

Memorandum 78-29

Subject: Study E-36.56 - Condemnation Law and Procedure (Ad Valorem Property Taxes in Eminent Domain Proceedings)

Earlier this year, the Commission distributed for comment a tentative recommendation relating to ad valorem property taxes in eminent domain proceedings. A copy of the tentative recommendation is attached. The objective of the recommendation is to reorganize and redraft existing provisions for clarity. The changes recommended are primarily technical in nature, with some minor substantive changes.

The responses to the tentative recommendation were generally favorable. It was approved without qualification by the tax collectors of the following counties: Trinity (Exhibit 1--pink), Los Angeles (Exhibit 4--buff), Nevada (Exhibit 9--yellow), San Bernardino (Exhibit 10--green), Riverside (Exhibit 14--white), and Solano (not reproduced--comments marked on copy). It was also approved without qualification by the Sacramento Municipal Utility District (Exhibit 2--yellow), County of San Diego (Exhibit 8--pink), and County of Riverside (Exhibit 13--gold). Qualified approval was expressed by the tax collectors of San Benito (Exhibit 6--gold) and San Mateo (Exhibit 12--blue) counties and by the State Bar Condemnation Committee (Exhibit 11--buff). Their qualifications are discussed below, along with the critical comments received from Hemmings (Exhibit 3--green), McElligott (Exhibit 5--blue), and Professor Sato (Exhibit 7--white).

Scope of Recommendation

McElligott (Exhibit 5--blue) makes the argument that there are problems in payment and apportionment of fixed assessment liens on property taken by eminent domain, which should be dealt with at the same time as the problems in payment and apportionment of tax liens are dealt with. The Commission has previously received the same suggestion from Hemmings, in a letter distributed to the Commission at the time of the initial staff draft of this recommendation.

The problem with dealing with assessment liens is that they must be treated quite differently from taxes. They are not subject to cancellation, and there may be different policies involved in the manner of apportionment and collection. If the Commission is interested, the

staff will further investigate the assessment lien problems, on a non-priority basis in the same manner that the present tentative recommendation has been done, and give the Commission a memorandum when the investigation is completed. The staff will add a note to that effect in footnote 4.

Title of Legislation

Hemmings (Exhibit 3--green) suggests that the title of the proposed legislation, which appears at the top of page 2 of the recommendation, be broadened to refer to public agency acquisition of real property. His apparent concern is that the statutes affected deal not only with acquisition by eminent domain but also incidentally with other types of acquisitions by public entities. The title could be revised to read:

An act to amend Section . . . , relating to ad valorem property taxes on property subject to eminent domain proceedings or acquired by public entities .

In any case, this is a matter for the Legislative Counsel to determine, and he will insert the title that is most descriptive.

Code of Civil Procedure § 1250.310. Contents of complaint

Although Section 1250.310 of the Eminent Domain Law is not proposed to be amended in the tentative recommendation, Hemmings (Exhibit 3--green) suggests that it be revised so that the eminent domain complaint includes the assessed identification number of the property to be taken and of the larger parcel, if any.

The staff questions whether this would serve a useful purpose. Existing law requires the tax collector to certify the assessed identification number to the court when the court gives the tax collector the legal description of the property and requests tax data for the property; this requirement is continued in Section 1260.250 of the draft. It seems unnecessary to require the identification number before this time, and it would create problems of accurate identification in the complaint. Also, the property owner presumably is familiar with the assessed identification number of the property. Absent some clear indication of the benefit to be gained by requiring this information in the complaint, the staff recommends against its adoption.

Code of Civil Procedure § 1260.250. Determination of property taxes

Subdivision (a). Section 1260.250(a) continues an existing provision that directs the court to require tax data from the tax collector. The State Bar Condemnation Committee (Exhibit 11--buff) points out a technical defect that there is no procedure for requiring tax data where the case is settled without having been set for trial. This defect could be cured by the following amendment, along the lines suggested by the Bar Committee:

1260.250. (a) The court, ~~either~~ on the date it issues an order for possession, ~~or~~ on or before the date set for trial, or on or before the date of entry of judgment, whichever is earlier occurs first, shall give the tax collector the legal description of the property sought to be taken and direct the tax collector to certify to the court the following information:

* * * * *

A comparable change would be required in subdivision (b).

Hemmings (Exhibit 3--green) believes that this provision should also be revised to place the burden on the condemnor to prepare an appropriate order for the court to sign ex parte. His concern is that, if the duty is left to the court, it will not be done until after the final judgment. The staff believes this can best be done by giving the condemnor an incentive to see that the taxes are paid out of the award. See discussion below under Revenue and Taxation Code Section 5083.

Subdivision (a)(1). Existing law permits application for a separate tax assessment of property in an eminent domain proceeding at any time after the taxes on such property are subject to cancellation. Code Civ. Proc. § 1268.420. The intent of this provision is to provide for the partial taking situation where taxes must be cancelled on the part taken but continue on the remainder.

The second sentence of Section 1260.250(a)(1) continues this provision but makes clear that the application may be made early in the proceeding. Hemmings (Exhibit 3--green) believes that the separate assessment should be made earlier still--"a segregation should be ordered promptly so that the property owner, if so advised, can stop paying ad valorem taxes on the portions sought to be taken and continue payments on the remainder." The County of San Mateo (Exhibit 12--blue), on the other hand, has problems with any separate assessment before the

final order of condemnation. "We are reluctant to split property until the final order has been issued because there are generally changes from those originally proposed and it leads to nothing but confusion to go back and redo the assessment maps and billings."

