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Practice Groups
Eminent Domain and Inverse Condemnation

California Bar Number
146285

Education
Hastings College of the Law, JD, 1989

University of California at Berkeley, BA History and Political Science, 1984

Practicing Since: 1990

David Skinner joined Meyers Nave in 1991 and has been serving as the Managing Principal since 2011. He is also the Principal in Charge of the Oakland and San Diego offices. For the last 30 years, David has focused on representing public entities and private sector clients in high profile and sensitive land acquisition and disposition matters for major infrastructure projects throughout California.

David is a trial attorney with extensive jury trial and bench trial experience. He represents public and private sector clients in high impact litigation matters, including handling several appeals that have established important legal precedents. He is highly regarded for collaborating with clients on effective strategies to resolve multi-layered legal, political and public relations matters.

David has a specialty expertise representing clients in a wide array of complex eminent domain transaction and litigation matters. He has extensive experience working with city and other public agency attorneys to develop and implement practical, cost-effective and time-sensitive land acquisition strategies, as well as coordinating complex multi-party litigation. He has appeared in closed session with city councils, county boards and other legislative bodies regarding highly publicized litigation. Given his depth of knowledge of California eminent domain law, David has provided expert testimony on the applicable "standard of care" governing eminent domain attorneys.

Professional Affiliations and Awards

- Member, The State Bar of California
- *The Best Lawyers in America*, Eminent Domain and Condemnation Law, 2023
- Recipient, Northern California Super Lawyer; 2005, 2006

Published Decisions

- *City of San Diego v. Barratt American* (4th Dist. 2005) 128 Cal.App. 4th 917
- *City of San Diego v. Barratt American* (4th Dist. 2005) Appeal Action No. D042582
- *City of San Diego v. D.R. Horton Holding Company* (4th Dist. 2005) 126 Cal.App. 4th 668
- *Regents of the University of California v. Sheily* (2nd Dist. 2004) 122 Cal.App.4th 824
- *City of Saratoga v. Hinz* (6th Dist. 2004) 115 Cal.App.4th 1202
- *City of San Diego v. Rancho Penasquitos Partnership* (4th Dist. 2003) 105 Cal.App.4th 1013
- *City of South San Francisco v. Mayer* (1st Dist. 1998) 67 Cal.App.4th 1350
- *City of Hollister v. McCullough* (6th Dist. 1994) 26 Cal.App.4th 289
- *Contra Costa County Flood Control and Water Conservation District v. Lone Tree Investments* (1st Dist.1992) 7 Cal.App.4th 930

Presentations and Publications

- Interviewed, "Alameda County Excited to Proceed with Caution into Orange Tier," KTVU FOX 2 News, March 30, 2021
- Presenter, "Motions in Limine and CCP §1260.040 Motions: Government Agency Perspective," 22nd Annual California Eminent Domain Conference, CLE International, San Diego, CA 2020
- Presenter, "A Valuation Conundrum: Considering Pre-Condemnation Damages and Disregarding Project Influence on the Date of Value," 20th Annual Northern California Eminent Domain Conference, CLE International, 2018
- Presenter, "When Construction of the Project Changes: Legal Obligations," 19th Annual Northern California Eminent Domain Conference, CLE International, 2017
- Presenter, "Don't Get Eliminated By In Limine: What Are Those 'Motions' to Exclude…You," Appraisal Institute, Northern California Chapter, Annual Spring Litigation Conference, 2017
- Presenter, "You Can't Get it Right if You Get the Project Wrong," International Right of Way Association, Los Angeles County Chapter Annual Valuation Seminar, 2017
- Presenter, "Eminent Domain: Emerging Flashpoints in a Unique Kind of Civil Action," Appellate Judicial Attorneys Institute, 2017
- Quoted, "California high court favors landowners in tunnels case," *Bloomberg BNA's Daily Environment Report*, July 21, 2016
- Presenter, "Legal Considerations for Consideration of the Project in Eminent Domain," CLE International, 18th Annual Eminent Domain Conference, 2016

