

6A.22 Additional limitations on exercise of power — definitions.

1. In addition to the limitations in [section 6A.21](#), the authority of an acquiring agency to condemn any private property through eminent domain may only be exercised for a public purpose, public use, or public improvement. However, if the owner of the property consents to the condemnation, the property may be condemned for any purpose.

2. a. “Public use”, “public purpose”, or “public improvement” means one or more of the following:

(1) The possession, occupation, and enjoyment of property by the general public or governmental entities.

(2) The acquisition of any interest in property necessary to the function of a public or private utility to the extent such purpose does not include construction of aboveground merchant lines, common carrier, or airport or airport system.

(3) Private use that is incidental to the public use of the property, provided that no property shall be condemned solely for the purpose of facilitating such incidental private use.

(4) The acquisition of property pursuant to [chapter 455H](#).

(5) (a) The acquisition of property for redevelopment purposes and to eliminate slum or blighted conditions in that portion of an urban renewal area designated as a slum or blighted area if each parcel, or any improvements thereon, for which condemnation is sought is determined by the governing body of the municipality to be in a slum or blighted condition. However, for a project or acquisition plan adopted by the governing body of a municipality after due deliberation and public input, if seventy-five percent or more of the area included in the plan consists of property in a slum or blighted condition at the time the plan was established, the entire project or acquisition plan area is subject to condemnation by the municipality. The project or acquisition plan area shall only include the adjacent and contiguous parcels necessary for the completion of planned activities for a specific business or housing project. Before a municipality exercises its eminent domain authority to acquire properties in a project or acquisition plan area that are not in a slum or blighted condition, the municipality shall be required to adopt a resolution by a two-thirds majority to authorize the acquisition of such property by eminent domain. The resolution shall make a finding that includes at a minimum all of the following:

(i) The taking of such property is necessary to achieve the project or acquisition plan objectives.

(ii) The taking of property for the project or acquisition plan will eliminate or rehabilitate the slum and blighted conditions in the area.

(iii) If the specific project is for a business, the proposed project or acquisition plan will confer economic benefits upon the municipality.

(b) For purposes of this subparagraph (5):

(i) “*Blighted condition*” means the presence of a substantial number of slum or deteriorated structures; insanitary or unsafe conditions; excessive and uncorrected deterioration of site or other improvements; tax or special assessment delinquency exceeding the fair value of the land; defective or unusual conditions of title; or the existence of conditions which endanger life or property by fire and other causes; or the existence of conditions which retard the provision of housing accommodations for low or moderate income families, or is a menace to the public health and safety in its present condition and use.

(ii) “*Slum condition*” means a condition conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, or crime, or detrimental to the public health and safety due to a predominance of buildings or improvements, whether residential or nonresidential, by reason of the following: by reason of dilapidation, deterioration that is excessive and uncorrected, age or obsolescence; by reason of inadequate provision for sanitation; by reason of high density of population and overcrowding; by reason of the existence of conditions which endanger life or property by fire and other causes; or by reason of any combination of such factors.

(iii) In no case shall land that is agricultural land be determined to be in a slum condition or blighted condition.

(iv) “*Project or acquisition plan*” means the planned activities of a municipality to

rehabilitate or redevelop specific property in that portion of an urban renewal area designated as a slum or blighted area pursuant to [chapter 403](#). The planned activities may include the sale and acquisition of property; demolition and removal of buildings and improvements; construction, repair, and rehabilitation of buildings or other improvements; and installation, construction, or reconstruction of streets and utilities.

(v) “*Economic benefits*” means the creation of new employment opportunities or the retention of employment opportunities.

b. Except as specifically included in the definition in paragraph “a”, “*public use*” or “*public purpose*” or “*public improvement*” does not mean economic development activities resulting in increased tax revenues, increased employment opportunities, privately owned or privately funded housing and residential development, privately owned or privately funded commercial or industrial development, or the lease of publicly owned property to a private party.

c. Notwithstanding paragraph “a”:

(1) (a) If private property is to be condemned for development or creation of a lake, only that number of acres justified as necessary for a surface drinking water source, and not otherwise acquired, may be condemned. In addition, the acquiring agency shall conduct a review of prudent and feasible alternatives to provision of a drinking water source prior to making a determination that such lake development or creation is reasonable and necessary. Development or creation of a lake as a surface drinking water source includes all of the following:

(i) Construction of the dam, including sites for suitable borrow material and the auxiliary spillway.

(ii) The water supply pool.

(iii) The sediment pool.

(iv) The flood control pool.

(v) The floodwater retarding pool.

(vi) The surrounding area upstream of the dam no higher in elevation than the top of the dam’s elevation.

