

EMINENT DOMAIN
Highest and Best Use, and Project Influence

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Highest and Best Use

Fair Market Value in Eminent Domain

Cal. Code Civ. Proc., § 1263.320(a)

The fair market value of the property taken is the highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for so doing, nor obliged to sell, and a buyer, being ready, willing, and able to buy but under no particular necessity for so doing, each dealing with the other with ***full knowledge of all the uses and purposes for which the property is reasonably adaptable and available.***

Highest and Best Use

CACI Jury Instruction 3502



You must determine fair market value based on the property's highest and best use. The highest and best use is the most profitable legally permissible use for which the property is physically, geographically, and economically adaptable.

Highest and Best Use

CACI Jury Instruction 3503



A determination of the property's highest and best use is not necessarily limited by **current** zoning or land use restrictions. If you decide that as of [date of valuation] there was a reasonable probability of a change in zoning or other use restrictions in the near future, then ***you must*** determine the highest and best use of the property based on that change.

Highest and Best Use

The Appraisal of Real Estate, 14th Edition (2013):

The ***reasonably probable use*** of property that results in the highest value.

Board of Equalization Assessors' Handbook § 501:

The highest and best use is defined as that use, among the ***possible alternative uses***, that is ***physically practical, legally permissible, market supportable, and most economically feasible*** ... The appraiser must make a determination of highest and best use as part of the appraisal process.

Highest and Best Use

... with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available. (Code Civ. Proc. § 1263.320(a).)

[T]he fair market value of property acquired has long taken into account the ***highest and most profitable use*** to which the property might be put in the ***reasonable near future***...

City of San Diego v. Neumann (1993)
6 Cal.4th 738, 744.

The property taken is valued based on the highest and best use for which it is ***geographically and economically*** adaptable.

County of San Diego v. Rancho Vista Del Mar, Inc. (1993)
16 Cal.App.4th 1046, 1058

Highest and Best Use

As applied in Eminent Domain assignments:

The four criteria that the highest and best use ***must meet*** are:

1. Legal permissibility.
2. Physical possibility.
3. Financial feasibility.
4. Maximum productivity.

Dictionary of Real Estate Appraisal, 5th Ed.
Appraisal Institute (2010), pg. 93.

Highest and Best Use

Factors to Consider

1. Physical nature (ie: *Lemos* (1960) 187 CA2d 348.)
2. Neighborhood and development trends (ie: Evid. Code § 821.)
3. Contamination (ie: *Thrifty Oil* (1992) 4 CA4th 469.)
4. Feasibility study (ie: *Vaquero Farms* (1997) 58 CA4th 883.)
5. Zoning & reasonable probability of change (ie: *Campus Crusade for Christ* (2007) 41 C4th 954.)

Highest and Best Use

Factors to Consider (cont.)

6. Reasonable probability of land use approval
7. Local ordinances & State law (ie: Cal. Coastal Act; *Talleur* (1978) 79 CA3d 690.)
8. Interim value (ie: *Covich* (1968) 260 CA2d 663.)
9. Assemblage theory / larger parcel (ie: *Curtner* (1966) 245 CA2d 730.)
10. Social and economic forces

Case Examples

Schmidt

The right to future exploitation of undeveloped natural resources based on the existence of valuable mineral deposits may be considered insofar as it influences the market value of the land.

