell properties that are or may be contaminated; thus, the city could acquire the properties through eminent domain, decontaminate them, and put the land to public use.

Property Owners and Groups Representing Them Reported Negative Effects on Communities from Eminent Domain Use

Property owners, property rights groups, and national community-based organizations described a number of negative effects from using eminent domain. For example, properties acquired through eminent domain may remain unused for some time, according to city officials and a property rights group. As an example, in downtown Chicago in 1989, the city condemned 16 improved, occupied buildings (one with historic landmark status the city had removed prior to condemnation) for a two-tower office

and retail development. Because of a downturn in the local real estate market, the proposed project did not begin. However, according to Chicago officials, a \$500 million development is now under construction on the long vacant land. In another example, Los Angeles acquired an industrially zoned parcel through eminent domain to build an animal shelter. According to city officials, to preserve the parcel for commercial use, the city is considering an alternate site for the animal shelter. As a result, the condemned property remains unused to date. In both of these instances, the cities expended public funds acquiring the land, including legal costs associated with invoking eminent domain.

Property rights groups and one national community organization further noted that certain costs to communities may not be compensated when eminent domain is used. These issues include the dispersal of residents in low-income communities to other neighborhoods or cities. The residents of low-income neighborhoods may rely on one another for day-to-day needs such as child care, according to the community organization. If these residents lose their homes through eminent domain and are relocated to new areas, then some of the resources upon which they depend also can be lost. Property rights and community groups added that owners also suffer emotional costs when losing a home. Making people leave their homes can be destabilizing to individuals or families even when relocation costs are provided.

Property rights groups also noted other community impacts, such as rent destabilization in neighborhoods affected by eminent domain and a reduction in an area's affordable housing stock when units are acquired and replaced by commercial developments. Other potential costs to the community that the groups mentioned include reductions in homeownership and the number of small businesses in an area. Furthermore, according to one property rights group, there is a tendency for cities to use eminent domain to remove manufacturing companies and replace them with retail businesses to collect increased sales revenue. However, removing manufacturing companies may have a negative effect on the community because it decreases the number of manufacturing jobs that are available.

Property Owners and Groups Representing Them Raised Concerns about the Land Acquisition and Eminent Domain Processes

Owners May Not Receive Public Notices and May Have Limited Opportunity to Speak at Public Hearings

The procedural requirements we previously described could provide some safeguards for property owners, such as ensuring that they receive timely public notice and just compensation. However, the effectiveness of the procedures depends on how well they are implemented by the authority invoking eminent domain. Property owners and property rights advocates we interviewed identified problems with how some authorities communicate with property owners, designate areas as blighted, and value property. Property rights advocates also expressed concern that owners may not fully comprehend the benefits available to them when an authority acquires their property.

Multiple owners and property rights groups with whom we met reported receiving little advanced, misleading, or no notice of public hearings or proposed condemnation actions by the relevant authority. These problems may prevent owners from voicing concerns about the proposed acquisition of their properties. For example, property rights groups in Los Angeles told us that many owners do not receive the statement of interest-owner participation letter that the authorities told us they send to all owners during the planning stage of each project. Property rights groups in Denver and New York said that notice was posted on signage, but not sent in a letter. According to the Denver group, the method of posting a notice at one site would not disseminate information about public hearings to most owners in a community. In another locality, the public notice that property owners received was reportedly not clear. For example, one authority sent a notice informing the owners of the redevelopment project and their responsibilities in a format that some owners confused with junk mail; it did not resemble an official letter. Finally, in Denver, property rights advocates told us that owners need notice earlier in the process. They said that owners learn about the condemnation after the initial planning has occurred and the urban renewal area has been designated. However, authorities in cities we visited consistently said that they always sent notice to owners of hearings—which give affected property owners multiple opportunities to voice concerns about the proposed plan and potential property acquisition—and sent notice of acquisition activities as required in all applicable laws and regulations.

Even when notice is received, owners may not have the financial or technical ability to fully comprehend what actions an authority is taking, what recourse they may have, or where to go to for assistance in understanding the proceedings or terms mentioned in the notice. For instance, one authority sent a statement of interest-owner participation letter to property owners stating that a redevelopment project was proposed for their area. The letter states that owners may, within 30 days,

propose their own alternative plan for redevelopment of the area. However, property rights groups explained that most owners do not have the money or skills needed to develop and execute a redevelopment plan. On the other hand, officials in this locality explained that multiple public funds and technical assistance were available to help owners formulate alternative business development plans. The letter of intent, officials said, provided the owners needed information about how to access these public benefits, remain in the community during redevelopment, and ultimately benefit from the project.

