

# WATER AGENCIES' DESIGN GUIDE

## Design Guidelines for Water and Sewer Facilities

### SECTION 1.4 LAND ACQUISITION AND DISPOSITION

#### 1.4.1 PURPOSE

This section addresses the acquisition and disposition of real property by an Agency.

Agencies maintain and operate water and wastewater treatment plants, pump stations, above and below ground water and wastewater storage tanks, dams, reservoirs, and other facilities. Normally these facilities are located on land owned by the Agency.

Agencies may acquire real property by negotiated purchase, or by exercising its power of eminent domain. Eminent Domain is governed under federal law by the Fifth Amendment to the Constitution, and by Article 1, Section 19 of the Constitution of the State of California. The agencies do not normally acquire property under Eminent Domain for third parties.

An agency may dispose of real property subject to its policies and procedures, and state law.

#### 1.4.2 STANDARD TERMS AND DEFINITIONS

The following terms and definitions as found in this section shall have the following meanings, which may vary slightly from the Standard Terms and Definitions section of the WADG.

- A. Agency Interests: recorded legal rights owned by the Agency in real property.
- B. Appraisal: the act or process of estimating value.<sup>1</sup>
- C. Boundary or Jurisdiction: area included within the boundaries of a water agency as established (and from time to time amended) by the Board of Directors (and LAFCO) and all property owned by the WADG Agency.
- D. Condemnation: the determination and declaration that certain property, especially land, is assigned to public use subject to reasonable compensation.<sup>1</sup>
  - 1. Excess Condemnation: the taking of property beyond what is needed for public use.
  - 2. Inverse Condemnation: an action brought by a property owner for compensation from a governmental entity that has taken the owner's property without bringing formal condemnation proceedings.
- E. Eminent Domain: the inherent power of a governmental entity to take privately owned property, especially land, and convert it to public use subject to reasonable compensation for the taking.<sup>1</sup>
- F. Expropriation: a governmental taking or modification of an individual's property rights especially by eminent domain.<sup>1</sup>

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<sup>1</sup> Black's Law Dictionary, Seventh Edition

- G. Fair Market Value: the fair market value of the property taken is the highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for so doing, nor obliged to sell, and a buyer, being ready, willing and able to buy but under no particular necessity for so doing, each dealing with the other with full knowledge of all of the uses and purposes for which the property is reasonably adaptable and available.<sup>2</sup>
- H. Just Compensation: under the Fifth Amendment, a fair payment by the government for property it has taken under eminent domain, usually the property's fair market value, so that the owner is no worse off than after the taking.<sup>1</sup>
- I. Relocation Acquisition: additional payment or payments beyond appraised value for property owners impacted by the exercise of eminent domain. Relocation Assistance was added to both state and federal law to insure that a property owner was made "whole" after the condemnation process was completed.

### 1.4.3 ACQUISITION BY NEGOTIATED PURCHASE

Agencies may enter into negotiations to acquire fee title to real property. The agency should negotiate on the basis of paying fair market value.

Agencies need to be aware that its actions may be construed as negotiating with the threat of eminent domain, which can create repercussions should an owner feel that the agency is not negotiating in good faith, and can lead to inverse condemnation proceedings.

The California Environmental Quality Act (CEQA) applies to the acquisition of real property by a public agency. If the acquisition is for an immediate project, the CEQA process can include the acquisition as a part of the project.

Property being acquired for possible future projects, should be addressed by a separate CEQA document. Additionally, California State Law regulates how property and when property may be acquired for a future project.

### 1.4.4 ACQUISITION BY CONDEMNATION

Acquisition by condemnation is the result of either a failure to negotiate a purchase price, or the time constraints imposed by the project.

The procedures for exercising the power of eminent domain are:

1. The governing board of the agency files a Notice of Necessity, notifies the property owners of its intent to acquire the property, and holds a public hearing. The property owner may present information at the public hearing why there is not public necessity, or offering information on other sites that are available.

The governing board determines on information provided by staff and the property owner whether there is a public necessity. If there is, the Notice of Necessity is approved, and the process to acquire is commenced.

2. The agency has the property appraised. Generally the agency will use a California Certified General Appraiser for this type of appraisal. Included in this phase, would be a determination if Relocation Assistance is required.