San Diego Gas & Electric Co. v. Schmidt (2014)

228 Cal.App.4th 1280

Acquisition of Vacant Land in the high desert

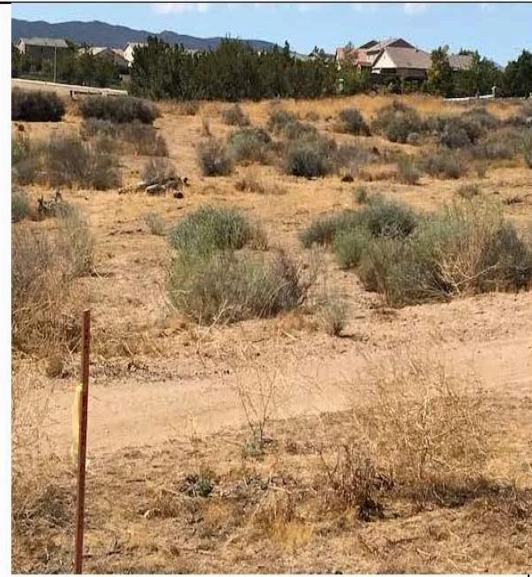
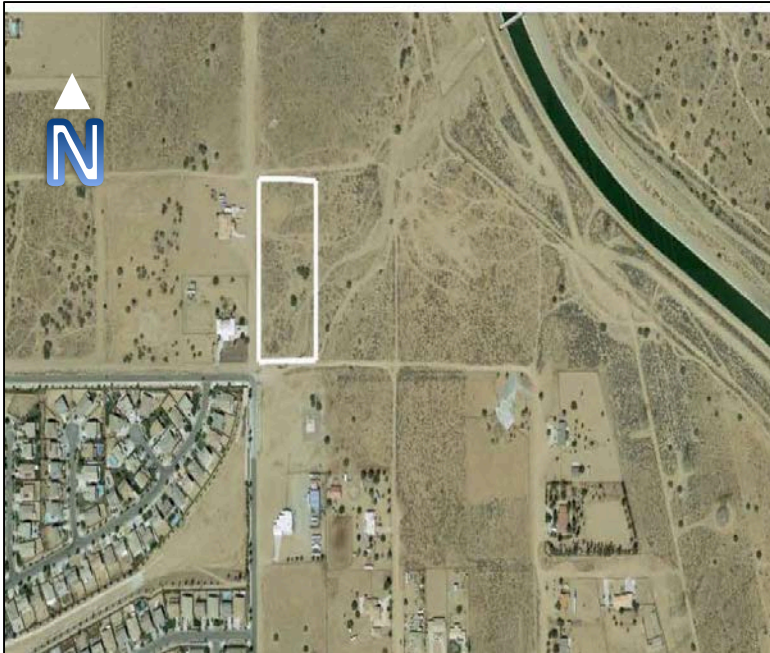
Size: 4.493 acres (5.0 public record).

Utilities: All available pending connection.

Topo: Level with good drainage.

Access: Two frontage streets.

Shape: Rectangular.



