IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

No. S213468

CITY OF PERRIS,
Plaintiff and Respondent,

v.

RICHARD C. STAMPER, et al.,
Defendants and Appellants.

After an Opinion by the Court of Appeal,
Fourth Appellate District, Division Two
(Case No. E053395)

On Appeal from the Superior Court of Riverside County
(Case No. RIC524291, Honorable Dallas Holmes, Judge)

APPLICATION TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION AND NFIB SMALL BUSINESS LEGAL CENTER IN SUPPORT OF STAMPER, ET AL.

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APPLICATION TO FILE BRIEF AMICUS CURIAE

Pursuant to California Rule of Court 8.520(f),[1] Pacific Legal Foundation and the National Federation of Independent Business Small Business Legal Center (NFIB Legal Center) request leave to file the attached brief amicus curiae in support of Defendants/Appellants Richard C. Stamper, et al., in support of reversal of the lower court's decision on the project-effect issue. Amici are familiar with the issues and believe the attached brief will aid the Court in its consideration of this appeal.

IDENTITY AND INTEREST OF AMICI CURIAE

Pacific Legal Foundation (PLF) is a nonprofit, tax-exempt corporation organized under California law for the purpose of litigating matters affecting the public interest. PLF's work is supported by the contributions of individuals who want to ensure strong protections for private property rights. Since its founding in 1973, PLF has been a leading voice for property rights, and has participated in numerous cases in the California courts and the United States Supreme Court. *See, e.g.*, *Koontz v. St. Johns River Water Mgmt. Dist.*, 133 S. Ct. 2586 (2013); *Sackett v. EPA*, 132 S. Ct. 1367 (2012); *Mt. San*

[1] Pursuant to California Rule of Court 8.520, Amici affirm that no counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than Amici, their members, or their counsel made a monetary contribution to its preparation or submission.

Jacinto Cmty. Coll. Dist. v. Superior Court, 40 Cal. 4th 648 (2007); *Metro. Water Dist. of S. Cal. v. Campus Crusade for Christ, Inc.*, 41 Cal. 4th 954 (2007); and *Nollan v. Cal. Coastal Comm'n*, 483 U.S. 825 (1987). PLF attorneys also have published scholarly works on the subject of eminent domain and property rights generally. *See* Timothy Sandefur, *Mine and Thine Distinct: What Kelo Says About Our Path*, 10 Chap. L. Rev. 1 (2006); James Burling, *The Latest Take on Background Principles and the States' Law of Property After Lucas and Palazzolo*, 24 U. Haw. L. Rev. 497 (2002). Because of its history and experience with private property rights and eminent domain issues, PLF believes that its perspective will aid this Court in considering the arguments of the parties.

The National Federation of Independent Business Small Business Legal Center (NFIB Legal Center), is a nonprofit, public interest law firm and is the legal arm of the National Federation of Independent Business (NFIB). NFIB is the nation's leading small business association, representing about 350,000 businesses across the United States. A large portion of NFIB's membership is in California.

To fulfill its role as the voice for small business, the NFIB Legal Center frequently files amicus briefs in cases that will impact small businesses. NFIB Legal Center seeks to file here because this case raises fundamental questions as to how commercial property owners should be compensated in eminent

domain actions. The issue is of great practical importance to small business owners.

SUMMARY OF ARGUMENT

The City of Perris (City) seeks to condemn 20 percent of a parcel of property (Stamper Property) owned by Richard C. Stamper, Donald D. Robinson, and Donald Dean Robinson, LLC (Owners) for a road as part of its Indian Avenue Realignment Project (Project). Def. Ans. Brief, at 1. The Project will bisect the Stamper Property, leaving the Owners with two irregularly shaped remainder parcels. *See id.* Although the Stamper Property is zoned for light industrial use, the City claims it need only compensate the Owners based on the land's far less valuable agricultural use. *Id.* at 6, 13. The City contends that if the Owners sought to develop their land, it would require them to dedicate to the City, for free, the same piece of land it seeks to condemn as a condition of development. Pl. Op. Brief, at 8. According to the City, because the City's general plan identifies that land as a roadway, and city ordinances would require its dedication as a condition of development, that land will never be used for anything but agriculture. *Id.* at 8, 15. Therefore, the City need only compensate the Owners accordingly. *Id.* at 15.

