

Public Agency Value Considerations for Properties that Have No “Market”

CA Evidence Code § 823

Across-the-Fence (ATF) Method

Conditions of Bilateral Monopoly – Case Studies

Definitions – Ev. Code § 823 & ATF Method

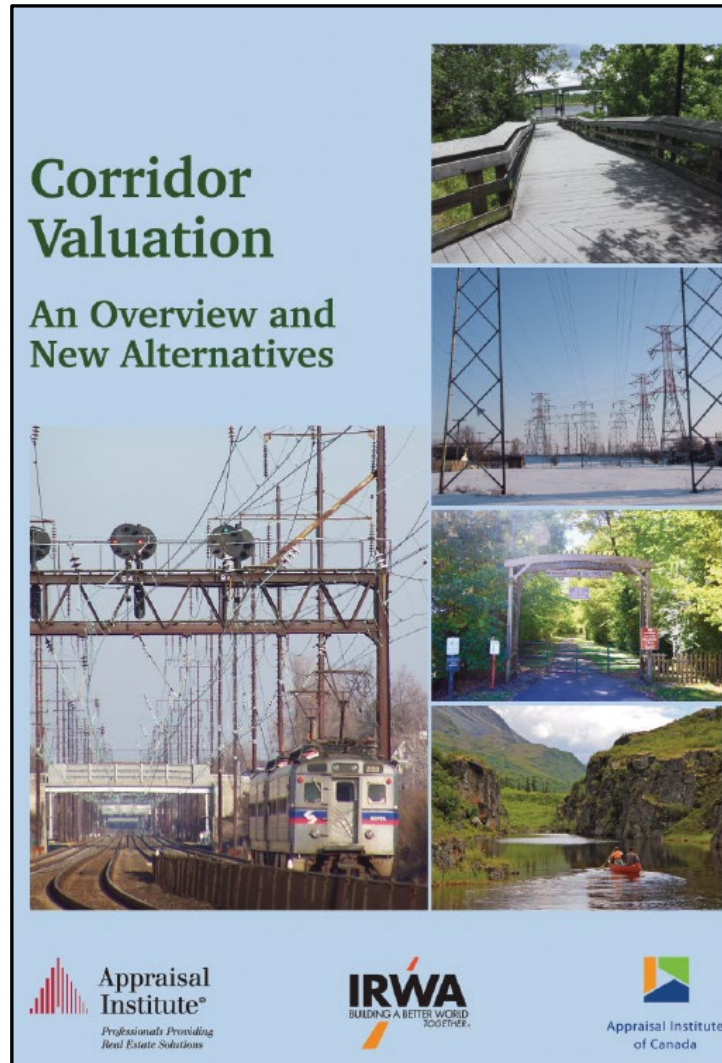
- CA Evidence Code § 823:

“..... the value of property for which there is no relevant, comparable market may be determined by any method of valuation that is just and equitable.”

- Across-the-Fence Method:

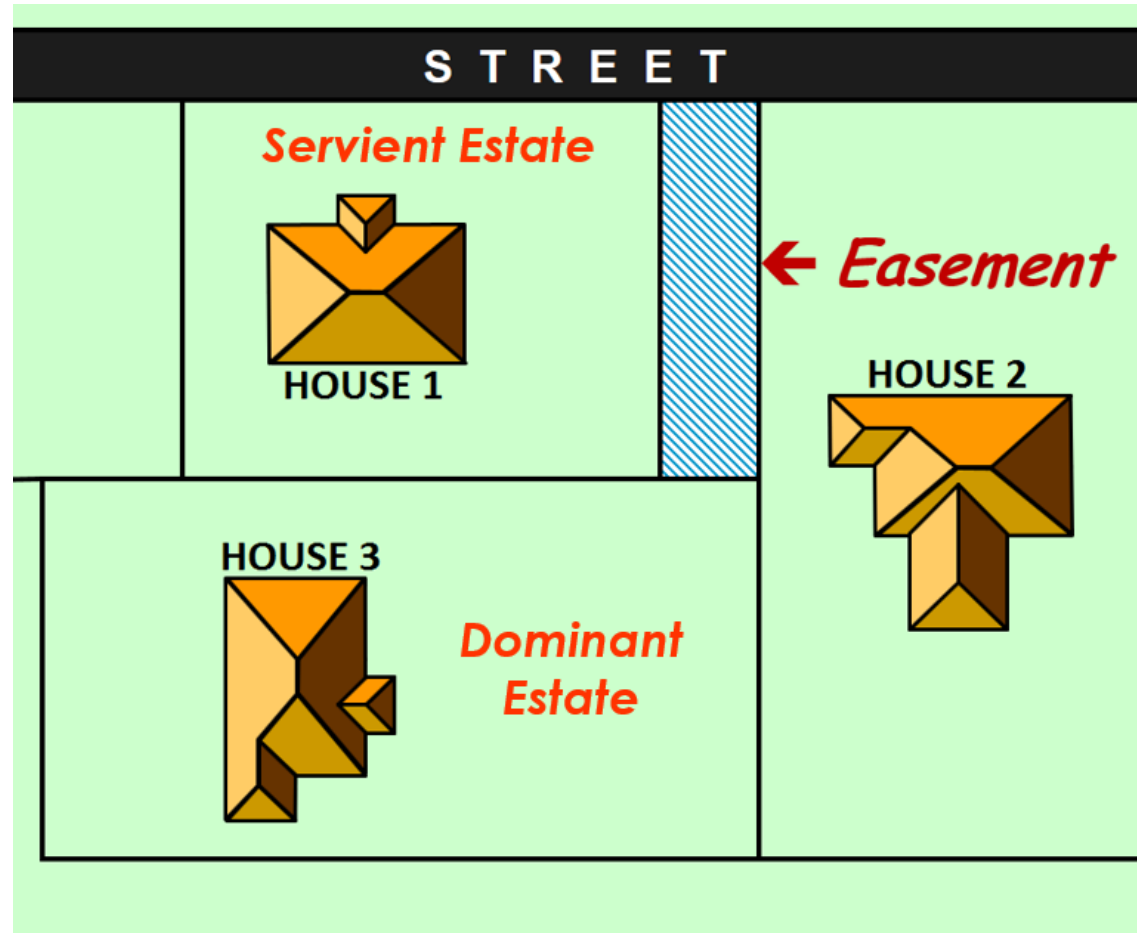
- “A land valuation method used in the appraisal of corridors. The across-the fence method is used to develop a value opinion based on comparison to abutting land” [Appraisal Institute’s Dictionary of Real Estate Appraisal, 7th Edition]
- “Corridor land is worth (at least) as much as the land through which it passes.” [informal definition]

