

Supplement to the
**Appendix to the Journal
of the Assembly**

LEGISLATURE OF THE STATE OF CALIFORNIA
1965 REGULAR SESSION

REPORTS

January 4, 1965—June 18, 1965



HON JESSE M UNRUH
Speaker

HON JEROME R WALDIE
Majority Floor Leader

HON CARLOS BEE
Speaker pro Tempore

HON ROBERT MONAGAN
Minority Floor Leader

JAMES D DRISCOLL
Chief Clerk of the Assembly

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Volume 26, number 8—The Pacific Southwest Water Plan



Assembly Interim Committee on Ways & Means

ROBERT W. CROWN
Chairman

SUB COMMITTEE ON ECONOMIC DEVELOPMENT

Published by the
ASSEMBLY OF THE STATE OF CALIFORNIA

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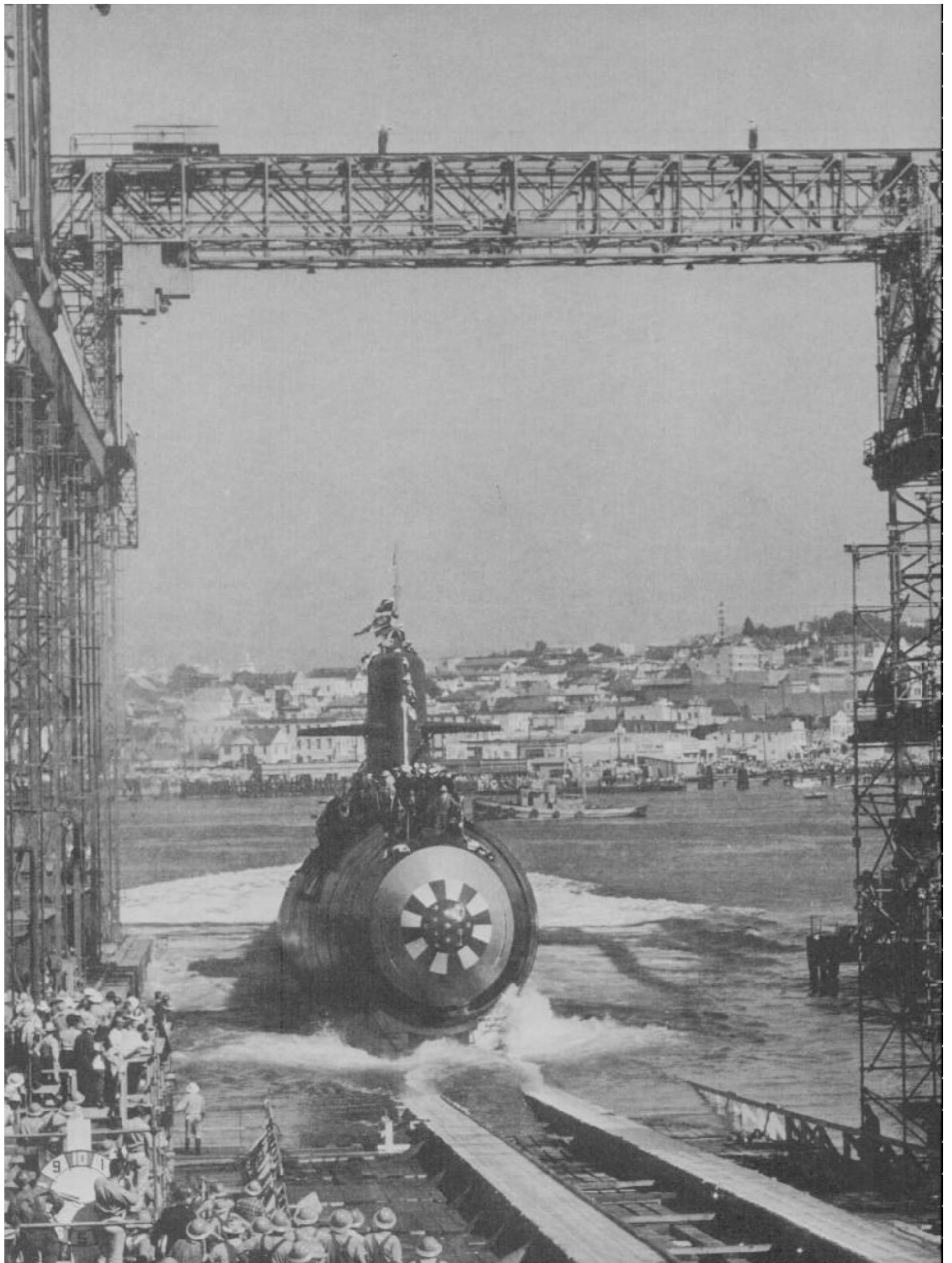


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LETTER OF TRANSMITTAL
ASSEMBLY INTERIM COMMITTEE ON WAYS AND MEANS

CALIFORNIA LEGISLATURE

January 5, 1965

TO THE CHAIRMAN AND MEMBERS OF THE ASSEMBLY COMMITTEE
ON WAYS AND MEANS

The Subcommittee on Economic Development of the Interim Committee on Ways and Means, in accordance with House Resolution 434, 1963 Regular Session, herewith respectfully submits its report.

