No. 23-169

IN THE

Supreme Court of the United States

CRANEVEYOR CORP., a California corporation,

Petitioner,

v.

CITY OF RANCHO CUCAMONGA,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

RESPONDENT CITY OF RANCHO CUCAMONGA'S OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Court should overrule *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104 (1978) ("*Penn Central*") in light of Plaintiff's failure to allege that it satisfied any of the *Penn Central* factors?

2. Whether the Ninth Circuit correctly held that Plaintiff had not alleged a facial taking under *Lucas v. South Carolina Coast Council*, 505 U.S. 1003 (1992) based on Plaintiff's ability to develop its property with economically beneficial uses?

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RESPONDENT'S BRIEF IN OPPOSITION

DECISIONS BELOW

The Ninth Circuit's opinion, Pet. App. A at pp. 2a-5a, is not reported but is available at *CraneVeyor Corp. v. City of Rancho Cucamonga*, 2023 WL 3017949 (9th Cir. 2023).

The decision of the United States District Court for the Central District of California, filed on March

30, 2022, granting the City of Rancho Cucamonga's Motion to Dismiss, Pet. App. B at pp. 6a-19a, is not reported but is available at *Inland Real Est. Grp., LLC v. City of Rancho Cucamonga*, 2022 WL 1296728 (C.D. Cal. 2022).

INTRODUCTION

Petitioner CraneVeyor Corp. ("Craneveyor") asks this Court to set aside *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104 (1978) -- a landmark precedent that has guided takings jurisprudence for over 45-years. This Court has consistently and repeatedly declined similar requests to abolish *Penn Central*, and this case does not present any circumstances that warrant a different outcome.

Here, the City of Rancho Cucamonga ("City") adopted the Etiwanda Heights Neighborhood and Conservation Plan (the "Specific Plan"), which Craneveyor claimed was a Fifth Amendment taking without just compensation because the Specific Plan reduces the intensity with which Craneveyor could develop its properties. Significantly, however, the Specific Plan still allows Craneveyor to develop single-family residences on its properties and make other economically beneficial uses. The City adopted the

Specific Plan with noble intentions: to preserve unspoiled views of the San Gabriel foothills and mountains, conserve rural open space and habitat resources to the extent feasible, and secure recreational access to the foothills, while providing unique, new neighborhoods that reflect the City's heritage.

Based on the foregoing facts, the District Court and Ninth Circuit both determined that Craneveyor had failed to allege a valid facial takings claim under either *Penn Central* or *Lucas v. South Carolina Coast Council*, 505 U.S. 1003 (1992). The Ninth Circuit properly held that *Lucas* requires a complete loss, and that Craneveyor failed to satisfy that standard because the land retained both more than *de minimis* value and had the potential for economically beneficial uses. It likewise rejected Craneveyor's *Penn Central* claim, finding that the Specific Plan did not have a sufficient economic impact for a taking because Craneveyor can still develop its properties with single-family residences and make other beneficial uses; there was no interference with Craneveyor's reasonable investment-backed expectations because Craneveyor does not have a reasonable expectation to be free from changes in zoning regulations; and the character of the government action arises from a

public program that adjusts the benefits and burdens of economic life to promote the common good.

Certiorari is not warranted to repeal *Penn Central*, which this Court has upheld and applied for over 45-years. Craneveyor's failure to allege that it met any of the *Penn Central* factors is not indicative of any deficiency in the *Penn Central* test itself. Instead, Craneveyor's losses in the District Court and Ninth Circuit evince the weaknesses in Craneveyor's case and the facts at issue. Craneveyor's attempt to change the outcome by upending decades of well-established takings precedents under *Penn Central* and its progeny neither merits this Court's review nor meets the *stare decisis* factors justifying such a monumental departure from this Court's precedents.

This case would also be an exceptionally poor vehicle to revisit *Penn Central* because the facts at issue here are so heavily weighted against Craneveyor, and Craneveyor does not even allege an as-applied takings challenge -- only facial challenges to which *Penn Central* should not even apply.