ATF Method / Corridor Valuation Book



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Bilateral Monopoly – Simple Real Estate Example (Kind of)



Definitions – Bilateral Monopoly

- The Dictionary of Real Estate Appraisal, 7th Edition:
 - A market in which a **single seller** (a monopoly) is confronted with a **single buyer** (a monopsony). Under these circumstances, the theoretical determination of **output and price will be uncertain** and will be affected by the interdependence of the two parties.
- Investopedia:
 - A bilateral monopoly exists when a market has only **one supplier** and **one buyer**. The one supplier will tend to act as a monopoly power and look to charge **high prices** to one buyer. The lone buyer will look towards paying a **price that is as low as possible**. Since both parties have conflicting goals, the two sides **must negotiate** based on the relative bargaining power of each, with a final price settling in between the two sides' points of maximum profit.

Market Value Concepts vs. Bilateral Monopoly Conditions

The Dictionary of Real Estate Appraisal, 7th Edition, provides the following definitions:

- Market: A set of arrangements in which buyers and sellers are brought together through the price mechanism; the aggregate of possible buyers and sellers and the transactions between them.
- Market Value: The most probable price, as of a specific date, in cash, or in terms of equivalent to cash, or in other precisely revealed terms, for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress.

Market value requires that a competitive market exist. Bilateral monopoly is the alternative in the extreme (there is no market -- no aggregate of buyers and sellers).

Bilateral Monopolies – Historical Context

- Per Investopedia, the bilateral-monopoly concept has most commonly been used by economists to describe the labor markets of industrialized nations in the 1800s and the early 20th Century.
- Large companies would essentially monopolize all the jobs in a single town and use their power to drive wages to lower levels. To increase their bargaining power, workers formed labor unions with the ability to strike and became an equal force at the bargaining table.

Bilateral Monopoly in Major League Baseball

MLB's lockout partially stems from the fact that the league is a monopoly

December 17, 2021 6:08 PM

By: Stacey Vanek Smith

J C BRADBURY: We have players who have banded together to form a union to form a monopoly to sell Major League talent to Major League owners.

VANEK SMITH: This is Kennesaw State University economist and baseball nerd JC Bradbury. And he says this is what is called a bilateral monopoly.


BRADBURY: You have a single buyer and a single seller, and each party needs the other one. And that's why this becomes such a brutal bargaining game right now. The neat thing about markets is that we don't have to sort of judge necessarily who's right. It's a bargaining process.

Bilateral Monopolies – Interesting 1960s Book

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Bargaining and group decision making: Experiments in bilateral monopoly New edition

by Sidney Siegel ▾ (Author)



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Insights from Aforementioned Book

- Bilateral monopoly is also known in economics as “Isolated Exchange.”
 - Behavioral economics concept – psychology and economic theory coincide.
- Important Pricing Considerations
 - Parties’ relative bargaining strengths (are public agencies “stronger” than private parties?)
 - Amount of available info (incomplete-incomplete, complete-incomplete, complete-complete).
 - Complete-complete: potential moralistic obligation to split the difference.
 - Complete-incomplete: the ignorant party may actually have a negotiating advantage.
 - Appraisers sufficiently familiar with bilateral monopoly can provide necessary info to the parties.
 - Levels of aspiration of the parties
- Other/Related Price Determinants (reference to Economist William Fellner)
 - Long-run consequences of faring “too well” (or perhaps “not well enough”)
 - The immediate political consequences of a stalemate.
 - The ability of the parties to take and inflict losses during a stalemate.
 - The toughness (unwillingness to yield) of the opponents.

