

EXECUTIVE DEPARTMENT
STATE OF CALIFORNIA



EXECUTIVE ORDER D-78-89

WHEREAS, the Fifth Amendment to the United States Constitution, applicable to the State of California by the Fourteenth Amendment, and Article 1, Section 19, of the California Constitution, guarantee that private property shall not be taken for public use without just compensation; and

WHEREAS, recent United States Supreme Court decisions in Nollan v. California Coastal Commission, 483 U.S. 825 and First English Evangelical Lutheran Church of Glendale v. County of Los Angeles, 482 U.S. 304, have affirmed that state governmental actions, including regulations, that do not formally invoke the condemnation power may result in a taking of private property, even temporarily, for which just compensation is required; and

WHEREAS, responsible fiscal management and fundamental principles of good government require that government decision makers evaluate carefully the effect of their regulatory actions on constitutionally protected private property rights; and

WHEREAS, the executive branch of the State of California is comprised of numerous agencies, departments, boards and commissions whose decisions may potentially affect private property interests; and

WHEREAS, state government should be a leader in demonstrating sensitive consideration of protected private property rights and in avoiding unintended and undue financial burdens on the state budget, while state agencies fulfill their statutory duties;

NOW, THEREFORE, I, George Deukmejian, Governor of the State of California, by virtue of the power and authority vested in me by the Constitution and statutes of the State of California, do hereby issue this order to become effective immediately:

1. All agencies, departments, boards, and commissions shall:

a. Consistent with fulfilling their statutory duties, evaluate their proposed regulatory actions in light of guidance provided in the aforementioned Supreme Court decisions and other relevant judicial authority in order to ensure the appropriate protection of private property rights consistent with the provisions of the United States and California Constitutions.

b. Assure that their actions are properly supported by the administrative record, by statutory and other legal authority, and fully comply with the guidance set forth by the United States Supreme Court, including consideration of the following principles:

(i) Governmental actions resulting in a physical invasion, or physical damage to private property may constitute a taking.

(ii) Governmental actions which interfere with the use and enjoyment of, or access to and from private property may constitute a taking.

(iii) For governmental actions which amount to a taking the actions result in a "temporary" taking.

2. The legal staff of the Department of General Services may be requested to provide guidance and technical assistance to any departments seeking to evaluate the potential private property impacts of agency proposals.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 20th day of December 1989.

Governor of California

ATTEST:

Secretary of State