Thus, the Petition presents no issue warranting this Court's review and should be denied.

STATEMENT OF THE CASE

In October 2019, the City adopted the Specific Plan, which regulates development in a largely undeveloped 4,393-acre area (the "Plan Area"), the majority of which was annexed into the City through a July 2020 resolution adopted by the Local Agency Formation Commission for San Bernadino. Pet. App. 7a. The purpose of the Specific Plan is to predictably implement a community-based vision for the future of the uniquely valuable foothill area of the City. Pet. App. 7a-8a. This includes conserving as much of the Plan Area as rural, open space and habitat conservation to be in balance with high quality neighborhood development. Pet. App. 8a.

Prior to the annexation of Craneveyor's properties, Craneveyor could generally develop up to one residence per acre on its properties. Pet. App. 8a. After annexation, the Specific Plan designates Craneveyor's properties as part of a Rural/Conservation Area ("RCA"), which limits the intensity with which those properties can be developed. Pet. App. 8a. Significantly, however, Craneveyor can still make beneficial uses of its properties by constructing single family residences, albeit at a lower density; by selling its development rights under the Transfer of Development Rights

("TDR") program; and by maintaining its properties for livestock and poultry keeping. Pet. App. 4a, 8a, 9a.

Although the Specific Plan still preserves beneficial uses for Craneveyor's properties, Craneveyor, and other Plaintiffs who are not parties to this appeal, filed the underlying lawsuit on September 30, 2021. Pet. App. 6a, 9a. Craneveyor then filed a First Amended Complaint on December 2, 2021. Pet. App. 9a. The City moved to dismiss the First Amended Complaint, and after recognizing that the City had raised "serious challenges to the viability of Plaintiffs' claims," the District Court granted Craneveyor's request for leave to file an amended complaint. Pet. App. 9a-10a. Craneveyor filed a Second Amended Complaint, and the District Court granted the City's Motion to Dismiss that pleading with prejudice. Pet. App. 9a, 19a.

Finally, Craneveyor appealed the District Court's ruling to the Ninth Circuit, which affirmed the District Court's conclusion that Craneveyor had not alleged a valid facial takings claim under either *Penn*

Central or *Lucas*.[1] Pet. App. 2a-5a.

ARGUMENT

I. This Case Presents No Issue Warranting a Repeal of *Penn Central*.

A. *Penn Central*'s Hallmark Is Its Flexibility.

Craneveyor argues that *Penn Central* has become practically unworkable because its fact-intensive inquiry can lead to different results, but Craneveyor mistakes the flexibility of *Penn Central*'s *ad hoc* inquiry for a defect when, as this Court already has said, that is its intended hallmark.

The Fifth Amendment's Takings Clause prohibits the taking of "private property for public use, without just compensation." U.S. Const. amend. V. In *Penn Central*, this Court identified three factors to determine whether a government regulation rises to the level of an unconstitutional taking: (1) the regulation's economic impact on the claimant; (2) the

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[1] The Ninth Circuit presumes, without deciding, that a facial takings challenge can be made under *Penn Central*. *Guggenheim v. City of Goleta*, 638 F.3d 1111 (9th Cir. 2010).

extent to which it interferes with reasonable investment-backed expectations; and (3) the character of the governmental action. 438 U.S. at 124. In *Lucas v. South Carolina Coastal Council*, the Court established a categorical, bright-line rule where the denial of all economically beneficial use of land constitutes a regulatory taking. 505 U.S. 1003, 1015 (1992).

This Court already has explained that the flexibility of *Penn Central* is its intended hallmark:

> "A central dynamic of the Court's regulatory takings jurisprudence, then, is its flexibility. This has been and remains a means to reconcile two competing objectives central to regulatory takings doctrine. One is the individual's right to retain the interests and exercise the freedoms at the core of private property ownership.
> …
> The other persisting interest is the government's well-established power to 'adjus(t) rights for the public good."