The resolution called specifically for a study of the impact of the Federal Government's activities on the economy of the State. Through the medium of several hearings, my own visits to Washington and staff research, we have compiled herewith, our findings and recommendations.

The Subcommittee is very appreciative of the efforts of the many witnesses at our hearings, including representatives of California industry, educators, and state and federal officials, who cooperated throughout the months of our endeavor.

Respectfully submitted,

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LETTER OF TRANSMITTAL

ASSEMBLY INTERIM COMMITTEE ON WAYS AND MEANS

CALIFORNIA LEGISLATURE

January 5, 1965

TO THE SPEAKER AND MEMBERS OF THE ASSEMBLY

Your Interim Committee on Ways and Means herewith respectfully submits the report of the Subcommittee on Economic Development.

The Subcommittee has produced the report separate from its other assigned topics because of the importance of the subject.

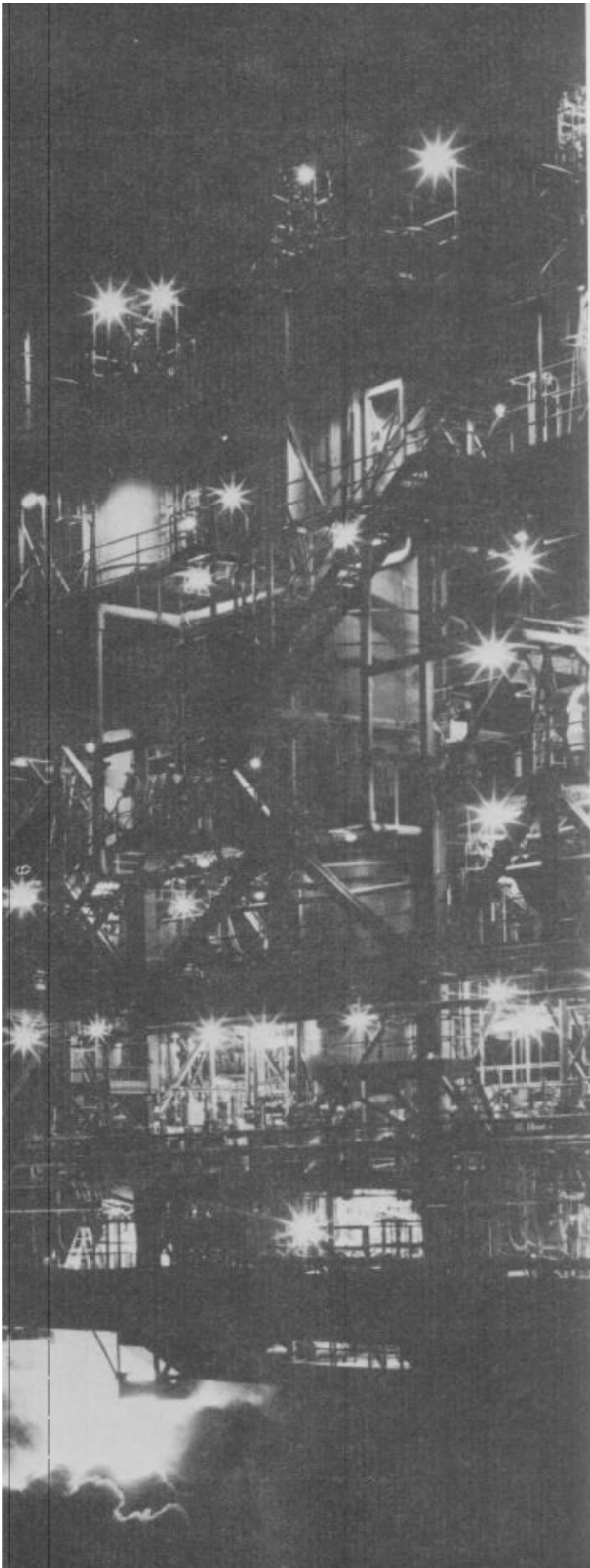
The whole committee has adopted this report and requested me as Chairman to submit it with my recommendation that its findings and conclusions be acted upon at the earliest possible date.

