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A Performance Audit

of

Redevelopment Agency Practices

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Digest of A Performance Audit of Redevelopment Agency Practices

Redevelopment is a process, outlined in the Redevelopment Agencies Act, to assist municipalities to remove blight from previously developed areas through reconstruction, rehabilitation, and residential, commercial, industrial, and retail development. Redevelopment encourages private investment in deteriorated areas to achieve the desired development.

Chapter I: Introduction

Currently there are 77 Redevelopment Agencies (RDAs) in the state, 71 established in cities or towns and six in counties. In Utah there are 154 active redevelopment projects, 51 have been approved since 1993. From 1994 to 2004, RDAs have received $587.6 million in tax increment. For the 51 redevelopment projects that have been approved since 1993, it has been projected that about $765 million in tax increment will go to RDAs to help complete those projects.

Chapter II: Blight Criteria Needs Strengthening

Large Areas of Undeveloped Land Are Being Included in Redevelopment Projects. A survey of 10 redevelopment projects showed that seven had some or significant areas of undeveloped land within the project area. The first and second provisions of ***Utah Code*** 17B-4-604(1)(a) gives RDAs the ability to include large areas of undeveloped land in redevelopment projects. A broad interpretation of "buildings and improvements" allow RDAs to identify questionable structures as "buildings and improvements" on large areas of undeveloped land, so it can be included in a redevelopment project area. The "50/50 Rule" also allows RDAs to create redevelopment areas that contain undeveloped parcels of land with no buildings or improvements as long as they are joined to parcels of blighted land.

Blight Factors Need Clarification and Consistent Application. Part of the blight determination process is the finding of at least three of nine statutorily listed blight factors. However, the blight factors are defined broadly enough that almost any area of land could be considered blighted.

The "but for" test is a common approach used in identifying redevelopment areas. The test asks the question "but for the involvement of the RDA would this project exist? RDAs should apply the "but for"

test for projects and should include a cost benefit analysis to determine if a redevelopment project is needed.

1. We recommend that the legislature clearly and tightly define blight criteria, by:

   - Clarifying what is meant by buildings or improvements.
   - Deciding if undeveloped land should be included in redevelopment project areas; if not, then the "50/50 Rule" should be amended to prevent undeveloped parcels of land from being substantial components of redevelopment project areas.
   - Adding clarifying language to each of the 9 blight factors articulating the intent of each.
   - Requiring blight factors to be present throughout the entire project area.
   - Require that a "but for" test should include a cost analysis of the findings of blight to help ensure that the application of blight factors appropriately identify redevelopment.

Chapter III: Redevelopment Practices Can Be Improved

Statutory Guidance Can Be Improved. State statute should clearly define legislative goals for redevelopment. Even though the finding of blight is central to the creation of a redevelopment project, the purpose of redevelopment needs clarification. Tax Increment Financing (TIF) can be used not only to remove blight, but also for modernization, revitalization, and the creation of new developments.

Roles and Responsibilities Need Clarification. Taxing Entity Committees (TECs) are being asked to make financial and land-use decisions concerning developments that are proposed by a municipality. However, TECs generally lack expertise in land use planning. It can be difficult for them to not only determine blight, but also to determine if budgets will appropriately address the needs of proposed developments. With TEC approval, RDAs can also exceed statutory restrictions to lengthen project time, project size, and exceed allowable percentages of TIF, when compared to the total taxable value of property within RDA boundaries.

Greater Oversight Is Needed for Redevelopment Projects. Beyond the initial approval of budgets and findings of blight, TECs provide little oversight of redevelopment projects. TECs should review the redevelopment projects they approve and determine if it is following the approved plan and budget. Of the 10 projects surveyed, the audit did not find any evidence of continual oversight by the TECs.

One problem that exists partly due to the lack of oversight is the lack of financial controls. From discussions with RDA officials and reviewing some financial statements, most RDAs do not keep expenses separate for each redevelopment project. The audit was unable to fully determine how tax increment has been spent.

1. We recommend that the Legislature consider clarifying the definition of redevelopment in the ***Utah Code***, determining whether the redevelopment:
    - should only be used for the purposes related to removing blight, or
    - can be used for additional purposed beyond the removal of blight, such as initial development.
2. We recommend that the Legislature consider:
    - allowing the taxing entity committees to hire an independent consultant with expertise in land-use planning, or
    - establishing an independent state redevelopment advisory panel.
3. We recommend that the Legislature clarify when taxing entity committees can approve exceptions to ***Utah Code*** 17B-4-403(m)(i)(ii) and ***Utah Code*** 17B-4-503(2)(a) by requiring the exceptions to only be approved when necessary to eliminate blight.
4. We recommend that the Legislature consider requiring taxing entity committees to meet on projects they approved at predetermined intervals (for example, biannually) to assess the projects' progress and approve any significant changes to the projects' budget.
5. We recommend that the Legislature consider requiring RDAs to maintain separate expense records for each redevelopment project.

Chapter IV: Other Issues That May Need to Be Addressed

Representation on Taxing Entity Committee Needs to Be Revisited. All taxing entities do not have an equal voice on the TECs. Unbalanced representation on the TEC can prevent an individual taxing entity from having an impact on project decisions. Of the five entities represented on a TEC, two have one vote each, while the other three have two votes

each. All affected taxing entities should have a voice in the decision-making process.

Cities Need an Instrument for Land Assembly. Eminent domain was a tool used by municipalities to assemble parcels of land into one large project area. In the 2005 Legislative General Session, Senate Bill 184 ended the practice of municipalities using eminent domain for redevelopment projects. Because acquiring land can be essential to making projects viable, the Legislature may want to consider if eminent domain or other instruments should be made available to municipalities for the purposes of land assembly.

1. We recommend that the Legislature require RDAs to mitigate with all taxing entities based proportionally on the normal property tax distribution or not mitigate with any taxing entity.

2. We recommend that the Legislature consider requiring a supermajority approval of the TEC if an RDA mitigates other than all of the taxing entities involved in a redevelopment project.

3. We recommend that the Legislature consider requiring a supermajority vote of three-fourths of taxing entity members for findings of blight and project budgets to be approved.

4. We recommend that the Legislature consider if eminent domain serves a public purpose for redevelopment projects.

Table of Contents

Table of Contents (Cont)

Chapter I
Introduction

The Redevelopment Agencies Act (***Utah Code*** 17B-4) outlines a process to assist municipalities in removing blight from previously developed areas through reconstruction and rehabilitation of residential, commercial, industrial, and retail development. The redevelopment process is intended to encourage private investment in deteriorated areas to achieve the desired development.

Redevelopment helps to equalize the costs of redeveloping previously developed areas and developing open space.

Through redevelopment, property areas receive focused attention to reverse deteriorating trends, revitalize the business climate, rehabilitate, and add housing. Redevelopment takes many forms throughout the state: transitioning blighted areas to updated commercial, retail, and residential areas; assisting with land assemblage so a preferred use of the property can be realized; and upgrading deteriorated public sidewalks and initiating street improvements.

RDAs Are Responsible for Improving Blighted Areas Within the State

The first RDA was established in 1969, by 1991 there were 49 agencies. Today there are 77 active RDAs in the state.

Redevelopment agencies (RDAs) are entities created by city and county governments to improve blighted areas and to implement the development goals of the community. RDAs are responsible for approving the redevelopment plans and providing a budget. Since 2000, 34 projects have been approved for redevelopment. Currently there are 77 RDAs in the state, 71 established in cities or towns, and six in counties.

The RDA board and the community legislative body are essentially the same. For a city RDA, city council members act as the governing board, and for counties, boards of supervisors are the governing boards. However, the council and the agency are two separate, distinct legal entities. RDAs assist communities in addressing three types of development issues:

- Redevelopment—improving blighted areas
- Economic Development—working with businesses to increase jobs available in the communities and the state
- Housing Development—providing high-density housing adjacent to a public or private institution of higher education

The scope of this audit focused on redevelopment projects.

RDAs Approve Redevelopment Plans

A redevelopment project area is the area within which actual redevelopment will take place. RDAs create a project area by identifying blight and then adopting a plan for redevelopment. A five-step process must be followed to adopt a redevelopment plan.

The process to adopt a redevelopment plan involves input from the taxing entity committee and the public.

1. A blight survey area is identified for study.
2. The RDA board holds a hearing to determine whether all or part of an area qualifies as blighted. If an area is considered blighted, it is eligible for redevelopment assistance.
3. The RDA prepares a redevelopment plan and project area budget to identify how redevelopment will occur.
4. The planning commission for the community reviews the redevelopment plan to assure it conforms to the community's master plans.
5. The RDA board holds one or more public hearings to obtain comments and suggestions on the proposed plan and budget. The RDA board then adopts, adopts with modifications or rejects the plan. Adopting the plan establishes a redevelopment project area.

The redevelopment plan represents a process and a basic framework within which specific projects will be undertaken. The plan provides the agency with powers to take certain actions, such as buying and selling land within the area covered by the plan, and improving dilapidated facilities.

The taxing entity committee provides guidance for redevelopment agencies.

After the plan is approved by the RDA and an estimated budget is completed the budget then has to be approved by the taxing entity committee (TEC). This committee is made of individuals who represent taxing entities which levy a property tax within the boundaries of RDA. The TEC not only approves the budget, but also approves the findings of blight in a proposed project area, as stated in Step 2. Once the plan and

budget are approved, the RDA implements the plan using tax increment generated as a result of the redevelopment project.

The Number of Redevelopment Projects Approved Has Increased

Currently in the state of Utah there are 154 redevelopment projects, 51 have been approved since 1993.

Currently, 154 redevelopment projects are active in Utah; 103 redevelopment projects were approved prior to 1993, and 51 have been approved since 1993. The reduction of redevelopment projects after 1993 is due to legislative action against using redevelopment tools for purely economic development reasons. The establishment of an economic development track has resulted in 46 economic development projects that might have been considered as redevelopment under the previous system.

Figure 1 shows the count of redevelopment projects approved each year since 1993. Almost twice as many redevelopment projects have been approved during 2000-2005, than during1994-1999.

Figure 1. Summary of RDA Projects. Fifty-one redevelopment projects have been approved since 1993.

Year	Count of Projects Approved	Year	Count of Projects Approved
1994	1	2000	5
1995	0	2001	2
1996	1	2002	7
1997	5	2003	5
1998	2	2004	9
1999	8	2005	6
Total	**17**	**Total**	**34**

Two of the redevelopment projects that have begun since 1993 are superfund sites. A superfund site is an area designated by the federal government that has a major environmental problem. A superfund site receives federal funds to help cleanup the polluted area. The federal government then tries to recoup those funds from the party (or parties) that created the polluted area.

Tax Increment Financing Helps Fund Redevelopment Projects

Property tax increment is defined as the increase in property taxes owed on a piece of property due to the development of the property.

Tax Increment Financing (TIF) is a financial tool used to help bring about redevelopment in situations where redevelopment would not otherwise occur because of financial constraints. Tax increment is the net new property tax revenue generated by redevelopment. In other words, it is the difference between the property taxes generated within an area before redevelopment and after redevelopment. These revenues would not exist if the redevelopment did not occur. The statute specifying the amount of tax increment that RDAs can use to redevelop an area has changed over the years.

Amount of Tax Increment Going to Redevelopment Projects Is Increasing

Tax increment is used to fill the gap between the total project costs and the level of private financing supporting a redevelopment project. The RDA can use tax increment to finance the issuance of bonds, to reimburse developers for a portion of their project financing, and to cover administrative costs for the RDA project. In the case of developer reimbursement, the taxing entity committee determines the amount of tax increment that is distributed to developers. Figure 2 shows the tax increment going to RDAs for both the redevelopment and economic development projects since 1994. From 1994 to 2004, RDAs alone received $587.6 million in tax increment.