Murr v. Wisconsin, 582 U.S. 383, 394 (2017) quoting *Andrus v. Allard*, 444 U.S. 51, 65 (1979).

Because *Penn Central*'s defining strength is its flexibility, Craneveyor's criticism, for example, regarding the variable degrees of economic impact in takings analyses (Petition at 12-15) misses the entire point of *Penn Central*. The benefit of *Penn Central* is its fact-intensive inquiry and flexible nature to determine what may be a taking under certain circumstances but not in others. If the Court had established bright-line percentages for a taking below the level of a *Lucas* taking, *Penn Central* would lose its flexibility to be a truly *ad hoc* inquiry and the ability to balance the competing public and private objectives central to the Court's regulatory takings doctrine.

B. The Investment-Backed Expectations Prong Has Been Defined Over Decades.

Craneveyor argues that the investment-backed expectations factor is undefined, hard to predict, and "'no one really knows what it . . . means'" (Petition 16-19), but Craneveyor overlooks this Court's decades of guidance on this issue. Craneveyor's unwillingness to rely on the Court's controlling precedents for analyzing investment-backed expectations is not a valid criticism of the *Penn Central* analysis warranting this Court's review.

Penn Central first established that one of the key factors in determining whether a compensable regulatory taking has occurred is based on the extent to which the regulation has interfered with distinct investment-backed expectations. 438 U.S. at 124. Since then, the Court has provided further guidance and several illustrative examples for analyzing the investment-backed expectations prong of *Penn Central*.

In *Ruckelshaus v. Monsanto Co.*, the Court explained that "[a] 'reasonable investment-backed expectation' must be more than a 'unilateral expectation or an abstract need.'" 467 U.S. 986, 1005–06 (1984) quoting *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 161 (1980). There, the Court determined that, with respect to any health, safety, and environmental data that Monsanto submitted to the Environmental Protection Agency ("EPA"), Monsanto could not have had a reasonable, investment-backed expectation that the EPA would keep the data confidential beyond the limits prescribed in the amended statute itself. *Ruckleshaus*, 467 U.S. at 1006. Thereafter, the Court observed that investment-backed expectations are "often informed by the law in force" where the property is located. *Arkansas Game & Fish Comm'n v. United*

States, 568 U.S. 23, 38 (2012). The field of regulation and the extent that field has been regulated previously matter too: "'(t)hose who do business in the regulated field cannot object if the legislative scheme is buttressed by subsequent amendments to achieve the legislative end.'" *Concrete Pipe & Prod. of California, Inc. v. Constr. Laborers Pension Tr. for S. California*, 508 U.S. 602, 645 (1993) quoting *FHA v. The Darlington, Inc.*, 358 U.S. 84, 91 (1958) (Concrete Pipe did not have a reasonable basis to expect that the legislative ceiling for contingent liability would never be raised beyond 30%). But, in considering the regulatory backdrop, unreasonable enactments do not become less unreasonable over time. See *Palazzolo v. Rhode Island*, 533 U.S. 606, 627 (2001).

By way of example, the Court has decided several precedents that shed further light on whether reasonable, investment-backed expectations have been violated. The Court already has determined that regulations imposing retroactive liabilities violate reasonable, investment-backed expectations. See e.g., *E. Enterprises v. Apfel*, 524 U.S. 498, 532, 118 S. Ct. 2131, 2151, 141 L. Ed. 2d 451 (1998) (the Coal Act substantially interfered with reasonable investment-backed expectations by retroactively imposing liability for activities from 30 to 50 years in the past).

Similarly, consolidating nonadjacent properties owned by a single person or entity to look at the value of the properties as a whole rather than considering whether each individual property had lost all value would be inconsistent with reasonable, investment-backed expectations. See *Murr v. Wisconsin*, 582 U.S. 383, 397 (2017). Finally, there is no reasonable expectation to receiving identical benefits that may be modified at some future time. *Bowen v. Gilliard*, 483 U.S. 587, 607 (1987) (The prospective right to support payments, and the child's expectations with respect to the use of such funds, are clearly subject to modification by law, be it through judicial decree, state legislation, or congressional enactment.)