South facing direction



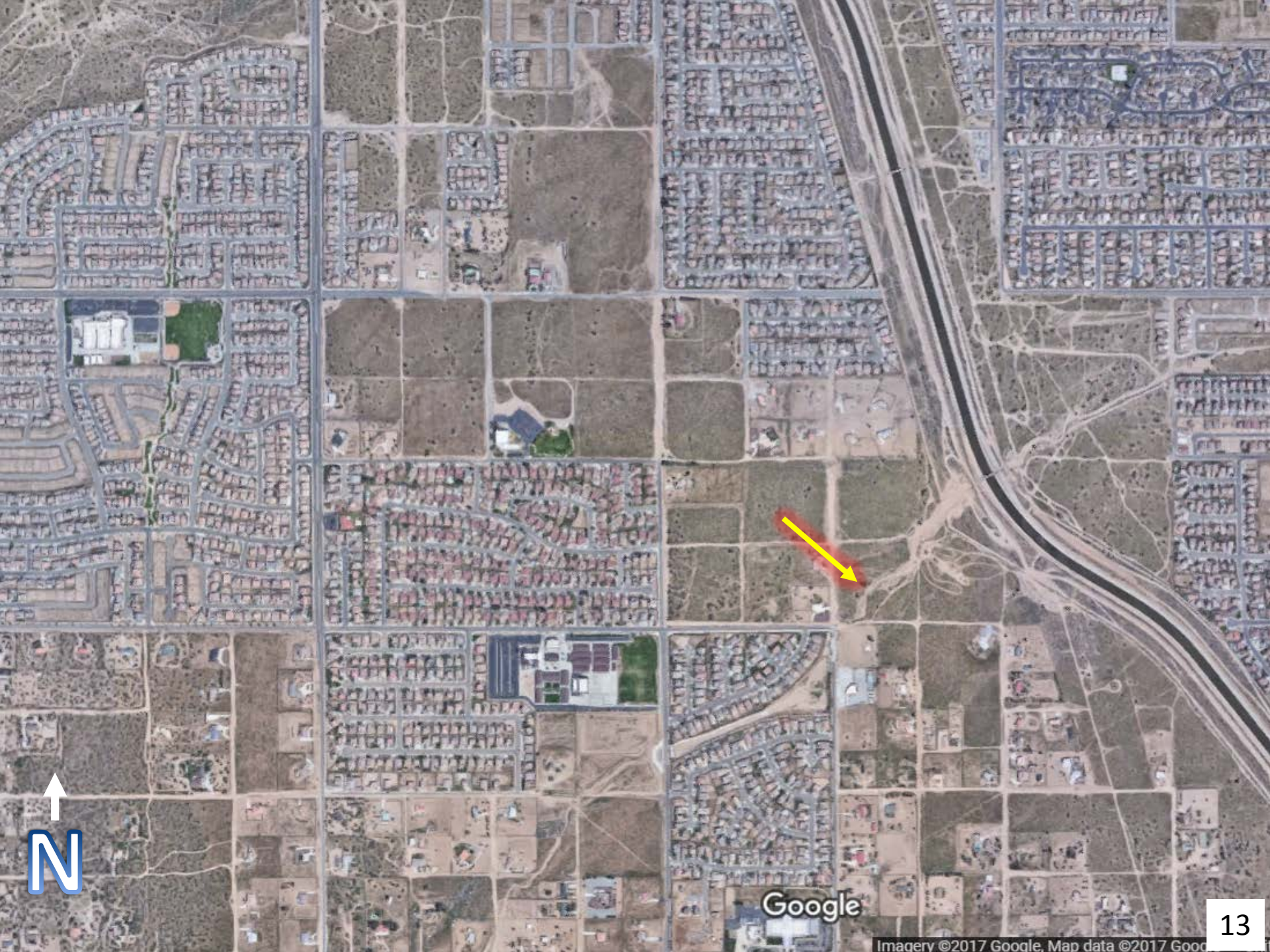
North toward 10-acre adjacent parcel and SFR subdivision



West



East toward Aquaduct



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Google

Acquisition in the high desert

Size: 4.493 acres (5.0 public record).

Utilities: All available pending connection.

Topo: Level with good drainage.

Access: Two frontage streets.

