Supreme Court Case No. S213468

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

CITY OF PERRIS,

Petitioner,

v.

RICHARD C. STAMPER, et al.,

Respondents.

SUPREME COURT
FILED

OCT 22 2013

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AFTER A DECISION BY THE COURT OF APPEAL,

FOURTH APPELLATE DISTRICT, DIVISION TWO

CASE NO. E053395

ON APPEAL FROM RIVERSIDE COUNTY SUPERIOR COURT, THE

HONORABLE DALLAS HOLMES, JUDGE

CASE NO. RIC524291

PETITIONER'S REPLY TO RESPONDENTS' ANSWER TO THE PETITION FOR REVIEW

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The Answer filed by Richard C. Stamper, Donald D. Robinson, and Donald Dean Robinson, LLC (collectively, "Respondents") supports why this Court ***must*** grant review of the issues raised by Petitioner City of Perris ("City") regarding: (i) who determines the validity/constitutionality of a dedication requirement; and (ii) introduction of percipient lay testimony.[1] Respondents do not dispute the ample legal authority cited by the City in its Petition for Review ("Petition"). As explained in detail in the Petition and reiterated herein, the Appellate Court has deviated from almost 100 years of precedent on these issues, and Respondents fail to refute this argument.

Additionally, Respondents fail to show why this Court should grant review of the additional issues raised in Respondents' Answer:

1) The Appellate Court's holding that the dedication requirement is not a project effect to be excluded under Code of Civil Procedure Section 1263.330 is consistent with over 40 years of well-established precedent and would be bad public policy to reverse because it would cripple a public agency's land use power; and

2) The merits of the constitutionality of the City's dedication requirement does not reach statewide concern and is applicable only in this case. Also, the Appellate Court wrongly concluded the rough proportionality standard of the constitutionality test cannot be based on

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[1] The Petition focuses on the issue of who determines the constitutionality of a dedication requirement. But in their Answer, Respondents ask this Court to follow a ***new standard*** set by the Fourth Appellate District on the rough proportionality analysis in the constitutionality of a hypothetical dedication requirement in a condemnation case. As fully briefed in section IV of this Reply, the Fourth Appellate District completely deviated from established precedence set by the First Appellate District in *State Route 4, infra*. The City hereby urges this Court to grant review *sua sponte* of the deviation by the Fourth Appellate District from this well-settled precedence.

promises of future benefits or development concessions, thereby creating conflicting law among appellate court decisions. To the extent this Court grants review, as improperly requested by Respondents, this Court must first determine ***how*** individualized determinations are to be made in the rough proportionality prong of the constitutionality test to secure uniformity of decision before reaching the merits of this case.

I. REVIEW IS APPROPRIATE HERE, WHERE THE APPELLATE COURT OF APPEAL HAS DEPARTED FROM ALMOST 100 YEARS OF ESTABLISHED CONDEMNATION AND REGULATORY TAKINGS PRECEDENT; RESPONDENTS' ANSWER FAILS TO SHOW OTHERWISE.

Respondents are either confused or are deliberately attempting to mislead this Court on this issue.

Contrary to Respondents' claim, well-established precedent is clear: In condemnation cases, the ***only*** issue a jury should consider is the ***amount*** of the award. (*See,. e.g., People v. Ricciardi* (1943) 23 Cal.2d 390, 402 [in condemnation proceedings, "***all issues*** except the sole issue relating to compensation are to be tried by the court, and if the court does not make special findings on those issues, its findings thereon are implicit in the verdict awarding compensation. ... ***'It is only the "compensation," the "award," which our constitution declares shall be found and fixed by a jury. All other questions of fact, or of mixed fact and law, are to be tried, . . . without reference to a jury.'***"] [emphasis added]; *Oakland v. Pacific Coast Lumber & Mill Co.* (1915) 171 Cal. 392, 397 [all questions of fact, or of mixed fact and law, are to be tried, without reference to a jury]; *Emeryville Redevelopment Agency v. Harcros Pigments, Inc.* (2002) 101 Cal.App.4th 1083, 1116 ("*Emeryville* ") ["[T]he general rule in