(vii) The appropriate setback distance required by state or federal laws and regulations to protect drinking water supply.

(b) For condemnation of property located in a county with a population of greater than nine thousand two hundred fifty but less than nine thousand three hundred, according to the 2010 federal decennial census, prior to making a determination that development or creation of a lake as a surface drinking water source is reasonable and necessary, the acquiring agency shall conduct a review of feasible alternatives to development or creation of a lake as a surface drinking water source. An acquiring agency shall not have the authority to condemn private property for the development or creation of a lake as a surface drinking water source if one or more feasible alternatives to provision of a drinking water source exist. An alternative that results in the physical expansion of an existing drinking water source is presumed to be a feasible alternative to development or creation of a lake as a surface drinking water source. An alternative that supplies drinking water by pipeline or other method of transportation or transmission from an existing source located within or outside this state at a reasonable cost is a feasible alternative to development or creation of a lake as a surface drinking water source. If private property is to be condemned for development or creation of a lake, only that number of acres justified as necessary for a surface drinking water source, and not otherwise acquired, may be condemned. Development or creation of a lake as a surface drinking water source includes all of the following:

(i) Construction of the dam, including sites for suitable borrow material and the auxiliary spillway.

(ii) The water supply pool.

(iii) The sediment pool.

(iv) The flood control pool.

(v) The floodwater retarding pool.

(vi) The surrounding area upstream of the dam no higher in elevation than the top of the dam’s elevation.

(vii) The appropriate setback distance required by state or federal laws and regulations to protect drinking water supply.

(c) (i) For purposes of this subparagraph (1), “*number of acres justified as necessary for a surface drinking water source*” means according to guidelines of the United States natural resource conservation service and according to analyses of surface drinking water capacity needs conducted by one or more registered professional engineers.

(ii) For condemnation proceedings for which the application pursuant to [section 6B.3](#) was filed after January 1, 2013, for condemnation of property located in a county with a population of greater than nine thousand two hundred fifty but less than nine thousand three hundred, according to the 2010 federal decennial census, which property sought to be condemned was in whole or in part described in a petition filed under [section 6A.24, subsection 2](#), after January 1, 2013, but before January 1, 2014, regardless of whether the petitioner was determined by a court to not be a proper acquiring agency, “*number of acres justified as necessary for a surface drinking water source*”, as determined under subparagraph subdivision (i) shall not exceed the number of acres that would be necessary to provide the amount of drinking water to meet the needs of a population equal to the population of the county where the lake is to be developed or created, according to the most recent federal decennial census.

(2) The use of eminent domain authority to acquire private property in the unincorporated area of a county for use as an airport, airport system, or aviation facilities is prohibited, notwithstanding any provision of the law to the contrary, if the property to be condemned is located outside the geographic boundaries of the city or county operating the airport, airport system, or aviation facilities or outside the geographic boundaries of the member municipalities of the commission or authority. However, an acquiring agency may proceed with condemnation of property under these circumstances if the board of supervisors of the county where the property for which condemnation is sought is located holds a public hearing on the matter and subsequent to the hearing approves, by resolution, the condemnation action. This subparagraph does not apply if any of the following conditions is met:

(a) The property to be condemned is for an improvement to an existing airport, airport system, or aviation facilities if such improvement is required by federal law, regulation, or order or if such improvement is included in an airport layout plan approved by the federal aviation administration for the existing site of the airport, airport system, or aviation facilities.

(b) The property to be condemned has been zoned by a city or county for use as an airport, airport system, or aviation facilities.

(c) The property to be condemned is for a proposed airport, airport system, or aviation facilities that as of July 1, 2006, were designated in the federal aviation administration national plan for integrated airport services, and the property to be condemned is located within the county where at least one of the cities that will participate in operation of the proposed airport, airport system, or aviation facilities is located.

[2006 Acts, 1st Ex, ch 1001, §3, 49; 2008 Acts, ch 1032, §201; 2015 Acts, ch 138, §151 – 155, 162; 2017 Acts, ch 170, §58 – 60](#)

Referred to in [§6B.56A](#)

2015 amendment adding subsection 2, paragraph c, subparagraph (1), new subparagraph division (b) takes effect July 2, 2015, and applies to projects or condemnation proceedings pending or commenced on or after that date; 2015 Acts, ch 138, §154, 155

2017 amendment to subsection 2, paragraph a, subparagraph (2), takes effect May 12, 2017, and applies to projects or condemnation proceedings commenced on or after that date; 2017 Acts, ch 170, §59, 60

Subsection 2, paragraph a, subparagraph (2) amended