



July 2016

**California
Bar
Examination**

**Performance Test A
INSTRUCTIONS AND FILE**

IN RE POTENTIAL WILDOMAR PROPERTY LITIGATION

Instructions

FILE

Memorandum to Applicant from Charles Drumm

Letter from Standish & Lobert LLP

Submission to Riverdale Regional Park District Board of Directors

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Agreement for Purchase of Real Property

Grant Deed

Riverdale Regional Park District Board of Directors Resolution No. 2016-210

Dixon *Daily News* Article

IN RE POTENTIAL WILDOMAR PROPERTY LITIGATION

INSTRUCTIONS

1. This performance test is designed to evaluate your ability to handle a select number of legal authorities in the context of a factual problem involving a client.
2. The problem is set in the fictional State of Columbia, one of the United States.
3. You will have two sets of materials with which to work: a File and a Library.
4. The File contains factual materials about your case. The first document is a memorandum containing the instructions for the tasks you are to complete.
5. The Library contains the legal authorities needed to complete the tasks. The case reports may be real, modified, or written solely for the purpose of this performance test. If the cases appear familiar to you, do not assume that they are precisely the same as you have read before. Read each thoroughly, as if it were new to you. You should assume that cases were decided in the jurisdictions and on the dates shown. In citing cases from the Library, you may use abbreviations and omit page citations.
6. You should concentrate on the materials provided, but you should also bring to bear on the problem your general knowledge of the law. What you have learned in law school and elsewhere provides the general background for analyzing the problem; the File and Library provide the specific materials with which you must work.
7. Although there are no parameters on how to apportion your time, you should allow yourself sufficient time to thoroughly review the materials and organize your planned response.
8. Your response will be graded on its compliance with instructions and on its content, thoroughness, and organization.

OFFICE OF THE COUNTY COUNSEL

COUNTY OF RIVERDALE

15000 CIVIC CENTER WAY

DIXON, COLUMBIA

TO: Applicant

FROM: Charles Drumm, Assistant County Counsel

DATE: July 26, 2016

RE: Potential Wildomar Property Litigation

We represent the Riverdale Regional Park District in this matter and our client contact is Pamela Walls, the District's General Manager.

The District has received a letter from counsel for Geraldine Santa Maria threatening litigation over the District's intended conveyance by sale to the City of Dixon of a parcel of land referred to as the "Wildomar Property."

It is the District's position that, under the Columbia Regional Park District Act ("Act"), real property is "actually dedicated" by a district, and thereby becomes subject to a requirement that it may validly be conveyed only with voter consent, only if the district's board of directors adopts a resolution dedicating the property. The District's Board of Directors never adopted a resolution dedicating the Wildomar Property, and accordingly never sought or obtained voter consent for its conveyance.

Santa Maria's position, in contrast, is that, under the Act, real property is "actually dedicated" simply by virtue of its acquisition.

Santa Maria is an environmental activist who has brought numerous lawsuits against small local public entities whom she believes have violated the law.

General Manager Walls is determined that Santa Maria will not prevail against the District.

Please draft a letter for my signature in response to Santa Maria's counsel's letter. In the letter, be sure to show:

(1) that the District's position that it may validly convey the Wildomar Property without satisfying the Act's voter-consent requirement is sound under the facts and the law;

and

(2) that Santa Maria's contrary position is unsound.

Begin the letter with a statement of the District's position and end the letter with a statement that the District will go forward with the conveyance notwithstanding the threatened litigation.

In drafting the letter, you should address all of the legal issues, preparing headings to separate your discussion of the District's position and Santa Maria's contrary position into distinct parts. You should use the facts persuasively in setting out the legal analysis, but you should not prepare a separate statement of facts. Finally, you should emphasize the law and facts supportive of the District's position, but you should also address and deal with any law or facts supportive of Santa Maria's position.

STANDISH & LOBERT LLP

ATTORNEYS AT LAW

1616 OAK STREET

DIXON, COLUMBIA

July 22, 2016

Pamela Walls

General Manager

Riverdale Regional Park District

1000 Independence Avenue

Dixon, Columbia

Re: Intended Conveyance of Wildomar Property

Dear Ms. Walls:

We have been retained by Geraldine Santa Maria, who is a resident of the Riverdale Regional Park District (“District”), to challenge the District’s intended conveyance of the Wildomar Property (“Property”) by sale to the City of Dixon (“City”).