But under state law, the Owners are entitled to receive fair market value for their property as just compensation in an eminent domain proceeding, and that includes considering the land's highest and best use. Code Civ. Proc.

§ 1263.310; *People ex rel. State Public Works Bd. v. Talleur*, 79 Cal. App. 3d 690, 695 (1978). The City cannot insulate itself from that requirement by designating land it wants to acquire in its general plan, because the law forbids government from reducing condemnation awards on account of the project for which it needs the land. Code Civ. Proc. § 1263.330. Under this "project-effect rule," the City cannot use its general plan to freeze forever the Stamper Property in its current agricultural use, in order to acquire it cheaply via eminent domain. But for the City's Project, the Owners would not be required to dedicate their property to the City as a condition of development. *City of Perris v. Stamper*, 160 Cal. Rptr. 3d 635, 658 (2013). Hence, that dedication requirement must be ignored in determining the property's fair market value.

In addition, this Court should interpret the project-effect statute to encompass the City's dedication requirement to avoid a construction that would implicate the requirement's constitutionality. *See Council of San Benito Cnty. Gov'ts v. Hollister Inn, Inc.*, 209 Cal. App. 4th 473, 493 (2012). Under the state and federal constitutions, where government seeks property as a condition of development, it must show that the dedication requirement is closely related—both in nature and extent—to the impacts of the proposed development so that it directly mitigates for those impacts on public infrastructure. *Dolan v. City of Tigard*, 512 U.S. 374, 391 (1994). When

considering hypothetical dedication requirements in an eminent domain proceeding, the burden still falls on the government to show that close connection. *See City of Hollister v. McCullough*, 26 Cal. App. 4th 289, 298-300 (1994). Here, the City has not shown that the future development of the Stamper Property would generate impacts requiring a 20 percent real property dedication. *See City of Perris*, 160 Cal. Rptr. 3d at 650. For that reason, the Court would be required to find the dedication requirement unconstitutional, were it to hold that the project-effect rule does not apply here. Because the City's own need for the Owners' property cannot be used to influence its fair market value in this condemnation action, the Court should find that the project-effect rule applies to this case.

The court of appeal improperly carved out an exception to the project-effect rule for the City's dedication requirement on the basis that it was "free-standing" from the City's Project, and it "applied across the board to all development within the community." *Id.* at 660. Neither the statute, nor case law, supports such an exception. To the contrary, they affirm that government may not use its police power to discriminate against property so that it can acquire it cheaply via eminent domain. *See*, *e.g.*, *City of San Diego v. Rancho Penasquitos P'ship*, 105 Cal. App. 4th 1013, 1038-40 (2013). This Court should affirm that principle and reverse the decision below on the project-effect issue.

ARGUMENT

I

LOCAL GOVERNMENTS CANNOT AVOID PAYING FAIR MARKET VALUE IN EMINENT DOMAIN PROCEEDINGS UNDER THE PROJECT-EFFECT RULE BY AMENDING THEIR GENERAL PLANS

A. The Project-Effect Rule Protects the Right to Just Compensation

The state and federal constitutions require government to pay just compensation when it takes private property for public use. Cal. Const. art. I, § 19(a);[2] U.S. Const. amend. V.[3] Under California law, the measure of just compensation in an eminent domain proceeding is the property's "fair market value." Code Civ. Proc. § 1263.310; *City of San Diego v. Neumann*, 6 Cal. 4th 738, 743-44 (1993). Fair market value is the "highest price on the date of valuation," to which a willing seller and buyer would agree, "each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available." Code Civ. Proc. § 1263.320(a). Hence, the property's fair market value is not based on the

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[2] The provision reads: "Private property may be taken or damaged for a public use and only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner."

[3] It provides: "nor shall private property be taken for public use, without just compensation."

land's current use alone, but encompasses the "highest and most profitable use to which the property might be put in the reasonably near future." *Talleur*, 79 Cal. App. 3d at 695.