condemnation actions is that the right to a jury trial . . . goes ***only*** to the ***amount*** of compensation . . . the issue of defendant's damages goes to the jury, and all other issues of law ***or fact*** must be decided by the court. Consistent with this rule, ***the court, rather than the jury, typically decides questions concerning the preconditions to recovery of a particular type of compensation, even if the determination turns on contested issues of fact.***"] [citations and quotations omitted] [emphasis added].)[2] None of the cases cited by Respondents are applicable here. What Respondents are asking for would create dangerous public policy, requiring jurors to decide complicated legal issues (especially, as briefed fully in the Petition, given how unclear and confusing the Appellate Court's Decision ("Opinion") is regarding whether both *Nollan* and *Dolan* prongs or something less go to the jury [Petition, pp. 21-23]). The Appellate Court here holds that the dispositive legal issue -- whether a dedication requirement, in other words an uncompensated taking, would violate the Constitution -- should be decided by the jury, presumably on the grounds that there may be some factual dispute on the rough proportionality prong of the test. This Opinion will undo years of condemnation precedent and potentially open up flood gates related to "legal" issues going to the jury if they involve any factual determination. Moreover, the Opinion can also be cited for the proposition that, going forward, no legal question should ever be decided by a trial court if it involves any factual dispute. That cannot be what the lower court intends to do!

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[2] Moreover, the City has cited ample authority to show that in regulatory takings actions, which are analogous to condemnation actions, mixed questions of fact and law are determined by the trial court; the *only* issue the jury decides is compensation. (*See* Petition, pp. 18-20.)

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Despite Respondents' attempts to apply this Court's holding in *Metropolitan Water Dist. of So. Calif. v. Campus Crusade for Christ, Inc.*, (2007) 41 Cal.4th 954, to assert that a dedication requirement is an issue for the jury, *Campus Crusade* is inapplicable here. In *Campus Crusade,* the issue involved a reasonable probability of a zone change such that it could affect the highest and best use of a property. Zoning ***has always been a question for the jury*** because it is not legal in nature, and courts routinely allow juries to decide reasonable probability of zone changes. (*See, e.g., City of San Diego v. Nuemann* (1993) 6 Cal.4th 738.)

Here, reasonable probability of a dedication requirement is wholly different from a zone change. To date, ***no court has left the decision of a reasonable probability of a dedication to a jury***. Courts have ruled repeatedly that reasonable probability of a dedication requirement is a question (even if mixed questions of fact and law) for the trial court, not a jury. (*See, e.g., City of Fresno v. Cloud* (1972) 26 Cal.App.3d 113 ("*Fresno*"); *City of Porterville v. Young* (1987) 195 Cal.App.3d 1260 ("*Porterville*"); *State Route 4 Bypass Authority v. Sup. Ct.* (2007) 153 Cal.App.4th 1546 ("*State Route 4*").) Therefore, Respondents' contention that the City failed to cite a case following the inapplicable *Campus Crusade* decision, a case that involved a ***zone change*** -- despite the fact the City cited an abundance of ***condemnation*** precedent to support its argument, which Respondents did not have a response for, is without merit.

Yet, nearly in the same breath as Respondents' claim that the City's well-established condemnation precedent is outdated, Respondents attempt to rely on *City of Hollister v. McCullough* (1994) 26 Cal.App.4th 289, a case decided before the United States Supreme Court's landmark decision in *Dolan v. City of Tigard,* (1994) 512 U.S. 374 ("*Dolan*"), for the claim

that the validity issue is primarily fact-based, and thus, appropriate for determination by a jury. Respondents ignore not only the distinguishing facts in *Hollister*, but also the Appellate Court's concern in *State Route 4, supra*, where the court questioned the "continuing precedential value" of *Hollister*, as applied to condemnation cases with dedication requirements because of *Dolan*, which was decided later that same year.

