

# CALIFORNIA SUPREME COURT AT THE INTERSECTION OF DEDICATIONS AND TAKINGS (whatever that means)

By:

Craig Farrington

Partner, Woodruff, Spradlin & Smart

Rick Friess

Partner, Allen Matkins

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APPRAISAL INSTITUTE, SOUTHERN CALIFORNIA CHAPTER

# Some Basics

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- Power of Eminent Domain
- Just Compensation
  - ❖ Highest and Best Use
  - ❖ Reasonable Probability of a Zone Change
  - ❖ Reasonable Probability of a Dedication

# Dedications in the Eminent Domain Context

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## Key Cases:

- City of Fresno v. Cloud  
26 Cal.App.3d 113 (1972)
- City of Porterville v. Young  
195 Cal.App.3d 1260 (1987)
- Nollan v. California Coastal Commission  
483 U.S. 825 (1987)
- Dolan v. City of Tigard  
512 U.S. 374 (1994)

# City of Fresno v. Cloud

## 26 Cal.App.3d 113 (1972)

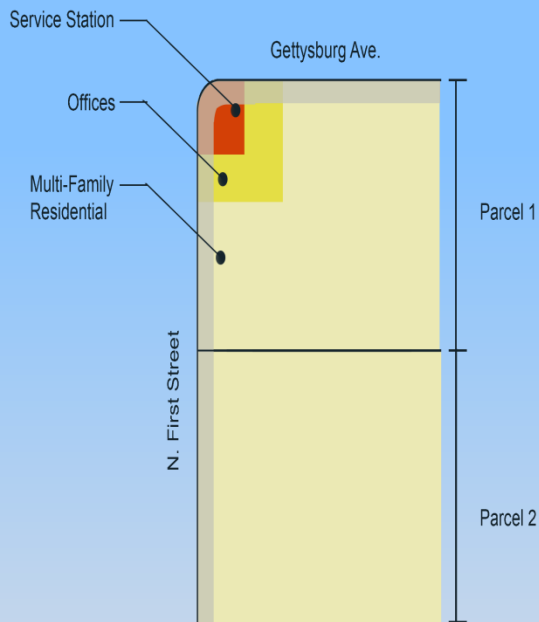
### Facts

- City brought an action to condemn 40' strips across two parcels to widen roads (direct condemnation)
- Zoning was R-A (Residential Agricultural), limiting site's use to residential, agricultural, and similar low-density uses
- The streets were part of the city's "master plan of streets and highways" which called for additional width
- The city had a policy which required street dedications from the landowner sufficient to conform the streets to the master plan if the landowner proposed any change to the existing zoning which caused in an increase in vehicular traffic.

# City of Fresno v. Cloud

## 26 Cal. App. 3d 113 (1972)

### Defendants' (landowners') Argument

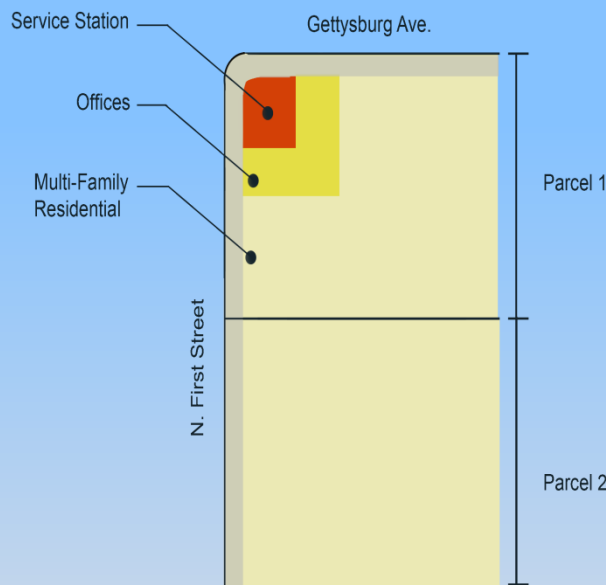


- Highest and best use of Parcel 1 was three zones: one for a service station (valued at \$2.50/SF), one for professional offices (\$1/SF) and one for multi-family residential (\$13,500/acre)
- Highest and best use for Parcel 2 was entirely multi-family residential. (\$13,500/acre)
- Value of the take from Parcel 1 was \$23,334 calculated by adding the values of the square footage of the takes from the three different zones.

# City of Fresno v. Cloud

## 26 Cal. App. 3d 113 (1972)

### Plaintiff's (City's) Argument



- Agreed that the highest and best use for Parcel 1 was three different zones and that Parcel 2 was a single multi-family zone.
- However, the City wanted to argue that the land taken could never be used for a use greater than the existing zoning because any up-zoning would increase traffic, which would require the take to be dedicated to the city
- The City also wanted to apply the “slide back” theory, meaning the highest valued zones (the service station and offices) could be preserved by simply sliding them back from the take. The value of the entire site could then be calculated in the after condition with the zones intact.

