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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO**

**COMMUNITY REDEVELOPMENT
AGENCY OF THE CITY OF RANCHO
CORDOVA,**

Plaintiff,

vs.

**THE LILY COMPANY,
Defendant**

Department 13

Case No.: 2009-00043404

TENTATIVE DECISION

The following shall constitute the Court's tentative decision after the first phase of this bifurcated trial, pursuant to Rule of Court 3.1590 and 3.1591(a).

Introduction

This is the first phase in a bifurcated trial of an eminent domain action in which plaintiff seeks to acquire four parcels owned by defendant, located on Folsom Boulevard in the City of Rancho Cordova. In this phase of the proceedings, the Court must address certain objections to the plaintiff's right to exercise eminent domain, which defendant has asserted as affirmative defenses in its First Amended Answer. If plaintiff's eminent domain complaint survives adjudication of defendant's right to take objections, the second phase of the trial will address valuation issues.

Legal Background

Defendant has asserted its right to take objections in this eminent domain proceeding as permitted by Code of Civil Procedure section 1245.255(a)(2).

1 Plaintiff's authority to acquire defendant's property through eminent domain is governed
2 by Code of Civil Procedure section 1240.030, which provides:

3 "The power of eminent domain may be exercised to acquire property for a proposed
4 project only if all of the following are established:

5 "(a) The public interest and necessity require the project.

6 "(b) The project is planned or located in the manner that will be most compatible with the
7 greatest public good and the least private injury.

8 "(c) The property sought to be acquired is necessary for the project."

9 Code of Civil Procedure section 1245.250(a) provides: "Except as otherwise provided by
10 statute, a resolution of necessity adopted by the governing body of the public entity pursuant to
11 this article conclusively establishes the matters referred to in Section 1240.030."

12 In this case, plaintiff adopted a Resolution of Necessity with regard to the acquisition of
13 defendant's property through eminent domain.¹

14 Code of Civil Procedure section 1245.255(b) provides that: "A resolution of necessity
15 does not have the effect provided in Section 1245.250 to the extent that its adoption or contents
16 were influenced or affected by gross abuse of discretion by the governing body."

17 Under applicable appellate case law, a gross abuse of discretion by the governing body
18 with respect to adoption of a resolution of necessity is shown where the resolution is not
19 supported by substantial evidence, or where, at the time of the agency hearing on the resolution,
20 the agency had committed itself irrevocably to the taking of the property regardless of the
21 evidence presented at the hearing. (See, e.g., *Santa Cruz County Redevelopment Agency v. Izant*
22 (1995) 37 Cal. App. 4th 141, 149; *Redevelopment Agency v. Norm's Slauson* (1985) 173 Cal.
23 App. 3rd 1121, 1127.)

24 The property owner asserting objections to the agency's right to take has the burden of
25 establishing, by substantial evidence, that the resolution of necessity was adopted in an invalid
26 manner, and because of a gross abuse of discretion is not entitled to its ordinary conclusive
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¹ See, Administrative Record ("A.R."), pages 1-6.

1 effect; if it does so, then the burden of proving the elements for a particular taking must rest on
2 the agency to do so by the preponderance of the evidence. (See, *Redevelopment Agency v.*
3 *Norm's Slauson, supra*, 173 Cal. App. 3rd at 1127-1128.)

4 Analysis

5 In this case, the Court finds that defendant has not established that plaintiff's Resolution
6 of Necessity is not supported by substantial evidence. The administrative record of the
7 proceedings leading up to plaintiff's adoption of the Resolution of Necessity contains ample
8 evidence of the blighted condition of the subject property and the surrounding area, of the need
9 to acquire the subject property in order to further the objectives of the City's Redevelopment
10 Plan for the area, and that the Redevelopment Plan itself, in furtherance of which the subject
11 property is being acquired, has been planned and located in such a manner as to lead to the
12 greatest public good and the minimum of private injury.

13 Additionally, the Court finds that defendant has not established, by substantial evidence,
14 that plaintiff's adoption of the Resolution of Necessity was the result of a gross abuse of
15 discretion in any other manner.