Governments may take into consideration the impacts of land use regulations on a property's worth when determining fair market value. *S. Bay Irrigation Dist. v. California-American Water Co.*, 61 Cal. App. 3d 944, 980-81 (1976) ("A diminution in the value of property resulting from a valid exercise of the police power . . . will not support an award in the amount thereof as just compensation in an eminent domain action."). The reason is that a willing seller and buyer would also take such regulations into account when reaching a bargained-for price. *Talleur*, 79 Cal. App. 3d at 695-96. Where government seeks to condemn vacant land, fair market value should reflect the regulatory costs the owner would incur were he to develop it—in order to put the land to its highest and best use—because again, that is something a willing seller and buyer would consider. *See id.*

Government may not, however, consider influences on a property's value stemming from its own need for the property. *City of San Diego v. Barratt Am. Inc.*, 128 Cal. App. 4th 917, 934 (2005). The Legislature codified this project-effect rule as follows:

> The fair market value of the property taken shall not include any increase or decrease in the value of the property that is attributable to any of the following:

> (a) The project for which the property is taken.
>
> (b) The eminent domain proceeding in which the property is taken.
>
> (c) Any preliminary actions of the plaintiff relating to the taking of the property.

Code Civ. Proc. § 1263.330. Under this rule, neither government nor private property owners may introduce evidence of how the project—which necessitated the government's use of eminent domain—will impact the value of the condemned land. *Rancho Penasquitos P'ship*, 105 Cal. App. 4th at 1029 ("[C]hanges in land use, to the extent that they were influenced by the proposed improvement, [are] properly excluded from consideration in evaluating the property taken." (citation omitted)). Thus, if government condemns property for a reservoir, the owner cannot claim that the land should be valued as if it were lakefront property. *See generally*, Miller & Starr, 11 Cal. Real Estate § 30A:24 (3d ed.). Conversely, if government condemns property for a waste-treatment plant, it cannot claim that the land's value should be lowered on account of foul smells and other negative impacts associated with that land use. *Id*.

This rule ensures that government pays fair market value for condemned property. Insulating the valuation calculus from government's own actions preserves the hypothetical "willing seller/willing buyer" standard and avoids government manipulation of the market. *Cnty. of San Diego v.*

Rancho Vista Del Mar, Inc., 16 Cal. App. 4th 1046, 1062 (1993) ("[W]here the market or demand is created by the government, then valuing the property on that basis is improper; such a valuation is tantamount to a valuation of the property in the hands of the condemnor."). Weeding out those government influences supports the purpose of an eminent domain proceeding, which is to put the owner in "as good a position" as if his land had not been taken. *People ex rel. Dep't of Transp. v. Clauser/Wells P'ship*, 95 Cal. App. 4th 1066, 1072-73 (2002).

B. The Project-Effect Rule Applies to the City's Dedication Requirement

In this case, the City argues the project-effect rule does not apply to its condemnation of 20 percent of the Stamper Property because that exact strip of land is subject to a dedication requirement. *See* Pl. Op. Brief, at 35. And, according to the City, the project-effect rule does not apply to dedication requirements. *Id*. But this Court should find that there is no such exception to the rule.

Code of Civil Procedure Section 1263.330 does not mention dedication requirements. To the contrary, it is drafted broadly and requires excluding from valuation "any increase or decrease in the value of property . . . attributable to: (a) [t]he project for which the property is taken; (b) [t]he eminent domain proceeding . . . or (c) [a]ny preliminary actions of the plaintiff relating to the taking of the property." Code Civ. Proc. § 1263.330(a)-(c).

Under the statute's plain language, "the project for which the property is being taken" must be excluded from valuation. The City has not offered any explanation, or pointed to any rule of statutory interpretation, that would justify the blanket exemption it claims exists for all dedication requirements. *See* Pl. Op. Brief, at 35.

The Court need not decide whether all dedication requirements are always subject to the project-effect rule. Rather, where, as here, a dedication requirement stems solely from the government's anticipated need for the property, rather than from mitigation for the effects of private development, it is an effect "attributable to the project for which the property is [being] taken" that must be excluded. Code Civ. Proc. § 1263.330(a). As the court of appeal stated, "there would be no requirement of a dedication of property for Indian Avenue, if the Indian Avenue project did not exist." *City of Perris*, 160 Cal. Rptr. 3d at 658. That statement, which the City does not dispute, proves the Owners' point. *See* Pl. Op. Brief, at 7 ("As set forth in the City's Resolution of Necessity, the Project is defined clearly as an 'acquisition of the Subject Interests for the Construction of Indian Avenue Improvements.' " (citations omitted)). By comparison, a dedication requirement obligating the Owners to widen the adjacent streets in order to accommodate increased traffic from the development of their land, does not pose the same problem. *See* Def's Brief, at 29. Such a requirement would exist regardless of any

City-driven project, in order to mitigate for the impacts of the Owners' private development of their property on public infrastructure.