Respectfully submitted,

Members

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ROBERT W. CROWN, CHAIRMAN
ASSEMBLY COMMITTEE ON WAYS AND MEANS



INTRODUCTION

The prospect of a decline, or even a leveling off, of federal defense and space expenditures in California poses serious questions for the state's continued economic growth. For it is clear that this growth in recent years has been largely dependent upon federal government spending. The state has been fortunate in having the natural resources, the heavy public investment in education, and the vision of California-based private enterprise to adapt successfully to the aerospace age. But with defense needs changing, the state's economic future demands close scrutiny of the federal impact on our economy and how we may best plan to adjust.

During the Ways and Means Committee study of this important subject, several hearings were held and extensive research was conducted. The committee chairman met in Washington with members of the California congressional delegation and representatives of the Department of Defense and the Arms Control and Disarmament Agency. From these meetings, a consensus developed that California would be hard pressed to maintain its clearly defined role in defense activities.

In the past decade, defense spending in California has risen 57 percent to keep pace roughly with the state's population growth of 50 percent. The federal government is, in fact, the largest single employer within the state. Moreover, over one-third of all manufacturing employees work in space and aerospace industries which operate almost wholly

under federal contract. Obviously, any change in federal spending habits would deeply affect the California economy.

Of course, changing defense needs pose a problem for many states besides California. And the problem is beginning to receive federal attention. The committee chairman had occasion to testify on this subject before the U. S. Senate Manpower and Employment Subcommittee, chaired by Senator Joseph C. Clark. At that time, Senator Clark demonstrated a keen awareness of California's situation and expressed a desire to be helpful. As beneficial as a more positive federal role in easing the impact of defense shifts would be, the state and the Legislature have a responsibility to do more than wait for action from Washington.

This is not a problem that is going to be resolved by a single solution or even a single set of solutions. A broad mixture of programs is needed to provide for the transition from armaments manufacture to peaceful production. And these programs must provide for the transition of assembly line workers, clerks and custodial help, as well as for systems engineers and scientists.

It is the purpose of this report to alert the Legislature and the people of California to the problem and to make suggestions for improvement. We are very grateful that so many outstanding people from industry and government took the time to give us the benefit of their experience and advice.

ROBERT W. CROWN
CHAIRMAN

FINDINGS

By virtue of its many technological and economic advantages, California has developed the industrial and educational base which in recent years has earned a commanding share of federal defense and aerospace contracts.

Receipt of these contracts has made a major contribution to the state's dynamic economic growth.

Continued expansion of the California economy is seriously challenged by the prospect of a decline, or even a leveling off, of federal defense and space activity within the State.

No single approach in meeting this challenge of economic transition will suffice. Several courses of action will undoubtedly be required, and new approaches must be sought as conditions change.

Greater use of the skills, resources and techniques of the defense and space industry in dealing with the problems of man's more immediate environment should play an important part in meeting this challenge.

Cooperation and coordination between private industry, labor unions, educational institutions and public agencies will be essential. While the willingness to cooperate has generally been evident, adequate coordination is sorely lacking.

California, more than any other state, stands to lose heavily in jobs and, thusly, in economic growth unless such a coordinated effort is mounted.

COMMENDATIONS

That the state administration give the subject of California's changing economy top priority and that it undertake a coordinated effort to facilitate impending transitions.

That the state administration shall charge one central office with the responsibility for:

- a) collecting and publishing all available data relating to federal defense and space employment in California,
- b) obtaining accurate figures on both prime and subcontracts awarded to California firms with meaningful estimates of the total employment impact,
- c) evaluating these data so that the correct magnitude of the potential employment problem can be adequately measured.

It is further recommended that such information and its careful evaluation be presented to the Legislature with the Governor's annual Economic Report.

That the State Development Plan include specific information relating to anticipated changes in the pattern of federal procurement and an outline of the steps that are being taken to accommodate these changes with the least possible adverse effect on employment.

That the Ways and Means Committee be directed to continue its study of California's economic development in general and federal defense and space procurement in particular.

That the University of California and other institutions of higher education in this state continue and expand current studies relating to conversion of space and defense technology.



FEDERAL SPENDING IMPACT

Space and defense expenditures account for the largest share by far of the annual flow of nearly 13 billion federal dollars into California. The state's space and defense related industries and institutions received nearly \$7 billion in prime contracts in 1963. Of course, subcontracts let by prime contractors often go to out-of-state firms. But it is held that this has little effect as it is offset by subcontracts won by California firms from out-of-state prime contractors.

Federal employment of California residents, civilian and military, is the next largest source of federal economic involvement in California. The federal payroll within the state approximates \$3 billion per year.

Individual residents of the state also receive nearly \$1.5 billion annually from the Federal Government in the form of social security and veterans benefits, public health services, unemployment compensation and farm subsidies.

Another \$825 million in federal grants is received each year by the state and local government units for purposes such as highway construction, urban renewal, aid to education and welfare. Additional federal expenditures in California take the form of public works, such as flood protection, irrigation and other resource development projects.

