



# LAND USE ISSUES AFFECTING VALUATION

Challenges influencing property value and development potential



# INTRODUCTION AND OBJECTIVES



# LAND USE ISSUES AFFECTING VALUATION



## Regulatory Impact on Valuation

Land use regulations such as zoning and overlay controls are often the core issues in valuation disputes during litigation.

## Compliance with USPAP Standards

Understanding the regulatory framework is vital to providing credible valuation opinions and defensible expert testimony under USPAP.

## Litigation and Valuation Context

Land use issues critically influence valuation disputes in eminent domain, regulatory takings, and complex market assignments.

# OBJECTIVES FOR TODAY



## **Impact of Land-Use Controls**

Understand how land-use controls affect Highest & Best Use and legal permissibility in property valuation.

## **Applying USPAP Standards**

Learn to apply USPAP Standards Rules 1-2, 1-3, and 1-4 in land-use analysis effectively.

## **Legal and Valuation Integration**

Recognize case law precedents and integrate litigation strategy with valuation methodology including partial takings.

## **Strategic Regulatory Thinking**

Develop skills to anticipate regulatory changes proactively rather than reacting after implementation.





# LEGAL FOUNDATIONS AND USPAP STANDARDS





# WHY LAND USE IS CENTRAL TO LITIGATION APPRAISAL

## Zoning as Valuation Basis

Zoning and regulatory status are essential for determining fair market value in litigation appraisal.

## Impact of Land-Use Changes

Changes in density or access can quickly affect property value during litigation disputes.

## Expertise and Documentation

Courts require appraisers to document legal status and establish a regulatory baseline for credibility.

# POLICE POWER VS. EMINENT DOMAIN

| CONCEPT           | GOVERNING PRINCIPLE                                 | KEY CASE                                    | VALUATION IMPACT   |
|-------------------|---|---|--|
| Police Power      | Government may regulate for health, safety, welfare | <i>Village of Euclid v. Ambler (1926)</i>   | No compensation; affects HBU only                            |
| Regulatory Taking | Regulation goes “too far”                           | <i>Penn Central (1978)</i>                  | Potential inverse claim; appraiser analyzes before/after use |
| Total Taking      | Deprivation of all beneficial use                   | <i>Lucas v. S.C. Coastal Council (1992)</i> | 100% loss = compensable                                      |
| Temporary Taking  | Interim prohibition on use                          | <i>First English v. LA County (1987)</i>    | Time-based damages; measure delay effect                     |

# CALIFORNIA REGULATORY ENVIRONMENT



**Government Code § 65800 et seq.**  
zoning enabling act.

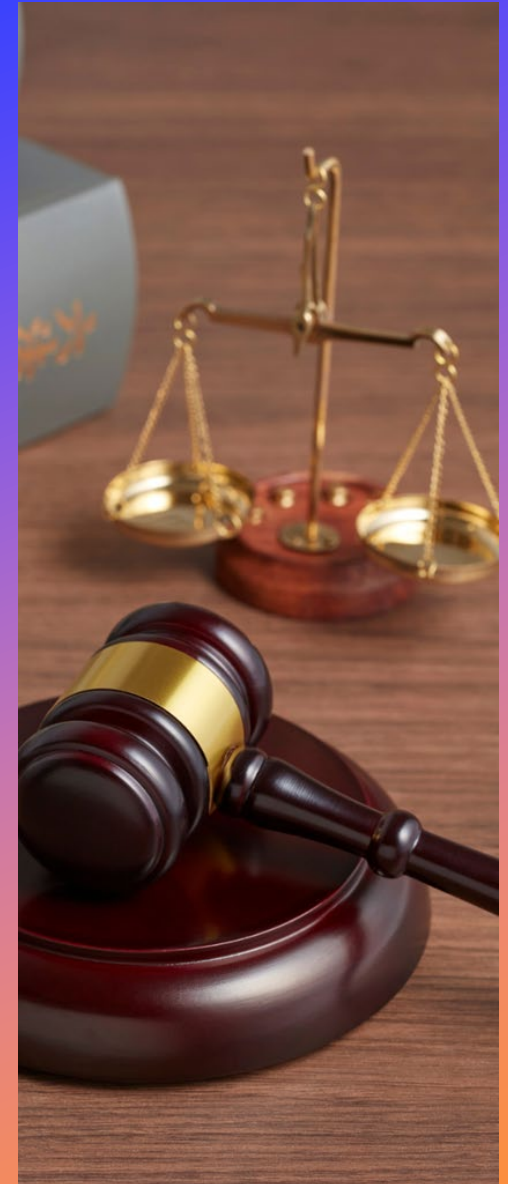
**CEQA (Pub. Res. Code § 21000 et seq.)**  
environmental process, not outcome, but affects timing & feasibility.