One local organization involved in urban redevelopment explained that local public hearings and the voting on proposed project plans (which may provide authorities the power to take property) by governmental bodies, such as city councils, occurred on different dates. Of concern was that the votes would happen without public attendance, thereby reducing the transparency of the process. Furthermore, a concern was raised about the time owners had to speak at hearings. In one locality, each owner was reportedly allowed only three minutes to address the elected body that would decide to approve or deny the project plan in which eminent domain might be used.⁴⁹

To facilitate better communication between property owners and government authorities looking to assemble land, some states, such as Utah, have established a Property Rights Ombudsman's office.⁵⁰ According to the current official in Utah, the ombudsman is an attorney hired by the state as an independent source of information and assistance for property owners and others involved in the acquisition of property for public projects. The ombudsman, who provides services free of charge to owners, can mediate disputes, arrange for arbitration, order appraisals, and provide information to property owners and governmental authorities acquiring land. Connecticut and Missouri reportedly have recently adopted statutes creating property rights ombudsman-type offices.

⁴⁹Officials from the National Academy of Public Administration told us that academy panels generally encourage improved communication between government agencies and the public and have put forth six principles of effective consultation. These include having an inclusive and well-known process, stakeholders being assisted to participate effectively, two-way exchange of information, timely access to decision makers and feedback to stakeholders, stakeholder satisfaction with the process, and stakeholder influence on results.

⁵⁰Utah Code Ann. § 13-42-101-206.

Blight Designations May Be Broadly Construed and Affect Nonblighted Properties

Many property rights groups and owners with whom we spoke were critical of blight designation processes in their localities. They said that nonblighted property parcels may be designated blighted because of factors such as design flaws, high density, turnover of occupants, and irregularly shaped parcels. According to some property rights groups, by these criteria almost any property or area in question may be considered blighted. They felt that blight should be defined narrowly based mainly on public health and safety risks from a specific property.

According to officials from one national organization, farmland may be wrongly designated as blighted. Many farms have older and what may appear to be dilapidated homes and barns, or old storage sheds and tractors, which makes the property especially susceptible to a blight designation. The officials added, however, that these buildings and machines are often fully functional or operable, meet housing or farm needs, and pose no public danger.

In the projects we reviewed where eminent domain was used to remove blight, blight was almost always designated by area (such as a city block) rather than by parcel. Owners and property rights groups opposed to this practice stated that nonblighted property can then be taken based on this area-wide designation. During the project planning stage, usually for projects that are considered urban redevelopment or blight removal, authorities designate the physical boundaries of areas selected for redevelopment and determine the presence of blight in the area. This designation is often then applied to all parcels in the area which, in turn, allows authorities to acquire any property in the designated area. Property owners and community groups argue that not all property in such areas is blighted; rather, many properties are improved and occupied.

Furthermore, we were told that the planning stage and blight designation can occur years before an authority is able to commence acquisition and construction in the area. For example, one area we reviewed initially was deemed blighted in 1986. The blight designation, and with it the threat of eminent domain, destabilized property values in the neighborhood for nearly 20 years, according to one owner. Although the area has been an official redevelopment area since 1986, local officials told us that state redevelopment law limits a blight designation to 12 years. The authority is then required by law to return to the deciding elected body to again prove blight before the authority is able to move forward with the project.

Property rights groups also expressed concerns that blight may be exacerbated by the redevelopment activity and has been termed

“developer blight”—that is, the physical decline of a parcel or area, such as a city block, once a redevelopment project has been announced. For example, in Denver, a property rights group told us that it is difficult to isolate the causes and effects of blight in their area because once an area is designated as blighted its decline might hasten. The public knowledge of the impending redevelopment and related property acquisition, according to one concerned group, can cause property values to fluctuate and discourage property owners from maintaining their dwellings or businesses or, in other words, cause an area to become blighted. In one neighborhood, according to a local property rights group, improved residential buildings were largely occupied and multiple businesses were open prior to the announcement of a redevelopment project. However, once the project was announced and the authority began the project design and planning stage, the developer purchased many of the properties and over time, failed to maintain them properly. This activity, according to the property rights group, constituted developer-initiated blight in the neighborhood. Remaining owners are concerned that “developer blight” has reduced their property values and that they will not receive what they consider just compensation from the authority as the project proceeds. Another group suggested that redevelopment plans and blight designations may prevent new businesses from relocating to a neighborhood that was revitalizing on its own because of the public’s awareness that authorities will have the power to use eminent domain in the area. Authority officials told us that areas they seek for redevelopment are not revitalizing on their own, but rather declining and becoming further blighted.

