



DAVID COSGROVE

Partner

Condemnation, Property Valuation

Orange County

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David Cosgrove serves as chair of the Condemnation and Property Valuation Practice group and specializes in eminent domain, municipal law, water law, and land use issues. He is currently City Attorney for the City of Laguna Woods and the City of Duarte. Previously, he served as Assistant City Attorney in the City of Signal Hill and was Deputy City Attorney for the Cities of San Clemente and La Palma. In these positions, he was directly involved in land use approval processes, redevelopment issues and disposition and development agreements. He also headed up ordinance development and drafting on such varied topics as campaign finance reform, development impact fees, specific plans and zoning measures, and conflict of interest matters. He was also instrumental in drafting and lobbying the Fair Political Practices Commission to consider and adopt regulations for analyzing conflicts of interest in smaller jurisdictions. He drafted and lobbied for the original Uniform Standby Assessment Procedures Act (stats. 188, Chapter 834) and legislation permitting collection of capital facilities fees for public entities (stats. 1988, Chapter 1350), both of which successfully passed the Legislature.

Dave's property acquisition and valuation practice includes assisting public agencies with property acquisitions, from the preliminary stages all the way through condemnation trials, and appellate work. In this capacity, he has served as lead counsel for the City of Anaheim's Resort Area acquisitions, involving hundreds of partial acquisitions for roadway widening projects in the Anaheim Resort area, near Disneyland. He represents landowners whose properties are acquired with both real property and business valuation issues, defenses to the right to take, and CEQA-related or other project challenges.

Dave also provides general counsel representation to water agencies, including water rights and groundwater adjudication issues, compliance with CEQA, endangered species, and other environmental regulatory requirements, and general public entity issues such as Brown Act, conflict of interest and reorganization questions. He also represents developers and private property owners on issues of water rights, appropriative license applications and groundwater production and use. He currently is the general counsel for the

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Bar & Court Admissions

- State Bar of California
- U.S. Court of Appeals for the Ninth Circuit
- Federal Courts for the Northern and Central

San Bernardino Valley Water Conservation District, and was formerly the Assistant General Counsel for the Orange County Water District, Serrano Irrigation District, Tri-Cities Municipal Water District and Rancho California Water District.

Districts of California

Areas of Expertise

- Eminent Domain
- Municipal Law
- Water Law
- Land Use/Environmental
- Public Entity-Related Litigation

Education

- Ohio State University, College of Law (J.D., 1984), with honors
- Xavier University (1981), H.A.B., Summa Cum Laude

Representative Matters/Cases

- *San Diego Gas and Electric Co. v. Schmidt, et al.* (2014) 228 Cal. App 4th 1280. In this published case, Mr. Cosgrove represented a landowner in the Lakeside region of San Diego county, over which a 300 foot wide utility easement was condemned by SDG&E, as part of the Sunrise Powerlink project. The property was vacant, but located in an area where rock mining uses were prevalent. The utility's appraised value was \$712,000. Our client challenged the highest and best use determination by the utility, urging that the property was suitable for mining, and had value of in-place mineral reserves in excess of \$8,000,000. After a three week jury trial, the jury sided with our client, and awarded over eight million dollars of compensation and damages. SDG&E challenged the result on appeal, and the verdict was successfully defended. In post-trial proceedings, the trial judge also awarded the client over eight hundred thousand dollars of attorneys' fees and litigation expenses.
- *State of California v. Sierra Lakes Land Company.* This case involved the State's condemnation of some 40 acres of vacant, commercially-zoned property in Fontana, owned by our client, a development entity. The property was acquired for the extension of the Interstate 210 freeway. The State originally offered \$3.97 million for the property interests acquired. After a two week trial, the jury returned a verdict for over \$10.9 million. In addition, we were successful in negotiating a conversion of a drainage easement condemned from a permanent to a temporary take, resulting in over \$1 million of additional compensation, and an award of attorneys fees, in excess of \$700,000. The case involved detailed engineering and architectural expert testimony on probable uses and development potential of the land, and real estate broker testimony on its marketability. The State alleged its freeway project resulted in \$6.7 million of benefits to the property, offsetting damages alleged by our client. The jury found the benefits to be zero.
- *City of Anaheim – Anaheim Resort Street Widening Actions.* This project involved over one hundred part takes for the City of Anaheim's roadway expansions for Harbor Boulevard, Katella Avenue, Ball Road, Lincoln, Euclid, and other major thoroughfares. The project included oversight and administration of all aspects of the acquisition process, from title

work to litigation. The diverse nature of the properties taken have raised the full range of eminent domain issues, including soil contamination, goodwill analyses, requirements for obtaining alternative access, and directing condemnees through nonconforming use and sign abatement problems created by the public acquisitions. Defendants included Chevron, Arco, 7-11, major hotels, Hertz, SCE, and other major corporate entities, as well as a host of small businesses.

