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LAND GRAB

TAKE ACTION WHEN THE GOVERNMENT COMES CALLING

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Land grab

Take action when the government comes calling

JANIS G. WHITE

Consider the following: You own property in an area with a growing population, and you plan to build a new residential community. You have prepared initial design documents and have begun the process of obtaining necessary government approvals. You may have even begun the work of providing necessary infrastructure for the project.

You receive a letter from the state transportation department, the county or the city. The government is going to build a new road that will run through

a portion of your property and is offering to pay you for the property it needs. If you cannot come to terms with the government on price, it will file a lawsuit in eminent domain, condemning the property it needs.

The new road will bisect your property, making your design plan obsolete. Instead of building 300 homes, you will only be able to build 250 homes. The new road will affect the quality of life because of traffic noise and because many homes will now border the new road, adversely affecting views. Not only will you be able to build fewer homes than planned—they will be worth less.

While the law allows the government to take private property for a public project such as a new road, the government must pay the property owner fair and just compensation. With the help of legal counsel, you can navigate the issues and maximize the amount of compensation you receive.

Counsel will determine whether the government agency has been legally authorized to acquire private property for the project.

Counsel will analyze whether the proposed acquisition is, in fact, for public use and whether the property is necessary for that use—two legal tests the government must satisfy in an eminent domain proceeding. Generally, construction of a new road is recognized as a public use and necessary within the government's power of eminent domain.

However, there are times when it makes sense to challenge the government's conclusion of public use and necessity.

Counsel will make sure you receive a copy of the appraisal upon which the government's offer of compensation is based. Assuming the government is taking only a portion of your property, you are entitled to compensation for the value of the property taken as well as for damages to the remainder of your property. In many cases you will want to obtain your own appraisal before negotiating with the government. You need to consider the following:

- How the appraiser determined the value of the property being taken and whether he or she used the appropriate methodology.
- Whether the appraiser considered the development stage of your project—for example, if you have infrastructure approvals in place, the property is worth more than raw land.
- How much of the property will still be able to be developed after the government acquisition—for example, if the government is leaving you with a corner of land that now will not be part of the development, you should ask the government to include that portion of

the property in its “take”—not just the land it needs for the road.

- Did the appraiser consider the damages to the remainder of the property—for example, what type of traffic is expected on the new road, and how noisy will it be? Can the noise be mitigated by building a sound wall, and how much will that cost? How will views be adversely affected?

Counsel will help you identify whether you need other experts, such as a noise engineer, to build the case that you are entitled to more compensation than the government offers. Although they are required to pay just compensation, governments sometime fail to do a complete analysis before seeking to acquire private property.

The bottom line is that a property owner does not have to accept the government's first offer of compensation. With expert assistance you can ensure that you do, in fact receive just compensation for condemned property. 



JANIS G. WHITE is counsel to the firm at Lane Powell PC. She focuses her practice on complex commercial litigation, including banking, condemnation, fiduciary litigation, products liability, securities, contracts,

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