**Subdivision Map Act**  
controls legal lot creation & development phasing.

**Coastal Act, Floodplain Management, Habitat Conservation**  
overlay restrictions.

## **Case Spotlight**

*Monks v. City of Rancho Palos Verdes (2008)* – moratorium ruled a taking.





# USPAP AND THE APPRAISER'S LEGAL RESPONSIBILITY



## Relevant USPAP Standards:

### SR 1-2(e)(i):

Identify the real property's legal characteristics.

### SR 1-3(a):

Analyze effects of existing land-use regulations.

### SR 1-4(a–c):

Apply appropriate approaches reflecting similar legal uses.

### Competency Rule:

Obtain requisite knowledge of regulatory context.

### Scope of Work Rule:

Determine depth of land-use analysis required for credible results.

*Key Principle: Failure to analyze known regulatory controls is not a minor omission—it's a credibility flaw.*



# HIGHEST & BEST USE AND REZONE PROBABILITY

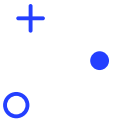


# HIGHEST & BEST USE: WHY IT MATTERS IN LITIGATION

## Core Legal & Valuation Role

- HBU determines which use the market values for just compensation (CCP § 1263.320).
- Courts require the appraiser to identify the legally permissible, physically possible, financially feasible, and maximally productive use.
- Failure to analyze land-use controls = unsupported conclusion under SR 1-3(a).
- Differences over HBU are often the dispute in eminent domain—especially where zoning or access changes.
- Testimony must show linkage between legal allowance, market evidence, and valuation logic.

# LEGALLY PERMISSIBLE = FIRST GATE OF HIGHEST & BEST USE



- “Legally permissible” governs whether any further HBU testing is relevant.
- Includes **zoning, general plan consistency, overlays, CC&Rs, and specific plan controls.**
- Appraisers must document: zoning designation, permitted uses, conditional uses, and restrictions.
- Verify data directly with planning staff or written documentation → record in workfile (USPAP Record-Keeping Rule).
- Changing or speculative assumptions about permissibility require **extraordinary assumption or hypothetical condition disclosure** (SR 1-2(g)).





# NON-CONFORMING & CONDITIONAL USES



- **Legal non-conforming use**

established lawfully before current zoning; may continue but subject to amortization or destruction limits.

- **Conditional Use Permit (CUP):**

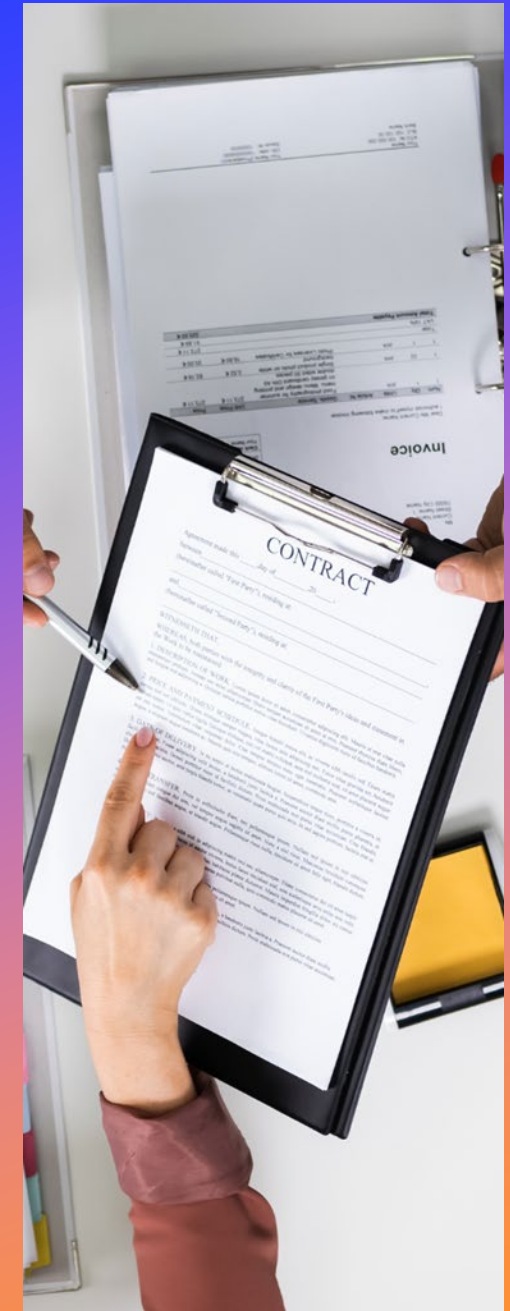
use allowed subject to findings—market value depends on renewal probability and transferability.

- **Risk considerations:**

insurance, financing, and sale discounting.