Figure 2. History of Tax Increment Funds Received by Redevelopment Agencies Statewide. The amount of tax increment being used by RDAs has continually increased for the last 10 years.

Year	Tax Increment Amount	Year	Tax Increment Amount
1994	$30,553,000	2000	$54,862,000
1995	31,357,000	2001	64,473,000
1996	36,350,000	2002	70,133,000
1997	44,349,000	2003	70,613,000
1998	48,188,000	2004	87,022,000
1999	49,721,000	2005	Not Available
Total	**$240,518,000**	**Total**	**$347,103,000**

The amount of property tax increment received by RDAs has increased, on average, by 9% annually.

This figure shows that the amount of tax increment being used by RDAs has almost tripled since 1994. However, accounting for inflation, the value of the tax increment more than doubled from 1994 to 2004. For 2004, the total tax increment directed to RDAs was 5.5 percent of $1.6 billion, the total property taxes collected that year for which tax increment can be taken.

Looking specifically at redevelopment projects, for the 51 projects approved since 1993, it has been projected that about $765 million in tax increment will go to RDAs for those projects which will cost about $3 billion to complete according to the project budgets. However, the average amount of tax increment expected per RDA project increased 24 percent (adjusted for inflation) from 1994-1999 to 2000-2004. Several projects approved since 1993 have not yet started receiving tax increment funds.

The state can benefit from redevelopment: revitalized properties, increased sales tax revenues, and increased property tax revenues.

All of the tax increment created by the redevelopment project goes to the taxing entities once the RDA has fulfilled its monetary obligations related to a project. Communities and the state can benefit from the creation of revitalized, productive properties, sales tax revenues can increase; and the taxing entities can get additional revenue from property taxes that would not have existed if the redevelopment projects had not been undertaken. However, the project time period can run in excess of

25 years with TEC approval. During the course of the audit, we were only able to identify one redevelopment project that had been completed.

Redevelopment Statute Regarding TIF Has Been Changed Several Times

Redevelopment began in Utah in the mid-1960s with the Utah Community Development Act. Its original intent was to fund the revitalization of blighted areas of communities through TIF. At that time, there were no limits on how much tax increment could be diverted to RDAs. Since that time, there have been a number of attempts to control RDAs use of tax increment and get the additional taxes to the taxing entities as early as possible.

The incremental rollback, designed to return more and more tax increment to the taxing entities as a redevelopment project continued, was in effect for 10 years.

The Incremental Rollback Provision in 1983 Was the First Major Revision. An incremental rollback, or "haircut," was designed so that as the life of a redevelopment project continued, more and more tax increment flowed back to the taxing entities, such as school districts. The provision was structured so that:

- 100 percent of the tax increment went to the RDA for the first five years
- 80 percent for the next five years
- 75 percent for the next five years
- 70 percent for the next five years
- 60 percent for the next five years

The balance of increment went to the taxing entities. At that time, the total potential life of a redevelopment project was 32 years.

The Incremental Rollback Provision Was Repealed in 1993. The second major revision occurred when the "haircut" provision was repealed and substituted with different tax increment dollar amounts and terms. The current TIF structure was designed as follows:

Even though the TIF structure changed in 1993, if approved by the TEC, any percentage of tax increment can be diverted to a redevelopment project.

- If 20 percent of tax increment is allocated for affordable housing, 100 percent of the tax increment can be diverted to the redevelopment project for 15 years, or 75 percent for 24 years.

- If 20 percent of tax increment is not allocated for affordable housing, 100 percent of the tax increment can be diverted to the redevelopment project for 12 years or 75 percent for 20 years.

From 1998 to 2000, RDAs were allowed to bypass the TEC if the project was approved by a 2/3 majority and pledge 20% of the tax increment to Olene Walker Affordable Housing Trust Fund.

The total potential life of a redevelopment project was set at 24 years. At that time a Taxing Agency Committee was created, now called the Taxing Entity Committee (TEC), with representatives from the affected taxing entities. The representatives were given the responsibility to approve multi-year project budgets, projects larger than 100 acres, and tax increment amounts and durations outside those guidelines stipulated in statute. If approved by the TEC, any percentage or amount of tax increment for any period of time can be diverted to a redevelopment project.

Beginning in 2000, Tax Increment must Meet the Olene Walker Affordable Housing Trust Fund Stipulations. All redevelopment projects generating more than $100,000 in tax increment annually must spend at least 20 percent of the tax increment on affordable housing, unless they obtain a waiver from the Loan Fund Board and the TEC.

Since 2000, there have been other changes to the Redevelopment Agencies Act, the most recent being Senate Bill 184 that was passed in the 2005 General Session. This bill modified numerous provisions of the Redevelopment Agencies Act. Notable changes include:

Senate Bill 184 modified numerous provisions of the Redevelopment Agencies Act.

- Requiring an RDA's finding of blight to be approved by the taxing entity committee
- Prohibiting a redevelopment agency from using eminent domain to acquire property, except when acquiring property from an agency board member or officer
- Modifying a date by which construction of a recreational or cultural facility must begin in order for an agency to be paid additional tax increment for the facility

It is important to note that when redevelopment projects have been approved, they follow the TIF structure at the time the project was approved.

Audit Scope and Objectives

A group of concerned legislators requested a performance audit of Utah's RDAs to determine if projects are complying with state statutes and to determine if RDAs are operating at the least cost to taxpayers. Specifically, the legislators asked us to look at the following questions:

The Redevelopment Agencies Act is a controversial piece of legislation due to the open wording of the statute and allowed exceptions.

- Is blight being addressed through redevelopment projects?
- Has sales tax revenue become the primary focus of redevelopment agencies?
- Is tax increment being used for genuine redevelopment—to remove blight?
- Do members of the taxing entity committees (TECs) that represent the taxing entities who are affected by redevelopment directly have an adequate voice in the redevelopment process?
- Does the RDA process have adequate oversight to ensure that decisions benefit local communities and the state?

To address these questions, we reviewed a sample of redevelopment projects to determine if those projects comply with statute and are operating efficiently and effectively. We reviewed the process by which RDAs define and approve project areas; gathered information to determine how tax increment is being utilized; reviewed blight studies, budgets, RDA and TEC meeting minutes; and interviewed TEC and RDA members.

In addition, we contacted other states and gathered literature on redevelopment practices, we contacted various taxing entities and RDA professionals to ascertain their perspective on redevelopment issues, we reviewed how redevelopment practices have changed in Utah, we reviewed the creation, structure, and voting history of the TECs, the amount of tax increment being diverted from the taxing entities, and looked at the impact of TIF on public education.

Chapter II
Blight Criteria Needs Strengthening

Current wording of Utah's Redevelopment Agencies Act (***Utah Code*** 17B-4) continues to allow almost any property to be deemed blighted. As a result, open space and land with minimal problems can be classified as blighted and be eligible for redevelopment. This allows for the use of tax increment for undeveloped lands that can alter the competitiveness of different properties within the state by providing incentives to developers. This can undermine the effectiveness of the statute when used in valid cases of blight. The Legislature needs to determine if undeveloped land should be included in redevelopment projects, and more clearly define the blight criteria in the Redevelopment Agencies Act.

Large Areas of Undeveloped Land Are Being Included in Redevelopment Projects

The Redevelopment Agencies Act allows open space to be considered part of a redevelopment project.

The redevelopment track of ***Utah Code*** 17B-4-604(1) can be used by RDAs to develop undeveloped land. This application allows tax increment to be used to develop open space. Our review of 10 post-1993 redevelopment projects with values of greater than $1 million found that RDAs using the redevelopment statute may significantly vary from the legislative intent and, in doing so, may reduce the statute's effectiveness. Of the 10 projects reviewed, 34 percent of the parcels included in the projects are undeveloped lands. Appendix A describes each of the 10 projects that were surveyed and shows a picture of each project.

The ***Utah Code*** 17B-4-604(1) has two provisions that RDAs are required to meet in order to identify an area of land as blighted:

- The first provision requires that the property have buildings or improvements on it. The improvements can include residential, commercial, or industrial uses or any combination of these.

- The second provision, commonly referred to as the "50/50 Rule" requires that a proposed area must have buildings or improvements on at least 50 percent of the number of parcels of private real

property whose acreage is at least 50 percent of the acreage of the real property within the proposed redevelopment project area.

A parcel of land, referred to in the second provision, is defined as a piece of land owned by one property owner. A parcel can consist of a portion of an acre or many acres. The following two sections explain how RDAs can use these two provisions to include undeveloped land in redevelopment projects.

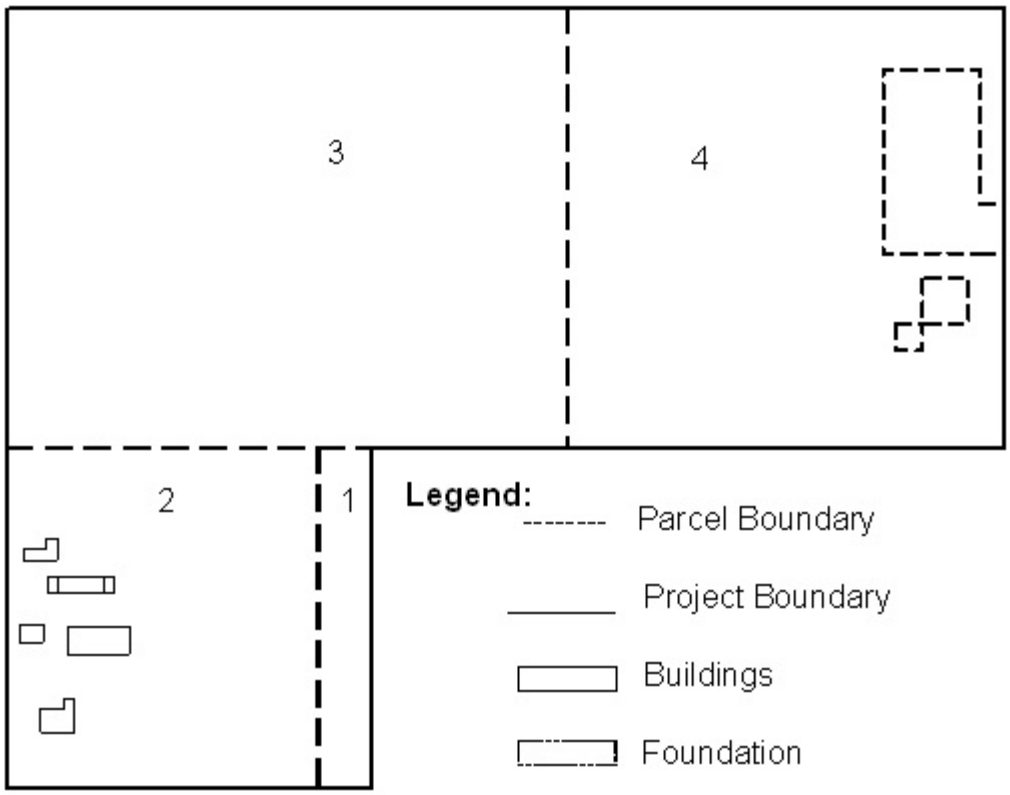
Definition of "Buildings or Improvements" Needs Clarification

Identifying buildings or improvements on undeveloped land, can helps enlarge redevelopment areas.

The first provision of ***Utah Code*** 17B-4-604(1)(a)(i) allows almost any man-made structure to be considered as a building or improvement. Redevelopment projects can identify such things as roads, mobile homes, and/or building foundations as potential "buildings or improvements." A broad interpretation of "buildings and improvements" allows RDAs to enlarge redevelopment areas. If a building or improvement is identified on a large undeveloped parcel of land, the entire parcel can be included in a redevelopment project area.

