

Supreme Court Case No.: S213468

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

SUPREME COURT  
FILED

CITY OF PERRIS,

*Plaintiff and Respondent,*

v.

RICHARD C. STAMPER, et al.,

*Defendants and Appellants.*

MAR 12 2014

Frank A. McGuire Clerk

Deputy

AFTER A DECISION BY THE COURT OF APPEAL, FOURTH  
APPELLATE DISTRICT, DIVISION TWO

CASE NO. E053395

ON APPEAL FROM SUPERIOR COURT OF RIVERSIDE COUNTY,  
THE HONORABLE DALLAS HOLMES, JUDGE

CASE NO. RIC524291

**PLAINTIFF AND RESPONDENT CITY OF PERRIS'S MOTION TO  
TAKE JUDICIAL NOTICE; MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT THEREOF (CRC § 8.520(g))**

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Attorneys for Plaintiff and Respondent  
CITY OF PERRIS

## **MOTION TO TAKE JUDICIAL NOTICE**

Plaintiff/Respondent, City of Perris (“City”), respectfully requests that the Court take judicial notice pursuant to Sections 459 and 452 of the Evidence Code and Rules 8.520(g) and 8.252(a) of the California Rules of Court of the following items:

1. Relevant excerpts from the records of the State Legislature pertaining to Assembly Bill 11 (1975-1976 Reg. Sess.), excerpts of which are attached hereto as Exhibit “A”. The excerpts are part of the recorded legislative history for Assembly Bill 11, which enacted Code of Civil Procedure Section 1263.330, regarding the “project effect rule”.
2. Relevant excerpts from the records of the State Legislature pertaining to Assembly Bill 237 (2001-2002 Reg. Sess.), excerpts of which are attached hereto as Exhibit “B”. The excerpts are part of the recorded legislative history for Assembly Bill 237, which enacted Code of Civil Procedure Section 1260.040, regarding the trial court’s determination of legal issues in eminent domain proceedings prior to trial on the issue of compensation.

This Motion to Take Judicial Notice is based upon the grounds in the accompanying Memorandum of Points and Authorities, including the statement of compliance therein with Cal. Rules of Court 8.252(a).

Dated: March 11, 2014

ALESHIRE & WYNDER, LLP

By: 

ERIC L. DUNN

SUNNY K. SOLTANI

PAM K. LEE

ADRIANA P. MENDOZA

Attorneys for Plaintiff and Respondent

CITY OF PERRIS

## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION AND SUMMARY OF REQUEST

The Court of Appeal's opinion below, *City of Perris v. Stamper* (2013) 218 Cal.App.4th 1104 ("Opinion"), in direct contradiction to established eminent domain precedent, has held for the first time that a jury should decide the constitutionality of a dedication requirement.

As set forth fully in the Reply brief filed by Plaintiff and Respondent, City of Perris ("City"), Defendants/Appellants claim incorrectly in their Answer Brief that: (1) Section 1263.330 of the Code of Civil Procedure requires exclusion of the dedication requirement when determining the market value of the property; and (2) that a jury, rather than the trial court, should determine the constitutionality of an otherwise reasonably probable dedication requirement, despite the provisions in Code of Civil Procedure Section 1260.040. A close reading of the legislative history of the relevant statutes evidences that the Legislature intended the contrary.

The City has provided excerpts of the records of the State Legislature pertaining to Assembly Bill 11 (1975-76 Reg. Sess.) (enacting Code of Civil Procedure Section 1263.330 regarding the project effect rule), and Assembly Bill 237 (2001-2002 Reg. Sess.) (enacting Code of Civil Procedure Section 1260.040 providing that the trial court shall determine legal issues in eminent domain actions) ("Legislative History").

As such, the City of Perris respectfully requests that this Court take judicial notice of the Legislative History pursuant to Sections 459 and 452 of the Evidence Code and Rules 8.520(g) and 8.252(a) of the California

Rules of Court. True and correct copies of the Legislative History are attached hereto as Exhibit “A” and “B”.

The Legislative History is relevant to this action because it further supports the City’s argument that: (1) the Legislature did not intend for the project effect rule to extend to dedication requirements (Item 1); and (2) the Legislature intended for the *trial court* to decide disputes on legal issues in eminent domain actions, prior to trial on the compensation issues (Item 2).

**II. THE LEGISLATIVE HISTORY IS A PROPER SUBJECT OF JUDICIAL NOTICE**

Evidence Code Section 459 provides that an appellate court “may take judicial notice of any matter specified in [Evidence Code] Section 452.” The Trial Court Brief is proper for judicial notice in this Court under Evidence Code Section 452 and Cal. Rule of Court 8.520(g).

Evidence Code Section 452(c) provides that: “Judicial notice may be taken of the following matters to the extent that they are not embraced within Section 451: Official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States.”

Case authorities demonstrate that “official act” has a broad meaning and has been applied in various contexts. “Official acts” include records, reports, and orders of administrative agencies. (*Rodas v. Spiegel* (2001) 87 Cal.App.4th 513, 518.) Judicial notice of legislative history is proper under Evid. Code § 452(c). (*See Lodge at Torrey Pines Partnership* (2008) 42 Cal.4th 1158, 1172 fn. 5 [judicial notice of a legislative history document was proper under Section 452(c) of the Evidence Code, even though the document was ultimately of little or no help in ascertaining legislative intent given uncertainty of who prepared the document and for what purpose]; *see also Casella v. Southwest Dealer Services, Inc.* (2007) 157

Cal.App.4th 1127 [judicial notice of history of legislation addressing fraud in the auto industry was proper]; *see also Giles v. Horn* (2002) 100 Cal.App.4th 206, 225, fn. 6 [judicial notice of legislative history of charter provisions was proper].)

The Legislative History was drafted by committees and members of the State Legislature in support of the passage of the corresponding bills. As such, the Legislative History is an official act of the California legislature and properly subject to judicial notice under Section 452(c) of the Evidence Code. (*See Lodge at Torrey Pines Partnership, supra*, 42 Cal.4th at 1172 fn. 5.)

The Legislative History was not presented to the trial court or the Court of Appeal in this action. (Cal. Rule of Court 8.252(a)(2)(B).) The Legislative History does not relate to proceedings occurring after the order or judgment that is the subject of this appeal. (Cal. Rule of Court 8.252(a)(2)(D).)

### III. CONCLUSION

For the foregoing reasons, Plaintiff and Respondent City of Perris respectfully requests that this Court take judicial notice of the Legislative History, attached hereto as Exhibits "A" and "B".

Dated: March 11, 2014

ALESHIRE & WYNDER, LLP

By: 

ERIC L. DUNN

SUNNY K. SOLTANI

PAM K. LEE

ADRIANA P. MENDOZA

Attorneys for Plaintiff and Respondent  
CITY OF PERRIS





## LEGISLATIVE INTENT SERVICE, INC.

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### DECLARATION OF L. KAREN HARRISON

I, L. Karen Harrison, declare:

I am an attorney licensed to practice in California, State Bar No. 148912, and am employed by Legislative Intent Service, Inc., a company specializing in researching the history and intent of legislation.

Under my direction and the direction of other attorneys on staff, the research staff of Legislative Intent Service, Inc. undertook to locate and obtain all documents relevant to the enactment of Assembly Bill 11 of 1975. Assembly Bill 11 was approved by the Legislature and was enacted as Chapter 1275 of the Statutes of 1975.

The following list identifies all documents obtained by the staff of Legislative Intent Service, Inc. on Assembly Bill 11 of 1975. All listed documents have been forwarded with this Declaration except as otherwise noted in this Declaration. All documents gathered by Legislative Intent Service, Inc. and all copies forwarded with this Declaration are true and correct copies of the originals located by Legislative Intent Service, Inc. In compiling this collection, the staff of Legislative Intent Service, Inc. operated under directions to locate and obtain all available material on the bill.

