

Case No. S248141

OCT 11 2018

Jorge Navarrete Clerk

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

Deputy

EVAN WEISS, BELINDA HENRY, MICHAEL HAYES, MICHEALE
HAYES, ROSS SHAW, DEBBIE SHAW, and 1819 MSC, LLC,

Plaintiffs and Appellants,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA, acting by and through
its Department of Transportation; and ORANGE COUNTY
TRANSPORTATION AUTHORITY,

Defendants and Respondents.

After a Published Decision by the Court of Appeal
Fourth Appellate District, Division Three, Case No. G052735

Appeal from the Orange County Superior Court
Superior Court Case No. 30-2012-00605637
Honorable Kirk H. Nakamura, Judge Presiding

**APPELLANTS' MOTION REQUESTING JUDICIAL NOTICE;
MEMORANDUM OF POINTS AND AUTHORITIES;
DECLARATION OF JOSEPH A. SCHWAR; EXHIBIT**

*John S. Peterson (State Bar No. 101215)
Joseph A. Schwar (State Bar No. 223195)
Stacy W. Thomsen (State Bar No. 274282)
PETERSON LAW GROUP
PROFESSIONAL CORPORATION
19800 MacArthur Boulevard, Suite 290
Irvine, California 92612
Telephone: (949) 955-0127
Facsimile: (949) 955-9007

*Attorneys for Plaintiffs and Appellants Evan Weiss,
Belinda Henry, Michael Hayes, Micheale Hayes,
Ross Shaw, Debbie Shaw, and 1819 MSC, LLC*

MOTION REQUESTING JUDICIAL NOTICE

Plaintiffs and Appellants respectfully ask the Supreme Court to take judicial notice pursuant to *Evidence Code*, sections 452, 453 and 459, and *Rules of Court*, Rules 8.252 and 8.520, of the legislative history of California *Code of Civil Procedure* section 1260.040 and related provisions of law passed concurrently as Assembly Bill 237 (Stats 2001, ch. 428, sec. 9) (the “Legislative History”).

POINTS AND AUTHORITIES

A. Legislative history may be judicially noticed.

Judicial notice may be taken under *Evidence Code* section 452(c) of “Official acts of the legislative, executive and judicial departments of the United States, or any state of the United States.” (*People v. Snyder* (2000) 22 Cal.4th 304, 315 fn.5; *Delaney v. Baker* (1999) 20 Cal.4th 23, 30; *Post v. Prati* (1979) 90 Cal.App.3d 626, 634.)

“[I]t is well established that reports of legislative committees and commissions are part of a statute's legislative history and may be considered when the meaning of a statute is uncertain. [Citations.] . . . [I]t is reasonable to infer that those who actually voted on the proposed measure read and considered the materials presented in explanation of it, and that the materials therefore provide some indication of how the measure was understood at the time by those who voted to enact it. (*Hutnick v. United States Fidelity & Guaranty Co.* (1988) 47 Cal.3d 456, 465, fn 7 [763 P. 2d 1326].)

B. The Supreme Court has the right, power and obligation to judicially notice the Legislative History.

The reviewing court “may take judicial notice of any matter specified in Section 452.” (*Evid. C.*, sec. 459(a).) Evidence Code section 459 grants the reviewing court the same right and power to take judicial notice as the trial court. (*Smith v. Rae-Venter Law Group* (2002) 29 Cal.4th 345, 359; *People v. Connor* (2004) 115 Cal.App.4th 669, 681, fn.3.)

A court may take judicial notice pursuant to *Evidence Code* section 452(c). *Evidence Code* section 453 provides that judicial notice is mandatory so long as a party gives “each adverse party sufficient notice of the request, through the pleadings or otherwise, to enable such adverse party to prepare to meet the request” and provides the court “sufficient information to enable it to take judicial notice of the matter.”

Rule 8.520(g) of the *California Rules of Court* provides that “To obtain judicial notice by the Supreme Court under Evidence Code section 459, a party must comply with rule 8.252(a).” Rule 8.252(a)(1) provides that “To obtain judicial notice by a reviewing court under Evidence Code section 459, a party must serve and file a separate motion with a proposed order.”

The Legislative History of which judicial notice is requested was not presented to the trial court, but was judicially noticed and cited by the Fourth Appellate District Court of Appeal. (*Weiss v. People ex rel. Dept. of Transportation* (2018) 20 Cal.App.5th 1156, 1170, fn5, and 1170-1171.)

