

Memorandum in Support of Public Use and Necessity

The memorandum on public use and necessity is the condemnor's opportunity to explain the legal standards that govern the public use and necessity determination. Under the case law (many of the key cases are cited in this memorandum) there should not be much of an issue concerning necessity, but this has not prevented condemnees from challenging the necessity of a take even when public use is not being challenged. This memorandum will be particularly adaptable in such a case.

If public use is being challenged, counsel should try to find a case where the particular type of project at issue has been held to be public. If no such case exists, point out specific statutory authority for the project.

While this memorandum may be useful as a template, it is not intended to be used in every case. Our state has developed a significant body of public use and necessity case law. Counsel should take care to become familiar with this body of law before the adoption of the ordinance and filing of the petition.