The major impact of federal spending on the California economy is impressive, though understated, when the \$12.8 billion in federal expenditures is contrasted with the \$57.6 total state personal and corporate income¹ for a comparable period.

While no precipitous reduction in this federal involvement seems imminent, neither does it appear the federal role will expand, as it has in recent years, to provide the large numbers of new jobs needed for California's ever-growing population.

¹ California State Budget, 1964-65, page A-9



FEDERAL IMPACT ON EMPLOYMENT

Directly employed by the federal government in California are some 266,000 civilians and 320,000 military personnel. Another 484,000 Californians¹ work in space and defense related industries and military institutions which derive about 95 percent of their business from the federal government.

Thus, approximately 1,060,000 California residents are on the federal payroll, either directly or through contractual arrangements. This accounts for more than 20 percent of all nonagricultural workers in the state. And the federal impact goes even further. Every federally supported job generates other jobs in service and support functions. Some economists estimate that as many as one-half of all jobs in California are attributable to defense and space activities.²

Space and defense related industries provide 8 percent of all nonagricultural and 35 percent of all manufacturing employment in California. In terms of growth, 6 of every 10 new jobs in the state since 1950 have been in these industries.³

Salaries and wages in this field have averaged higher than the pay in other manufacturing pursuits. As a result, job losses in space and defense related industries have a more pronounced impact than like numbers of job losses in other industries.

Space and defense employees differ from the work force of other manufacturing enterprises in another important way. Nearly 53 percent of all space and defense workers are in the white collar category as compared to 28 percent in all other manufacturing areas combined. This reflects the large numbers of professional and technical employees in this single field.

¹ State Department of Industrial Relations

² "The Role of Defense Expenditures in the Community Income Stream," by Professor Charles M. T. ' ' Vol. 2, Selected Readings, US Senate Committee on Labor and Public Welfare, 1964, pp 795-805

³ "Trends in Employment and Federal Employment" S. D. ...

After years of continuing expansion, space and defense related employment took a downturn in 1963 throughout the nation⁴ and in California.⁵ During that year, job losses were felt in California in two of the four categories of space and defense work. Employment in electronics was down 16,300 and in aircraft it fell off by 3,200. Meanwhile, the other two categories gained slightly (missiles up 4,600 and instruments up 1,300) but the overall picture showed a loss of nearly 14,000 jobs. Though precise statistics are unavailable at this writing, all indicators show the downtrend continued in 1964 and carried into 1965.

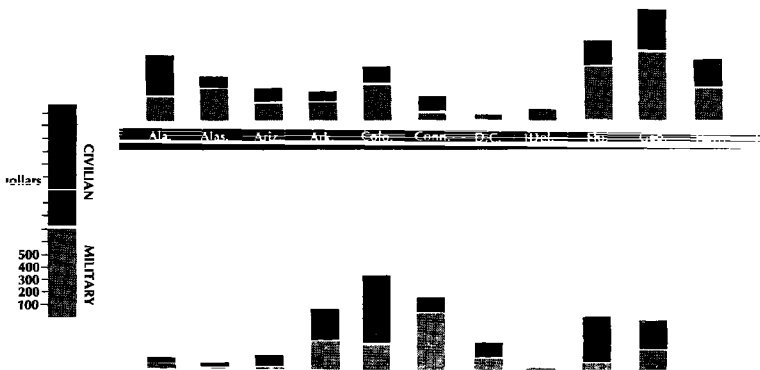
Employment in these industries has become concentrated in a relatively few communities, rendering them particularly vulnerable to slackening defense activity. According to the U.S. Department of Labor, five California industrial centers (Los Angeles-Long Beach, Sacramento, San Bernardino-Riverside-Ontario, San Diego, and San Jose) contain nearly two-fifths of the nation's total space and defense work force.⁶