#### **EXHIBIT A - ASSEMBLY BILL 11 OF 1975:**

1. All versions of Assembly Bill 11 (McAlister-1975);
2. Procedural history of Assembly Bill 11 from the 1975-76 *Assembly Final History*;
3. Analysis of Assembly Bill 11 prepared for the Assembly Committee on Judiciary;
4. Material from the legislative bill file of the Assembly Committee on Judiciary on Assembly Bill 11 as follows:
  - a. Previously Obtained Material,
  - b. Updated Collection of Material;
- + 5. Material from the legislative bill file of the Assembly Republican Caucus on Assembly Bill 11 as follows:



- a. Previously Obtained Material,
- b. Updated Collection of Material;
- + 6. Analysis of Assembly Bill 11 prepared for the Senate Committee on Judiciary;
- 7. Material from the legislative bill file of the Senate Committee on Judiciary on Assembly Bill 11 as follows:
  - a. Previously Obtained Material,
  - + b. Updated Collection of Material;
- 8. Report of the Subcommittee on Eminent Domain regarding Assembly Bill 11;
- 9. Two analyses of Assembly Bill 11 prepared by the Legislative Analyst;
- 10. Third Reading analysis of Assembly Bill 11 prepared by the Senate Democratic Caucus;
- 11. Material from the legislative bill file of the Senate Democratic Caucus on Assembly Bill 11;
- 12. Third Reading analysis Assembly Bill 11 prepared by the Senate Republican Caucus;
- 13. Material from the legislative bill file of the Senate Republican Caucus on Assembly Bill 11;
- 14. Concurrence in Senate Amendments analysis of Assembly Bill 11 prepared by the Assembly Office of Research;
- 15. Excerpt regarding Assembly Bill 11 from the 1975 *Journal of the Assembly*;
- 16. Excerpt regarding Assembly Bill 11 from the 1975 *Journal of the Senate*;
- 17. Material from the legislative bill file of Assembly member Alister McAlister on Assembly Bill 11 as follows:
  - a. Previously Obtained Material,
  - + b. Updated Collection of Material;
- 18. Post-enrollment documents regarding Assembly Bill 11;
- 19. Material from the file of the Legislative Representative of the State Bar of California on Assembly Bill 11;
- 20. Material from the file of the Legislative Representative of the League of California Cities on Assembly Bill 11;
- 21. Material from the legislative bill file of the Department of Finance on Assembly Bill 11;
- 22. Transcript of Hearing on Assembly Bills 11, etc. prepared for the Subcommittee on Eminent Domain Senate Judiciary Committee;
- 23. Excerpt regarding Assembly Bill 11 from the 1975 *Summary Digest of Statutes Enacted and Resolutions Adopted* prepared by Legislative Counsel.

**EXHIBIT B - CALIFORNIA LAW REVISION COMMISSION BACKGROUND MATERIAL:**

1. Excerpt regarding Code of Civil Procedure section 1263.330 from Tentative Recommendation relating to Condemnation Law and Procedure proposing “The Eminent Domain Law”, prepared by the California Law Revision Commission, January 1974;
2. Excerpt regarding Code of Civil Procedure section 1263.330 from Recommendation proposing “The Eminent Domain Law,” prepared by the California Law Revision Commission, December 1974;
3. Excerpt regarding Code of Civil Procedure section 1263.330 from “The Eminent Domain Law with Conforming Changes in Codified Sections and Official Comments,” prepared by the California Law Revision Commission, December 1975;
4. Memorandum 64-45, Study 36(L) – Condemnation Law and Procedure (Just Compensation and Measure of Damages Generally) July 13, 1965;
5. Memorandum 71-36, Study 36.50 – Condemnation (General Philosophy Concerning Method and Extent of Compensation) June 28, 1971;
6. Memorandum 72-75, Study 36.50 – Condemnation (Just Compensation – Compensation for Property Taken or Damaged) November 16, 1972;
7. Memorandum 73-8, Study 36.50 – Condemnation (Just Compensation and Measure of Damages—Draft Statute) January 4, 1973;
8. Memorandum 73-18, Study 36.50 – Condemnation (Just Compensation and Measure of Damages—Draft Statute) January 30, 1973 related documents as follows:
  - a. First Supplement Memorandum 73-18, February 20, 1973
  - b. California Law Revision Commission Minutes, April 12, 1973 through April 14, 1973;
9. Memorandum 73-41, Study 36.50 – Condemnation (Compensation and Measure of Damages) April 25, 1973;
10. Memorandum 73-86, Study 36.50 and 36.400 – Condemnation (Comprehensive Statute: Chapters 9 and 10— Compensation and Divided Interests) September 28, 1973 related documents as follows:
  - a. First Supplement Memorandum 73-18, October 04, 1973
  - b. Second Supplement Memorandum 73-18, October 04, 1973
  - c. California Law Revision Commission Minutes, Study 36.390 – Condemnation (Comprehensive

Statute: Chapter 9—Compensation October 18, 1973 through  
October 19, 1973;

**EXHIBIT C – ADDITIONAL BACKGROUND MATERIALS :**

1. Excerpt regarding Article X, section 1005 from the “Third Tentative Draft Uniform Eminent Domain Code,” prepared by the National Conference of Commissioners on Uniform State Laws, August 1-10, 1974

+ Because it is not unusual for more materials to become publicly available after our earlier research of legislation, we re-gathered these file materials, denoting them as “updated collection of material.”

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 28th day of February, 2014 at Woodland, California.



L. KAREN HARRISON

STATE OF CALIFORNIA

# CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

*proposing*

**The Eminent Domain Law**

**December 1974**

CALIFORNIA LAW REVISION COMMISSION  
Stanford Law School  
Stanford, California 94305

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particular necessity for so doing, each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available.

**Comment.** Section 1263.320 is new. It codifies the definition of fair market value that has developed through the case law. See, e.g., *Sacramento etc. R.R. v. Heilbron*, 156 Cal. 408, 409, 104 P. 979, 980 (1909); *Buena Park School Dist. v. Metrim Corp.*, 176 Cal. App.2d 255, 263, 1 Cal. Rptr. 250, 255-256 (1959). Although the phrase "the highest price estimated in terms of money" has been utilized in the case law definitions of fair market value, Section 1263.320 omits this phrase because it is confusing. No substantive change is intended by this omission.

The phrase "in the open market" has been deleted from the definition of fair market value because there may be no open market for some types of special purpose properties such as schools, churches, cemeteries, parks, utilities, and similar properties. No substantive change is intended by this deletion. All properties, special as well as general, are valued at their fair market value. Within the limits of Article 2 (commencing with Section 810) of Chapter 1 of Division 7 of the Evidence Code, fair market value may be determined by reference to (1) the market data (or comparable sales) approach, (2) the income (or capitalization) method, and (3) the cost analysis (or reproduction less depreciation) formula.

The standard provided in Section 1263.320 is the usual standard normally applied to valuation of property whether for eminent domain or for any other purpose. The evidence admissible to prove fair market value is governed by the provisions of the Evidence Code. See especially EVID. CODE § 810 *et seq.* Where comparable sales are used to determine the fair market value of property, the terms and conditions of such sales may be shown in an appropriate case. See EVID. CODE § 816.

For an adjustment to this basic fair market value standard in case of changes in value prior to the date of valuation, see Section 1263.330.

**§ 1263.330. Changes in property value due to imminence of project**

1263.330. The fair market value of the property taken shall not include any increase or decrease in the value of the property that is attributable to any of the following:

- (a) The project for which the property is taken.
- (b) The eminent domain proceeding in which the property is taken.



(c) Any preliminary actions of the plaintiff relating to the taking of the property.

**Comment.** Section 1263.330 is an adjustment to the basic definition of fair market value in Section 1263.320 and requires that the compensation for property taken by eminent domain be determined as if there had been no enhancement or diminution in the value of property due to the imminence of the eminent domain proceeding or the project for which the property is taken. For related provisions of state and federal law that apply to offers for voluntary acquisition of property, see Government Code Section 7267.2 and Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. § 4651(3) (1971) (excluding from consideration the effect of the “public improvement” for which the property is acquired).

