



Inverse Condemnation & Regulatory Takings

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

What is Inverse Condemnation?

Inverse condemnation cases arise when the government or a public entity takes or damages property without filing a condemnation action. This typically occurs in situations in which:

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 damage to a property, such as in a flooding or landslide situation; or,
3. the government abandons plans to file a lawsuit to condemn property, but 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 will defend your property rights and have litigated dedication and fee cases including, for example, a multimillion-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 successfully brought an inverse condemnation case on behalf of a lumber company that relocated in anticipation of the government's condemnation of its leased property and suffered damages when the government decided not to acquire the property or offer compensation.

Regulatory Takings & Dedication or Fee Extractions

Not all real estate takings involve condemnation. Sometimes the government imposes restrictions on an owner's use of property that so limit the property's utility as to amount to a compensable taking. In contrast to condemnation cases, in which it is presumed that the government has taken something for which it must pay just compensation, regulatory takings cases often focus on two factors: whether the regulations leave the owner with an economically viable use of property or interfere with the owner's investment-backed

expectations; and whether a regulation or fee triggered by the owner's plans to develop the property 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 a purchase offer, 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 the property owner 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 on ways to ensure that the regulations they seek will survive any regulatory takings challenge. On the property owner side, we provide advice early on to owners who may be impacted by a regulation, and continue to guide them 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 property owners. If the government proceeds with a regulation that rises to the level of a taking, we have experience challenging such regulations. And if 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.