

First Supplement to Memorandum 75-46

Subject: Study 36.43 -- Eminent Domain (AB 278--Open Space)

A representative of the State Chamber of Commerce and representatives of ranchers and persons who use open range have suggested that AB 278 be amended to restrict the use of condemnation authority to acquire open space by adding the following provision of Section 6955 to the Government Code:

Property may be acquired through condemnation authority under this chapter only if the city or county makes a finding in its resolution of public interest and necessity that an existing or proposed use or development, unnecessarily threatening the open space values, is eminent (sic).

If the substance of this limitation is thought to be desirable, the proposed draft attached to Memorandum 75-46 might be revised by revising paragraph (2) of subdivision (c) of Section 65574 (page 2 of green pages) to read:

(2) The resolution of necessity, in addition to the requirements imposed by Section 1245.230 of the Code of Civil Procedure, shall include a finding that the open-space lands to be acquired are necessary for the long-term benefit of the public and a finding either that a use or development of such lands which threatens the open-space value of the lands is imminent or that the open-space lands to be acquired are adjacent to other open-space lands in which the city or county already owns a fee or lesser interest.

The effect of the proposal is to limit acquisition of open-space lands to those that are about to be developed, thus requiring that the property owner be paid compensation based on the value of lands for development and precluding the acquisition of open-space lands at a time when they can be acquired at the lower value that they would have for agricultural or a similar use. This presents a significant policy question. The staff revision would also permit acquisition by eminent domain where some of the open-space lands have already been acquired by purchase or gift so that the remainder of the lands necessary for open-space use could be acquired by eminent domain to complete the acquisition of the necessary lands.

Respectfully submitted,

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