Prior case law held that, in general, increases in the value of the property caused by the project may not be included in the compensation. See, e.g., *County of San Luis Obispo v. Bailey*, 4 Cal.3d 518, 483 P.2d 27, 93 Cal. Rptr. 859 (1971). The effect of Section 1263.330(a) is to codify this rule. It should be noted that *Merced Irr. Dist. v. Woolstenhulme*, 4 Cal.3d 478, 483 P.2d 1, 93 Cal. Rptr. 833 (1971), stated an exception to the rule of exclusion of enhancement from market value where the property was not originally included within the scope of the project; this exception is discussed below under the “scope of the project” rule.

Prior case law was uncertain respecting the treatment of any decrease in value due to such factors as general knowledge of the pendency of the public project. Several decisions indicated that the rules respecting enhancement and diminution were not parallel and that value was to be determined as of the date of valuation notwithstanding that such value reflects a decrease due to general knowledge of the pendency of the public project. See *City of Oakland v. Partridge*, 214 Cal. App.2d 196, 29 Cal. Rptr. 388 (1963); *People v. Lucas*, 155 Cal. App.2d 1, 317 P.2d 104 (1957); and *Atchison, T. & S.F. R.R. v. Southern Pac. Co.*, 13 Cal. App.2d 505, 57 P.2d 575 (1936). Seemingly to the contrary were *People v. Lillard*, 219 Cal. App.2d 368, 33 Cal. Rptr. 189 (1963), and *Buena Park School Dist. v. Metrim Corp.*, 176 Cal. App.2d 255, 1 Cal. Rptr. 250 (1959). The Supreme Court case of *Klopping v. City of Whittier*, 8 Cal.3d 39, 500 P.2d 1345, 104 Cal. Rptr. 1 (1972), cited the *Lillard* and *Metrim* approach while disapproving the *Partridge*, *Lucas*, and *Atchison* approach in the inverse condemnation context. The *Klopping* case, however, does not make clear the approach the court would take in a direct condemnation case. See 8 Cal.3d at 45 n.1, 51 n.3, 500 P.2d at 1350 n.1, 1354 n.3, 104 Cal. Rptr. at 6 n.1, 10 n.3; cf. *Merced Irr. Dist.*



*v. Woolstenhulme*, 4 Cal.3d at 483 n.1, 483 P.2d at 3 n.1, 93 Cal. Rptr. at 835 n.1. Section 1263.330(a) is intended to make the rules respecting appreciation and depreciation parallel by codifying the views expressed in the *Lillard* and *Metrim* decisions. See Anderson, *Consequences of Anticipated Eminent Domain Proceedings—Is Loss of Value a Factor?*, 5 SANTA CLARA LAWYER 35 (1964).

Subdivision (a) of Section 1263.330 is also intended to codify the proposition that any increase or decrease in value resulting from the use which the condemnor is to make of the property must be eliminated in determining compensable market value. See *Merced Irr. Dist. v. Woolstenhulme*, 4 Cal.3d at 490–491, 483 P.2d at 12–14, 93 Cal. Rptr. at 841–842. If, however, the condemnor's proposed use is one of the highest and best uses of the property, the adaptability of the property for that purpose may be shown by the property owner. See *San Diego Land & Town Co. v. Neale*, 78 Cal. 63, 20 P. 372 (1888).

While Section 1263.330(a) provides that changes in value caused by the project for which the property is taken may not be included in the compensation, this exclusionary provision is not intended to apply to value changes that are beyond the scope of the "project." Thus, where changes in value are caused by a project other than the one for which the property is taken, even though the two projects may be related, the property owner may enjoy the benefit or suffer the detriment caused by the other project. See, e.g., *People v. Cramer*, 14 Cal. App.3d 513, 92 Cal. Rptr. 401 (1971). Likewise, if property is affected by a project but is not to be taken for that project and subsequently the scope of the project is changed or expanded and the property is acquired for the changed or expanded project, the property should be valued as affected by the original project up to the change in scope. See, e.g., *People v. Miller*, 21 Cal. App.3d 467, 98 Cal. Rptr. 539 (1971), and *Merced Irr. Dist. v. Woolstenhulme, supra* ("increases in value, attributable to a project but reflecting a reasonable expectation that property will not be taken for the improvement, should properly be considered in determining 'just compensation.' " [4 Cal.3d at 495, 483 P.2d at 12, 93 Cal. Rptr. at 844]); cf. *United States v. Miller*, 317 U.S. 369 (1943), and Annot., 14 A.L.R. Fed. 806 (1973).

Subdivision (b) of Section 1263.330 requires that value changes caused by the fact that the property will be taken by eminent domain must be excluded from fair market value. Changes based on conjecture of a favorable or unfavorable award are not a proper element of compensation. See *Merced Irr. Dist. v. Woolstenhulme*, 4 Cal.3d at 491–492, 483 P.2d at 9, 93 Cal. Rptr.



at 841-842.

Subdivision (c) of Section 1263.330 requires that preliminary actions on the part of the condemnor related to the taking of the property should not be allowed to affect the compensation. See *Buena Park School Dist. v. Metrim Corp., supra*.

### Article 5. Compensation for Injury to Remainder

#### § 1263.410. Compensation for injury to remainder

1263.410. (a) Where the property acquired is part of a larger parcel, in addition to the compensation awarded pursuant to Article 4 (commencing with Section 1263.310) for the part taken, compensation shall be awarded for the injury, if any, to the remainder.

(b) Compensation for injury to the remainder is the amount of the damage to the remainder reduced by the amount of the benefit to the remainder. If the amount of the benefit to the remainder equals or exceeds the amount of the damage to the remainder, no compensation shall be awarded under this article. If the amount of the benefit to the remainder exceeds the amount of damage to the remainder, such excess shall be deducted from the compensation provided in Section 1263.510, if any, but shall not be deducted from the compensation required to be awarded for the property taken or from the other compensation required by this chapter.

**Comment.** Section 1263.410 provides the measure of compensation for injury to the remainder in a partial taking. It supersedes subdivisions 2 and 3 of former Section 1248. The phrase "damage to the remainder" is defined in Section 1263.420; "benefit to the remainder" is defined in Section 1263.430.

It should be noted that the term "larger parcel" is not defined in the Eminent Domain Law, just as it was not defined in the former eminent domain provisions of the Code of Civil Procedure. The legal definition of the larger parcel is in the process of judicial development. See, e.g., *City of Los Angeles v. Wolfe*, 6 Cal.3d 326, 491 P.2d 813, 99 Cal. Rptr. 21 (1971) (contiguity not essential). Leaving the larger parcel definition uncodified permits continued judicial development of the concept.





STATE OF CALIFORNIA

# CALIFORNIA LAW REVISION COMMISSION

The Eminent Domain Law  
with  
Conforming Changes in Codified Sections  
and  
Official Comments

December 1975

CALIFORNIA LAW REVISION COMMISSION  
Stanford Law School  
Stanford, California 94305

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## PREFACE

This pamphlet contains the Eminent Domain Law and related revisions of codified sections. The official Law Revision Commission or Legislative Committee Comment is set out following each statute section. The Eminent Domain Law was enacted by Chapter 1275 of the Statutes of 1975. The amendments, repeals, and additions of codified statutes were made by a series of bills. The source of the session law chapter that amended, repealed, or added a particular codified section is indicated in the Table which begins on page 1479.

The 1975 eminent domain legislation was the result of the following recommendations of the California Law Revision Commission:

- (1) *Recommendation Proposing the Eminent Domain Law*, 12 CAL. L. REVISION COMM'N REPORTS 1601 (1974);
- (2) *Tentative Recommendation Relating to Condemnation Law and Procedure: Conforming Changes in Special District Statutes*, 12 CAL. L. REVISION COMM'N REPORTS 1101 (1974).

For earlier tentative recommendations, see *Tentative Recommendations Relating to Condemnation Law and Procedure: The Eminent Domain Law and Condemnation Authority of State Agencies*, 12 CAL. L. REVISION COMM'N REPORTS 1 & 1051 (1974).