The staff finds the case of the taxing authorities more compelling than that of the property owner. The property owner can recover any taxes paid that are subsequently cancelled by obtaining a refund pursuant to Section 1268.440. The staff would restore the separate assessment provision to Section 1268.420, as in existing law, permitting application at any time after the taxes are subject to cancellation.

This would also help to cure the problem raised by Professor Sato (Exhibit 7--white) that separate assessment should not be used as a means of avoiding payment of taxes past due on the whole parcel. To make clear that taxes as to the whole property are required to be paid out of the award, the staff would revise the second sentence of Section 1260.250(a)(1) to read:

If the property does not have a separate valuation on the assessment roll, the information required by this section shall be for the larger parcel of which the property is a part.

Subdivision (a)(3)-(4). Professor Sato (Exhibit 7--white) notes an inconsistency between Section 1260.250(a)(3)-(4) and Revenue and Taxation Code Sections 5084-5085 in their use of the phrase "current taxes." However, the staff does not believe that Professor Sato's proposed amendment to Section 1260.250 is an improvement. If the inconsistency is causing confusion, the staff proposes to remedy it by deleting the reference to "current" taxes from Section 5084; this provision actually relates to taxes for the next succeeding tax year.

Subdivision (b). The County of San Mateo (Exhibit 12--blue) points out that it is unnecessary to have the board of supervisors approve a form on which the tax collector submits the required information to the court when a simple letter would suffice. The staff agrees, and will delete the phrase "on a form approved by the board of supervisors."

Hemmings (Exhibit 3--green) believes that a method should be devised by which the information certified by the tax collector to the court is made available to the property owner's attorney. He suggests that the findings in an eminent domain proceeding include a statement of

the amount of taxes to be paid out of the award. The staff sees no problem with this and proposes that the first sentence of subdivision (c) be amended to read:

The court, as part of the judgment, shall order that separately state the amount certified pursuant to this section and order that the amount be paid to the tax collector from the award.

Code of Civil Procedure § 1268.410. Liability for taxes

Professor Sato (Exhibit 7--white) notes that the language of Section 1268.410 is a little hard to understand. He has a point. The staff would revise Section 1268.410 to conform to the language used in Sections 5081-5090 of the Revenue and Taxation Code:

1268.410. As between the plaintiff and defendant, the plaintiff is liable for any ad valorem taxes, penalties, and costs upon property acquired by eminent domain that would be subject to cancellation under Article 5 (commencing with Section 5081) of Chapter 4 (commencing with Section 4986) of Part 9 of Division 1 of the Revenue and Taxation Code if the plaintiff were a public entity and if such taxes, penalties, and costs had not been paid, whether or not the plaintiff is a public entity if the property were exempt property, regardless whether it is exempt property .

Code of Civil Procedure § 1268.430. Reimbursement for taxes

Section 1268.430, which is not affected by the present recommendation, provides that, if the property owner has paid any taxes for which the law makes the condemnor liable, the property owner may recover the amount paid by a cost bill in the eminent domain proceeding. Hemmings (Exhibit 3--green) complains that the provision "contains no teeth," other than Section 1268.440, which authorizes the property owner to apply directly to the taxing authority for a refund. The staff believes that the provisions are adequate.

Code of Civil Procedure § 1268.440. Refund of taxes paid by public entity

Discussion of the preceding section reveals that Section 1268.440(a) is too narrowly drawn; it should apply to taxes paid by the property owner as well as to taxes paid by the public entity since it appears that there are some cases where the property owner fails to be reimbursed. The leadline should be revised accordingly and subdivision (a) amended to read:

1268.440. (a) If a public entity has paid taxes on property that the public entity acquired taxes have been paid on property

that is acquired by a public entity by eminent domain after the lien date, the amount of taxes that would have been subject to cancellation under Article 5 (commencing with Section 5180) of Chapter 4 of Part 9 of Division 1 of the Revenue and Taxation Code if unpaid shall be deemed to be erroneously collected and shall be refunded to the public entity person who paid the taxes in the manner provided in Article 1 (commencing with Section 5096) of Chapter 5 of Part 9 of Division 1 of the Revenue and Taxation Code.

Revenue & Taxation Code § 2921.5. Transfer of taxes to unsecured roll

Professor Sato (Exhibit 7--white) believes that the word "unsecured" should be deleted from the phrase "unsecured property" since, by definition, a tax on "unsecured property" would never be on the secured roll. He is incorrect; "unsecured property" is a term having a technical definition in the Revenue and Taxation Code, which should not be tampered with. See Section 134.

Revenue & Taxation Code § 2922. Delinquent penalties

Section 2922 and other sections in the recommendation (Sections 5083, 5086, 5087, 5088) refer to "penalties." Hemmings (Exhibit 3--green) notes that "penalties" are not recoverable in bankruptcy proceedings, and a change in terminology might be desirable. The staff believes, as Hemmings points out, that this problem is beyond the scope of the present recommendation. If the taxing authorities are concerned about the loss of money in bankruptcy proceedings, they can sponsor legislation to revise the terminology of the Revenue and Taxation Code.

Revenue & Taxation Code § 4986. Cancellation of taxes

The San Benito County Tax Collector (Exhibit 6--gold) is concerned about changing "may" to "shall" in subdivision (a) (and also in Section 4986.2) since he is currently authorized by resolution of the board of supervisors pursuant to Section 4804 to exercise the authority covered by these provisions. The change from "may" to "shall" simply codifies existing law; in addition, a board resolution under Section 4804 may extend to "any act required or authorized to be performed by the board" (emphasis added). The staff sees no problem here and will so inform the San Benito County Tax Collector.