# City of Fresno v. Cloud

## 26 Cal. App. 3d 113 (1972)

### The Court's Holding

- The City should have been allowed to enter testimony that the dedications would be required as a condition of any up-zoning:
  - “appraisers c[an] take into consideration the reasonable probability of more favorable zoning changes in the near future, so long as they also consid[er] the burdens of the probable changes.”
- California Evidence Code §813, which limits valuation testimony to expert witnesses, property owners, or a designee of a business entity, did not bar testimony regarding the dedication requirement. The testimony simply allowed the trier of fact to “understand and weigh” the valuation testimony given by an expert.
- The “slide back” theory is properly applied in circumstances where: 1) the portion condemned was not independently usable and 2) The remainder is left in a shape such that the same number of zones could be restored after the take.

# City of Porterville v. Young

## 195 Cal.App.3d 1260 (1987)

### Facts

- City filed action to condemn a 12' strip along one side of a property to widen a roadway. (Direct condemnation)
- The 5 Acre Parcel was then zoned as PD-C2 which allowed both commercial and planned unit development.
- City had an ordinance which required an applicant for a conditional use or building permit to dedicate frontage necessary to meet specific right-of-way widths prescribed in the City's General Plan.



# Nollan v. California Coastal Commission

## 483 U.S. 825 (1987)

### Facts



- The Nollans requested a permit from the California Coastal Commission to replace an existing single-story bungalow with a two-story home.
- Commission conditioned the permit on the Nollans granting a public easement over that portion of their property between the mean high tide line (their westernmost property line) and a seawall.
- Commission argued that the larger home would “increase blockage of the view of the ocean, thus contributing to the development of a ‘wall’ of residential structures that would prevent the public ‘psychologically . . . from realizing a stretch of coastline exists nearby that they have every right to visit.’”
- The Commission wanted the easement to encourage the public to traverse from two nearby public beaches, one to the north (Faria County Park) and one to the south (the Cove).

# Nollan v. California Coastal Commission 483 U.S. 825 (1987)



# Dolan v. City of Tigard

## 512 U.S. 374 (1994)

### Facts

- Florence Dolan applied to City Planning Commission for a permit to double the size of her hardware store and pave a new 39-space parking lot. The Commission granted the permit subject to 2 conditions:
  - 1) Dedication of all property lying within the 100 year floodplain of the adjacent Fanno Creek for a storm drainage system.
  - 2) Dedication of an additional 15' strip of land adjacent to the floodplain as a public pedestrian and bicycle path.

# Dolan v. City of Tigard 512 U.S. 374 (1994)





# The Dedication Issue in *City of Perris v. Stamper*

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- This is a Brand New Supreme Court Case Addressing Eminent Domain
  - The Key Issues in the Case is Concern Dedications
    - Addressed Whether a Claimed Dedication Could be “Project Influenced”
    - Addressed Whether a Judge or Jury Decides the Constitutionality of a Claimed Dedication

