

# VALUATION CONCEPTS AROUND THE PUBLIC PROJECT:

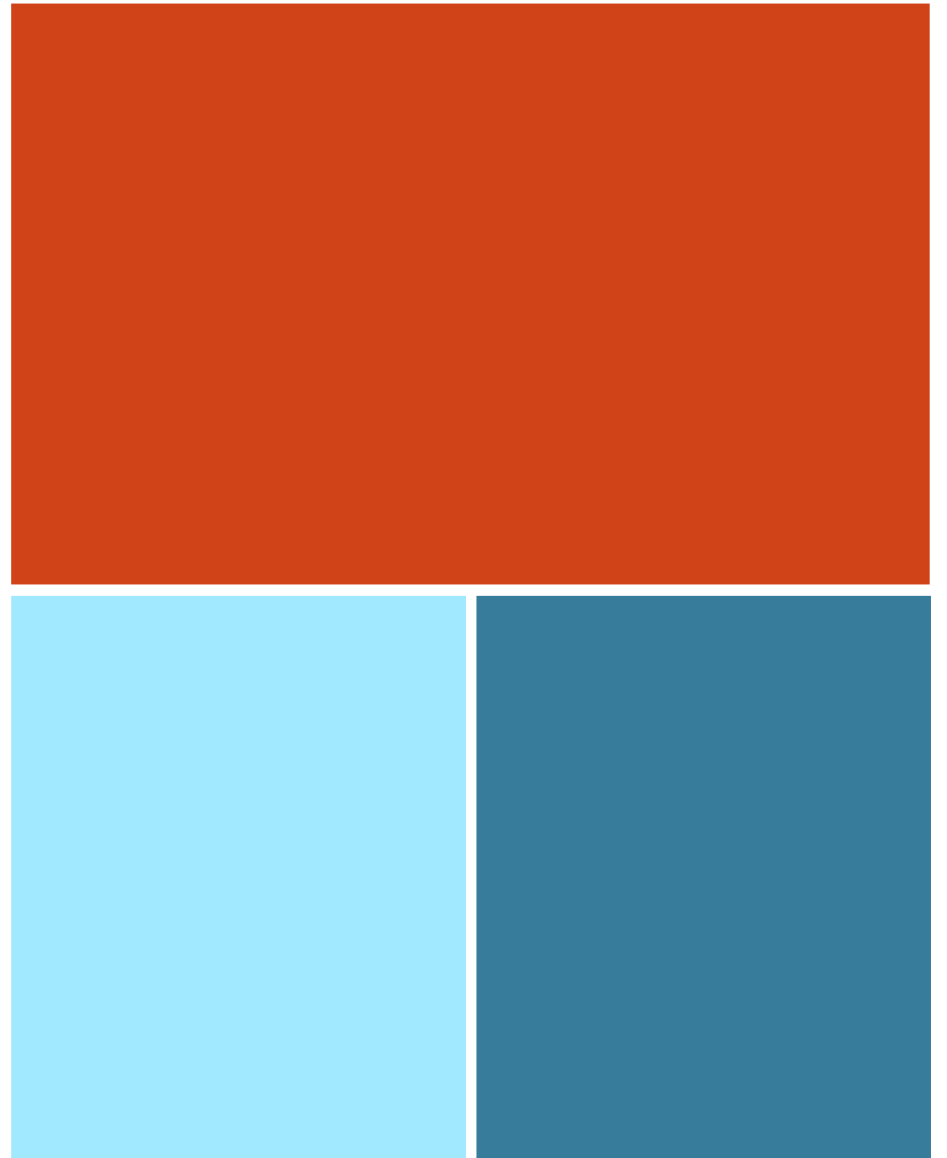
- The Project-Influence Rule;
- Valuing Severance Damages from a Taking; and
- Valuing Easements that are Being Taken

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# What We Will Cover

- Why does the “public project” even matter?
- What is the “public project”?
- **City of Perris v. Stamper** – a case study in the importance of understanding the public project – and what the California Supreme Court has to say about it.
- Specific project-related issues and concepts: the project influence rule; severance damages; and easement valuation (including implications of consistency/inconsistency between the language of the easement description and the project in the manner proposed).