The foregoing precedents from this Court, alone, confirm that the investment-backed expectations factor is not some unknown standard that is impossible for lower courts to apply. Certiorari is unwarranted to overturn *Penn Central* where, as here, courts have for decades been able to define and apply the reasonable, investment-backed expectations standard in *Penn Central* based on this Court's precedents.

C. The Character of the Governmental Action Complies With This Court's Decisions And Is Not Unfairly Weighted Against Takings Claimants.

Craneveyor argues that the character of governmental action in adjusting the benefits and burdens of economic life to promote the common good is not a legitimate consideration in the regulatory takings analysis and conflicts with *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528 (2005) (Petition at 21-22). But Craneveyor ignores the plain language of *Lingle*, which contradicts this exact position. Specifically, the Court in *Lingle* unequivocally stated that "regulatory takings challenges are governed by the standards set forth in [*Penn Central*]." 544 U.S. at 538. After reciting the economic impact and investment-backed expectation factors, the Court stated that "the 'character of the governmental action'—for instance whether it amounts to a physical invasion or instead merely affects property interests through 'some public program adjusting the benefits and burdens of economic life to promote the common good'—may be relevant in discerning whether a taking has occurred." *Id.*, at 539 quoting *Penn Central*, 438 U.S. at 124. Both *Lingle* and *Penn Central* specifically hold that the consideration of a public program adjusting the benefits and burdens of economic life to promote the

common good is properly done within the context of a regulatory takings analysis under the character of the governmental action prong. This flatly contradicts Craneveyor's position to the contrary.

Similarly, Craneveyor argues that the character of governmental action analysis violates *Loretto* by making a regulatory taking contingent on whether there has been a physical taking, but Craneveyor again misconstrues this Court's precedents. In *Loretto v. Teleprompter Manhattan CATV Corp.*, the Court concluded: "In short, when the 'character of the governmental action,' is a permanent physical occupation of property, our cases uniformly have found a taking to the extent of the occupation, without regard to whether the action achieves an important public benefit or has only minimal economic impact on the owner." 458 U.S. 419, 434–35 (1982) quoting *Penn Central*, 438 U.S. at 124. *Loretto* does not stand for the proposition that a regulatory taking is contingent upon a physical taking as Craneveyor suggests. Instead, whether there has been a physical occupation of property is a sufficient, but not a necessary, basis for determining that a regulatory taking has occurred, regardless of the economic impact or public benefit of the regulation.

Finally, contrary to Craneveyor's assertion

otherwise (Petition at 22-24), the character of the governmental action is not unfairly skewed against takings claimants because this Court's precedents demonstrate that this factor, alone, can be dispositive against the government in a regulatory takings analysis. As demonstrated above, the Court in *Loretto* found that the character of the government's action was a physical occupation, constituting a taking in spite of the important public benefit achieved and minimal economic impact imposed. 458 U.S. at 434–35. Similarly, in *Hodel v. Irving*, the Court found that the character of the government regulation was so extraordinary that the entire *Penn Central* analysis shifted from a determination that the regulation at issue would be constitutional to a conclusion that it is an unconstitutional taking:

> "If we were to stop our analysis at this point [after analyzing economic impact and investment-backed expectations], we might well find § 207 constitutional. But the character of the Government regulation here is extraordinary. . . . [T]he regulation here amounts to virtually the abrogation of the right to pass on a certain type of property—the small undivided interest—to one's heirs.

> . . . [A] total abrogation of these rights cannot be upheld."

481 U.S. 704, 716–17 (1987). The foregoing precedents confirm that the character of governmental action analysis is not a foregone conclusion in favor of the government, as Craneveyor now contends.