Some Property Owners Claim They Received Insufficient Compensation and Others Faced High Costs to Challenge Condemnation or Compensation

While property valuation is intended to provide property owners compensation at fair market value for their property, property rights groups and owners expressed concern about the reasonableness of property appraisals. Multiple property rights groups believed that localities undervalue property and make offers lower than owners would receive on the market. One group cited large differentials between final jury awards and first appraisal amounts in cases in which owners challenged a condemnation. Owners in this property rights organization who challenged initial offers reported receiving an average of 40 percent more in compensation than the initial offer. Conversely, officials of the local authority claim that it would be to their detriment to make an unreasonably low offer at any stage in the negotiation process because an offer not in good faith might enable a jury to award additional damages to a prevailing owner.

Some believe that property is undervalued because of when appraisals take place. In New York, one owner, attempting to remain in his home,

stated that if he were eventually required to sell his property, it would be appraised long after all other neighborhood owners had settled and moved away. With most of the neighborhood acquired, the owner believed that, should he lose his bid to keep his property, the value of his property would be lower than when the neighborhood was fully occupied. One state mediator of property disputes explained that an approved redevelopment area creates a hardship for owners, which is exacerbated when the project construction date is unknown. Owners in this case may have a more difficult time selling their property on the open market because it is within a redevelopment zone and subject to eminent domain. On the other hand, in one city we reviewed, buyers actively sought property in areas slated for redevelopment because the prospect of an authority acquiring the property was high.

Property rights groups also noted that property and business owners may be uninformed about the benefits provided to them once their property is taken by eminent domain. In Denver, a property rights group stated that owners did not always realize that money was available for relocation benefits. In other localities, property rights groups noted that owners might have known that some financial support was available, but might not have been aware of the range of benefits. However, property rights groups also stated that acquisition and eminent domain can cost business owners more than the amount compensated for under the URA or state and local relocation regulations. For example, the URA may often only partially cover expenses related to either lost inventory or transferring inventory to the new location. Moreover, businesses are not compensated for lost goodwill or for loss of business attributable to the new location under the URA.

Multiple property rights groups further explained that owners often are unable to fight a condemnation action if they want to retain their homes or businesses or seek additional compensation because costs related to hiring an appraiser or attorney, as well as court costs, are too high. Property rights groups believe that many owners sell their property under the threat of condemnation when they otherwise would not do so because they cannot afford to fight the action, something which can take several years. In New York City, a contested condemnation can take more than 10 years to settle, according to city officials we interviewed. Authorities counter that, under certain circumstances, there is money available to owners to fight eminent domain. In some localities, authorities can use quick take, in which the authority obtains the title of the property and deposits the estimated compensation with the court. Owners, authorities note, can withdraw these funds to challenge the authority's valuation of

their property. However, a property rights group and a state mediator emphasized that the owners cannot use these funds to dispute the authority's right to take the property. Challenges to the right to take must typically be made and heard prior to quick take procedures.⁵¹

According to one national organization, partial condemnations of farmland do not always result in just compensation. If authorities were to take only a portion of a farm and that portion ran directly through the middle of the property, the owner's business could be negatively affected. For example, one state reportedly developed a toll road that ran through the middle of a farm property. The farmer was paid the value of the land taken by the authority, but according to this organization, the damage done to the farm's business was not compensated. The road reduced the farm's crop yield, forced the farmer to maintain equipment on both sides of the walled toll road, and necessitated the costly alteration of an irrigation system.

Since June 2005, Many State Legislatures Have Enacted Changes to Their Eminent Domain Laws

Numerous states have adopted at least one of three general types of changes to their eminent domain laws since June 2005. In particular, some states amended their eminent domain laws and placed restrictions on the use of eminent domain for economic development, increasing tax revenues, or transferring condemned property from one private entity to another. Other states revised their eminent domain procedures or added requirements. Finally, some states defined or redefined key terms related to the use of eminent domain, such as blight or blighted property, public use, and economic development. Several states had ballot initiatives on constitutional amendments to restrict current eminent domain laws. In addition, some states, including those that did and did not enact any changes, commissioned studies on their state's eminent domain laws.

⁵¹7-2 *Nichols on Eminent Domain* § 2.04 (2006).

Slightly More Than Half of All State Legislatures Modified Their Eminent Domain Laws

After the Supreme Court's *Kelo* decision, 29 states enacted at least one of three general types of changes to their eminent domain laws from June 23, 2005, through July 31, 2006.⁵² These changes include placing certain restrictions on the use of eminent domain, revising procedural requirements, and defining or redefining key eminent domain terms. While at least 3 of the 29 states specifically made reference to the *Kelo* decision in connection with their legislation, other states stated that the legislation was enacted to protect property rights and limit eminent domain use. Figure 3 identifies the states that enacted changes and the types of changes they enacted to their eminent domain laws.

⁵²The period of our analysis was from June 23, 2005, through July 31, 2006. We chose June 23, 2005, as the start date because the U.S. Supreme Court decided *Kelo* on this date. During our analysis period, 21 states did not make any changes to their eminent domain laws.