Contrary to Respondents' claim, the United States Supreme Court's holding in *City of Monterey v. Del Monte Dunes,* (1999) 526 U.S. 687 ("*Del Monte Dunes*"), is inapplicable here. The plaintiff in *Del Monte Dunes* brought a 42 USC § 1983 claim, an action which "sound[s] in tort," and is wholly distinct from a condemnation or a takings case. (*Id.* at 709-10.) The Supreme Court expressly stated the rough proportionality standard under *Dolan*, a Fifth Amendment issue, ***did not apply*** to the *Del Monte Dunes* case. (*Id.* at 702-03.) Moreover, the ***only*** reason the issues went to the jury was because, as the Court explained, the § 1983 action was one based in tort, where historically a jury -- not a judge -- determines these issues. (*Id.* at 721.) Here, as explained in detail in the Petition, in condemnation actions, historically a judge -- not a jury -- determines the validity/constitutionality of a dedication requirement.[3]

None of the cases Respondents rely on refute the City's showing that under well-established condemnation precedent, the ***only*** issue that goes to the jury is the amount of the award. (*See,. e.g., Ricciardi, supra,* 23 Cal.2d

[3] Contrary to Respondents' claim, the City cited case law that holds judges determine the validity/constitutionality of a dedication requirement. (*See Contra Costa County Flood Control & Water Conserv. Dist. v. Lone Tree Invs.* (1992) 7 Cal.App.4th 930 ("*Contra Costa*").)

at 402; *Oakland v. Pacific Coast Lumber & Mill Co., supra,* 171 Cal. at 397; *Emeryville, supra,* 101 Cal.App.4th at 1116.)

Additionally, Respondents fail to cite any case law to show the validity of a dedication requirement is a valuation issue that must be determined by the jury. Time and time again, this Court and numerous Appellate Courts have held that, in condemnation cases, the jury should determine ***only*** the amount of the award. The Appellate Court here departs from almost 100 years of precedent in holding that these issues should be determined by the jury. Moreover, the Appellate Court's holding sets terrible public policy, requiring juries to decide complicated legal issues. Hence, review is appropriate here.

II. REVIEW IS APPROPRIATE, WHERE, DESPITE WELL-ESTABLISHED PRECEDENT TO THE CONTRARY, THE APPELLATE COURT IMPROPERLY EXCLUDED PERCIPIENT TESTIMONY.

Respondents analyzed in detail the rules and policy supporting special standards for testimony and valuation testimony. The City does not dispute this analysis. However, given that Mr. Motlagh and Mr. Belmudez only testified as City employees on matters they personally observed, Respondents' discussion is wholly irrelevant, misleading, and confusing. The only issue on this topic is whether the Appellate Court was correct in going against legal tradition to limit City employee testimony on matters which said employees personally observed within the scope of their employment by re-characterizing such testimony as expert testimony. Respondents failed to show that the Appellate Court acted properly, because Respondents cannot make this showing.

Instead, Respondents muddy the issue by highlighting the importance of irrelevant rules on expert witness testimony in condemnation

cases. For example, Respondent cites to numerous cases underscoring the importance of mutual exchange of expert testimony. (*See, e.g.,* Answer, pp. 23-24.) Given the issue is whether limiting employee testimony was proper, this analysis only confuses the issue.

Respondents further attempt to confuse the issue by mischaracterizing the law, stating: "...the exchange rules apply to both expert consultants ***and party-related witnesses***." (Answer, p. 24, [emphasis in original].) Respondents cite to legal authority which simply does not support this conclusion. For example, Respondents cited to *Padre Dam Mun. Water Dist. v. Burkhardt* (1995) 38 Cal.App.4th 988, which actually only applies to valuation testimony: "...the pertinent question is not whether a witness is an expert but whether the witness intends to offer an opinion as to value." (*Id.* at 993.) Despite Respondents' assertion, neither City employee testified valuation, as the in testimony was offered during the phase one of the trial regarding whether the dedication requirement was valid, and phase two of trial regarding valuation was never commenced. Respondents cannot support a claim to the contrary.

In conclusion, returning to the core issue, Respondents failed to demonstrate that the Appellate Court's holding is consistent with prior legal authority. The Appellate Court has essentially created a citable case standing for the proposition that an employee's testimony as to matters within his or her observation is now the subject of expert testimony, ***even though*** this contradicts a long tradition of case law. As such, Respondents failed to demonstrate why review should not be granted.

III. REVIEW IS NOT APPROPRIATE WHERE THE APPELLATE COURT DECISION IS CONSISTENT WITH OVER 40 YEARS OF PRECEDENT HOLDING THAT DEDICATION REQUIREMENTS ARE TO BE CONSIDERED IN VALUATIONS, RATHER THAN EXCLUDED AS PROJECT EFFECTS UNDER CODE OF CIVIL PROCEDURE SECTION 1263.330.