Figure 3 shows a drawing of an entire redevelopment project area. In this example of an actual redevelopment project, parcels two and four can be declared blighted according to the first provision because buildings and improvements were identified on each parcel.

Figure 3. Representation of a Redevelopment Project Area. Using the first provision, large undeveloped areas can be included in redevelopment projects as shown in parcels two and four.



Developed parcels can contain large areas of undeveloped land.

Parcel 2 contains residential and agriculture structures. Parcel 4 contained two foundations, which can be considered as a building or improvement. As a result both parcels, even though they contain large areas of undeveloped land, can be considered blighted in their entirety.

Other redevelopment projects we surveyed identified questionable structures as buildings and improvements on physically undeveloped land so those areas can be included in the projects. As an example, one redevelopment project with undeveloped areas was privately owned. This property with structures was, with the owner's consent, declared blighted. The project area met statute requirements due to the poor condition of a makeshift structure: two mobile homes and remnants of a shed, on a 119 acre parcel.

Of the 10 projects surveyed 7 consisted of minimal structures on primarily undeveloped land. To prevent municipalities from developing

Historical experience shows that a more precise definition of "buildings and improvements" is needed.

undeveloped land under the guise of redevelopment, a more precise definition of "buildings or improvements" is needed. Redevelopment was never intended to be used as a means to develop undeveloped land. Redevelopment by its very definition was devised to help rehabilitate or improve existing developed properties and the improvement of the land. Historical experience shows that a more precise description is necessary to prevent loopholes and to ensure that undeveloped land is not being considered "developed" by RDAs.

50/50 Rule Permits Undeveloped Land In Redevelopment Projects

The second provision of ***Utah Code*** 17B-4-604(1)(a), commonly known as the "50/50 Rule," gives RDAs additional ability to include separately-owned, undeveloped lands in redevelopment projects. For the 10 projects surveyed, about $73 million of tax increment will go to the RDAs. Of that amount, it is estimated that more than $25 million of tax increment may be going toward developing undeveloped parcels. This amount does not include the undeveloped land on developed parcels. This provision includes two components:

- The area must contain buildings and improvements on at least 50 percent of its parcels.
- The area of those parcels with the buildings and improvements must be at least 50 percent of the proposed project area.

The "50/50 Rule" allows redevelopment areas to contain undeveloped parcels of land as long as they are joined to developed parcels.

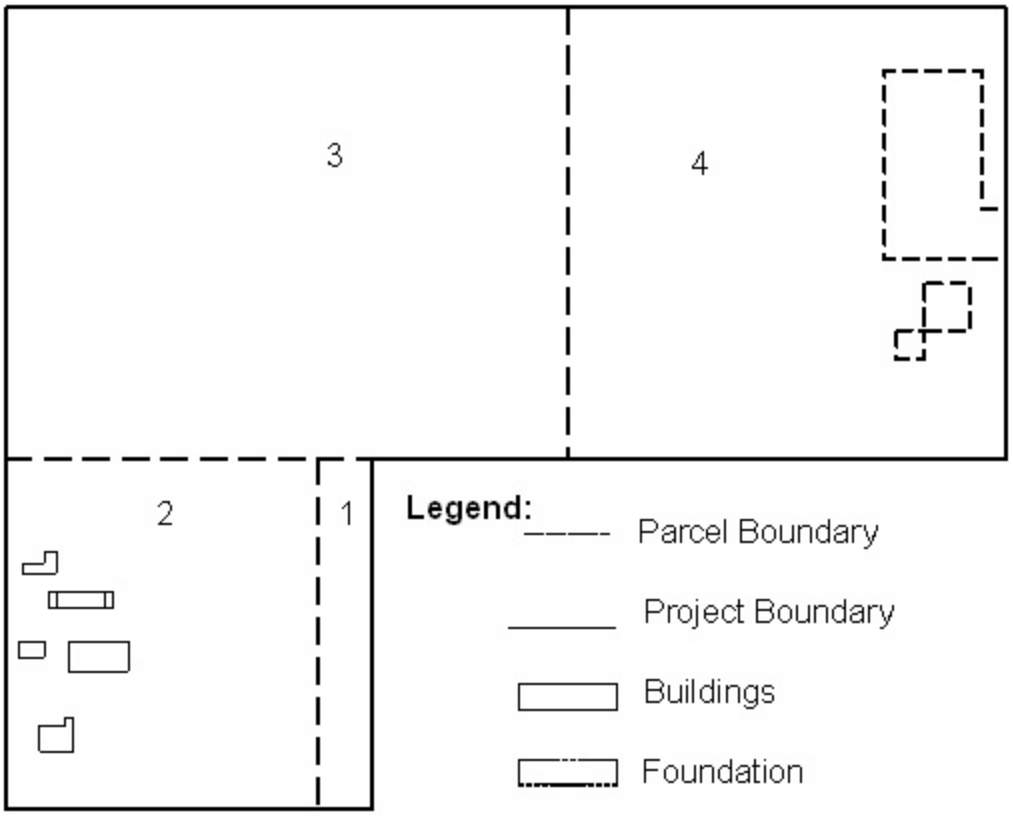
If the Legislature determines that undeveloped land should not be included in redevelopment projects, then the "50/50 Rule" should be amended to prevent undeveloped parcels of land from being substantial components of redevelopment project areas.

The "50/50 Rule" allows RDAs to create redevelopment areas that contain undeveloped parcels of land with no buildings or improvements as long as they are joined to parcels of blighted land with some structures. As with the first provision, the broad definition of this provision allows redevelopment of undeveloped land. Figure 4 shows the same redevelopment project area as in Figure 3 to demonstrate the application of the second provision to a redevelopment project area.

A redevelopment area must contain buildings and improvements on at least 50% of its parcels.

The area with the buildings and improvements must also be at least 50% of the proposed project area.

Figure 4. An RDA Project Area with a Substantial Amount of Undeveloped Land. Using the "50/50 Rule", this redevelopment project is able to include a large area of undeveloped land.



Parcel No.	Acres	Parcel With Buildings/Improvements
Parcel 1	1	
Parcel 2	4	X
Parcel 3	10	
Parcel 4	9	X
Total	**24**	**2**

Component 1- Total Parcels = 4
Parcels with Buildings/Improvements = 2
Percent Parcels with Buildings = 50%

Component 2- Total Acres = 24.00 Acres
Acres with Buildings/Improvements = 13.00 Acres
Percent with Buildings = 54%

The redevelopment project in Figure 4 shows how RDAs are able to include large parcels of undeveloped lands in redevelopment project areas. Parcels 1 and 3 were undeveloped agricultural lands. Parcel 2 is residential/agricultural land and parcel 4 was cited in the blight survey as vacant land. Although two building foundations on parcel 4 only accounted for a small amount of overall acreage of the parcel, the entire parcel was still considered developed. Parcel 2 also has a large area of undeveloped land, but is considered developed. Because 50 percent of the parcels (2 of 4) have buildings or improvements, the connecting parcels 1 and 3, which are undeveloped, are both eligible for redevelopment along with parcels 2 and 4.

Another redevelopment project area is shown in Figure 5 to demonstrate how the "50/50 Rule" can include large areas of undeveloped land.

Figure 5. An Area Determined Blighted by an RDA. Using the first provision, large undeveloped areas can be included in redevelopment projects.

This picture is indicative of the ability of RDAs to include large areas of undeveloped land as part of a redevelopment project. This project area

consists of 102 privately owned acres of land, 43 percent of which consists of undeveloped parcels.

Of the 1,149 acres considered for redevelopment in the 10 project areas, 387 acres are located in parcels with neither structure nor direct blight findings. This information is detailed in Figure 6.

Figure 6. Survey of Undeveloped Land Included in Redevelopment Projects. This comparison reveals 34% of the land in 10 redevelopment project areas is undeveloped parcels.

		For Undeveloped Parcels	
Project	Total Project Acres	Acres of Undeveloped Land	Percent of Undeveloped Land
A	24	11	46%
B	119	20	17
C	119	55	46
D	482	217	45
E	102	44	43
F	64	21	33
G	49	9	18
H	49	1	2
I	52	3	6
J	89	6	7
Total	**1149**	**387**	**34%**

Of the 10 redevelopment projects surveyed, 7 had some or significant areas of undeveloped land.

This figure shows that the "50/50 Rule" enables RDAs to include large areas of undeveloped parcels in redevelopment projects. The five projects(A, C, D, E, F) with the most acres in undeveloped parcels averages 44 percent. The 387 undeveloped acres do not include the undeveloped land found in parcels considered developed, such as parcels 2 and 4 in Figure 3. RDAs are not required to identify the amount of undeveloped acreage in developed parcels of land. If that percentage was included in blight studies the percent of undeveloped land found in the

survey would be considerably larger than 34 percent. The total amount of TIF that may go toward undeveloped parcels is estimated at $25 million. The amount of TIF going toward undeveloped lands would also be higher if the undeveloped land were included. Seven of the 10 surveyed projects had some or significant areas of undeveloped lands.

Contacting surrounding western states revealed that there is no current standard of the "50/50 Rule." No state requires an analysis be completed that looks at the ratio of undeveloped land to developed land as part of the blight determination process. However, other states allow undeveloped lands to be included in redevelopment project areas. The Legislature should determine whether or not there are situations where it is appropriate to use tax increment to develop tracts of undeveloped land.

Blight Factors Need Clarification and Consistent Application

Part of the blight determination process is finding three of nine blight factors within a proposed project area.

If the purpose of redevelopment is to remove blight, then genuine blight needs to be the driving force behind the initiation of redevelopment projects. The Redevelopment Agencies Act, ***Utah Code*** 17B-4-604, is broad in defining what constitutes a blighted area. One land condition can meet multiple blight factors. To ensure that blight is the primary factor that redevelopment projects are addressing, blight factors need to be present throughout project areas and not just isolated occurrences within an overall project area. In addition, redevelopment should apply the "but for" test and include a cost analysis of the findings of blight to help ensure that application of the blight factors appropriately identify redevelopment. Past legislative action increased the number of factors necessary for a blight designation but did not address the degree or prevalence of the problem needed to establish blight.

Part of the blight determination process is the finding of at least three of nine statutorily listed blight factors. This requires an RDA to inventory each of the properties within the proposed redevelopment project area in order to determine if the proposed project area is blighted. Figure 7 lists the nine blight factors required to establish a finding of blight. According to the ***Utah Code*** 17B-4-604(1)(a)(iii), these nine factors must show that the existing property's condition is unfit or unsafe to occupy or may be conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, or crime.

Figure 7. Nine Factors Used to Determine Blight. Currently the Redevelopment Agencies Act requires a finding of three or more of the following conditions in order for the areas to be considered blighted.

- Defective character of physical construction
- High density of population or overcrowding
- Inadequate ventilation, light, or spacing between buildings
- Mixed character and shifting of uses, resulting in obsolescence, deterioration, or dilapidation
- Economic deterioration or continued disuse
- Lots of irregular shape or inadequate size for proper usefulness and development, or laying out of lots in disregard of the contours and other physical characteristics of the ground and surrounding conditions
- Inadequate sanitation or public facilities which may include streets, open spaces, and utilities
- Areas that are subject to being submerged by water
- Existence of any hazardous or solid waste

Adequately defining blight has been an on going problem.

Adequately defining blight has been an ongoing problem. The 1991 performance audit of RDAs stated: "Every RDA official we interviewed stated that any piece of property can be proved blighted using Utah's statute." After the release of the 1991 audit, the statute was significantly altered to address the use of blight, but the changes do not appear to have changed its usage. Some current redevelopment professionals believe this statement is still true.