The Petition for Review asks whether the Fourth District Court of Appeal correctly concluded that Code of Civil Procedure section 1260.040 cannot be used to determine, in advance of a bench trial, whether private property has been taken or damaged in an inverse condemnation action.

The Opening Brief on the Merits filed in this Court cites to the Legislative History and, at footnote 7 on page 27, “renew[s] Plaintiffs’ motion for judicial notice of the legislative history documents to section 1260.040.” The Answer Brief on the Merits filed concurrently also cites to and discusses the Legislative History.

The Supreme Court’s review may reach questions about legislative intent. The Legislative History is pertinent to matters arising on appeal, and continuing through briefing to the Supreme Court.

C. The Legislative History found in the record on appeal is authenticated through the attached declarations.

Pursuant to *Evidence Code*, section 453, *Rules of Court*, Rule 8.252(a)(3) the Legislative History was filed and served in the Fourth District Court of Appeal on November 3, 2017 and is understood to be a part of the record imported from the Fourth District and available to the Supreme Court in electronic format as of about April 11, 2018.

The Declaration of Joseph A. Schwar attached hereto includes as Exhibit “A” the declaration of Jenny S. Lillge of Legislative Intent Service, Inc., indicating the sources of the documents contained within the Legislative History.

CONCLUSION

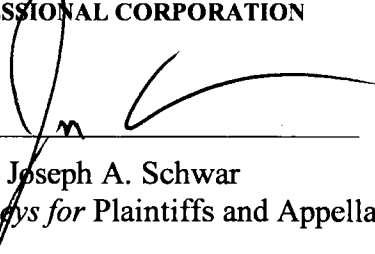
Based on the foregoing points and authorities, Plaintiffs and Appellants ask the Court to take judicial notice of the legislative history of Assembly Bill 237 (Stats 2001, ch. 428, sec. 9), which enacted *Code of Civil Procedure* section 1260.040 and related provisions.

Respectfully submitted,

Dated: October 10, 2018

PETERSON LAW GROUP
PROFESSIONAL CORPORATION

By: _____


Joseph A. Schwar
Attorneys for Plaintiffs and Appellants

DECLARATION OF JOSEPH A. SCHWAR

I, Joseph A. Schwar, declare as follows:

1. I am an attorney at law duly admitted to practice in the State of California. I am an attorney with Peterson Law Group Professional Corporation (“PLG”), counsel of record herein to Plaintiffs and Appellants. I make this declaration in support of Appellants’ Motion Requesting Judicial Notice (“Motion”). I have personal knowledge of the facts stated herein, believe the same to be true and if called upon as a witness I could and would competently testify hereto.

2. On or about October 23, 2017, PLG purchased from Legislative Intent Service, Inc. materials comprising legislative history of Assembly Bill 237 of 2001, Chapter 428 (the “Legislative History”). Assembly Bill 237 enacted Code of Civil Procedure section 1260.040.

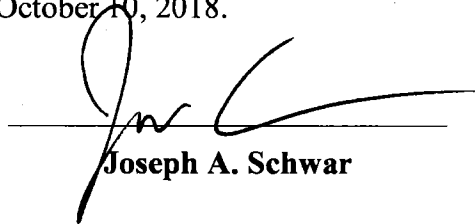
3. After purchase, the Legislative History was made available to me for download through Legislative Intent Service’s website www.legintent.com, and I downloaded same to PLG’s computer server. The Legislative History includes bookmarks as received by PLG.

4. I thereafter caused the Legislative History to be consecutively numbered beginning with the number “1” and made searchable. A true and correct copy, so modified, of the Legislative History was served and filed in the Fourth District Court of Appeal on November 3, 2017.

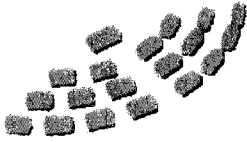
5. Attached hereto as Exhibit "1" is a true and correct copy of the declaration of Jenny S. Lillge of Legislative Intent Service, Inc., which I received via email from Legislative Intent Service shortly after requesting same, indicating the sources of the documents included in the Legislative History.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 10, 2018.



Joseph A. Schwar



LEGISLATIVE INTENT SERVICE, INC.