Review is appropriate before this Court when deciding important legal questions involving public policy, resolving inconsistent opinions among courts of appeal, and maintaining statewide harmony and uniformity of decision. (CRC 8.500(b)(4).) Respondents, however, fail to demonstrate how the Appellate Court's holding that the dedication requirement is not a project effect to be excluded under Code of Civil Procedure Section 1263.330 falls under any of those categories.

In fact, the opinion on this issue is consistent with over 40 years of well-settled case law. In condemnation cases where property to be acquired is subject to a dedication requirement, a long-standing road map has been laid out for courts and juries to follow in determining just compensation. Respondents, however, mislead this Court and try to draw a new road map.

Respondents attempt to undo decades of precedent by arguing the dedication of property for Indian Avenue is a project effect that must be ignored in valuing the property, per Section 1263.330. Under Section 1263.330, the determination of fair market value of a property must exclude, *inter alia*, any increase or decrease in property value attributable to the project or any preliminary action for which that property is being taken.

Respondents go so far as to state the dedication requirement is a "classic project effect" under the statute, but the only two cases Respondent cite do not even involve dedication requirements. (Answer, p. 28.) Why? This is because Section 1263.330 simply does not apply to dedication

requirements. Respondents cite to *City of San Diego v. Rancho Penasquitos Partnership,* (2003) 105 Cal.App.4th 1013, and *City of San Diego v. Barratt American, Inc.*, (2005) 128 Cal.App.4th 917, for the proposition that the 2005 update to the City's General Plan to realign Indian Avenue is a preliminary action and that the hypothetical dedication of Indian Avenue is part of the project to construct Indian Avenue. According to Respondents, any decreased valuation to the portion of property being acquired as a result of the dedication requirement must be excluded under Section 1263.330 as a project effect. Frankly, Respondents' argument is nonsense.[5]

Unlike in *Rancho Penasquitos* and *Barratt American*, the City did not enact the dedication requirement solely for the purpose of constructing Indian Avenue. The Perris Municipal Code authorizes the City to require dedication of rights of way upon development of any property, not just for

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[5] The *Rancho Penasquitos* and *Barratt American* cases involved a zoning restriction that was enacted by the City of San Diego ***specifically for the purpose of*** restricting development and depressing property values in areas where the city would acquire property for a highway. In *Rancho Penasquitos,* the appellate court ruled that evidence of the zoning restriction was properly excluded under Section 1263.330 because the restriction was enacted by the city solely as a result of the project to construct the highway. The effect of the zoning restriction was to freeze property values so the city could later acquire property for the highway. (*Rancho Penasquitos, supra,* 105 Cal.App.4th at 1038-39.)

In *Barratt American*, the parties agreed that project effects should be excluded, but differed on ***how*** the project effects should be excluded. The owners argued the property should be valued as if the highway construction project were never conceived or planned. The city argued the property should be valued as if the highway construction project were suddenly abandoned on the date of value of the property. The appellate court agreed with the owners and ruled that the city's theory did not fully exclude the effects of the project because abandonment of the project assumed the zoning restriction was still in place to freeze property values. (*Barratt American, supra,* 128 Cal.App.4th at 937-38.)

the Indian Avenue project. (Opinion, p. 40.) The Appellate Court correctly ruled, "While certainly there would be no requirement of a dedication of property for Indian Avenue, if the Indian Avenue project did not exist, the imposition of a dedication is nonetheless not attributable to the project within the confines of the statute" as "dedication requirements exist independent of any specific project." (*Id.*.) The dedication requirement "applied across the board to all development within the community ... [and] was not a governmental action designed to be applied solely to the Indian Avenue project." (Opinion, p. 45.) The Opinion comports with over 40 years of jurisprudence regarding the proper method of valuing dedication requirements in condemnation cases. (*See, e.g., Fresno, supra,* 26 Cal.App.3d 113; *Porterville, supra,* 195 Cal.App.3d 1260; *Contra Costa, supra,* 7 Cal.App.4th 930; *Hollister,* 26 Cal.App.4th 289; and *State Route 4, supra,* 153 Cal.App.4th 1546.)