“Neighbors In American Land Law”

(Columbia Law Review)

- The market structure confronting a landowner seeking to buy a right held by his neighbor belies the assumption that two parties negotiating over land-use rights face few obstacles.
- A landowner who wishes access to a lake or road may find that **only one neighbor can provide him with access, or that only that neighbor can do so at reasonable cost.**
- The neighbor, on the other hand, may find that the only prospective purchaser of an access right is the landowner without access from his own lot.
- The result is a bilateral monopoly: the seller faces a market with only one buyer and the buyer faces a market with a single seller.
- Our system of servitudes, cotenancies, and estates provides **countless such illustrations** in which two parties hold unique rights that are of greater value joined together than they would be if held separately.

Bilateral Monopolies in Real Estate – Where Do They Commonly Arise in Voluntary Transactions?

Voluntary Transactions:

- Assemblages
 - Uneconomic Remnants
 - Last Holdouts
 - Lease Buyouts
 - Highly Special-Use Properties
-
- But What About in Condemnation Actions?



Analysis of Previous Easement Transaction

GRANTEE'S (PRIVATE PARTY'S) PERSPECTIVE - ASSEMBLAGE	
Per SF Value of the Locked Parcel "As if it Had Access"	\$7.50
Less: Per SF Value of the Locked Parcel "As Is"	<u>\$4.77</u>
Value Unlocked by Providing Access	\$2.73
Multiplied by: Square Footage of Parcel	<u>381,150</u>
	\$1,040,540

GRANTOR'S (SBCFCD'S) PERSPECTIVE - STAND-ALONE	
Nominal Value of, say,	\$10,000

SALE PRICE	PROFIT TO GRANTEE	PROFIT TO GRANTOR
\$1,040,540	\$0	\$1,030,540
\$1,000,000	\$40,540	\$990,000
\$950,000	\$90,540	\$940,000
\$900,000	\$140,540	\$890,000
\$850,000	\$190,540	\$840,000
\$800,000	\$240,540	\$790,000
\$750,000	\$290,540	\$740,000
\$700,000	\$340,540	\$690,000
\$650,000	\$390,540	\$640,000
\$600,000	\$440,540	\$590,000
\$550,000	\$490,540	\$540,000
\$525,270	\$515,270	\$515,270
\$500,000	\$540,540	\$490,000
\$450,000	\$590,540	\$440,000
\$400,000	\$640,540	\$390,000
\$350,000	\$690,540	\$340,000
\$300,000	\$740,540	\$290,000
\$250,000	\$790,540	\$240,000
\$200,000	\$840,540	\$190,000
\$150,000	\$890,540	\$140,000
\$143,200	\$897,340	\$133,200
\$100,000	\$940,540	\$90,000
\$50,000	\$990,540	\$40,000
\$10,000	\$1,030,540	\$0



RV & BOAT STORAGE UNITS

Victoria RV & Boat Storage in Rancho Cucamonga has over 500 Indoor Self Storage, Mini Self Storage, and Outdoor Parking Spaces!

At Victoria RV & Boat Storage we offer a whole lot more than just *RV & Boat Storage Units*. Our brand new 12 + acre facility features more than 500 indoor self storage, mini self storage and outdoor parking spaces for storing all of your extra vehicles; cars, boats, trucks, RVs, and trailers and in addition, a newly built section for your self storage needs. We are now renting mini storage units to help store your sports equipment, clothing, furniture or lifelong collections. With a completely fenced property, and a state-of-the-art security system, make Victoria RV & Boat Storage your one stop source for storage.