- Appraiser's task → analyze continuation probability and disclose factual basis.

- Case Example: *City of Los Angeles v. Decker (1977)* – non-conforming use can be part of HBU if continuation probable.

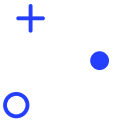


# REASONABLE PROBABILITY OF REZONE – LEGAL STANDARD

- Courts allow consideration of a **reasonably probable** zoning change in valuing property.
- Not speculation—requires **objective evidence** such as:
  - Pattern of approvals in vicinity
  - Planning staff or elected official statements
  - Consistency with General Plan or Housing Element
  - Pending specific-plan updates
- **Key Cases:**
  - *Merced Irrigation Dist. v. Woolstenhulme (1971)* – reasonable probability standard established.
  - *City of San Diego v. Neumann (1993)* – must be probable within foreseeable future.
- Absent credible evidence, assumption of rezone = advocacy, not analysis.



# TRANSLATING REZONE PROBABILITY INTO VALUE



- Rezone probability affects value through timing and risk, not categorical change.
- Methods of Analysis:
  - Discounted Cash Flow model with staged entitlement timeline.
  - Paired sales: entitled vs. unentitled land adjustments.
  - Probability-weighted scenarios (e.g., 60% chance of approval).
- **Extraordinary Assumptions** must be explicit → if probability fails, value is invalid.
- Report Language Example: “Value assumes city approves rezoning to C-2 within the ensuing 12 months.”
- Cross-Examination Tip: Be ready to defend each probability input with documented evidence.

# FROM VALUATION TO STRATEGIC ANALYSIS

- Advanced appraisers evaluate alternative feasible uses rather than assuming a single outcome.
- Land-use analysis supports **strategic valuation decisions**:
  - Should the client pursue rezoning or rely on interim use?
  - What level of entitlement risk is market-supportable?
  - How does development timing influence value today?
- High-level assignments demand understanding of **policy, market, and financial dynamics** behind HBU.
- In litigation, strategic appraisal insight assists counsel during mediation or pre-trial settlement.