Hemmings (Exhibit 3--green) notes that the last paragraph of Section 4986(a) is concerned with mention of taxes as grounds for mistrial in eminent domain and that the Commission was planning to recommend its

repeal. The Commission still is planning to recommend its repeal, but this is the subject of a separate recommendation. See the Note following the Comment. Should AB 2282 (which embodies the Commission's recommendation) fail to be enacted, we will incorporate the mistrial recommendation in the tax recommendation.

Hemmings also notes that the reference to "municipal corporation" in subdivision (b) should be changed to "city." The staff will make this change.

Revenue & Taxation Code § 5083. Delinquent taxes, penalties, and costs

Section 5083(a) precludes cancellation of delinquent taxes on property acquired by a public entity. Professor Sato (Exhibit 7--white) notes a redundancy in the wording of subdivision (a); the staff believes his revision is appropriate:

5083. (a) No cancellation shall be made of all or any portion of any unpaid taxes, or of any penalties or costs that have accrued thereon while on the secured roll, levied for prior tax years that constitute a lien ~~on exempt property acquired after the lien date at the time of acquisition of exempt property~~ .

Section 5083(b) provides for payment of the delinquent taxes through escrow or from the award in an eminent domain proceeding. Hemmings (Exhibit 3--green) notes that sometimes there is no escrow in a public entity acquisition and that, even where there is, the taxes do not always get paid. Apparently, taxes do not always get paid out of the award in eminent domain proceedings either. The staff believes that the best solution to these problems is to make the acquiring entity responsible for seeing that the taxes are paid out of the funds that it is putting up for the property. This can be done fairly simply by making any unpaid taxes on property that becomes exempt collectible from the acquiring entity:

5083. . . . (b) Such unpaid taxes, penalties, and costs shall be paid through escrow at the close of escrow or from the award in eminent domain, or if unpaid for any reason, shall be collected from either the person from whom the property was acquired or the public entity that acquired the property, like any other taxes, penalties, and costs on the unsecured roll.

Similar changes should be made in Sections 5085(a) (current taxes, penalties, and costs) and 5086 (taxes, penalties, and costs transferred directly to unsecured roll).

This change will impose on the acquiring entity an incentive either to see that (1) the tax collector is notified and makes a claim in the eminent domain or other proceeding or (2) the purchase price is reduced by an amount sufficient to enable the public entity later to pay the taxes. To make clear, however, that, even though the unpaid taxes are collectible from the public entity, it is the property owner who is ultimately liable for them, a provision such as the following should be added:

§ 5091. Liability as between public entity and property owner

5091. As between the person from whom property was acquired and the public entity that acquired the property, the person from whom the property was acquired is liable for any unpaid taxes, penalties, and costs on exempt property that are not subject to cancellation pursuant to this article.

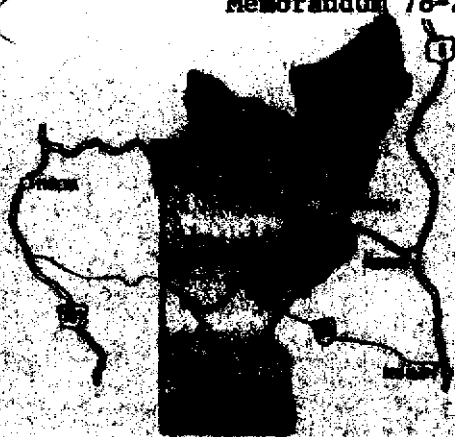
Comment. Section 5091 is new. Even though unpaid taxes, penalties, and costs may be collected from the public entity pursuant to Sections 5083 (delinquent taxes), 5085 (current taxes), and 5086 (taxes transferred to unsecured roll), the property owner is liable to the public entity for taxes so collected.

Revenue & Taxation Code § 5089. Transfer of lien

Professor Sato (Exhibit 7--white) believes that Section 5089 should precede Sections 5083 et seq. since they deal with the same concept. Whether Section 5089 should precede or follow the sections to which it relates is a matter of taste. The staff sees no harm in reorganizing as Professor Sato suggests and plans to make the change.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary



Historical
TRINITY COUNTY
WEAVERVILLE, CALIFORNIA 96083

PHONE (916) 623-5511

February 3, 1978

California Law Revision Comm.
School of Law
Stanford, Calif. 94305

Subject: Tentative recommendation relating to Ad Valorem property taxes
in eminent domain proceedings.


Gentlemen:

Having reviewed the subject matter in your January 15, 1978 mailing, it appears that there is no conflict with your proposals.

There have been no prior problems experienced in this locality in the previous law sections, but we are in full agreement with all revisions that will tend to shorten much unnecessary language in our property tax laws.

Thank you in considering this office as a source of information related to the subject matter.

Respectfully,


C. M. Fetterolf
Trinity Tax Collector
County of Trinity

CVF/ch



SACRAMENTO MUNICIPAL UTILITY DISTRICT □ 6201 S Street, Box 15830, Sacramento, California 95813; (916) 452-3211

February 13, 1978

California Law Revision Commission
Stanford Law School
Stanford, CA 94305

Gentlemen:

I have read through your Tentative Recommendations Relating to Ad Valorem Property Taxes in Eminent Domain Proceedings and believe it to be satisfactory.

Very truly yours,

A handwritten signature in dark ink, appearing to read "David S. Kaplan". The signature is fluid and cursive, written over the printed name.

David S. Kaplan
General Counsel

LAW OFFICES OF
COX, CUMMINS & LAMPHIRE
A PROFESSIONAL CORPORATION
COURT AND MELLUS STREETS
MARTINEZ, CALIFORNIA 94553

JAMES E. COX
BERNARD F. CUMMINS
PAUL O. LAMPHIRE
CHARLES L. HEMMINGS
ANTHONY J. DEMARIA
IRVEN L. GRANT, JR.