Eleven bills were introduced at the 1975 Regular Session to effectuate the Commission's eminent domain recommendations. All were enacted. Cal. Stats. 1975, Chs. 1275 (Eminent Domain Law), 1239 (conforming changes—state agency condemnation), 1240 (conforming changes—codified sections), and 581, 582, 584, 585, 586, 587, 1176, and 1276 (conforming changes—special district statutes). See also Cal. Stats. 1976, Ch. 22 (operative date—urgency measure).

The official Comment that follows each section is taken from the pertinent Law Revision Commission recommendation or from the special report adopted by the Assembly Committee on Judiciary or the Senate Committee on Judiciary providing a new or revised Comment for the particular section. See *Report of Assembly Committee on Judiciary*, ASSEMBLY J. (May 19, 1975) at 5183-5212; *Report of Senate Committee on Judiciary*, SENATE J. (Aug. 14, 1975) at 6537-6563.

Also included in this pamphlet are two recommendations relating to eminent domain which the Law Revision Commission submitted to the 1976 session of the California Legislature. *Recommendation Relating to Relocation Assistance by Private*

*Condemnors* (October 1975), beginning on page 1465 of this pamphlet, and *Recommendation Relating to Condemnation for Byroads and Utility Easements* (October 1975), beginning on page 1471 of this pamphlet. At the time this publication was sent to the printer, the legislation introduced to effectuate these recommendations was pending in the Legislature.

This pamphlet does not contain a table showing the source in prior law for the sections in the new eminent domain title, nor does this pamphlet contain a table showing the disposition of the sections of the prior eminent domain title. However, the Comment to each section of the new eminent domain title indicates the provisions of prior law from which the section was derived. The Appendix, beginning on page 1361 of this pamphlet, contains a Comment to each section of the prior eminent domain title showing the disposition of that section.

The California Continuing Education of the Bar (CEB) paid the cost of publishing this Commission pamphlet. The Commission is pleased to assist CEB in its effort to inform lawyers, appraisers, judges, and others concerning the new eminent domain law. The pamphlet also will aid the Commission in its continuing study of eminent domain law.

Any defect believed to exist in the legislation contained in this pamphlet should be brought to the attention of the Law Revision Commission so that the Commission can study the matter and present any necessary corrections for legislative consideration. The Commission also solicits suggestions for revision of other statutes relating to eminent domain, such as the Evidence Code provisions relating to evidence in eminent domain and inverse condemnation actions. The address is: California Law Revision Commission, Stanford Law School, Stanford, California 94305.

JOHN H. DEMOULLY  
Executive Secretary



cemeteries, parks, utilities, and similar properties. All properties, special as well as general, are valued subject to the limits of Article 2 (commencing with Section 810) of Chapter 1 of Division 7 of the Evidence Code. The Evidence Code provides that, regardless of whether there is a relevant market for property, its fair market value may be determined by reference to matters of a type that reasonably may be relied upon by an expert in forming an opinion as to the value of property including where appropriate, but not limited to, (1) the market data (or comparable sales) approach, (2) the income (or capitalization) method, and (3) the cost analysis (or reproduction less depreciation) formula.

The standard provided in Section 1263.320 is the usual standard normally applied to valuation of property whether for eminent domain or for any other purpose. The evidence admissible to prove fair market value is governed by the provisions of the Evidence Code. See especially EVID. CODE § 810 *et seq.* Where comparable sales are used to determine the fair market value of property, the terms and conditions of such sales may be shown in an appropriate case. See EVID. CODE § 816.

For an adjustment to this basic fair market value standard in case of changes in value prior to the date of valuation, see Section 1263.330.

### § 1263.330. Changes in property value due to imminence of project

1263.330. The fair market value of the property taken shall not include any increase or decrease in the value of the property that is attributable to any of the following:

- (a) The project for which the property is taken.
- (b) The eminent domain proceeding in which the property is taken.
- (c) Any preliminary actions of the plaintiff relating to the taking of the property.

#### Law Revision Commission Comment

**Comment.** Section 1263.330 is an adjustment to the basic definition of fair market value in Section 1263.320 and requires that the compensation for property taken by eminent domain be determined as if there had been no enhancement or diminution in the value of property due to the imminence of the eminent domain proceeding or the project for which the property is taken. For related provisions of state and federal law that apply to offers for voluntary acquisition of property, see Government Code Section 7267.2 and Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. § 4651 (3) (1971) (excluding from consideration the effect of the "public improvement" for which the property is acquired).

Prior case law held that, in general, increases in the value of the property caused by the project may not be included in the compensation. See, *e.g.*, *County of San Luis Obispo v. Bailey*, 4



Cal.3d 518, 483 P.2d 27, 93 Cal. Rptr. 859 (1971). The effect of Section 1263.330(a) is to codify this rule. It should be noted that *Merced Irr. Dist. v. Woolstenhulme*, 4 Cal.3d 478, 483 P.2d 1, 93 Cal. Rptr. 833 (1971), stated an exception to the rule of exclusion of enhancement from market value where the property was not originally included within the scope of the project; this exception is discussed below under the “scope of the project” rule.

Prior case law was uncertain respecting the treatment of any decrease in value due to such factors as general knowledge of the pendency of the public project. Several decisions indicated that the rules respecting enhancement and diminution were not parallel and that value was to be determined as of the date of valuation notwithstanding that such value reflects a decrease due to general knowledge of the pendency of the public project. See *City of Oakland v. Partridge*, 214 Cal. App.2d 196, 29 Cal. Rptr. 388 (1963); *People v. Lucas*, 155 Cal. App.2d 1, 317 P.2d 104 (1957); and *Atchison, T. & S.F. R.R. v. Southern Pac. Co.*, 13 Cal. App.2d 505, 57 P.2d 575 (1936). Seemingly to the contrary were *People v. Lillard*, 219 Cal. App.2d 368, 33 Cal. Rptr. 189 (1963), and *Buena Park School Dist. v. Metrim Corp.*, 176 Cal. App.2d 255, 1 Cal. Rptr. 250 (1959). The Supreme Court case of *Klopping v. City of Whittier*, 8 Cal.3d 39, 500 P.2d 1345, 104 Cal. Rptr. 1 (1972), cited the *Lillard* and *Metrim* approach while disapproving the *Partridge*, *Lucas*, and *Atchison* approach in the inverse condemnation context. The *Klopping* case, however, does not make clear the approach the court would take in a direct condemnation case. See 8 Cal.3d at 45 n.1, 51 n.3, 500 P.2d at 1350 n.1, 1354 n.3, 104 Cal. Rptr. at 6 n.1, 10 n.3; *cf. Merced Irr. Dist. v. Woolstenhulme*, 4 Cal.3d at 483 n.1, 483 P.2d at 3 n.1, 93 Cal. Rptr. at 835 n.1. Section 1263.330(a) is intended to make the rules respecting appreciation and depreciation parallel by codifying the views expressed in the *Lillard* and *Metrim* decisions. See Anderson, *Consequences of Anticipated Eminent Domain Proceedings—Is Loss of Value a Factor?*, 5 SANTA CLARA LAWYER 35 (1964).

Subdivision (a) of Section 1263.330 is also intended to codify the proposition that any increase or decrease in value resulting from the use which the condemnor is to make of the property must be eliminated in determining compensable market value. See *Merced Irr. Dist. v. Woolstenhulme*, 4 Cal.3d at 490-491, 483 P.2d at 12-14, 93 Cal. Rptr. at 841-842. If, however, the condemnor's proposed use is one of the highest and best uses of the property, the adaptability of the property for that purpose may be shown by the property owner. See *San Diego Land & Town Co. v. Neale*, 78 Cal. 63, 20 P. 372 (1888).



