

What Constitutes a Public Use?

Property owner's 15-year battle to block a public highway



Malibu Rancho owner May Rindge fought long and hard to block the expansion of Pacific Coast Highway through her property. She eventually lost that battle, spending nearly all of her family's \$30 million fortune in the process.

BY LARRY STEVENS, SR/WA

Long before there was a *Kelo v New London* case heard before the U.S. Supreme Court, at a time when there were relatively few cars on the road, a challenge to the government's right to take land for public highways surfaced in Southern California.

The case was filed by the County of Los Angeles against May Rindge, the owner of Rancho Topanga Malibu Sequit (or Rancho Malibu), a property that stretched along a rugged, isolated, and breathtaking 22-mile coastline north of Santa Monica, with the expressed intent of extending an existing public highway across the ranch to the Ventura County line. With public access restricted to the soft sand of low tide, the county decided that a more direct and feasible coastal route was required.

Isolated as it was, the rancho was run more like a medieval fiefdom built on a model of self-sufficiency, which included its own railroad, wharf and dam for water. Despite a public persona of wealth, charm and generosity, May Rindge guarded her property rights with fence lines patrolled by armed vaqueros whose instructions were to stop intruders at all costs. Documentation shows that the ranch remained under attack by homesteaders who continually challenged the validity of the Spanish land grant. One case apparently removed 132 trespassers.

So who were the Rindges and what brought them before the U.S. Supreme Court? It all started in 1883, when Frederick Hastings Rindge, the sole survivor of the Rindge family in Cambridge, Massachusetts, inherited his father's estate valued around \$2 million. He married Rhoda May Knight, and having funded a new Cambridge public library, City Hall and a Manual Training School, abruptly moved to Los Angeles, leaving behind friends, the Rindge family mansion and their prodigious social status in the community.

Perhaps lured by the completion of two railroad lines, or the mercurial advertisements about the Southern California oranges, the Rindges quickly settled into the brash, budding boomtown of Los Angeles, and in 1892 bought the 13,300-acre Rancho Malibu for \$10 per acre, which expanded over time to 17,000 acres. With the buying of the ranch, Mr. Rindge realized his dream of an idyllic home in the country. He built a ranch house in Malibu Canyon, raised cattle and grain, and then joined a consortium in founding the Conservative Life Insurance Company (now Pacific Mutual) in May 1900. Shortly after, he became the vice president of Union Oil and a director of the Los Angeles Edison Company (now Southern California Edison). With his rising fortunes, he continued buying new land holdings in Stockton, California, the San Fernando Valley, and even in Sinaloa, Mexico. But his

dream of a kingdom by the sea was dashed when a brush fire raged across the ranch destroying much of the property, including burning the ranch house to the ground. The family moved to tent cabins, but before a replacement house could be completed, Frederick Rindge died prematurely at the age of 48 in 1905.

May Rindge, now a grieving widow with three teenage children, took over the management of the ranch. It is here that our story really begins. Lynn Bowman characterized the future course of events in her book *Los Angeles: Epic of a City* – “Never again was the rancho a place of tranquil contentment.” May’s new life and focus were on the ranch operations, and she ran it with a will of iron. Losses of 30 to 50% of the newborn unbranded livestock to thieves and poachers, along with the threat of fires from careless intruding campers, eventually led to her discouragement of public access and ultimately to formidable and guarded locked gates to prevent trespassers from entering. May, not shy to hold onto what was hers, frequently drove along the ranch roads with a pistol in a holster.

Shortly before Frederick’s death, Southern Pacific Railroad applied to the Interstate Commerce Commission to build tracks across Rancho Malibu between the Long Wharf in Santa Monica and the railroad’s northern tracks in Santa Barbara. The Rindges opposed this move, and in 1905, using a loophole in the ICC’s law preventing the condemnation of parallel rights of way, May began the construction of 15 miles of track that she called the *Hueneme, Malibu and Port of Los Angeles Railway*. It was completed in 1908, and although it was never actually connected with the Port of Los Angeles, the railway continued to ship grains and hides from the ranch to the Malibu Pier until it fell into disuse in the 1920s. May had proved quite adept at taking on the railroad.

However, when it came to public use, this was only the first shot fired across the bow of Rancho Malibu, the Rindge family and the Rindge Company. With the continued burgeoning of the Southern California population, and increased demand for transportation systems that would connect far-flung farming communities to Los Angeles, local officials began to cast covetous eyes toward Rancho Malibu, and the need to connect the truck farmers of coastal Ventura County with their markets in downtown Los Angeles grew.

Early efforts to acquire the necessary rights of way, both by the county and the state, were eschewed, and finally in 1916 and 1917 – over eight years after discussions were initiated – a frustrated government and public brought the matter before the Los Angeles County Board of Supervisors who found

“It is not essential that the entire community, nor even any considerable portion, should directly enjoy or participate in an improvement in order to constitute a public use.”

in favor of public necessity and authorized court actions to obtain the required rights of way. For 15 years, the battle raged. A court action went to the California Supreme Court four times, and twice it was heard by the U.S. Supreme Court.