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<sup>2</sup> California Code of Civil Procedure, Title 7, Eminent Domain Law; Chapter 9, Compensation; Article 4; Paragraph 1263.320

3. A written offer to acquire the property is made by the agency, along with a summary of the appraised value. The offer is always the appraised amount.
4. Negotiations based on the appraised value begin. Negotiations can continue throughout the process, even during the trial. If the case goes to trial, the agency must deposit with the court the amount of the last offer. The court will hold this amount in an interest bearing account until the trial is over.

It should be noted that if the agency and property owner cannot agree on a price, there is a final offer before trial. If the jury finds that the final offer was too low, it can award a higher price, and the agency can be liable for the property owners court costs.

5. Once the trial is over, the court will process the necessary paper work, and basically act as the escrow company.

#### **1.4.5 DISPOSAL OF EXCESS OR SURPLUS PROPERTY**

An agency may determine from time to time that certain parcels of real property are no longer necessary for its use. California State Law dictates how various public agencies are to dispose of excess or surplus property. Note that this action is subject to CEQA, and a Categorical Exemption Class 12 is to be prepared.

Generally the procedures are:

1. The governing board of the agency will declare the property excess or surplus, and then direct staff to dispose of it.
2. Depending on the size of the parcel, staff must notify and offer the property to:
  - i. Any park or recreation department of any city within which the land may be situated.<sup>3</sup>
  - ii. Any park or recreation department of the county within which the land may be situated.<sup>3</sup>
  - iii. To any regional park authority having jurisdiction within the area which the land is situated.<sup>3</sup>
  - iv. The State Resources Agency or any agency which may succeed to its powers.<sup>3</sup>
  - v. Any school district in whose jurisdiction the land is located.<sup>3</sup>
  - vi. The nonprofit neighborhood enterprise association corporation in that zone.<sup>3</sup>
  - vii. To any county, city, city and county, community redevelopment agency, public transportation agency, or housing authority within whose jurisdiction the surplus land is located for the purpose of developing property within an infill opportunity zone designated pursuant to Section 65088.4. or within an area covered by a transit village plan adopted pursuant to the Transit Village Development Planning Act of 1994 (Article 8.5 (commencing with Section 65460) of Chapter 3 of Division 1 of Title 7).<sup>3</sup>

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<sup>3</sup>California Government Code Sections 54220-54232

Note there is no requirement to sell the property to any of these entities at less than market value.

3. The property may be disposed of by either sale to adjoining property owners, Through normal real estate listings, auction or may be granted to abutting owners without cost, if it is determined that the costs associated with maintenance and cleanup are more than the parcel is worth.

## **PROPERTY ACQUISITION TIME LINE**

### **NEGOTIATED PURCHASE:**

Public Agency announces project.

If the property to be acquired is currently listed for sale, the Public Agency may offer the full listed price, and then proceed with an escrow.

If the property is not on the market, the Public Agency will have the property appraised, and then offer the owner the appraised value. If the owner accepts the offer, then the Agency will proceed with an escrow.

Because the Public Agency is generally offering cash, the acquisition time can be short as all parties agree to.

### **EMINENT DOMAIN (CONDEMNATION):**

Public Agency announces project, and hires a California State Certified General Real Estate Appraiser to value the property to be acquired, and damages to any remainder if the whole property is not taken.

The Public Agency must offer the appraised value to the property owner. If accepted, an escrow is opened, and the sale is handled as a standard real estate purchase.

If the offer is rejected, the Public Agency must hold a public hearing to adopt a resolution of necessity to acquire the property through condemnation. The property owner must receive written notice of this hearing at least fifteen (15) days before the hearing is held.

The Public Agency Board must have a 2/3 vote to acquire the property. The resolution of necessity must determine that the project is necessary for the public good, and that the property being acquired is necessary to complete the project. The property owner may attend and comment on the necessity of the acquisition or the project. The amount offered is rarely discussed.

Once the notice of necessity has been approved, a complaint is filed with the superior court. The Public Agency may deposit the appraised value with the court, and request an order of possession prior to trial. Normally the Public Agency may take possession within 30 days, unless the property is occupied. If the property is occupied, then the normal waiting period is 90 days.

In an emergency, the Public Agency may petition the court for an immediate order of possession. This allows the Public Agency to take possession in as little as 3 days.

Once the Public Agency has possession, it may begin the process, even though no ruling or verdict has been reached.

Note: Timing for acquisition of real property is dependent on the work load of appraisers, and the timeliness of the Public Agency in preparing the necessary documentation.