

Memorandum 70-27

Subject: Study 36.204 - Condemnation (The Declared Public Uses--Condemnation for State Purposes)

One part of the right to take aspect of the condemnation study is the right to condemn for state purposes. In one respect, at least, this part presents no difficulties. We have noted in other memoranda that care must be taken in repealing Code of Civil Procedure Section 1238 to insure that adequate condemnation authority is preserved elsewhere for those declared public uses. However, with respect to the state, it appears that the authorization conferred by Section 1238 has been totally eclipsed by the expansive condemnation powers conferred elsewhere upon the Director of the Department of General Services and State Public Works Board and the Department of Public Works.

For a number of years, the acquisition of property for the general purposes of the state government has been centralized under the Property Acquisition Law in the State Public Works Board which obtains staff assistance from the Department of General Services. The Board consists of three voting members--the Directors of the Departments of Finance, General Services, and Public Works. Meeting with the Board in an advisory capacity are two appointed Senators and two appointed Assemblymen. See Government Code Section 15770. The Board is authorized to "select and acquire . . . suitable and adequate real property for such purposes as may be specified in the legislation making funds available for such acquisition." Govt. Code § 15853. That "acquire" includes "condemn" is implicit in the requirement of Section 15854 that the Board conduct condemnation proceedings in the manner provided in Title 7 of Part 3 of the Code of Civil Procedure. No

additional specification of the public purpose for which property is to be acquired beyond that set forth in the appropriation bill is apparently needed. See State v. City of Los Angeles, 256 Cal. App.2d 930, 64 Cal. Rptr. 476 (1967). Moreover, the Director of the Department of General Services is separately authorized to bring "condemnation proceedings for the acquiring of any land to be obtained for any state agency, except land to be acquired by the Department of Public Works for highway purposes, if no other state agency is specifically authorized and directed to institute such proceedings." Govt. Code § 14661.

The exception for state highway purposes recognizes the autonomy of the Department of Public Works, Division of Highways. However, adequate authority to condemn for state highway purposes is granted that department by Streets and Highways Code Section 102 et seq.

The Department of Water Resources and the State Reclamation Board also appear to conduct their own acquisition activities subject only to the review of the Department of General Services. However, adequate authority to condemn is granted these two agencies by various provisions of the Water Code. See attached Exhibit I.

To complete the picture, it should be noted that Section 14661 excepts those cases where another state agency is specifically authorized to conduct condemnation proceedings. It appears that this exception permits the Department of Fish and Game, the Adjutant General, the State Lands Commission, and the Department of Aeronautics to condemn certain property for very limited purposes. See attached Exhibit I. Whether or not these agencies actually exercise this prerogative or instead rely upon the staff of the Department of General Services we do not know. In any case, however, this does not bear

on the immediate problem. It appears certain that no state agency derives any taking authority from the generalities of Section 1238 and the repeal of that section would have no effect on such authority and would accordingly require no legislative changes in this connection.

It might be desirable to determine the extent to which state agencies (other than the Departments of Public Works and Water Resources) have independent condemnation authority; it may be the intent of the Legislature that all other acquisitions be under the Property Acquisition Act.

The staff suggests that the Department of General Services be contacted to determine what, if any, changes are needed in the statutes governing condemnation of property for state agencies (other than the Department of Public Works and the Department of Water Resources).

Respectfully submitted,

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EXHIBIT I

State Agencies Granted Power of Eminent Domain

<u>Agency</u>	<u>Purpose</u>	<u>Statute</u>
Regents of the University of California	buildings and grounds for the University of California	Educ. Code § 23151
Trustees of the California State Colleges*	housing and parking facilities for students, faculty, and staff of state colleges	Educ. Code §§ 24502, 24503
Department of Fish and Game (under the authority of Wildlife Conservation Board)	access roads or rights of way to areas used for fishing coastal waters of Pacific Ocean	Fish & Game Code §§ 1348, 1349
Department of General Services (provides staff assistance for Public Works Board)	state purposes generally ("any land authorized by law to be obtained for any state agency, except land . . . for highway purposes, if no other state agency is specifically authorized . . . to institute such proceedings")	Govt. Code §§ 14661, 14662
State Public Works Board	state purposes generally ("real property for such purposes as may be specified in the legislation making funds available for such acquisition")	Govt. Code § 15853 (Property Acquisition Law--Govt. Code §§ 15850-15866)
Department of Parks and Recreation*	easements on property owned or controlled by city, county, or local agency for access to public beach	Govt. Code § 54093
Adjutant General (with the approval of the Department of General Services)	armories	Mil. & Vets. Code § 437
Department of Parks and Recreation	development of the state park system	Pub. Res. Code §§ 5006, 5006.2
State Lands Commission	rights of way or easements for development of oil and gas from state owned land	Pub. Res. Code § 6808

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Acquisition activities actually conducted by Department of General Services (for Public Works Board) on behalf of this agency.

<u>Agency</u>	<u>Purpose</u>	<u>Statute</u>
Department of Aeronautics	elimination and removal of hazards to operation of airport	Pub. Util. Code §§ 21633-21635
Department of Public Works	state highways	Sts. & Hwys. Code §§ 102, 103.5, 104-104.4, 104.6
Department of Public Works (for California Toll Bridge Authority)	bridge, toll bridge, transportation facilities	Sts. & Hwys. Code §§ 30400-30413
Department of Water Resources	water and dam purposes	Water Code §§ 250-256, 258-259
Department of Water Resources	recreational development associated with state water projects	Water Code §§ 345, 346
Department of Public Works	right of way to construct flood control works	Water Code § 8304
State Reclamation Board	flood control and drainage works	Water Code §§ 8590, 8593- 8595
Department of Water Resources	Central Valley (Water) Project	Water Code §§ 11575-11592