- Presenter, "Every Community Needs a Stadium – How Can you Build one, Finance one and Make it Successful?" International Municipal Lawyers Association, 80th Annual Conference, 2015
- Author, "New Professional Sports Arenas: A Game Plan to Prepare for and Overcome a Myriad of Legal and Regulatory Challenges," International Municipal Lawyers Association, 80th Annual Conference, 2015
- Presenter, "Rights of Entry" and "Temporary Severance Damages," CLE International, 17th Annual Eminent Domain Conference, 2015
- Presenter, "Temporary Takings: When Do They Give Rise to a Claim for Damages?" CLE International, 14th Annual Eminent Domain Conference, 2012
- Presenter, "Considerations for Effective Trial Testimony," Federal Agency Update: International Right of Way Association, 2010
- Presenter, "Temporary Construction Easements and Severance Damages," California Continuing Legal Education Seminar, 2009
- Presenter, "Extended Term Temporary Construction Easements," Northern California Appraisal Institute, Spring Litigation Conference, 2009
- Presenter, "Eminent Domain Process for Upside Down Mortgages," Federal Agency Update: International Right of Way Association, 2009
- Presenter, "Severance Damages from Temporary Construction Easements," California Continuing Legal Education Seminar, 2008
- Presenter, "Expert Witness Testimony in Eminent Domain Trials," California Continuing Legal Education Seminar, 2008
- Presenter, "Implications of Proposition 98 and Proposition 99 on Eminent Domain Law," International Right of Way Association, Chapter 2, 2008
- Presenter, "New Standards for Acquiring 'Probability of Rezoning' Under Campus Crusade for Christ case and Trial Preparation," Northern California Appraisal Institute Annual Retreat, 2008
- Presenter, "Implications of Proposition 98 on Eminent Domain Law," testified before California State Senate Judiciary Committee, 2008
- Presenter, "Implications of Propositions 98 and Proposition 99 on Eminent Domain Law," Meyers Nave Sponsored Seminar, 2008
- Presenter, "Trial Strategies in Eminent Domain Law," California Continuing Legal Education Seminar, 2007
- Presenter, "Trial Preparation," Northern California Appraisal Institute Presentation, 2007
- Presenter and Moderator, "Eminent Domain in California," Lorman Education Services, Eminent Domain Seminar, Oakland, CA, 2007

- Presenter, "New Requirements for Obtaining Orders for Possession," International Right of Way Association, Chapter 2, 2007
- Presenter, "Opening Statement and Closing Argument at Trial," California Continuing Legal Education Seminar on Eminent Domain in California, 2006
- Presenter, "Implications of Proposition 90 on Eminent Domain Law," National Airport Association Annual Seminar, 2006
- Co-author, "Will Eminent Domain for Redevelopment Purposes Survive Legislative Changes After Kelo?," *California Real Property Journal* (Vol. 24, No. 2), 2006
- Presenter, "Challenges Facing Public Entities in Eminent Domain Litigation," California Special Districts Association Annual Retreat, 2006

Representative Experience

- Defended the City of Los Angeles in a class action filed in federal court alleging that the City failed to comply with the Americans with Disabilities Act with regard to its curb ramps and sidewalks.
- Represented the City of Sacramento with regard to the Sacramento Kings' threat to move its National Basketball Association team to Seattle, including the City's prosecution of a high-profile eminent domain case involving a former Macy's Department Store site that was vital for the development and construction of a new downtown sports arena and entertainment complex.
- Representing numerous public entities in water and utility related projects, including sanitation districts in acquiring properties for wastewater treatment plants and sewer trunkline projects; Kirkwood Meadows Public Utility District in the acquisition of a gasoline/propane facility and electrical transmission system; and California American Water Company in the acquisition of a water facility in Felton, CA, a lawsuit filed in Santa Cruz County relating to Cal Am's water rates, and a local public water district's desire to take over Cal Am's water utility operations.
- Represented the Santa Clara Valley Transportation Authority in numerous eminent domain actions for the BART-Silicon Valley 10-Mile Extension Project. The acquisitions range from full takes of multi-acre industrial parks containing numerous multi-tenant masonry buildings to complicated acquisitions involving highest and best use and project influence issues. The favorable multi-million dollar jury verdict in the first trial for the BART project, which was a three-week trial in Santa Clara County Superior Court, allowed VTA to continue with its property acquisition process on budget and on time.
- Successfully defended (after trial) the Santa Clara Valley Transportation Authority (VTA) in a legal challenge by General Growth Properties – the largest owner and operator of retail shopping malls in the United States. The company challenged VTA's environmental review of, and property acquisition efforts for, a light rail project in San Jose.
- Successfully defended (after trial) the Rancho Cordova Redevelopment Agency (Sacramento

County) in a legal challenge by a developer which challenged the Redevelopment Agency's efforts to acquire and redevelop a 10-acre parcel of land for a community college and transit-oriented development project.