Under Section 40 of the Columbia Regional Park District Act (“Act”), a regional park district “may not validly convey any interest in any real property ... without the consent of a majority of the voters of the district voting at a special election called by the board and held for that purpose” if that interest has been “actually

dedicated and used for park purposes.” Under the common law, a real property interest may be “dedicated” by an offer by a private owner, and an acceptance by a public entity, having the character of a gift as well as a contract. See *Baldwin v. City of Lake Alston* (Colum. Supreme Ct. 1999). But under Section 65 of the Act, a real property interest is “dedicated” by a regional park district simply by acquisition: “The legal title to all property acquired by the district under the provisions of this Act ... is *dedicated* ... for ... the uses and purposes set forth in this Act” (Italics added).

It is indisputable that the Property has been “actually dedicated and used” so as to subject the District to the voter-consent requirement of Section 40, mandating that it must obtain the “consent of a majority of the voters of the district voting at a special election” before it may “validly convey” the Property.

As for “actual use,” the Property, although not developed into a regional park, has nevertheless functioned as such.

As for “actual dedication,” the matter is similar. To begin with, the Property has been “dedicated” under the common law. Separately and independently, the Property has been “dedicated” under Section 65.

Further, it is undisputed that the District has not satisfied the voter-consent requirement of Section 40, having failed even to seek the “consent of a majority of the voters of the district voting at a special election” for the conveyance of the Property.

As a consequence, because it is indisputable that the Property has been “actually dedicated” so as to subject the District to the voter-consent requirement of Section 40, and because it is likewise undisputed that the District has not satisfied that requirement, the District may not “validly convey” the Property.

We are aware that it is the District’s position that, under Section 40, a real property interest is “actually dedicated” by a district so as to trigger the voter-consent requirement only by the “adoption of a resolution by [the district’s] board of directors” dedicating the interest, and not simply by virtue of acquiring the interest under Section 65. The District’s position, however, is specious.

It is plain that “actually dedicated” in Section 40 and “dedicated” in Section 65 are identical. Indeed, unless “dedicated” in Section 65 were read as identical to “actually dedicated” in Section 40, Section 65 would be rendered meaningless.

Moreover, although the adoption of a resolution by a district’s board of directors is an *alternative* method of “actual dedication” for an “easement” under Section 40 *in addition to* simple “acquisition” under Section 65, it is *not* a method of “actual dedication,” additional or otherwise, for “any other” real property interest.

On August 1, 2016, we will file an appropriate action, on Ms. Santa Maria’s behalf, to prohibit the District from going forward with the intended conveyance of the Property to the City unless and until it satisfies the voter-consent requirement of Section 40.

As you are doubtless aware, over the years, Ms. Santa Maria has found it necessary to file several actions against various local public entities to compel them to comply with the law. As you are also doubtless aware, she has prevailed in all of those actions, either by settlement or by judgment. She is confident that she will prevail in any action that the District may force her to file.

Accordingly, should the District wish to respond to this letter in an attempt to render Ms. Santa Maria's coming action unnecessary—and in an effort to avoid incurring attorney's fees and related expenses that the District can ill afford in the current economic climate—we request that the District respond expeditiously. We wish to make Ms. Santa Maria's position clear: The only response by the District that will obviate her coming action is its formal and binding commitment not to proceed with the intended conveyance of the Property without voter consent.

Very truly yours,

Michael Standish

Michael Standish

**SUBMISSION TO THE BOARD OF DIRECTORS
RIVERDALE REGIONAL PARK DISTRICT**

From: Patricia Smith, General Manager

Date: June 5, 1995

Re: Purchase of Real Property, Wildomar

I recommend that the Board of Directors adopt a motion to the following effect:

1. Accept and execute the Agreement for Purchase of Real Property for 161.27 acres of real property in Wildomar, Columbia, identified as APN 362-180-004 ("Property"), from Lucille Potts;

2. Direct the Administrative Office to transfer \$980,000 for the purchase of the Property;

3. Approve the expenditure of \$950,000 for the acquisition of the Property and \$30,000 for escrow fees and related costs;

4. Authorize the District to accept as a gift the difference between the appraised value of the Property, \$1,370,000, and the purchase price of the Property, \$950,000, amounting to \$420,000;

5. Authorize the District to administer all necessary and appropriate documents to complete the purchase of the Property; and

6. Direct the Clerk of the Board to take all ministerial actions necessary and appropriate to complete the purchase of the Property.