The City's act of amending its general plan to map out roadways it intends to acquire also falls squarely within subsection (c) of the statute. It is a "preliminary action[] . . . relating to the taking of the property" that must be excluded from valuation. Code Civ. Proc. § 1263.330(c). The gap in time between enacting the general plan amendment and this eminent domain proceeding is not legally significant because the acknowledged purpose of the amendment was to lay the groundwork for the Indian Avenue project. "There is nothing in the language of section 1263.330 stating that an eminent domain proceeding must be 'imminent' or 'impending' for an action by the plaintiff to be considered a 'preliminary action' related to the taking of the property." *Rancho Penasquitos P'ship*, 105 Cal. App. 4th at 1039. Again, the plain language of Section 1263.330(c) does not exclude dedication requirements simply because they exist in a City's general plan. But more importantly, excluding value-impacts from this type of preliminary action is crucial for preserving the fair market calculation of just compensation: "To hold otherwise would permit a public body to depress the market value of the property for the purpose of acquiring it at less than market value." *Buena Park Sch. Dist. v. Metrim Corp.*, 176 Cal. App. 2d 255, 259 (1959).

That is exactly what the City did here. By mapping the Indian Avenue realignment project to bisect the Stamper Property, the City tried to ensure that it would never have to pay fair market value for that land. As it claims in its brief, *see* Pet. Op. Brief, at 8, because City ordinances require property owners to dedicate all property mapped for roadways in the City's general plan as a condition of development, the City would get that land for free (in theory) if its owners ever sought to develop the surrounding acreage. As a result, the Owners would never be able to use the dedicated land for its highest and best use. Either it would remain at its current use—i.e. for agriculture—or, the Owners would have to dedicate it to the City in exchange for a development permit.

By the City's reasoning, it can depress the value of any land it wants to acquire—and simultaneously insulate itself from the project-effect rule—merely by amending its general plan. There would be nothing to stop it, for example, from designating 90 percent of a privately-owned, vacant parcel as a roadway. Later in an eminent domain action, it could claim that it need only pay for the land according to its current use because the roadway is mapped into the City's general plan, and therefore the City would require the owner to dedicate 90 percent of it to the City, for free, were the remaining 10 percent to be developed. Fortunately, California law does not condone that end-run around the project-effect rule. Case law makes clear that this type of

preliminary activity—"discriminat[ing] against . . . particular . . . parcels of land in order to depress their value with a view to future takings in eminent domain,"—is subject to the project-effect rule. *People ex rel. Dep't of Pub. Works v. S. Pac. Transp. Co.*, 33 Cal. App. 3d 960, 965 (1972).

For example, in *Rancho Penasquitos Partnership*, 105 Cal. App. 4th at 1020-21, the city enacted zoning restrictions to prevent development of land it intended to acquire for a freeway. It later filed an eminent domain action to acquire 10 acres of vacant, privately-owned property for the project. *Id*. at 1021. In valuing the property at trial, the parties argued over whether the city's restrictive zoning should be allowed to influence the property's fair market value. *Id*. The court of appeal said it could not and that the zoning restriction must be ignored because it was a "preliminary action [of the city's freeway project] relating to the taking of the property" under Code of Civil Procedure Section 1263.330(c). *Id*. at 1038-39. And in addition, the city's zoning activity fell afoul of the common law prohibition against using land use controls to depress property values ahead of an eminent domain action. *Id*. at 1040.