- Representing the Transportation Agency for Monterey County in a 16-mile Commuter Rail extension project in the "pre-condemnation" acquisition phase, including advising on all eminent domain, valuation, project timeline, and coordination issues, as well as assisting with several hardship acquisitions.
- Representing the Los Angeles Metropolitan Transportation Authority on various large eminent domain actions to acquire property for the 8.5-mile Crenshaw/LAX Transit Corridor Project and for the Metro Purple Line Westside Subway Extension Project. The Purple Line Westside Subway Extension Project involved acting as lead counsel in two significant jury trials and one bench trial concerning subsurface subway tunnel easements located in Beverly Hills.

Partial List of Eminent Domain Trials

Stanislaus County v. McGrane (2015)

This was an eminent domain action on behalf of Stanislaus County. The County needed to acquire a 3.21-acre portion of agricultural land from a 57-acre parcel for a road-widening project. The landowners sought $385,000 for the part taken, plus $3,500,000 in severance damages for the alleged damage to the remainder parcel. The County's appraiser valued the part taken at $241,000, with $0 in severance damages. The jury awarded $288,900 for the value of the part taken, and $0 in severance damages.

Santa Clara Valley Transportation Authority v. 1523 Gladding Court LLC (Herzstein) (2013)

This was an eminent domain action. David Skinner serves as lead counsel on numerous eminent domain cases filed by VTA—one of the Silicon Valley region's largest transportation planning and construction agencies—to acquire property for the Bay Area Rapid Transit District's (BART) 10-mile extension project to the Silicon Valley. The acquisitions range from full takes of multi-acre industrial parks containing numerous multi-tenant masonry buildings to complicated acquisitions involving highest and best use and project influence issues. In a recent eminent domain valuation dispute, Meyers Nave successfully convinced jurors that the land at issue—a large industrial property—was worth $6.75 million less than the owners were demanding. The three-week trial in Santa Clara County Superior Court was the first for the BART project, and was closely watched by many landowners (and their attorneys), whose properties will also be needed for the BART project. An adverse jury verdict would have led to high demands by other landowners and put the project at risk. The favorable jury verdict allowed VTA to continue with its property acquisition process on budget and on time.

Santa Clara Valley Transportation Authority v. Eastridge Shopping Center (2013)

This was a condemnation action. Meyers Nave's VTA team prevailed at a "Right to Take Trial" on behalf of VTA in a condemnation action to acquire property owned by a shopping center for the construction of the Capitol Expressway Light Rail Project. Judgment favored VTA on all 10 challenges, including CEQA objections raised by Eastridge's counsel, the global law firm Gibson Dunn, Macy's West Stores' counsel, Matteonni O'Laughlin & Hechtman, counsel for J.C. Penney's, Andy Turner, and Sears' Counsel, SNR Denton.

Alameda County Flood Control & Water Conservation District, Zone 7 v. Legacy Development Company (2010)

This was an eminent domain action. The property was a 5.56-acre parcel located in unincorporated Alameda County, but within the City of Pleasanton's sphere of influence. The property was zoned for agricultural use. Zone 7 sought to acquire 2.5-acres for a well and water treatment plant project. Zone 7's appraiser valued the property at $27,500.

The primary valuation issue was the property's highest and best use. Legacy Development's first appraiser valued the property on the assumption that there was a reasonable probability of a zoning change to allow office use. He valued the property at $1,680,000. Ultimately, after several motions in limine filed by Zone 7, the Court found his valuation methodology was inadmissible.

Legacy retained a second appraiser. He, too, valued the property on the assumption that there was a reasonable probability of a zoning change to allow office use. His appraised value was $488,917.

The jury found in favor of Zone 7, determining the value of the 2.5-acres was $67,500 – just $40,000 higher than Zone 7's appraisal.

