

Relevant Takings Law		Citation
California and Federal Constitution	". . . nor shall private property be taken for public use, without just compensation."	U.S. Const., 5th Amend. Cal. Const. Art. I, § 19 also requires compensation when property is damaged for public use. Apart from this difference, state takings clause is construed congruently with federal clause. <i>San Remo Hotel v. City and County of San Francisco</i> 27 Cal.4th 643, 664 (2002)
The Police Power: The Authority to Regulate	The authority for local agencies to regulate land arises from the "police power" to protect the public's health, safety and welfare. The power is reserved for states in the Tenth Amendment to the United States Constitution. In California, the constitution gives this power to cities and counties.	U.S. Const., 10 th Amend; Cal. Const., art. XI, § 7.
	Local governments may protect the general welfare through enactment of residential zoning ordinances	<i>Euclid v. Ambler Realty Company</i> , 272 U.S. 365 (1926)
Four Approaches to Regulatory Takings Claims		
A plaintiff seeking to challenge a government action as an uncompensated taking of private property may proceed under one of four theories by alleging: (1) a physical invasion of property, (2) that a regulation completely deprives a plaintiff of all economically beneficial use of property, (3) a general regulatory takings challenge pursuant to <i>Penn Central</i> , or (4) a land-use exaction violating the standards set forth in <i>Nollan</i> and <i>Dolan</i> . (<i>McClung v. City of Sumner</i> , 545 F.3d 803 (9th Cir. 2008), amended at 548 F.3d 1219, 1228 (9th Cir. 2008), <i>cert. denied</i> , 129 S. Ct. 2765 (2009).)		
Per Se Regulatory Takings: The first two categories of regulatory action will generally be deemed <i>per se</i> compensable takings. 1) Permanent Physical Invasion and 2) the Deprivation of all Economically Beneficial Use of Property		<i>Lucas v. South Carolina Coastal Council</i> , 505 U.S. 1003, 1019 (1992); <i>Lingle v. Chevron U.S.A. Inc.</i> , 544 U.S. 528 (2005)
1) Permanent Physical Invasion:	Where the government requires an owner to suffer a "permanent physical invasion" of his property for such things as cable lines.	<i>Loretto v. Teleprompter Manhattan CATV Corp.</i> 458 U.S. 419, 432 (1982)

2) Deprivation of All Economically Beneficial use of Property	When an owner of real property is called upon to sacrifice <i>all</i> economically beneficial uses in the name of the common good, <i>i.e.</i> , to leave its property economically idle, this may constitute a taking.	<i>See Lucas v. South Carolina Coastal Commission</i> , 505 U.S. 1003, 1005 (1992)
3) Less than Total Loss of All Economically Beneficial Use of Property	Where a claimant claims that a regulation causes a less than total diminution of the value of his/her property, a reviewing court must engage in an ad hoc, factual inquiry, centering on three factors: (1) the character of the government's action, (2) the economic effect of the regulation on the property; and (3) the extent by which the regulation has interfered with distinct, investment-backed expectations.	<i>Penn Central Transp. Co. v. New York City</i> (1978) 438 U.S. 104, 124 (<i>Penn Central</i>) (<i>Lingle v. Chevron U.S.A. Inc.</i> , 544 U.S. 528, 538-39 (2005) (<i>Lingle</i>); <i>Hertzberg v. County of Plumas</i> , 133 Cal.App.4th 1, 14 (2005)
Three Part Penn Central Balancing Test	(1) Character of the Government Action:	Test: whether there is a physical invasion of private property or whether the action is a legitimate form of regulation. Traditionally, regulations that prevent harm to the public or protect a public interest in quality of life and the environment are considered legitimate exercises of the police power that do not constitute a taking. NOTE: <i>Lingle</i> explicitly did not limit <i>Penn Central</i> 's balancing test, but may have narrowed the "character" inquiry's "legitimacy" element.
	(2) Economic impact of the regulation:	Test: property owner must demonstrate that the challenged regulation will result in the denial of the economically viable use of his or her property. Even a significant reduction in the value of property will not alone constitute a "taking." <i>See, e.g., Euclid v. Ambler Realty Co.</i> , 272 U.S. 365 (1926) (finding no taking even where zoning ordinance caused 75% reduction in value)
	(3) Extent by which the regulation has interfered with distinct, investment-backed expectations	Test: What did the property owners expect when they purchased the property? Should the owners have anticipated the agency's action?
4) Takings Resulting from Exactions:	Addresses only land use "bargains" between property owners and regulatory bodies- those in which the individual property owner developer seeks to negotiate approval of a planned development.	<i>San Remo Hotel L.P. v. City and County of San Francisco</i> , 27 Cal. 4 th 643 (2002)

	<p>Nollan: The lack of “nexus” between the burdens imposed by the owners’ development (a Coastal Commission development permit condition requiring dedication of a lateral access easement along the owners’ private beach) and the permit condition caused the dedication requirement to fail the first part of the <i>Agins</i>* test, since it did not “substantially advance” a “legitimate state interest.” (<i>Nollan, supra</i>, 483 U.S. at p. 837.) There must be a relationship between the projected impact of the development and the exaction imposed.</p>	<p><i>Nollan v. California Coastal Comm’n</i>, 483 U.S. 825 (1987) (<i>Nollan</i>)</p>
	<p>Dolan: When a city makes an adjudicative decision, it must demonstrate a “reasonable relationship” between the conditions imposed on a development permit and the development’s purported impact. Two step process for evaluating these takings claims:</p> <ol style="list-style-type: none"> 1) First the court must determine whether an “essential nexus” exists between the legitimate state interest” and the permit condition exacted by the city. 2) Second, if it finds that a nexus exists, a court then must decide whether the required degree of connection between the exactions and the projected impact of the proposed development can be shown. The court coined the term “rough proportionality” to describe the required relationship between the exactions and the projected impact of the proposed development. 	<p><i>Dolan v. City of Tigard</i>, 512 U.S. 374 (1994)</p>
	<p>*Agins Test: a land-use regulation "effects a taking if the ordinance does not substantially advance legitimate state interests, or denies an owner economically viable use of his land."</p> <p>NOTE: <i>Lingle</i> clarified the doctrine by relegating <i>Agins</i>’ “substantially advances” test to an inquiry of substantive due process, not one of takings. (<i>Lingle, supra</i>, 544 U.S. at 540.) The Court emphasized, however, that while the “substantially advances” formula is not a valid takings test; it did not require the Court to disturb any of its prior holdings, including <i>Nollan</i> and <i>Dolan</i>.</p>	<p><i>Agins v. City of Tiburon</i>, 447 U.S. 255 (1980) (<i>Agins</i>); abrogated by <i>Lingle v. Chevron U.S.A. Inc.</i>, 544 U.S. 528 (2005) (<i>Lingle</i>)</p>
	<p>Today: There is a due process claim where a “land use action lacks any substantial relation to the public health, safety, or general welfare.” Such a claim cannot be remedied under the takings clause.</p>	<p><i>Crown Point Development, Inc. v. City of Sun Valley</i>, 506 F.3d 851, 855-856 (9th Cir. 2007)</p>