Notably, if this Court were to grant review on this issue and agree with Respondents, then ***all*** condemnation jurisprudence involving dedication requirements would be turned on its head. Under Respondents' logic, ***every*** condemnation case involving a dedication requirement would be overruled, because every dedication requirement would become a project effect requiring exclusion from valuation, since every dedication requirement is part of the project for which property is being acquired.

Respondents argue this is not the typical dedication requirement in a condemnation case because the City updated its General Plan in 2005, changing the location of Indian Avenue to cross Respondents' property in anticipation of the Indian Avenue construction project. Under Respondents' logic, the ***only*** time a dedication requirement can be considered in a condemnation case is when a road is acquired as part of the initial adoption

of a General Plan. According to Respondents, any update to, and implementation of, the General Plan, as required under Government Code § 65900 *et seq.*, precludes valuing the acquisition of property based on a hypothetical requirement, because the dedication requirement would be a project effect. Respondents are wrong.

The facts of this case are no different from the seminal condemnation cases dealing with hypothetical dedication requirements. After several public hearings where Respondents could have but failed to object to the realignment of Indian Avenue, the City adopted Indian Avenue in its current configuration as part of its 2005 update to the General Plan. ***Four*** years later the City began implementing its updated General Plan to build out its roadway system and commenced this case. If this Court grants review on this issue and determines the dedication requirement is a project effect, the holding will cripple the use of dedications as a valid, statutorily permitted planning tool and have very negative public policy implications.

In ***all*** seminal condemnation cases with dedication requirements, the projects were acquisition of property for right of way as part of the implementation of a general or specific plan, as is this case:

1. In *Fresno*, to implement its ***master plan***, a city acquired strips of property abutting two streets that were subject to dedication requirements. (*Fresno, supra,* 26 Cal.App.3d at 115-16.)

2. In *Porterville,* as part of its ***general plan***, a city acquired a commercially zoned strip of property to widen a street to full width. (*Porterville, supra*, 195 Cal.App.3d at 1263.)

3. In *Contra Costa,* a flood control district was building a flood control channel per its ***specific plan*** and acquired 5 acres of a 38-acre property. (*Contra Costa, supra,* 7 Cal.App.4th at 932, 937.)

4. In *Rohn v. Visalia,* (1989) 214 Cal.App.3d 1463, a city ***amended*** its ***general plan*** to connect a street at an intersection.

5. In *State Route 4,* a bypass authority constructed a highway as part of its transportation plan. (*State Route 4, supra,* 153 Cal.App.4th at 1553.)

Precedence clearly establishes that hypothetical dedication requirements in the context of condemnation cases ***must be considered*** instead of ignored in valuation. The Appellate Court's ruling is therefore in line with current case law. No review is warranted. Accordingly, the Court would be reversing over 40 years of well-settled case law and misapplying statutory intent by reviewing this issue and agreeing with Respondents.

IV. REVIEW IS INAPPROPRIATE TO DETERMINE WHETHER THE DEDICATION REQUIREMENT IN THIS CASE IS CONSTITUTIONAL, SINCE THE RULING WOULD HAVE NO STATEWIDE IMPORTANCE AND IS ONLY APPLICABLE IN THIS CASE; IF REVIEW IS GRANTED, THIS COURT MUST FIRST RESOLVE CONFLICTING APPELLATE COURT OPINIONS REGARDING THE ROUGH PROPORTIONALITY PRONG OF THE CONSTITUTIONALITY TEST.

Respondents request this Court to decide the dedication requirement is a project effect that must be excluded from valuation under Section 1263.330. At the same time, however, Respondents also request that this Court rule, as a matter of law, that the dedication requirement for Indian Avenue is unconstitutional. These doctrines are disparate and mutually exclusive: if a dedication requirement is analyzed for constitutionality, it cannot also be analyzed as a project effect.