# Why the “Public Project” Even Matters: Setting up the hypothetical is critical

- Code of Civil Procedure §1263.330 (*effect of changes in value*): 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.*
- The public project is essential to the highest-and-best-use opinion and therefore to the fair market value of the larger parcel and of the part taken.
- The public project is essential in a proper analysis of the fair market value of the remainder in the after condition.

# What is the Public Project?

- The condemning agency's resolution of necessity is the key, controlling document.
- The condemning agency often creates conflicts, ambiguities, and inconsistencies with the resolution of necessity:
  - From language in the complaint.
  - From project "hearsay."
  - From the "person most knowledgeable" at deposition.
  - From the construction plans, particularly changes in those plans.
- Can there be segments or phases of a single project? (Is it a separate project when segmentated or phased?)
- Are there two (or more) related projects running concurrently?
- Are there multiple unrelated projects, e.g., projects of two different condemnors?

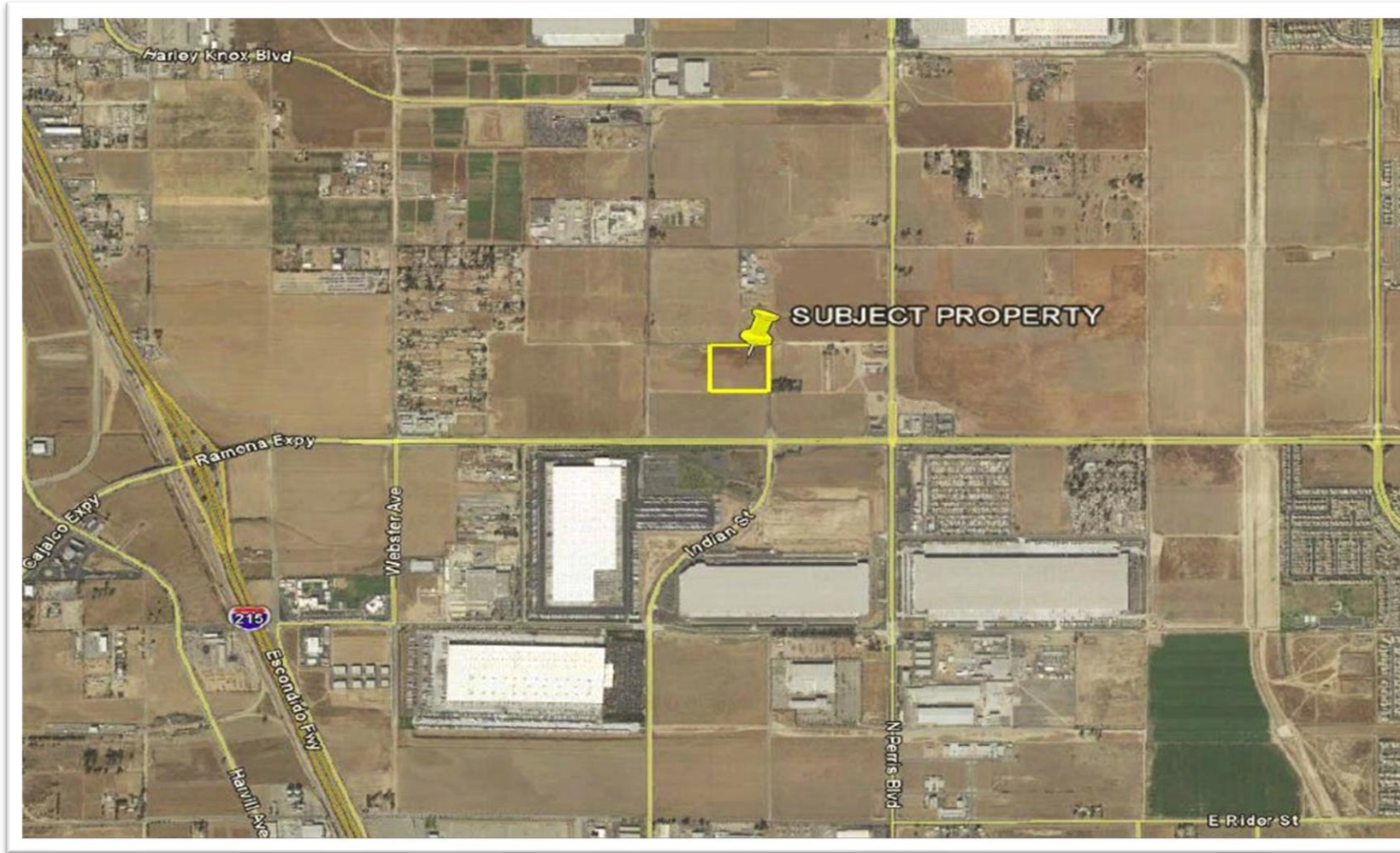
# *City of Perris v. Stamper*: Our Case Study