Indeed, Craneveyor's criticism on this point demonstrates that public entities are functioning better, which is not a defect of *Penn Central* but rather a better thing for society. Craneveyor cannot seriously be disappointed that public entities have good reasons behind their regulatory enactments and that those enactments are meant to achieve some public benefit or purpose. Doing things for good reasons is one of the best ideals to which government can aspire, and any trend in furtherance of this is indicative of institutional progress -- not a deficiency in *Penn Central*.

D. *Penn Central* Should Not Be Overruled Under *Stare Decisis*.

Under *stare decisis*, this Court should decline Craneveyor's request to overrule *Penn Central* as the Court has repeatedly done with similar requests.

"*Stare decisis* is the preferred course because it

promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." *Payne v. Tennessee*, 501 U.S. 808, 827 (1991). Thus, the Court "will not overturn a past decision unless there are strong grounds for doing so." *Janus v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31*, 138 S. Ct. 2448, 2478 (2018).

The *stare decisis* factors for overturning a decision include the quality of the decision's reasoning, the workability of the rule it establishes, its consistency with other related decisions, developments since the decision was handed down, and reliance on the decision. *Janus*, 138 S. Ct. at 2478–79 (2018).

As demonstrated above, *Penn Central* establishes a workable regulatory takings analysis that courts have applied for over 45-years.

Craneveyor does not argue that *Penn Central* was incorrectly decided or poorly reasoned. For example, Craneveyor does not identify any flaw in its reasoning or attempt to show that it was incorrect as a matter of text, precedent, or history. In fact, *Penn Central* followed from and was consistent with this

Court's precedents: "[T]he Court's decisions identif[y] several factors that have particular significance" in determining whether a regulatory taking has occurred. 438 U.S. at 124. "*Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393 (1922), is the leading case for the proposition that a state statute that substantially furthers important public policies may so frustrate distinct investment-backed expectations as to amount to a 'taking.'" 438 U.S. at 127. The Court's decision in *Goldbatt v. Town of Hempstead*, 369 U.S. 590 (1962), also looked to "[t]he economic impact of the regulation on the claimant," and "the extent to which the regulation has interfered with distinct investment-backed expectations." *Penn Central*, 438 U.S. at 124. Significantly, however, Craneveyor does not call for this Court to overrule those decisions. Nor should they be overruled since the *Penn Central* analysis correctly flows from this Court's precedents.

Craneveyor also fails to demonstrate that *Penn Central* is inconsistent with this Court's subsequent decisions. To the contrary, this Court has repeatedly reaffirmed that, except for those rare cases governed by bright-line rules, "regulatory takings challenges are governed by the standards set forth in *Penn Central*." *Lingle*, 544 U.S. at 538; accord, e.g., *Murr*, 137 S. Ct. at 1943; *Arkansas Game & Fish Comm'n v.*

United States, 568 U.S. 23, 32 (2012); *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Plan. Agency*, 535 U.S. 302, 315 n.10 (2002); *Lucas*, 505 U.S. at 1019 n.8; see also, e.g., *Hodel v. Irving*, 481 U.S. 704, 713-714 (1987); *Mac-Donald, Sommer & Frates v. Yolo County*, 477 U.S. 340, 349 (1986).

Because courts have for over 45-years relied upon and applied *Penn Central*, the Court should not now overturn *Penn Central* when Craneveyor fails to meet the *stare decisis* factors for overturning a decision, let alone one as significant as *Penn Central*.

E. This Case Is An Unsuitable Vehicle To Overturn *Penn Central*.

This case is an extremely unsuitable vehicle to overturn *Penn Central* because the facts specific to this case are weighted heavily against Craneveyor and because Craneveyor does not even allege an as-applied takings challenge but rather a facial one.

