



Inverse Condemnation – Money & Dirt Valuation and Legal Issues

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Overview

- Inverse Condemnation Law
 - Legal Standards
 - Liability Standards
 - Exceptions
- Case Examples
- Role of Appraisers
- Valuation Considerations



Inverse Condemnation

- California Constitution, Article I, Section 19: “Private property may be taken or damaged for a public use and only when just compensation...has first been paid to...the owner.”
- If a public agency damages another’s property “for a public use,” then it owes the owner compensation (damages).
- Inverse condemnation occurs when a public entity takes or damages property *without* the payment of just compensation.
- Key difference: Eminent domain is initiated by the government and inverse condemnation is initiated by the injured party, i.e. property owner or business owner



Elements of Inverse Condemnation

- Plaintiff must prove:
 - A public improvement
 - Damage to private property
 - Causation (substantial cause)
 - *Albers v. County of Los Angeles* (1965) 62 Cal.2d 250

Strict Liability?

- Potential Strict Liability: A public entity is liable for property damage substantially caused by a public improvement, regardless of foreseeability or fault.
- Policy: Public improvement costs should be spread among those benefited (taxpayers) rather than allocated to a single community member (the claimant or property owner).

Compare: Tort Claims

- More defenses / immunities available for tort claims
- Limited availability of attorneys' fees
- Must comply with Government Tort Act and submit claims to public agency within 6 months of incident



Exception - Common Enemy Doctrine



- Surface water, like rainwater or storm runoff, is a “common enemy” of everyone
- Each property owner, including government, can take reasonable steps to protect their land from it
- Limits: A public agency cannot use the doctrine as a defense if its project *unreasonably* collects, channels, or increases water flow in a way that damages private property
- Key: whether design, construction, or maintenance of the public improvement was reasonable



Flood Control Exception

- Reasonableness Standard: When a public flood control improvement substantially causes damage to properties historically subject to flooding, courts have not allowed property owners to recover in inverse condemnation absent proof that the failure was attributable to some unreasonable conduct.
- Theory: Strict liability would discourage beneficial flood control improvements.

Non-Compensable Police Powers

- Not all actions resulting in diminution in property value are compensable
- General police powers
 - Elimination of left-turn lane
 - Change in traffic flow
 - Loss of on-street parking
 - Increased circuitry of travel
- Change of zoning
- Impacts to view
- Improvements that do not benefit the public as a whole



Takeaway - Compare Cases

City of Oroville v. Superior Court (2019)

- Damage must be the probable result of inherent risks in public improvement design or maintenance.
- City sewer system backed up into a dental office—court ruled no liability because owner failed to install backflow valve.

Albers v. County of Los Angeles (1965)

- Landslide caused by road construction led to property damage.
- Court held the county liable, establishing that damage from public works—even without negligence—can trigger compensation.

Examples of Inverse Condemnation

- Installation of public improvement on private property
- Regulatory restrictions or permit conditions which may reduce property value
- Landslide / slope failure
- Loss of or interference with access
- Injury by noise, dust, vibration, and fumes
- Flooding and public drainage issues
- Wildfires linked to public improvements



Why Should Appraisers Care?

- Inverse Condemnation = Full Employment Act for Appraisers
- Climate Change increasing frequency & severity of natural disasters
- California has broadest definition and application of inverse condemnation
- Any damage linked to public improvement potentially gives hook for liability
 - Easier form of recovery (do not need to show negligence or intent)
 - Recovery of attorneys' fees and litigation costs

Getty fire may have started with branch blown onto LADWP power lines, LA officials say



LAFD arson investigators gather evidence at the possible source of the Getty Fire along Sepulveda Blvd north of the Getty Center Tuesday, October 29, 2019. (Photo by David Crane, Los Angeles Daily News/SCNG)

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Palisades Fire – Potential Causes

**THE PALISADES FIRE LAWSUIT IS AN ACTIVE LAWSUIT**[SEE IF YOU QUALIFY >](#)

It is known that environmental factors, including strong Santa Ana winds and severe drought conditions, also played a role in the rapid spread of the flames.