Figure 3: Changes to State Eminent Domain Laws from June 23, 2005, through July 31, 2006



Sources: GAO (analysis); Art Explosion (map).

Restrictions on Eminent Domain Use for Certain Purposes

According to our analysis, 23 of the 29 states enacted changes that placed restrictions, with certain exceptions, on the use of eminent domain for economic development, increasing tax revenues, or transferring condemned property to a private entity (see fig. 3). Specifically, some of these states prohibited the use of eminent domain to transfer private property to a private entity for economic development unless the primary purpose of the use was to eliminate blight. For example, both Alabama and Maine now prohibit condemning authorities from taking property in a

nonblighted area for purposes of private retail, office, commercial, residential, or industrial development or use. In addition, Ohio imposed a moratorium, through December 31, 2006, on the use of eminent domain to take land within a nonblighted area when the purpose is economic development that leads to ownership of the property being vested in another private person. Furthermore, Florida prohibits the use of eminent domain to take private property for the purpose of preventing or eliminating slum or blight conditions.

However, most of the states that enacted changes restricting the use of eminent domain for economic development, increasing tax revenues, or transferring condemned property to a private entity did make an allowance for the transfer of private property to a private entity for public rights of way and public utilities. Some states included other exceptions. For example, Alabama, Kansas, and Nebraska allow the use of eminent domain to clear a defective title under certain circumstances.

Procedural Changes

Twenty-four of the 29 states changed their eminent domain procedures or added new requirements (see also fig. 3). Some states placed the burden of proof on the condemning authority to show that the use is public, the taking is necessary to remove blight, or both. For example, Colorado law states that the condemning authorities must prove by a preponderance of evidence that the eminent domain taking is for a public use. Furthermore, Colorado law sets a higher standard if the purpose is to eliminate blight—requiring condemning authorities to show by clear and convincing evidence that the taking is necessary for the elimination of blight.

In addition, some of these states require condemning authorities to provide improved or additional public notice and hearings prior to condemning a property. Utah law requires that written notice be provided to the property owner of each public meeting at which a vote on the proposed taking is expected to occur and that the property owner must be given an opportunity to be heard on the proposed taking. West Virginia redefined the requirement for public notice to require a certified letter be sent to the property owner informing the owner about the public hearing and the right to an inspection to determine if the property is blighted.

Some states also passed changes requiring condemning authorities to negotiate in good faith and increase the level of compensation to be paid to owners prior to invoking eminent domain. For example, in Missouri condemning authorities are required to establish requirements for the amount of compensation, which may be more than the fair market value. Missouri law also requires condemning authorities to pay, in addition to

the fair market value, a “heritage” value for certain property owned by the same family for more than 50 years, which is equal to 50 percent of the fair market value of the property. Other procedural changes enacted by some of the states include providing the former owner of a condemned property the opportunity to purchase the property if it was not used within certain period of time or for the stated purpose and requiring the use of eminent domain to be approved by a governing body.

Changes in Definitions

Twenty-one of the 29 states defined or redefined key terms related to the use of eminent domain, including blight or blighted property, public use, and economic development (see also fig. 3). In particular, some states redefined blight or blighted property to include several explicit factors, generally emphasizing factors that are detrimental to public health and safety and removing aesthetic factors, such as irregular lot size. For example, California’s statutes require that for an area to be qualified for redevelopment it must be predominantly urbanized with a combination of physical and economic conditions of blight so prevalent and substantial that they can cause a serious physical and economic burden that cannot be reversed or alleviated by private enterprise or governmental action alone, or in combination with each other, without redevelopment powers and financing mechanisms. Prior California law would have allowed, as an exception to its general rule, that property subdivided into parcels with irregular shapes and inadequate sizes for proper development could also to be considered as qualifying an areas as blighted for redevelopment purposes. California amended its definition to remove this exception.

In addition, some states redefined public use to include the possession, occupation, or use of the public or government entity, public utilities, roads, and the addressing of blight conditions. For instance, Iowa defined public use to include acquisition by a public or private utility, common carrier, or airport or airport system necessary to its function. Indiana included highways, bridges, airports, ports, certified technology parks, and public utilities as public uses. Finally, some states also established that economic development—which was defined by those states to include activities to increase tax revenue, the tax base, employment, or general economic health—does not constitute public use or purpose.

