

Department of Fish and Game  
Current Issues  
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**Eminent Domain and Conservation Easements**

The Department of Fish and Game's (DFG) mission and regulatory authorities call for it to maintain fish, wildlife, plants and their habitats. Securing conservation lands through fee title acquisition or permanent conservation easements held by the DFG or their agent are the primary mechanism the DFG uses to effect land-based conservation. Lands set aside for wildlife preservation and protection are often prime targets for non-compatible uses because they are generally undeveloped, often avoid interference with other human activities and are often less expensive to acquire. Often conservation lands protected with a conservation easement are subject to eminent domain as a means to eliminate these protections and make them available for other land uses.

California's eminent domain law requires a public entity seeking to condemn property that is already in public use to establish that the proposed new use is more necessary than the existing public use. In 2001, Fish and Game Code was revised to raise the legal standard of proof for the taking of a wildlife conservation easement held by a state agency, in an effort to help ensure the long-term viability of these interests. The statute requires a condemning authority to prove, by clear and convincing evidence, that its proposed use is a higher public use than the conservation easement. The condemning authority must also consult with the conservation easement holder before initiating eminent domain proceedings. DFG lands and DFG-held conservation easements are nevertheless facing increased condemnation-related challenges.

California law also specifies that conservation easements are permanent. As a result, DFG is not in a position to voluntarily surrender its interest when faced with a competing public project. Conservation-minded landowners, some of whom have sold or donated conservation easements to DFG, expect DFG to vigorously defend against potential condemnation.

DFG would hope to be engaged as a stakeholder in a fair planning process that avoids or minimizes potential interference with conservation lands. It must also ensure that any condemnation-related losses are replaced with appropriate new conservation.