712 Main Street, Suite 200, Woodland, CA 95695
(800) 666-1917 • Fax (530) 668-5866 • www.legintent.com

DECLARATION OF JENNY S. LILLGE

I, Jenny S. Lillge, declare:

I am an attorney licensed to practice in California, State Bar No. 265046, and am employed by Legislative Intent Service, Inc., a company specializing in researching the history and intent of legislation.

Under my direction and the direction of other attorneys on staff, the research staff of Legislative Intent Service, Inc. undertook to locate and obtain documents relevant to the enactment of Assembly Bill 237 of 2001. The documents listed below were obtained through Legislative Intent Service, Inc.'s online quick purchase service of previously-compiled legislative histories. Assembly Bill 237 was approved by the Legislature and was enacted as Chapter 428 of the Statutes of 2001.

The following list identifies all documents purchased on October 23, 2017, through Legislative Intent Service, Inc.'s online quick purchase service of compiled legislative histories, on Assembly Bill 237 of 2001. All documents listed in this Declaration are true and correct copies of the originals gathered by Legislative Intent Service, Inc.

ASSEMBLY BILL 237 OF 2001:

1. All versions of Assembly Bill 237 (Papan-2001);
2. Procedural history of Assembly Bill 237 from the 2001-02 *Assembly Final History*;
3. Analysis of Assembly Bill 237 prepared for the Assembly Committee on Judiciary;
4. Material from the legislative bill file of the Assembly Committee on Judiciary on Assembly Bill 237 as follows:
 - a. Previously Obtained Material,
 - b. Updated Collection of Material;
5. Material from the legislative bill file of the Assembly Republican Caucus on Assembly Bill 237;

6. Analysis of Assembly Bill 237 prepared for the Senate Committee on Judiciary on Assembly Bill 237;
7. Material from the legislative bill file of the Senate Committee on Judiciary on Assembly Bill 237 as follows:
 - a. Previously Obtained Material,
 - b. Updated Collection of Material;
- + 8. Third Reading analysis of Assembly Bill 237 prepared by the Office of Senate Floor Analyses;
9. Material from the legislative bill file of the Office of Senate Floor Analyses on Assembly Bill 237;
10. Material from the legislative bill file of the Senate Republican Office of Policy on Assembly Bill 237;
11. Concurrence in Senate Amendments Analysis of Assembly Bill 237 prepared by the Assembly Committee on Judiciary;
12. Material from the legislative bill file of Assemblymember Louis Papan on Assembly Bill 237 as follows:
 - a. Previously Obtained Material,
 - b. Updated Collection of Material;
- + 13. Post-enrollment documents regarding Assembly Bill 237;
14. Press Release #L01:092 issued by the Office of the Governor on October 3, 2001 to announce that Assembly Bill 237 had been signed;
15. Title 25 of the California Code of Regulations, section 6182;
16. Excerpt regarding Assembly Bill 237 from the *Digest of Significant Legislation*, prepared by the Office of Senate Floor Analyses, 2001.

+ Because it is not unusual for more materials to become publicly available after our earlier research of legislation, we re-gathered these file materials, denoting them as "updated collection of material."

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 26th day of October, 2017 at Woodland, California.



JENNY S. LILLGE

CERTIFICATE OF SERVICE

I, Mi Tran, am employed in the County of Orange, California. I am over the age of 18 years and not a party to the within action. My business address is 19800 MacArthur Boulevard, Suite 290, Irvine, California 92612.

On October 10, 2018, I served the **APPELLANTS' MOTION REQUESTING JUDICIAL NOTICE; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF JOSEPH A. SCHWAR; EXHIBIT** by sending one copy by US Mail addressed to each of the following recipients:

Gary Weisberg
Esther Lin
Woodruff, Spradlin & Smart
555 Anton Boulevard, Suite 1200
Costa Mesa, CA 92626
(Counsel for Respondents)

Hon. Kirk H. Nakamura
c/o Superior Court Clerk
Orange County Superior Court
700 Civic Center Drive West
Santa Ana, CA 92701

Office of the Attorney General
1300 "I" Street
Sacramento, CA 95814-2919

Clerk of the Court
California Court of Appeal
Fourth District, Division Three
601 W. Santa Ana Blvd. .
Santa Ana, CA 92701

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 10, 2018, at Irvine, California.

Mi Tran