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High Winds, Red Flag Warnings, and Active Power Lines: a Recipe for Disaster and Just Compensation

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Let's imagine, you bought your dream home with a beautiful, spacious backyard. The backyard is bordered off with a wooden fence. Beyond the fence, lies an open green field with tall, brown power lines. One day, the weather brings heavy wind, blowing at twenty to twenty-five miles per hour. The National Weather Services issued a red flag warning and provided notice to the local electric company days before. The power lines were not shut off.

Suddenly, debris starts to fly in the air. Tree branches start to break off and spin in the air. The debris and branches come into contact with the electrical poles and ignite a fire. Immediately, the fire starts to spread across the open space and—into your neighbors' and your backyard.

Now, all of your vegetables and plants are destroyed, your wooden pool deck has disintegrated to fibers, and your lovely bedroom is destroyed. What legal claim(s) may be available?



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Well, Pay Close Attention to the Claims Arising out of the Wildfires in Hawaii

Interestingly, [property owners in Lahaina, Hawaii](#) have collectively initiated an inverse condemnation claim against: Maui Electric Company, Limited; Hawaiian Electric Company, Inc; Hawaii Electric Light Company; Hawaiian Electric Industries, Inc., to receive compensation for the damages of their property. The named defendants operate and supply the state with electricity. The basis of the property owners' claim hinges on the state's constitutional provision that states—"[private property shall not be taken or damaged without just compensation.](#)" The complaint identifies that the defendants received a Red Flag Warning and a High Wind Watch notification yet, the defendants did not depower the electrical lines. Consequently, the wind knocked down the power lines which ignited numerous fires. These fires have [displaced about 7,000 Lahaina residents out of their homes and killed 115 Lahaina residents.](#)

Now, Let's Take a Look at Inverse Condemnation

Inverse condemnation is a claim which a property owner individual seeks just compensation so that they may be relieved of the burden placed on their property. Specifically, this claim is initiated by a property owner against a public utility entity or the government, as a result of the owner's property being taken or damage—for public use. Inverse condemnation claims may be applied to wide spectrum of actions conducted by a public utility company or the government.

Historically, the [progression of infrastructure](#) has triggered inverse condemnations claims. As a variety of means of transportation were in demand, the government and public utility companies needed land to construct those means. For example, in [Rose v. State of California](#), the plaintiffs,

numerous Hayward residents, sought damages against the state for interfering with the use and enjoyment of their property. The state granted the Department of Public Works and the Railroad Commission to build a subway and lay tracks on a street, Jackson Street. Consequently, Plaintiffs could only enter and exit their property through the public utility construction. Importantly, the Supreme Court of California found that the public utility project impaired the values of the plaintiffs' homes and warranted just compensation for the plaintiffs. Given *Rose*, we can think about the amount of inverse condemnation claims private property owners initiated against the state of California and utility companies as these entities started to set tracks for railroads, and pave roads for streets and highways.

Fundamentally, an inverse condemnation claim is grounded in the notion that the government cannot force an individual to bear the burdens of the public which should be borne by the public, itself. Notably, this claim stems from the constitutional doctrine of eminent domain. This doctrine prevents the government from taking property, without just compensation ([The Takings Clause](#)). Interestingly, the government may delegate the power of eminent domain to [public service corporations](#), so that the corporation can condemn private property. However, [private service corporations](#) must receive statutory authority to condemn private property.

Like eminent domain, the taking under an inverse condemnation claim must be for a public use. In [Foley Investments, L.P. v. Alisal Water Corp.](#), the California Court of Appeal interpreted "public use" as a utility designed to cover a system of people who would exist, even though they may not have been customers. Accordingly, the court held that a public utility company providing services solely to an apartment complex did not constitute a public use since the utility served an individual "subdivision" and not the public at large.

Although the concept of eminent domain and inverse condemnation are analogous, it is important to highlight the distinction between the two. A key difference between eminent domain and inverse condemnation proceedings is the party initiating the claim. In an eminent domain proceeding, the government initiates the claim; it is the party seeking to take private property for just compensation. Conversely, in an inverse condemnation proceeding, the property owner initiates the claim; it is the party seeking just compensation after his or her property was taken, or damaged for public use.



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What is Needed to Succeed on an Inverse Condemnation Claim?

For a property owner to prevail on an inverse condemnation claim, the owner must show that their property was taken or damaged for public use. There are [two types of taking: a physical taking and a regulatory taking](#). A physical taking occurs when there is a physical interference with the owner's property. A regulatory taking occurs when a regulation forces a limitation upon the owner's use of land where the owner is deprived of an economic benefit or a productive use of their property. Moreover, damaged is [defined](#) as "any actual physical injury to real property proximately caused by public improvement as deliberately designed and constructed is compensable... whether foreseeable or not."

When assessing inverse condemnation laws in different states, it is crucial to identify whether a state's law possess a [damaging clause](#). A damaging clause references the language in the statute that permits property owner to recover after a taking or—damaging—of their property. The purpose of the damaging clause is to allow property owners to receive just compensation even though their property has not been taken. Currently, only twenty-seven states possess a damaging clause, including California; however, all states have the Taking Clause embedded into their state constitution. Those states that do not possess a damaging clause, explicitly only allow for just compensation when a taking has occurred. Again, the court's interpretation of a "taking" is crucial.

Now, the line between taken property and damaged property may be a blurry one. In a [concurrency](#), Justice Peterson questioned the distinction between [the Takings Clause](#) and

Georgia’s [State Just Compensation Clause](#). Specifically, in [Diversified Holdings, LLP v. City of Suwanee](#), Justice Peterson raised “[the] textual difference between the Clauses seems to me significant enough to raise questions about the validity of our caselaw often interpreting the Clauses as essentially the same.” This observation raises the questions of: whether state laws with or without a damaging clause are significantly different, or should a damaging clause be interpreted within the Takings Clause? This question has yet to be answered.



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The Madness behind the Beauty

California has it all. The state is home to warm weather and beautiful beaches in Southern California, breathtaking city and nature views in the Bay Area, and mouthwatering, local grown fruits and vegetables in Central California. In addition, the state gets its fair share of disasters—earthquakes, floodings, and wildfires. A month ago, California saw its first tropical storm in [84 years](#). With disasters, damages are certain. Whether high winds knocked the city’s power lines into your backyard and sparked a fire, or the combination of heavy rain and faulty storms drains cause a flooding in your community, bringing an inverse condemnation claim is an avenue that Californians may pursue to receive some justice, in the form of just compensation.

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