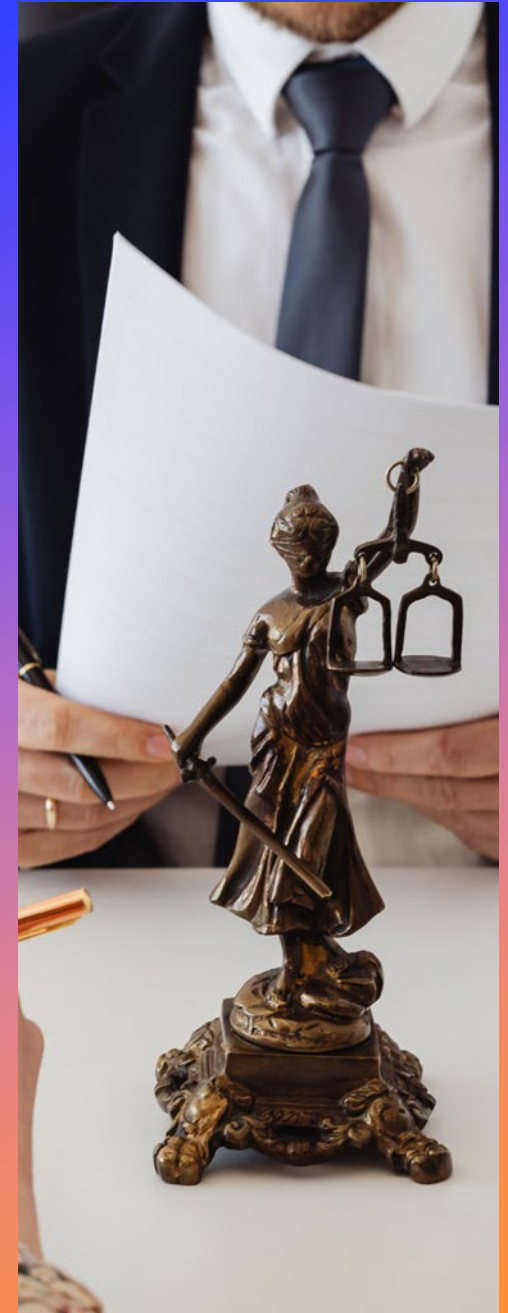
# CONDEMNATION & REGULATORY TAKINGS



# EMINENT DOMAIN FRAMEWORK IN CALIFORNIA



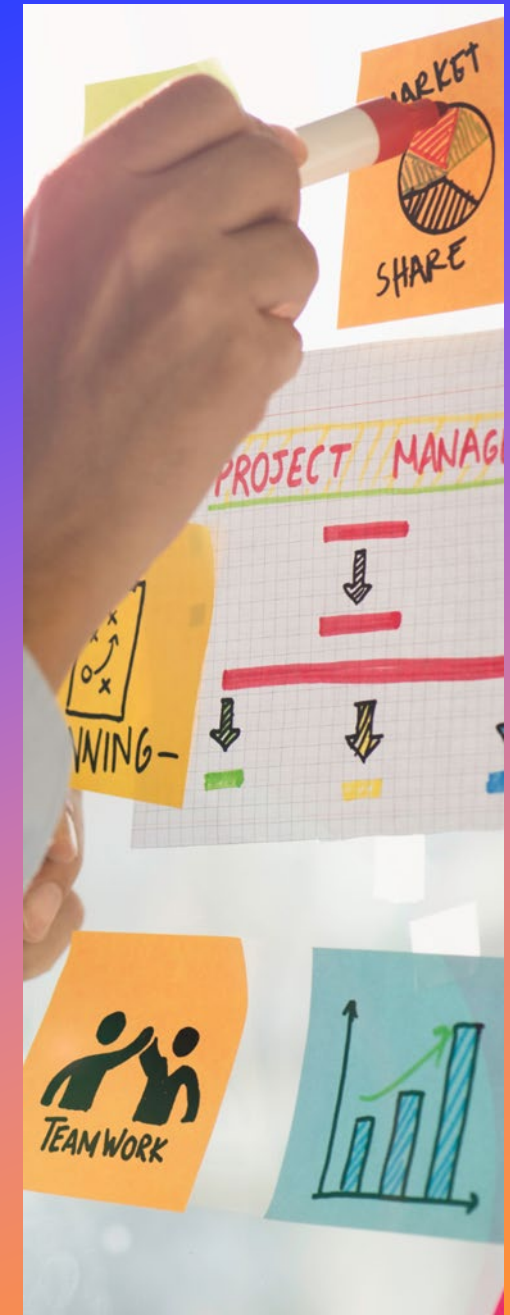
- **Constitutional Basis:** U.S. Const. 5th Amend.; Cal. Const. Art. I § 19 → “Just compensation for property taken or damaged.”
- **Governing Statutes:** Cal. Code Civ. Proc. §§ 1230 – 1273 (“Eminent Domain Law”).
- **Standard of Value:** Fair Market Value = Price a willing buyer / willing seller would agree upon, CCP § 1263.320.
- **Date of Value:** That date of value is set by statute; typically, it is the date on which the agency deposits the amount of probable compensation to be awarded, which is almost always before the current date (retrospective).
- **Project Influence Rule (§ 1263.330):** Ignore any increase or decrease in value caused by the project itself.
- **Partial Takings:** Value the part taken + severance damages – benefits.
- **Appraiser Focus:** Identify legal status of property immediately before the take.



# PROJECT INFLUENCE RULE IN PRACTICE



- **Purpose:** Prevent inflated or depressed values from the condemning project.
- **Key Case – *City of Perris v. Stamper*, 1 Cal.5th 576 (2016):**
  - Dedication requirement imposed because of project = project influence.
  - If project itself created zoning or dedication condition, it's ignored in valuation.
- **Analytical Approach:** Value “before project influence” legal framework.
- **Common Error:** Including post-project restrictions (e.g., setbacks, road dedications) in HBU analysis.
- **USPAP Tie-In:** SR 1-2(e) → identify correct legal context for value date.





# DEDICATIONS & EXACTIONS

- **Definition:** Condition imposed on development approval (e.g., land dedication, fees).
- **Compensability depends on:**
  - Whether requirement is part of general plan policy (pre-existing), or
  - Imposed because of the specific public project.
- **Key Cases:**
  - *People ex rel. DOT v. Cole (1992)* – Dedication within project corridor non-compensable.
  - *Dolan v. City of Tigard (1994)* – “Essential nexus” & “rough proportionality” tests.
- **Valuation Implication:** Exclude project-created dedication areas; include independent conditions.
- **Practical Tip:** Use jurisdictional staff letters or ordinance dates to prove timing.



# CONDEMNATION BLIGHT & PRE-CONDEMNATION CLAIMS



- **Concept:** Government actions that depress value before formal taking.
- **Pre-Condemnation Claims (Leading Case):** Government actions that unreasonably delay acquisition or depress value may create compensable “condemnation blight” under *Klopping v. City of Whittier (1972)*.
- Unreasonable delay or oppressive pre-condemnation conduct → compensable damage.
- **Appraiser Role:** Measure “before-announcement” and “after-announcement” market conditions.
- **Evidence Needed:** Public records, media announcements, market surveys.
- **Analytical Approach:** Paired sales or trend line comparison to control market.
- **Litigation Tip:** Keep timeline chart of agency actions in report to establish causation.