In April 1923, attorneys for the County of Los Angeles and the Rindge family, now referred to as the Marblehead Land Company, made their respective cases before the William Howard Taft-led court. Although the Rindge Company attorneys fought the case using a number of legal and constitutional defenses, only two issues remained when the case ultimately went before the U.S. Supreme Court. The other defenses, while not fully elaborated in any of the source material, may have involved administrative irregularities associated with the resolution of necessity, and vastly varying approaches to valuation and damages. After all, May wanted \$9,180,000 for the taking, a far cry from the final settlement amount of \$107,289.



The 100-foot-high Rindge Dam was built in 1925 by May Rindge, with a 574 acre-foot reservoir to control floods and conserve the water of Malibu Creek.

There were two key issues:

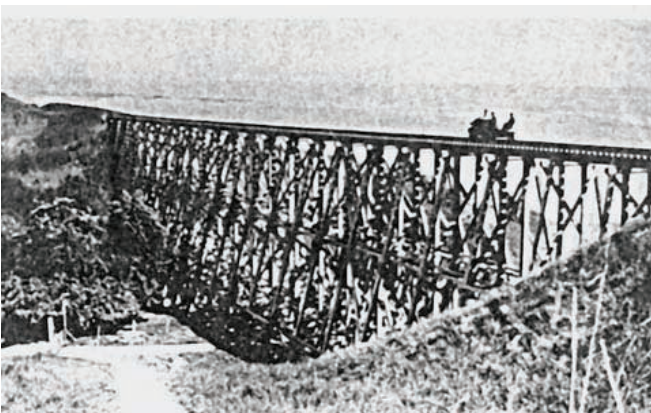
1) Was the taking an authorized public use?

The plaintiff's position: Even the ranch's attorneys had to concede that a "genuine highway . . . adapted as a convenience or necessity for public use and travel, is a public use." However, they claimed that "these particular roads" were highways in name only "shams under the name of public improvements. . .". The roads all terminated within the ranch boundaries and did not connect to any other roads at the ranch's western or northern ends. In other words, they were roads to nowhere.

The defendant's position: The county maintained that the road had several public purposes, including better access to the ranch property and better access for owners who used the ranch's internal roads for access to public roads. Its construction would provide a means for the public to enjoy "a scenic highway of great beauty."

The court's findings: The court held that the use, whether public or private, was ultimately a judicial question, and they felt compelled to be "influenced by local conditions" when enforcing the Fourteenth Amendment. The court said that when "enforcing the Fourteenth Amendment [the court] should keep in view the diversity of such conditions and regard with great respect the judgments of state courts upon what should be deemed public uses in any state." They did recognize that the taking of property for highways had been "universally recognized, from time immemorial," and acknowledged that California Code specifically declared "highways to be 'public uses' for which the right of eminent domain may be exercised."

Having somewhat demurred to the state and county to determine what constitutes a public use, the court went on gathering up nails to pound the coffin shut. Since the ranch had taken the position that the highway was a sham, the court felt compelled to respond. They held that the people on the ranch would have the use of the road, those with no adequate outlet except through



The line was completed in 1908 and remained in use until the 1920s, used mainly to ship grains and hides from the ranch operations via the Malibu Pier.

private roads would have access, and people to the east of Santa Monica, Los Angeles and other cities would also have access.

One quote on the topic included, "It is not essential that the entire community, nor even any considerable portion, should directly enjoy or participate in an improvement in order to constitute a public use."

Finally, the court found in favor of the county, stating, ". . . aside from these considerations, these roads, especially the main road, through its connection with the public road coming along the shore from Santa Monica, will afford a highway for persons desiring to travel along the shore to the county line, with a view of the ocean on one side, and the mountain range on the other, constituting . . . a scenic highway of great beauty. Public uses are not limited, in the modern view, to matters of mere business necessity and ordinary convenience, but may extend to matter of public health, recreation and enjoyment. . . A road need not be for a purpose of business to create a public exigency; air, exercise and recreation are important to the general health and welfare; pleasure travel may be accommodated as well as business travel; and highways may be condemned to places of pleasing natural scenery." (Rindge Co. v. County of Los Angeles, 262 U.S. 700 (1923))

2) Was there a public necessity for the taking?

The plaintiff's position: The attorneys for May Rindge made a two-pronged argument on the provisions of the Fourteenth Amendment. First, "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States," and second, that they had been deprived of their right to "property" without the "due process." Apparently, because there was no provision for a hearing in the state law provisions, and therefore no notice prior to adopting the resolution of necessity, the Rindges' attorneys felt they could challenge for defective law, insufficient showing of necessity and an abridgement of their constitutional rights.