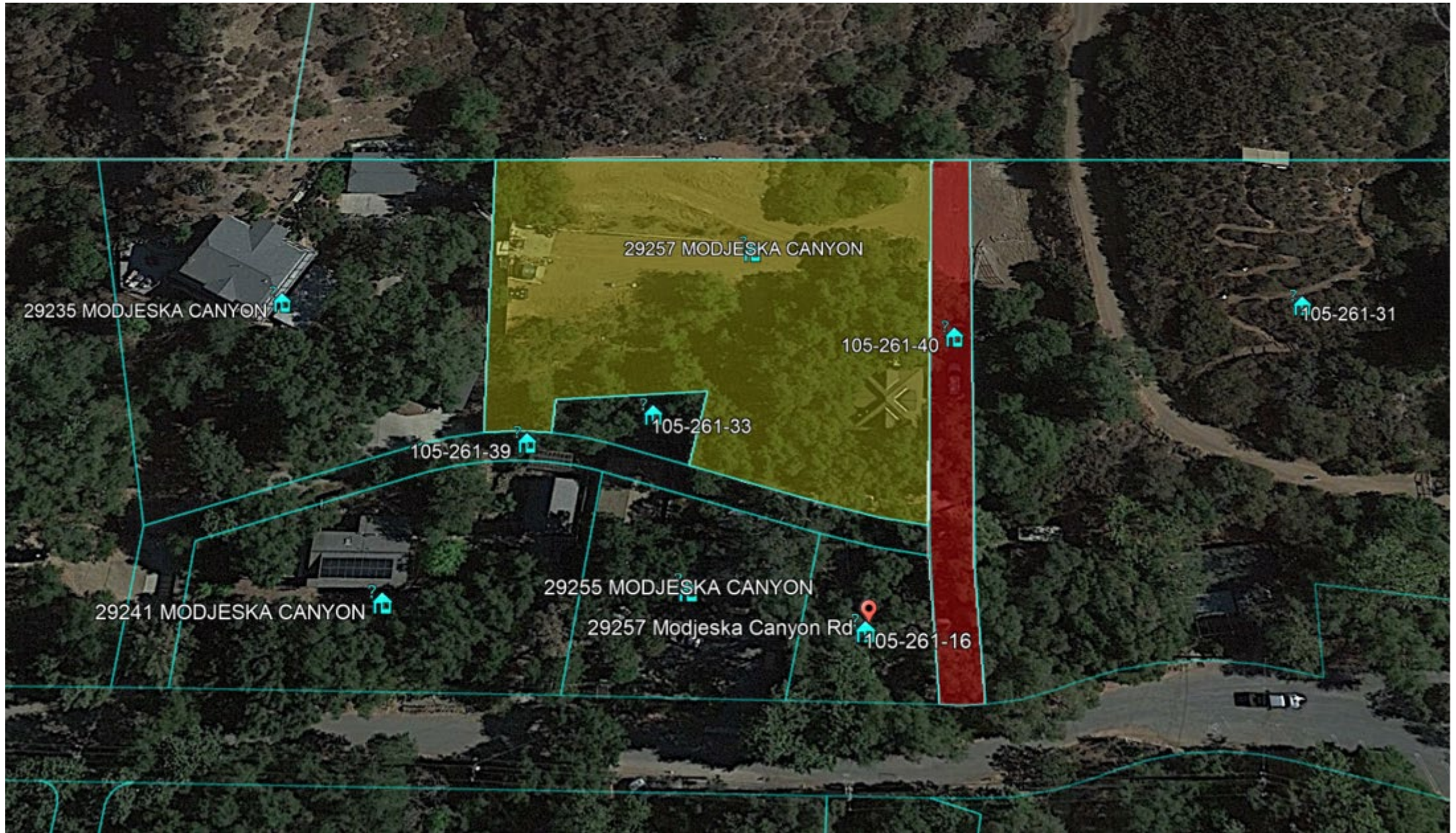


Bilateral Monopoly – Lease Buy-out Scenario

- Land under a 25-year lease of a downtown parking lot could be developed as an apartment tower if the ground lease is terminated. The tenant under the ground lease is paying market rent for parking use but not market rent for apartment development. Even if the tenant wanted to construct the higher and better use, there may not be a sufficient remaining term to amortize the new improvements. Even if there was, parking may be the only use permitted under the lease.
- The leasehold is worth \$2M based on the PV of the difference between the amount of net income that the tenant can charge subtenants and the amount it pays to the landlord for continued parking lot use. A 3rd-party has offered to buy out the tenant for \$2M.
- The leased fee is worth \$8M based on the PV of the contract rent and the reversion.
- Before the tenant can sell its lease to the third-party buyer for \$2M, the landowner approaches the tenant with a \$4M offer to buy out the tenant's lease.
- The value of the fee simple based on the property's highest and best use for office development is \$22M.

Bilateral Monopoly – Lease Buy-out Scenario (Cont.)

<u>"As Is" Values (In-Place Lease)</u>		<u>Landlord Buy-Out @</u>	<u>Tenant's Profit</u>	<u>Landlord's Profit</u>
Leasehold (Tenant)	\$2,000,000	\$3,000,000	\$1,000,000	\$11,000,000
Leased Fee (Landlord)	\$8,000,000	\$4,000,000	\$2,000,000	\$10,000,000
		\$5,000,000	\$3,000,000	\$9,000,000
		\$6,000,000	\$4,000,000	\$8,000,000
Fee Simple Value (Landlord)	\$22,000,000	\$7,000,000	\$5,000,000	\$7,000,000
Potential Value to Unlock (Landlord)	\$14,000,000	\$8,000,000	\$6,000,000	\$6,000,000
		\$9,000,000	\$7,000,000	\$5,000,000
		\$10,000,000	\$8,000,000	\$4,000,000
		\$11,000,000	\$9,000,000	\$3,000,000
		\$12,000,000	\$10,000,000	\$2,000,000
		\$13,000,000	\$11,000,000	\$1,000,000



TITLE INSURANCE COMPANY'S APPRAISAL

Intended Use:

Negotiations with the County of Orange in settlement of a title insurance claim.

