

# **Bond Case Briefs**

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## **EMINENT DOMAIN - CALIFORNIA**

### **Brost v. City of Santa Barbara**

**Court of Appeal, Second District, Division 6, California - March 25, 2015 - Not Reported in Cal.Rptr.3d - 2015 WL 1361196**

Plaintiffs own three parcels of land in an active landslide area known as Slide Mass C of the Conejo Slide. An ordinance adopted by the City of Santa Barbara in 1997 prohibits new construction on properties entirely within that slide mass. Plaintiffs resided on the properties until their homes were destroyed by a wildfire in November 2008.

When plaintiffs inquired about rebuilding their homes, the City maintained it had no discretion to permit reconstruction and declined to amend the ordinance to provide an exemption. The trial court determined the ordinance, as applied to plaintiffs, constituted an unlawful regulatory taking of their properties. To avoid having to compensate plaintiffs for a permanent taking, the City amended the ordinance in April 2012 to allow reconstruction. The court awarded plaintiffs damages for a temporary taking plus attorney fees and costs. City appealed.

The Court of Appeal held that:

- City was not entitled to claim that plaintiffs' takings claim were not ripe for consideration because they failed to file formal applications to rebuild their homes, as the filing of development applications would have been futile because the City lacked discretion to permit any development on plaintiffs' properties; and
- The moratorium on new construction was not justified under principles of state nuisance law as, at best, uncertainty existed regarding the stability of the geology within Slide Mass C.