

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR SAN JUAN COUNTY

COMMON SENSE ALLIANCE, P.J. TAGGARES )  
COMPANY, and FRIENDS OF THE SAN JUANS, )  
 )  
Petitioners, )  
 )  
v. )  
 )  
GROWTH MANAGEMENT HEARINGS BOARD, )  
WESTERN WASHINGTON REGION, et al., )  
 )  
Respondents. )

No. 13-2-05190-8 (Consolidated)  
**MOTION OF PACIFIC LEGAL  
FOUNDATION FOR LEAVE TO  
FILE AMICUS CURIAE BRIEF**

**RELIEF REQUESTED**

Pacific Legal Foundation (PLF) respectfully moves this Court for leave to file an amicus curiae brief in support of Petitioners Common Sense Alliance and the P.J. Taggares Company (CSA) in this appeal from the decision issued by the Growth Management Hearings Board in *Friends of the San Juans, et al. v. San Juan County*, GMHB No. 13-2-0012c (FDO Sept. 6, 2013). The proposed amicus brief will be no longer than 12 pages in length and will be filed within 14 days of the Court’s ruling on this motion.



1 114 S. Ct. 2309, 129 L. Ed. 2d 304 (1994); *Nollan v. California Coastal Comm'n*, 483 U.S. 825,  
2 107 S. Ct. 3141, 97 L. Ed. 2d 677 (1987).

3 PLF attorneys have more than two decades of experience litigating the nexus and  
4 proportionality tests in Washington. *See, e.g., Citizens' Alliance for Property Rights v. Sims*, 145  
5 Wn. App. 649, 187 P.3d 786 (2008); *City of Olympia v. Drebeck*, 156 Wn.2d 289, 126 P.3d 802  
6 (2006); *Isla Verde Int'l Holdings, Inc. v. City of Camas*, 146 Wn.2d 740, 49 P.3d 867 (2002);  
7 *Vintage Construction Co., Inc. v. City of Bothell*, 135 Wn.2d 833, 959 P.2d 1090 (1998); *Sparks*  
8 *v. Douglas County*, 127 Wn.2d 901, 904 P.2d 738 (1995); *Sintra, Inc. v. City of Seattle*, 119 Wn.2d  
9 1, 829 P.2d 765 (1992). In addition, PLF attorneys have extensive experience litigating GMA  
10 issues. *See, e.g., Thurston County v. Western Washington Growth Mgmt. Hearings Bd.*, 164 Wn.2d  
11 329, 190 P.3d 38 (2008); *Kitsap Alliance of Prop. Owners v. Cent. Wash. Growth Mgmt. Hearings*  
12 *Bd.*, 160 Wn. App. 250, 255 P.3d 696 (2011); *Swinomish Indian Tribal Cmty. v. Western*  
13 *Washington Growth Mgmt. Hearings Bd.*, 161 Wn.2d 415, 166 P.3d 1198 (2007). PLF's  
14 arguments based on this experience will assist the Court in understanding and deciding important  
15 constitutional issues raised in CSA's petition for review.

#### 16 **NEED FOR FURTHER ARGUMENT**

17 Counsel for the amicus applicant has reviewed the pleadings on file with the Court and  
18 relevant portions of the record on review, and is familiar with the facts and issues raised in this  
19 appeal. CSA's petition asks this Court to review certain provisions of San Juan County's critical  
20 areas ordinance under the "essential nexus" and "rough proportionality" standards of *Nollan v.*  
21 *California Coastal Commission* and *Dolan v. City of Tigard*. Washington courts have incorporated  
22 the nexus and proportionality standards into state constitutional law, and recognize that local  
23 governments must satisfy those tests when adopting critical area regulations that place conditions  
24 on new development. *Kitsap Alliance of Prop. Owners*, 160 Wn. App. 250, 273 ("Regulations  
25 adopted under the GMA that impose conditions on development applications must comply with

1 the nexus and rough proportionality tests.”); *Honesty in Env'tl. Analysis and Legislation v. Cent.*  
2 *Puget Sound Growth Mgmt. Hearings Bd.*, 96 Wn. App. 522, 533, 979 P.2d 864 (1999)  
3 (“[P]olicies and regulations adopted under GMA must comply with nexus and rough  
4 proportionality limits the United States Supreme Court has placed on governmental authority to  
5 impose conditions on development applications.”).

6 The nexus and proportionality tests constitute a special application of the unconstitutional  
7 conditions doctrine that protects the Fifth Amendment right to just compensation for property that  
8 the government demands as a condition on approval of a land-use permit. *Koontz*, 133 S. Ct. 2586,  
9 2594. Washington courts have historically recognized that the nexus and proportionality  
10 requirements subject development conditions—like the County’s buffer requirement—to  
11 heightened scrutiny, with the burden of demonstrating compliance placed on the government. *See*,  
12 *e.g.*, *Burton v. Clark Cnty.*, 91 Wn. App. 505, 523, 958 P.2d 343 (1998); *Sintra, Inc. v. City of*  
13 *Seattle*, 131 Wn.2d 640, 676, 935 P.2d 555 (1997). However, a recent decision from Division II  
14 of the Court of Appeals created a substantial amount of confusion by characterizing *Nollan* and  
15 *Dolan* as establishing a “due process” doctrine and subjecting the challenged development  
16 conditions to lesser, rational basis, scrutiny. *See Kitsap Alliance of Prop. Owners*, 160 Wn. App.  
17 at 272-74.

18 PLF is uniquely qualified to address the nexus and proportionality standards, their proper  
19 application, and any conflicts/confusion in Washington case law. Amicus applicant believes that  
20 additional argument based on its unique perspectives and experience will assist the Court in  
21 understanding and deciding the important constitutional issues raised in this case.

22 ///

23 ///

24 ///

25 ///

1 **CONCLUSION**

2 Amicus applicant respectfully requests that this Court grant its motion for leave to file an  
3 amicus curiae brief in support of Petitioners Common Sense Alliance and the P.J. Taggares  
4 Company.

5 DATED: December 17, 2013.

6 Respectfully submitted,

7 BRIAN T. HODGES

8 

9 BRIAN T. HODGES, WSBA No. 31976  
10 Pacific Legal Foundation  
11 10940 NE 33rd Place, Suite 210  
12 Bellevue, Washington 98004  
13 Telephone: (425) 576-0484  
14 Facsimile: (425) 576-9565

15 *Attorney for Amicus Curiae*  
16 *Pacific Legal Foundation*