There is no substantive difference between enacting a zoning ordinance targeting specific parcels of land for an anticipated project, and mapping out land for an anticipated project in a general plan amendment. In fact, these two land use tools—zoning and general plan amendments—go hand in hand and

must be consistent with one another in order to be valid. *Lesher Commc'ns, Inc. v. City of Walnut Creek*, 52 Cal. 3d 531, 541 (1990) ("A zoning ordinance that is inconsistent with the general plan is invalid when passed."). A general plan is a "charter for future development" and because zoning ordinances serve as the means to implement that charter, they must conform to it. *See id.* at 540. Where a city uses either its zoning or general plan amendment authority to set aside property for itself so that it may acquire it more cheaply in the future, such action is invalid. *See S. Pac. Transp. Co.*, 33 Cal. App. 3d at 965 (finding a zoning ordinance invalid where it "discriminated against a particular parcel or parcels of land in order to depress their value with a view to future takings in eminent domain"). *See also People ex rel. Dep't of Pub. Works v. Graziadio*, 131 Cal. App. 2d 525, 530 (1964) (jury must consider evidence that city enacted restrictive zoning to depress property values in anticipation of highway project to determine whether zoning was project effect to be ignored in just compensation valuation); *Barratt*, 128 Cal. App. 4th at 938 (invalidating city's method of valuing property because it relied on "de facto restrictions on upzoning" which were caused by the project).

The Court of Civil Appeals of Texas provided an apt explanation for why such an exercise of government power is unlawful:

> [I]n exercising the police power, the governmental agency is acting as an arbiter of disputes among groups and individuals for the purpose of resolving conflicts among competing interests. This is the role in which government acts when it adopts zoning

> ordinances, enacts health measures, adopts building codes, abates nuisances, or adopts a host of other regulations. . . . But where the purpose of the governmental action is the prevention of development of land that would increase the cost of a planned future acquisition of such land by government, the situation is patently different. . . . [G]overnment . . . can no longer pretend to be acting as a neutral arbiter. . . . Instead, it has placed a heavy governmental thumb on the scales to insure that in the forthcoming dispute between it and one . . . of its citizens, the scales will tip in its own favor.

San Antonio River Auth. v. Garrett Bros., 528 S.W. 2d 266, 273-74 (Tex. Civ. App. 1975); *accord Joint Ventures, Inc. v. Dep't of Transp*., 563 So. 2d 622, 626 (Fla. 1990). Here, the same is true: the City is using its general plan amendment authority to place its "thumb on the scale" in this eminent domain action to avoid paying fair market value to the Owners. But the Court need not find that the City abused its police power in enacting the general plan in the first place—only that it relied on its own need for the Owners' land as codified in the plan—to reduce its just compensation obligation. *See Rancho Penasquitos P'ship*, 105 Cal. App. 4th at 1033 (noting court was not obligated to find zoning restriction an unlawful exercise of police power where landowner in eminent domain proceeding argued only that adoption of zoning restriction was "predicated upon the taking itself" and therefore had to be excluded from valuation).

C. Applying the Project-Effect Rule in this Case Does Not Eviscerate the *Fresno/Porterville* Doctrine

The City sets up a straw man when it argues that applying the project-effect rule here means a property's fair market value can never take into account dedication requirements. As noted, when government seeks to condemn vacant land, it may consider restraints on development. *See infra*, Part I.A. Those restraints may include dedications of real property an owner would have to convey to the government before developing his land to its highest and best use. *See People ex rel. Dep't of Pub. Works v. Investors Diversified Servs., Inc.*, 262 Cal. App. 2d 367, 376 (1968) (requiring consideration of both the benefits and burdens of upzoning property in valuing land). That is the essence of the *Fresno/Porterville* Doctrine, which holds: " 'Where there is a reasonable probability that a public agency would require dedication of the take as a condition of development, the take should be valued based on the use that can be made of the property in its undeveloped state.' " *State Route 4 Bypass Auth. v. Superior Court*, 153 Cal. App. 4th 1546, 1550 (2007) (quoting *Contra Costa Cnty. Flood Control & Water Conservation Dist. v. Lone Tree Invs.*, 7 Cal. App. 4th 930, 937 (1992)). But the project-effect rule still applies and serves to ferret out dedication requirements imposed solely to benefit the government's project, from those required as mitigation for the impacts of private development. *See State Route 4 Bypass Auth.*, 153 Cal. App. 4th at 1551-52 (finding agency could value at its current

use only that portion of the condemned land the owners would have to dedicate to develop their property; the remaining portion had to reflect the land's highest and best use).