Several States Had Constitutional Amendments on Fall Ballots

At least six state legislatures approved constitutional amendments on restricting current eminent domain laws, which were placed on the ballot for voter consideration.⁵³ For example, the Louisiana legislature approved two proposed constitutional amendments that were passed on September 30, 2006, by the voters in that state. These two amendments, among other things, (1) prohibit the taking of private property for use by or transfer to a private person; (2) limit public purposes to a list of factors, which includes such purposes as the removal of a threat to public health and safety; (3) exclude economic development, enhancement of tax revenue, and incidental benefits to the public from being considered in the determination of a public purpose; and (4) provide an option for the former owner to purchase condemned property or a portion of it should the property go unused by the authority that originally acquired the property. In addition, citizen-initiated proposals to amend the state constitution obtained the requisite number of signatures and were placed on a ballot in California, Nevada, and North Dakota.⁵⁴ For example, the Nevada Property Owners Bill of Rights initiative to amend the state constitution in regards to eminent domain qualified for the Nevada 2006 general election ballot. The amendment would, among other things, establish just compensation as the amount necessary to place owners in the same position monetarily as if property had not been taken and prohibit the direct or indirect transfer of property from one private party to another.

⁵³In addition to changing their eminent domain laws, Florida, Georgia, and New Hampshire also approved a constitutional amendment further restricting eminent domain laws that was placed on the states' ballots for voter consideration. Michigan and South Carolina also had ballot measures related to eminent domain. Some other states had measures on their ballots regarding their eminent domain statutory laws, which we did not review because they were outside our period of analysis. According to each Secretary of State's website, the proposed constitutional amendment was approved in Florida, Georgia, Louisiana, Michigan, Nevada, New Hampshire, North Dakota, and South Carolina.

⁵⁴The California initiative approved for the ballot during the November 2006 election, if passed, would have, among other things, amended the state constitution to bar state and local governments from condemning private property and transferring it to another private party unless the transfer occurred under circumstances where the private party would perform a public use project. The California initiative failed. California's state legislature also enacted changes to its definition of blight, as noted in figure 2.

Some States or State Associations also Commissioned Studies on the Use of Eminent Domain

Several states and state associations also commissioned studies to determine if any changes were needed to their eminent domain laws. For example, in November 2005, the president of the New York State Bar Association appointed a special task force on eminent domain to provide legal analysis and recommendations about appropriate legislative and regulatory considerations in the practice of eminent domain law in the aftermath of the *Kelo* decision. According to a report issued by the task force, little state-specific research and data exist to accurately assess both the need for, and the impact of, changes to the state's eminent domain laws.⁵⁵ The task force suggested that the state legislature begin the collection and analysis of such data before deciding on appropriate substantive modifications to the law. For example, the report lists several questions that could be answered through empirical research, including how often condemnation proceedings are instituted and how many times eminent domain is used for economic development. Consequently, the task force recommended that a Temporary State Commission on Eminent Domain be established to further study the use of eminent domain in New York.⁵⁶

In June 2005, the Governor of Missouri established by executive order a task force to study the use of eminent domain, including when the property being acquired by eminent domain would not be directly owned or primarily used by the general public. The task force recommended three categories of actions: redefining the scope of eminent domain, improving the procedures and process required for exercising eminent domain, and providing penalties for condemning authorities that abuse the eminent domain process.⁵⁷ As a result, the state enacted changes to its eminent domain laws in July 2006. The governor of New Mexico also issued an executive order in which he stated that the most effective method of examining *Kelo's* impact on the state's eminent domain laws and practices was by convening a task force of the state's eminent domain experts to determine what steps should be taken to ensure that

⁵⁵New York State Bar Association, New York State Bar Association Special Task Force on Eminent Domain, *New York State Bar Association Special Task Force on Eminent Domain Report* (Mar. 2006).

⁵⁶*Id.* at 52.

⁵⁷State of Missouri, Missouri Eminent Domain Task Force, *Final Report and Recommendations of the Missouri Eminent Domain Task Force* (Jefferson City, Mo.: Dec. 30, 2005).

condemnation would be used responsibly. Therefore, he appointed a state commission to make recommendations on eminent domain reform.

Finally, in November 2005, Ohio enacted legislation that created a task force to study the use and application of eminent domain in the state and how the *Kelo* decision affects state law governing the use of eminent domain. On August 1, 2006, the task force issued its report, which, among other things, recommended that the state retain the use of eminent domain as a tool for the elimination of blight, even if the property that is taken is converted to another private use; rewrite and tighten the definition of blight; and require that a majority of the properties in an area be blighted to designate it as such. The report also recommended (1) prohibiting eminent domain takings solely for the purpose of generating added tax revenue, (2) prohibiting declaring blight solely on the basis of additional revenue that could be generated, and (3) compensating the property owner for actual moving and relocation expenses, and, when appropriate, loss of business, goodwill, and attorney's fees.⁵⁸