Speights v. City of Oceanside (2009)

This was an inverse condemnation action. A developer of a proposed apartment project in the City of Oceanside (San Diego County) filed an inverse condemnation action against the City, seeking in excess of $12 million in damages. The developer alleged that it obtained a "vested rights" to complete the apartment project, but that the City's stormwater drainage requirements amounted to a physical taking, a regulatory taking, and unreasonable precondemnation conduct.

The developer's lawsuit survived two demurrers and one motion for summary judgment filed by the City. Ultimately, the City prevailed in its second summary judgment motion. The developer appealed, but the Court of Appeal (in an unpublished opinion) affirmed the trial court's ruling in June 2009.

Alameda County Flood Control & Water Conservation District, Zone 7 v. Ferreri Family Trust (2008)

This was an eminent domain action. The property was a 34-acre parcel. The landowner had previously taken steps to obtain entitlements for a "business park." Zone 7 sought to acquire a

1.41-acre strip of land for a permanent pipeline easement, and a 2.8-acre strip of land for a 39.5-month temporary construction easement (TCE).

The primary valuation issue was whether (in the wake of the California Supreme Court's decision in *Metropolitan Water District v. Campus Crusade for Christ* (2007) 41 Cal.4th 954, and the appellate court's decision in *City of Fremont v. Fisher* (2008) 160 Cal.App.4th 666 there were "temporary severance damages" to the remainder parcel caused by the TCE and, if so, the amount of temporary severance damages.

The landowner's appraiser initially valued temporary severance damages at $2.35 million. After legal rulings by the trial court, the landowner's appraiser reduced his opinion of temporary severance damages to $1.89 million. Zone 7's appraiser found no temporary severance damages. Before trial, the landowner's total "final offer" was in the sum of $2 million. The issue was tried before a jury, and the jury completely agreed with Zone 7's appraiser, finding that there were no temporary severance damages caused by the TCE.

Alameda County Flood Control & Water Conservation District, Zone 7 v. Land Factors, Inc. (2008)

This was an eminent domain action. The property was a 10.8 acre parcel which the landowner had previously obtained conditional approvals to construct a self-storage facility. Zone 7 sought to acquire a 12,311-square foot pipeline easement, and a 2.65-acre, 39.5-month temporary construction easement ("TCE").

The issues at trial related to the subject property's "highest and best use;" the value of the permanent pipeline easement; the value of the TCE; severance damages, if any, to the remainder parcel caused by the pipeline easement; and "temporary severance damages," if any, to the remainder parcel caused by the TCE. This case was tried prior to the "Ferreri" case listed above, but also involved application of the recent holdings in the Campus Crusade for Christ and Fisher relating to the temporary severance damages.

The landowner had two appraisers who had a total appraised value of $3.82 million and $3.93 million, respectively. Zone 7's appraiser had a total appraised value of $593,000. The landowner's "final offer" was $3.5 million. The total amount awarded by the jury was $1,351,344. This was $2,468,656 and $2,586,656 lower than the landowners' appraised value, and $758,344 higher than Zone 7's appraised value.

(David represented (and still represents) Zone 7 in acquiring numerous properties for the Altamont Water Treatment Plant and 11-mile water pipeline project in the City of Livermore).

Sacramento Housing and Redevelopment Authority v. Rashid, et al. (2006)

Sacramento Redevelopment Agency sought to acquire several parcels for redevelopment purposes. In one case, the site was improved with a former gasoline service station and mini-mart business. Valuation issues included highest and best use, the value of the real estate and improvements, and entitlement to loss of business goodwill. Landowner's total appraised value at trial was $919,000. After a bench trial on entitlement to loss of business goodwill, and a jury

trial on the value of the land and improvements, the jury awarded $492,000. Landowner's motion for litigation expenses for over $250,000 was also denied.

Partial List of Appellate Court Decisions

City of San Diego v. Barratt American, (4th Dist. 2005) 128 Cal.App. 4th 917

The Eminent Domain Law includes complex rules for the valuing property in the "before condition." One rule is that an appraiser must generally disregard the influence of the public project on the value of the property. In other words, the appraiser must assume – in a hypothetical analysis – that there is no public project. A second and related rule is that a landowner is generally not entitled to any increase in value (or "project enhanced" value) to his/her property caused by the public project. However, there is an exception to this rule: a landowner may obtain "project enhanced" value up to the point when it became probable that the property would be needed for the public improvement. This has been referred to as the date of "probable inclusion."