In *City of Fresno v. Cloud*, 26 Cal. App. 3d 113, 114 (1972), one of the cases after which the doctrine is named, the city sought to condemn 40-foot strips of privately-owned land to widen city streets. Although the land was zoned for residential-agricultural uses, the property owners argued that its highest and best use would be for multiple-residential and/or commercial purposes, and that the city would authorize the property's rezoning for those uses. *Id*. at 116-17. The city argued that it would approve a rezoning only if the owners dedicated land to the city to widen the adjoining streets. *Id*. at 119. The city relied on its zoning policy which allowed the city council to require dedications for street widening as a condition of a zoning change, if the change would cause increased traffic on the surrounding streets. *Id*. The court held that in valuing the property on remand, the trial court must consider the city's evidence that the owners would be required to dedicate the very land that the city was condemning, as a precondition to upzoning their land to its highest and best use. *Id*. at 123. If the owners would be required to dedicate that land in order to rezone their parcels, the condemned land should be valued according to its existing use. *Id*. In *City of Porterville v. Young*, 195 Cal. App. 3d 1260, 1269 (1987), the court held that the same rule applied to land that,

although already zoned for commercial purposes, would be required to be dedicated to the city for road-widening to obtain building permits to develop the land for commercial use.

In *City of Fresno*, *City of Porterville*, and other cases applying the *Fresno/Porterville* Doctrine, *see, e.g.*, *State Route 4 Bypass Auth.*, 153 Cal. App. 4th at 1551-52, 1559, government was allowed to value the condemned property—or portions of it—according to its existing use, because the owner would have had to dedicate that land as a condition of putting the remainder to its highest and best use *in order to mitigate the impacts of those intensified uses on public infrastructure*. That is the key to distinguishing between dedication requirements that may be considered in valuing property from those that may not: the former would mitigate for the impacts of intensified land use were the owner to develop his property; the latter would not exist but for the government's project.

The court of appeal relied on this distinction in *City of Hollister v. McCullough*, 26 Cal. App. 4th 289, 298 (1994), where it explained that the city could rely only on evidence of a dedication requirement in an eminent domain proceeding where that requirement was "reasonably related to the owner's proposed use of the property." There, the city argued that it could avoid paying severance damages for condemning a slice out of the middle of defendant's property for a road. It claimed that, because the road appeared on

the city's general plan, it could require dedication of the same strip of land it sought to condemn, if the owner tried to develop the parcel in the future. The court rejected that argument, finding that the dedication requirement was not related to the defendant's proposed highest and best use of the land—or any additional burdens such use would place on municipal services. *Id*. at 298. Rather, the court found the city was requiring the dedication in order to promote "general municipal objectives," including conforming the city's streets to its general plan by building a street through the defendant's property. *Id*. at 299-300. As a result, the city could not rely on the dedication requirement to reduce its damages award to the property owner, even though the city's general plan—showing the street bisecting defendant's property—had been in place for twenty years. *Id*.

Here, the City is using the same reasoning as the City of Hollister to avoid its obligation to pay fair market value to the Owners. The Owners do not contest that, were they to develop their land for an industrial use, the City could lawfully require them to dedicate land for widening the adjacent roads in order to accommodate the increased traffic from their parcel. Def. Ans. Brief, at 11, 27-28. Under *City of Hollister*, such a dedication could be considered in a just compensation proceeding because it would be "reasonably related to the owner's proposed use of the property." 26 Cal. 4th at 298. But the City's argument fails here for the same reason the City of Hollister's did:

The dedication is not related to the Owners' proposed use of their property. Moreover, *City of Hollister* emphasizes that the City's gap in time between adopting its general plan amendment and this eminent domain action is irrelevant to determining whether the project stems from the City's need for the land, or from the Owners' own use of it. *Id.*

There is no question that the City may, pursuant to its police powers, enact a general plan placing a road through the Stamper Property, and exercise its power of eminent domain to acquire that road. But it cannot avoid paying fair market value for that property by trying to disguise the dedication requirement—that stems from its own roadway project—as a run-of-the-mill dedication requirement that would be required to mitigate the alleged impacts of private development. If the City wants to realign Indian Avenue through the Owners' property, it must pay them fair market value for it.

