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# Ruling That Curtails Public Agencies' Abilities to Get Order Protecting Project Planning Inspections is Decertified

Supreme Court Decides to Review Lower Court Case



An appellate court ruling that essentially curtailed the ability of public agencies to obtain a court order to conduct project planning inspections was decertified by a grant of review by the California Supreme Court. In *Property Reserve, Inc. v. Superior Court of San Joaquin County*, the State of California petitioned for

an order for entry to conduct two general categories of pre-condemnation activities: geological and environmental inspections. The Third District Court of Appeal's March 2014 ruling found that the pre-condemnation entry statutes (Code of Civil Procedure section 1245.010 et seq.) violate the taking provisions of article 1, section 19 of the California Constitution.

The Court's decision last week to grant review immediately decertifies the appellate court's ruling. Public agencies are free to again seek court orders for project planning inspections. Although the arguments relied on by the property owners remain available and the fact that the constitutionality of the statutes are under review can be pointed out, the appellate court's ruling is no longer legal precedence for denying an order under the entry statutes.

The Court's review will focus on three issues:

1. Do geological inspections constitute a taking?
2. Do environmental inspections constitute a taking?
3. If so, do the precondemnation entry statutes provide a constitutionally valid eminent domain proceeding for the taking?

The answer to these three questions will provide public agencies and property owners with either a clear path forward for project planning inspections, or turn project planning upside down until the Legislature fashions a resolution.

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