**MINUTES OF THE BOARD OF DIRECTORS
RIVERDALE REGIONAL PARK DISTRICT**

On motion of Director Cisneros, seconded by Director Mullen and duly carried by unanimous vote, IT WAS ORDERED that the motion recommended by General Manager Smith, dated June 5, 1995, entitled "Purchase of Real Property, Wildomar," is adopted as recommended.

Ayes: Buster, Taglieri, Cisneros, Wilson, and Mullen

Noes: None

Abstain: None

Absent: None

Date: June 12, 1995

Gerald A. Maloney

Clerk of the Board

By *Laura Soto*

Deputy

**THE BOARD OF DIRECTORS
RIVERDALE REGIONAL PARK DISTRICT
RESOLUTION NO. 1995-165
AUTHORIZING PURCHASE OF REAL PROPERTY**

BE IT RESOLVED by the Board of Directors of the Riverdale Regional Park District, State of Columbia, in regular session assembled on July 18, 1995, that the purchase of 161.27 acres of real property in Wildomar, Columbia, identified as APN 362-180-004, from Lucille Potts for the sum of \$950,000, is approved, and the General Manager is authorized and directed to take the necessary and appropriate action to complete the purchase, including obtaining funds to pay the purchase price and the costs and expenses of the acquisition.

ROLL CALL:

Ayes: Buster, Taglieri, Cisneros, Wilson, and Mullen

Noes: None

Abstain: None

Absent: None

The foregoing is certified to be a true copy of a resolution duly adopted by said Board of Directors on the date therein set forth.

Gerald A. Maloney

Clerk of the Board

By *Laura Soto*

Deputy

AGREEMENT FOR PURCHASE OF REAL PROPERTY

Agreement dated this 19th day of July 1995, by and between Lucille Potts, hereinafter "Seller," and the Riverdale Regional Park District, hereinafter "Buyer."

1. The Property.

Seller and Buyer agree that Seller will sell and Buyer will buy 161.27 acres of real property in Wildomar, Columbia, identified as APN 362-180-004 ("Property").

2. Purchase Price.

The total purchase price to be paid by Buyer for the Property will be \$950,000.

3. Gift.

Buyer accepts as a gift from Seller the difference between the appraised value of the Property, \$1,370,000, and the purchase price of the Property, \$950,000, amounting to \$420,000.

4. Closing.

Closing will be held be on or about July 20, 1995, at a time and place designated by Buyer. Buyer shall choose the escrow, title and/or closing agent. Seller agrees to convey title by a deed.

Lucille Potts

Lucille Potts

Patricia Smith

Riverdale Regional Park District

GRANT DEED

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, Lucille Potts GRANTS to the Riverdale Regional Park District, State of Columbia, the 161.27 acres of real property in Wildomar, Columbia, identified as APN 362-180-004, for park purposes in perpetuity.

Dated: July 20, 1995

By Lucille Potts

Lucille Potts

**THE BOARD OF DIRECTORS
RIVERDALE REGIONAL PARK DISTRICT
RESOLUTION NO. 2016-210
NOTICE OF INTENT TO CONVEY REAL PROPERTY BY SALE**

WHEREAS the Riverdale Regional Park District, State of Columbia, acquired 161.27 acres of real property in Wildomar, Columbia, identified as APN 362-180-004 ("Property"), in 1995 with the hope of developing it into a regional park;

WHEREAS the Riverdale Regional Park District has been unsuccessful in obtaining the funds necessary to develop the Property into a regional park;

WHEREAS the Property has given rise to health and safety problems as the public has continued to frequent it without parking and restroom and other facilities;

BE IT RESOLVED by the Board of Directors of the Riverdale Regional Park District, in regular session assembled on July 14, 2016, and NOTICE IS HEREBY GIVEN pursuant to Section 63 of the Columbia Regional Park District Act, that this Board intends to convey the Property by sale, on or after 9:00 a.m. on August 15, 2016, to the City of Dixon for the sum of \$2,100,000.

