

CALIFORNIA LAW REVISION COMMISSION

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NEWS RELEASE
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Eminent Domain: Precondemnation Activities

Request for Public Comment

The California Law Revision Commission seeks public comment on a tentative recommendation relating to precondemnation activities that result in a taking.

The California Supreme Court recently held that the statutory procedure for compensation of takings that result from precondemnation entry and testing activities is constitutionally insufficient as drafted. The California Constitution guarantees the right to a jury trial on the amount of compensation owed. The statutory procedure does not. See *Property Reserve Inc. v. Superior Court*, 1 Cal. 5th 151 (2016).

Rather than invalidate the precondemnation statute entirely, the Court “reformed” it, reading in a jury trial right on the amount of compensation owed. That reformation cured the constitutional infirmity, but created an inconsistency between what the statute says on its face and what the Court reformed it to mean. That inconsistency could cause problematic confusion and error.

The Law Revision Commission tentatively recommends that the precondemnation activities statute be revised to conform to the reformed meaning established by the Court.

The tentative recommendation is available from the California Law Revision Commission, 4000 Middlefield Road, Room D-2, Palo Alto, CA 94303-4739. It is also available at the Commission’s website (www.clrc.ca.gov) in the pull-down “Reports” menu.

The Commission often substantially revises its recommendations as a result of public comment. To receive timely consideration, comments should be submitted by **August 8, 2017**.