Blight Criteria Definitions Need More Guidance

Utah's statute includes the blight factors meant specifically to aid the revitalization of blighted areas. However, the blight factors are defined broadly enough that only a few blight factors are needed to determine an area of land blighted. After reviewing several blight studies, we found that structures or improvements on parcels of land met more than one blight factor to identify redevelopment project areas. Figure 8 shows the four most common blight factors used to identify project areas in the blight studies from the 10 redevelopment project that were reviewed.

Figure 8. Use of Blight Condition Factors. From the survey of 10 redevelopment projects, these four blight factors were used the most frequently in determining that an area was blighted.

Blight Factors	Number of Times Used
Defective character of physical construction	9
Lots of irregular shape or inadequate size for proper usefulness and development, or laying out of lots in disregard of the contours and other physical characteristics of the ground and surrounding conditions	9
Inadequate sanitation or public facilities which may include streets, open spaces, and utilities	9
Mixed character and shifting uses, resulting in obsolescence, deterioration, or dilapidation	8

One land condition can meet more than one blight factor definition.

This figure shows the four blight factors that were most commonly used in determining blight. Because these terms are broadly defined they can be used in many different ways to substantiate a finding of blight. The blight factors currently used need to be defined more precisely, so that one land condition cannot be used to meet the definitions of multiple blight factors. Redevelopment officials agree that the blight standard has been strengthened over the years, but it still needs further tightening and clarification in order to ensure that the intent of the Redevelopment Agencies Act is being followed. One such example of this is the blight factor of "Inadequate sanitation or public facilities which may include streets, open spaces, and utilities." This factor could be more precisely defined such as "hazardous or unsafe conditions," that cannot be addressed except for the abilities of an redevelopment project.

A blight study for one redevelopment project used the same land condition for two findings of blight. Vacant buildings needing maintenance met two blight factors: "defective character of physical condition" and "economic deterioration or continued disuse." Three other blight studies in different RDAs use the same land condition to meet two different blight factors, one of the factors being "defective character of physical condition" for all three blight studies.

From the survey of redevelopment projects, some RDAs list abandoned vehicles, scattered debris, or weeds as meeting the "mixed character and shifting uses, resulting in obsolescence, deterioration, or dilapidation" blight factor. Other RDAs listed the same land conditions as meeting another blight factor—"economic deterioration or continued disuse." This demonstrates that the broad wording of the statute gives RDAs the ability to apply different blight factors to numerous land conditions, and a lack of uniformity exists in how blight is determined from community to community.

Blight studies are often inconsistent in content and depth.

Blight Factors Are Not Present Throughout the Entire Project Area. Some RDAs are finding factors of blight in small areas and subjecting much larger areas to redevelopment. For example, one surveyed redevelopment project area consisting of 119 acres of undeveloped land found blight factors in a mobile home, poor asphalt paving, open storage, weeds along the fence line, abandoned vehicles, fences in need of maintenance, and scattered debris. Most of these factors were in small areas throughout the project area and not present throughout the entire area, yet these blight factors allowed the municipality to legally justify designating the entire area as a redevelopment project.

In many of the surveyed projects the actual clean-up or repair of the blighted conditions is a negligible cost in a small portion of the project area. In effect, the finding of blight is a small hurdle necessary to access redevelopment benefits for a project that has nothing to do with blight revitalization.

The finding of blight can be seen as a small hurdle necessary to access redevelopment benefits for a project that has nothing to do with blight revitalization.

Application of Blight Criteria Needs Refinement

The Legislature should consider having the RDAs more thoroughly apply the "but for" test. This test is asking the question "but for the involvement of the RDA, would this project exist?" The "but for" test should include a cost-benefit analysis, such as a cost per acre for remediation to determine if a redevelopment project is needed.

The "but for" test is a common approach used by the economic development projects that can also be helpful in identifying redevelopment areas. "But for" testing simply frames the issue of redevelopment involvement, but establishes neither costs nor alternatives of the proposed development. Other western states, including California, Wyoming, and

Washington use "but for" testing for redevelopment projects. California requires, as part of a blight analysis, that an economic feasability study be completed. Adding this study to the blight analysis could be a valuable tool to decision makers in determining the appropriateness of a redevelopment project.

All 10 redevelopment projects surveyed lacked an adequate "but for" analysis.

As part of the project area plan requirements stated in the Redevelopment Agencies Act, Utah is also required to use the "necessary and appropriate" test. According to ***Utah Code*** 17B-4-403(s), the plan should include an analysis of whether adoption of the project area plan is necessary and appropriate to reduce or eliminate blight. However, 8 projects lacked an adequate analysis. For example:

- One analysis, completed for an RDA, listed the project's benefits but did not include an actual cost-benefit analysis.
- Another analysis was only partly completed and showed no real cost depth study of the proposed project area.

The projects did not take into account alternatives to creating a new redevelopment project area. While this requirement attempts to address the benefits of redevelopment, it lacks a strong tie into how Tax Increment Financing is used for the purposes of removing blight and how it is used for development incentives.

The audit also found that blight studies show a variety of methods used by municipalities to prove findings of blight. The lack of statutory clarity allows blight studies that are often inconsistent in terms of both content and depth. This was also an issue that was noted in the 1991 audit. The effect is a lack of uniformity on how blight is declared and what is truly considered "blighted."

While Utah requires a "but for" test, it does not provide a cost benefit analysis of removing the blight.

The Legislature should consider having the TECs, who approve the budget and findings of blight, review the cost of removing blight in each proposed project area. If the TECs determines the cost to remove the blight is considered relatively inexpensive, then a proposed area does not need to become a redevelopment project; the blight just needs to be removed.

The "But For" Test Should Include a Financial Analysis of the Cost to Remove the Blight. If a parcel of land has an old, dilapidated

trailer on the property, it may only cost a few thousand dollars or less to have it removed. That parcel of land does not need to be deemed as a redevelopment project; the trailer just needs to be removed. It was observed during the audit and some blight surveys listed abandoned vehicles, noxious weeds, and debris such as a car axle with wheels and remnants of sheds were deemed as blight findings. These conditions can be easily removed. Using a cost per acre for remediation approach could be used as an approach to identify the cost of blight removal. The cost per acre for remediation approach looks at the cost to remove the blight by acre.

On the other hand, if a parcel of land is being considered blighted and has several dilapidated buildings with environmental problems that may cost several hundred thousand dollars to remove, that area should be considered a redevelopment project and use tax increment to subsidize the clean-up costs. Concerns arise when minimal blight problems on a parcel of land become a project area, because tax increment can be used as incentives for economic development, rather than just removing the blight.

The question of whether development would occur without the help of a private/public endeavor was not adequately addressed in identifying the redevelopment project areas for 8 of the 10 projects reviewed. If developments on undeveloped land are allowed to follow demand and occur on their own, then the new growth in property tax would go to the taxing entities.

A recent study performed by the Bureau of Economic and Business Research at the University of Utah shows that in some cases development can occur without tax increment financing. The study, titled *The Economic and Social Impacts of Large-Format Retail on Salt Lake County*, cites two examples of developments in Salt Lake County that did not use tax increment financing. In both examples, the developers paid the cost to clean up deteriorated areas and made significant improvements to the infrastructure, such as widening streets and installing traffic lights, without financial assistance from the city. Hence, the new growth in property taxes for these two areas will be distributed among the taxing entities without going through the redevelopment process.

If an area is deemed blighted by the TEC, the TEC should review the project budgets to ensure that budget expenditures include reasonable

costs to remove blight from the project areas. This analysis should be included in the blight study and used in consideration when developing the budget.

Recommendations

1. We recommend that the Legislature strengthen the blight determination process by:

    - Clarifying what is meant by buildings or improvements.

    - Deciding if undeveloped land should be included in redevelopment project areas; if not, then the "50/50 Rule" should be amended to prevent undeveloped parcels of land from being substantial components of redevelopment project areas.

    - Adding clarifying language to each of the 9 blight factors articulating the intent of each.

    - Requiring blight factors to be present throughout the entire project area.

    - Requiring that a "but for" test should include a cost analysis of the findings of blight to help ensure that the application of blight factors appropriately identify redevelopment.

Chapter III
Redevelopment Practices Can Be Improved

Concerns with Utah's redevelopment track can be reduced by statutory clarifications and improved redevelopment agency (RDA) oversight. First, the Legislature should clarify whether the elimination of blight is the primary reason for the creation of redevelopment projects. Second, the Legislature should clarify the roles and responsibilities of Taxing Entity Committees (TECs). Third, the Legislature should provide TECs with greater assistance in financial and land-use planning decisions.

Statutory Guidance Can Be Improved

The current statute that governs redevelopment in Utah does not specifically state the primary purpose of redevelopment. Tax Increment Financing (TIF) can be used not only to remove blight and bring an area of previously developed land equal to that of raw land, but also to develop open space. Redevelopment projects can provide benefits to the state by revitalizing unuseable areas in a community, but the Legislature should determine if using tax increment to develop open space is appropriate.

Purpose of Redevelopment Needs Clarification

The Legislature should clarify the intent of redevelopment.

State statute should clearly define legislative goals for redevelopment. Even though the finding of blight is central to the creation of a redevelopment project, it is not well defined in statute. While some improvements of the definition have taken place in the past, there are continuing problems with the interpretation of the redevelopment statute.

The ***Utah Code*** outlines the blight determination process, but the definition of redevelopment does not state that the removal of blight is the primary purpose of redevelopment. Figure 9 states the statutory definition of redevelopment found in ***Utah Code*** 17B-4-102(25).

Figure 9. Legal Definition of Blight. The Redevelopment Agencies Act provides a broad definition of the redevelopment track.

> (25) "Redevelopment" means the development activities under a project area plan within a redevelopment project area, including:
>
> (a) planning, design, development, demolition, clearance, construction, rehabilitation, or any combination of these, of part or all of a project area;
>
> (b) the provision of residential, commercial, industrial, public, or other structures or spaces, including recreational and other facilities incidental or appurtenant to them;
>
> (c) altering, improving, modernizing, demolishing, reconstructing, or rehabilitating, or any combination of these, existing structures in a project area;
>
> (d) providing open space, including streets and other public grounds and space around buildings;
>
> (e) providing public or private buildings, infrastructure, structures, and improvements; and
>
> (f) providing improvements of public or private recreation areas and other public grounds.

The *Utah Code* does not mention "blight" as the primary purpose for redevelopment.

The current definition of redevelopment is broad.

The broad application of the redevelopment track has been a concern creating conflicts between municipalities and their associated taxing entities and between competing municipalities. As far back as 1975, concerns existed as to the purpose of redevelopment. These concerns resulted in a Utah Supreme Court case, *Tribe v. Salt Lake City Corp.* (1975), concerning the purpose of redevelopment, which is still the precedent today.

> The concept of redevelopment was enacted by the State Legislature, its area of operation is statewide, and deals with a statewide problem, viz., blight. To be sure, the present project area would appear to have only local operation, but it must be remembered that it is a local operation of an act of general statewide scope; and that its local operation hinges on a contingency—the decision of the legislative body of the Agency. A decision motivated by the existence of a condition of statewide concern.

The Utah Supreme Court cites blight as the driving force for redevelopment.

Both past legislative action and the Utah Supreme Court's decision identify blight as the deciding factor in determining if a development should be completed under the redevelopment track. Even with these clarifications, some RDAs continue to use the redevelopment track for projects that do not appear to follow the legislative intent of the law. Our statewide survey of 10 redevelopment projects found that 7 RDAs used TIF to develop undeveloped lands. The goal of these projects appears to be to attract retail development at the lowest possible cost to the municipality. This use of tax increment to develop open space does not appear to fit the Supreme Court's interpretation of the Redevelopment Agencies Act.