## Key Issues in the Case

- Project Influence
- Nollan/Dolan

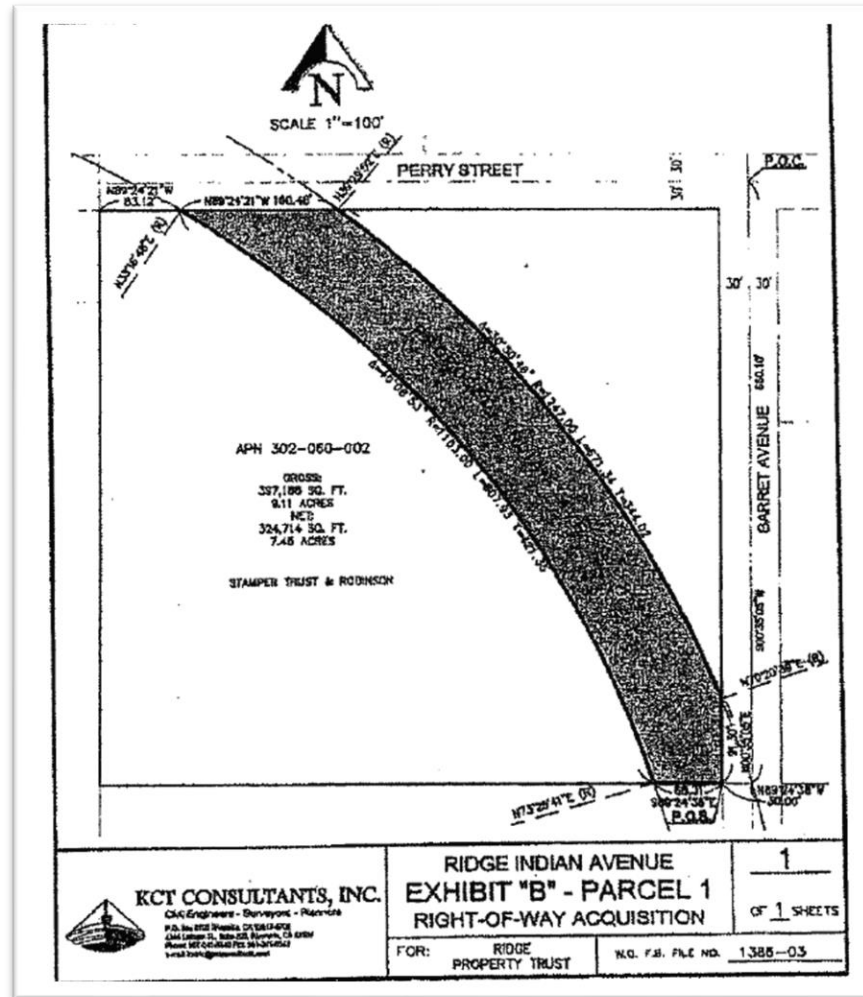
# *City of Perris v. Stamper*

## Background



# City of Perris v. Stamper

## Background





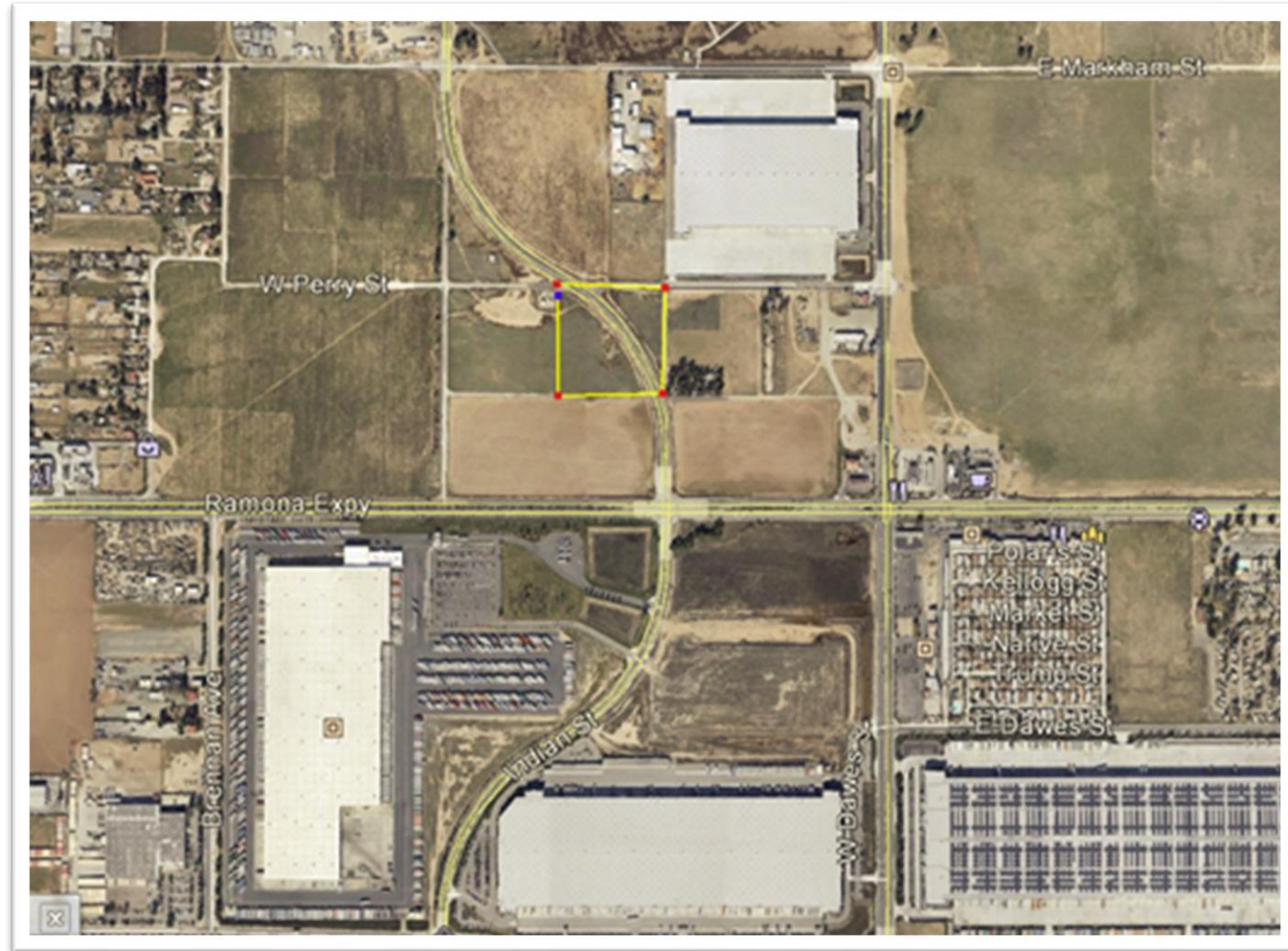
# Factors to consider in Nollan/Dolan test

- Extraordinarily burdensome
- Not a traditional sideline take
- Corner to corner – diagonally through property
- Windfall to developer? No. Local streets are still a requirement on the developer.
- Was there an assessment district? (Pay twice)



# *City of Perris v. Stamper*

## Background



# *City of Perris v. Stamper*

## Background

- Factual Context
- Trial
- Appeal
- California Supreme Court Opinion
- Remanded
- Settled

# *City of Perris v. Stamper*: The Rules – The Effect on Fair Market Value and the “Before Condition” Hypothetical

- Project influence.
- Project enhancement.
- When a pending project can have an eligible enhancement to fair market value – Before Condition.

