



Inverse Condemnation & Regulatory Takings

We help companies protect their interests when faced with government action/inaction and regulation that negatively affects their business.

INVERSE CONDEMNATION

Inverse condemnation cases arise when the government takes or damages property without filing a condemnation action. This typically occurs in three different situations where:

1. government regulation of property rises to the level of a taking, such as through restrictive zoning, access impairment, or refusal to process development;
2. the government causes accidental property damage to a property, such as in a flooding or landslide situation; or,
3. the government abandons plans to condemn property before filing the lawsuit, but only after the government's precondemnation conduct has already resulted in a compensable taking.

We have expertise in all three types of inverse condemnation claims. Our attorneys have litigated dedication and fee cases, including, for example, a multi-million dollar case involving park in lieu fees in which we saved our client \$20 million. We litigated a major landslide case that involved two, three-month jury trials and three appellate court proceedings. We also handled an inverse condemnation case on behalf of a lumber company damaged when it relocated in anticipation of the government's condemnation of the property it leased. Only after relocating did they learn that the government had decided not to acquire the property and, therefore, not to offer any compensation for its losses.

REGULATORY TAKINGS & DEDICATION OR FEE EXTRACTIONS

Not all takings involve condemnation. Sometimes, the government imposes restrictions on an owner's use of property that so limit its utility that the owner claims that the regulation amounts to a compensable taking of the owner's property. A key difference between condemnation and regulatory takings cases is that the latter do not start from the presumption that the government has taken something for which it must pay just

compensation. In regulatory takings cases, the focus often is on whether the regulations leave the owner with an economically viable use of property or otherwise interfere with the owner's investment-backed expectations. And, where the regulation or fee is triggered by the owner's plans to develop the property, whether the regulation or fee is roughly proportional to the burden the owner's planned use will have on the relevant infrastructure.

Takings can also occur during the entitlement process. For example, we represented the owner of a 454-acre property in Riverside County that the Regional Conservation Authority (RCA) sought for conservation purposes. The RCA and the County refused to process the owner's development entitlements, yet they never made an offer to purchase, instead "de facto" conserving the property. Under threat of an inverse condemnation action, we assisted the owner in an arbitration in which the RCA presented appraisal testimony of a value below \$30 million. After completion of the arbitration, the parties reached a settlement by which the RCA paid more than \$70 million.

We also have expertise in evaluating whether a proposed regulation rises to the level of a regulatory taking. We have advised government agencies seeking to impose the regulation on ways to ensure that the regulation, if implemented, will survive any regulatory takings challenge. On the property owner side, we advise owners impacted by regulations through the administrative proceedings leading up to the regulation's enactment in an effort to effect changes in the regulation that will avoid or minimize harm to the owner. Where the government proceeds with a regulation that rises to the level of a taking, we have experience challenging such regulations. And, where a regulatory taking is shown, the case begins to resemble a condemnation case, where our valuation expertise allows us to achieve strong results for clients.