Montana State Legislature

2013 Session

Exhibit 1

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Helena MT 59620-1201
2013 Legislative Scanner Susie Hamilton

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Eminent Domain in Montana

EXHIBIT 1
DATE 1/14/13
HB 45

Revised by

Sonja Nowakowski 2012

Published by

Legislative Environmental Policy Office
Environmental Quality Council
P.O. Box 201704
Helena, MT 59620-1704
Phone: 406/444-3742, Fax: 406/444-3971

EXHIBIT 1
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TABLE OF CONTENTS

ACKNOWLEDGMENTS i

DISCLAIMER iii

FOREWORD 1

EMINENT DOMAIN IN GENERAL 3
What is eminent domain? 3
Where are the eminent domain laws found? 3
For what purposes can eminent domain be exercised? 5
Who can exercise the power of eminent domain? 9
What property may be taken through eminent domain? 10
What estates and rights in land may be taken? 11
How is the survey of property to be taken conducted? 13
When is the survey conducted? 14
What facts must be found before condemnation? 14

THE EMINENT DOMAIN PROCESS 16

The Preliminary Process 17
What is a preliminary condemnation proceeding? 17
Where are court proceedings for eminent domain cases heard? 17
How are court proceedings started? 17
What needs to be in the complaint? 18
What happens in a condemnation proceeding? 19
What is a preliminary condemnation order? 20
What powers does a preliminary condemnation order give? 20

Hearing and Judgment 22
Who are the condemnation commissioners? 22
In a condemnation hearing, what are the roles of the judge and the condemnation commissioners? 24
What if at least two commissioners can't agree? 27

Optional Steps **29**
Can the assessment of the commissioners be appealed? 29
What is the final offer upon appeal? 30
What are litigation expenses? 30

COMPENSATION **32**
When and how is the payment of compensation made? 32
When is a bond necessary? 33
What is current fair market value? 33

FINAL CONDEMNATION **34**
What is a final order of condemnation? 34
Can the final order of condemnation be appealed? 34
Does an appeal to the Supreme Court prohibit further proceedings? 35
When can the condemnor take possession of the condemned property? 35
Is there a limit on property owner liability? 37
Who controls weeds on condemned property? 37
What about taxes on property taken? 37

ABANDONMENT OF USE **39**
What happens if the public use is abandoned? 39
What if the interest is not fee simple interest? 39

CONCLUSION 40

GLOSSARY 42

INFORMATION RESOURCES 47

SENATE BILL 120 PUBLICATION REQUIREMENTS 49

FOREWORD

Eminent domain has been part of the Montana Constitution and statutes since statehood. As Montana moves forward, the concept remains in place. Most land acquisitions and transactions are negotiated agreements and do not go through the formal eminent domain process. Eminent domain can fundamentally impact private property by allowing the State of Montana and its agents to condemn private property for a public use. It is critically important that Montanans understand the eminent domain process so that they can actively participate in that process.

In 1999, the 56th Montana Legislature concluded that because legislators and citizens alike were confused or not fully versed on the statutes relating to eminent domain, a careful and deliberate study was warranted. House Joint Resolution No. 34 (HJR 34) was passed, and the Legislative Council assigned HJR 34 to the Environmental Quality Council (EQC), an interim, bipartisan, 17-member committee that includes both legislators and public members.

HJR 34 stated that the "use of the power of eminent domain is not well-understood". The Subcommittee agreed with this statement and, to resolve the issue, voted to create an easy-to-understand handbook.

Eminent Domain in Montana was developed to describe the eminent domain laws in a format that is user-friendly and that answers the most frequently asked questions.

The Premise of Eminent Domain ⟶

By virtue of being a government, the **sovereign** has **inherent powers** that are fundamental to the legitimacy and durability of the government. Eminent domain is an inherent right of statehood, similar to the state's police power and the right of the state to tax. The right of eminent domain was given to the 13 original states, and each state thereafter received this same authority. Laws relating to eminent domain do not authorize its existence, but rather place limits on its use and provide for due process in condemnation procedures. Montana's eminent domain laws are, in