BE IT FURTHER RESOLVED by the Board of Directors of the Riverdale Regional Park District, that this Board may validly convey the Property to the City of Dixon without the consent of a majority of the voters of this District voting at a special election called by this Board and held for that purpose because this Board has not "actually dedicated and used" the Property, within the meaning of Section 40 of the Columbia Regional Park District Act, because it never adopted a resolution dedicating the Property and never developed the Property.

ROLL CALL:

Ayes: Kim, Brady, Horstman, Chen, and Peters

Noes: None

Abstain: None

Absent: None

The foregoing is certified to be a true copy of a resolution duly adopted by said Board of Directors on the date therein set forth.

Myra R. Taylor

Clerk of the Board

By *Robert Gupta*
Deputy

DIXON DAILY NEWS

FRIDAY, JULY 15, 2016

“Wildomar Regional Park—Now You See It, Now You Don’t”

Since 1995, the sign posted at the end of Clayton Road promised, “The Future Site of Wildomar Regional Park.” Now, it appears, the promise will not be kept.

Last night, the Board of Directors of the Riverdale Regional Park District voted to issue a notice of its intent to sell the 160+-acre parcel at the end of Clayton Road to the City of Dixon. The district had purchased the property in 1995 for less than \$1 million, had never developed it, and is now selling it for more than twice as much.

District General Manager Pamela Walls and Dixon Mayor David Stokovich both expressed satisfaction that the deal, which had been negotiated in fits and starts over more than a year, was finally nearing completion. Stokovich stated that Dixon had long been seeking a location for a new community college campus to accommodate its growing population. “The property,” he said, “is beautiful and, what’s more, it’s ideally suited to our needs.” For her part, Walls stated that the district decided that the time had come to sell it. “We bought it in 1995,” she said, “hoping to develop it into a regional park with athletic facilities for games, trails for running and hiking and, of course, open space simply for enjoying. It turned out, however, the funds for development never materialized. The sale will give us funds we can use for our other regional parks.” Stokovich added, “It’s a win for everyone.”

But everyone does not agree. The property has long been popular with hikers, hunters, and birdwatchers because of its pristine beauty. Its former owner, Lucille Potts, never developed the land and never posted it to keep the public out, and neither did the district. As a result, hikers, hunters, and especially birdwatchers have continuously flocked to it. Geraldine Santa Maria, a local environmental activist who lives adjacent to the property, spoke out strongly against the sale at last night's meeting of the district's board of directors. She argued unsuccessfully that the board could not go ahead with the sale because it had not obtained the consent of the district's voters and was "just trying to make a quick buck." Questioned as she left the meeting, she stated that she would consider litigation unless the board were to change its mind.

District General Manager Walls did not discount the possibility of a lawsuit, but expressed confidence that the district would prevail if it were to find itself in court. "It's true we haven't obtained voter consent for the sale," she said, "but that's because we don't have to."

As for the "broken promise" of Wildomar Regional Park, Walls just shook her head. She denied that the board "was in it for the money." She went on: "Although the community college campus won't be a regional park, it'll have athletic facilities, trails, and open space, the kind of things we had hoped for. It's not perfect, but it's close enough." Whether the district's residents—including Santa Maria—agree, only time will tell.



July 2016

**California
Bar
Examination**

**Performance Test A
LIBRARY**

IN RE POTENTIAL WILDOMAR PROPERTY LITIGATION

LIBRARY

Osuna on Real Property, Dedication (5th Ed. 1995).....

**Selected Provisions of the
Columbia Regional Park District Act.....**

**Teller Irrigation District v. Collins
Columbia Supreme Court (1988)**

**Baldwin v. City of Lake Alston
Columbia Supreme Court (1999)**

OSUNA ON REAL PROPERTY

(5th Ed. 1995)

Dedication

Section 1. Introduction

Dedication Defined. Generally speaking, dedication is the application of private real property to a public use by the acts of its owner and a public entity. Any real property interest may be dedicated.

Kinds of Dedication. The two kinds of dedication are statutory dedication and common law dedication.

Statutory Dedication. Dedication is generally governed by statute. Statutory dedication is accomplished through compliance with the requirements specified by the statute in question, such as by the recordation of a map in substantial compliance with the Subdivision Map Act.