16 Although defendant contended at trial that plaintiff's eminent domain action represented
17 little more than a subterfuge designed to permit the Los Rios Community College District to
18 acquire the property without having to honor a contract the Los Rios District previously had
19 entered into with defendant, the evidence did not support that contention. The Court finds no
20 evidence to support a view that plaintiff and the Los Rios District colluded for the purpose of
21 assisting the latter to escape from its contract with defendant. Instead, the evidence supported
22 the view that plaintiff initially was willing to permit that proposed deal to go forward in
23 furtherance of the Redevelopment Plan, and that it was only when the proposed deal fell apart
24 (largely over environmental contamination issues), **which it did without any interference by**
25 **plaintiff**, that plaintiff decided to move forward through eminent domain.

26 The Court also finds that the evidence does not support defendant's contention that
27 plaintiff had committed itself irrevocably to acquiring the property prior to the hearing on the
28 Resolution of Necessity and regardless of any evidence presented in that process. While the

1 evidence did show that plaintiff had considered the need to acquire defendant's property in order
2 to advance the Redevelopment Plan, that plaintiff had considered the specific end use of at least
3 a portion of the property as a college facility, and that plaintiff even had discussed the potential
4 terms of an agreement to transfer a portion of the property to the Los Rios District following its
5 acquisition through eminent domain, such evidence falls short of demonstrating actual
6 predetermination. Plaintiff had not taken any of the kind of formal and detailed action with
7 regard to the proposed end use, such as entering into binding commitments, that was found to
8 support a finding of predetermination in cases such as *Redevelopment Agency v. Norm's Slauson*
9 (1985) 173 Cal. App. 3rd 1121. Plaintiff had done no more than consider a proposed end use for
10 the property and discuss potential future contract terms with a potential ultimate buyer. If such
11 consideration amounted to predetermination, it is likely that few eminent domain acquisitions in
12 support of a redevelopment plan would survive scrutiny. Indeed, the Eminent Domain Law
13 permits an agency to acquire property for a public purpose with the intent to sell or otherwise
14 dispose of it in furtherance of that purpose. (See, Code of Civil Procedure section 1240.120.)

15 The Court therefore finds that the adoption and contents of plaintiff's Resolution of
16 Necessity in this case were not influenced or affected by a gross abuse of discretion. The Court
17 therefore finds that the Resolution of Necessity is valid, and conclusively establishes the matters
18 referred to in Code of Civil Procedure section 1240.030. This, in turn, establishes plaintiff's
19 right to take defendant's property, unless defendant can assert a meritorious objection on other
20 grounds.

21 Defendant attempts to do so, asserting objections to plaintiff's right to take under Code of
22 Civil Procedure section 1250.360, which apply regardless of whether the agency has adopted a
23 resolution of necessity.

24 As relevant to this case, subsection (h) of the statute provides for objections on "[a]ny
25 other ground provided by law." The Legislative Committee Comment, 1975 Addition, explains
26 that "...there may be other grounds for objection not included in the Eminent Domain Law, e.g.,
27 where there exist federal or constitutional grounds for objection or where the prerequisites to
28 condemnation are located in other codes."

1 Defendant has advanced several objections based on the common theory that plaintiff has
2 failed to comply with statutory prerequisites for condemnation set forth in other codes, including
3 the contention that plaintiff has failed to conduct an environmental review of the proposed end
4 use for the property under the California Environmental Quality Act ("CEQA"), and has failed to
5 comply with various statutory requirements for acquisition of a school site or for the construction
6 of public buildings, found in the Education Code and the Health and Safety Code.

7 The Court finds that defendant's objections should not be sustained because they suffer
8 from a common flaw, in that they focus inappropriately on the proposed ultimate use of the
9 property for an educational facility as the purpose of the eminent domain acquisition, rather than
10 on the immediate and actual purpose for which the property is being acquired, which is to
11 eliminate blight in furtherance of the Redevelopment Plan, as stated explicitly in the Resolution
12 of Necessity. In other words, defendant incorrectly analyzes this matter as a single-stage
13 process, in which plaintiff is viewed, in effect, as the agency acquiring the property for the
14 construction of a college facility, rather than as a two-stage process, in which the present eminent
15 domain action stands or falls on its own merits, and any future acquisition of the property by the
16 Los Rios District for the construction of a college facility will be done through a separate
17 contract or proceeding which is subject to its own separate legal requirements.