While Section 1263.330(a) provides that changes in value caused by the project for which the property is taken may not be included in the compensation, this exclusionary provision is not intended to apply to value changes that are beyond the scope of the "project." Thus, where changes in value are caused by a project other than the one for which the property is taken, even though the two projects may be related, the property owner may enjoy the benefit or suffer the detriment caused by the other project. See, e.g., *People v. Cramer*, 14 Cal. App.3d 513, 92 Cal. Rptr. 401 (1971). Likewise, if property is affected by a project but is not to be taken for that project and subsequently the scope of the project is changed or expanded and the property is acquired for the changed or expanded project, the property should be valued as affected by the original project up to the change in scope. See, e.g., *People v. Miller*, 21 Cal. App.3d 467, 98 Cal. Rptr. 539 (1971), and *Merced Irr. Dist. v. Woolstenhulme*, *supra* ("increases in value, attributable to a project but reflecting a reasonable expectation that property will not be taken for the improvement, should properly be considered in determining 'just compensation.'" [4 Cal.3d at 495, 483 P.2d at 12, 93 Cal. Rptr. at 844]); cf. *United States v. Miller*, 317 U.S. 369 (1943), and Annot., 14 A.L.R. Fed. 806 (1973).

Subdivision (b) of Section 1263.330 requires that value changes caused by the fact that the property will be taken by eminent domain must be excluded from fair market value. Changes based on conjecture of a favorable or unfavorable award are not a proper element of compensation. See *Merced Irr. Dist. v. Woolstenhulme*, 4 Cal.3d at 491-492, 483 P.2d at 9, 93 Cal. Rptr. at 841-842.

Subdivision (c) of Section 1263.330 requires that preliminary actions on the part of the condemnor related to the taking of the property should not be allowed to affect the compensation. See *Buena Park School Dist. v. Metrim Corp.*, *supra*.

## Article 5. Compensation for Injury to Remainder

### § 1263.410. Compensation for injury to remainder

1263.410. (a) Where the property acquired is part of a larger parcel, in addition to the compensation awarded pursuant to Article 4 (commencing with Section 1263.310) for the part taken, compensation shall be awarded for the injury, if any, to the remainder.

(b) Compensation for injury to the remainder is the amount of the damage to the remainder reduced by the amount of the benefit to the remainder. If the amount of the benefit to the remainder equals or exceeds the amount of the damage to the remainder, no





SENATE JUDICIARY COMMITTEE  
 Martha M. Escutia, Chair  
 2001-2002 Regular Session

AB 237	A
Assembly Member Papan	B
As Amended May 31, 2001	
Hearing Date: August 21, 2001	2
Code of Civil Procedure	3
CJW:sr	7

SUBJECT

Eminent Domain

DESCRIPTION

This bill would amend eminent domain law to facilitate resolution of condemnation cases without trial. Specifically, it would (1) allow parties to submit any dispute in an eminent domain proceeding for mediation or arbitration; (2) require appraisal summaries and offers of compensation to contain detail sufficient to indicate the basis for the appraisal or offer; and (3) require final offers and demands to include all elements of required compensation, including loss of goodwill.

This bill would apply to any eminent domain proceeding commenced on or after January 1, 2002.

BACKGROUND

In October of 2000, the California Law Revision Commission published a report entitled "Early Disclosure of Valuation Data and Resolution of Issues in Eminent Domain," recommending improvements in several areas of eminent domain law.

The report notes that in almost all condemnation cases, the primary issue is the amount of compensation. Existing law seeks to encourage settlement of compensation disputes before trial in various ways, such as requiring the parties to exchange valuation data early in the process, and to

(more)

AB 237 (Papan)  
 Page 2

make their final offers and demands for compensation before trial.

The report states that the various incentives for pretrial settlement have been "reasonably successful," noting that 92 percent of the 3,477 California eminent domain cases brought to conclusion between 1996 and 1999 either were resolved before trial or were uncontested at trial.

Nevertheless, the report concludes that various provisions could be improved to increase the number of cases settled without trial. The Commission now sponsors this bill incorporating most of the recommendations in its report.

CHANGES TO EXISTING LAW

1. Existing law provides that at least 20 days prior to trial in an eminent domain proceeding, the plaintiff and defendant shall file and serve upon each other their final offer of, and demand for, compensation for the subject property. [CCP Sec. 1250.410.]

This bill would provide that the offer and demand shall include all compensation required pursuant to this title, including compensation for loss of goodwill, if any, and



shall state whether interest and costs are included.

2. Existing law provides that issues of compensation in eminent domain proceedings may be submitted to binding arbitration by agreement of the parties. [CCP Sec. 1273.010 et. seq..]

This bill would provide that the parties may agree to refer a dispute that is the subject of an eminent domain proceeding to mediation, binding arbitration, or nonbinding arbitration.

This bill further would provide that in a nonbinding arbitration, the arbitrator's decision would be final unless a party timely moves the court for trial. If that party fails to secure a more favorable judgment at trial,

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Page 3

he or she shall pay the other party's specified costs incurred from the time of election of trial (including reasonable costs of expert witnesses) unless the court finds the imposition of costs would create a substantial economic hardship contrary to the interest of justice.

This bill further would provide that on motion of a party, the court may postpone the date of trial for a period that appears adequate to enable resolution of a dispute pursuant to mediation or arbitration, if the court is satisfied that the parties are actively engaged in the resolution process, appear to be making progress, and agree that additional time for resolution is desirable.

3. Existing law provides that at any time before entry of judgment, the plaintiff may deposit with the State Treasury the probable amount of compensation, based on an expert appraisal, that will be awarded in the proceeding. The expert shall prepare a written statement of, or summary of the basis for, the appraisal. [CCP Sec. 1255.010.]

Existing law further provides that, at any time after this deposit has been made, the plaintiff or any other party having an interest in the property may move the court to determine or redetermine whether the amount deposited is the probable amount of compensation that will be awarded in the proceeding. [CCP Sec. 1255.030.]

This bill would provide that the statement or summary accompanying the deposit shall contain detail sufficient to indicate clearly the basis for the appraisal, including:

- (a) the date of valuation, highest and best use, and applicable zoning;
- (b) the principal transactions, reproduction or replacement cost analysis, or capitalization analysis, supporting the appraisal; and
- (c) separate statements of compensation for the

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property and damages for the remainder, if any, and the calculations and a narrative explanation supporting the compensation, including any offsetting benefits.

This bill further would provide that a motion for redetermination made pursuant to this section shall be supported by the same detail as the analysis accompanying the initial deposit.

4. Existing law provides that, unless otherwise agreed to by the parties, the date of exchange for expert witness lists and statements of valuation data shall be 60 days prior to trial. [CCP Sec. 1258.220.]

Existing law further provides that statements of valuation data shall include each matter on which an expert witness will give an opinion, what that opinion is, and shall specify the factors used to reach the opinion. [CCP Sec. 1258.260.]

This bill would provide that, unless otherwise agreed to by the parties, the date of exchange for these lists and statements shall be 90 days prior to trial.

This bill further would provide that unless otherwise agreed to by the parties, the date of exchange shall not be earlier than nine months after the date of commencement of the proceeding.

This bill further would provide that if an opinion in a statement of valuation data concerns loss of goodwill, the statement shall include the method used to determine the loss, and a summary of the data supporting the opinion.

5. Existing law provides for the resolution by the court of disputes on matters of law, such as the plaintiff's right to take the subject property, prior to jury trial on the issue of just compensation. [CCP Sec. 1260.110.]

This bill would provide that, if the parties dispute an

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evidentiary or other legal issue affecting the determination of compensation, either party may move the court for a ruling on the issue no later than 60 days before trial. A court that issues a ruling on such a motion may postpone other statutory deadlines in the action for a period sufficient to enable the parties to engage in further proceedings in response to the court's ruling on the motion.

6. Existing law provides that, prior to adopting a resolution of necessity to initiate condemnation proceedings, a public entity considering acquisition of property shall offer the property owner an amount it believes to be just compensation therefor, and shall provide the owner with a written statement of, and summary of the basis for, the amount offered as just compensation. [Govt. Code Sec. 7267.2.]

Existing law further provides that, where the property involved is owner-occupied residential property and contains no more than four residential units, the homeowner shall, upon request, be allowed to review a copy of the appraisal upon which the offer is based. [ Id. ]

This bill would provide that the written statement and summary provided to the property owner shall contain detail sufficient to indicate clearly the basis for the offer, including but not limited to the data set forth in the proposed amendment to CCP Section 1255.010, above.

