IMPACTS OF EMINENT DOMAIN ON AGRICULTURE:
IS AG LAND BEING SEIZED INAPPROPRIATELY
SENATE AGRICULTURE COMMITTEE
NOVEMBER 1, 2005

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Thank you for the invitation to testify this afternoon on the impacts of eminent domain on California agriculture. As the state's largest general farm organization, California Farm Bureau Federation is extremely concerned about the growing use of eminent domain to take productive farms and ranches in rural communities. Farm Bureau also has a long record of protecting the rights of farmers and ranchers against governmental overreaching in this area of law. I would like to provide the committee with some background relative to both our legal and legislative efforts to protect our members private property rights. In order for us to get where we want to go, legislatively, we need to know where we are starting from and how we got here via case law and previous efforts to improve various state laws.

While the highly controversial use of condemnation to take private property for later transfer to another private party has been in the news recently thanks to the U.S. Supreme Court's decision in *Kelo v. New London*, the taking of farmland in California for "re" development was settled in 1987 in *Emmington v. Solano County* (195 Cal.App.3d 491). The Collinsville-Montezuma Hills Redevelopment Project involved approximately 10,350 acres of land in Solano County primarily devoted to agricultural use. The redevelopment plan proposed the development of water-dependent industrial uses in the project area, including the possible construction of an industrial road, a rail line, shipping berths and water-oriented commercial recreation facilities. The appellant, Margaret Emmington, contended the Solano County Redevelopment Agency and the Solano County Board of Supervisors approved the redevelopment plan in violation of the Community Redevelopment Law (CLR) and the California Environmental Quality Act. It should be noted that Solano County tried to rush through the Montezuma Hills redevelopment plan to avoid a new state law intended to stop just this type of abuse of the CLR, by requiring that any redevelopment project area be at least 80 percent urbanized. The Court of Appeal agreed with Farm Bureau's amicus brief and found that the project was illegal even under the old law because productive agricultural land could not be termed "blighted" as required for redevelopment. The court also concluded that farmland is not blighted just from lack of infrastructure, if the current infrastructure is adequate for the present use of the property and does not end it present economic use.

Bob Perkins, executive director of the Monterey County Farm Bureau, has already provided details of our redevelopment lawsuit against the City of San Jacinto. It should again be noted that the City of San Jacinto also tried to rush their redevelopment plan ahead of the enactment of the sweeping reforms contained in Assemblyman Isenberg's AB 1290 in 1993. While the litigation was settled out of court, the case did lead to a significant change in law. Senator Monteith authored SB 1566 (Chapter 617 of the Statutes of 1996) that strictly prohibits local officials from placing Williamson Act land in redevelopment project areas. Further, local officials cannot include any farmland over two acres if it is in agricultural use unless they find that:

- Including the land is consistent with the Community Redevelopment Law.
- Including the land will not cause adjacent land to be removed from agricultural use.
- Including the land is consistent with the local general plan.
- Including the land will result in more contiguous development patterns.
- There is no proximate nonagricultural land available and suitable for redevelopment.

The bill also required redevelopment officials, when preparing their preliminary reports on proposed project areas, to disclose the number of acres in agricultural use and it required notice to the Department of Conservation, the county agricultural commissioner, the county Farm Bureau, and the California Farm Bureau Federation. It also granted standing to these same groups to contest the validity of an ordinance adopting a redevelopment plan where farmland is included.

Should the CRL be tightened further to protect farmland, absolutely. One option would be to expand the strict prohibition on the taking of Williamson Act land to include any agricultural land.

But agricultural land is not only threatened with condemnation within the context of redevelopment. In the worse case, Williamson Act land is targeted by state and local agencies for a public use despite strong state policy statements to the contrary. Government Code § 51292 states that it is the policy of the state to avoid, whenever practicable, the location of any federal, state, or local public improvements and any improvements of public utilities, and the acquisition of land therefore, in agricultural preserves. It is further the policy of the state that whenever it is necessary to locate such an improvement within an agricultural preserve, the improvement shall, whenever practicable, be located upon land other than land under a contract pursuant to this chapter. This section also states that any agency or entity proposing to locate such an improvement shall, in considering the relative costs of parcels of land and the development of improvements, give consideration to the value to the public (as indicated in the findings and declaration of the Williamson Act) of land, and particularly prime agricultural land, within an agricultural preserve.

The Williamson Act also requires all public agencies or persons seeking to locate a public improvement within an agricultural preserve to make two specific findings: 1) the location is not based primarily on a consideration of the lower cost of acquiring land in an agricultural preserve; and 2) If the land is agricultural land covered under a contract pursuant to this chapter for any public improvement, that there is no other land within or outside the preserve on which it is reasonably feasible to locate the public improvement.

As noted by Assistant Director O'Bryant, these provisions of law have not stopped local governments and school districts from jumping outside of their boundaries, and condemning Williamson Act land for a public improvements. In 1994 Farm Bureau sponsored SB 1534 by Senator Patrick Johnston to close what was a serious loophole in the Williamson Act that led on several occasions to the taking of contracted land for a proposed public improvement only to have the land sold, at a profit by the local agency, for development not related to any public improvement.

The most egregious case had to be the City of Guadalupe that acquired 120 acres of Williamson Act land under the threat of eminent domain for the primary purpose of expanding a wastewater treatment plant. Other public improvements were also cited, including a city park, corporation yard, athletic fields and access roads. The city acquired the land from an unwilling seller for approximately $1 million. The land was subsequently divided in half with the Eastern, non-Coastal Zone section being subdivided into Point Sal Dunes. This half was sold to America West Redevelopment Company for $3 million. There were 253 lots that were ultimately approved and upon completion of the first phase of development, 100 units, the estimated market value of this half of the property was $160 million, or more importantly for the city's perspective at that time, $1.6 million annually in property tax revenue. Not bad for an initial investment of $1 million, plus they still had 60 acres to develop if it wasn't for that nagging problem about wastewater treatment capacity.

This poster child of governmental abuse led to the adoption of SB 1534 to provide a more appropriate definition of public improvement and required that the land be returned to some form of enforceable restriction if a public entity desire to put the property back into private ownership. Could this area of law be further improved? Definitely, yes.

Finally, I would like to remind the committee that in 1992 a Kern County rancher named Ken Mebane prevailed in the Fifth District Court of Appeal (*Mebane Ranches v. Superior Court*, 10 Cal.App.4th 276) and stopped the

extraterritorial condemnation of a portion of his ranch for environmental mitigation. The *Mebane* case involved an attempt by an urban flood control district to mitigate damage that its flood control project near the City of Fresno caused to an endangered wildflower, by condemning ranch land 100 miles away in Kern County. As you might suspect, the case created an uproar not only among agricultural groups, but also rural county governments and public entities in those counties, who objected strongly to what was seen as mitigation “poaching” on rural areas by powerful and well-funded urban interests looking for cheap mitigation. The California Supreme Court endorsed the *Mebane* decision by turning down a Petition for Hearing, and certifying the decision for publication. We believe codification of the *Mebane* decision would still be appropriate.

There is clearly plenty of room for improvement is this highly controversial area of law. We look forward to working with Senator Hollingsworth on his measure, AB 1099, and others to help fashion added protection for California’s agricultural community from the any further governmental abuse of eminent domain.

I would be happy to respond to any questions that you may have.