In practice, the application of these complicated valuation principles by attorneys and appraisers in eminent domain litigation has been difficult and at times contradictory. How can an appraiser assume a long-planned public project if it was never planned? If an appraiser must assume a public project was never planned, how can he/she argue that there was in fact "project enhanced" value up to the date of "probable inclusion"?

The Barratt American case was the first published decision to recognize these practical difficulties.

City of San Diego v. Barratt American, (4th Dist. 2005) Appeal Action No. D042582

In order to be entitled to compensation in an eminent domain proceeding, a person (1) must have an ownership interest in the property as of the date of the taking, and (2) must not have waived his/her right to compensation.

In the Barratt American case, a developer who had purchased the property from an individual contractually agreed that, if the City were to exercise its eminent domain authority in the future, only the individual would be entitled to compensation. However, when the City filed its complaint in eminent domain, the developer tried to make a claim for $1.3 million in "severance damages," suggesting that its waiver of compensation should not be construed as a waiver of severance damages.

The trial court ruled in favor of the City, holding that the developer was not entitled to make a claim for severance damages because the developer did not own the "part taken" and because the developer waived its right to claim any compensation. The appellate court affirmed.

City of San Diego v. D.R. Horton Holding Company, (4th Dist. 2005) 126 Cal.App. 4th 668

When a public entity acquires a portion of a "larger parcel" in an eminent domain proceeding, the landowner may make a claim for "severance damages" – i.e., the diminution in value to the "remainder" parcel caused by the severance of the "part taken," and/or caused by the public project. However, severance damages must be offset by "benefits" to the remainder parcel caused by the public project.

In rendering its verdict, a jury in an eminent domain case generally may award the amount of compensation requested by the landowner, the amount of compensation requested by the public entity, or anywhere in between. The D.R. Horton case addressed a situation where the jury verdict as to "severance damages" and "benefits" was within the range of values testified to by the landowner's appraiser and the City's appraiser. However, there was an alleged "inconsistency" in the special verdict – the jury based its opinion of severance damages on the City's appraiser's conclusion, and its opinion of benefits on the landowner's appraiser's conclusion. The appellate court was asked to clarify whether this alleged inconsistent verdict was properly within the range of values testified to by the appraisers.

Regents of the University of California v. Sheily, (2nd Dist. 2004) 122 Cal.App.4th 824

In order to claim entitlement to loss of business goodwill, a business owner in an eminent domain proceeding must prove that he/she acted "reasonably" in attempting to relocate the business, or by taking steps and adopting procedures to preserve the goodwill. (CCP §1263.510(a)(2).) This statutory requirement has been in existence in California since 1975, yet there had been no published decision interpreting it.

The Sheily case involved the acquisition of a medical office building for the expansion of the UCLA/Santa Monica Hospital. A dentist made a claim for loss of business goodwill. The case went to trial over whether the dentist acted "reasonably" in attempting to relocate his practice. The trial court held that the dentist failed to prove that he acted reasonably and, therefore, that the dentist was not entitled to compensation for loss of business goodwill. In the first published decision interpreting CCP §1263.510(a)(2), the appellate court affirmed.

City of Saratoga v. Hinz, (6th Dist. 2004) 115 Cal.App.4th 1202

Local street and roadway improvement projects are commonly funded through the formation of assessment districts. Proposition 218 (approved by the voters of the State of California in November 1996) added Article XIII to the California Constitution. Under Proposition 218, along with prior decisional law, a public improvement that is funded by a special assessment must specially benefit the assessed property. The amount of the assessment cannot exceed the special benefit to the property. For this reason, a determination must be made as to whether properties within the proposed assessment district will receive a "special benefit" from the project, or merely a "general benefit."