Inclusion of Blight Within the Redevelopment Definition Could Reduce Questionable Projects. Currently, Utah's broadly defined redevelopment definition allows RDAs to interpret the uses of the redevelopment track. This interpretation permits tax increment to be used not only for blight removal, but also for modernization, revitalization, the creation of new developments, and for incentives for developer participation.

The purpose of redevelopment is also broadly defined in other western states.

The purpose of redevelopment and the use of tax increment is also broadly defined in other western states. California is among seven states that require quantifiable findings of blight in order for a municipality to use tax increment for redevelopment. Arizona does not allow the use of tax increment for any redevelopment, but Idaho allows municipalities to use tax increment without the consent of any taxing entities. In Washington, the law states that a redevelopment project is "expected to encourage private development within the increment area and to increase the fair market value of real property within the increment area." The county assessors follow up to track the incremental increase of the property value.

With a broadly defined redevelopment track, decisions made by one locality can have negative effects on other localities and various taxing entities. ***Utah Code*** 17b-4-1005 states, "if the development of retail sales of goods is the primary objective of the project area, tax increment may not be paid to or used by an agency unless a finding of blight is made." Two potential negative scenarios of using TIF for retail development as the primary purpose of doing a redevelopment project are:

- Use of tax increment to attract retail development to an undeveloped parcel that may have happened anyway within the general vicinity. In this case, cities compete with one another to benefit from an increase in sales tax revenues.

- Use of tax increment to provide relocation incentives for businesses that are already established in other parts of the state. This does not create any benefits to the state, but, in fact, can have a negative financial affect on taxing entities.

Redevelopment Projects Can Create Value for Taxing Entities

When used according to the Legislative intent, redevelopment can add value to communities.

When an RDA uses TIF to replace unuseable areas of the city with new developments, the community receives several benefits. Taxing entities can receive an increase in revenues when the RDA has finished using the tax increment. Some city services can be reduced by decreasing the risks of fire and crime in older buildings. The city and state can benefit with an increase in sales tax revenue from some of the new developments. Additionally, the redevelopment project can prevent further degeneration of property values in a declining area.

The audit was only able to locate one project that has gone back onto the tax rolls in Utah. Until redevelopment projects fully come back onto the tax rolls, it is difficult to put a dollar amount on the city's return on its investment.

Studies show that decreasing blight has a positive affect on the value of communities.

However, studies that have been done in other urban areas of the country showing generally positive results when a city uses TIF to clean up deteriorated areas. One such study, done by the University of Illinois at Urbana-Champaign Department of Economics, surveyed 89 tax increment financing districts in 67 municipalities. The study shows a positive correlation between factors of blight, such as vacancy rates and median age of structures, and the growth of property values of the tax increment financing district after a redevelopment project.

Roles and Responsibilities Need Clarification

TEC roles and responsibilities should receive greater clarification than currently found in statute. Currently, TECs generally lack the expertise necessary to make independent land-use planning decisions necessary for their understanding of projects and their ramifications on future taxes. Additional clarification may also be needed for the use of legislatively-approved statutory exceptions that can significantly alter taxing structures.

TECs Lack Expertise In Land-Use Planning

The Legislature should consider providing the TECs with additional land-planning resources.

The Legislature should allow TECs to hire an independent consultant, or the Legislature should create a state redevelopment advisory panel to consult with the TECs. Either of these two options will help the TECs in their determination of blight and approving budgets that adequately address the needs of redevelopment projects.

Because voting members of TECs generally lack expertise in land-use planning, it is difficult for them to not only determine blight, but also to determine if budgets will appropriately address the needs of the proposed development. Currently, TECs are being asked to make financial and land-use decisions concerning developments that are proposed by a municipality. The proposal and all of the supporting research comes from the municipality, and the TECs have to make budgetary decisions based on this information.

An independent consultant or a state redevelopment advisory panel could provide TECs with necessary guidance.

An independent consultant or a state redevelopment advisory panel could provide TECs with necessary guidance and possible alternatives in their decision making capacity. Some taxing entity members have told us that they lack expertise in land-use planning, which limits their ability to adequately review and approve findings of blight.

The ***Utah Code*** establishes the makeup of TECs. Figure 10 shows this representation.

Figure 10. *Utah Code* 17B-4-1002(2)(a)(i). Each agency that adopts or proposes to adopt a post-June 30, 1993 project area plan shall, and any other agency may, cause a taxing entity committee to be created.

TECs for city redevelopment projects consists of eight members.

Each taxing entity committee shall be composed of:

- two school district representatives appointed...;
- in counties of the second, third, fourth, fifth, or sixth class, two representatives appointed by resolution of the legislative body of the county in which the agency is located; or
- in counties of the first class, one representative appointed by the county executive and one representative appointed by the legislative body of the county in which the agency is located;
- if the agency was created by a city or town, two representatives appointed by resolution of the legislative body of that city or town;
- one representative appointed by the State Board of Education; and
- one representative selected by a majority vote of the legislative bodies or governing boards of all other taxing entities that levy a tax on property within the agency's boundaries, to represent the interests of those taxing entities on the taxing entity committee.

Individuals who represent taxing entities on TECs seldom have experience in land-use planning issues. Sometimes county or city staff who sit on TECs come from a planning background, but this is often not the case. Listed below are positions held by individuals who usually represent taxing entities on TECs:

Individuals who represent taxing entities on TECs seldom have experience in land-use planning issues.

- Cities – represented by elected officials and/or a staff person
- Counties – represented by elected officials and/or a staff person
- School districts – represented by a school board member and the business administrator
- Utah State Office of Education – represented by its finance director
- Special Service Districts or other taxing entities – represented by a variety of professionals who seldom have expertise in land-use planning

To enhance the TEC's ability in the blight and budget approval process the Legislature should consider:

- requiring the TECs to hire an independent consultant, or
- creating a state redevelopment advisory panel capable of aiding TECs in land-use planning issues.

Other State Advisory Panels Have Been Created to Provide Independent Assessments. The Legislature has created other state advisory panels, boards and commissions, including the following:

- Utah's Quality Growth Commission
- The Motor Carrier Advisory Board
- The Municipal Government Fiscal Committee
- Utah's Health Advisory Council
- The Water Development Coordinating Council

These are just a few examples of state advisory boards. A state redevelopment advisory panel placed under the Governor's Office of Planning and Budget, the Governor's Office of Economic Development, or the Department of Community and Culture could help TECs by providing independent assessments of redevelopment budgets and findings of blight. This independent evaluation could help TECs ensure that the legislative intent of the Redevelopment Agencies Act is being followed and that redevelopment practices are benefitting local communities and the state as a whole.

The Legislature could consider establishing the requirements for membership of this panel by profession and/or representation by geographic location and then have the Governor, with the consent of the Senate, appoint the members of this independent panel. This panel should be able to make professional judgements and provide advice to the TECs concerning project area plans, budgets, and findings of blight without political pressures from municipal governments.

Exceptions in Statute May Need Further Clarification

The Legislature should clarify that exceptions only be approved if necessary to eliminate blight.

The Legislature should also consider reevaluating the exceptions to a project's time constraint and size allowed in the Utah Code to further enhance control of redevelopment projects in the state. Currently, three exceptions in statute allow redevelopment projects to exceed statutory restrictions if approved by the TEC. The Legislature should clarify that

the TECs should only approve these exceptions if it is directly related to eliminating blight.

The first two exceptions allow projects to exceed the amount of time that tax increments can be provided to an RDA and expand the size of the redevelopment project area.

The first two exceptions allow projects to 1) exceed the amount of time that tax increment can be provided to an RDA, and 2) expand the size of the redevelopment project area. For example, if tax increment is to be paid to an RDA, the ***Utah Code*** restricts the amount of time that tax increment can be paid to the RDA to 25 years, and the project area size to 100 acres. According to ***Utah Code*** 17B-54-403, these two restrictions can be removed with TEC consent.

Taxing entities can be adversely affected when tax increment is allowed to be paid to an RDA for extended periods of time or when redevelopment project areas become too large. This is because property tax revenues generated for the taxing entities are redistributed to the RDAs through TIF.

To enhance overall control of redevelopment projects, the Legislature should consider clarifying these exceptions and requiring the TECs to ensure that the exceptions only be used if necessary to eliminate blight. Since 2000, TECs have voted on 34 redevelopment projects; seven of them have exceeded the 100-acre limit and two were approved to exceed the 25-year limit. Therefore, 26 percent of these redevelopment projects have been approved to exceed one of these two exceptions.

The third exception allows the TEC to waive Legislative restrictions which prevent RDAs from exceeding allowable percentages of TIF when compared to the total taxable value of property within RDA boundaries.

The third exception, as cited in ***Utah Code*** 17B-4-503, allows the TEC to waive Legislative restrictions which prevent RDAs from exceeding allowable percentages of TIF, when compared to the total taxable value of property within RDA boundaries. When a proposed redevelopment project is being considered, the total taxable value of property within the municipality is compared to the amount of combined incremental value of the RDA. If, by comparison, the incremental value exceeds 10 percent of total taxable value within the municipality, then the project cannot be approved without the TEC consenting to waive this restriction.

For example, if the total taxable value of property within a municipality is $100 million when a redevelopment project's budget is being considered, the combined incremental value of all of the municipality's redevelopment projects cannot exceed $10 million, unless the TEC consents to waive the restriction. This restriction places a control on the size of all redevelopment projects within a single

municipality. The Legislature should consider clarifying this exception as well to ensure that the TEC only consents to waive this restriction if it directly relates to eliminating blight.

Clarifying these three exceptions will help ensure that redevelopment efforts are serving their intended purposes.

Clarifying these three exceptions in the ***Utah Code*** will strengthen control over the use of redevelopment practices in the State of Utah and help assure that redevelopment projects are serving their intended purposes.

Greater Oversight Is Needed for Redevelopment Projects

TECs don't provide on going oversight of redevelopment projects beyond approval of budgets and findings of blight.

Beyond the initial approval of budgets and findings of blight, TECs do not provide ongoing oversight of redevelopment projects. Utah's current redevelopment statute requires a finding of blight for redevelopment projects to be approved by the TECs, but leaves the direction of the redevelopment projects to the discretion of RDAs.

One problem that exists partly due to the lack of oversight is that some RDAs receive more tax increment than needed to pay project and administrative costs. The Legislature should consider providing ongoing oversight of redevelopment projects and determine if RDAs should receive more tax increment than they need to pay project related expenses.

No Oversight Exists for Redevelopment Projects after the Initial TEC Approval

Once a redevelopment project is approved, little external oversight exists. On occasion, TECs will approve motions to reconvene in a predetermined number of years to assess the project's progress, but often the TEC does not follow through.

The Legislature may wish to consider requiring TECs to meet at predetermined intervals (for example, biannually) to assess project progress. At these meetings, the TEC should review the redevelopment project and determine if it is following the plan and approved budget. These meetings could also be used to gain TEC approval for any significant changes to the budget or negotiate any needed changes to the redevelopment plan.

We did not find any evidence of continual oversight by the TECs beyond approval of preliminary budgets and initial findings of blight for the 10 redevelopment projects in our survey. The TEC of one of the surveyed projects approved a motion in 1997 to meet again after five years to review receipts and expenditures; however, the committee never reconvened. TEC membership typically changes with each meeting, while the RDA staff typically remains more constant. Thus, taxing entities rely heavily on the RDA staff to schedule future meetings. In the case of the aforementioned project, the RDA never scheduled the planned meeting five years after the project's approval.