TELEPHONE
415-228-7300
P. O. BOX 111

February 14, 1978

California Law Revision Commission
Stanford Law School
Sanford, California 94305

RE: Ad Valorem Property Taxes in Eminent
Domain Proceedings

Gentlemen:

I recognize that the stated objective of the January 1978, Tentative Recommendation is technical changes with minor substantive changes in existing statutes. The whole problem came about because it was decided in 1959 that former Revenue and Taxation Code section 4986(e) permitted public agencies to acquire real property by eminent domain or otherwise and to apply for cancellation of delinquent taxes without pro-rata. Since most county auditors report that the tax delinquency rate is less than 2%, the problem is and was essentially a minor one. A legal structure has been built to insure that counties and other taxing agencies receive every ad valorem tax dollar to which they are entitled. The present legislation and the recommended legislation are so cumbersome as to be unworkable and the cause of great delay in actual everyday practice.

THE PRESENT PROBLEM

The condemnor is not interested in taking the required steps to see that tax delinquencies are made good in an eminent domain proceeding. To my knowledge, no court ever follows the requirements of present Revenue and Taxation Code section 4986.9. The present law which requires notice that the condemnation award has been deposited is not followed.

SUGGESTED CHANGES

1. The title of the proposed legislation should be broadened to add "and to public agency acquisition of real property".

COX, CUMMINS & LAMPHERE
A PROFESSIONAL CORPORATION

California Law Revision Commission
February 14, 1978
Page two

2. Add to present code of Civil Procedure section 1250.310 a requirement in public agency condemnation that the complaint contain a reference to assessed identification number of the property sought to be taken, and of the larger parcel if there is a possibility of compensation for injury to a remainder under Code of Civil Procedure section 1263.410-450. The condemnor can readily secure this information from a preliminary title report or a reference to county assessor's maps.

3. I have never yet seen an order for immediate possession under Code of Civil Procedure section 1255.410 which complies with present Revenue and Taxation Code section 4986.9 (proposed Code of Civil Procedure section 1260.250). If the eminent domain proceeding seeks to acquire only part of a larger parcel, a segregation should be ordered promptly so that the property owner, if so advised, can stop paying ad valorem taxes on the portions sought to be taken and continue payments on the remainder.

4. The present section 4986.9 and proposed statute puts the burden of requesting ad valorem tax information and possible segregation upon "the court". Legislation should be devised which places the burden upon the condemnor to prepare an appropriate order for the court to sign ex parte. Some method should also be devised for having the information contained in the tax collector's certificate made available to the attorney for the landowner when the tax collector files his certificate with "the court".

5. Perhaps the solution to the problem raised in 4. would be an express requirement of findings of fact and conclusions of law in eminent domain proceedings including a statement concerning the amount of delinquent or prorated ad valorem real property taxes to be paid out of the award.

6. If the attorney for the condemnor has complied with Code of Civil Procedure section 1268.120, the defendant landowner then has the necessary information to apply for withdrawal of the deposit and payment of the appropriate amount to the county tax collector.

COX, CUMMINS & LAMPHERE
A PROFESSIONAL CORPORATION

California Law Revision Committee
February 14, 1978
Page three

7. If the landowner has prepaid taxes, he submits a memorandum in the nature of a cost bill under present Code of Civil Procedure section 1268.430. Although the statute says that the plaintiff shall pay the defendant the amount to which the defendant is entitled, the statute contains no teeth, other than proposed Code of Civil Procedure section 1268.440.

8. In proposed Revenue and Taxation Code section 4986b, fourth line, "municipal corporation" should read "city". (Gov.Code §§34100-2).

9. I note that it is proposed to eliminate from Revenue and Taxation Code section 4986, the prohibition against mention of unpaid taxes (annual report - December, 1977, page 125). If this is the desired result, then the portion of proposed section 4986 (on page 10) should be eliminated from the Tentative Recommendation.

10. As to acquisitions other than through eminent domain sections 5081-5083 assume that property acquired by gift or purchase will always be handled through a title company escrow. It occasionally occurs that there is no escrow.

It is my observation that title companies, unless specially instructed, do not handle proration and application for cancellation of ad valorem taxes in accordance with the governing statutes.

Title companies routinely provide for proration of taxes as of some fixed date in transactions between private buyers and sellers. Unless the escrow officer is in close touch with the county tax collector, the amount of taxes due as of the date of recording is unknown. The tax collector will not accept partial payments on tax bills unless there has been a resolution of the Board of Supervisors cancelling taxes which would otherwise be due after the date of recording.

COX, CUMMINS & LAMPHERE
A PROFESSIONAL CORPORATION

California Law Revision Committee
February 14, 1978
Page four

Perhaps the solution for non-eminent domain acquisitions would be an amendment to Government Code Section 27281 (requirement of certificate or resolution of acceptance of a deed to a public agency), as a condition of acceptance for recordation by the county recorder. The solution may be that the tax collector be required to certify that all ad valorem taxes have been paid to the date of recording, and ordered cancelled as to future taxes.

Although it is beyond the scope of the present study, the reference to "penalties" in proposed Revenue and Taxation Code sections 2922, 5083, 5086, 5087, 5088 should be changed to some other word for the reason that penalties are not collectible in a bankruptcy proceeding.

