

Eminent Domain: Current Issues

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2006 GAO Mandated to Study Eminent Domain

- Public Law 109-115 Transportation and related agencies appropriations legislation mandated:
- That the Government Accountability Office, in consultation with the National Academy of Public Administration, organizations representing State and local governments, and property rights organizations, shall conduct a study to be submitted to the Congress within 12 months of the enactment of this Act on the nationwide use of eminent domain, including the procedures used and the results accomplished on a state-by-state basis as well as the impact on individual property owners and on the affected communities.

November 2006

EMINENT DOMAIN

Information about Its
Uses and Effect on
Property Owners and
Communities Is
Limited

GAO Unable to Address Many Questions

- GAO was precluded from conducting a statewide or national assessment
 - How frequent eminent domain is used
 - How often private-to-public or private-to-private transfer of property occurs
 - The purpose for which eminent domain has been used by state and local governments
- Data limited by multiple authorities in each state and no centralized authority responsible for collecting such data

Eminent Domain Subject Areas

- Pipelines
- Rail
- Highway Connectors
- Inland Ports

August 2013 – Trans-Canada Corp. found to be common carrier under Texas State law and thus entitled to easement across private ranch land . . . (50-foot wide easement).

- Opposition was that Trans-Canada was proprietary.
- Must show public use-registration as common carrier not dispositive.

- Pipeline Project to take natural gas liquids (ethane, propane, butane) from Western Pennsylvania, West Virginia, Eastern Ohio to Marcus Hook, PA.
- Local Judge ruled in October that Sunoco Pipeline could take land under eminent domain in Cumberland County.

Mariner East 2 Map



Missouri Court Blocks Eminent Domain by Port Authority – 2013

- Southeast Missouri Regional Port Authority sought 30 acres for use in \$20 million project for crude oil terminal on Mississippi River.
- 2006 Post-Kelo ban bars condemnation “for solely economic development purposes.”
- State Supreme Court bars use of eminent domain.
- Port Authority’s desire to promote economic development undergirds all of its actions in this condemnation.

Missouri Court Blocks Eminent Domain by Port Authority (continued)

- Judge Fischer – 2006 Law “made it difficult –if not impossible–for the Port Authority to advance its purposes through the use of eminent domain.”

Connectors/Port-Related Infrastructure

October 2015

- Mississippi Highway Commission seeking to build highway connection from Port of Gulfport to Interstate 10.
- Corps grants permit to fill 162 acres of wetlands in exchange for conserving 1,600 acres through an easement. (State pursues through eminent domain).
- Corps permit challenged, revoked by federal court. Landowners of 1,300 acres sue, seek compensation for lost development opportunities
- Dismissed – Taking not permanent
- State Supreme Court Reverses. Goes to trial.

Portland Maine – 28 August 2014

Maine DOT pays \$7.2 million for 18 acres of industrial waterfront room needed for wheel yard.

Miscellaneous Tales

- Conflicting Condemnation Authorities
- Inland Terminals
- Environmental Issues

Thank You



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