# PARTIAL TAKINGS & SPLIT ZONING



- **Definition:** Only portion of property acquired; remainder retained.
- **Analytical Steps:**
  - Value whole property “before take.”
  - Value remainder “after take” with new land-use constraints.
  - Difference = value of part taken + severance damages.
- **Common Complexity:** Remainder zoned differently → access loss, setback change, or utility reduction.
- **Temporary Construction Easements (TCEs):** Treated as time-limited takings; value typically based on market rent for the area occupied plus measurable interference or access loss. Duration and restoration obligations are key valuation variables.
- **Support with:** Site maps showing pre/post FAR, setbacks, and access points.
- **USPAP SR 1-4:** Ensure comparable data reflect same legal constraints.



# INVERSE CONDEMNATION



**Definition:** Owner-initiated claim alleging property was *taken or damaged* for public use *without formal eminent domain proceedings* (Cal. Const. Art. I § 19).

## Two Principal Categories:

**Disaster / Physical Invasion Takings** – Government-owned infrastructure or public projects cause *physical damage or flooding*.

*Albers v. County of Los Angeles (1965)*: County landslide from road work → strict liability for property damage.

*Belair v. Riverside County Flood Control Dist. (1988)*: Flood control levee failure; test = substantial causal relationship.

**Regulatory / Permit Denial Takings** – Regulations or actions *deprive all or substantially all beneficial use* of property.

*First English Evangelical Lutheran Church v. County of L.A. (1987)*: Temporary moratorium after flood = compensable taking for lost use.

*Monks v. City of Rancho Palos Verdes (2008)*: Indefinite moratorium = per se taking.

**Valuation Focus:** “Before-and-after” analysis of property utility and market value; compensation equals lost use, delay, or restoration cost.

**Appraiser’s Role:** Quantify loss of use and duration impacts using paired sales, income interruption, or DCF timing adjustments.



# APPRAISER'S ROLE IN CONDEMNATION LITIGATION



- **Pre-Trial:** Confirm client and legal assumptions → Ethics Rule requires no advocacy.
- **Discovery:** Workfile retention critical (USPAP Record Keeping Rule = 5 yrs or 2 yrs post-litigation).
- **Direct Examination:** Explain regulatory facts clearly; avoid legal opinions.
- **Cross-Examination:** Be prepared to cite source of zoning and effective dates.
- **Best Practice:** Include exhibit map of legal constraints dated and sourced.
- **Objective:** Credibility = Compliance + Transparency.







# TAKING VALUATION AND RECOVERY STRATEGIES

- Appraisers can help quantify **residual potential** of remainder parcels:
  - Evaluate re-entitlement or subdivision potential.
  - Assess value recovery through adaptive reuse or reconfiguration.
  - Model cost-to-cure scenarios for access or utility loss.
- Advanced appraisal analysis adds value during settlement and mediation—numbers supported by **practical redevelopment evidence**.
- Expert reports should describe *how* remainder value can be optimized within current regulatory limits.

# ENVIRONMENTAL & OVERLAY CONSTRAINTS



# LAYERS OF LAND-USE REGULATION: A CUMULATIVE MATRIX

- Every parcel is subject to multiple, overlapping **jurisdictions and overlays**.
- Typical hierarchy:
  1. **General Plan Policy** → sets long-term community objectives.
  2. **Zoning Ordinance** → implements permitted and conditional uses.
  3. **Specific Plan / Overlay Zone** → adds tailored development standards.
  4. **Environmental Constraints** → CEQA, floodplain, wetlands, habitat, historic.
- **Appraisal Implication:** Each layer can alter feasibility, timing, and residual land value.
- **USPAP Link:** SR 1-2(e) & 1-3(a) require identification and analysis of these legal constraints.
- **Best Practice:** Map and date-stamp every layer; include GIS or FEMA references in workfile.

# CEQA AS A VALUATION VARIABLE



- **California Environmental Quality Act (Pub. Res. Code § 21000 et seq.)** → process, not prohibition.
- **Timing Impact:** Environmental review = delay = cost.
- **Uncertainty Impact:** Mitigation measures or EIR conditions can limit density or change site design.
- **Case Law:** *Mount San Jacinto Community College Dist. v. Superior Court (2007)* – CEQA delay affects feasibility and market timing.
- **Valuation Approach:** Model approval timeline in DCF or discount rate; treat as temporary regulatory risk.
- **Litigation Angle:** Attorneys use CEQA history to prove entitlement uncertainty or regulatory taking delay.