# *City of Perris v. Stamper*

## EARLIER IMPORTANT CASES

- City of San Diego v. Barratt American Incorporated.
- City of San Diego v. Rancho Penasquitos Partnership.

## HOLDING IN STAMPER

- Court of Appeal Opinion.
- California Supreme Court – No discussion of fact that Stamper appraiser did deduct for reasonable and required dedication per the before-condition general plan and circulation element.

# *City of Perris v. Stamper*

## Issues for Appraisers

- 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 is an attendant statute to fair market value and 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.”

# *City of Perris v. Stamper*

**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.

# City of Perris v. Stamper

## JURISDICTIONAL EXCEPTION RULE

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

Comment: When compliance with USPAP 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 an 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 exception.

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



# *City of Perris v. Stamper*

## Exercise the Jurisdictional Exception Rule

- Identify the law
- Comply with the law
- Clearly and conspicuously disclose
- Cite in the report

# *City of Perris v. Stamper*

- The Project, as well as actions influenced by the Project, must be thoroughly investigated.
- Study all background data, reports and studies, including Scoping Studies, Project Study Reports, Environmental Documents (DEIR, FEIR, Mitigated Negative Declarations, etc.), General Plan and Amendments, Circulation Element, Staff Reports for Planning Commission and City Council Meetings, Minutes, Interview Decision Makers, City Council Members, Supervisors, etc. (All will be challenged – memorialize in notes, emails, in-person interviews, declarations, etc.)
- Study Project Construction Plans in various stages of completion and Project Specifications included in Construction Contract.
- Traffic Reports for proposed Project.
- Keep digging in order to understand the true "Before Condition."
- [Project Influence – probable inclusion date (court)] vs. [Precondemnation Damages – liability date (court)]: Same Song/Different Dance.

CAN BE DIFFERENT DATES but very similar facts give rise to damage/impact

# Severance Damages

- CCP 1263.410 (measure of compensation):
  - (a) Where the property acquired is part of a larger parcel, in addition to the compensation awarded . . . for the part taken, compensation shall be awarded for the injury, if any, to the remainder.
  - (b) Compensation for injury to the remainder is the amount of the damage to the remainder reduced by the amount of the benefit to the remainder. If the amount of the benefit to the remainder equals or exceeds the amount of the damage to the remainder, no compensation shall be awarded under this article. If the amount of the benefit to the remainder exceeds the amount of damage to the remainder, such excess shall be deducted from the compensation for [severance damages], if any, but shall not be deducted from the compensation required to be awarded for the property taken or from the other compensation required by this chapter.

# Severance Damages

CCP 1263.420 (damage to remainder):

Damage to the remainder is the damage, if any, caused to the remainder by either or both of the following:

- (a) The severance of the remainder from the part taken.
- (b) The construction and use of the project for which the property is taken in the manner proposed by the plaintiff whether or not the damage is caused by a portion of the project located on the part taken.

# Severance Damages

CCP 1263.430 (benefit to remainder):

Benefit to the remainder is the benefit, if any, caused by the construction and use of the project for which the property is taken in the manner proposed by the plaintiff whether or not the benefit is caused by a portion of the project located on the part taken.

# Severance Damages

CCP 1263.440 (time of damage and benefit):

- (a) The amount of any damage to the remainder and any benefit to the remainder shall reflect any delay in the time when the damage or benefit caused by the construction and use of the project in the manner proposed by the plaintiff will actually be realized.
- (b) The value of the remainder on the date of valuation, excluding prior changes in value as prescribed in Section 1263.330, shall serve as the base from which the amount of any damage and the amount of any benefit to the remainder shall be determined.

# Easement Valuations and Importance of Public Project

- Read the language of the easement (if it exists).
- *County of San Diego v. Bressi* – the agency cannot limit the scope of the taking identified in the resolution of necessity.



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