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Property Reserve, Inc. v. Superior Court: When a Governmental Entry to Test and Inspect Private Property May Not be a "Taking"

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A recent decision by the California Supreme Court in *Property Reserve, Inc. v. Superior Court*1 articulates the roughly four ways the government can legally enter onto or take private property. Those are:

1. It has permission of the property owner;
2. In an emergency, as a function of its police power (Tenth Amendment to the United States Constitution);
3. It takes private property for a public purpose, and pays just compensation (Fifth Amendment to the United States Constitution, made applicable to the states through the Fourteenth Amendment); or
4. It has a search warrant, based on probable cause (Fourth Amendment to the United States Constitution).

The Supreme Court's opinion in *Property Reserve* is a mashup of the first three of these concepts. The question in *Property Reserve* was whether the California statute authorizing precondemnation entry and testing by the government (i) authorizes physical occupation of and changes to the property, and if so, whether it (ii) satisfies constitutional requirements for the taking of private property.

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