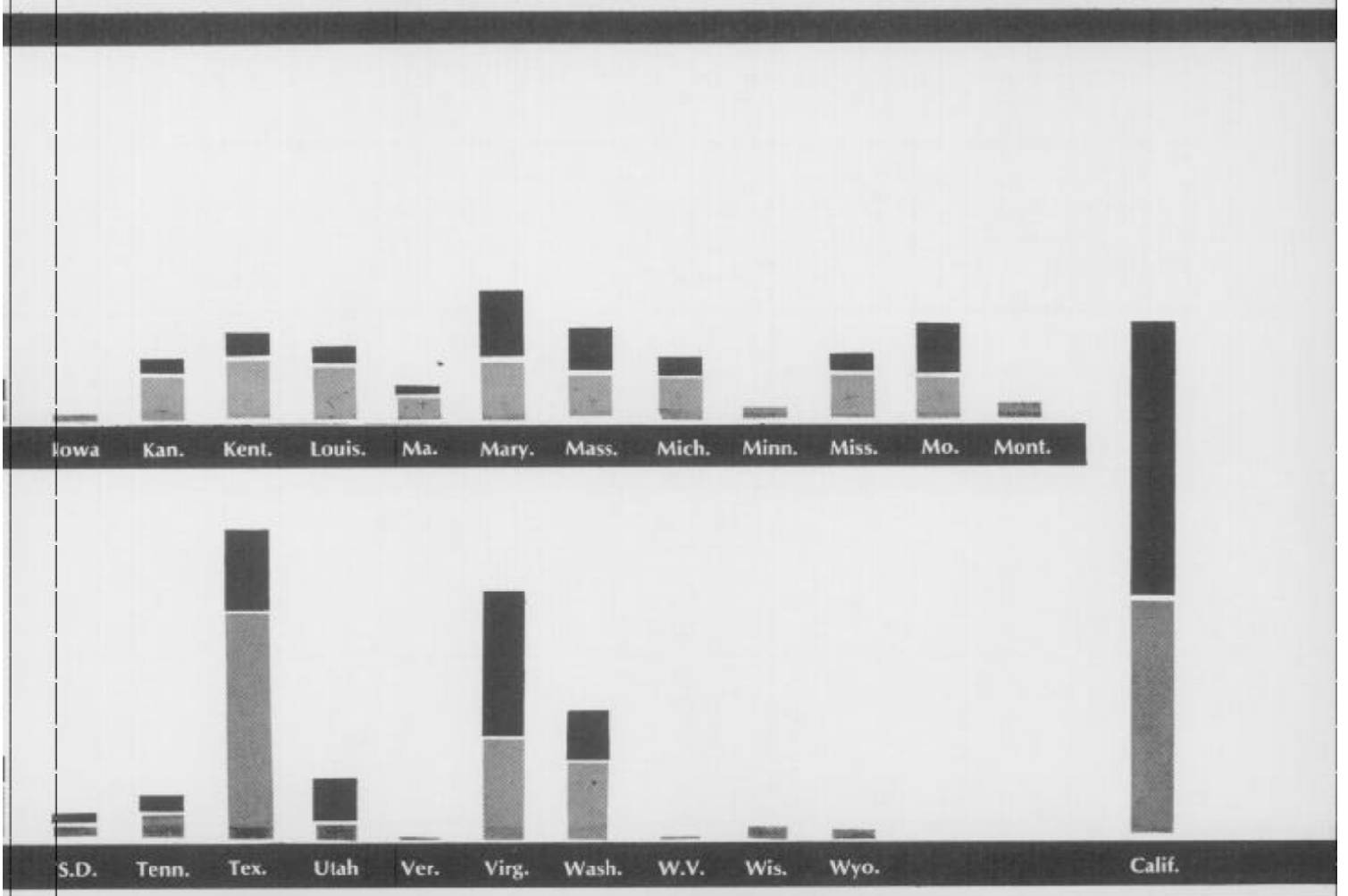
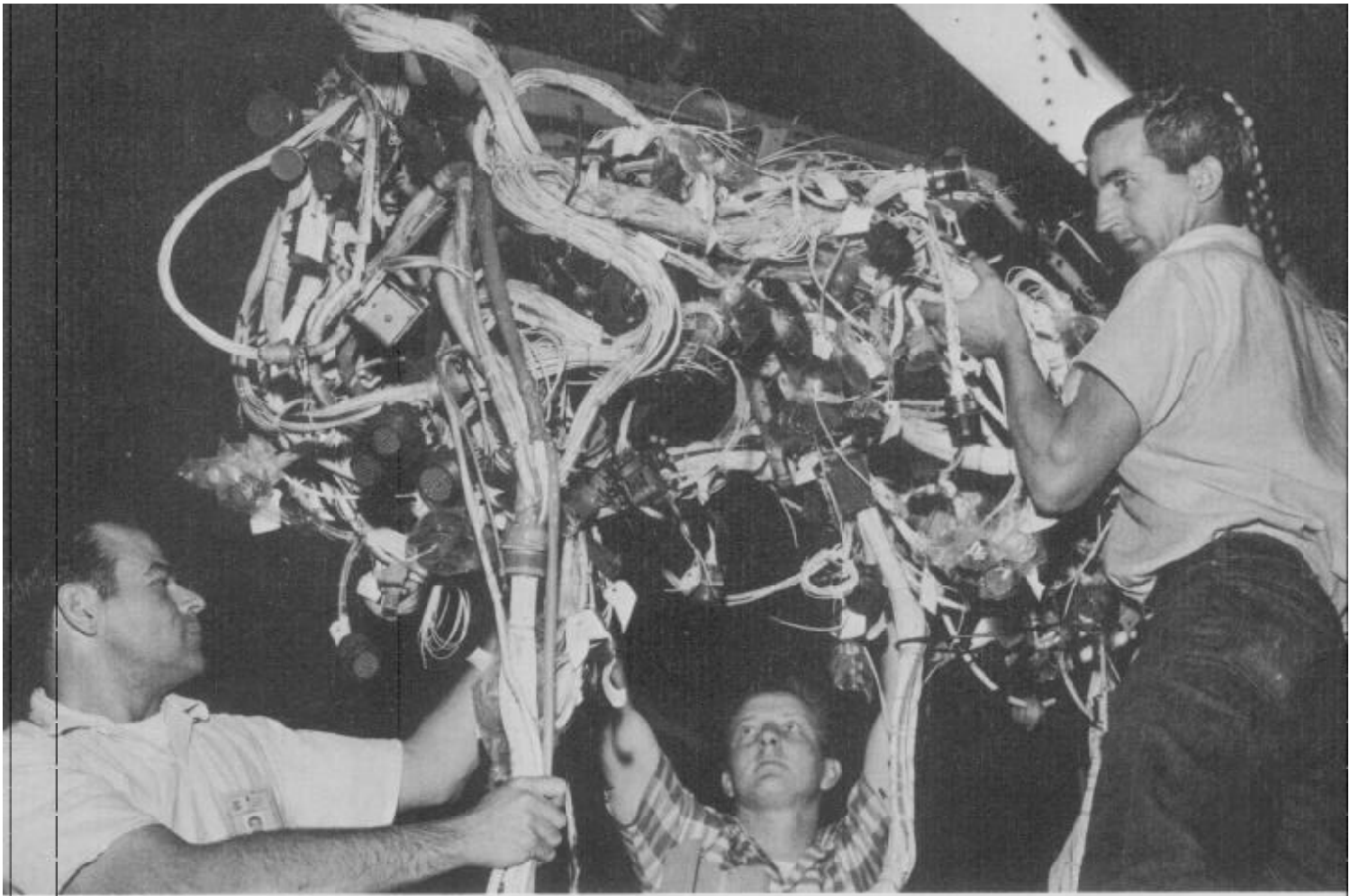
The economic viability of these communities hinges in large measure upon a continuing flow of federal funds. While the unhealthy nature of this dependence is widely discussed, action to offset it often is missing until the shock of announced cutbacks. And even at that point, the lack of coordinating responsibility hinders an effective attack on the problem.