This bill further would provide that the public entity may, but is not required to, satisfy the written statement, summary, and review requirements of this section by providing the owner a copy of the appraisal on which the offer is based.

This bill further would provide that this act in its entirety shall apply to any eminent domain proceeding commenced on or after January 1, 2002.

COMMENT

1. Stated need for legislation

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Unlike most other civil cases, the discovery process in eminent domain actions usually involves only one subject area - the amount of compensation the plaintiff must pay for the defendant's property. Although existing law facilitates discovery by mandating the exchange of expert valuation data and of compensation offers and demands within specified time frames, the current process does not require the opinions, offers, or demands to be supported in any detail. As a result, further interrogatories are sent out by each party, neither of whom have much incentive to settle because they have not been provided with the basis for their opponents' opinions and offers.

Accordingly, one of the Commission's main recommendations is to increase the amount of detail required in the information exchanged by the parties before trial. The bill would require that offers and demands include all forms of compensation required, including loss of goodwill; that deposits of "probable compensation" based on expert appraisal to be supported by data sufficient to indicate the basis for the appraisal; and that prelitigation offers include statements supported by data sufficient to indicate the basis for the offers.

The Commission's other main recommendation is to encourage parties of condemnation actions to use alternative dispute resolution methods to resolve some or all of their disputes. Although eminent domain law already provides for the use of binding arbitration, this bill would permit the parties to use mediation or nonbinding arbitration as well, and would encourage acceptance of a decision in nonbinding arbitration by providing that a party who subsequently seeks trial but fails to obtain a more favorable result may be ordered by the court to pay the opposing party's post-arbitration costs unless to do so would be contrary to the interests of justice. (The proposed process is similar to that used in judicial arbitrations in this state.)

Finally, the bill would set an earlier deadline for required information exchanges (unless otherwise agreed to by the parties), and would allow the parties to bring pre-trial motions on legal issues relating to

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compensation prior to jury trial.

2. ~~Prior opposition to provision awarding costs may be resolved~~

The only letter received in opposition to a provision of the bill was sent prior to the most recent amendments, and generally supported the bill except for the nonbinding arbitration provision. The writer opined that this provision would never be used because it was too harsh in imposing costs on a party who opted for trial but failed to achieve a better result. In apparent response to this concern, the most recent amendments have modified this provision to allow the court to decline to impose such costs if they would pose an economic hardship contrary to the interests of justice.

3. ~~Suggested clarifying amendment: Exchange of data (CCP Sec. 1258.220)~~

In order to give parties more time to analyze their opponents' evidence as a basis for settlement, the bill would move up the deadline for exchange of expert witness lists and valuation data from 60 to 90 days before trial. To protect parties against having to provide this information before they have had sufficient time to compile it, however, the bill also would provide that the

date of exchange shall not be earlier than nine months after proceedings commenced.

In order to clarify that the latter provision controls the former, the author may wish to amend this provision to read, "(b) Unless otherwise agreed to by the parties, and notwithstanding subdivision (a), the date of exchange shall not be earlier than nine months after the date of commencement of the proceeding."

Support: California Chamber of Commerce; Civil Justice Association of California (CJAC)

Opposition: None Known

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HISTORY

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Source: California Law Revision Commission

Related Pending Legislation: None Known

Prior Legislation: None Known

Prior Vote: Assembly Judiciary Committee 10-0  
Assembly Floor 76-0

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Page 1

Date of Hearing: May 2, 2001

ASSEMBLY COMMITTEE ON JUDICIARY  
Darrell Steinberg, Chair  
AB 237 (Papan) - As Amended: April 2, 2001

SUBJECT : EMINENT DOMAIN

KEY ISSUE : SHOULD THE USE OF MEDIATION AND ARBITRATION BE SPECIFICALLY AUTHORIZED IN EMINENT DOMAIN PROCEEDINGS?

SYNOPSIS

This Bill Seeks To Facilitate Resolution Of Eminent Domain Cases Through The Authorization Of ADR And Revises Procedures In Eminent Domain Proceedings. In Response To Concerns Raised By Public Entities, The Author And Sponsor Have Agreed To Amend The Bill, As Noted In The Analysis.

SUMMARY : Seeks to facilitate resolution of eminent domain cases through the authorization of ADR and revise procedures in eminent domain proceedings. Specifically, this bill :

- 1) Requires the final offer of the plaintiff (public entity) and final demand of the defendant (property owner) in eminent domain proceedings relating to compensation to include all elements of required compensation, including compensation for the loss of goodwill, and to indicate whether or not interest and costs are included.
- 2) Provides that the parties to such proceedings may by agreement refer the dispute to resolution by mediation or binding or non-binding arbitration, and provides that the arbitrator's decision in a non-binding arbitration is final unless within 30 days after service of the arbitrator's decision a party moves the court for a trial of the eminent domain proceeding.
- 3) Provides that, upon motion of a party, the court may postpone the date of such trial for a period that appears adequate to enable resolution of a dispute pursuant to alternative resolution procedures provided that the court is satisfied that certain conditions are met.
- 4) Changes the date of exchange of valuation data in eminent domain proceedings to 90 days before trial from 60 days.

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- 5) Requires, pertaining to statements of valuation required under existing law, to have included in an exchange of the valuation of data the method used to determine a loss of goodwill and a summary of the data supporting the opinion as to the value of the property.

EXISTING LAW :

- 1) Requires that, at least 20 days prior to trial on issues relating to compensation, the plaintiff serve on the defendant a final offer of compensation. (Code of Civil Procedure section 1250.410. All further statutory references are to this code.)
- 2) Requires that just compensation in an eminent domain proceeding be determined by a jury unless waived. (Cal. Const. Art. I, sec. 19.)
- 3) Permits the plaintiff to deposit the probable amount of compensation, based on an appraisal, at any time before entry of judgment and requires the plaintiff to prepare a written statement of summary of the basis for the appraisal. (Section 1255.010.)
- 4) Requires parties to exchange valuation data 60 days prior to commencement of trial on the issue of compensation. (Section 1258.220.)

FISCAL EFFECT : The bill as currently in print is not keyed fiscal.

COMMENTS : This bill, sponsored by the Law Revision Commission, is intended to facilitate resolution of eminent domain cases through the authorization of ADR and revise procedures in eminent domain proceedings. In its Recommendation on the measure, the Commission states:

In almost all condemnation cases, the primary issue is the amount of compensation. Evidence is introduced in support of each party's contention of the value of the property taken and damages to the remainder. Valuation disputes may arise from such matters as differing interpretations of sales data and differing opinions of highest and best use, probability of changes in zoning, probability of

dedication, feasibility of development, and legal compensability of loss.

Existing law seeks to encourage settlement of eminent domain valuation disputes by requiring the parties to make their final offers and demands before the commencement of trial. Attorney fees and other litigation expenses may be awarded to the property owner if the final pretrial demand of the property owner was reasonable and the final pretrial offer of the condemnor was unreasonable.

Other settlement inducements include special provisions for exchange of valuation data by the parties. As a general rule, conventional discovery techniques have been of little value in generating useful information concerning the key points of disagreement between the parties. This is because the critical evidence in eminent domain proceedings is expert opinion testimony, and valuation experts who may be called to testify at trial resist formulating an opinion for that purpose until the time of trial. For this reason, California has adopted special discovery rules for eminent domain proceedings, which provide for an early exchange of valuation data on demand of a party.

While the parties do not always take advantage of the exchange procedure for various tactical reasons, there is a strong incentive to use it due to the operation of the litigation expense statute. Because an award of litigation expenses is predicated on the reasonableness of the parties' valuation determinations, each party must make a good faith effort to understand and respond to the other's case. A party who does not seek to review the opponent's case in advance of trial is at risk of being determined not to have acted reasonably in the proceeding.

The various incentives for the parties to resolve the eminent domain dispute without the need for a lengthy and expensive trial have been reasonably successful. During the three-year period from July 1, 1996, to June 30, 1999, for example, there were 3,783 eminent domain cases filed statewide. Of the 3,477 pending eminent domain cases disposed of statewide during that period, 3,200 (92%) were either disposed of before trial or after trial as uncontested matters. Only 277 (8%) were disposed of after trial as contested matters.