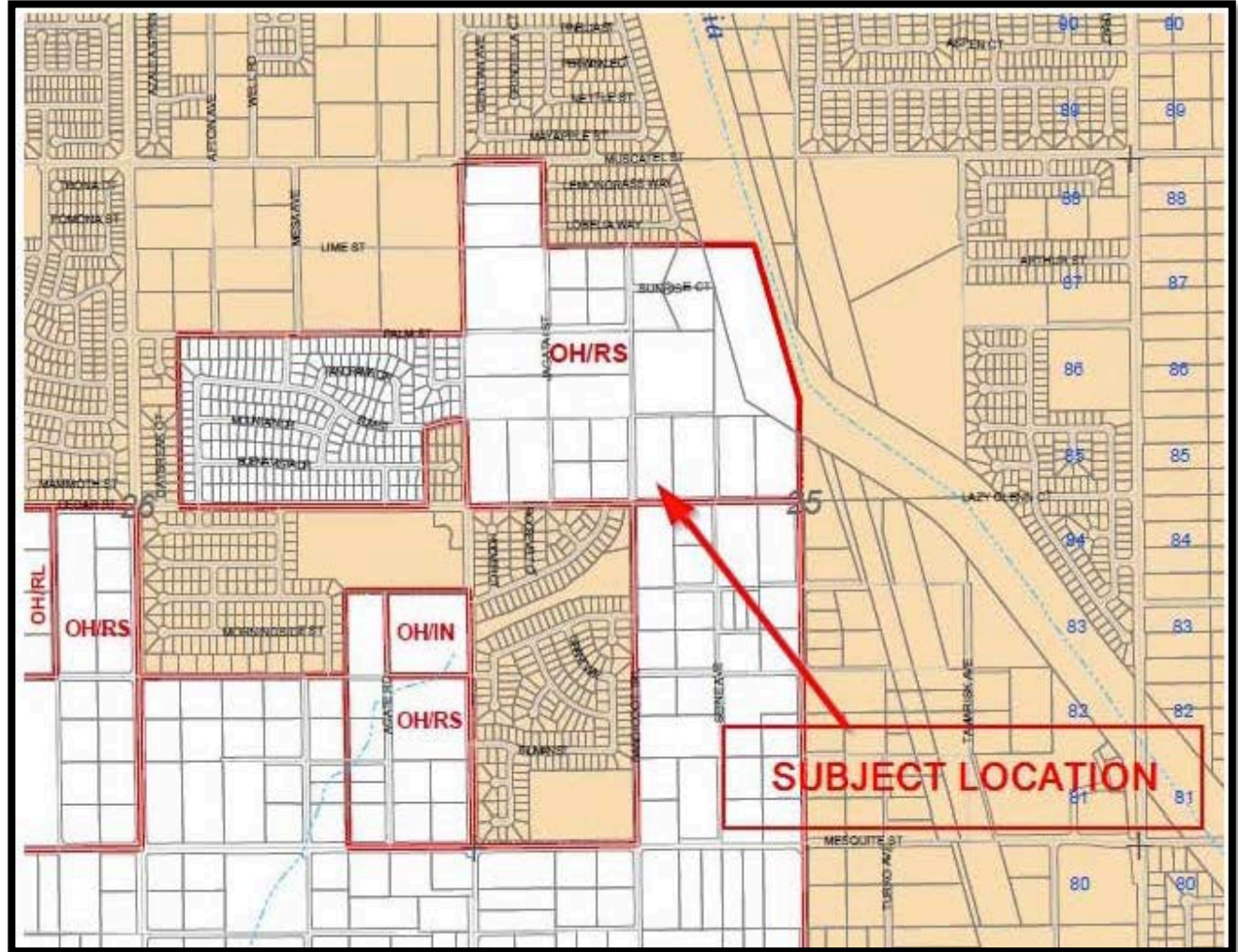
Shape: Rectangular.

Zoning: OH/RS

- 7,200 SF min. lot size.
- Max bldg. height 35 ft.
- # allowed units based on ***gross*** acres.
- 0.73 acre street dedication used in max. lot area calculations.
- Submit application to the County.

Highest & Best Use:

To develop a zoning compliant multiple lot demised residential SFR property similar to surrounding zoned area developments.





Aqueduct

California Aqueduct

California Aqueduct

Highest and Best Use

Take aways & key points

1. Define HBU (CACI 3502 & 3503).
2. Research the property and the area.
3. Analyze applicable factors.
4. Be realistic.

Project Influence

Project Influence

The Exception

Woolstenhulme

Where the property was not originally included within the scope of the project (“scope of the project” rule).

Increases in value, attributable to a project but reflecting a reasonable expectation that property ***will not be taken*** for the improvement, should properly be considered in determining just compensation.