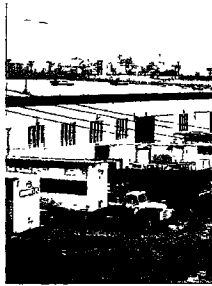
⁴ *Aerospace Employment, Industry Manpower Surveys No. 111*, U.S. Department of Labor, June .
⁵ *Op cit*, State Department of Industrial Relations

⁶ *Op cit*, U.S. Department of Labor

MILITARY AND CIVILIAN PAYROLLS BY STATES, 1962







FEDERAL IMPACT ON INDUSTRY

The federal government is the principal customer for hundreds of California businesses, large and small. Besides the annual \$7 billion in prime contracts, California firms benefit from other economic activity generated by federal expenditures. The multibillion-dollar payroll of persons employed either directly by the federal government or by private firms under federal contract undoubtedly increases the business volume of practically every economic activity in the state.

Most directly affected, of course, are the space and defense related industries which depend almost wholly upon federal contracts. As indicated earlier, these firms provide 37 percent of all manufacturing employment within California. And they have provided 6 of every 10 new jobs in the state since 1953.

Current federal space and defense procurement policies are often described in such terms as "stretchout," "phaseout" and "shifting mix." Larger firms have been better able to withstand these adjustments partly because of their ability to diversify and produce a number of goods or services for government purchase. And it most likely will be the medium and smaller sized firms that will be hurt in future shifts in defense spending. Even though sufficient business is foreseen to sustain the major portion of the space and defense related industry, smaller firms that cannot afford a 25- to 50-percent decrease in sales volume can expect difficult times.

The more highly skilled of California workers are particularly susceptible to the impact of the federal government on the California economy. The growing importance of federal research and development activities has importantly affected the complexion of the state's work force.



FEDERAL IMPACT ON THE HIGHLY SKILLED

In fiscal 1963, federal "R and D" expenditures totaled nearly \$10 billion, with most of that amount going for space and defense purposes. During the same period, California-based industries and educational institutions received 38.4 percent of all federally funded "R and D" work, or \$3.8 billion. This included 50.5 percent of all NASA, and 39.6 percent of all Defense Department, research and development expenditures.¹

This has provided a major attraction to the scientific and engineering community, particularly since nearly 70 percent of all research and development efforts, public and private, throughout the nation presently are supported by the federal government.²

Major concentrations in California of highly skilled professionals have resulted. According to the National Science Foundation, California leads all other states in its scientific and engineering population.³ Space and defense industrial centers account for large clusters of the highly skilled, as in the Los Angeles-Long Beach, San Francisco-Oakland, and San Jose metropolitan areas.⁴

A recent U.S. Labor Department survey found that the much publicized shortage in recent years of engineers and other highly trained professionals "has subsided considerably."⁵ However, on a nationwide basis, a number of defense and space firms reported difficulty in filling some specialized positions.