Common Law Dedication. Dedication in the absence of a statute is available under the common law. Normally, common law dedication does not involve any payment by the public entity to the private property owner and hence partakes of the character of a gift. Common law dedication entails, in substance, an offer by a private owner, and an acceptance by a public entity, of real property subject to a specified restricted public use in perpetuity. Common law dedication may be either express or implied. Accordingly, common law dedication may be found whenever there is a basis for finding an offer, either express or implied, by the property owner to give the property for perpetual public use, and an acceptance, either express or implied, by the public entity to receive the property for the same use. Although common law dedication therefore takes on the character of a contract, it does not lose any character it may have as a gift.

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SELECTED PROVISIONS OF THE COLUMBIA REGIONAL PARK DISTRICT ACT

Section 1. Purpose

The purpose of the Act is to foster the creation and preservation of regional parks for the enjoyment of the public.

Section 2. District Defined

“District,” as used in this Act, means any regional park district formed pursuant to this Act.

* * *

Section 27. Board of Directors

The government of each district shall be vested in a board of five directors. Directors shall be residents of the district.

The district may act only through its board of directors or through such officers, employees, or agents appointed by the board, subject to the authority the board confers upon any such officers, employees, or agents.

* * *

Section 40. Powers; Acquisition; Conveyance of Property; Consent of Voters

A district may take by grant, appropriation, purchase, gift, devise, condemnation,

or lease, and may hold, use, enjoy, and lease or dispose of real and personal property of every kind, and rights in real and personal property, within or without the district, necessary to the full exercise of its powers.

An easement or any other interest in real property may be actually dedicated for park purposes by the adoption of a resolution by the board of directors, and any interest so dedicated may be conveyed only as provided in this section.

A district may not validly convey any interest in any real property actually dedicated and used for park purposes without the consent of a majority of the voters of the district voting at a special election called by the board and held for that purpose.

* * *

Section 43. General Powers

A district may make contracts, employ labor, and do all acts necessary for the full exercise of its powers.

* * *

Section 47. Board of Directors; Mode of Action; Resolutions, Ordinances and Motions; Form and Requisites

The board of directors shall act only by ordinance, resolution, or a motion duly recorded in the minutes of the meeting. The ayes and noes shall be taken upon the passage of all ordinances or resolutions, and entered upon the journal of the proceedings of the board.

* * *

Section 63. Sale or Lease of Surplus Property; Disposition of Proceeds

If, in the opinion of the board, any real or personal property owned by the district, or any interest therein, becomes unnecessary for the purposes of the district, the board may, subject to the provisions of Section 40, sell such property, or interest therein. The proceeds of any sale of such property, or interest therein, shall be used for and applied to such purposes of the district as the board may, by resolution, determine.

* * *

Section 65. Property; Title to Vest in District

The legal title to all property acquired by the district under the provisions of this Act shall immediately and by operation of law vest in the district, and shall be held by the district in trust for, and is dedicated and set apart for, the uses and purposes set forth in this Act. The board may hold, use, acquire, manage, occupy, and possess such property, as provided in this Act.

* * *

TELLER IRRIGATION DISTRICT v. COLLINS

Columbia Supreme Court (1988)

Phyllis Mosier recovered a judgment against the Teller Irrigation District (District), a public entity created pursuant to the Columbia Irrigation District Act (Act), for damages the District caused by its negligence in flooding her land. The District, however, refused to satisfy the judgment. Mosier caused execution to issue on the judgment, directing Charles Collins, the Sheriff of Teller County, to levy upon and sell so much of the District's real and/or personal property as was necessary to satisfy the judgment.

The District then brought this action to restrain Sheriff Collins from levying upon and selling any of its property. The trial court refused to restrain Sheriff Collins and rendered judgment against the District. The District appealed.

It cannot be doubted that it was the duty of the District to satisfy Mosier's judgment. But the question here is whether the performance of that duty may be compelled by an execution, levy, and sale of the District's property.

All of the property owned by the District, both real and personal, was acquired by virtue of Section 13 of the Act, which declares that the "legal title to all property acquired under the provisions of this Act shall immediately and by operation of law vest in the district, and shall be held by the district in trust for and is hereby dedicated and set apart to the uses and purposes set forth in this Act"—that is, for irrigation.

Under Section 13 of the Act, the “legal title” to *all* of the District’s property is held “in trust” by the District and “is dedicated and set apart to the uses and purposes” specified, namely, irrigation.