The defendant's position: The County took the simple position that the resolutions passed by the County Supervisors were "conclusive evidence" as to a finding of public necessity for the highways and the state law stood on its own merits.

The court's findings: The court agreed with the county attorney that the Supervisors' adoption of the resolution by a two-thirds vote was "prima facie evidence" that the owner had not been denied due process. The court agreed with the trial judge that introducing the Supervisors vote was not prejudicial to the ranch owner. The Supreme Court deftly sidestepped the issue by ruling that this was "a matter of state law. . . the resolutions of the Board of Supervisors [were] conclusive evidence as the necessity of the taking . . . [and] The necessity for appropriating private property for public use is not a judicial question. . . This power resides in the legislature. . . or delegated. . . to public officers."

Case held: AFFIRMED

As one can readily see, this was a long grueling battle. But with the delivery of the opinion by Justice Sanford on June 11, 1923, it was clear that the government's First Amendment right to take private property for public purposes remained intact. The needs of the public were found to be paramount to the rights of the individual and the court's deference to state's rights was affirmed. The attorneys for the ranch had fought nothing more than a 15-year campaign of delay. Ultimately, it was the people and the government who prevailed in this war of attrition. May Rindge lost on all points of the law - public necessity, the validity of the highway's public use and that California state laws authorized local agencies to condemn. Perhaps the deepest wound came when May's demand for \$9,180,000 for the taking was scaled down to \$107,289. Despite her best efforts to stop the public's legal intrusion into her kingdom, and her hope to maintain the last Spanish land grant ranch, the loss made it abundantly clear that the Queen of the Malibu would never again be sole owner of that stretch of coastline.

Surveyors, bulldozers and an army of workers descended on the ranch, and by 1928, a wide highway opened the spectacular coastline to the public. May redoubled her efforts to protect the ranch, constructing high fences, fighting off squatters and maintaining the fence line patrols.

All the years of litigation, compounded by escalating ranch expenses, a failure to recognize the sea-change in Southern California land use and demand, and the extensive reconstruction of the old ranch house into a grand castle on the hill, had all contributed to the ranch's growing financial problems. Between 1929 and 1932, construction costs for the house alone ran over a half million dollars in lumber, concrete, marble, tile and hand-carved mahogany. May was forced to admit that the ranch was no longer viable and accepted that, if she did not take steps to find new revenue sources, it would not survive.

It is interesting to note that it was the Pacific Coast Highway, which she had fought so long to prevent, that May found her solution. The improved access allowed her to lease portions of her oceanfront property, although she balked at the thought of sale. Even though she granted only 10-year leases, the Hollywood crowd, led by John Gilbert, Ronald Coleman and Corinne Griffith, flocked to build expensive homes in what would come to be known as the Malibu Colony. A narrow road, a gatekeeper who barred non-residents and their guests, and a lack of phone service made this an extremely secluded playground for the rich and famous, much like the environment the Rindges sought when they bought the ranch. Availing herself of the new highway, May also abandoned her private railroad in order to conserve money. And finally, acknowledging the strong demand for decorative tiles for the Mediterranean and Spanish homes being built throughout Southern California, the ranch's, May was able to use the abundance of red and buff clays and plentiful water to establish Malibu Potteries in 1926. Customers, using the newly completed highway, flocked



May Rindge created a ceramic tile factory in an attempt to offset financial difficulties and avoid selling her property.

to the factory to place their orders, including Simon Rodia, who trucked off shards of tile that he used to fashion into the Rodia Towers (also known as the Watts Towers). Although the factory produced tiles predominantly for the Southern California market, the factory artisans also made tiles to be shipped worldwide. In fact, you can find 23 large 1928 neoclassical modern tile panels in the Los Angeles City Hall.

Nevertheless, the gathering clouds of the Great Depression could not be prevented, and the ranch's fortunes steadily declined. The Malibu Potteries factory closed its doors in 1932, construction on the Rindge Castle on Laudamus Hill ceased, never to be finished, and the Marblehead Land Company, no longer able to meet expenses, filed a petition for bankruptcy in 1936. The company was reorganized, and the ranch land was divided into oceanfront lots, acreage for small ranches and land appropriate for hotels. In 1940, the entire ranch went up for sale.

Her world in tatters, her precious land continuing to teeter in insolvency, practically penniless and no doubt suffering from a broken heart at the loss of her American Riviera, May Rindge passed away on February 8, 1941 at the age of 76. Though defeated by the pressures of population, progress and shifting economics, May undeniably left a legacy of an indefatigable spirit with great courage.



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A longstanding member of IRWA, Larry held numerous positions with Chapter 67, including Chapter President. Following a 35-year career with the California Department of Transportation, he retired in 2005. Since then, he has focused on traveling the globe while awaiting his next right of way consulting "dream" job from his home in Monument, Colorado.