# VALUING ENVIRONMENTAL & OVERLAY CONSTRAINTS

- **Quantification Tools:**
  - Paired sales (affected vs. unaffected properties).
  - Income approach with risk-adjusted yield rate.
  - Residual land analysis with added permit period costs.
- **Common Constraints:** Flood zones (FEMA map changes), habitat preservation, coastal setbacks.
- **Disclosure Requirements:** Extraordinary assumptions or hypothetical conditions per SR 1-2(g).
- **Case Reference:** *Lucas v. South Carolina Coastal Council (1992)* – complete economic loss from coastal regulation = taking.
- **Practice Tip:** Use overlay maps as trial exhibits – jurors grasp spatial limits better than text.

# EVALUATING AND COMMUNICATING REGULATORY RISK



- Treat land-use and environmental restrictions as **quantifiable market risks**, not footnotes.
- Analytical process:
  - Identify constraint (e.g., flood zone, overlay).
  - Evaluate mitigation or compliance options.
  - Estimate cost, delay, and probability of success.
  - Reflect impact through understanding the timing, rate premium, or external obsolescence.
- Appraiser's role: communicate risk transparently so trier of fact can understand the value effect.
- Effective experts frame these analyses in market-participant language, not regulatory jargon.



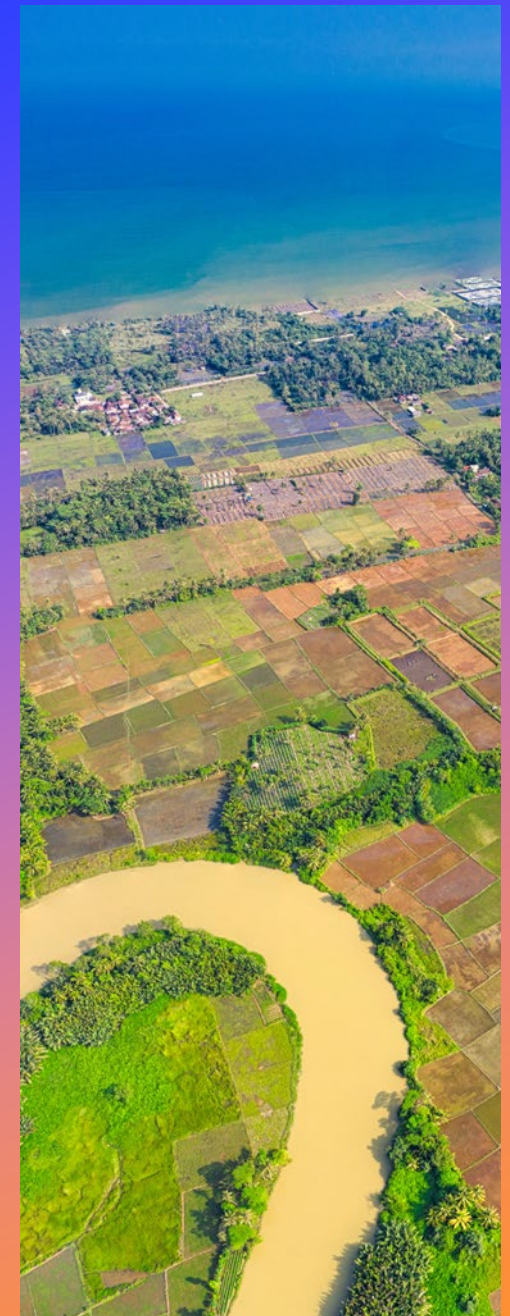


# EMERGING LAND-USE TRENDS AFFECTING VALUATION

# CALIFORNIA'S RAPIDLY SHIFTING LAND-USE LANDSCAPE



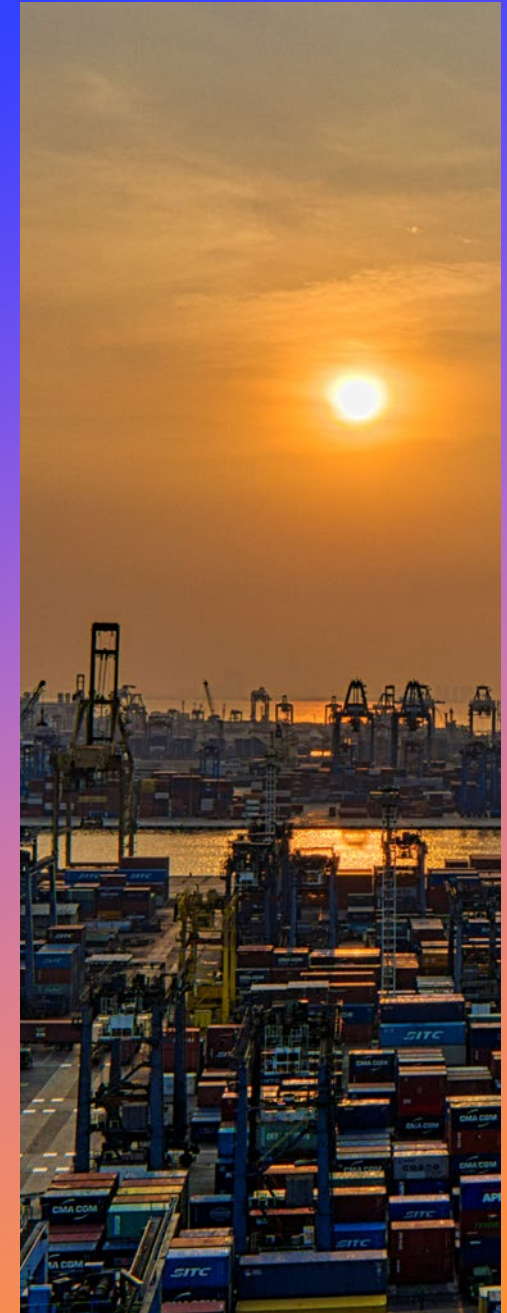
- **Legislative Drivers:**
  - **SB 330 (2019)** “ Housing Crisis Act ” → freezes zoning, limits down-zonings, and fast-tracks residential entitlements.
  - **SB 35 (2017)** → ministerial approval for qualifying infill projects; removes discretionary denial.
  - **ADU & Density Bonus Laws (Gov. Code § 65852 et seq.; § 65915)** → increase allowable units and height.
- **Valuation Impact:**
  - “Entitlement risk” may decrease → lower yield rate.
  - Density and by-right use increases → land residuals rise.
  - Market comparables must reflect *post-reform* feasibility, not outdated zoning.
- **Litigation Context:** Conflicts between local control and state mandates spawning new regulatory-takings and pre-emption cases.



# INDUSTRIAL & LOGISTICS MORATORIA



- **Trend:** Southern California cities enacting moratoria on large logistics / e-commerce facilities (air-quality & traffic concerns).