Merced Irrigation Dist. v. Woolstenhulme (1971)

4 Cal. 3d 478

Project Influence

Cal. Code Civ. Proc., § 1263.330(a)

The fair market value of the property taken shall not include any increase or decrease in the value of the property that is attributable to ... [t]he ***project for which the property is taken.***

Project Influence

CACI Jury Instruction 3504



You must consider any increase or decrease in the property's fair market value caused by public knowledge of [the project] until [the property's inclusion in the project]. You ***may not consider*** any change in value caused by [the project] after that date. You may, however, consider other factors that changed the property's value after [date of property's inclusion in the project], but before [date of valuation].

Case Examples

Barratt American

The trial court did not abuse its discretion by excluding the city's proposed "abandoned project construct" because the construct did not disregard the impact of the project on the value of the property.

City of San Diego v. Barratt American, Inc. (2005)
128 Cal. App. 4th 917

Take aways & key points

1. Project cannot affect value.
2. Woolstenhulme / CACI 3504

The Overlap

The Overlap

Code Civ. Proc., § 1263.330, Law Revision Commission Comment

Any increase or decrease in value resulting from the use which the condemnor is to make of the property must be eliminated in determining compensable market value.

If, however, the condemnor's proposed use is one of the highest and best uses of the property, the adaptability of the property ***for that purpose*** may be shown by the property owner.

San Diego Land & Town Co. v. Neale (1888)
78 Cal 63, 20 P 372

The Overlap

HBU same as purpose for the acquisition

Decker

The environmental impact report showing the city's conclusion that there was a present need for airport parking was admissible evidence to show the present need for airport parking, and to show that the best and highest use of the property in the condemnee's hands, and not as part of the airport project, was for airport parking.

City of Los Angeles v. Decker (1977)
18 Cal. 3d 861

City of Los Angeles v. Decker (1976)
61 Cal. App. 3d 445

The Overlap

Case Example

Andresen

A property owner whose land was condemned for a rock quarry to provide material to repair a dam was allowed to value the property based on a highest and best use as a rock quarry.

Dept. of Water Resources v. Andresen (1987)

193 Cal.App.3d 1144

The Overlap

Case Example

Rancho Vista Del Mar

In situations where the market or demand is created by the government, then valuing the property on that basis is improper.

County of San Diego v. Rancho Vista Del Mar, Inc. (1993)