Date of Value:

2nd Quarter 2022

As Is Fee Simple Market Value

\$20,000

Impact of Easement:

Joint use, typically measured as a 50%/50% proposition

Contributory Value of the Proposed Non-Exclusive Easement:

\$10,000

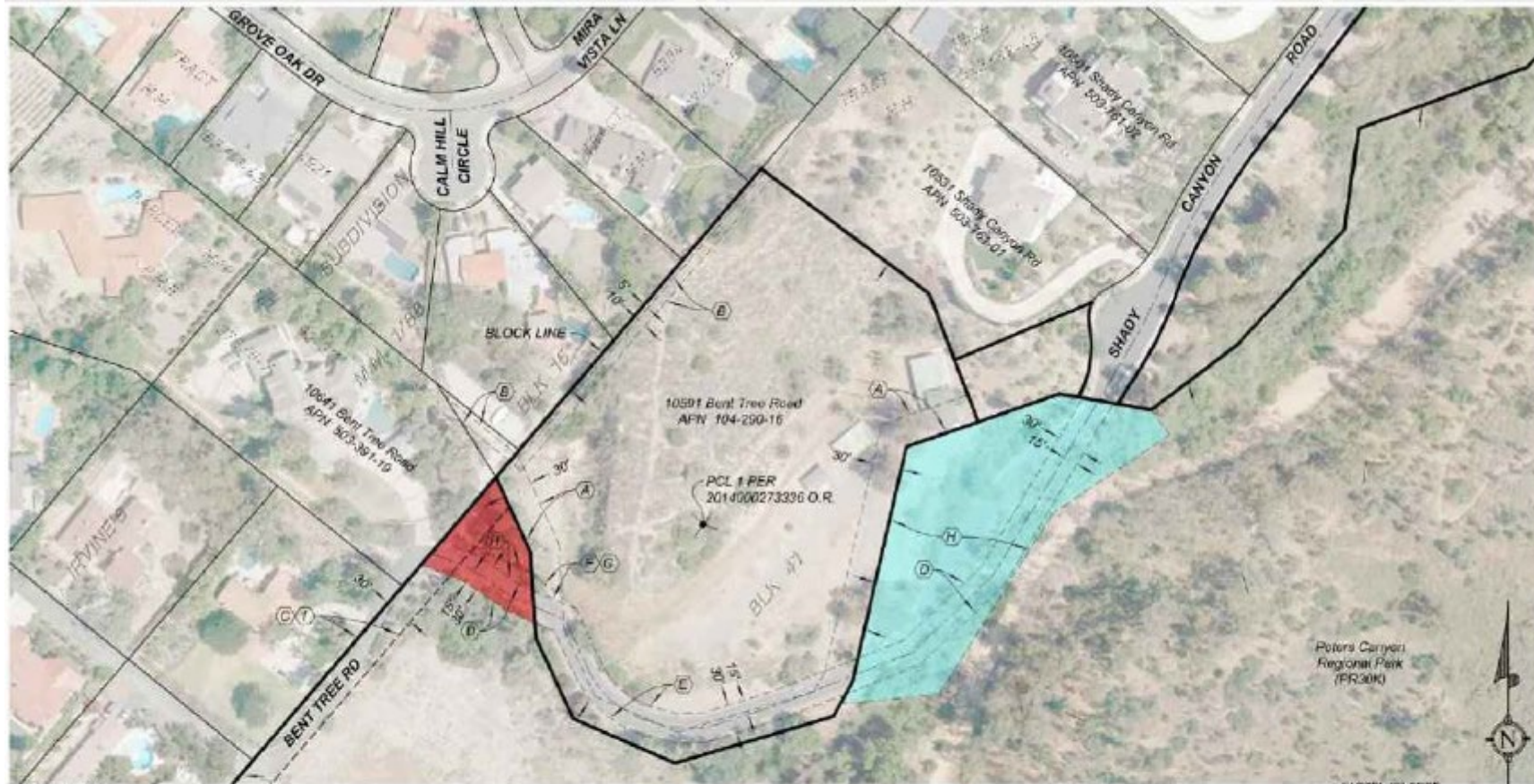




Redevelopment Potential of the Site (At It's Highest and Best Use):

If the Site was redeveloped to its highest and best use, it's unclear if any additional multi-family units could be achieved with the extra 20,000 SF of land area afforded by the subject property since the Site has a cap of 231 dwelling units within the Platinum Triangle Master Plan. Due to the general housing crisis in California, it's plausible that with the right amount of effort, a motivated entrepreneur could seek an increase in unit count above 231 based on an expansion of the site by 20,000 SF.

Even without an increase in unit count, the 20,000 SF would likely provide site configuration alternatives to the site by way of improving access and traffic circulation and/or meeting common area requirements for a redevelopment. It could allow for pushing out the boundaries of a potential parking lot, which would enable more parking to be provided.