Yours very truly,


Charles L. Hemmings

CLH/cs

EXHIBIT 4



H.B. ALVORD
TREASURER AND TAX COLLECTOR

COUNTY OF LOS ANGELES
DEPARTMENT OF THE TREASURER AND TAX COLLECTOR

HALL OF ADMINISTRATION
225 NORTH HILL STREET
P.O. BOX 2102 TERMINAL ANNEX
LOS ANGELES, CALIFORNIA 90051
(213) 974- 2101

B.J. NUREMBERG
CHIEF DEPUTY

February 15, 1978

California Law Revision Commission
Stanford Law School
Stanford, California 94305

Attention John H. DeMouilly
Executive Secretary

Gentlemen:

Thank you for giving me the opportunity to review your Commission's tentative recommendation relating to Ad Valorem Property Taxes in Eminent Domain Proceedings.

I believe that it goes a long way in cleaning up an area of the Revenue and Taxation Code which over the years has become cluttered and unclear.

I am happy to wholeheartedly give my approval to this effort.

Very truly yours,

A handwritten signature in cursive script, appearing to read "H. B. Alvord".

H. B. ALVORD
TREASURER AND TAX COLLECTOR

HBA:naf

EXHIBIT 5

WILSON, JONES, MORTON & LYNCH

ATTORNEYS AND COUNSELLORS AT LAW

630 NORTH SAN MATEO DRIVE

P.O. BOX 182

SAN MATEO, CALIFORNIA 94401

[415] 342-3523

CHARLES N. KIRKBRIDE

1894-1911

KIRKBRIDE & GORDON

(JOSEPH S. GORDON)

1911-1929

KIRKBRIDE & WILSON

1929-1947

KIRKBRIDE, WILSON, HANZFIELD & WALLACE

1947-1961

OF COUNSEL

THOMAS C. MURPHY

A. A. KAPLAN (MO. ONLY)

ERNEST A. WILSON
KENNETH I. JONES
JAMES T. MORTON
JOHN T. LYNCH (1908-1971)
PHILIP O. ASSAT
PEGGY L. McELIGOTT
ROBERT J. HILL
THOMAS S. ADAMS
SHERROD R. DAVIS
LAWRENCE C. JENSEN

ANDREW C. HALL, JR.
GERALD A. LASTER
JEREMIAH J. LYNCH
MICHAEL R. NAVE
JAMES L. COPELAND
SHARON S. WHITE
MAYER A. DANIEL
JOAN E. BRIDDT
PAUL C. WILKINS
ROBERT G. AUWBREY
ROY J. KOEDEN
JAMES M. PARMELER

February 16, 1978

California Law Revision Commission
Stanford Law School
Stanford, CA 94305

Attention: John H. DeMouilly
Executive Secretary

Re: Tentative Recommendation Relating to Ad
Valorem Property Taxes in Eminent Domain
Proceedings

Dear John:

I have rapidly reviewed the Tentative Recommendation Relating to Ad Valorem Property Taxes in Eminent Domain Proceedings which is evidently proposed to be placed before the Legislature shortly. It has brought to mind a problem which we find occurring with increasing regularity. This is the failure to recognize the existence of certain fixed lien assessments which are collected together with, and not separately from, taxes. These are frequently a problem when there is acquisition of less than an entire parcel, particularly by the Department of Transportation. I would specifically draw your attention to the provisions of proposed Section 1260.250 relating to the certification to the Court relative to all unpaid taxes, penalties and costs. The problem we face is that assessments which have been funded through the Improvement Bond Act of 1915 may only be collected with taxes. The lien of the assessment is a lien for the entire amount, but the due date and billing relates only to the portion payable each year. It cannot be paid separately from taxes and therefore, as to any year on which taxes are unpaid, the 1915 Act assessments will also be unpaid. Thus, it is essential that there be notification to the Court of the existence of such assessment delinquencies and liens.

Additionally, the assessment itself is not subject to cancellation. Since it is a fixed lien in the nature of a debt of the property, even though it is not collected all at one time, it is a property interest in the same sense that a mortgage or deed of trust would be.

California Law Revision Commission
Re: Tentative Recommendation Relating to
Ad Valorem Property Taxes in Eminent
Domain Proceedings

February 16, 1978

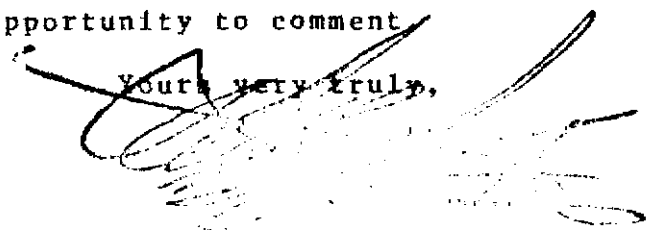
Page 2

Thus, cancellation would be inappropriate and it is not recommended that your proposed Section 1250.250 of the Code of Civil Procedure be enlarged upon to provide for assessments.

Because the proposed amendments are purportedly comprehensive, the following are advisable: that reference be made to the existence of the fixed lien assessments; that those which are delinquent be paid from the judgement; and (where less than all of the parcel is involved) that portion which is not yet due and which is applicable to the lands being acquired should also be paid from the judgement. We have had continuing problems with the Department of Transportation attempting to transfer all of the lien of an assessment over to the remainder of a parcel where they acquire less than the whole. This, unfortunately, frequently results in a significant reduction of the security and rarely has any relationship to the actual benefits received by the land. The rationale used by the Department of Transportation is that the property owner from whom they are acquiring the portion of the property has agreed to such segregation. Unfortunately, mere agreement on the part of the condemnee cannot affect the basic security of the bondholder.

Although this would seem to be somewhat outside the scope of your proposed amendments, I cannot help but feel that the one cannot be considered without recognition of the other.