16 Cal.App.4th 1046

The Overlap

Probability of Inclusion

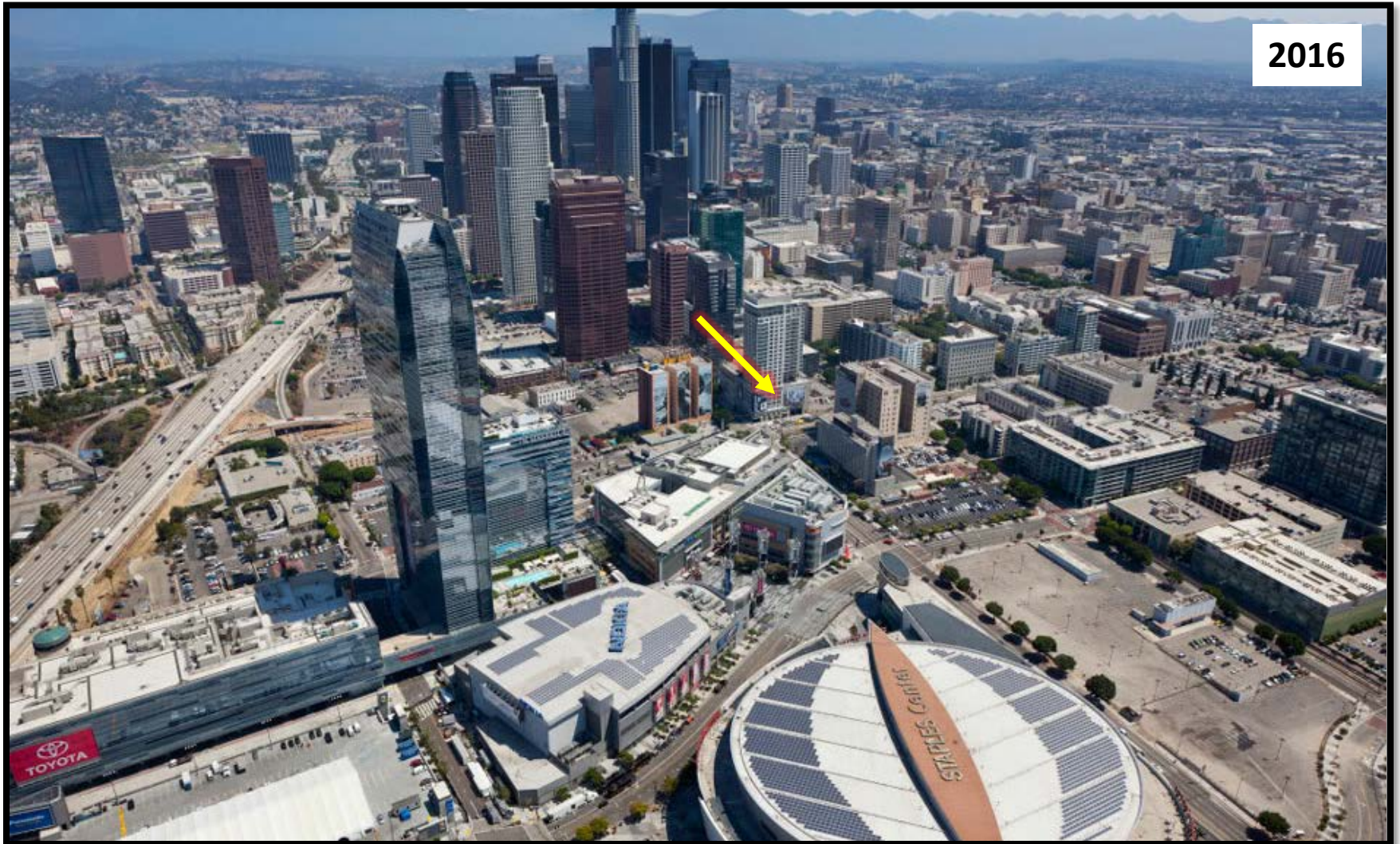
Disallowed project enhancement: was the property “probably within the scope of the project from the time the Government was committed to it” ? (*U.S. v. Miller* (1943) 317 US 369.)

Increases in value, attributable to a project but reflecting a reasonable expectation that property **will not** be taken for the improvement, should properly be considered in determining just compensation.