EASEMENTS:

- (A) RESERVATION TO THE IRVINE COMPANY FOR ROADS, TELEPHONE, TELEGRAPH POLES, LINES & CONDUITS, WATER DITCHES & PIPELINES PER 401023 O.R.
- (B) EASEMENT TO SOUTHERN CALIFORNIA EDISON FOR PUBLIC UTILITIES PER 4527514 O.R.
- (C) EASEMENT TO J.P. HOLCOMB & D.P. HOLCOMB, J.A. SEGAL & C.H. SEGAL, J.M. SEGAL & J.P. SEGAL, W.W. CRAWMER & E.L. CRAWMER, K.E. REAFSNYDER & V.M. REAFSNYDER, B.R. BAKER & A.F. BAKER, L.A. BRITTE & B.J. BRITTE FOR ROAD & PUBLIC UTILITIES PER 36828 O.R.
- (D) EASEMENT TO W.W. CRAWMER & E.L. CRAWMER, K.E. REAFSNYDER & V.M. REAFSNYDER, B.R. BAKER & A.F. BAKER FOR ROAD & PUBLIC UTILITIES PER 36828 O.R.
- (E) EASEMENT TO K.E. REAFSNYDER & V.M. REAFSNYDER, B.R. BAKER & A.F. BAKER FOR ROAD & PUBLIC UTILITIES PER 36828 O.R.
- (F) EASEMENT TO SHADY CANYON, INC. & K.E. REAFSNYDER FOR ROAD AND PUBLIC UTILITY PURPOSES PER 85-349669 O.R.
- (G) EASEMENT TO JACK CHOU, DORIS CHOU, DAVID CHOU, THOMAS CHOU, DANIEL CHOU FOR ROAD AND PUBLIC UTILITY PURPOSES PER 89-411573 O.R.
- (H) EASEMENT TO JACK CHOU FOR PRIVATE ROAD AND UNDERGROUND UTILITIES PER 89-437891 O.R.
- (I) EASEMENT TO DARRYN CAPITAL, LLC FOR ROAD AND PUBLIC UTILITY PURPOSES PER 2014000273336 O.R. (PARCEL 2)

0.196 AC
1.103 AC

PARCEL 101.91 OF
FACILITY PR-35K (PETERS
CANYON REGIONAL PARK)
PER 93-136832 O.R.



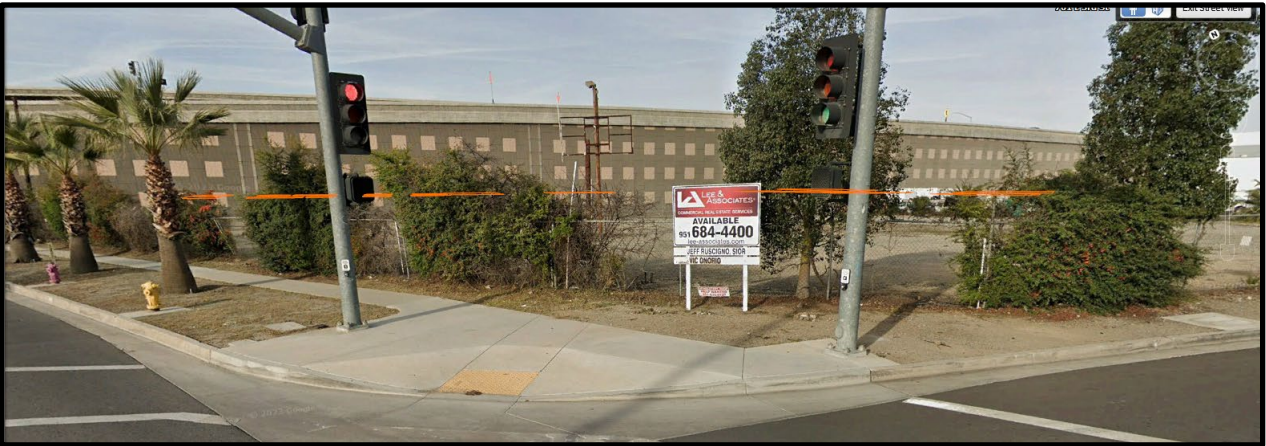
OC PUBLIC WORKS
OC SURVEY
RIGHT-OF-WAY SERVICES

ROW ID NO. 2018-002
SCALE: 1" = 100'

PETERS CANYON REGIONAL PARK
ENCUMBRANCE INVESTIGATION
(PR30K)
SHEET 1 OF 1

PROJECT: ENCUMBRANCE INVESTIGATION FOR 10591 BENT TREE ROAD





PROPERTY SUMMARY – EXCESS LAND SALE	
Assessor's Parcel No.	117-270-009
Property Rights Appraised	Fee Simple
Location	The Property is located at 129 East Grand Blvd., Corona, CA.
Size and Shape	Per the Riverside County Assessor's Office, the subject Property contains one parcel approximately 11,265± square feet/ 0.26 acres.
Encumbrances	Subject to special assessments if any, restrictions, reservations, and easements of record. The sale of this Property is subject to all matters of public record and any easement, claim of easements or reservations not of record.
Zoning	The subject property is zoned BP – Business Park.
Improvements and Access	There are no building improvements located on the property. Direct access to the Property is available from E. Grand Blvd.
Topography and Drainage	The overall area is generally level and at grade with the adjacent street.