2025 Palisades Wildfire Lawsuit


What caused the Palisades Fire?





The cause of the Palisades fire is under investigation by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF).

Possible Contributing Factors:

Investigators are looking into a **smaller fire that started on January 1st** that may not have been properly extinguished.

Drought in Los Angeles County played a significant role in the rapid spread of the Palisades Fire. Dry plants kindle faster.

High winds add oxygen to fires, increasing the fires speed and intensity. Winds will also carry hot embers to new, unburnt areas.

The nearby **water reservoir was empty for repairs** at the time of the fires, which decreased water pressure to fire hydrants.



Palisades Fire Claims Against Water Utility

- The complaint alleges that public utility's reservoirs were empty at the time the Palisades Fire erupted, leaving fire crews little or no water to fight the Palisades fire. Plaintiffs claim fire damage to their properties was proximately and substantially caused by utility's operation or maintenance of its water delivery systems.
- Specifically, the public utility owned and operated reservoirs, and because the reservoirs had inadequate water supply, fire hydrants lost water pressure and ran dry, causing or worsening the damage and destruction to plaintiffs' property.

Causation – Only (Narrow) Defense

- Claimant must show public improvement was a “substantial cause” of damage.
- Public improvement is not a substantial cause where damage would have occurred even it had operated perfectly.
- Even where an independent force (e.g., wildfire) contributes to the damage, liability exists if the injury occurred in substantial part because the public improvement failed to function as it was intended.

Role of Appraisers

- Determining “just compensation” is central in both direct and inverse cases.
- Appraisers help establish:
 - Before and after values
 - Severance damages
 - Cost-to-cure estimates
 - Highest and best use impacts
- In inverse cases, damages often arise from unintended physical impacts

Valuation Insights

- Valuation process for inverse condemnation very similar to direct condemnation.
- Understanding the codes, case law, and jury instructions for both is critical for a credible appraisal.
- And what are they???



Definition of Value

- Code of Civil Procedure 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.
 - (b) The fair market value of property taken for which there is no relevant, comparable market is its value on the date of valuation as determined by any method of valuation that is just and equitable.

Date of Value

- For Direct: CCP 1263.110 (a)
 - Unless an earlier date of valuation is applicable under this article,...the date of valuation is the date on which the deposit is made.
- For Inverse: *Pierpont Inn v. State of California* (70 Cal.2d 282)
 - Date of taking
 - Date of accrual / stabilization
 - Date of trial
 - Delayed discovery rule?





The Yellow line showing the approximate location of the planned Underground Pipe

Blue shaded area showing the approximate location of the proposed temporary and permanent use for the installation of the proposed underground pipe.

Location of existing pipe

17130 FOOTHILL BLVD

Evidentiary Implications

- For Direct: Valuation is **prospective**. Appraisers try to anticipate what will happen to the value of a property as a result of construction and operation of the project in the manner proposed.
 - Generally cannot bring information into the case beyond the date of value.
- For Inverse: Valuation is retrospective. Appraisers take into account what actually happened and how it impacted the value of the property.
 - Question: How does date of value impact the valuation?



Valuation Takeaway

- Problem identification at the onset
 - Dates
 - Definitions
 - Scope

Inverse Condemnation - Recoverable Damages

- Present and prospective damages:
 - Cost of repairs
 - Loss of use of real and personal property
 - Lost profits and prospective profits
 - Increased operating expenses
- Claimant's attorneys' fees, expert fees, and other litigation costs
- Broader than in direct action – limited to goodwill?

Secure Legal Instructions on Compensability

- Talk to attorney about compensability
 - Access
 - View
 - Traffic



Other Issues

- Stigma or market perception
 - Post land-movement
 - Post-flooding
 - Post-wildfire
- Temporary takings
- Hybrid cases
 - Recurring flooding
- Property interest acquired (no legal / plat)
- Project influence rule



Questions?



Thank You



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