No. _____

IN THE SUPREME COURT OF THE UNITED STATES

CRANEVEYOR CORP., a California corporation,

Applicant,

v.

CITY OF RANCHO CUCAMONGA,

Respondent.

APPLICATION DIRECTED TO THE HONORABLE ELENA KAGAN FOR AN EXTENSION OF TIME TO FILE A PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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Counsel for Applicant

July 8, 2023

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6 of the Rules of this Court, Applicant Craneveyor Corp. certifies that it has no parent corporation and there is no publicly held corporation that owns 10% or more of its stock.

To the Honorable Elena Kagan, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Ninth Circuit:

Pursuant to 28 U.S.C. § 2101(c) and Rules 13.5, 22, and 30.2 of the Rules of this Court, Applicant Craneveyor Corp. (hereafter "Craneveyor") respectfully requests a 30-day extension of time, to and including August 18, 2023, within which to file a petition for a writ of certiorari to review the judgment of the Court of Appeal for the Ninth Circuit in this case. The Memorandum of the court of appeal was issued on April 20, 2023 (App. A), and the Mandate was issued on May 12, 2023 (App. B). Unless extended, the time for filing a petition for a writ of certiorari will expire on July 19, 2023. The jurisdiction of this Court will be invoked under 28 U.S.C. § 1254(1) and 42 U.S.C. § 1983.

This Application is being filed at least 10 days before the time for filing a petition for a writ of certiorari.

The district court had jurisdiction pursuant to 28 U.S.C. §1331 and 42 U.S.C. § 1983 because Craneveyor's constitutional claims present federal questions, and the complaint alleges a violation of civil rights. As shown in the Memorandum opinion (App. A) this case involves claims for compensation under the Fifth Amendment's takings

clause, and the Fourteenth Amendment's Due Process clause, related to Defendant City of Rancho Cucamonga's (hereafter "City") denial of economic use of property and denial of reasonable investment-backed expectations resulting from the adoption of land use plan encompassing two parcels of land.

The trial court granted the City's motion to dismiss at the pleading stage, and the Ninth Circuit affirmed.

This case presents important questions related to this Court's precedents in *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104 (1978), and *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992). This case also presents important questions related to the ability of property owners to seek compensation pursuant to a claim that a governmental regulation, on its face, requires payment of just compensation under the Fifth Amendment to the United States Constitution.

The undersigned counsel for Craneveyor, Timothy V. Kassouni of Kassouni Law, has several case conflicts that have necessitated this Application. These conflicts include the rescheduling of a motion for preliminary injunction in an unrelated Orange County, California,

Superior Court action from June 15, 2023 to July 13, 2023 due to the illness of opposing counsel; demurrers in unrelated cases in Sacramento, California, Superior Court set for hearing on July 13, 2023 and August 3, 2023, respectively; a trial in a Sacramento County, California, Superior Court action which was continued from May, 2023 to August 2023; and an opposition to a preliminary injunction motion to be filed by July 13, 2023.

The extension will further assist Craneveyor in refining the questions to be presented to this Court and will not prejudice the City.

For the foregoing reasons, Craneveyor respectfully requests that the time for filing a petition for a writ of certiorari in this case be extended to August 18, 2023.

Respectfully submitted,

July 8, 2023

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APPENDIX A

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Appendix A:

Craneveyor Corp. v. City of Rancho Cucamonga, No. 22-55435 (9th Cir. Apr. 20, 2023), Memorandum, not for publication

FILED

APR 20 2023

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CRANEVEYOR CORP., a California corporation, Plaintiff-Appellant, and INLAND REAL ESTATE GROUP, LLC; et al., Plaintiffs, v. CITY OF RANCHO CUCAMONGA, Defendant-Appellee, and DOES, 1-10, inclusive, Defendant.	No. 22-55435 D.C. No. 5:21-cv-01656-SB-KK MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Stanley Blumenfeld, Jr., District Judge, Presiding

Argued and Submitted April 13, 2023
Pasadena, California

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Before: MILLER and MENDOZA, Circuit Judges, and MOSKOWITZ,** District Judge.

CraneVeyor Corporation appeals from the district court's order dismissing its complaint against the City of Rancho Cucamonga for failure to state a claim. The complaint asserts a facial takings challenge under 42 U.S.C. § 1983 to a city zoning plan that allegedly restricts development on two parcels of land owned by CraneVeyor. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

We accept the factual allegations in the complaint as true and review the dismissal of the complaint de novo. *Doe v. Regents of Univ. of Cal.*, 23 F.4th 930, 935 (9th Cir. 2022). A facial takings challenge asserts that "the mere enactment of a statute constitutes a taking." *Levald, Inc. v. City of Palm Desert*, 998 F.2d 680, 686 (9th Cir. 1993) (quoting *Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470, 494 (1987)).