B) SELECTION CRITERIA

RCTC will only be accepting offers made on the full site. RCTC shall use the following criteria in the selection of offers received, which in its judgment and sole discretion is the most advantageous to RCTC:

1. Appraised value, nominal: \$2,500.00;
2. Applicant's financial capacity to purchase and develop the Property;
3. Applicant requires minimal or no additional obligation from RCTC to prepare the Property for sale;
4. Applicant's ability to close escrow expeditiously (60 days).





1. Fence in Newport's Back Bay at heart of dispute between homeowner, environmentalists (Media Source: OC Register, Reporter: Tony Saavedra)

A chain-link fence on a blufftop overlooking Newport Beach's Back Bay is at the center of a war between environmentalists and a wealthy Republican donor.

On one side of the fence is the private home of longtime political rainmaker Buck Johns. On the other side is the Upper Newport Bay Nature Preserve and a popular trail used by bicyclists, hikers and equestrians.

Part of the land claimed by Johns, nearly one-third of an acre, actually belongs to the county of Orange. But it has been fenced since before Johns owned the home, perhaps for decades. Now activists want the fence taken down. And state agencies and the Orange County grand jury agree.

For his part, Johns filed a lawsuit this month to keep the county from touching the fence — not that it wants to. Orange County officials were poised in 2019 to sell the triangular-shaped property to Johns for an appraised value of \$13,000, far below the \$1.1 million valuation that activists say was appraised for a similar parcel.

And therein lies the debate. Is this a case of a rich, powerful man exerting his influence to take a piece of pristine parkland — home to Savannah sparrows and the California gnatcatcher — from the public? Or a longtime error that can only be resolved by keeping the status quo?

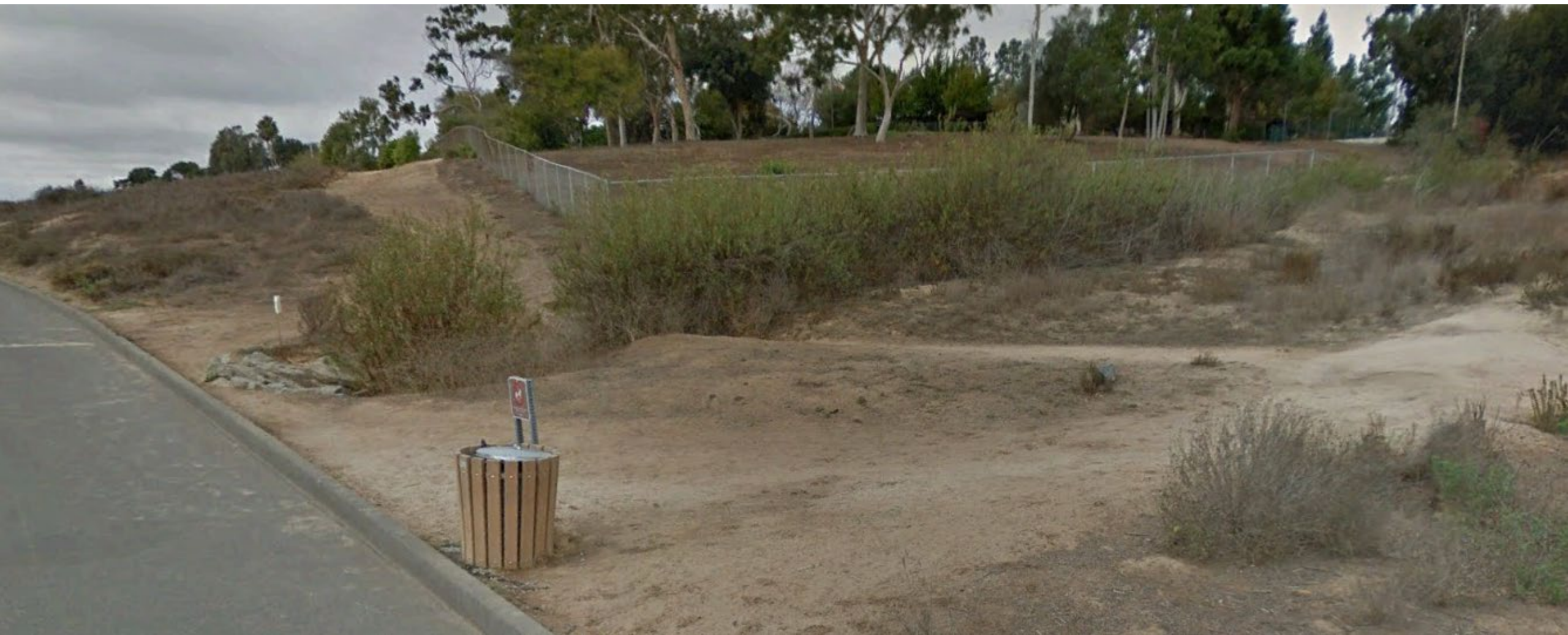
'It's government property'

"It's very simple," said county Supervisor Katrina Foley, a Democrat. "It's public land that someone put a private fence on, so the fence needs to come down. It's not for sale. It's government property."