Section 13 of the Act is similar to analogous provisions in dozens of analogous statutes creating districts—e.g., Section 34 of the Columbia Water Reclamation District Act and Section 65 of the Columbia Regional Park District Act. Such provisions have been held to create a public trust over all of the district’s property, with the district itself as the owner of the legal title, the residents of the district as the owners of the beneficial title, and the district’s board of directors as the trustees. *Merchants’ Bank v. Erickson Irrigation Dist.* (Colum. Ct. App. 1976). Public trusts have long been exempted from execution, levy, and sale, not because districts and their boards are considered incapable of wrongdoing, but solely to protect the districts’ residents. *Sannerville v. Itsell* (Colum. Supreme Ct. 1880).

Therefore, Section 13 of the Act creates a public trust over all of the District’s property, and the public trust so created is exempt from execution, levy, and sale.

We are not unaware that the District has come to court seeking equity in spite of its failure to do equity. But however blameworthy the District may be in refusing to satisfy Mosier’s judgment, it cannot be estopped from insisting that property that is in public trust and, as such, is exempted from execution, levy, and sale, must remain so for the protection of its residents.

Reversed.

BALDWIN v. CITY OF LAKE ALSTON

Columbia Supreme Court (1999)

The trial court entered a judgment granting a petition for writ of mandate by Skip Baldwin, a resident of the City of Lake Alston, in which Baldwin challenged the City's adoption of an ordinance providing for the sale of a seven-acre parcel of real property—the so-called Woodside Lot—to Human Habitat, a non-profit corporation, for use in constructing affordable housing. The judgment determined that, by an ordinance adopted years earlier, the City had dedicated the Woodside Lot to “public recreation purposes,” and had thereby deprived itself of the power to put the lot to any other use. The City appealed. We reverse.

In 1976, the South Plains Railroad Company proposed donation of the Woodside Lot to the City “for public recreation purposes,” “conditioned upon the City assuming the responsibility for removing rails and restoring streets where railroad tracks have previously been retired.” The City's Department of Recreation and Parks issued a report to the City Council, in which it noted that the lot had an estimated value of \$600,000 and that the total cost of removing tracks and restoring streets would total about \$200,000; it stated that acquisition of the lot would be profitable to the City; and it recommended that if the City Council were inclined to accept the lot, it should refer the matter to the City Attorney to work out the terms of an agreement with South Plains because “there may be legal problems relating to removal of the tracks and restoration of the streets”

In 1977, the City Council adopted Ordinance No. 1977-149. The ordinance provided that the City may “accept donation” of the Woodside Lot “upon payment by the South Plains Railroad Company of \$200,000.” South Plains sent a letter to the City Council, enclosing a conditional donation deed for the lot “for public

recreation purposes.” The letter stated that “Delivery of this instrument is conditioned upon receipt of a Certified Copy of the Resolution adopted by the City Council of the City of Lake Alston, accepting the Donation Deed.” The letter concluded that it was with pleasure that South Plains was able to “donate” the lot “for public recreation purposes.”

Between 1977 and 1979, the City apparently did nothing to respond to South Plains’ letter.

In 1980, in the course of routine review of files, the City Attorney discovered the unresponded-to South Plains letter. The City Attorney went on to discover that South Plains had not made the \$200,000 payment required by Ordinance No. 1977-149. The City Attorney sent a letter to South Plains inquiring about the \$200,000 payment. This time, it was South Plains that failed to respond.

In 1983, after the City had levied an assessment of about \$20,000 on the Woodside Lot and sought payment from South Plains, South Plains delivered an unconditional donation deed and the City excused payment of the assessment. The City did not request, and South Plains did not make, the \$200,000 payment required by Ordinance No. 1977-149.

Between 1983 and 1995, the City used the Woodside Lot for public recreation purposes.

In 1996, following a series of City Council hearings on the need for affordable housing in the general vicinity of the Woodside Lot, the City sold the lot to Human

Habitat to construct such housing.

Immediately thereafter, Baldwin filed a petition for writ of mandate challenging the sale of the Woodside Lot.

The sole issue on appeal is whether the City had dedicated the Woodside Lot to “public recreation purposes,” and had thereby deprived itself of the power to put the lot to any other use. That issue depends on whether the lot can be deemed to have been dedicated under the common law by force of Ordinance No. 1977-149.