Observations

An inherent right of sovereignty, eminent domain is a government's power to take private property for a public use while fairly compensating the property owner. Despite its fundamental significance, little is known about the practice or extent of the use of eminent domain in the United States. The matter of eminent domain remains largely at the level of state and local governments that, in turn, delegate this power to their agencies or designated authorities. Since multiple authorities have the power to take private property within the same jurisdiction without any centralized tracking of eminent domain use, data such as the purpose for which eminent domain is used or the number of times eminent domain is used in a given locality are not readily available. The testimonial evidence we obtained from state and local authorities on the purposes for which eminent domain can be and was used generally pointed to long-established uses, such as taking land for infrastructure, particularly transportation-related projects; uses that addressed economic and social conditions, such as blight; relatively more recent uses such as environmental remediation;

⁵⁸Ohio General Assembly, Legislative Task Force to Study Eminent Domain and Its Use and Application in the State, *Final Report of the Task Force to Study Eminent Domain* (Columbus, Ohio: Aug. 1, 2006). Indiana also commissioned a task force to study eminent domain on May 6, 2005, which was prior to the date of the *Kelo* decision. See Indiana HEA 1063-2005 (P.L. 173-2005), and other states may have formed various groups, commissions or task forces to study eminent domain.

and initiatives aimed at promoting economic activity or community redevelopment. Recently, popular attention has concentrated on cases where the condemned land was ultimately used for economic development projects and appeared to benefit private entities. In the absence of statewide or nationwide data, it is difficult to quantify the usage of eminent domain; for example, there are no data on how frequently private-to-public or private-to-private transfer of property occurs or with what frequency eminent domain has been used by state and local governments, their agencies, or designated authorities.

Concerns and debates on the use of eminent domain for economic development purposes, as well as the *Kelo* decision, have played a role in recent state legislative activity. Many state legislatures have acted to prohibit certain eminent domain practices, such as preventing property from being transferred from one private party to another for specific purposes—for purely economic development projects, as an example. Many states changed their eminent domain laws to permit a private-to-private transfer only if it meets certain conditions, such as the property having been determined to be blighted. Since these recent modifications to state laws have not been tested and historical data on eminent domain use are not available for comparison purposes, how these laws may affect property rights or state and local government use of eminent domain is unclear.

Our discussions with authorities and property rights groups suggest that the impact of eminent domain often depends on the nature of the project, the parties involved, costs related to legal proceedings and relocation, and the administration of procedural requirements. On the one hand, local and state government officials generally have described eminent domain as one of several tools necessary for land acquisition and explained that most of the properties assembled for projects are obtained through negotiated settlements with owners. Representatives from the authorities in cities we visited provided examples of how projects where land was assembled using eminent domain have yielded benefits to the public, including increased housing stock and new commercial centers that offer local job opportunities. On the other hand, property rights advocates described the high costs property owners faced in challenging property valuations and the intangible effects on neighborhoods when residents are involuntarily dispersed. Although we observed some of the benefits derived from the projects we visited and heard of instances in which property owners reportedly were misled by authorities about condemnation proceedings or appraisals, a lack of measures and aggregated data do not allow us to

make any comment on the overall impact eminent domain has had on property owners and communities.

Regardless of their stance in the debate on eminent domain, government officials and property rights groups we interviewed identified a few concerns related to the procedures on invoking eminent domain, including the adequacy of compensation amounts and the timeliness of notification about public hearings. First, many government officials we spoke with said that certain benefits provided under the URA, such as actual moving costs and expenses in finding a replacement site for businesses, to displaced individuals and businesses may not offer adequate compensation under certain circumstances. For example, the URA places a \$10,000 cap— an amount left unchanged since 1987—on reestablishment expenses for businesses that have to relocate. A 2002 FHWA study confirmed the inadequacy of the reestablishment payments. Second, property owners and organizations advocating for property rights repeatedly told us that property owners may have limited opportunity or are unaware of the need to attend public hearings at a project’s planning stage to voice their opinions about the proposed acquisition of their property. For example, some property owners and property rights groups explained that property owners may not receive public notice on a timely basis or that they may lack sufficient understanding of the legal process to be fully engaged in the hearing discussions. To address the latter issue, at least one state has created an ombudsman office to provide information and assistance for property owners and others involved in the acquisition of property for public projects. Nevertheless, these two concerns may deserve continued attention given that just compensation and public hearings are two important safeguards designed to protect property owners.

Agency Comments and Our Evaluation

We provided a draft of this report to the Departments of Justice, Transportation and Housing and Urban Development for their review. The Department of Transportation provided technical comments, which have been incorporated where appropriate. The Departments of Justice and Housing and Urban Development did not have any comments.

We will send copies of this report to the Chairman and Ranking Member, Subcommittee on Transportation, Treasury, the Judiciary, Housing and Urban Development, and Related Agencies, Senate Committee on Appropriations; and the Chairman and Ranking Member, Subcommittee on Transportation, Treasury, Housing and Urban Development, the Judiciary,

District of Columbia, and Independent Agencies, House Committee on Appropriations. We also will send copies to the Secretary of Housing and Urban Development, Secretary of Transportation, and the Attorney General. We also will make copies available to others upon request. In addition, the report will be available at no charge on the GAO Web site at <http://www.gao.gov>.