Or as the grand jury put it in June, Johns "has effectively usurped that valuable land parcel at no cost and without the permission of the State Lands Commission or the Coastal Commission. The fence is an eyesore."

Foley's colleagues on the Board of Supervisors don't see it that way. They responded to the grand jury that the removal of the fence was "not warranted and not reasonable."

"The property at issue is a slope that has no public recreational amenities located on the fenced-in real property and provides no apparent public park benefit," said the county response.



Bilateral Monopolies in Real Estate – What about in Eminent Domain/Condemnation?

- Bilateral Monopolies Exist in ED as well.
 - Property Owner Perspective (Extreme):
My house is worth \$11M! ... because you can't build your freeway unless you acquire it.
 - Public Agency Perspective (Extreme):
We're buying a strip of land; it's 4 feet by 200 feet. It's not worth anything.
- The ED legal model removes the bilateral-monopoly concern.
 - Just compensation is measured by what the owner has lost rather than what the condemner has gained. (People v. Southern Pacific Transportation Co.)
 - In a partial taking, the owner is compensated based on the contributory value of the part taken to the larger parcel (owner's perspective)

Transverse Crossing – Voluntary Transaction

Example Valuation Request:

Please assist us in determining an annual use fee for the subject license to Southern California Gas Company. It is a 10-year revocable license for SoCal Gas to use approximately 750 square feet, 25-feet below Xyz Avenue and 14-feet below the Flood Control District's channel. Any help or guidance on this valuation is appreciated, even if it is considered de minimis at \$xxxx/year, or other amount or range acceptable. Let me know if you need additional information or assistance.

- Valuation Options:
 - (1) Licensee's Gain ?
 - (2) Licensor's Loss ?
 - (3) ATF ?
 - (4) Any method that is just and equitable (E.C. § 823) ?

Transverse Crossing – Eminent Domain

- Oakland v. Schenck (197 Cal. 456; 241 P. 545)
 - The Superior Court of Alameda County determined that the fair market value of a road easement transversely crossing railroad right of way was nominal (one dollar).
 - The Supreme Court of CA affirmed, arguing the railroads would retain their rights in their property for all purposes consistent with the full enjoyment of the easement acquired by the city for street purposes.
 - Consistent with the elemental rule in eminent domain law that you're restricted to the perspective of condemnee's loss, not the condemnor's gain.

ATF Examples

Prior Gas Line Example Compared to Another Example

Transaction Type	License	Easement
Purpose	Underground Gas Line	Pump Station
\$/SF - ATF	\$80.00	\$130.00
SF	750	9,618
Acquistion Value As Part of Whole	\$60,000	\$1,250,340
Impact Rate	---	95.0%
Rate of Return	8.0%	---
Take Value	---	\$1,187,823
Annual Fee	\$4,800	---



The appraisal profession typically assumes that the “Across the Fence” (ATF) appraisal approach is the proper method to value a railway or utility corridor. In summary, the ATF approach assumes that the value of a corridor should be equal to the value of lands that are adjacent to that corridor. This method of appraisal may work well in consensual sales where both sides are in agreement as to the proper appraisal approach.

2000 / The Legality of the Across the Fence Approach in Eminent Domain Proceedings / Todd Amspoker / Right of Way Magazine

Further Reading

Bilateral Monopolies:

<u>Year</u>	<u>Title</u>	<u>Author</u>	<u>Publication</u>
1982	Valuing Real Estate Under Conditions of Bilateral Monopoly	Albert, Stanton & Pearson	The Appraisal Journal
1985	Alternatives to Point Estimates	Eric Reenstierna	The Appraisal Journal
1986	Monopolistic Advantage	Eric Reenstierna	The Real Estate Appraiser & Analyst
1987	Neighbors in American Land Law	Stewart Sterk	Columbia Law Review
1988	The Abutter Approach	Eric Reenstierna	The Appraisal Journal
2004	Value In Contribution & Landlocking	Gordon Macnair	Right of Way Magazine
2005	Disassembling Assemblage	Richard Parli	The Appraisal Journal
2012	The Added Value of Assembling Parcels	Wayne Rasmussen	Right of Way Magazine

Across the Fence:

- 2019 / Corridor Valuation – An Overview and New Alternatives / Appraisal Institute, Appraisal Institute of Canada, IRWA
- 2000 / The Legality of the Across the Fence Approach in Eminent Domain Proceedings / Todd Amspoker / Right of Way Magazine

Questions?

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County of Orange