18 This flaw is illustrated by defendant's claim that plaintiff was required to comply with
19 CEQA by carrying out an environmental review of the proposed college facility before acquiring
20 defendant's property through eminent domain. Defendant's theory depends upon accepting the
21 concept that the "project" that will be carried out through the eminent domain action is the
22 ultimate construction of the college facility. This is not the case: as stated in the Resolution of
23 Necessity, the "project", for purposes of CEQA, is the acquisition of land pursuant to plaintiff's
24 Redevelopment Plan, which was subject to a full environmental analysis that is not challenged in
25 this action.²
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28 ² The Final Environmental Impact Report for the Rancho Cordova Redevelopment Plan is in the Administrative
Record at Vol. 15, pp. 3925-4019.

1 In acquiring property pursuant to a redevelopment plan for the purpose of eliminating
2 blight, a public agency may rely on the environmental review conducted for the adoption of the
3 plan, even if the current acquisition represents only a part of the implementation of the plan.
4 (See, *Dusek v. Redevelopment Agency of the City of Anaheim* (1985) 173 Cal. App. 3rd 1029,
5 1041.) Because plaintiff seeks to acquire defendant's property to eliminate blight pursuant to the
6 Redevelopment Plan, this is not a case in which the "project" has changed since the time of the
7 initial environmental review, such as *City of San Jose v. Great Oaks Water Co.* (1987) 192 Cal.
8 App. 3rd 1005 or *Burbank-Glendale-Pasadena Airport Authority v. Hensler* (1991) 233 Cal. App.
9 3rd 577.

10 Nor is it a case in which plaintiff seeks to acquire defendant's property without having
11 any defined public use in view at all, such as *City of Stockton v. Marina Towers, LLC* (2009) 171
12 Cal. App. 4th 93. As stated in that case, the Community Redevelopment Law, specifically,
13 Health and Safety Code section 33037, provides that redevelopment of blighted areas is a public
14 use for which property may be condemned, thus providing what the court described as a "safe
15 harbor" for the resolution of necessity.³

16 It is true, as defendant argues, that the Final EIR for the Redevelopment Plan is a
17 program EIR that explicitly does not address "...the detailed impacts of future individual, site-
18 specific, infrastructure, industrial, commercial, and residential development actions (subsequent
19 activities) that are not specifically described in the proposed [Redevelopment] Plan, but may
20 occur within the Project Area at some future time, pursuant to or facilitated by the
21 Redevelopment Plan..."⁴ But the Final EIR does not provide, as defendant's argument implies,
22 that project-specific environmental review must, or will, occur at the time of any acquisition of
23 property pursuant to the Redevelopment Plan, by eminent domain or otherwise. Rather, the
24 Final EIR provides that "...CEQA review of such subsequent activities will be undertaken at a
25 later time, if and when such actions come before the City or Agency in the form of a specific
26 development application or City/Agency initiated project. At that time, when details of the
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28 ³ See, 171 Cal. App. 4th at 111.

⁴ See, A.R., p. 3933, Paragraph 2.1.

1 subsequent activity are sufficiently defined, the subsequent activity will be subject to its own,
2 project-specific, environmental determination by the City or Agency.”⁵ Thus, nothing in the
3 Final EIR itself requires plaintiff to conduct an environmental review of the potential end use of
4 defendant’s property for a college facility at the time of the acquisition of the property pursuant
5 to the Resolution of Necessity. The appropriate time for such review is when the ultimate end
6 use is formally proposed for approval by the City. With regard to any college facility to be
7 constructed by the Los Rios District, that time has not yet arrived.

8 Similarly, because the true nature of the action at issue here is the acquisition of
9 defendant’s property for the purposes of eliminating blight pursuant to the Resolution of
10 Necessity, compliance with statutes in various codes that may be applicable to the Los Rios
11 District’s ultimate acquisition of a portion of the property for a college facility, or to the actual
12 construction of the public buildings that will make up the facility, is not required as a
13 prerequisite to the present eminent domain action.⁶ Again, the appropriate time for such action
14 has not yet arrived.