Here, the District Court and Ninth Circuit both correctly determined that Craneveyor had failed to allege a valid takings claim under either *Penn Central* or *Lucas v. South Carolina Coast Council*, 505 U.S. 1003 (1992). The Ninth Circuit properly held that *Lucas* requires a complete loss, and that Craneveyor

failed to satisfy that standard because the land retained both more than *de minimis* value and had the potential for economically beneficial uses. Pet. App. 3a. It likewise rejected Craneveyor's *Penn Central* claim, finding that the Specific Plan did not have a sufficient economic impact for a taking because Craneveyor can still develop its properties with single-family residences and make other beneficial uses; there was no interference with Craneveyor's reasonable investment-backed expectations because Craneveyor does not have a reasonable expectation to be free from changes in zoning regulations; and the character of the government action arises from a public program that adjusts the benefits and burdens of economic life to promote the common good. Pet. App. 4a-5a. In light of the foregoing facts, it is difficult to see how Craneveyor suffered a taking under any reasonable understanding of the Takings Clause, making this case far from an ideal vehicle to overturn *Penn Central*.

This case is an unsuitable vehicle also because Craneveyor does not even allege an as-applied takings challenge but rather a facial challenge, rendering the *Penn Central* framework inapplicable. *Laurel Park Cmty., LLC v. City of Tumwater*, 698 F.3d 1180, 1188 (9th Cir. 2012) ("It is not clear that a facial challenge

can be made under *Penn Central*.")

The ad hoc nature of a *Penn Central* claim requires considering the effect of the Specific Plan in specific circumstances unique to each party and parcel of property, which is beyond the scope of a facial challenge. *See Zilber v. Town of Moraga*, 692 F. Supp. 1195, 1202 (N.D. Cal. 1988) (recognizing that *Penn Central*'s "particularized factual determinations are inappropriate in a facial challenge"). Importantly, *Penn Central* developed its framework in response to an as-applied challenge—not a facial challenge. See *Penn Central*, 438 U.S. at 130-31. Indeed, the Court has described the framework as requiring "ad hoc, factual inquiries." *Id.*, at 124. In *Hodel*, the Court indicated that such inquiries are inappropriate in a facial challenge:

> "These 'ad hoc, factual inquiries' must be conducted with respect to specific property, and the particular estimates of economic impact and ultimate valuation relevant in the unique circumstances.
>
> Because appellee's taking claim arose in the context of a facial challenge, it presented no concrete controversy concerning either application of the Act

> to particular surface mining operations or its effect on specific parcels of land. Thus the only issue properly before the District Court and, in turn, this Court, is whether the 'mere enactment' of the Surface Mining Act constitutes a taking."

Hodel v. Virginia Surface Min. & Reclamation Ass'n, Inc., 452 U.S. 264, 295 (1981).

As *Hodel* explains, *Penn Central*'s ad hoc inquiries are in direct conflict with a facial claim that is confined to looking only at the regulations' text and "general scope and dominant features." *Comm. for Reasonable Regul. of Lake Tahoe v. Tahoe Reg'l Plan. Agency*, 311 F. Supp. 2d 972, 997 (D. Nev. 2004) ("a facial challenge…[is] inapposite to the ad hoc, factual inquiries necessary under *Penn Central*"). Because Craneveyor does not allege an as-applied takings challenge to which a *Penn Central* analysis would be appropriate in the first place, this case is an unsuitable vehicle to overturn *Penn Central*.

II. Craneveyor Proposes to Replace *Penn Central* With Deeply Flawed Standards.

Craneveyor proposes to jettison *Penn Central* in

favor of a new, deeply flawed rule: "When the government deprives a property owner of a discrete, marketable interest in land, just compensation for the taking must be paid irrespective of the *Penn Central* factors." Petition at 27. Such a rule is anathema to this Court's precedents and would create absurd results such that no meaningful regulations could be adopted for fear of liability for a regulatory taking, or the government would always be liable for any regulation it adopts.