Furthermore, the Appellate Court never ruled on the merits of the constitutionality of the hypothetical dedication requirement. Respondents want this Court to correct an alleged error by the Appellate Court, but this Court's focus is not on correction of error in a specific case. (*People v. Davis* (1905) 147 Cal. 346, 348.) Review is ordered when "necessary to secure uniformity of decision or to settle an important question of law." (CRC 8.500(b)(1).) A holding that the Indian Avenue dedication requirement is unconstitutional is ***unnecessary*** to secure uniformity of decision and ***does not*** settle any important question of law – in fact, such a ruling is ***only*** applicable in this case. This Court should not review the merits of the constitutionality of the Indian Avenue dedication requirement.

Nonetheless, if this Court is inclined to grant review of the constitutionality issue, this Court should also resolve the inconsistencies between Appellate Courts in deciding the proper method to determine the rough proportionality prong of the constitutionality of a hypothetical dedication requirement in a condemnation case.

As stated in the City's Petition, a hypothetical dedication requirement in condemnation cases is valid if it is both: (i) reasonably probable, and (ii) constitutional, that is: (a) substantially furthers a legitimate government objective (the nexus prong under *Nollan v. Calif. Coastal Comm'n* (1987) 483 U.S. 825), and (b) roughly proportional to the impacts of development (the rough proportionality prong under *Dolan, supra*). (*State Route 4,* 153 Cal.App.4th at 1551.) To be roughly proportional, "no precise mathematical calculation is required, but the city must make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development." *Dolan, supra,* 512 U.S. at 391.)

The first Appellate Court district, in *State Route 4,* recognized that an individualized determination generally cannot be made in condemnation cases because there is no proposed development on the property to trigger the dedication at the time of condemnation. Instead, the court opined:

> It is important to recognize that the *Dolan* test had to be applied in this case to the purely ***hypothetical*** circumstance of a possible future development application for the properties in question. ...Here, the only opportunity for the agency to engage in that type of analysis was through evidence put on in the *Porterville* [dedication requirement] trial itself. Under these circumstances, the trial court properly deemed the evidence presented at the trial to, in fact, constitute the "individualized determination" required by *Dolan*.
>
> (*State Route 4, supra*, 153 Cal.App.4th at 1560 [emphasis added].)

The *State Route 4* court ruled that the city's "flexibility to make other concessions in the development approval process" upon a future development constituted sufficient individualized determinations under the rough proportionality prong of the constitutionality test. (*Id.*)

The fourth Appellate Court district in this case, however, disagreed:

> We respectfully disagree with *State Route 4* to the extent it holds that the rough proportionality test may be determined based on a condemning or planning authority's unenforceable promises of future development concessions to the property owner in the event it turns out the extent of the developed property's impacts are less than anticipated at the time of trial in the eminent domain proceeding. Specifically we do not believe the rough proportionality test may be met based on promises of future 'negotiation, modification, or offset.' ... 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."
>
> (Opinion, p. 39 [citations omitted].)

Therefore, there is a difference between appellate districts regarding what type of individualized determinations are required in determining rough proportionality. If this Court is inclined to rule as a matter of law on

the constitutionality issue, as improperly requested by Respondents, this Court must first "secure uniformity of decision" among appellate districts by resolving ***how*** individualized determinations must be made in the rough proportionality prong of the constitutionality test before it decides the constitutionality of the Indian Avenue dedication requirement.

V. CONCLUSION

For the foregoing reasons, the City respectfully requests that the Court grant review on the issues raised by the City.

Dated: October 21, 2013

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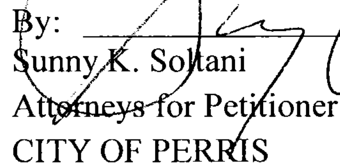

By: ______________________
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CERTIFICATE OF WORD COUNT

I certify that pursuant to Rule 8.204(c)(1) of the California Rules of Court, the attached Petitioner's Petition for Review was produced on a computer and contains 4,199 words, as counted by the Microsoft Word 2010 word-processing program used to generate Petitioner's Petition for Review.

Dated: October 21, 2013

ALESHIRE & WYNDER, LLP
ERIC L. DUNN
SUNNY K. SOLTANI
PAM K. LEE
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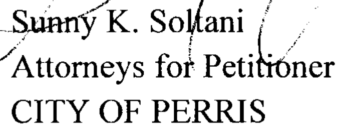

By: ______________________
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PROOF OF SERVICE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 18881 Von Karman Avenue, Suite 1700, Irvine, CA 92612.