If you or your staff have any questions regarding this report, please contact me at (202) 512-8678 or shearw@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report are listed in appendix II.



William B. Shear
Director, Financial Markets and
Community Investment

Appendix I: Objectives, Scope and Methodology

Congress, in the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act, 2006, mandated that we conduct a nationwide study on the use of eminent domain. Our objectives were to provide information on (1) the purposes and extent for which eminent domain can be and has been used; (2) the process states and select localities across the country use to acquire land, including by eminent domain; (3) how the use of eminent domain has affected individuals and communities in select localities; and (4) the changes state legislatures made to laws governing the use of eminent domain from June 2005 through July 2006.

To report on the purposes for which eminent domain has been and can be used, including the extent of its use, we reviewed pertinent sections of each state's constitution to determine whether there is a general limitation on use of eminent domain in the state for public use only. We also reviewed specific blight definitions for 10 states we selected: California, Colorado, Florida, Illinois, Massachusetts, Missouri, New York, Texas, Virginia, and Washington.¹ In addition, we interviewed multiple national associations of local and state government officials and planning professionals, national public interest groups, national property rights groups, and the National Academy of Public Administration to gain their perspective on past, current, and potential uses of eminent domain. We also interviewed federal officials from the Departments of Transportation, Housing and Urban Development, and Justice, as well as the Environmental Protection Agency, to learn about how federal programs or funding may be involved in eminent domain proceedings that state and local governments undertake. Finally, we requested information from state legislative research offices on information related to which authorities within the selected state have the authority to use eminent domain.

To learn about specific instances in which eminent domain was used, we collected project information from multiple sources. We solicited project information from 10 different national organizations that had either

¹We selected 10 different states based on the 10 regions used by the U.S. Department of Housing and Urban Development (HUD) in its quarterly report on the nation's housing market to provide geographic diversity among the selected states. HUD's regional framework was used because HUD has established programs (e.g., Community Development Block Grant Program) to provide states and localities funds for promoting community and economic development. From the 10 regions, we selected the state in each region with the highest number of housing units (single and multifamily) authorized by building permits in 2003, 2004, and 2005 based on HUD data.

testified before Congress on eminent domain matters or who met the criteria laid out in our mandate for types of organizations we were expected to consult during our study. We provided these 10 organizations with a formal request for project information. Our request included basic criteria that each submitted project should meet. The criteria were: eminent domain having been used (rather than only threatened), the project being substantially completed by December 2004, the project not being primarily related to transportation, the project being located within the 10 states we selected, and preferably, that the project be funded with some federal financial assistance. In addition, we explained to the organizations that we would accept projects that did not involve federal funds, as long as the other four criteria were met.² We requested that each organization provide at least 5 different projects within each of the 10 states we selected for review.

In total, the 10 national organizations provided 134 projects. Based on the criteria outlined above, the desire to have at least one project in each of the selected states, and to provide a diversity of examples, we selected a total of 40 projects from the 134 for further review.³ To obtain further information on the projects, we made at least three attempts to contact each local authority responsible for completing or overseeing the project. We completed contact with 36 of the 40 local authorities and learned that 9 of the projects did not meet our criteria because eminent domain was not used, the project was not yet complete, or the project was located in a state not included in our 10 selected states. Of the 27 remaining projects for which we were able to confirm basic project information, such as the use of eminent domain or year of completion, we sent a detailed e-mail request for project information to individuals we contacted from the local authority. Based on our conversations with the authorities responsible for the 27 projects, we scaled back the amount of information we were requesting and extended deadlines for providing the requested

²We had anticipated gaining additional knowledge about projects from federal agencies, departments, and programs that may have offered some assistance to the selected projects. However, recognizing that not all projects selected may involve federal financial assistance and that our mandate focused on state and local use of eminent domain, we did not want to exclude any projects solely because federal resources were not used in the project.

³We selected 40 projects from the 134 received because project information provided was not always sufficient for us to determine whether to include a project in our review. For example, 27 percent, or 36 out of the 134, of the projects were either still in progress or the completion date was unknown, according to the organization providing the project information.

information. We received detailed project information for only 11 out of the 27 projects.

In addition to efforts described above, we interviewed officials from state departments of transportation of the 10 selected states. We decided to speak with these officials because interviews with national organizations and federal agencies and our literature research indicated that transportation-related projects often rely on eminent domain to assemble land. From these officials we also solicited detailed project information on transportation-related projects, mostly dealing with road improvements, construction, or expansion, in which eminent domain was used. From the state departments of transportation we received 6 projects in which eminent domain was used that also met the same criteria used to select projects provided by the 10 national organizations. We also contacted several state agencies responsible for brownfield remediation, but were unable to receive any additional projects from these agencies.