The abilities of these highly skilled professionals constitute one of the most valuable resources of our state and nation. Narrowing job opportunities in these occupations could well damage their future attraction at a time when such skilled and trained talents are essential to the nation's security and its capacity to deal with the complex problems of the modern world.

¹ Geographic Distribution of Federal Research and Development Funds, Committee Print, House Science and Astronautics Committee, October 1964.

² *Op. cit.*, U.S. Senate Labor and Public Welfare Committee, p. 695.

³ Profiles of Manpower in Science and Technology, National Science Foundation, 1963.

⁴ American Science Manpower—1962, National Science Foundation, June 1964.

⁵ *Op. cit.*, U.S. Department of Labor.

CHANGING PATTERNS OF DEFENSE SPENDING

In recent years, California has enjoyed a commanding position in the nation's defense efforts.

In 1963, for example, 23 percent of all prime defense contracts were placed with firms within the state. Meanwhile, the ever-increasing awareness of the economic importance of defense spending has spurred competition between the states for the contracts. While California has in great quantity all those resources needed to compete successfully for such contracts, it would be prudent to expect an indefinite continuance of its heavy predominance in an increasingly competitive field.

For more than a decade, California's superb technological and industrial complex has expanded by developing and producing new weaponry. Some cutbacks have occurred, such as the Navajo program curtailment and the cancellation of the Skybolt missile system. These cutbacks had little effect on the total state economy but the localized impact was more severe.

Now, however, production goals for the major weapons systems in use are well on their way

to attainment. Once sufficient Minuteman missiles are produced to supply the hundreds of launching sites built to handle them, plus experimental and stockpile needs, then production of Minutemen presumably will cease. In a similar vein, there are no future plans for large-scale manufacture of long-range bombers, once a major source of defense expenditures in California. Barring a major breakthrough into a new generation of weapons systems, spending for strategic defense weapons seems sure to diminish.

Concurrently with the so-called "strategic stalemate," the changing nature of international tensions has brought about the need to cope with "brushfire" wars—wars conducted more in close-to-man combat and more suited to conventional weaponry.

Thus, as California reached a peak of effort to develop and produce more complex weaponry systems, the demand for conventional weaponry—the production specialties of other areas of the country—has begun to supplant the need to develop new super weaponry.

DISTRIBUTION OF MILITARY PRIME CONTRACT AWARDS

Texas	3.9%	California	15.4%	All Other States	59%
Connecticut	4.9%				
Ohio	5.2%				
Illinois	5.4%				
Texas	5.4%				
Kansas	5.7%				
New York	10.8%				

Washington	4.1%	California	23%	All Other States	59.4%
Massachusetts	4.2%				
Connecticut	4.2%				
Texas	4.8%				
New Jersey	5.0%				
Ohio	5.3%				
New York	10%				

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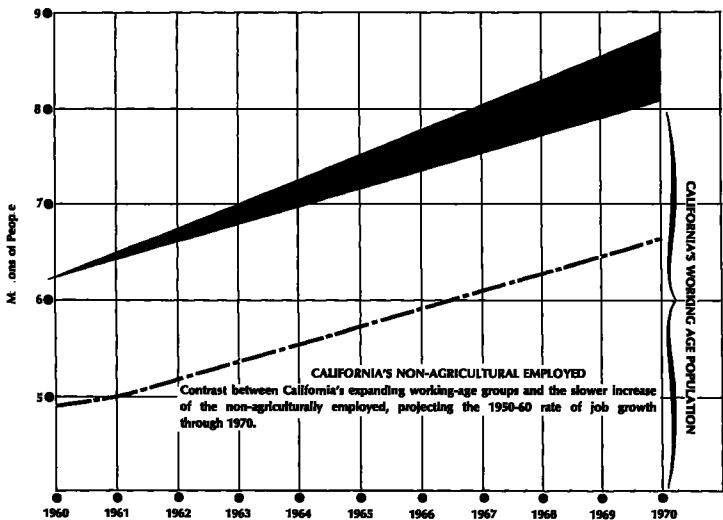


CALIFORNIA EMPLOYMENT PROSPECTS

California's working age population has grown at a faster rate than the state's population as a whole. The areas of space-defense industry concentration were the primary recipients of in-migration during the 1950's. The natural increase of these new Californians is also being felt in greater demand for new jobs because their children are entering the labor market. And it contributes to the ever-increasing demand for education and state services of every kind.

