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Need 2 Know

DEALING WITH CONDEMNATION ISSUES IN THE RECOVERING ECONOMY

Now that Arizona's economy is on the road to recovery, some public projects in Maricopa County that were put on hold during the recession may soon be back in the pipeline or, in some cases, already are back on track. Large areas of land throughout the county will be affected, and many of these projects will require government acquisition of private land. The government (which can include federal, state, county, cities and utilities) may purchase land either through a voluntary, negotiated transaction with the land owner, or, when negotiations fail, through use of the government's power of eminent domain (also referred to as condemnation). Let's look at some of these proposed projects and what property owners facing government acquisition of their land may need to know about eminent domain. **///** Based on current projections, public transportation projects represent the largest potential for government land acquisition in the coming years. To determine if you may be a landowner in the path of a proposed public project in Maricopa County, a good resource is the Regional Transportation Plan (RTP) developed and approved through the Maricopa Association of Governments (MAG). A link to the RTP can be found through the Maricopa Association of Governments website, azmag.gov. **///** MAG is the principal planning agency for the Maricopa County region. The RTP is a regional plan addressing freeways and highways, streets, public transit, airports, and other transportation facilities through 2031. The RTP was first developed and approved by MAG in 2003 and was last updated in 2010. A major funding source for the RTP is the half-cent sales tax for transportation (Proposition 400) approved by Maricopa County voters and authorized through 2026. State law requires revenues from the half-cent sales tax to be used on projects and programs identified in the RTP, and MAG administers Proposition 400 funds using the "blueprint" of the RTP. **///** Another resource for property owners is the State Transportation Improvement Program (STIP) through ADOT and the 2014-2018 Transportation Program, which identifies a number of large projects from the RTP. For example: The Loop 202 South Mountain freeway, which will start at Interstate 10, run along the Pecos Road alignment and then turn north to Interstate 10 between 55th and 63rd Avenues, is a significant project anticipating significant land acquisition. Although well into the planning and funding phases, the Loop 202 South Mountain freeway has experienced implementation problems, including criticism from the Gila River Indian Community, Ahwatukee residents and the Environmental Protection Agency, resulting in an uncertain construction schedule. **///** Another major project will be continuation of the Loop 303 Freeway south from Interstate 10 to MC-85. **///** In the broader region beyond Maricopa County, ADOT is making progress on the Passenger Rail between Tucson and Phoenix by recently narrowing the alternative routes from seven to three, although no funding has been secured for the project. And Congress has designated Interstate 11 as a proposed interstate highway from Casa Grande to Las Vegas, but the project still has a long horizon. **///** The Maricopa County Department of Transportation (MCDOT) has developed a number of planning studies for parkways or transportation corridors based on the RTP, which can be accessed at mcdot.maricopa.gov. The parkways will provide connections between undeveloped land and Interstate 10, US 60, SR 74 and other highways. While not imminent, the projects will be extensive and far-reaching. **///** Valley Metro is also moving forward with its studies for light rail extensions along the Northeast Corridor (along SR 51 north to the Paradise Valley Mall area), in Central Phoenix and through West Phoenix/Central Glendale. The Northwest Extension is planned to continue along Dunlap from 19th Avenue to Interstate 17, and more extensions are being contemplated. **///** Other public improvements, usually smaller in scale, by cities and other entities with the power of eminent domain can impact property owners, and it may be prudent to occasionally check government website planning pages. With all of these projects moving forward, land acquisition, and, in the worst case, condemnation may be just around the corner and property owners should be prepared. Below is a "FAQ" style summary of what every property owner should know about eminent domain. **/// What is "Eminent Domain?"** Eminent domain is the legal term for the government's power to condemn private property and use it for the public good. Entities with the authority to condemn include the state, counties, cities, towns and utilities. When the government exercises its power of eminent domain, it is required to pay "just compensation." **/// What is the**

Current Projections

PUBLIC TRANSPORTATION PROJECTS REPRESENT THE LARGEST POTENTIAL FOR GOVERNMENT LAND ACQUISITION IN THE COMING YEARS.

"right to take?" To condemn property, the government must show public use and necessity. This is commonly called "the right to take." Right to take challenges are rare because in most condemnation cases the public use is obvious, such as for a road widening, utility easement or a new freeway. Only in the most unusual circumstances will a court deny the government the right to take. **/// How does a condemnation action start?** Before condemning property, the government must first attempt to negotiate a sale with the property owner by making an offer to purchase, supported by an appraisal. An owner does not have to accept the offer, or may try to negotiate for a higher amount. If the owner and the government cannot reach an agreement, then a condemnation lawsuit probably will be filed. It may be advisable to consult with a lawyer and/or real estate appraiser as soon as discovering that the government intends to make a pre-condemnation offer. **/// What damages are recoverable as just compensation?** If the condemnation takes all of the land, the property owner is entitled to be paid fair market value for the entire parcel. Fair market value is generally defined as the most probable price a willing buyer would pay a willing seller on the open market. If the condemnation takes part of a parcel of land, the property owner is entitled to be paid the fair market value of the part that is taken, and damages for the decrease, if any, in the market value of the remainder caused by the taking. The damages to the remainder are called "severance damages." **/// Are economic damages recoverable in a condemnation case?** As a general rule, damages for loss of business during or after construction, loss of business goodwill, and other economic damages are not recoverable in Arizona. **/// What is the "date of valuation" in a condemnation case?** Just compensation is based on the fair market value of the property and severance damages, if any, as of a specific date, called the "date of value." The date of value ordinarily is the date the government files the condemnation lawsuit. So, even if a trial is held years later, just compensation is typically calculated based on the market conditions that existed when the lawsuit was filed. **/// Does a property owner have rights when the government announces a future project that will require the condemnation of property?** The government can announce a future public project that will require future acquisition (and potential condemnation) of land, and it is not liable for damages even though the land that is "targeted" may in fact greatly decrease in value as the result of the announced public project. **/// Can a property owner build in the path of a future public project?** The owner of property that is in the path of a proposed project can build or improve a building in the path of that project and still get paid for the building if and when the government condemns the land. The government cannot, simply by announcing a public project, restrict the rights of the owner of the land to use or develop his land, as long as the owner acts in good faith. **/// Is a property owner entitled to legal fees and expert witness fees?** When land is condemned and the property owner contests the amount of just compensation rather than accept the government's offer, the property owner typically has to bear his own legal fees and expert witness fees. Some attorneys may accept condemnation cases on a contingency fee basis. **/// What about moving costs?** If a business is condemned for a public project, the property owner or tenant is

entitled to be reimbursed some expenses by the government for moving, re-establishing the business and other relocation costs. However, the relocation assistance generally will not reimburse a property owner for all or even most of the moving expenses. **/// Who else might be entitled to condemnation payment?** Normally we talk about compensation to the property owner, but other parties – such as tenants and lienholders – may be entitled to compensation as well. **///** These are some basic concepts and legal principles that landowners should know. However, every property is unique. Property owners facing condemnation should contact an attorney about their particular circumstances and rights. ●



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