Hinz involved an eminent domain action to acquire an easement for ingress and egress over a portion of property that was already subject to an easement for a private road. Prior to the eminent domain action, the City had determined that some of the properties along the roadway (and within the assessment district) would receive a "special benefit" from the new public easement. After the City commenced the eminent domain action, a property owner (who was not within the assessment district) asserted a "right to take objection," challenging the City's ability to exercise its eminent domain authority. The owner argued (in part) that there was no "public use" necessitating the acquisition of his property because the City had already determined (in the formation of the assessment district) that only a few properties would "specially benefit" from the public right-of-way.

The trial court rejected this right to take objection, and the appellate court affirmed.

City of San Diego v. Rancho Penasquitos Partnership, (4th Dist. 2003) 105 Cal.App.4th 1013

Established eminent domain case law requires an appraiser to consider lawful land use regulations in valuing the property that is the subject of the eminent domain action. However, statutory law (CCP §1263.330) requires an appraiser to disregard the influence of the public improvement project (necessitating the acquisition) in valuing the property.

This was an eminent domain action for a freeway project. The question on appeal was whether the parties' respective appraisers could consider a lawful land use regulation which conditioned suburban density development on the selection of the final alignment of the freeway in valuing the property. The appellate court affirmed the trial court's ruling that the appraisers could not consider the land use regulation under CCP §1263.330 because it contemplated the freeway project.

City of South San Francisco v. Mayer, (1st Dist. 1998) 67 Cal.App.4th 1350

Under established eminent domain case law, a public entity can acquire (by eminent domain) a lessor's interest in property, and/or a lessee's interest in property, so long as the elements of public use and necessity are established.

In this eminent domain action, the City was the lessee of a conference center. The City sought to acquire the lessor's interest so that the City could own the conference center outright. The legal issues at trial related to (1) whether the City's contractual obligation (as a lessee) impaired its ability to exercise its eminent domain authority to acquire the lessor's interest, and (2) assuming the City could exercise its eminent domain authority to acquire the lessor's interest, whether the property owner was entitled to compensation (for the land and the conference center improvements) based on its fee value (i.e., as unencumbered by the lease) or based on its leased fee value (i.e., as encumbered by the lease). The fee value was approximately $10,000,000. The leased fee value was approximately $5,000,000.

The trial court held that, notwithstanding the City's lease of the conference center site, the City could exercise its eminent domain authority to acquire the lessor's interest. The trial court further held that, since the City was only acquiring the lessor's interest in the property (not fee

title), the owner was entitled to the leased fee value of the property. The appellate court affirmed.

City of Hollister v. McCullough, (6th Dist. 1994) 26 Cal.App.4th 289

In eminent domain cases there is a special rule of valuation relating to a portion of property which would have to be dedicated for infrastructure purposes in order for the "remainder parcel" to be developed to a higher and better use. Under this rule of valuation (known as the "Porterville" rule based *on City of Porterville v. Young* (1987) 195 Cal.App.3d 1260), that portion of property must be valued based upon the highest and best use of the property which would not trigger a dedication requirement.

In this case, the appellate court clarified that application of the Porterville rule can only be made if there is a "reasonable probability" that the plaintiff would probably have imposed the dedication condition if defendants had sought to develop the property and that the proposed dedication requirement would have been constitutionally permissible.

Redevelopment Agency of San Ramon v. Sghayer (1993) 21 Cal.Rptr. 2d 183
(not published in official reports)

In this eminent domain action, the landowner filed a cross-complaint against a redevelopment agency (the condemning authority) and City alleging that a zoning restriction was invalid, both facially and as applied, to his property. On summary judgment, the trial court held, and the appellate court affirmed, that Government Code section 65009(c)'s statute of limitations barred both claims.

Contra Costa County Flood Control and Water Conservation District v. Lone Tree Investments, (1st Dist. 1992) 7 Cal.App.4th 930

This was another eminent domain action involving the Porterville rule of valuation. The trial was bifurcated. The first phase involved a bench trial on the question of whether the subject property would have to be dedicated to the city in which the property was located as a condition of development approval. The trial court found that there was a "reasonable probability" that the city could and would require dedication of the property.

The second phase of the trial involved a jury trial on the question of valuation. The plaintiff requested that one of the jury instructions make it clear that the use that could be made of the condemned parcel without triggering a dedication requirement is "agricultural." The trial court refused to give this instruction, but the appellate court reversed.