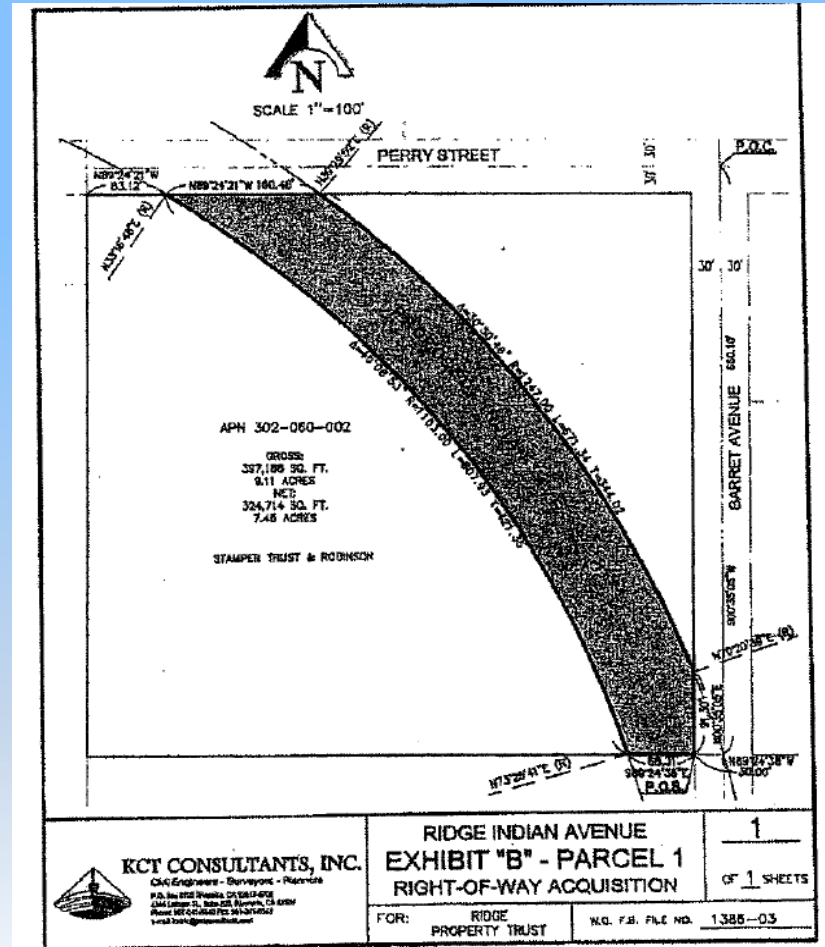
# CITY OF PERRIS V. STAMPER

## Background



# CITY OF PERRIS V. STAMPER

## Background



# ***CITY OF PERRIS V. STAMPER***

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## **Background**





# CITY OF PERRIS V. STAMPER

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The Rules – The Effect on Fair Market Value and the “Before Condition” Hypothetical

Project Influence:

- Code of Civil Procedure §1263.330: 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.

# ***CITY OF PERRIS V. STAMPER***

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## *Nollan/Dolan –*

- Compensation is required unless there is an...
  - *Nolan* = “Essential Nexus,” and
  - *Dolan* = “Rough Proportionality”
- Holding in *Stamper*
- *Nollan/Dolan* Issue Before California Supreme Court

# ISSUES FOR APPRAISERS

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- CCP §1263.310 – Compensation shall be awarded for the property taken. The measure of this compensation is the fair market value of the property taken.
- Fair Market Value (CCP §1263.320) is premised upon a required hypothetical.
- Project Rule shapes the hypothetical.
- USPAP requires the disclosure of the hypothetical.
- USPAP requires analysis of the effect on value of anticipated public or private improvements, located on or off the site, to the extent reflected in market actions. Relevant to the appraisal of the Larger Parcel in the "Before Condition."

# ISSUES FOR APPRAISERS

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**HYPOTHETICAL CONDITION:** a condition, directly related to a specific assignment, which is contrary to what is known by the appraiser to exist on the effective date of the assignment results, but is used for the purpose of analysis.

Comment: Hypothetical conditions are contrary to known facts about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis.

# ISSUES FOR APPRAISERS: JURISDICTIONAL EXCEPTION

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**If any applicable law or regulation precludes compliance with any party of USPAP, only that part of USPAP becomes valid for that assignment.**

Comment: When compliance is required by federal law or regulation, no part of USPAP can be voided by a law or regulation of a state or local jurisdiction.

In an assignment involving a jurisdictional exception, an appraiser must:

1. Identify the law or regulation that precludes compliance with USPAP;
2. Comply with that law or regulation;
3. Clearly and conspicuously disclose in the report the part of USPAP that is voided by that law or regulation; and
4. Cite in the report the law or regulation requiring this exception to USPAP compliance.

Comment: The JURISDICTIONAL EXCEPTION RULE provides a saving or severability clause intended to preserve the balance of USPAP if compliance with one or more of its parts is precluded by the law or regulation of a jurisdiction. When a appraiser properly follows this Rule in disregarding a part of USPAP, there is no violation of USPAP.

Law includes constitutions, legislative and court-made law, and administrative rules and ordinances. Regulations include rules or orders having legal force, issued by an administrative agency. Instructions from a client or attorney do not establish a jurisdictional exemption.

**JURISDICTIONAL EXCEPTION:** an assignment condition established by applicable law or regulation, which precludes an appraiser from complying with a part of USPAP.

# ISSUES FOR APPRAISERS

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- Exercise the Jurisdictional Exception Rule:
  - Identify the law
  - Comply with the law
  - Clearly and conspicuously disclose
  - Cite in the report

# CONTACT

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## **Craig Farrington**

Woodruff, Spradlin & Smart  
555 Anton Boulevard, Suite 1200  
Costa Mesa, CA 92626  
Phone: (714) 415-1016  
cfarrington@wss-law.com

## **Rick Friess**

Allen Matkins Leck Gamble Mallory & Natsis LLP  
1900 Main Street, 5<sup>th</sup> Floor  
Irvine, CA 92614  
Phone: (949) 851.5478  
rfriess@allenmatkins.com  
www.allenmatkins.com