The governing statutes, while salutary, are not free of problems. In particular, the provisions applicable to the exchange of valuation data could be improved, as well as pretrial procedures for resolving legal disputes affecting valuation. The Law Revision Commission proposes in this recommendation a number of revisions of the law intended to

facilitate resolution of eminent domain cases without the need for trial.

Author's Amendments. In order to address the concerns of public entities, the author and sponsor agreed to amend the bill as noted below:

- 1) Require the written statement or summary of the appraisal of property by the plaintiff to contain detail sufficient to clearly indicate the basis for the appraisal, including the date of valuation, highest and best use, and applicable zoning of the property, the principal transactions, reproduction or replacement cost analysis, or capitalization analysis supporting the appraisal, and if the appraisal includes compensation for damages to the remainder, the compensation for the property and for damages to the remainder separately stated, and the calculations and a narrative explanation supporting the compensation, including any offsetting benefits.
- 2) Provide that, at any time after a deposit has been made, the motion of a plaintiff or any party having an interest in the property shall be supported with detail sufficient to indicate clearly the basis for the motion, including, but not limited to the information noted above.
- 3) On page 8, delete lines 32-40 and on page 9, delete lines 1-17.
- 4) On page 9, delete lines 39-40 and on page 10, delete lines 1-5 and insert language providing that the public entity shall provide the property owner with a written statement and summary of the basis for the amount established as just compensation. The amendments also require that the written statement and summary shall contain detail sufficient to indicate clearly the basis for the offer and include specified information.

REGISTERED SUPPORT / OPPOSITION :

Support

California Law Revision Commission (sponsor)  
Civil Justice Association of California  
California Chamber of Commerce

Opposition

None on file

Analysis Prepared by : Saskia Kim / JUD. / (916) 319-2334





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|SENATE RULES COMMITTEE | AB 237|
|Office of Senate Floor Analyses | |
|1020 N Street, Suite 524 | |
|(916) 445-6614 Fax: (916) | |
|327-4478 | |
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THIRD READING

Bill No: AB 237  
 Author: Papan (D)  
 Amended: 8/28/01 in Senate  
 Vote: 21

SENATE JUDICIARY COMMITTEE : 4-1, 8/21/01  
 AYES: Escutia, Ackerman, O'Connell, Peace  
 NOES: Haynes

ASSEMBLY FLOOR : 76-0, 5/10/01 (Passed on Consent) - See last page for vote

SUBJECT : Eminent domain

SOURCE : California Law Revision Commission

DIGEST : This bill would amend eminent domain law to facilitate resolution of condemnation cases without trial. Specifically, it would (1) allow parties to submit any dispute in an eminent domain proceeding for mediation or arbitration; (2) require appraisal summaries and offers of compensation to contain detail sufficient to indicate the basis for the appraisal or offer; and (3) require final offers and demands to include all elements of required compensation, including loss of goodwill.

This bill would apply to any eminent domain proceeding commenced on or after January 1, 2002.

ANALYSIS : Existing law provides that at least 20 days prior to trial in an eminent domain proceeding, the

CONTINUED

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plaintiff and defendant shall file and serve upon each other their final offer of, and demand for, compensation for the subject property.

This bill would provide that the offer and demand shall include all compensation required pursuant to this title, including compensation for loss of goodwill, if any, and shall state whether interest and costs are included.

Existing law provides that issues of compensation in eminent domain proceedings may be submitted to binding arbitration by agreement of the parties.

This bill would provide that the parties may agree to refer a dispute that is the subject of an eminent domain proceeding to mediation, binding arbitration, or nonbinding arbitration.

This bill further would provide that in a nonbinding arbitration, the arbitrator's decision would be final unless a party timely moves the court for trial. If that party fails to secure a more favorable judgment at trial, he or she shall pay the other party's specified costs incurred from the time of election of trial (including reasonable costs of expert witnesses) unless the court finds the imposition of costs would create a substantial economic hardship contrary to the interest of justice.

This bill further would provide that on motion of a party, the court may postpone the date of trial for a period that appears adequate to enable resolution of a dispute pursuant to mediation or arbitration, if the court is satisfied that the parties are actively engaged in the resolution process, appear to be making progress, and agree that additional time for resolution is desirable.

Existing law provides that at any time before entry of judgment, the plaintiff may deposit with the State Treasury the probable amount of compensation, based on an expert appraisal, that will be awarded in the proceeding. The expert shall prepare a written statement of, or summary of the basis for, the appraisal. (CCP Sec. 1255.010)

Existing law further provides that, at any time after this

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deposit has been made, the plaintiff or any other party having an interest in the property may move the court to determine or redetermine whether the amount deposited is the probable amount of compensation that will be awarded in the proceeding.

This bill would provide that the statement or summary accompanying the deposit shall contain detail sufficient to indicate clearly the basis for the appraisal, including:

1. The date of valuation, highest and best use, and applicable zoning.
2. The principal transactions, reproduction or replacement cost analysis, or capitalization analysis, supporting the appraisal.
3. Separate statements of compensation for the property and damages for the remainder, if any, and the calculations and a narrative explanation supporting the compensation, including any offsetting benefits.

This bill further would provide that a motion for redetermination made pursuant to this section shall be supported by the same detail as the analysis accompanying the initial deposit.

Existing law provides that, unless otherwise agreed to by the parties, the date of exchange for expert witness lists and statements of valuation data shall be 60 days prior to trial.

Existing law further provides that statements of valuation data shall include each matter on which an expert witness will give an opinion, what that opinion is, and shall specify the factors used to reach the opinion.

This bill would provide that, unless otherwise agreed to by the parties, the date of exchange for these lists and statements shall be 90 days prior to trial.

This bill further would provide that unless otherwise agreed to by the parties, the date of exchange shall not be earlier than nine months after the date of commencement of

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the proceeding.

This bill further would provide that if an opinion in a statement of valuation data concerns loss of goodwill, the statement shall include the method used to determine the loss, and a summary of the data supporting the opinion.

Existing law provides for the resolution by the court of disputes on matters of law, such as the plaintiff's right

to take the subject property, prior to jury trial on the issue of just compensation.

This bill would provide that, if the parties dispute an evidentiary or other legal issue affecting the determination of compensation, either party may move the court for a ruling on the issue no later than 60 days before trial. A court that issues a ruling on such a motion may postpone other statutory deadlines in the action for a period sufficient to enable the parties to engage in further proceedings in response to the court's ruling on the motion.

Existing law provides that, prior to adopting a resolution of necessity to initiate condemnation proceedings, a public entity considering acquisition of property shall offer the property owner an amount it believes to be just compensation therefor, and shall provide the owner with a written statement of, and summary of the basis for, the amount offered as just compensation.

Existing law further provides that, where the property involved is owner-occupied residential property and contains no more than four residential units, the homeowner shall, upon request, be allowed to review a copy of the appraisal upon which the offer is based.

This bill would provide that the written statement and summary provided to the property owner shall contain detail sufficient to indicate clearly the basis for the offer, including but not limited to the data set forth in the proposed amendment to CCP Section 1255.010, above.

This bill further would provide that the public entity may, but is not required to, satisfy the written statement,

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summary, and review requirements of this section by providing the owner a copy of the appraisal on which the offer is based.

This bill further would provide that this act in its entirety shall apply to any eminent domain proceeding commenced on or after January 1, 2002.

In October of 2000, the California Law Revision Commission published a report entitled "Early Disclosure of Valuation Data and Resolution of Issues in Eminent Domain," recommending improvements in several areas of eminent domain law.

The report notes that in almost all condemnation cases, the primary issue is the amount of compensation. Existing law seeks to encourage settlement of compensation disputes before trial in various ways, such as requiring the parties to exchange valuation data early in the process, and to make their final offers and demands for compensation before trial.

The report states that the various incentives for pretrial settlement have been "reasonably successful," noting that 92 percent of the 3,477 California eminent domain cases brought to conclusion between 1996 and 1999 either were resolved before trial or were uncontested at trial.