TECs typically do not meet after the project and budget have been approved.

RDAs Need Greater Financial Controls

Some city officials claim that they need to consistently overestimate their budgets that are submitted to their county auditors in order to collect all tax increment generated by the redevelopment project. Some officials believe they are entitled to the entire increment, irrespective of the amount they actually need for improvement and administrative costs for the projects. Additionally, several RDAs include a clause in their budget reports that states they intend to collect the amount they need, or the entire tax increment, whichever is greater.

Some city officials believe they are entitled to all tax increment generated, regardless of the project's costs.

Utah Code 17B-4-1303 stipulates that all RDAs should submit an estimate of tax increment to the county auditor to be paid to the RDA to cover expenses for the ensuing year by November 1. However, the statute does not stipulate how much of the tax increment the county auditor should distribute to the RDA nor does it state what the county auditor should do if the RDA requests more tax increment than it needs. The county auditor is required to fill out tax form 695A, which informs the auditor that he/she should give the city the amount the RDA requests or the entire tax increment generated by the project in that year, whichever is less.

Some RDAs admit that they have intentionally overestimated their annual report budgets that they submitted to the county auditor in order to not leave any tax increment "on the table." Four of the largest RDAs in the state each claim to overestimate their budgets by 10-20 percent each year.

City officials have stated that they overestimate their budgets by up to 20%.

Some county auditors admit that this is a common practice among RDAs, but they don't have the resources to prove the RDA actually needs less than the amount that they request. The county auditors from three of the four counties we surveyed will typically pay the RDAs the amount they request. One county auditor will give the RDA the amount that he believes the RDA needs to pay the necessary costs.

If an RDA were to receive more tax increment than it actually needs to pay project costs it should return the excess to be distributed among the taxing entities. When RDAs keep excess tax increment:

- Taxing entities are not receiving money that they should be receiving.
- RDAs are collecting more money than they need and using money that should be going to the taxing entities to fund other projects.

The Legislature should determine if RDAs should receive more tax increment than they need to pay project-related costs.

While the audit did not find evidence that the RDAs are using tax increment for anything other than RDA project expenses or received more tax increment than the TEC has approved, we believe that there should be greater control in order to ensure that RDAs are not receiving more tax increment than has been approved for a specific project for which they collect tax increment. We were also unable to determine the exact amount that RDAs are actually overestimating their budgets because most cities do not provide a separate list of redevelopment project expenses.

The Legislature should consider providing additional oversight of redevelopment projects by the TECs.

In order to resolve these concerns and increase fiscal responsibility, we recommend that the Legislature determine whether an RDA should be allowed to use tax increment collected from one project area to pay expenses in other project areas. Additionally, if the Legislature decides that RDAs should not receive additional tax increment beyond individual project costs, RDAs should be required to submit a list of expenses from the prior year with the budget request for the ensuing year to the county auditor. This will provide the county auditors with documentation and help improve financial control of RDAs by ensuring that any excess tax increment funds are returned to the county auditor to be dispersed to the taxing entities.

Recommendations

1. We recommend that the Legislature consider clarifying the definition of redevelopment in the ***Utah Code***, determining whether the redevelopment:

    - should only be used for the purposes related to removing blight, or

    - can be used for additional purposes beyond the removal of blight, such as initial development.

2. We recommend that the Legislature consider:

    - allowing the taxing entity committees to hire an independent consultant with expertise in land-use planning, or

    - establishing an independent state redevelopment advisory panel.

3. We recommend that the Legislature clarify when taxing entity committees can approve exceptions to ***Utah Code*** 17B-4-403(m)(i)(ii) and ***Utah Code*** 17B-4-503(2)(a) by requiring the exceptions to only be approved when necessary to eliminate blight.

4. We recommend that the Legislature consider requiring taxing entity committees to meet on projects they approved at pre-determined intervals (for example, biannually) to assess the projects' progress and approve any significant changes to the projects' budget.

5. We recommend that the Legislature consider requiring RDAs to maintain separate expense records for each redevelopment project.

Chapter IV
Other Issues That May Need to Be Addressed

The overriding importance of blight remediation has made some issues secondary that can only be effectively addressed if blight concerns are satisfied. Once the blight statute has been clarified to the Legislature's satisfaction, further clarification of Taxing Entity Committee (TEC) representation, project mitigation, and land assembly could be useful. The Legislature should revisit the representation of the TECs and consider requiring a supermajority vote of three-fourths of the TEC members for a redevelopment project to be approved. Additionally, the Legislature may wish to review RDAs use of land assembly.

Representation on Taxing Entity Committee Needs to Be Revisited

All taxing entities do not have an equal voice on the TECs. RDAs can mitigate with taxing entities; however, this practice can influence votes for a proposed project. Unbalanced representation on the TEC can prevent an individual taxing entity from having an impact on project decisions. The voting history shows that all but one of the development projects proposed since 2000 have been approved. Some projects that have been approved consist of significant areas of undeveloped lands.

The Legislature should consider changing the process in which decisions are approved in order to enhance the representation of individual taxing entities. The Legislature should require RDAs to mitigate with all taxing entities based proportionally on the normal property tax distribution or not mitigate with any taxing entities. In addition, the Legislature could require a supermajority TEC vote of three-fourths of the members for approval of redevelopment budgets and findings of blight if a redevelopment project is going to use tax increment financing (TIF). This could help give individual taxing entities a stronger voice.

Mitigation Can Influence Taxing Entities Votes

Utah Code **permits RDAs to mitigate tax increment with taxing entities.**

Utah Code 17b-4-1008 allows RDAs to mitigate the financial effects of redevelopment with taxing entities. RDAs can provide taxing entities with mitigation funds to offset their potential loss in revenue that will go the RDAs as TIF. When an RDA mitigates with taxing entities, it promises to share in the growth of the redevelopment project if the taxing entities will vote in favor of the project. RDAs paid $3.6 million in mitigation to five school districts in the state in 2004.

Mitigation funds have been used by school districts to pay for teachers' and administrators' salaries, building improvements, additional security in schools, additional administrators, and capital outlay. The funds have also been used to offset the cost of increased services of residential growth that was created, in part, by redevelopment projects.

Mitigation funds are used to pay such things as building improvements, salaries, and increased school services.

While mitigation can provide a financial benefit to the taxing entities, it may influence them to vote for a proposed project, even though a project may not be true redevelopment and may not benefit the state. This practice can be unfair to the taxing entities, particularly the special service districts, if RDAs only mitigate with one taxing entity to obtain the necessary votes to get a project approved. For example, under the current TEC setup, the RDA can essentially influence the votes of the school district and the USOE in order to receive the five votes necessary for the project to be approved. This practice increases the inequity of an already unbalanced TEC.

In order to help make the process of establishing a redevelopment project more equitable, and help ensure that only proposed projects that meet statutory requirements are approved, the Legislature should require RDAs to mitigate with all taxing entities based proportionally on the normal property tax distribution or not mitigate with any taxing entity.

In some situations, certain taxing entities may be impacted more than others. For example, a redevelopment project may create additional housing surrounding the project area, which would result in a potentially unbalanced financial burden for a school district. An RDA may believe it is necessary to compensate a taxing entity for extraordinary costs due to the redevelopment. In such cases, a supermajority approval of the TEC

should be required if an RDA does not mitigate with all of the taxing entities for each redevelopment project.

The Current Structure of the TEC, Does Not Give All Taxing Entities an Equal Voice. Of the five entities represented on a TEC, two have only one vote each, while the other three have two votes each. TECs should not be structured to give individual taxing entities control over project decisions. Instead, each affected taxing entity should have a voice. A supermajority vote of three-fourths of the taxing entity members could help give individual taxing entities a stronger voice in the decision making process and would help to ensure that redevelopment projects are fulfilling the legislative intent of the Redevelopment Agencies Act.

TECs Have Approved Projects That Include Undeveloped Land

The voting history shows that TECs have approved all but one proposed project as redevelopment even though some projects have been approved that contain undeveloped land within the redevelopment boundaries. The voting trends of TECs were reviewed for all proposed redevelopment projects since 2000 and found that only one failed to get the approval of the TEC.

The project must have a majority vote of the TEC to be approved.

For redevelopment budgets and findings of blight to be approved by the TEC, an affirmative vote of a majority of a quorum present at the TEC meeting is required. A project fails if a majority of TEC members vote against the project or if the same number of members that voted for the project vote against it. For example, if four TEC members vote in favor of the project and four members vote against the project, the initiative fails.

Figure 11 shows the voting history of the TECs for redevelopment projects since 2000. Fifteen of the 34 redevelopment projects, or 44 percent, have been approved unanimously by TECs since 2000.

Only one out of 34 projects has not passed since 2000.

Figure 11. History of Voting Record for TECs. This figure shows the voting record of TECs for redevelopment projects proposed by RDAs throughout the State of Utah since 2000.

Unanimous Approval	15	44%
1 Dissenting Vote	9	26
2 Dissenting Votes	4	12
3 Dissenting Votes	5	15
4 (or more) Dissenting Votes	1	3
Totals:	**34**	**100%**

Source: Utah State Office of Education.

Five current redevelopment projects would not have passed if a supermajority of 3/4 was required.

Looking at the voting history in the above figure, if a supermajority vote of three-fourths had been required, the five projects with three dissenting votes may not have been approved.

Of these five projects, two are areas in which the majority of land is undeveloped. The other three project areas consist mostly of previously developed land and blighted areas. A supermajority vote may have prevented the two projects with significant areas of undeveloped land from being approved. This problem could also be remedied without the need of a supermajority vote by more clearly defining the purpose of redevelopment in the state and by tightening the definition of blight to reflect the legislative intent of redevelopment.

Cities Need an Instrument for Land Assembly

Senate Bill 184 of the 2005 Legislative Session ended the use of eminent domain as a tool for redevelopment by municipalities.

In the 2005 Legislative General Session, Senate Bill 184 ended the practice of municipalities using eminent domain for redevelopment projects. Acquiring land can be essential in making some redevelopment projects viable. If the Legislature determines that redevelopment's sole purpose is to remove blight, they may also want to consider if eminent domain or other instruments should be made available to municipalities for the purposes of land assembly to assist in blight removal.

In the summer of 2005, the United States Supreme Court ruled that it is legal for eminent domain to be used in conjunction with redevelopment projects, but the decision of whether and how to use eminent domain was left up to state legislatures. In *Kelo vs. City of New London*, the US Supreme Court held:

The U.S. Supreme Court ruled that the use of eminent domain for redevelopment projects is a decision for individual states.

> The disposition of this case therefore turns on the question whether the City's development plan serves a "public purpose." Without exception, our cases have defined that concept broadly, reflecting our longstanding policy of deference to legislative judgments in this field.

There are advantages in allowing municipalities to use eminent domain for the purposes of redevelopment. Eminent domain could be particularly advantageous in the following situations:

- Death of a property owner
- Failure to locate a property owner
- An unreasonable "hold-out" by a property owner

Eminent Domain Can Be a Useful Tool for Municipalities. There have been certain circumstances that a piece land will sit vacant for a period of time and a municipality is not able to do anything with the land due to the fact that an owner is unable too be located. Additionally, there are issues of an "unreasonable" hold out. In these instances, property owner(s) refuse to sell at a reasonable price in order to take advantage of the perception of municipalities having unlimited financial resources.

Eminent domain can be useful for certain redevelopment projects.

In discussions with redevelopment professionals, we found that most believe eminent domain can be an important tool in the redevelopment process. They contend that eminent domain may be necessary in a limited range of scenarios for municipalities to assemble parcels of land for redevelopment that would benefit the community.