- **Examples:** Moreno Valley, Fontana, Ontario, Los Angeles County unincorporated areas.
- **Effect on Value:**
  - Temporary moratoria = interim loss; analyze as “regulatory delay.”
  - Permanent prohibition → change in legally permissible use → HBU shift.
- **Analytical Approach:**
  - Compare “pre-moratorium” vs “post-moratorium” sales.
  - DCF with probability-weighted development resumption.
- **Legal Dimension:** Potential inverse condemnation if moratorium deemed confiscatory (*First English, Monks v. RPV*).



# CANNABIS, SHORT-TERM RENTAL, AND USE-SPECIFIC BANS



- **Dynamic Regulation:** Local ordinances frequently amended; legality can change within months.
- **Market Volatility:** Properties bought on assumption of continued cannabis / STR operation.
- **Valuation Risks:**
  - Licensing & zoning interdependence → dual-permit failure risk.
  - Loss of non-conforming rights = total HBU shift.
- **Case Example:** *City of Palm Springs v. Lynch (2023)* – revocation of dispensary CUP upheld.
- **Best Practice:** Date-stamp regulatory status in report; treat license assumption as extraordinary.
- **Cross-Exam Tip:** Expect questions on whether value reflects illegal use or valid permit.

# CLIMATE RESILIENCE AND FLOOD-RISK RE-MAPPING



- **Federal & State Initiatives:** FEMA Flood Insurance Rate Map updates; State Climate Adaptation Strategy.
- **Consequences for Value:**
  - Increased insurance costs → lower NOI → cap-rate expansion.
  - Building code requirements → higher replacement costs.
  - Potential “functional obsolescence by regulation.”
- **Case Context:** Coastal and delta communities facing height restrictions & setback expansions.
- **Valuation Method:** Quantify cost to comply or loss of developable area as external obsolescence.
- **Litigation Angle:** Emerging takings claims for “climate overlay down-zonings.”

# ANTICIPATING AND MODELING REGULATORY CHANGE



- Appraisers engaged in litigation must anticipate emerging regulatory shifts and model their impact.
- Key analytical questions:
  - What pending ordinances or moratoria could alter HBU?
  - Who are the market actors reacting to those signals?
  - How quickly might policy implementation occur?
- Scenario modeling: develop probability-weighted value outcomes for alternate regulatory futures.
- Forward-looking valuation strengthens expert credibility and aids counsel in evaluating damages or strategy.



