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**Severance Damages in Partial Takings Cases:  
Lessons Learned and Future Considerations**

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**ALI-CLE: Eminent Domain and Land Valuation Litigation**  
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**Introduction**

Much like Superstorm Sandy stripped away portions of the coastline in New Jersey and New York, the New Jersey Supreme Court stripped away protections for property owners faced with a partial taking of their property. In *Borough of Harvey Cedars v. Karan*, 425 N.J. Super. 214 N.J. 384, 70 A.3d 524 (2013), the Court abandoned the long-standing “special benefits” doctrine which had controlled the valuation of properties in partial takings cases in New Jersey for decades in favor of a new formula that allows consideration of any benefit to the remaining property as an offset to the damages caused by the partial taking.

“[W]hen a public project requires the partial taking of property, ‘just compensation’ to the owner must be based on a consideration of *all relevant, reasonably calculable, and non-conjectural factors* that either decrease or increase the value of the remaining property”.

In *Karan*, the municipality argued that as a result of the dune construction project that required the taking of an easement over the property, the owner realized “storm-protection benefits . . . that increased the value of their home” after the taking. The Borough argued that this benefit outweighed any damage caused to the remaining property’s value, so that only a *de minimus* award of damages was warranted. The Karans argued that because the project was intended to protect all residents of the Borough these “general benefits” were not admissible as an offset against the loss in value caused by the partial taking. The New Jersey Supreme Court agreed with the Borough, which could have a dramatic impact on the measure of just compensation in partial takings cases.

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Where only a portion of a property is condemned, the measure of damages includes both the value of the portion of land actually taken and the value by which the remaining land has been diminished as a consequence of the partial taking. The diminished value of the remaining property constitutes the severance damages visited upon that property as a result of the taking.

This presentation will focus on the impact of the *Karan* decision on the measure “severance damages,” also referred to as “damages to the remainder” and how it modified the “special benefits doctrine” as well as the implications for the application of the “project influence rule” in partial takings cases going forward.

### **Severance Damages**

In a partial taking, the property owner is not only entitled to compensation for the value of the property or rights taken, but also the diminution in value caused by the taking to the property that remains.

In New Jersey, the right to severance damages has been crafted by the courts. *State, by Comm’r of Transp. v. Silver*, 92 N.J. 507, 457 A.2d 463 (1983); *Village of South Orange v. Alden Corp.*, 71 N.J. 363, 365 A.2d 469 (1976). Other states, such as North Carolina, also recognize the right to compensation for any damage to the remainder caused by a partial taking. *Kirkman v. State Highway Commission*, 257 N.C. 428, 126 S.E.2d 107 (1962); *State Highway Commission v. Gasperson*, 268 N.C. 307, 317 S.E.2d (1984). The right to damages for any diminution in value to the remaining property has also been extended by the courts in South Carolina. *South Carolina State Highway Department v. Touchberry*, 248 S.C.1, 148 S.E.2d 747 (1966); *Moss v. South Carolina Highway Department*, 223 S.C. 282, 75 S.E.2d 462 (1953); *South Carolina Power Company v. Baker*, 212 S.C. 358, 46 S.E.2d 278 (1948).

In other jurisdictions, such as Arizona and California, the right to severance damages has been codified by statute. See Arizona Revised Statutes (“A.R.S.”) § 12-112(A)(2) and California Code of Civil Procedure (“C.C.P.”) §1263.320(a).

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**Project Influence Rule and the Special Benefits Doctrine**

***Project Influence***

To understand the special benefits doctrine and the impact of *Karan*, there must first be an understanding of the “enhancement doctrine” now more commonly referred to as the “project influence rule.” Enhancement is a change in value attributable to the very project for which the subject property is being acquired. The just compensation calculus generally requires that enhanced value be excluded. This rule is a subsidiary to the constitutional rule that an owner shall receive just compensation, no more and no less; the special value of the land to the taker, or value created solely by the condemnor’s demand for the property is not compensable. *United States v. Cors*, 337 U.S. 325, 69 S. Ct. 1086, 93 L. Ed. 1392 (1949); *United States v. Miller*, 317 U.S. 369, 63 S. Ct. 276, 87 L. Ed. 336 (1943).

Project influence describes the full breadth of the doctrine which provides that increases or decreases in value attributable to the very project for which property is sought to be acquired may not be considered in calculating just compensation. Stated another way, in determining just compensation there can be no consideration given to the impact on value that may result from the planned project, whether positive or negative. In New Jersey, this rule has been stated as “[t]he proper basis of compensation is the value of the property . . . disregarding either the depreciating threat of or the inflationary reaction to the proposed public project.” *Jersey City Redevelopment Agency v. Kugler*, 58 N.J. 374, 277 A.2d 873 (1971). This doctrine has been adopted by courts in other states such as Arizona, *State v. Hollis*, 93 Ariz. 200, 379 P.2d 750 (1963); *Robles v. City of Tuscon*, 16 Ariz. App. 100, 491 P.2d 489 (1972); Ohio, *Nichols v. City of Cleveland*, (1922) 104 Ohio St. 19, 135 N.E. 291; and Missouri, *Quality Heights Redevelopment Corp. v. Urban Pioneers*, 799 S.W.2d 867 (M. Ct. App. 1990).

In California, the project influence rule has been adopted by statute, C.C.P. §1263.330. The Model Eminent Domain Code, Sec. 1005, also provides that fair market value of property taken does not include any increase or decrease in value before the date of valuation that is caused by the proposed improvement or project for which the property is taken. 13 Uniform Laws Annotated 91 (1986). South Carolina has adopted the enhancement doctrine by statute