- *City of Irvine-Jamboree Road Widening Actions*. This matter involved some twenty-four cases, for a major road expansion project in the City of Irvine. The cases are just now in the final process of being resolved. Our involvement included training the City's in-house right-of-way agents, as well as extensive negotiations with The Irvine Company regarding resolution of land use restrictions and CC&R enforcement mechanisms, and negotiation of a form "Joint Use Agreement" for utility easements and relocations.
- *Redevelopment Agency of the City of Signal Hill v. Signal Hill Terminal Corporation*. This case involved difficult issues of condemnation of property contaminated with oil and other petroleum products, where remediation costs exceeded valuation estimates. The case presented complex valuation issues, as well as significant interface with the local Regional Water Quality Control Board, regarding its enforcement practices and their effect on property values. This case also involved significant oversight of environmental consultants in connection with a soil remediation effort.
- *City of Palm Springs - Mid-Valley Arterial*. This project involved acquisition of some thirteen properties for a major roadway construction in the Coachella Valley, eleven of which were Indian trust properties. The project requires coordination of both City of Palm Springs and Cathedral City right-of-way staffs, in addition to coordination with the Coachella Valley Association of Governments (CVAG).
- *City of Huntington Beach v. Marow*. Here, the City condemned three undersized "encyclopedia" lots in connection with a road widening project. The City's appraiser placed nominal value on the properties, while the defendant asserted a zone change was probable for more productive use, and claimed substantially higher values. We negotiated a settlement for the City which included acquisition of not only the three lots condemned, but fifteen others, in a global resolution which eliminated the City's need to bring a substantial number of future eminent domain actions against the same landowner.
- *City of Huntington Beach - Garfield and Goldenwest Road Widenings*. This project involved over ten eminent domain lawsuits, to acquire properties for road widening project. The cases implicated relocation issues, goodwill claims relating to oil production activities, and coordination between the city's public works department and a developer who is financing the improvements as part of a specific plan traffic mitigation plan.
- *City of Palm Springs v. 9.75 Acres of Property*. In this case, the City of Palm Springs sought to condemn land owned in trust by the United States government, for an individual allottee of an Indian tribe. The case was brought in Federal Court, and was resolved favorably with a land

swap, by which the City acquired cheaper land which was traded for the property condemned, and ultimately incorporated into the Indian reservation.

- *City of San Clemente - Colony Cove*. In this project, we successfully avoided any necessity of eminent domain, while acquiring easements to over sixty-three properties for slope stabilization work. Acquisition of the easements involved extensive coordination with Federal Highways Administration (FHWA) and CalTrans, as well as the California Coastal Commission. The City not only acquired the easements, but successfully included a waiver of claims for both the slope stabilization project and pre-existing slope conditions.
- *Redevelopment Agency of the City of Indian Wells v. White*. This action involved representation of the landowner in a condemnation of property for incorporation into a municipal golf course. Our client brought a summary judgment motion challenging the right to take, on grounds of the insufficiency of the precondemnation offer. The result allowed the client to take advantage of a date of value three years later than the original deposit, which in the then-escalating real estate market resulted in a substantial additional award.
- *San Joaquin Hills Transportation Corridor Agency v. Daniel*. This case involved representation of a landowner whose property was taken for a toll road. The case raised relocation issues surrounding horses kept on residential property, and significant severance damage issues, including valuation of landscaping constructed as part of a formal estate garden. The matter settled short of trial, with the condemning agency paying over three times the amount of its original offer.
- *La Familia Genovese v. County of Orange*. In this case, our client, the City of San Clemente, was sued in inverse condemnation for flooding damage to a hotel and restaurant. The City filed a direct eminent domain action to acquire the property in its cleared, post-flood condition. The case settled favorably immediately prior to picking a jury, after the trial court ruled in our favor on a series of pre-trial motions establishing lack of duty on the part of the City to upgrade older flood control facilities, and natural water course immunities. We also succeeded in excluding testimony of the landowners' fixtures and equipment valuation expert.
- *City of Lake Elsinore v. Koliber*. In this case, the City sought to condemn some 17 acres of vacant property from our private landowner client, for construction of a wetland preserve. We filed a cross-complaint in inverse for flooding and damages based upon the spread of the wetlands, and its impact on the developability of the property. The case ultimately settled with the participation of additional water district agencies, obviating the latter's planned condemnation of additional property and securing concessions from the City regarding development impact fees for future development of the parcel.
- *City of La Quinta - Jefferson Street Widening*. This matter involved oversight and processing of the City of La Quinta's portion of a CVAG regional roadway upgrade, and required coordination with the City of Indio. It implicated twelve part take acquisitions, including relocation issues and joint use negotiations with Coachella Water District regarding

impacts to pump stations. Each of the acquisitions was favorably settled prior to trial.

