



How to Handle Absentee Owners

Acquiring easements from a foreign-based property owner can be complicated

BY MICHAEL F. YOSHIBA, ESQ.

Cities routinely acquire—and sometimes condemn—property for the construction of public projects. Occasionally, public agencies must acquire property rights that allow local utility companies to relocate their facilities as an indirect result of a public project.

A number of years ago, the City of Agoura Hills in California was in the midst of a major road widening project that initially only required a temporary construction easement from one vacant property within the project footprint. On its face a pretty nonintrusive and simple acquisition, right? Wrong.

The Discovery

When preparing the utility portion of the construction plans for the road widening, the City discovered that an electrical utility company already had two facilities located on and within the property in question. The legal descriptions underlying the preexisting distribution facilities were fixed-location easements, as distinguished from floating easements, which can move anywhere practical on a parcel. A floating easement would have allowed the utility company to move their distribution facilities as they saw fit without having to obtain new property rights.

In this case, because the utility's fixed location easements were being impacted, the utility refused to cooperate in the design or relocation of their replacement facilities, unless and until the City acquired new easements for the facilities. The

project's construction schedule dictated that the City would have to expedite the easement acquisition for utility. Fortunately, statutes in California permit public agencies to acquire substitute property for others by condemnation, in this case to accommodate the relocation of the utility's facilities. The City immediately initiated the acquisition process.

No Time to Lose

The property owner of the vacant lot being affected was a limited liability company owned by a foreign-based individual who lived in Korea. The owner had a designated agent for service of process and also a local attorney who regularly acted as an intermediary for the owner whenever property issues arose involving the City. The City was confident that the easement acquisitions could be easily negotiated without having to condemn those interests. Amicable negotiations with the owner's attorney and the City led to a Purchase and Sale Agreement, and the escrow process began. However, the momentum ground to an immediate halt when the escrow agent could not get in direct contact with the owner to formally execute the documents, and the owner's attorney did not have written authority to execute the Purchase and Sale Agreement or the escrow instructions in the owner's absence. Due to a compressed project schedule, the City had no time to lose and therefore quickly transitioned from a voluntary deal to a resolution of necessity and proceeded with condemnation on behalf of the utility.

Once the condemnation action was filed, the task of contacting the owner was now the responsibility of the condemnation attorney. Several unsuccessful attempts were made to personally serve the owner's agent with the condemnation complaint package. The agent's listed business address was not a commercial building, but instead was a residential condominium high-rise building with perimeter security preventing the City's process server from successfully serving the agent

with the condemnation complaint package. The City capitalized on the circumstances surrounding these unsuccessful attempts as support for its application to the court seeking permission to serve the owner by publication in a local newspaper. The court granted the City permission, and notice was published once a week over four consecutive weeks in a local newspaper.

During this time, the owner's attorney periodically informed the City that the owner remained ready, willing and able to consummate a voluntary sale of the easement rights and would soon return from Korea to California to execute the necessary documents. Potentially complicating this matter, the owner and his attorney began actively marketing the property to sell to developers. Several of the developers contacted the City inquiring about the project impacts and status. If

the property were sold during the condemnation litigation, it would have the potential to delay the City from obtaining timely pre-judgment possession. The City would have been forced to add another party to the legal action and provide appropriate notices.

Fortunately, no developer deal was reached, and the City was able to get the court to issue an order for pre-judgment possession and an entry of default against the owner. The entry of default was the precursor to obtaining a final judgment against the absentee owner. Once the court approved the judgment and final order of condemnation, it was then recorded, and the City was able to transfer the easement interests to the utility by recorded deed. Ultimately, this ended favorably for all the parties involved, but not without several anxious moments over project scheduling and the potential costs associated with lengthy project delays. ☘



Michael is a shareholder in the Eminent Domain and Litigation Departments of the Los Angeles law firm, Richards, Watson & Gershon.

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DOYLE LAND SERVICES

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www.doyleland.com

J. Warren Doyle
President
(504) 620-5051 (Office)
(281) 755-6259 (Mobile)
jwdoyle@doyleland.com

Ken L. Davis, SR/WA
Vice President
(412) 299-1199 (Office)
(724) 513-6383 (Mobile)
kldavis@doyleland.com

Stephen K. Patton
Vice President
(713) 458-5110 (Office)
(832) 794-0501 (Mobile)
skpatton@doyleland.com

J. Warren Doyle, Jr.
Vice President
(504) 620-5058 (Office)
(281) 755-6251 (Mobile)
jwdoylejr@doyleland.com