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METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA
EXECUTIVE SECRETARY

March 24, 1995

To: Board of Directors (Committee on Legislation--Action)
From: General Manager
Subject: Senate Bill 466 (Leonard)--Inverse Condemnation for Reduction
in Property Value

Report

The scope of inverse condemnation law has recently evolved with a series of United States Supreme Court decisions addressing the issue of regulatory takings. These cases have established that a government agency will be liable for a "taking" of property if it deprives the owner of "all economically beneficial or productive use of land." Government regulations which restrict, but do not completely eliminate, all uses of the property may constitute a "taking" if there is not a nexus between the regulations and a legitimate government interest or the restrictions are not roughly proportional to the impact the property use has on the public. The California courts have also allowed inverse condemnation liability against government agencies for unreasonable or oppressive conduct which deprives an owner of all economically viable use of land.

Because it has no land use regulatory powers, Metropolitan is not likely to be held liable under these rulings. Metropolitan's liability for inverse condemnation would be most likely to result from physical entry on or damage to private property.

Senate Bill 466 would greatly expand the scope of inverse condemnation liability for local government agencies in California. The bill creates a cause of action when a local agency adopts an "ordinance, resolution, or other measure, or institutes any other official decision, action, policy, or practice" which results in the reduction of the market value of private real property by 25 percent or more. The bill does not apply to state agencies.

The bill would expand the scope of liability in several ways. Existing law allows government agencies to adopt regulations which reasonably serve a legitimate government purpose without liability, as long as some economic use is left in the property. This bill would require payment, even for legitimate regulations, if there is a loss in value of 25 percent.

The bill also goes beyond the current law by imposing liability for any official decisions, actions, policies or practices. At present, a property owner would have to prove the government agency engaged in unreasonable or oppressive conduct. Under the bill, the nature of the government conduct is irrelevant. Strict liability is imposed for any official government action which reduces the land value by the required percentage.

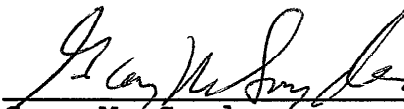
The language of the bill is sufficiently broad that it may impose liability on Metropolitan for a variety of official acts. Project planning would be particularly difficult because the public disclosures required during the process may impact property values in the area of proposed project sites. Decisions regarding water rates and annexation fees could also result in claims to the extent that they cause agricultural lands to be fallowed or increase development costs on marginal lands.

The bill does require that the property owner provide the testimony of three certified real estate appraisers to prove the reduction in market value. However, this does little to help local government agencies. Because the appraisal of real property is somewhat subjective and the required reduction in value is only 25 percent, it would not be difficult to retain the required appraisers in many cases. The government agency is then faced with the problem of overcoming the testimony of three appraisers. Furthermore, existing California law would require the government agency to pay the property owner's appraisers' fees if it is held liable.

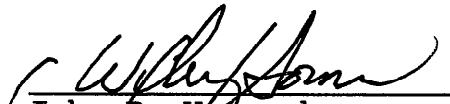
Recommendation

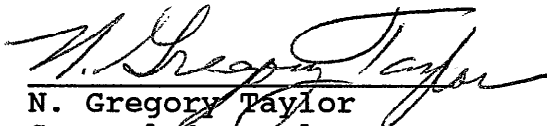
It is recommended that the Board of Directors express their opposition to Senate Bill 466.

John R. Wodraska
General Manager

By: 
Gary M. Snyder
Chief Engineer

Concur:


John R. Wodraska
General Manager


N. Gregory Taylor
General Counsel