Only one of the 10 redevelopment projects surveyed actually used eminent domain. This project took property for the purpose of redevelopment, and the municipality's actions were upheld in court. After Senate Bill 184 was signed into law, the municipalities could no longer use eminent domain. They are now faced with a situation in which they feel property owners are holding the development hostage by asking for more than fair market value.

No statistic or number has been maintained as to the precise number of times the threat of eminent domain for presumed tax advantages has been used for redevelopment purposes, but redevelopment officials have told us that the actual use of eminent domain is rare. Neither the Utah State Courts nor the State of Utah Property Ombudsman offices collect information as it relates to the use of eminent domain for redevelopment projects.

The Legislature could authorize other tools for land assembly other than eminent domain.

Other than eminent domain, there are other tools that municipalities use to help assemble land for redevelopment projects. If the Legislature decides that eminent domain should not be used for redevelopment, then municipalities will have to continue to rely on other tools such as:

- **Market-Based Solutions** – include a municipality purchasing property to assemble land for redevelopment.

- **Lease Options** – include long-term leases that are signed with a developer and property owner for the proposes of redevelopment.

- **Land Swaps** – include instances in which a developer and property owner trade property owned by the developer for property desired by a developer for redevelopment.

The primary purpose to any approach is to provide an equitable means for municipalities to assemble land for the purposes of redevelopment. We recommend that the Legislature consider if eminent domain, in some situations, serves a legitimate public purpose for redevelopment projects.

Recommendations

1. We recommend that the Legislature require RDAs to mitigate with all taxing entities based proportionally on the normal property tax distribution or not mitigate with any taxing entity.

2. We recommend that the Legislature consider requiring a supermajority approval of the TEC if an RDA mitigates other than all of the taxing entities involved in a redevelopment project.

3. We recommend that the Legislature consider requiring a supermajority vote of three-fourths of taxing entity members for findings of blight and project budgets to be approved.

4. We recommend that the Legislature consider if eminent domain serves a public purpose for redevelopment projects.

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Redevelopment Projects Surveyed

The audit surveyed 10 post-1993 redevelopment projects with values of greater than $1 million. Nine of the projects were randomly selected and one was specifically requested to be reviewed by Legislators. The selection includes both rural and urban projects. We surveyed the area in order to determine the amount of undeveloped land included in the project area. We surveyed the projects in order to determine the purpose, size, and cost of each project.

Farmington Station Park Redevelopment Project

Plan Adopted May 2005

Size: 119 Acres

Total Length of Project: 20 Years

Total Approved TIF Budget: $18,500,000

Logan North Main Street Redevelopment Project

Plan Adopted September 2000

Size: 24 acres

Total Length of Project: 15 years

Total Approved TIF Budget: $1,539,893

Pleasant Grove 700 South Project

Plan Adopted October 1997

Size: 49 Acres

Total Length of Project: up to 12 years

Total Approved TIF Budget: $2,799,715

Price City/Carbon County Airport Road Redevelopment Project

Plan Adopted June 2002

Size: 482 acres

Total Length of Project: 12 years

Total Approved TIF Budget: $1,163,555

Riverton Redwood Road South Neighborhood Redevelopment Project

Approved September 1997

Size: 49 acres

Total Length of Project: 20 years

Total Approved TIF Budget: $2,671,753

Salt Lake City West Capitol Hill Redevelopment Project

Approved August 1996

Size: 87 acres

Total Length of Project: 20 years

Total Approved TIF Budget: $8,199,160

Springville Frontage Road Redevelopment Project

Approved December 1999

Size: 119 Acres

West Valley City East 3500 "A" Redevelopment Project

Approved July 1999

Size: 64 Acres

Total Length of Project: 20 Years

Total Approved TIF Budget: $2,661,949

Ogden City River Project

Approved July 2002

Size: 52 Acres

Total Length Approved: 15 years

Total Approved TIF Budget: $20,991,224

Bluffdale Gateway Redevelopment Project

Plan Adopted April 2000

Size: 140 Acres

Total Length of Project: 15 Years

Total Approved TIF Budget: $12,500,000

Agency Response

February 10, 2006

John Schaff
Legislative Auditor General
130 State Capitol
P.O. Box 140151
Salt Lake City, UT 84114-0151

Dear Auditor General Schaff:

These comments are in regards to your office's Performance Audit on Redevelopment Agency Practices dated February 6, 2006 on behalf of the Utah Association of Counties (UAC). All comments in this response are from a working draft of the audit. UAC realizes that some of the concerns expressed in this response may be addressed in the finalized audit.

The Utah Association of Counties is generally pleased with the findings of your performance audit and feels that your careful, thorough work has shed light on a program that is in much need of reform. Hopefully, the results of this audit coupled with the recently introduced SB 196 – Revisions to Redevelopment Agency Provisions will go a long way towards correcting redevelopment agency (RDA) abuses.

The Utah Association of Counties would like to touch on three issues raised in the audit, namely: 1) the role sales tax revenues plays in RDA abuse, 2) the effectiveness of the taxing entity committee (TEC) to make sophisticated decisions regarding a project and its budget, and 3) the practice of overestimating an RDA project's budget.

Sales Tax Revenues Role in RDA Abuse
Included in the scope of the audit was a request to analyze the role sales tax plays in the creation of RDA projects. The audit did an excellent job in identifying RDA abuses in the name of blight, but failed to adequately explain the motivation behind those abuses. UAC feels strongly that RDA abuses are committed primarily in an effort to chase sales tax revenues.

UAC would have been interested to see the audit address the percentage of RDA projects instituted for commercial purposes. UAC would also have liked to have seen the audit consider the percent sales tax revenue makes up in the total budget of those cities that have aggressively sought out RDA projects. UAC believes that study would show an ever-increasing reliance on sales tax as a source of revenue for those municipalities.

Effectiveness of Taxing Entity Committees
The audit highlighted several flaws concerning the taxing entity committee's (TEC's) ability to be effective. Several of these issues are addressed in SB 196. SB 196 would require a super majority vote from the TEC to approve a project's budget. SB 196 also prohibits the RDA from soliciting taxing entity support for projects by offering selected entities mitigation revenues.

Unfortunately, the timing of the audit's release makes it difficult for SB 196 to address some of the issues raised in the audit that the coalition of city, county, school, and taxpayers who worked on the bill didn't consider. While the ideas of expanded training for TEC membership, independent expertise made available to the TEC, and detailed annual or biannual reviews of the RDA project and its budget may have been highlighted too late to be included in SB 196, UAC feels that these ideas deserve serious consideration.

Overestimating the Budget
The audit detailed several instances where RDAs were overestimating the budget for projects. This is troublesome because it means that tax increment that would otherwise be going towards schools, county health and human services, and other worthwhile services is instead going into an RDA project already fully funded. The audit suggested detailed cost analysis of removing blight as well as stricter accounting practices that separate each RDA project within an RDA. UAC wholeheartedly supports these recommendations and hopes that the Legislature will consider them in either SB 196 or future legislation.

The Utah Association of Counties is encouraged that 2006 will be the year that real RDA reform will take place thanks in no small part to the hard work of your office in producing this audit. UAC would also like to thank the efforts of Senator Bramble, the League of Cities and Towns, the State Office of Education, the UEA, the Taxpayers Association, and all other parties who have worked together to produce SB 196.

Sincerely,

L. Brent Gardner
Executive Director
Utah Association of Counties

February 14, 2006
86 N. University Ave., Suite 240
Provo, UT 84020

Wayne Kidd
Audit Supervisor
Office of Legislative Auditor general
W315 State Capitol Complex
Salt Lake City, UT 84114-0151

Re: A Performance Audit of Redevelopment Agency Practices, 2/10/06 Exposure Draft

Dear Mr. Kidd:

On behalf of the Utah Redevelopment Association, we have appreciated the opportunity to comment on the pre-exposure draft of the Performance Audit of Redevelopment Agency Practices. We offer these comments in a spirit of trying to deal in facts, arrive at truth, and work for the best interests of the people and communities of Utah. This begins by summarizing how SB 196, which redevelopment officials have formulated in partnership with legislators and other stakeholders, responds to recommendations in the audit report. We then go on to offer thoughts on a wide range of topics in the report.

A. Items Being Addressed in 2006 Legislative Session

SB 196, sponsored by Senator Bramble, contains major revisions to the current RDA Statute that implement many of the recommendations outlined within the audit report. Some of these changes area as follows:

I. Recommendation: Strengthen the blight determination process

SB 196 strengthens the blight determination process by revising the blight definition and the process. The bill makes revisions which eliminate project areas that are predominantly greenfields, defines what a greenfield area is, amends the 50/50 rule to a 66% requirement, adds clarifying language to the required blight factors, and requires the reduced blight factors to be found on 66 percent of the parcels within a proposed project area. In addition, SB 196 requires a blight study to be reviewed and approved by the taxing entity committee, as part of the approval process.

It should be noted that of the 10 project areas surveyed under the performance audit, seven would not qualify under the amended blight provisions recommended in SB 196.

II. Recommendation: Improvement of redevelopment practices

SB 196 separates the RDA Statute into three tracks. These tracks include redevelopment, economic development, and community development tracks. Each track has been redefined within specific requirements and restrictions. Many of the restrictions will provide greater oversight of the redevelopment process. Some of the changes include more information for and meetings with the taxing entity committees, an opportunity for the taxing entities to "opt-in" on participating in projects in the community development track (see below), and better control over the agency and proposed budgets.

III. Recommendation: Other areas that need to be addressed

SB 196 would require RDAs to mitigate with all taxing entities, or not to mitigate with any taxing entity. In addition, the bill will require a supermajority vote on any redevelopment or economic development project area. The third track, which will be known as the community development track, will require an agency to formalize an agreement with each taxing entity allowing them to "opt-in" for participation within the project area.

It should be noted that SB 196 does not allow the RDA the use of eminent domain in any project area.

B. Benefits of Redevelopment & Tax Increment Financing

The report outlines several benefits associated with redevelopment (p.5). In addition to those listed, public education often is benefitted by the additional income tax revenues which some redevelopment projects bring. There are also very real but difficult-to-measure benefits of removing blight through redevelopment intervention. Perhaps chief among these is the value of halting the decline of an area, including erosion of the property tax base before it becomes nearly insurmountable. There are also non-monetary, quality-growth-type benefits such as environmental and public health impacts, and improved access to goods and services for the large numbers of people (especially children and elderly) who don't have easy access to automobiles.

Please note also that many redevelopment projects have been sending new property tax revenues to the taxing entities for several years, by way of the Statute's incremental rollback, or "haircut", provision (p. 6). In other cases, tax revenues have not increased, but tax rates have dropped in response to a stronger tax base. Either way, the taxpayers benefit.

The audit report notes that development, including cleanup of deteriorated areas, often occurs without redevelopment intervention (p. 21). Indeed, in many circumstances that is correct. No one has suggested that *no* development will ever occur without tax increment financing. Clearly, TIF should be reserved for a narrow range of situations which require intervention.

C. Redevelopment of Undeveloped Land

The report devotes considerable attention to the issue of "redeveloping" previously undeveloped land, including "greenfield" areas. May we respond to several items from the report relating to undeveloped land:

- The statement on p. 12 that, of the $73 million of increment for the 10 surveyed projects, $25 million will go toward developing undeveloped parcels, is based not on anything in the record for these projects but on the unsupported assumption than increment in these projects will be used equally on developed and undeveloped parcels.

- Throughout a discussion of redevelopment on undeveloped land (pp.12-14), it is always important to distinguish between never-developed "greenfields" versus abandoned industrial sites or neglected vacant lots in urbanized areas.