II

APPLYING THE PROJECT-EFFECT RULE TO THE CITY'S DEDICATION REQUIREMENT AVOIDS HAVING TO ADJUDICATE ITS CONSTITUTIONALITY

The Court should also find that the project-effect rule applies to the dedication requirement in this case, because otherwise, it must decide whether the dedication satisfies constitutional standards. Under the "constitutional avoidance" canon, courts must avoid ruling on constitutional questions where a fair interpretation of a statute obviates the need to do so. *Santa Clara Cnty.*

Local Transp. Auth. v. Guardino, 11 Cal. 4th 220, 230 (1995) (courts are constrained to avoid constitutional questions where other grounds are available and dispositive of the issues of the case). Relatedly, courts should avoid interpretations of statutes that raise serious constitutional questions. *Myers v. Philip Morris Cos., Inc.*, 28 Cal. 4th 828, 846 (2002) ("An established rule of statutory construction requires us to construe statutes to avoid 'constitutional infirmit[ies].' " (citations omitted)); *see also Ass'n for Retarded Citizens v. Dep't of Developmental Services*, 38 Cal. 3d 384, 394, (1985) ("When faced with a statute reasonably susceptible of two or more interpretations, of which at least one raises constitutional questions, we should construe it in a manner that avoids any doubt about its validity."). Here, adopting the City's interpretation of Section 1263.330 would both requires this Court (or the trial court on remand) to reach an unnecessary constitutional issue, and raise serious constitutional concerns. For if the project-effect rule never applies to dedication requirements, as the City contends, government will always be able to impose dedication requirements in anticipation of its own development needs, contrary to the state and federal constitutions.

Under California law, hypothetical dedication requirements must be lawful, of their own accord, in order to offset a just compensation award in an eminent domain proceeding. *See State Route 4 Bypass Auth.*, 153 Cal. App. 4th at 289; *City of Hollister*, 26 Cal. App. 4th at 298. Thus, a trial court must

consider not only whether it is reasonably probable that the government would require a dedication before the owner could put the land to its highest and best use, but also whether such a dedication would be "constitutionally permissible." *City of Hollister*, 26 Cal. App. 4th at 297. Dedications are constitutionally permissible when they satisfy the "essential nexus" and "rough proportionality" standards of *Nollan*, 483 U.S. at 837, and *Dolan*, 512 U.S. 391.[4] *Nollan* requires an "essential nexus" between the dedication requirement, and the mitigation of harm that would otherwise be caused by the development sought to be permitted. 483 U.S. at 837. Under *Dolan*, the size of that dedication requirement must be "roughly proportional" to that potential harm. 512 U.S. at 391. Together, these cases require that dedication requirements mitigate directly—"both in nature and extent"—for "the impact of . . . proposed development." *Dolan*, 512 U.S. at 391. Importantly, the government bears the burden of establishing that direct link. *See id.* ("[T]he city must make some sort of individualized determination" that the dedication is roughly proportional and closely related to the impacts of development.). Where government cannot meet that standard, dedication requirements are unconstitutional because they require the landowner to give up real property

[4] The *Nollan* and *Dolan* standards apply to evaluating unconstitutional land-use conditions under Article I, section 19 of the California Constitution. *See San Remo Hotel, L.P. v. City & Cnty. of San Francisco*, 27 Cal. 4th 643, 664 (2002); *Hensler v. City of Glendale*, 8 Cal. 4th 1, 9 n.4 (1994).

without just compensation, in violation of the Fifth Amendment.[5] *See Koontz*, 133 S. Ct. at 2594 ("*Nollan* and *Dolan* 'involve a special application' of the [unconstitutional conditions] doctrine that protects the Fifth Amendment right to just compensation for property the government takes when owners apply for land-use permits." (quoting *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 547 (2005)).

When applying *Nollan* and *Dolan* to hypothetical dedication requirements in eminent domain proceedings, the burden still remains on the government to show that the dedication directly mitigates for the impacts of proposed development. *See State Route 4 Bypass Auth.*, 153 Cal. App. 4th at 1559-60; *see also City of Hollister*, 26 Cal. App. 4th at 298-300. The court of appeal in this case correctly surmised that:

> Though it is difficult to gauge the nature and extent of a hypothetical development project's impacts when no specific development proposal has been made, the impacts must nonetheless be reasonably determined in the condemnation proceeding, and the trier of fact must determine whether those impacts are roughly proportionate to the hypothetical dedication condition.