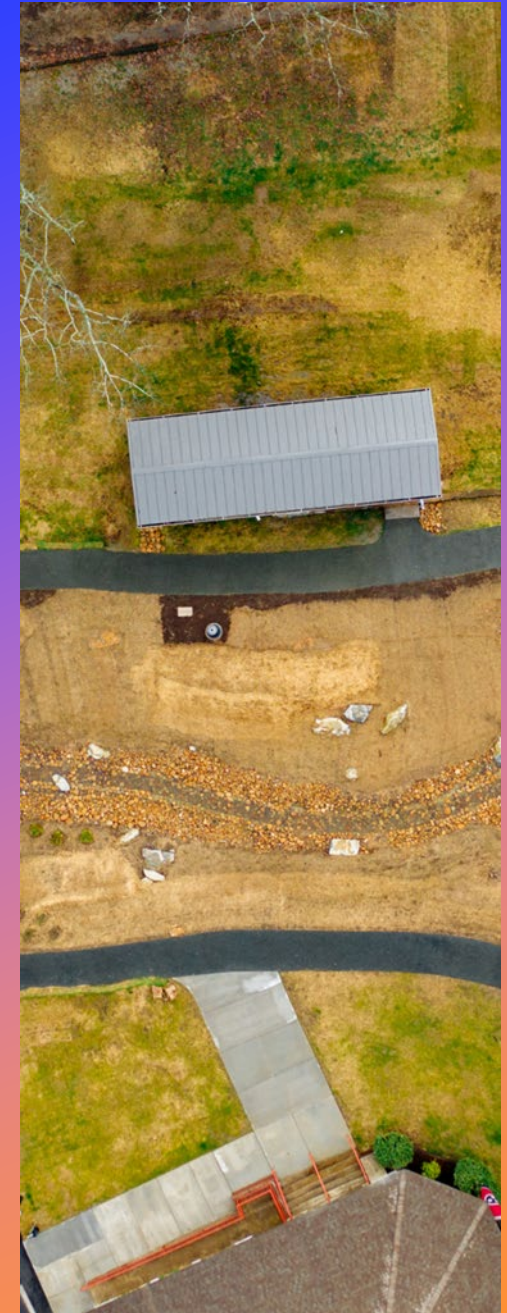


# PRACTICAL TAKEAWAYS & ETHICS IN LAND-USE VALUATION

# LAND-USE DUE-DILIGENCE CHECKLIST



- Obtain and **date-stamp zoning map**; confirm with planning staff in writing.
- Identify **general plan designation, overlays, and specific-plan districts**.
- Review **parcel history** – subdivision approvals, conditional use permits, variances.
- Check **CEQA / NEPA status** – any pending or completed EIRs.
- Verify **easements, dedications, and recorded restrictions**.
- Include **all documents in workfile** per Record-Keeping Rule (5 years / 2 years post-litigation).





# INTEGRATING LAND USE INTO VALUATION APPROACHES



- **Sales Comparison:** Confirm comparables share similar legal permissibility; adjust for entitlement status.
- **Income Approach:** Reflect regulatory risk in yield or absorption rate.
- **Cost Approach:** Identify external obsolescence from regulatory delay or mitigation cost.
- **Reconciliation:** Weigh approaches by reliability of land-use assumption.
- **USPAP SR 1-4 (a–c):** Requires analysis of comparable data reflecting *similar legal uses*.

# ETHICS AND CREDIBILITY UNDER USPAP AND EVIDENCE LAW



- **Ethics Rule:** No advocacy; identify assumptions transparently.
- **Competency Rule:** Gain necessary land-use knowledge before accepting assignment.
- **Scope of Work Rule:** Match depth of research to intended use (litigation  $\neq$  bank review).
- **FRE 702 / Daubert:** Court expects reliable principles and verified data.
- **Key Point:** Credibility = Methodology  $\times$  Transparency  $\times$  Documentation (Relevant Evidence & Logic).





# ATTORNEY-APPRAISER COLLABORATION BEST PRACTICES



- Clarify **legal assumptions** early; memorialize in engagement letter.
- Use joint **land-use expert or planner** when zoning is disputed.
- Exchange **source documents** (staff reports, ordinances) before appraisal draft.
- Coordinate **report language** with pleadings to avoid inconsistencies.
- Prepare **visual exhibits** (maps, overlays) for mediation and trial.

# FROM VALUATION TO LITIGATION STRATEGY SUPPORT



- Experienced appraisers add value beyond the number:
  - Clarify how land-use factors drive damages or benefits.
  - Quantify alternatives: mitigation, redevelopment, or market repositioning.
  - Help attorneys test case theory through valuation scenarios.
- Process Framework:
  - Define the valuation issue.
  - Develop analytical alternatives.
  - Evaluate feasibility and market reaction.
  - Communicate clear, defensible conclusions.
- Appraisers who apply this framework are viewed as **strategic experts**, not just valuation technicians.



# KEY TAKEAWAYS



## On Screen:

- Land use defines legality, feasibility, and compensability.
- USPAP makes land-use analysis mandatory for credible results.
- Case law sets boundaries between regulation and taking.
- Collaboration between attorney and appraiser builds defensible opinions.
- High-level thinking positions experts as strategic partners in litigation and policy.



# THANK YOU

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