To describe how state agencies and select localities invoke eminent domain, we relied on our interviews with the 10 state departments mentioned above. We discussed the state departments of transportation's authority to invoke eminent domain, the planning phases they undertake, and their land acquisition and relocation processes. In addition, we interviewed officials from the 5 cities we visited: Baltimore, Maryland; Chicago, Illinois; Denver, Colorado; Los Angeles, California; and New York, New York.⁴ During our site visits, we learned about specific projects in which eminent domain was used according to the city officials, 14 of which we toured. City officials also provided written documentation related to the selected projects that included detailed project plans, court documents, applicable state statutes and municipal codes, and relocation services provided to property owners and residents displaced due to eminent domain proceedings. Finally, we reviewed pertinent sections of each state's constitution to determine whether there is a requirement for the payment of fair or just compensation paid to the owner whose property is taken by eminent domain.

⁴To make effective use of time and resources, we first visited Baltimore, Maryland, to gain some perspective on redevelopment projects that involved eminent domain use. Unable to take into consideration the frequency of eminent domain use or generate a list of projects in which eminent domain was used by state or localities, we visited the four remaining cities based on geographic diversity, location within our 10 selected states, and availability of time and resources.

To convey how eminent domain has affected property owners and communities in select localities, we interviewed national and local organizations that advocate for property rights, in addition to property owners who claimed to have been involved in eminent domain proceedings. In accordance with long-standing GAO policy, we excluded eminent domain takings currently under litigation and, therefore, only focused on past instances involving eminent domain use. We discussed how eminent domain impacts property owners, businesses, and residents with affected owners and organizations that advocate for property rights.

To report on the changes state legislatures had made to laws governing the use of eminent domain, we reviewed legal databases and various Web-published information, such as the text or status of a bill, from state legislatures from all 50 states to determine in which states changes occurred. We then analyzed the state laws identified and grouped states based on our interpretation of those laws into three broad categories in order to more easily describe which states enacted certain types of provisions to their eminent domain laws. The three categories were: (1) states that placed restrictions on the use of eminent domain, such as prohibiting its use to increase property tax revenues, transfer condemned property to a private entity, or to assemble land for projects that are solely for economic development; (2) states that established additional procedural requirements, such as providing further public notice prior to condemnation; and (3) states that modified definitions for terms related to eminent domain use, such as blight or blighted property, public use, and economic development. We only reviewed those changes to state law that state legislatures passed and governors signed into law between June 23, 2005, and July 31, 2006.⁵ Related to other state and local laws referenced in the report, we did not undertake any independent legal review of them or how those laws affect the use of eminent domain. To identify state requirements regarding eminent domain procedures, we relied on the state and local officials we interviewed and the information they provided. In the time frame allotted for our study, we could not review all pertinent state requirements regarding eminent domain authorities and procedures.

In addition to the work outlined above, we conducted an extensive literature search to assist us in meeting our objectives. Primarily, we searched for other reports, studies, and academic papers that may have tallied or assembled data sets on eminent domain use, or developed

⁵The period covers approximately 1 year after the *Kelo* decision.

measures to assess the impact of eminent domain. To refer to or analyze data collected by others, we had to satisfy our criteria for identifying reliable and valid data, which include testing the methods and procedures others used in collecting the data. Although we identified some studies that were useful in providing us context and outlining barriers to collecting and analyzing data related to eminent domain use, we did not find any with data that met our criteria.⁶ Our literature review did provide many articles, reports, and reviews of matters related to eminent domain. However, none provided an analysis of detailed data related to eminent domain use.

We conducted our work in accordance with generally accepted government auditing standards from January through November 2006 in Baltimore, Maryland; Chicago, Illinois; Denver, Colorado; Los Angeles, California; New York, New York; and Washington, D.C.

⁶In addition to time and resource constraints, the lack of any systematic data that met our criteria prohibited us from performing other types of analyses. For example, we did not undertake any cost-benefit analyses of specific projects or purposes, since no data existed that quantified the various costs and benefits attributed to the various parties involved in an eminent domain taking. Also, we could not undertake a case study approach, primarily because the various involved parties could not be readily located, such as property owners who had moved due to the eminent domain taking.

Appendix II: GAO Contacts and Staff Acknowledgments

GAO Contact

William B. Shear, (202) 512-8678 or shearw@gao.gov

Acknowledgments

In addition to the individual named above, Karen Tremba (Assistant Director), Alexander Galuten, Alison Martin, Marc Molino, Josephine Perez, Linda Rego, Barbara Roesmann, Julie Trinder, Mijo Vodopic, Kristen Waters, and Nicolas Zitelli made key contributions to this report.

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