

## Prop2 Class 24 - Categorical Regulatory Takings

; nor shall private property be  
**taken** for public use, without just  
compensation.

1. Is there a taking
2. Is taking for public use
3. If 1 and 2 are true, then pay just  
compensation

Actual Takings (Eminent Domain)  
Regulatory Takings - Affecting the  
use of land while owner gets to  
keep it.

Taking by Regulation -- most  
important question “is there a  
taking”

Condemned/Condemnation -  
refers to process of using eminent  
domain

Category 1: “Permanent **Physical** Occupation” --> AUtomatic taking  
--> Per Se (By itself)  
Per Se Taking.  
--> determine compensation  
“Categorical Regulatory Taking.”  
: government loses

Category 2: “Temporary Physical Invasion.”  
--> Not Per Se Taking  
--> Maybe, maybe not. Apply balancing test.  
--> NOT Physical  
: government wins

\$800k - \$18 milllion

“Nuisance test of takings”  
If a regulation is viewed as nuisance control, not a taking, regardless of the loss

1. Categorical regulatory taking - permanent physical occupation (Loretto)
2. Nuisance Test (hadacheck)