“Common law dedication entails ... an offer by a private owner, and an acceptance by a public entity, of real property subject to a specified restricted public use in perpetuity”; it “may be either express or implied”; and it may have the character of a “gift” as well as a “contract.” *Osuna on Real Property*, Dedication, Section 1 (5th Ed. 1995). Therefore, unless the private owner’s offer is accepted by the public entity, there is no dedication of the property and hence no restriction on its use.

Cities are required to enact ordinances to enable the making of contracts for the acquisition and disposition of real property. *American-Hawaiian Steamship Co. v. Home Sav. and Loan Assn.* (Colum. Ct. App. 1974).

The rules for the construction of statutes apply equally to ordinances and other municipal measures. *Terminal Plaza Corp. v. City of St. Francis* (Colum. Ct. App. 1986). Under these rules, courts should read the provision in question

according to its plain language. *Ibid.* In addition, courts should *not* read the provision in such a way as to render any part surplusage. *Ibid.* And courts should read a provision authorizing particular action by particular means as *discretionary* for the *action* but *mandatory* for the *means*. *Ibid.*

The City of Lake Alston City Charter provides that the “City Council may make any contract for the acquisition and/or disposition of any real property or any interest in real property, as it may deem necessary and proper, by enacting an ordinance.” City of Lake Alston Munic. Charter, Section 73. Under the provision quoted, the City Council may choose to make any real property contract it wishes, but must make it by ordinance.

After review, we conclude that the Woodside Lot cannot be deemed to have been dedicated under the common law by force of Ordinance No. 1977-149. Although South Plains may have *offered* the lot under a perpetual restriction, the City did not *accept* it under that restriction. The ordinance states in plain language, which can hardly be treated as surplusage, that the City may “accept donation” of the Woodside Lot for public recreation purposes—but only “upon payment by the South Plains Railroad Company of \$200,000.” The ordinance’s language can reasonably be interpreted only as an acceptance of the “donation” conditioned on South Plains’ payment of \$200,000 payment. That condition, however, was never satisfied.

The trial court accordingly erred when it concluded that the City had dedicated the Woodside Lot to “public recreation purposes.”

Reversed.

1)

CHARLES DRUMM
OFFICE OF THE COUNTY COUNSEL
COUNTY OF RIVERDALE
15000 CIVIC CENTER WAY
DIXON, COLUMBIA

July 26, 2016

Michael Standish
Counsel for Geraldine Santa Maria
Standish & Lobert LLP
Attorneys At Law
1616 Oak Street
Dixon, Columbia

Re: Intended Conveyance of Wildomar Property

Dear Mr. Standish,

Thank you for your letter regarding Ms. Santa Maria's concerns over the Riverdale Regional Park District's (the "District") impending conveyance of the Wildomar Property to the City of Dixon. It is the District's position that the impending conveyance is valid, as the facts and law preclude the Wildomar Property from the Columbia Regional Park District Act's (the "Act") requirements. After reviewing your claims, we have determined that Ms. Santa Maria's position to the contrary is unsound. The Wildomar Property is not "actually dedicated" or "actually used" under the Act, dedicated under common law, or otherwise subject to the requirements for a special election set out in the Act Section 40.

The Wildomar Property Is Not "Actually Dedicated" Under the Act

"Actually Dedicated" Property Interests and Their Requirements Are Defined Solely in Section 40

The District finds your client's argument for the conflation of "dedication" and "actual dedication" in Sections 65 and 40 unsound. Your letter states that Section 65 would be rendered meaningless unless "dedicated" was read identical to Section 40's "actual dedication. To the contrary, Section 40 is designed to empower the district to "hold, use, enjoy, and lease or dispose" of real property "necessary to the full exercise of [the district's] powers." Then, as your letter noted, Section 40 provides for the District's ability to "actually dedicat[e]" the property interest through adoption of a resolution. Immediately following this initial statutory definition of an "actually dedicated" property interest, Section 40 carves out a special requirement for property interests that meet the narrowly defined criteria of "actually dedicated" property interests.