On **October 21, 2013**, I served the within document(s) described as: **PETITIONER'S REPLY TO RESPONDENTS' ANSWER TO THE PETITION FOR REVIEW** on the interested parties in this action as stated on the attached mailing list.

☐ **(BY MAIL)** By placing a true copy of the foregoing document(s) in a sealed envelope addressed as set forth on the attached mailing list. I placed each such envelope for collection and mailing following ordinary business practices. I am readily familiar with this Firm's practice for collection and processing of correspondence for mailing. Under that practice, the correspondence would be deposited with the United States Postal Service on that same day, with postage thereon fully prepaid at Irvine, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

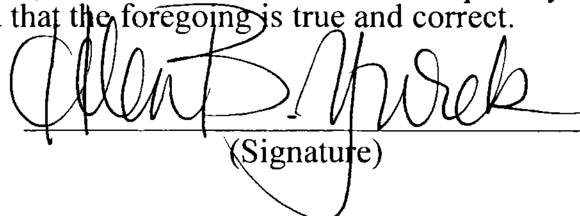
☒ **(BY OVERNIGHT DELIVERY)** I deposited in a box or other facility regularly maintained by Norco Overnite (formerly known as Overnite Express), an express service carrier, or delivered to a courier or driver authorized by said express service carrier to receive documents, a true copy of the foregoing document(s) in a sealed envelope or package designated by the express service carrier, addressed as set forth on the attached mailing list, with fees for overnight delivery paid or provided for.

☐ **(BY FAX)** By transmitting a true copy of the foregoing document(s) via facsimile transmission from this Firm's sending facsimile machine, whose telephone number is (949) 223-1180, to each interested party at the facsimile machine telephone number(s) set forth on the attached mailing list. Said transmission(s) were completed on the aforesaid date at the time stated on the transmission record issued by this Firm's sending facsimile machine. Each such transmission was reported as complete and without error and a transmission report was properly issued by this Firm's sending facsimile machine for each interested party served. A true copy of each transmission report is attached to the office copy of this proof of service and will be provided upon request.

☐ **(BY E-MAIL)** By transmitting a true .pdf copy of the foregoing document(s) by e-mail transmission from lyarvis@awattorneys.com to each interested party at the e-mail address(es) set forth above. Said transmission(s) were completed on the aforesaid date at the time stated on declarant's e-mail transmission record. Each such transmission was reported as complete and without error.

☐ **(BY PERSONAL SERVICE)** I caused to be delivered a true copy of the foregoing document(s) in a sealed envelope by hand to the offices of the above addressee(s).

Executed on **October 21, 2013**, at Irvine, California. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.



Helen B. Yurek
(Type or print name)

(Signature)

Richard C. Stamper, et al. v. City of Perris
California Court of Appeal, Fourth Appellate District, Division Two – Case No. E053395
City of Perris v. Richard C. Stamper, et al.
Riverside Superior Court, Central District – Case No. RIC524291

SERVICE LIST

K. Erik Friess, Esq. ALLEN MATKINS LECK GAMBLE MALLORY & NATSIS, LLP 1900 Main Street, 5th Floor Irvine, CA 92614 T 949.553.1313 F 949.553.8354 E-MAIL: rfriess@allenmatkins.com	ATTORNEYS FOR DEFENDANTS AND APPELLANTS, Richard C. Stamper, Donald D. Robinson and Donald Dean Robinson, LLC ***(1 COPY)*** [VIA OVERNIGHT MAIL]
Supreme Court of California Office of the Clerk, First Floor 350 McAllister Street San Francisco, CA 94102 Tel: (415) 865-7000	***(1 ORIGINAL & 13 COPIES)*** [VIA OVERNIGHT MAIL]
Hon. Dallas S. Homes c/o Clerk of the Court Riverside County Superior Court 4050 Main Street Riverside, CA 92501 Tel: (951) 777-3147	***(1 COPY)*** [VIA OVERNIGHT MAIL]
Court of Appeal 4th District Div 2 3389 Twelfth Street Riverside, CA 92501 Phone: (951) 782-2500 Fax: (951) 248-0235	***(1 COPY)*** [VIA OVERNIGHT MAIL]