Thank you very much for the opportunity to comment


Yours very truly,

Peggy L. McElligott
for WILSON, JONES, MORTON & LYNCH

PLMcE/kw

COUNTY OF SAN BENITOOffice of **JULIAN MEDINA** Tax and License CollectorPost Office Box 700
HOLLISTER, CALIFORNIA 95023
Phone (408) 637-4373

February 17, 1978

California Law Revision Commission
Stanford Law School
Stanford, California 94305

Re Ad Valorem Property Taxes in Eminent Domain Proceedings

Gentlemen:

CONGRATULATIONS!

Finally someone is taking the initiative to cleanse the verbosity in Sections 4986 et seq, California Revenue & Taxation Code.

I question the synonymity, if any, of the word "shall" versus the word "may" in Section 4986(a) & 4986.2.In my opinion, the word "shall" can be defined to express what is mandatory, akin to "must" or "command."Whereas, the word "may" is more lenient and can be expressed as - have permission to, ability to, having purpose or expectation, or option to.The reason I am desirous for the retention of "may" expressly within 4986(a) & 4986.2 is because we have a Board Resolution pursuant to Section 4804 of the R & T Code, wherein both 4986 & 4986.2 are included.

The purpose being that we need not acquire Board of Supervisor approval for routine tax matters, thus alleviating our Board of any unnecessary or remedial tax corrections.

Therefore, should the word "shall" supersede "may", I believe our Resolution may become invalid.

Any comments with reference to this matter would be appreciated.

Respectfully,


JULIAN MEDINA
Tax Collector

JM/hh

EXHIBIT 7

UNIVERSITY OF CALIFORNIA, BERKELEY

BERKELEY • DAVIS • IRVINE • LOS ANGELES • RIVERSIDE • SAN DIEGO • SAN FRANCISCO



SANTA BARBARA • SANTA CRUZ

SCHOOL OF LAW (BOALT HALL)
BERKELEY, CALIFORNIA 94720
TELEPHONE (415) 642-1831
February 21, 1978

Mr. John H. DeMouilly
Executive Secretary
California Law Revision Commission
Stanford Law School
Stanford, CA 94305

Dear John:

Thank you for sending me a copy of the tentative recommendations on disposition of ad valorem property taxes in eminent domain proceedings. The following comments are offered:

1. Section 1260.250 does not deal adequately with accrued taxes when there is a partial taking. For the current tax year, a separate assessment of the partial taking can determine the amount due upon the portion taken but as to accrued taxes for prior tax years, is it contemplated that the lien will be apportioned on the basis of respective assessed values of portion taken and the remainder? Or will all of the accrued taxes for past fiscal years be collectible from the proceeds of the partial taking? I would think that the latter approach is the proper one. The taxpayer ought not to have the benefit of separate assessment for accrued taxes for past fiscal years when a fund has become available to pay the taxes.

2. I assume that § 1260.250 is intended to cover the following situations:

a. The date of trial or acquisition is February 1, 1978. Subsection (a)(2) covers taxes owing for the fiscal years prior to and including 1976-77.

b. The date of trial or acquisition is June 1, 1978. The taxes owing for the fiscal year 1977-78 are known.

c. If the date of trial is June 1, 1978, the date of acquisition may be delayed until the fiscal year 1978-79 but the taxes for 1978-79 may not be fixed even though the lien date for the fiscal year 1978-79 has passed.

d. The date of trial is February 1, 1978. The date of acquisition may be delayed until August 1, 1978 or later.

Mr. John H. DeMouilly
Page 2
February 21, 1978

I cannot determine when § 1260.250(a)(3) and (4) applies to my situations b, c and d above. The confusion arises because I cannot determine whether the Commission is using the terms "current year" and "succeeding tax year" in this section consistently with Rev. & Tax. Code §§ 5084 and 5085.

I suggest the following amendment:

(3) All unpaid taxes, penalties, and costs levied and is a lien on the property for the tax year commencing next prior to the date of court's direction when the date of acquisition, as determined pursuant to Section 5082 of the Revenue and Taxation Code, or the date of trial is in the same tax year. The unpaid taxes, penalties, costs shall be prorated to, but not including, the date of acquisition or the date of trial, whichever is earlier. If the amount of the tax is not ascertainable at the time of proration, the amount shall be estimated and computed based on the assessed value for such year and the tax rate levied on the secured roll for the immediately preceding year.

(4) The actual or estimated amount of taxes that are or will become a lien on the property in the tax year next succeeding the date of court's direction when the date of acquisition, as determined pursuant to Section 5082 of the Revenue and Taxation Code, or date of trial is in the next succeeding tax year. The taxes shall be prorated to, but not including, the date of acquisition or the date of trial, whichever is earlier. Any estimated amount of taxes shall be premised upon the assessed value of the property and the tax rate levied on the secured roll for the year preceding the year for which the estimate is made.

(5) The amount of the taxes, penalties, and costs allocable to one day of the tax year referred to in paragraph (3), and, where applicable, the amount allocable to one day of the tax year referred to in paragraph (4), hereinafter referred to as the "daily prorate."

3. Section 1268.410 is incomprehensible to me. I assume that this section is intended to apportion the tax liability between the plaintiff and defendant. Although the Commission is making a technical amendment only, it should take the occasion to make it understandable. The portion that gives me trouble is the last three lines of the section commencing with the words, "if such taxes,".

4. The word "unsecured" should be eliminated from the second line of the section 2921.5. Without the change, there is an internal inconsistency since a tax on unsecured property [meaning property on the unsecured roll] cannot be transferred from secured to unsecured roll.