1. The city has filed a motion for judicial notice (Dkt. No. 18) of a county map showing the location of CraneVeyor's first parcel. We may take judicial notice of a fact only if it is "not subject to reasonable dispute." Fed. R. Evid. 201(b). But the county, which produced the map, disclaims its accuracy. Because the map is subject to reasonable dispute, and because we "rarely take judicial

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** The Honorable Barry Ted Moskowitz, United States District Judge for the Southern District of California, sitting by designation.

notice of facts presented for the first time on appeal," we deny the motion. *Reina-Rodriguez v. United States*, 655 F.3d 1182, 1193 (9th Cir. 2011).

2. CraneVeyor asserts that the city's plan effected a facial taking of its first parcel under *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992). Under *Lucas*, a regulation effects a taking when it "deprives land of all economically beneficial use." *Id.* at 1027. CraneVeyor alleges that its first parcel is in a fault zone. But CraneVeyor acknowledges that the plan, on its face, does not prohibit all development in fault zones. Thus, CraneVeyor has not stated a claim for a facial *Lucas* taking.

3. CraneVeyor also asserts that the plan effected a facial taking of both its parcels under *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104 (1978). We "assume, without deciding, that a facial challenge can be made under *Penn Central*." *Guggenheim v. City of Goleta*, 638 F.3d 1111, 1118 (9th Cir. 2010) (en banc). The *Penn Central* analysis considers three factors: (1) the "economic impact of the regulation" on the property owner, (2) "the extent to which the regulation has interfered with distinct investment-backed expectations," and (3) the "character of the governmental action." *Penn Cent.*, 438 U.S. at 124. Those factors do not support CraneVeyor's claim.

First, the economic impact is insufficient. Valuable uses remain on CraneVeyor's land. According to the city, CraneVeyor could build up to two

residential units on its first parcel. And the plan permits livestock and poultry keeping on the second parcel. *See MacLeod v. Santa Clara Cnty.*, 749 F.2d 541, 547 (9th Cir. 1984) (rejecting a *Penn Central* claim when the landowner "was free to continue to raise cattle or to lease out the property for grazing lands").

Second, the regulation does not interfere with distinct investment-backed expectations. CraneVeyor maintains that it expected to use its land for residential development. But a property owner "cannot reasonably expect that property to be free of government regulation such as zoning." *Rancho de Calistoga v. City of Calistoga*, 800 F.3d 1083, 1091 (9th Cir. 2015). And CraneVeyor "pursued [its] alleged expectation . . . with something less than speed or vigor." *Dodd v. Hood River Cnty.*, 136 F.3d 1219, 1230 (9th Cir. 1998). The company took no steps to pursue development in the seven years that it owned the parcels before the city adopted the plan.

Third, the character of the city's plan is an "interference aris[ing] from some public program adjusting the benefits and burdens of economic life to promote the common good," not "a physical invasion by government." *Penn Cent.*, 438 U.S. at 124. "Zoning laws are, of course, the classic example" of permissible regulation. *Id.* at 125. CraneVeyor objects that the city failed to provide statutorily required notice of a hearing about the plan. *See* Cal. Gov't Code §§ 65854, 65091. But the failure to notify an affected property owner does not prevent the plan from

promoting the common good. The city adopted the plan after several years of consultations with agencies and public meetings with residents. Even if the plan did not strike the optimal balance between property rights and conservation interests, "the imbalanced distribution of the benefits and burdens resulting from such an ordinance did not mean that the law effected a taking." *MacLeod*, 749 F.2d at 546. The district court correctly rejected the *Penn Central* claim.

AFFIRMED.

APPENDIX B

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Appendix B:

Craneveyor Corp. v. City of Rancho Cucamonga, No. 22-55435 (9th Cir. May 12, 2023), Mandate

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAY 12 2023

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

CRANEVEYOR CORP., a California corporation,

Plaintiff - Appellant,

and

INLAND REAL ESTATE GROUP, LLC; et al.,

Plaintiffs,

v.

CITY OF RANCHO CUCAMONGA,

Defendant - Appellee,

and

DOES, 1-10, inclusive,

Defendant.

No. 22-55435

D.C. No. 5:21-cv-01656-SB-KK
U.S. District Court for Central California, Riverside

MANDATE

The judgment of this Court, entered April 20, 2023, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

CERTIFICATE OF SERVICE

I, Timothy V. Kassouni, counsel for Applicant and a member of the Bar of this Court, hereby certify that on the 8th day of July, 2023, a copy of this Application for Extension of Time to File a Petition for Writ of Certiorari in the above-entitled case was mailed, first-class postage prepaid, to Stephen D. Lee, Richards, Watson & Gershon, A Professional Corporation, 350 South Grand Avenue, 37th Floor, Los Angeles, California, 90071-3101, (213) 626-8484, and was e-mailed to slee@rwglaw.com, counsel for the respondent herein. I further certify that all parties require to be served have been served.

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