- Likewise, some building foundations, such as at abandoned industrial sites, are a valid form of "buildings or improvements" often associated with blight. Consequently, they should be included among the types of "buildings or improvements" which may constitute blight (pp. 10-12).

- Also, although there is sometimes undeveloped acreage in developed parcels, breaking out the undeveloped versus developed portion (p. 15) could be quite subjective and complex. For example, on a blighted commercial property, is the old parking lot considered "developed" or "undeveloped"? Or for a blighted house on a one acre lot, where does the house's yard end and the "undeveloped" land begin?

- If someone were only to look at the photos of the surveyed projects in the Appendix (pp. 45-50) without reviewing Figure 6 (p. 15), it would be easy to draw the conclusion that nine of the ten projects are primarily undeveloped land on the urban fringes. However, as Figure 6 shows, none of the projects is predominantly undeveloped, although some contain large undeveloped areas. As just one example, the photo of the Ogden project -- *a declining area adjoining Ogden's central business district* – emphasizes a large vacant lot in the foreground, although only six percent of the project is undeveloped and the project includes about 100 houses and many other buildings. In this sense, the photos give a skewed impression of the kinds of areas being redeveloped.

D. Blight and the Purposes for Redevelopment

The whole issue of defining blight is one of the thorniest parts of the Redevelopment Agencies Act. To the analysis of the audit report, we would add several key points:

- Genesis of blight concepts in Utah law. Blight was introduced in Utah's original

redevelopment statute mainly to establish criteria for determining where the last-resort eminent domain tool would be justified. Blight factors were not intended to be the sole basis for determining locations where tax increment financing is appropriate. With eminent domain no longer allowed under the Statute, much of the original basis for documenting signs of blight no longer exists. Over time, the law and redevelopment practice has drifted more and more into using the blight factors (p.17) to determine if a location is right for use of tax increment financing.

- Blight factors tightened since 1991 RDAs audit. The need for tight, specific factors in the Statute to indicate the presence of blight was a major issue in the 1991 redevelopment agencies audit. Today's redevelopment statute is much stronger in this area than was the law in 1991 and does a much better job of differentiating blighted and nonblighted properties. Nevertheless, there is still room for improvement.

- Definition of "redevelopment" sheds light on Legislative intent. In its definition of "redevelopment" (p. 24), the Statute outlines the kinds of activities redevelopment is intended to encompass. This range of activities suggests that the blight factors which appear later in the Statute are *not a narrow list of problems which redevelopment intervention is intended to solve, but rather some basic, observable indicators that deeper blighting conditions exist.* The list of activities in the redevelopment definition has been criticized as being overly broad, but the list must of necessity encompass the variety of legitimate blight situations which exist from community to community.

- Correcting blight means identifying & solving underlying problems. True blight is more than simply abandoned mobile homes, junk cars and weedy lots. These conditions can be cleaned up without incurring the kinds of redevelopment costs for which the Legislature instituted tax increment financing. But they won't stay cleaned up unless the underlying problems are solved. *Dealing with these underlying problems is the reason for redevelopment and tax increment financing.* It is plain that Legislative intent is to remove blight at its roots. The root of blight lies in circumstances which won't resolve themselves in the short term or through the normal workings of market forces; hence, the need for modernization, revitalization, creation of new development or previously-developed sites, and incentives for developer participation (p.26).

For example, a neglected, vacant parcel of ground in a downtown may be that way because it is too small to accommodate an efficient, modern building. Yet adjacent parcels still may contain buildings which, though obsolete in many ways, retain enough market value to make them impractical for a private developer to buy and assemble into a larger development parcel. It's too easy to just go out to a larger, cheaper suburban parcel and build new there, even with the cost of extending services to the outlying parcel. Meanwhile, the vacant downtown parcel grows worse and worse, infrastructure investment in the downtown is wasted, and over time vacancy spreads to other downtown parcels.

Some theorize that if one waits long enough, downtown properties will decline to a "rock-bottom" state in which someone can afford to buy them up to assemble a site for new development. But places such as downtown Detroit suggest that it is extremely difficult to attract the capital and other forces needed to bring them back once they are so far gone.

Blight analysis – focus less on checklists, more on analysis (pp. 17-20). If the blight analysis is limited to a simplistic checklist of whether physical evidences of blight are present or not, then expect conclusions which have little to do with the actual need for redevelopment intervention. As enticing as it may be to try to compress the entire blight analysis process down to a foolproof objective system, "untouched by-human hands," so to speak, such an approach is arbitrary and deceptive. There will always be an element of personal judgment in the process. Quantitative analysis has its place in the process, but a process that seeks to achieve impartiality in simply plugging in "objective" data at the front end and then living or dying by the results that come out the other end only pretends to be objective. The subjectivity may lie, say, in picking the number of blight factors which must be met, or in the way those factors are defined and applied, but the subjectivity will always be there. For this reason, some lack of uniformity in how blight is declared is inevitable.

At least as important as meeting an arbitrary number of blight factors is the *degree* to which each factor exists. A place with only one or two factors present, but where those factors are present in the extreme, may be much more appropriate for redevelopment than a place where many factors are present to a nominal degree.

Likewise, to criticize using a single land condition to meet multiple blight factors (p. 18) is to miss the point of the blight analysis – that is, to determine if area circumstances are such that redevelopment intervention is appropriate. Problems are almost always multifaceted, so naturally the same problem is expressed through multiple blight factors.

This would argue for blight analyses to pay more attention to explaining the *connection* between *physical evidences* of a problem and the *actual problem* – and, in turn, to explaining how redevelopment intervention can hope to solve the underlying problem. Rather than endlessly revising blight factors, the law should focus on specifying a required level of analysis that must be met for relating observable conditions to an area's root problems. In a cursory way, the brief discussion of the vacant downtown block in the paragraph above starts to get at the sort of analysis which RDAs should provide to taxing entity committees.

- Stronger "but for" analysis. A more rigorous "but for" test, as called for in the audit report, is an excellent recommendation. However, the answer to the question, "but for the involvement of the RDA would this project exist?", is not a question which cost-benefit analysis is well suited to answer. Cost-benefit analysis is good for lining up the

quantifiable costs of an enterprise alongside the quantifiable benefits and seeing if the benefits exceed the costs. However, cost-benefit analysis rarely accounts well for indirect or intangible costs and benefits, which are often the most important costs and benefits to consider in a redevelopment project. Furthermore, the "but for" question asks whether normal market forces will solve a development problem without some kind of redevelopment catalyst – whether the proposed redevelopment catalyst is both *necessary* and *sufficient* to achieve the desired outcome. "But for" is more of a supply-and-demand question than a cost-benefit question. Requiring RDAs to explain fully the need for RDA-type intervention in a project greatly strengthens redevelopment decision making. Solid "but for" analysis might even take the place of reviewing an esoteric list of blight factors.

E. Taxing Entity Committee

TEC, the arbiter of redevelopment project merit. The fact that only one proposed project has failed to receive TEC approval since 2000 (p.37) has a lot to do with RDAs generally doing their homework , e.g., screening out questionable projects before they reach the TEC or modifying projects in response to taxing entities' feedback. This isn't to say that all RDAs perform their roles to a uniformly high level of proficiency; some projects will always be better-conceived than others. Furthermore, reasonable minds will differ sometimes on what is appropriate. However, TEC's have been set up as the arbiters of whether a redevelopment project is meritorious or not, and the high TEC approval rate is an important indicator that redevelopment projects have been "genuine" (p.38).

TEC voting - equal representation versus proportional representation. Some contend that taxing entities' votes on the TEC should be roughly proportional to their proportion of the total property tax levy in the agency boundaries. The present system of representation on the TEC is an attempt at this. Requiring supermajority votes may give more leverage to the smaller entities, but it tends to do so at the expense of the proportional voting which larger entities' have had for several years.

TECs and technical expertise (pp. 27-29). Blight determination actually is a function quite separate and apart from land use planning – although planners may often possess the skills necessary for both. As the report suggests, TECs also need some expertise to determine if the RDA's proposed financing option (project area budget) will aid in the elimination of blight. Most or all county governments in Utah have planners and finance people, or access to expertise through their association of governments. Therefore, for many TECs the issue raised in the audit report may be more a matter of how taxing entities draw upon their expertise and of how they select their TEC representatives, rather than of not having the expertise.

The report proposes a state advisory board to assist TECs. How might such a board function? Would it need to be prepared to meet whenever a TEC has business to transact? Would it be expected to travel around to participate in all the TEC meetings? Would it have a staff to prepare

reports? They questions need further exploration.

F. Taking Increment

There seems to be some misunderstanding on the point about RDAs allegedly taking more increment than they need – suggesting that RDAs are misusing these public funds (p.31). While RDAs sometimes try to structure their November 1 requests to the county for increment in a way that utilizes all available increment, this is done for two legitimate reasons: a) it is an attempt to pay off redevelopment project expenses as early as possible, thus hastening the day when tax increment is no longer needed and the monies can flow to the normal taxing entities; and b) RDAs often undertake projects for which there is little hope of ever recovering via tax increment the entire amount they or other parties have advanced to the project, but they do want to be sure to recover as much of their cost as possible via increment. Often these costs are covered initially by federal grants and other sources. To the extent they can be reimbursed by tax increment, the recovered funds can then be revolved for use on other redevelopment projects. RDAs should not be taking increment for purposes other than projects, housing, or project administration. As with cities and other governmental entities, financial auditing and other safeguards already are in place to protect against misuse of funds.

If the audit has found no improprieties in the way RDAs use tax increment (p. 33), why is this raised as an issue in the report?

G. Truth in Taxation, Property Valuation

The audit report has not addressed the variation across the State in how counties treat redevelopment-induced property valuation growth with regards to Truth in Taxation. Some counties treat this growth as "new growth", while others do not. The differences in interpretation mean that taxing entities in some counties automatically enjoy the increased tax revenues brought about by redevelopment, while others merely see a reduction in their tax rate. Taxpayers benefit either way, but the failure of taxing entities in some counties to receive the increased revenues has led to much of the outcry over redevelopment in recent times. RDAs believe the intention of the law has always been for taxing entities to receive the increased revenues. SB 196, currently before the Legislature, would clarify the law on this point.

Also: this practice by some counties of reducing tax rates rather than increasing revenues may be skewing downward some figures in the audit report re: the benefits produced by redevelopment. To fully account for fiscal benefits of redevelopment, the audit would need to consider how redevelopment has reduced or stabilized tax rates.

RDAs often make large investments in removing blight and growing the tax base with no assurance that the owner of the benefitting properties won't turn around and apply for equalization. When the county board of equalization approves such requests, it can be much more difficult for the RDA to recover its investment as planned through tax increment. It also

delays the revenue benefits to the other tax entities. At least, there should be provision for RDAs to be notified of equalization applications, so they can attend the hearings and be sure all sides are represented.

H. Tax Increment for Housing

The requirement that 20 percent of a project's tax increment be pledged for affordable housing (p. 7) has little policy relationship to resolving blight. Yet it has all the revenue impacts on taxing entities for which blight-related tax increment is sometimes criticized. Its effect is to dilute the redevelopment effort and extend by up to 25 percent the tax increment to be diverted from taxing entities. We are not suggesting that tax increment for housing is not a valid public policy – only that it is not adequately examined in this audit report. Would this not be a relevant topic to address in an analysis of tax increment financing?

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It is our intention to use the final draft of this audit report in training and seminars with our membership over the coming months as we strive to improve the practice of redevelopment in Utah. We appreciate the effort you and your staff have made to produce a well-thought out product. And again, thanks for the opportunity to offer our input.

Sincerely yours,

A. Paul Glauser
President, Utah Redevelopment Association

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