
Dealing With Condemnation From a Public Entity



Michael R. Kiesling

Associate

619.699.2542

mkiesling@luce.com

www.luce.com/michaelkiesling



Antony D. Nash

Partner

619.233.2968

anash@luce.com

www.luce.com/antonymash



Steven S. Wall

Partner

619.699.2469

swall@luce.com

www.luce.com/stevenwall

The following article appeared originally in the November-December 2010 edition of California Builder Magazine:

Under California law, the power of eminent domain may only be used to acquire private property for a particular use: in other words, for a proposed project. As a prerequisite to the taking of property, the law requires that a condemning entity adopt a resolution of necessity containing, among other things, “a general statement of the public use for which the property is to be taken.”

But what constitutes a sufficient general statement of public use? The answer to this question is significant to private landowners facing condemnation, because a statement deemed insufficient will result in the invalidation of the resolution and potentially prevent the taking.

Fortunately, the California Court of Appeal’s recent decision in the case of *City of Stockton v. Marina Towers, LLC* sheds some light on this important issue.

Discussion of the *Stockton* Decision

In *Stockton*, a private landowner, Marina Towers, LLC (“Marina”), owned two parcels of property along the North Shore of the Stockton Deep Water Channel. In early 2003, an agency of the City of Stockton (the “City”) began planning to redevelop the North Shore area, including Marina’s property. The City’s plans included construction of a multi-use event center containing a sports arena, hotel, baseball stadium and residential apartments.

In August 2003, the City offered to purchase Marina’s property. When Marina refused, the City adopted resolutions of necessity for the taking of the property. Despite the City’s general plan for an event center, the resolutions contained no specific description of the use to which the property would be put, stating only that “the Proposed Project consists of the acquisition of additional land in conjunction with potential development on the North Shore of the Stockton Deep [W]ater Channel.” The resolutions also made reference to a laundry list of statutes supposedly authorizing the taking.

In October 2003, the City filed an eminent domain action against Marina. Shortly thereafter, the City obtained possession of Marina’s property and constructed a public parking lot and baseball field on the property. At trial, Marina argued that the City’s resolutions of necessity were defective because they failed to sufficiently identify a public use for the property. However, the trial court found in favor of the City, in primary part because the City had ultimately put Marina’s property to a public use.

Marina appealed, and the Court of Appeal reversed the trial court’s decision. In so doing, the court opined that the City’s resolutions of necessity were “woefully lacking” in their identification of the project proposed to be constructed on Marina’s property. According to the court, the project description was so “vague, uncertain and sweeping in scope” that it failed to identify the public use for which the City sought to acquire the property.

Dealing With Condemnation From a Public Entity

The court opined that an adequate project description is a prerequisite to condemnation, and that for a resolution of necessity to support a taking, it must identify the proposed project with such specificity that “persons of ordinary intelligence can discern what the ‘project’ is.”

The court identified four reasons why an inadequate project description must be considered fatal to a taking. First, an inadequate description prevents a determination of whether the basic statutory requirements for a taking of property are met. Second, if vague descriptions were permissible, a municipality could improperly evade the environmental protections provided by the California Environmental Quality Act. Third, a private landowner’s due process rights require a specific project description. Finally, an adequate description is essential to enable judicial resolution of a landowner’s defenses to condemnation.

In addition to finding an inadequate project description, the court also found fault with the City’s reference in the resolutions of necessity to multiple statutes supposedly authorizing the taking. The court observed that, rather than referring to a specific statute as required by law, the City’s “resolution[s] simply trot[] out a laundry list of statutes setting forth a plethora of possible purposes for condemning property. This global, yet evasive enumeration constitutes an implied admission that [the City] does not yet know to what use it intends to put the property.”

Finally, the court held that the fact that the City had ultimately put the property to a public use was irrelevant to its determination whether the resolutions of necessity were adequate. The court opined that “the entire objective of requiring a resolution of necessity is to ensure that the public entity makes a careful and conscientious decision about the need for the ... property *before* it condemns private property. This purpose would be eviscerated if the validity of a resolution of necessity could be validated by post hoc events.” (Emphasis added.)

Despite the court’s findings of inadequacy of the City’s resolutions of necessity, it ultimately gave the City another chance to get the condemnation right by allowing the City an opportunity to adopt new resolutions. This decision was based, in part, on the court’s observations that the City had substantially improved the property prior to trial, and that compelling the return of the improved property would result in a substantial windfall to Marina. The court also found fault in Marina’s delay in waiting until trial to challenge the sufficiency of the resolutions. However, the court did award Marina reasonable litigation expenses arising from its challenge of the resolutions.

What the *Stockton* Decision Means for Landowners

The *Stockton* decision serves as a reminder that private landowners facing condemnation must promptly and carefully scrutinize a condemning entity’s resolution of necessity to determine whether the resolution contains an adequate project description. As mentioned above, under *Stockton*, a project description must contain sufficient specificity that persons of ordinary intelligence can determine what the “project” is.

Specific examples of an adequate description include that the property will be used for an “elementary school and grounds” or “right of way for a freeway” or “open space to be maintained in its natural condition.”

Dealing With Condemnation From a Public Entity

If a resolution of necessity does not contain a project description, or includes a description that appears to fall short of *Stockton's* specificity requirements, the landowner should challenge the adequacy of the resolution. Such a challenge should be made as early as possible in the condemnation process because, as in *Stockton*, a challenge made after the condemning entity has obtained possession of the property and made improvements may not ultimately prevent a taking.

A court may allow the condemning entity a second chance to get the resolution right. Landowners should also keep in mind that where the stated purpose of a taking is to combat urban blight, no specific project description is necessary, and any challenge to the resolution on grounds of inadequate description is unlikely to be successful.

Finally, landowners must carefully examine the resolution of necessity to determine whether it contains an overinclusive list of statutes supposedly authorizing the taking. The law requires a resolution to contain "a reference to the statute that authorizes the [condemning] entity to acquire the property by eminent domain."

However, under *Stockton*, if a condemning entity goes overboard and references multiple inapplicable statutes, a court might construe such overinclusion as evidence that the condemning entity has no specific purpose for the property.

Originally printed and posted by California Builder. Reposted with permission.