Merced Irrigation Dist. v. Woolstenhulme (1971)
4 Cal. 3d 478

The Overlap

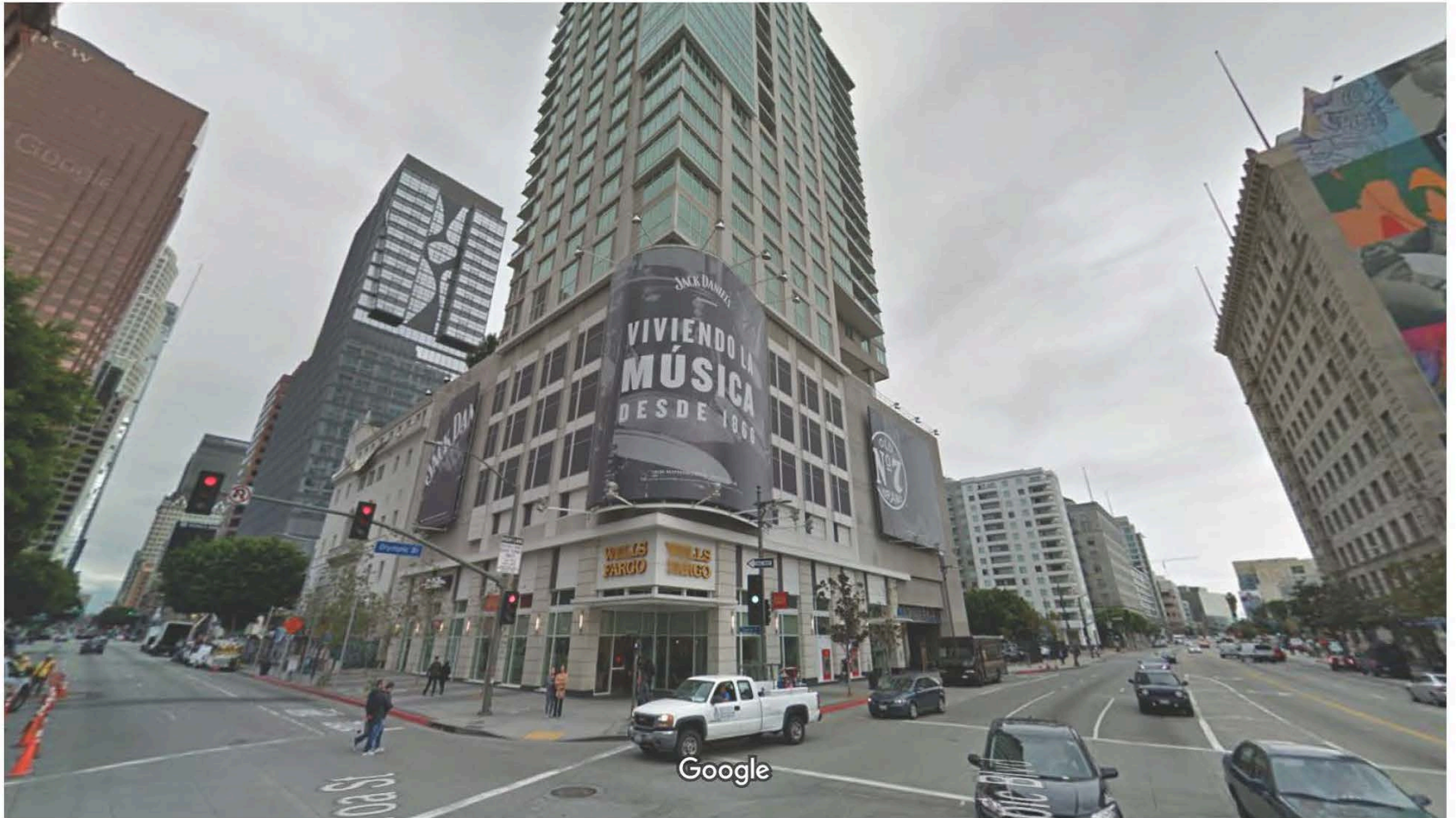
Probability of Inclusion: Figueroa and Olympic



2016

The Overlap

Probability of Inclusion: Figueroa and Olympic



The Overlap

Probability of Inclusion: Figueroa and Olympic



The Overlap

2016



1997



The Overlap

Comparable Sales that may be project influenced

Judge's discretion on admissibility (Evid. Code §816) is based on both project enhancement and whether the sale “sheds light” on the value of the acquired property.

County of San Luis Obispo v. Bailey (1971) 4 C3d 518

Sales are admissible when they illuminate the value of the subject property at the date of valuation, even if project influenced.

Los Angeles v. Retlaw Enterprises (1976) 16 Cal.3d 473

It is improper to prevent cross examination of an expert on whether a sale had been influenced by project enhancement.

People ex rel Dept Public Works v. Reardon (1971) 4 C3d 507

The Overlap

Take aways & key points

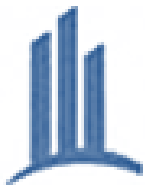
1. HBU may be the same as the proposed use for the project.
2. Does the property have a probability of inclusion ?
3. Woolstenhulme / CACI 3504
4. Does a project-influenced comp “shed light” on the value ?

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Thank you!

Questions?



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