

Memorandum 98-54**Eminent Domain Law Update: Recent Communications**

We have recently received two letters addressing the need for the Commission's project to update the California Eminent Domain Law.

Attached is a letter from the California County Counsels' Association (Exhibit pp. 1-2). That association is concerned about the project — they are not aware of (1) any desire from practitioners that the law be reviewed, (2) any lack of clarity within existing eminent domain statutes, or (3) the need to make any substantive changes in the law. They comment that large bodies of case law have developed in areas identified by the Commission for study, and revisions in these areas will create additional complexities.

The view of the County Counsels' Association is not universally shared. In another letter to the Commission, Brian T. Stuart states his belief that the current law, both statutory and judicial, is vague and, at times, misleading (Exhibit p. 3). Mr. Stuart concludes that the Commission should carefully examine California's eminent domain law and make needed improvements.

The staff thinks the Commission should be particularly attentive to a remark made in the County Counsels' Association letter. The association observes that eminent domain law "has increasing applicability within the land use and regulatory fields of local government. Revisions at this time will be subject to special interest pressures in this 'takings' context."

This echoes a concern the staff has expressed to the Commission, and the staff agrees with the association's observation on this point completely. This project has the potential to become extremely political as a result of the land use and environmental implications of eminent domain law. Our admonition in Memorandum 98-39, considered by the Commission at its June meeting, bears repeating:

But the staff thinks the political landscape really has changed. Not only is environmentalism a more powerful force than it was in 1975, but the entire legislative process is now more highly politicized than it was then. In addition, the effect of term limits in the Legislature has eroded the Commission's goodwill in the

Legislature, which traditionally enabled it to obtain enactment of otherwise controversial measures. Recent history has taught us forcefully that it is a mistake for the Commission to jump into an area it knows will be controversial.

The staff believes the Commission needs to proceed with caution in this area. We must be selective in the issues we address. Any recommendations to the Legislature must be seen as balanced — not particularly favoring one side or the other in the public entity v. property owner debate.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary



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California Law Revision Commission
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Re: Review of Eminent Domain Law

Dear Commissioners:

This is in response to your recent press release concerning the desire of the Commission to review the status of the law of eminent domain. The California County Counsels' Association is again concerned that the Commission not venture into an arena in which a substantial body of judicial law already exists and which was subject to revision within our memory.

It is not clear from your press release that a review of eminent domain law is urged by practitioners, the legislature or property owners. Absent a desire from practitioners that there be such a review or that there is a need for additional Commission work in this area, we urge you to devote the Commission's efforts to those other projects which are already underway.

The County Counsels' Association is not aware of lack of clarity within existing eminent domain statutes. Nor is the Association aware that there is a need to make substantive changes to:

"... such matters as date of valuation, general benefits and severance damages, offer and demand and litigation expenses, condemnation by privately owned public utilities, and admissibility of comparable sales to public entities."

Large bodies of case law have developed within discrete areas of what the Commission's staff have identified as areas for review. Revisions within these areas will create additional complexities. Further, the subject matter has increasing applicability within the land use and regulatory fields

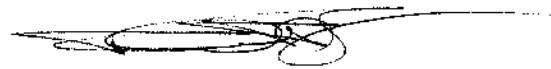
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of local government. Revisions at this time will be subject to special interest pressures in this "takings" context.

Should the Commission receive direction or otherwise determine to undertake this project, the Association is willing to assist the Commission.

Thank you for the opportunity to respond regarding the initiation of this project.

Sincerely,

A handwritten signature in dark ink, appearing to read "Robert A. Ryan, Jr.", with a long horizontal line extending to the right.

ROBERT A. RYAN, JR.
County Counsel

cc: Ms. Ruth Sorensen

1707 Magnolia Place
Davis, California 95616
June 18, 1998

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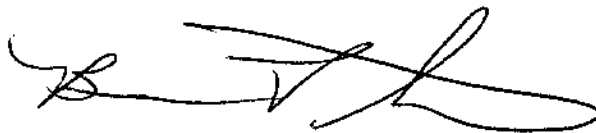
Dear Mr. Sterling,

I recently received notice regarding the Law Revision Commission's intent to review the current California Eminent Domain Law. I would appreciate the opportunity to participate in these studies. I believe the current law, both statutory and judicial, is vague and, at times, misleading.

The most recent decision of the California Supreme Court, Los Angeles County Metropolitan Transit Authority v. Continental Development Corporation, 941 P.2d 809 (1997), is an example of the uncertainty in the current law. In that case, the California Supreme Court misinterpreted the current eminent domain law and, as a result, arrived at a faulty conclusion. I enclosed an article I wrote that details the faulty reasoning of the California Supreme Court.

That is just one example of the problems with the current law. The California Law Revision Commission should carefully examine the Eminent Domain Law and compare it to other states to create an improved model. I hope to be a part of the Commission's efforts.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian T. Stuart", with a stylized, flowing script.

Brian T. Stuart

Enclosure (1)