15 Defendant’s contention that the present eminent domain action violates the terms of the
16 Redevelopment Plan itself is also without merit. To the extent that such contention is based on
17 the theory that the Redevelopment Plan requires plaintiff to comply with all applicable laws, the
18 Court finds, for the reasons discussed above, that defendant has not established that plaintiff has
19 failed to comply with any applicable legal prerequisite for the exercise of eminent domain.
20 Moreover, even under defendant’s view of the case, with the “project” being viewed as the
21 acquisition of the property for a college facility, the Redevelopment Plan specifically provides
22 for educational facilities within the redevelopment area.⁷

23 Defendant also asserts that plaintiff’s attempt to acquire its property through eminent
24 domain violated its due process and equal protection rights. From the administrative record, it
25 does not appear that defendant presented these arguments to plaintiff prior to the adoption of the
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27 ⁵ *Id.*

28 ⁶ As such alleged prerequisites to the present eminent domain action, defendant cites Education Code sections 66904, 81033(c), and Health and Safety Code sections 33445, 33352, 33490, 33679.

⁷ See, e.g., A.R. pp. 165; 183.

1 Resolution of Necessity, and on that basis, defendant's contentions are barred for failure to
2 exhaust administrative remedies. (See, *City of Lincoln v. Barringer* (2002) 102 Cal. App. 4th
3 1211, 1228.)

4 Regardless of any failure to exhaust, however, the Court also finds that the evidence
5 presented at trial does not establish any violation of defendant's due process or equal protection
6 rights. Specifically, the evidence does not establish that defendant was subjected to any kind of
7 unequal treatment based on illegitimate or improper racial animus, as defendant alleged, or that
8 defendant was not provided with an opportunity for a fair hearing, and a fair hearing, on its
9 objections to eminent domain prior to adoption of the Resolution of Necessity.

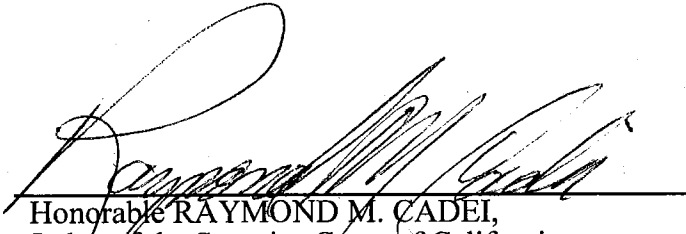
10 Conclusion

11 Defendant has not established, either through the evidence in the administrative record or
12 through the evidence admitted at trial, that any of its objections to plaintiff's right to take have
13 merit. Defendant's right to take objections are therefore overruled, and the Court finds that
14 plaintiff has established its right to take defendant's property pursuant to the Resolution of
15 Necessity.

16 Pursuant to Rule of Court 3.1591(a), a Statement of Decision must be issued on this first
17 phase of this bifurcated trial as prescribed in Rule of Court 3.1590. Pursuant to Rule of Court
18 3.1590(c)(3), the Court orders counsel for plaintiff to prepare the proposed Statement of
19 Decision.

20
21
22 Date:

11/30/10


HONORABLE RAYMOND M. CADEI,
Judge of the Superior Court of California,
County of Sacramento

CERTIFICATE OF SERVICE BY MAILING
(C.C.P. Sec. 1013a(4))

I, the Clerk of the Superior Court of California, County of Sacramento, certify that I am not a party to this cause, and on the date shown below I served the foregoing TENTATIVE DECISION by depositing true copies thereof, enclosed in separate, sealed envelopes with the postage fully prepaid, in the United States Mail at Sacramento, California, each of which envelopes was addressed respectively to the persons and addresses shown below:

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I, the undersigned deputy clerk, declare under penalty of perjury that the foregoing is true and correct.

Dated: 11-30-10

Superior Court of California, County of
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By: S. SLORT,
Deputy Clerk