A "discrete, marketable interest in the land" is so broad that Craneveyor's newly-proposed rule would always be violated by virtually any regulation. For example, if the City were to enact regulations limiting the height of buildings, establishing minimum required setbacks, or setting square-footage limitations for dwellings based on lot sizes, the City would be liable for a taking under Craneveyor's new rule. This is because there would be a discrete, marketable interest in having a taller building, a larger building that did not have to comply with setbacks, and more square-footage.

Such a rule is unworkable because it would not only always create liability for public entities but also would not allow for any regulations to be passed. As Justice Holmes aptly observed, "'Government hardly

could go on if to some extent values incident to property could not be diminished without paying for every such change in the general law.'" *Murr v. Wisconsin*, 582 U.S. 383, 394 (2017) quoting *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 413 (1922). Craneveyor's rule is precisely what Justice Holmes warned against, runs counter to this Court's precedents, and merits no further consideration.

Similarly, Craneveyor's requests for clarification of *Penn Central* and *Lucas* are unavailing. Petition at 28-35. Contrary to Craneveyor's assertions otherwise, no further clarity need be rendered by this Court to establish what does and does not meet the *Penn Central* factors because that is the entire point of over 45-years of jurisprudence from this Court and lower courts. The Court already has well-established and repeatedly applied the *Penn Central* factors. The further "clarification" Craneveyor seeks would only serve to establish bright-line rules to Craneveyor's benefit, binding the important flexibility of *Penn Central*'s ad hoc analysis, while overturning more of this Court's precedents.

Craneveyor requests that zoning ordinances that promote the common good carry no weight in the regulatory analysis (Petition at 33), but this would

only serve to overrule *Lingle*, 544 U.S. at 539 and *Penn Central*, 438 U.S. at 124, which are inapposite with Craneveyor's demand: "the 'character of the governmental action'—for instance whether it amounts to a physical invasion or instead merely affects property interests through 'some public program adjusting the benefits and burdens of economic life to promote the common good'—may be relevant in discerning whether a taking has occurred."

Craneveyor requests clarification that a property owner have a legally cognizable expectation of using the property for permitted uses under existing regulations, but this would overturn this Court's precedents and others, establishing that litigants are not immune from zoning and other legislative changes. See *Concrete Pipe & Prod. of California, Inc. v. Constr. Laborers Pension Tr. for S. California*, 508 U.S. 602, 645 (1993) ("'[T]hose who do business in the regulated field cannot object if the legislative scheme is buttressed by subsequent amendments to achieve the legislative end.'"); *FHA v. The Darlington, Inc.*, 358 U.S. 84, 91 (1958); *Rancho de Calistoga v. City of Calistoga*, 800 F.3d 1083, 1091 (9th Cir. 2015) ("Simply put, when buying a piece of property, one cannot reasonably expect that property to be free of government regulation such as zoning").

Craneveyor demands that the Court clarify that a property owner need not suffer a near total loss of a property's use or value to satisfy the economic impact factor (Petition at 29), but that would upend further precedents from this Court and defeat the purpose of the entire regulatory scheme. "[G]overnmental land-use regulation" is supposed to "amount to a 'taking'" only "under extreme circumstances." *United States v. Riverside Bayview Homes, Inc.*, 474 U.S. 121, 126 (1985); see, e.g., John D. Echeverria, *Making Sense of Penn Central*, 23 UCLA J. Envt'l L. & Pol'y 171, 179 (2005) (identifying "numerous, diverse reasons why a high level of economic impact should be necessary to establish a regulatory taking").

Finally, Craneveyor seeks a clarification that a *Lucas* taking is established when the effect of a regulation forecloses all economically viable use (Petition at 34). Such a change is not only unwarranted in this case -- where Craneveyor presents only facial challenges only -- but also unnecessary because *Lucas* already establishes a per se taking when the government has deprived a landowner of all economically beneficial uses. *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1018 (1992).

III. CONCLUSION

Because the Petition for Writ of Certiorari fails to set forth any valid reason for this Court's review, the Petition should be denied.

Respectfully Submitted,

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