City of Perris, 160 Cal. Rptr. 3d at 657. This Court should not free the government from its burden to show that the dedication requirement lawfully

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[5] The requirement that government pay just compensation for the taking of private property for public use has been incorporated against the states via the Due Process Clause of the Fourteenth Amendment. *Chi., Burlington & Quincy R.R. v. City of Chicago*, 166 U.S. 226, 241 (1897).

mitigates for the impacts of private development on public infrastructure; such an undermining of *Nollan* and *Dolan* would allow government to reduce the amount of compensation it pays in eminent domain proceedings, thereby burdening the Fifth Amendment rights of the property owners whose land it condemns. *See Koontz*, 133 S. Ct. at 2596 ("Extortionate demands for property in the land-use permitting context run afoul of the Takings Clause not because they take property but because they impermissibly burden the right not to have property taken without just compensation."). The injury is constitutionally indistinguishable from dedication conditions imposed directly on development that fail the *Nollan* and *Dolan* standards. In both cases, a property owner risks being deprived of just compensation for the taking of his land, because government is using its permitting authority to take from the owner more than would be required to mitigate for the impacts of development. *See Nollan*, 483 U.S. at 837 (explaining that dedication requirements that fail to mitigate for the impacts of development are "an out-and-out plan of extortion") (citation omitted)).

Here, the City has not satisfied its burden of showing that any proposed private development of the Stamper Property would create impacts on public infrastructure justifying a 20 percent dedication requirement. The City frankly admitted during trial that it never considered how development of the Stamper Property would impact traffic on the adjacent roads. *City of Perris*, 160 Cal.

Rptr. 3d at 650. The Owners do not contest the City's authority to impose a requirement that they dedicate nine-foot-wide strips along the two existing roads, in order to widen them. Such a requirement would serve to alleviate traffic impacts caused by the Owners' development of their land. But the City's additional dedication requirement of 20 percent of land from the middle of the Owners' property flunks the *Nollan* and *Dolan* standards because it is unrelated to the impacts of any potential private development.

The City's recitation of the general benefits that the Owners will enjoy from owning property in a City that has adequate roads does not save this dedication requirement from its constitutional infirmity. *See* Plaintiff's Reply Brief, at 1-2. As the court of appeal explained in *City of Hollister*, evidence showing how a dedication requirement will "promot[e] general municipal objectives" is insufficient to allow government to deduct such a dedication from the valuation of the property. 26 Cal. App. 4th at 298. Rather, where, as here, the condition sought to be imposed is "not reasonably related to the landowner's proposed use, but [is] imposed by a public entity to shift the burden of providing the cost of a public benefit to one not responsible, or only remotely or speculatively benefitting from it," *id.*, government may not rely on that condition to offset its just compensation award. But this Court can, and should, avoid deciding this question by holding that the dedication requirement violates the project-effect rule because it stems from the City's own need for

the property, rather than from the alleviation of the impacts of private development on public infrastructure.

CONCLUSION

This Court should reverse the project-effect rule portion of the decision below and hold that the City's dedication requirement is a project-effect that must be ignored in determining fair market value.

DATED: April 11, 2014.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to California Rule of Court 8.204(c)(1), I hereby certify that the foregoing APPLICATION TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION AND NFIB SMALL BUSINESS LEGAL CENTER IN SUPPORT OF STAMPER, ET AL. is proportionately spaced, has a typeface of 13 points or more, and contains 6,222 words.

DATED: April 11, 2014.

_____

PAUL J. BEARD II

DECLARATION OF SERVICE BY MAIL

I, SUZANNE M. MACDONALD, declare as follows:

I am a resident of the State of California, residing or employed in Sacramento, California.

I am over the age of 18 years and am not a party to the above-entitled action.

My business address is 930 G Street, Sacramento, California 95814.

On April 11, 2014, true copies of APPLICATION TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION AND NFIB SMALL BUSINESS LEGAL CENTER IN SUPPORT OF STAMPER, ET AL. were placed in envelopes addressed to:

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which envelopes, with postage thereon fully prepaid, were then sealed and deposited in a mailbox regularly maintained by the United States Postal Service in Sacramento, California.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this 11th day of April, 2014, at Sacramento, California.

_____
SUZANNE M. MACDONALD