Nevertheless, the report concludes that various provisions could be improved to increase the number of cases settled without trial. The Commission now sponsors this bill incorporating most of the recommendations in its report.

FISCAL EFFECT : Appropriation: No Fiscal Com.: No  
Local: No

SUPPORT : (Verified 8/28/01)

California Law Revision Commission (source)  
California Chamber of Commerce  
Civil Justice Association of California (CJAC)

ASSEMBLY FLOOR :

AYES: Aanestad, Alquist, Ashburn, Bates, Bogh, Briggs, Calderon, Bill Campbell, John Campbell, Canciamilla, Cardenas, Cardoza, Cedillo, Chan, Chavez, Cogdill, Cohn, Corbett, Correa, Cox, Daucher, Diaz, Dickerson, Dutra, Firebaugh, Florez, Frommer, Goldberg, Harman, Havice, Hollingsworth, Jackson, Keeley, Kehoe, Kelley, Koretz, La Suer, Leach, Leonard, Leslie, Longville, Lowenthal, Maddox, Maldonado, Matthews, Migden, Mountjoy, Nakano, Nation, Negrete McLeod, Oropeza, Robert Pacheco, Rod Pacheco, Papan, Pavley, Pescetti, Reyes, Richman, Runner, Salinas, Shelley, Simitian, Steinberg, Strickland, Strom-Martin, Thomson, Vargas, Washington, Wayne, Wesson, Wiggins, Wright, Wyland, Wyman, Zettel, Hertzberg

RJG:sl 8/28/01 Senate Floor Analyses

SUPPORT/OPOSITION: SEE ABOVE

\*\*\*\* END \*\*\*\*

**PROOF OF SERVICE**

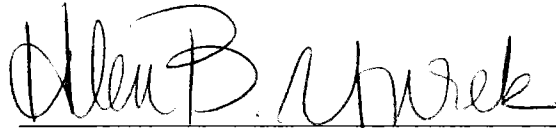
I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 18881 Von Karman Avenue, Suite 1700, Irvine, CA 92612.

On **March 11, 2014**, I served the within document(s) described as: **PLAINTIFF AND RESPONDENT CITY OF PERRIS'S MOTION TO TAKE JUDICIAL NOTICE; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF (CRC § 8.520(g))** on the interested parties in this action as stated on the attached mailing list.

- (BY MAIL)** By placing a true copy of the foregoing document(s) in a sealed envelope addressed as set forth on the attached mailing list. I placed each such envelope for collection and mailing following ordinary business practices. I am readily familiar with this Firm's practice for collection and processing of correspondence for mailing. Under that practice, the correspondence would be deposited with the United States Postal Service on that same day, with postage thereon fully prepaid at Irvine, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
  
- (BY OVERNIGHT DELIVERY)** I deposited in a box or other facility regularly maintained by NORCO Overnight Delivery, an express service carrier, or delivered to a courier or driver authorized by said express service carrier to receive documents, a true copy of the foregoing document(s) in a sealed envelope or package designated by the express service carrier, addressed as set forth on the attached mailing list, with fees for overnight delivery paid or provided for.
  
- (BY E-MAIL)** By transmitting a true .pdf copy of the foregoing document(s) by e-mail transmission from hyurek@awattorneys.com to each interested party at the e-mail address(es) set forth above. Said transmission(s) were completed on the aforesaid date at the time stated on declarant's e-mail transmission record. Each such transmission was reported as complete and without error.
  
- (BY PERSONAL SERVICE)** I caused to be delivered a true copy of the foregoing document(s) in a sealed envelope by hand to the offices of the above addressee(s).

Executed on **March 11, 2014**, at Irvine, California. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

\_\_\_\_\_  
Helen B. Yurek  
(Type or print name)

  
\_\_\_\_\_  
(Signature)

*Richard C. Stamper, et al. v. City of Perris*  
 California Court of Appeal, Fourth Appellate District, Division Two – Case No. E053395;  
 Supreme Court Case No.: S213468  
*City of Perris v. Richard C. Stamper, et al.*  
 Riverside Superior Court, Central District – Case No. RIC524291

**SERVICE LIST**

<p>K. Erik Friess, Esq.          ALLEN MATKINS LECK GAMBLE          MALLORY &amp; NATSIS, LLP          1900 Main Street, 5<sup>th</sup> Floor          Irvine, CA 92614</p> <p>T 949.553.1313          F 949.553.8354          E-MAIL: rfriess@allenmatkins.com</p>	<p>ATTORNEYS FOR DEFENDANTS          AND APPELLANTS,          Richard C. Stamper, Donald D. Robinson          and Donald Dean Robinson, LLC</p> <p>(1 COPY)</p>
<p>Supreme Court of California          Office of the Clerk, First Floor          350 McAllister Street          San Francisco, CA 94102</p> <p>Tel: (415) 865-7000</p>	<p>(1 ORIGINAL &amp; 8 COPIES)</p>
<p>Hon. Dallas S. Homes          c/o Clerk of the Court          Riverside County Superior Court          4050 Main Street          Riverside, CA 92501</p> <p>Tel: (951) 777-3147</p>	<p>(1 COPY)</p>
<p>Court of Appeal          4th District Div 2          3389 Twelfth Street          Riverside, CA 92501</p> <p>Phone: (951) 782-2500          Fax: (951) 248-0235</p>	<p>(1 COPY)</p>

Supreme Court Case No.: S213468

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

---

CITY OF PERRIS,

*Plaintiff and Respondent,*

v.

RICHARD C. STAMPER, et al.,

*Defendants and Appellants.*

---

AFTER A DECISION BY THE COURT OF APPEAL, FOURTH  
APPELLATE DISTRICT, DIVISION TWO

CASE NO. E053395

---

ON APPEAL FROM SUPERIOR COURT OF RIVERSIDE COUNTY,  
THE HONORABLE DALLAS HOLMES, JUDGE

CASE NO. RIC524291

---

**[PROPOSED] ORDER GRANTING PLAINTIFF AND  
RESPONDENT CITY OF PERRIS'S MOTION TO TAKE JUDICIAL  
NOTICE**

---

ERIC L. DUNN (Bar No. 176851)

SUNNY K. SOLTANI (Bar No. 209774)

PAM K. LEE (Bar No. 246369)

ADRIANA P. MENDOZA (Bar No. 286659)

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Irvine, CA 92612

Telephone: (949) 223-1170

Facsimile: (949) 223-1180

Attorneys for Plaintiff and Respondent  
CITY OF PERRIS

**[PROPOSED] ORDER GRANTING PLAINTIFF AND  
RESPONDENT CITY OF PERRIS'S MOTION TO TAKE JUDICIAL  
NOTICE**

Having considered the Petitioner City of Perris's Motion to Take Judicial Notice,

IT IS HEREBY ORDERED that the motion is granted as to the following Items:

1. Relevant excerpts from the records of the State Legislature pertaining to Assembly Bill 11 (1975-1976 Reg. Sess.), excerpts of which are attached hereto as Exhibit "A". The excerpts are part of the recorded legislative history for Assembly Bill 11, which enacted Code of Civil Procedure Section 1263.330, regarding the "project influence rule".
2. Relevant excerpts from the records of the State Legislature pertaining to Assembly Bill 237 (2001-2002 Reg. Sess.), excerpts of which are attached hereto as Exhibit "B". The excerpts are part of the recorded legislative history for Assembly Bill 237, which enacted Code of Civil Procedure Section 1260.040, regarding the trial court's determination of legal issues in eminent domain proceedings prior to trial on the issue of compensation.

IT IS SO ORDERED.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Justice



**PROOF OF SERVICE**

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 18881 Von Karman Avenue, Suite 1700, Irvine, CA 92612.

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\_\_\_\_\_  
Helen B. Yurek  
(Type or print name)

\_\_\_\_\_  
  
(Signature)

*Richard C. Stamper, et al. v. City of Perris*  
 California Court of Appeal, Fourth Appellate District, Division Two – Case No. E053395;  
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