5. The last line of section 5083(a) should be revised to read, "lien at the time of acquisition of exempt property."

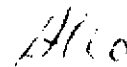
Since the section deals with prior tax years, it does not make any difference whether the property was acquired before or after the

Mr. John H. DeMouilly
Page 3
February 21, 1978

lien date of the year of acquisition. The taxes for the fiscal year in which the property is acquired is taken care of by section 5085 and for the ensuing fiscal year when property is acquired after the lien date for the ensuing fiscal year will be taken care by section 5084.

6. Section 5089 ought to precede section 5083 since the concept in section 5089 is embodied in section 5083 et seq.

Sincerely,



Sho Sato
Coffroth Professor of Law

SS/es



Memorandum 78-25

Study E-36.56

EXHIBIT 8

County of San Diego

OFFICE OF COUNTY COUNSEL

355 COUNTY ADMINISTRATION CENTER
SAN DIEGO, CALIFORNIA 92101
(714) 236 3651

February 22, 1978

DONALD L. CLARK
County Counsel

JOSEPH KASE, JR.
Assistant County Counsel

LLOYD M. HARMON, JR.
Chief Deputy County Counsel

Deputies

BETTY E. BOONE	LEVIN F. ZOLLINGER
WILLIAM C. GEORGE	RALPH E. SHADWELL
ANTHONY ALBERS	LEONARD W. POLLARD II
JACK LEMER	D. RICHARD RUDDY
W. KEAT HARVEY	WILLIAM D. SMITH
ROBERT B. HUTCHINS	JUDITH M. CIPFLAND
JOHN McEVY	CAMERON L. REEVES
ANNE HANSEN	CHRISTINE D. LITTLEJOHN
WILLIAM J. SCHWARTZ JR.	ROBERT C. CAMPBELL
TIMOTHY W. GARFIELD	BRUCE W. BEACH
ROBERT C. WICE	PHILLIP L. MORRY
SUE A. HENRY	D. HALE OSON
GREGORY C. M. GARRATT	ARLENE PRAYEN

California Law Revision Commission
Stanford Law School
Stanford, California 94305

Dear Commissioners:

Re: Tentative Recommendation Relating to Ad Valorem
Property Taxes in Eminent Domain Proceedings

In accordance with your request for comments concerning the above-noted tentative recommendation, this letter is to advise you that this office approves of the tentative recommendation.

Very truly yours,

DONALD L. CLARK, County Counsel

By *Ralph E. Shadwell*
RALPH E. SHADWELL, Deputy

RES:bh

A 78-0368
cc Assessor

COUNTY OF NEVADA
STATE OF CALIFORNIA

"NEVADA COUNTY" — — — — — "THE GATEWAY TO THE SIERRAS"

OFFICE OF
MARCELLA J. CARSON
TREASURER AND TAX COLLECTOR
COURTHOUSE ANNEX
NEVADA CITY, CALIFORNIA 95959
DIAL 284-2461, EXT. 207

February 28, 1978

John H. De Moully, Exec. Sec'ty
California Law Revision Commission
Stanford Law School
Stanford, CA 94305

Dear Mr. De Moully:

Please be advised that I have no objections to the changes recommended relating to Ad Valorem Property Taxes in Eminent Domain Proceedings covered in your transmittal dated January 15, 1978.

Yours very truly,


MARCELLA J. CARSON,
Treasurer & Tax Collector

MJC/mf

JOHN A. GARTNER
Treasurer - Tax Collector
Hall of Records
172 West Third Street
San Bernardino, CA 92415

COUNTY OF
SAN BERNARDINO

February 28, 1978

California Law Revision Commission
Stanford Law School
Stanford, California 94305

Attention: John H. DeMouilly, Executive Secretary

Dear Sirs:

Reference is made to your letter of transmittal dated January 15, 1978, in which you enclosed Tentative Recommendations Relating to Ad Valorem Property Taxes in Eminent Domain Proceedings.

Because the changes recommended are clarifications and reorganizations of existing legislation, we have nothing to recommend.

We appreciate your efforts to improve those portions of the codes.

Yours very truly,



JOHN A. GARTNER
Treasurer-Tax Collector

JG:eb

EXHIBIT 11

LAW OFFICES

FADEM, BERGER & NORTON

A PROFESSIONAL CORPORATION

501 SANTA MONICA BOULEVARD

POST OFFICE BOX 2148

SANTA MONICA, CALIFORNIA 90406

JERROLD A. FADEM
MICHAEL M. BERGER
RICHARD D. NORTON
KEITH W. DOUGLAS
SUSAN M. TRAGER
GREGORY M. BERGMAN

TELEPHONE
451-9951
AREA CODE 213

March 1, 1978

Mr. Nathaniel Sterling
Assistant Executive Secretary
California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

Re: Staff Draft - Tentative Recommendation Relating to
Ad Valorem Property Taxes in Eminent Domain Proceedings
(Study 36.56)

Dear Nat:

The State Bar Condemnation Committee's recommendation as to the above draft is that the only problem with the proposed provision is that in a case in which there is no order for possession, and where the matter is settled without ever being set for trial, the County has no notice whatsoever of the taking and has no opportunity to collect current and delinquent taxes from the award. Although the lien then attaches to the unsecured roll, the Los Angeles County Tax Collector's experience is that what little money is ever recouped from the unsecured rolls is offset by the expensive process of procuring it.

We believe there should be some obligation on the part of the condemnor to solicit tax information when the Court is not involved in the case. This could be incorporated into proposed Code of Civil Procedure Section 1260.250 by adding as follows:

"(a) The Court, either on the date it issues an order for possession, or on or before the date set for trial, or on or before the date it issues an interlocutory judgment in condemnation..."