Unlimited Application of the Requirements for "Actually Dedicated" Property Interests Would Render Section 63 Meaningless

Although Section 65 states that all property acquisitions by the district shall be "dedicated" -- but not "actually dedicated" -- for park purposes, a reading of "dedicated" as identical to "actually dedicated" as set out in Section 40 would render Section 63 meaningless. Section 63 provides for the district board of directors (the "board") to opine when a property interest may be sold. If all property acquired by the district was dedicated and thereby subject to a special election for conveyance, the board would be effectively prohibited from opining that a property interest could become unnecessary for the district and subject to sale, rendering Section 63 meaningless.

Section 65 begins, "The legal title to all property acquired ... shall immediately and by operation of law vest in the district..." The more likely and more reasonable interpretation of Section 65 is that it empowers the district to make the decisions necessary for public welfare, irrespective of the demands of lone

individuals. The interpretation of this very text in a parallel statute has been upheld by our Supreme Court.

In *Teller Irrigation District v. Collins* (Colum. Supreme Ct. 1988), another individual litigant sought to force the public entity's hand in the sale of its property. In that case the trial court ruled in the individual litigant's favor, directing the county sheriff to levy and sell the public property in order to satisfy the litigant's judgment. The *Collins* Court examined a parallel statute where the language in question was the same nearly word-for-word. The Court overruled the trial court's decision, finding that the statutory language established a public trust over the public entity's property, "with the district itself as the owner of the legal title". *Collins* citing *Merchants' Bank v. Erickson Irrigation Dist.* (Colum Ct. App. 1976). Although the *Collins* case involved a litigant attempting to force the sale of public property, the Court's ruling establishes that the Act provides the district with the powers to exempt public property from demands by individual litigants in order to preserve the district's ability to operate public property.

The Wildomar Property Is Not Dedicated Under Common Law

The District very much shares your client's concerns, and recognizes that its ultimate responsibility "is to foster the creation and preservation of regional parks for the enjoyment of the public." Columbia Regional Park District Act Section 1. However, the District must disagree with your interpretation of the term "dedicated" in *Baldwin v. City of Lake Alston* (Colum. Supreme Ct. 1999) to mean that the Wildomar Property is precluded from valid conveyance.

In a similar premise to the matter at hand, the city government in *Baldwin* adopted an ordinance officiating acquisition of land from a private party. But here, the situations diverge. In *Baldwin*, the private party donated the land to the city, conditioning its conveyance on specific maintenance obligations. The Wildomar Property was conveyed in a sale transaction with no contractual use restraints.

Although the property deed is "for park purposes in perpetuity," we can only presume your letter does not mention this fact because it was not agreed to by the city and is not a valid restraint in this situation.

In arriving at its determination that the *Baldwin* property was not dedicated and therefore unrestricted, our Court relied upon the definition of common law dedication set out in *Osuna on Real Property*. In sum, the treatise and the Court agree that "unless the private owner's offer is accepted by the public entity, there is no dedication of the property and hence no restriction on its use." Here the District was not offered the land with such a constraint. Instead, the agreement specifies a plot of land, a purchase price, the difference of value between the two as a gift. While the District agrees with you as to the applicability of the *Baldwin* ruling to the Wildomar Property conveyance, we must conclude that it harms your common law dedication claim more than it supports it.

The Wildomar Property Is Not "Actually Used" for Park Purposes

In your letter, you acknowledge that the Wildomar Property was never developed into a regional park. You only support your claim that it is "actually used" because it has "functioned as such." The District oversees a number of regional parks which see "actual use," all of which notably have parking, restrooms, and other such facilities. As indicated by the *Collins* Court, public trusts are empowered to make such determinations over public property as whether it is "actually used," rather than the personal views of individual residents.

Given that Ms. Santa Maria's position is unsupported by any legal or factual claims, we cannot satisfy her request to halt the conveyance of the Wildomar Property absent a special election. This by no means demonstrates the District's lack of commitment to our voters, and we will continue to operate with their best interests at heart. As you acknowledge in your letter, the District is not currently well-situated to afford the expenses of litigating this conveyance. That holds true

for the logistics involved in special elections, as well as the continued health and safety problems arising from the District's inability to maintain and develop the Wildomar Property. We urge your client to continue participating at our public board meetings and discuss with us how the funds from this sale can be best applied to our community's many other regional parks.

Sincerely,

Charles Drumm
Assistant County Counsel

Question #1 Final Word Count = 1222

END OF EXAM