- *State v. Cinnamon Hollow Homeowners' Association*. In this case, the State acquired small portions of a condominium complex common area, to accommodate the I-5 freeway widening. We represented the homeowners' association, which was the designated agent for the owners under the CCRs, though the owners still held common title to the condemned land. The representation required continuous coordination of the 85 individual owners, negotiation with Caltrans of site improvements to lessen project impacts, and ultimate compensation issues. The matter settled with Caltrans paying \$1.7 million dollars, on an original offer of less than \$300,000.
- *Riverside County Flood Control and Water Conservation District v. Lansing*. This case involved representing a landowner, who had a 38 acre vacant piece of property condemned by a County Flood Control District for a detention basin. The case involved difficult issues of cross-claims by defendants, since an adjacent land owner claimed rights to the condemnation award, by virtue of a pre-condemnation agreement to sell fill dirt from the site. After a bench trial defeating the competing claim to share in the award, we settled the matter on the eve of trial for \$3.8 million, when the County Flood Control District's original offer and appraised value was \$1.5 million.

Publications and Seminars

- *"Temporary Damages- IRWA Chapter 1 Valuation Seminar"* co-presenter, Spring 2016.
- *"Appraising Property with Entitlements - Value or Voodoo?"* presented to the Orange County Chapter of Lambda Alpha Real Estate Professionals Group, February 2016.
- *"Water and Development"* presented as part of the Rutan and Tucker In-House MCLE Program, September 9, 2013.
- *"California Condemnation Case Review 2012"* presented to Chapter 67, International Right of Way Association, March 12, 2013.
- *"Reform Not Revolt—California Voters Pass on Eminent Domain-Again,"* International Right of Way Association's Right of Way Magazine, July/August 2008.
- *"Will Californians Move Eminent Domain Reform to the Back Burner?"* Los Angeles Daily Journal, June 11, 2008.
- *"Reform vs. Revolt-99 Fears, 98 Tears-The Continuing Saga of Ballot Box Eminent Domain Reform"* presented to Chapter 67, International Right of Way Association, May, 2008.
- *"Post 11/7-Where the Election Leaves Us"* presented to Chapter 67, International Right of Way Association, November 14, 2006.
- *"Proposition 90-Timely Reform, or Dawn of Armageddon?"* presented as part of the Rutan and Tucker In-House MCLE Program, and to the City of Anaheim City Attorney's Office, October, 2006.
- *"The United States Supreme Court Authorizes Taking Private Property for Economic Development—New London, but Old Rules?"* Orange County Bar Association's Orange County Lawyer, September 2005.

- “*Overview of Eminent Domain and Related Valuation Issues*” presented as part of the Rutan and Tucker In-House MCLE Program, July 28, 2004.
- “*Selected legal Issues in Part Takings*” presented to Chapter 1, International Right of Way Association, April 22, 2004.
- “*Critical Analysis of Real Property Appraisals*” – Rutan & Tucker In-House MCLE Course delivered November, 1998.
- “*Eminent Domain Overview*” – delivered to the Orange County City’ Attorney’s Association in March, 1998.
- “*Words From The Wings*” – a regular series of articles on eminent domain-related subjects written for the Orange County Chapter of the International Right of Way Association Newsletter, 1997. Topics included proposed changes to appraisal disclosure rules, the role of alternative dispute resolution in eminent domain proceedings, and evidentiary requirements for resolution of necessity hearings, among others.
- “*Contamination In Condemnation*” – delivered to the International Right-of-Way Association, local Chapter No. 67, March 10, 1994.
- “*Requesting Advice From The F.P.C.–A Series of Practical Considerations for Increasing Accuracy and Response Time*” – delivered to the Association of California Water Agencies’ 1993 Continuing Legal Education Workshop, October 7, 1993.
- “*CEQA and Incompatible Uses*” – Rutan & Tucker Environmental Law Practice Group Seminar conducted September 11, 1992.
- “*CEQA Document Preparation and Processing*” -delivered to the California Association of County Counsels, May 8, 1992.
- “*Information Sources for Defensible Market Adjustments*” – delivered to the International Right-of-Way Association, local Chapter No. 67, on December 14, 1991.
- “*Cross-Examination and Defense of Market Data Adjustments*” – course delivered to the American Institute of Real Estate Appraisers on December 8, 1989.
- “*The San Marcos Case and Legislative Response*” – presented to the Association of California Water Agencies, Fall 1988 Conference.
- Drafted Uniform Standby Assessment Procedures Act, Stats. 1988, Chapter 834 (Gov’t Code §§ 54984 et seq.). The Act unified and simplified diverse authorizing statutes for water districts’ standby assessments.
- Original drafting of Stats. 1988, Chapter 1350 (Gov’t Code §§ 54999 et seq.), authorizing collection of capital facilities fees from public entities.

Awards & Honors

- Southern California “Super Lawyers” 2012-2017
- AV® Preeminent™ rating with LexisNexis/Martindale Hubbell

Foreign Language

Conversant in Spanish

Community Affiliations

- Association of California Water Agencies
- International Right-of-Way Association (President - 1998)
- Vocational Visions-Board Member (charitable organization providing employment opportunities for disabled persons)

Memberships & Associations

Orange County Bar Association

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