Mr. Nathaniel Sterling
Assistant Executive Secretary
California Law Revision Commission
March 1, 1978
Page Two

Otherwise, we think this draft is more readable and more logically ordered than the existing law.

Sincerely,

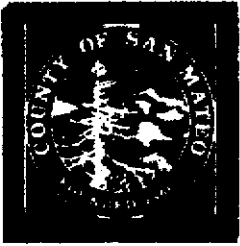


Jerrold A. Fadem
Chairman
State Bar Condemnation Committee

cc: Members, State Bar Condemnation Committee.
Non-Members:
Jess Jackson, Jr., Esq.
John De Mouilly, Esq.
William Sherwood, Esq.
Patricia Remmes Hersom
Jeanne Toohey
Sections and Committees
State Bar of California

JAF/mlm

Office of Tax Collector

**COUNTY OF SAN MATEO**

COUNTY GOVERNMENT CENTER • REDWOOD CITY • CALIFORNIA 94063

BOARD OF SUPERVISORSEDWARD J. BACCIOCCO, JR.
JAMES V. FITZGERALD
FRED LYON
WILLIAM H. ROYER
JOHN M. WARD**ROSS CONTI**
TAX COLLECTOR-TREASURER
TELEPHONE: 364-5600

March 3, 1978

Mr. John H. De Mouilly, Executive Secretary
California Law Revision Commission
Stanford Law School
Stanford CA 94305SUBJECT: YOUR LETTER DATED JANUARY 15, 1978, and
TENTATIVE RECOMMENDATION RELATING TO AD VALOREM
PROPERTY TAXES IN EMINENT DOMAIN PROCEEDINGSMr. De Mouilly, I have reviewed the referenced tentative
recommendation and concur with the following comments:

1. Page 4, Paragraph B - I suggest you delete "on a form approved by the Board of Supervisors." We see no need for a form and believe a simple letter would suffice.
2. The Tax Collector's problem with these proceedings has always been splitting property before the final hearing and after the final order of condemnation. We are reluctant to split property until the final order has been issued because there are generally changes from those originally proposed and it leads to nothing but confusion to go back and redo the assessment maps and billings. Therefore, we do not agree with Section 1260.250(A)(1) regarding the separate valuation on the assessment roll until the final order has been issued. However, if you are going to leave it in this present form, i.e., Section 1260.250(A)(1), it is also necessary that the Revenue and Taxation Codes Section 2821 and others be changed accordingly to reflect this separation of property.

By copy hereof, I am forwarding your tentative recommendations to Mr. Robert Branch, Tax Collector/Treasurer of Ventura County who is the Chairman of the California State Tax Collector's Association so that they might review your recommendation.

ROSS CONTI

by *Albert E. Flanagan*
Albert E. Flanagan

EXHIBIT 13

OFFICE OF THE
COUNTY COUNSEL
RIVERSIDE COUNTY
3535 TENTH STREET, SUITE 300
RIVERSIDE, CALIFORNIA 92501

TELEPHONE (714) 787-2421

April 4, 1978

DEPUTIES

JOEL BRAND
W. W. MILLER
STEVEN A. BROOKS
PETER H. LYONS
JERRY A. SCHEER
LOYAL E. KEIR
GERALD BLANKENSHIP, JR.
EDWARD D. PALMER
ROBERT WESTMEYER
L. THOMAS KRAHELSKI
WILLIAM C. KATZENSTEIN
WILLIAM P. MCNAMES
TIMOTHY J. DAVIS
DIANE R. BARTOLF

RAY T. SULLIVAN, JR.
COUNTY COUNSEL

JAMES H. ANGELL
ASSISTANT

GERALD J. GEERLINGS
SENIOR DEPUTY

Mr. John H. DeMouilly, Executive Secretary
California Law Revision Commission
Stanford Law School
Stanford, California 94305

Subject: Ad Valorem Property Taxes in Eminent
Domain Proceedings

Dear Mr. DeMouilly:

This is to advise that we approve of the tentative recommendation of the Commission relating to ad valorem taxes in eminent domain proceedings. It is apparent that the Commission has succeeded in its objective of reorganizing and consolidating the relevant provisions into a much more usable form. The proposed Article 5 is particularly effective in consolidating and simplifying the provisions in the 4986 series of sections in the Rev. & Tax. Code.

Very truly yours,

Ray T. Sullivan, Jr.
County Counsel

By *Loyal E. Keir*
Loyal E. Keir
Deputy County Counsel

LEK:im

EXHIBIT 14

COUNTY OF RIVERSIDE

MRS. DONNA BOUER BABCOCK
TREASURER AND TAX COLLECTOR

TREASURER and TAX COLLECTOR

TELEPHONE (714) 767-2821

COUNTY ADMINISTRATIVE CENTER • 4080 LEMON STREET
RIVERSIDE, CALIFORNIA 92501
MAILING ADDRESS: POST OFFICE BOX 846, RIVERSIDE 92502

April 17, 1978

California Law Revision Commission
Stanford Law School
Stanford, California 94305

Attention: John H. DeMouilly, Executive Secretary

Gentlemen:

RE: Tentative Recommendation Relating to Ad Valorem Property Taxes in
Eminent Domain Proceedings

Following receipt of your requests for comments dated January 15, 1978, I assigned a qualified member of my staff to thoroughly review the proposed reorganization and redrafting of existing procedures. It is our observation that the proposed changes would be an improvement in that it will make it easier to follow and we find no point of disagreement.

Very truly yours,



DONNA BOUER BABCOCK

Treasurer and Tax Collector

DEB:b