If the population growth trend continues, and the state's economy maintains its rate of growth of the 1950's, then each year will find more new people than new jobs in the labor market. Secretary of Defense Robert McNamara has warned that the defense industry is no longer a "growth industry." He has explained that while the total procurement may remain about the same, defense will account for a smaller proportion of the gross national product as the nation's economy expands. In short, California must rely on other endeavors for the 200,000 to 300,000 new jobs needed annually in coming years.

THE NEED FOR MORE JOBS



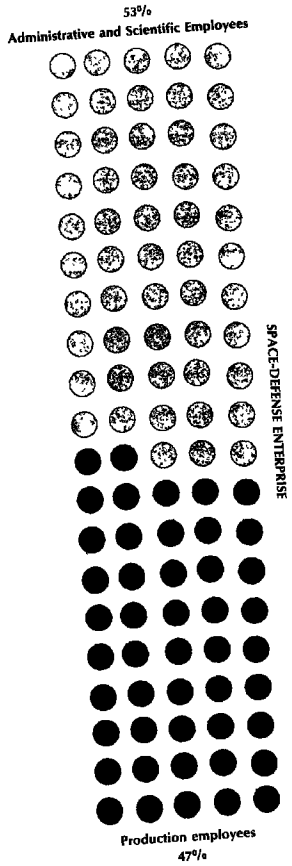
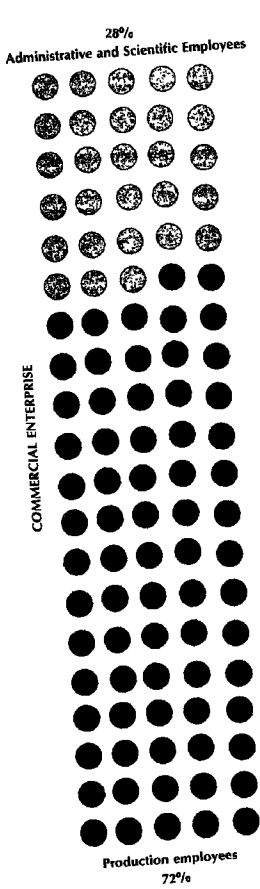
Increased factor of newly employable people in the work source based on the 1950 to 1960 rate of growth in employment and on current population projections.

SPACE AND DEFENSE INDUSTRY CONVERSION PROSPECTS

It has been widely assumed that curtailments in government purchase of defense goods would be met by a conversion of defense industries to production of consumer goods or related activities. This did occur to a great extent immediately following World War Two. However, the pent-up consumer demand resulting from years of short supply during the war does not exist today. Moreover, even expansion of consumer demand may not greatly stimulate employment since many of these goods are produced in highly automated plants.

Conversion of defense and space related facilities often is hindered by their special design and location, unique to national security needs. Additionally, space and defense related firms are manned by a much larger proportion of scientific and administrative personnel than commercial enterprises could afford to maintain. This is evidenced by the disproportionate ratio of white-collar to blue-collar workers.

In other ways, too, space and defense industries are ill fit to convert output to civilian demand. Lack of experience in marketing to customers other than government is one drawback. Another is the practice of gearing to extremely high standards and close tolerances, which is necessary in space-defense activities but not economic commercially.



EMPLOYEE DISTRIBUTION

UNSATISFIED DEMANDS

Defense and space activities are public demands financed by public funds. As defense demands slacken and space requirements are stretched out, the best hope of retaining California's research and development establishment probably lies in orienting its skills and resources toward other public demands. The conventional consumer and industrial markets do not invite the kind of massive effort required to keep the California space and defense industrial complex intact. The hoped-for but unrealized "spinoff," or byproduct, of space and defense research has not provided a measurable amount of increased economic activity. The transfer of this advanced technology to other sectors of the economy holds great but as yet unfulfilled promise.

Some of the most often mentioned public demands which could well absorb the attention of California's aerospace industry are: new educational techniques, mass transportation systems, application of advanced technology to agriculture, resource development, medical science, underdeveloped economies, and the furtherance of man's conquest of his environment. California's favorable access to the sea offers a vast, newly appreciated resource. The State's greatest hope, in fact the world's greatest hope, lies in meeting the constructive needs of mankind. The conversion from the destructive needs of modern warfare to the constructive needs of a world at peace offers as great a challenge as has ever confronted man.

PLANNING EFFORTS

Many public and private agencies are actively concerned with the problem of changing defense spending policies. At the federal level, President Lyndon B. Johnson has established a Committee on Economic Impact of Defense and Disarmament. Concerned with changes in demand for technical manpower are the Federal Council for Science and Technology and the Technical Manpower Panel of the President's Science Advisory Committee. The U.S. Arms Control and Disarmament Agency conducts studies on the economic impact of changing defense needs. Within the Defense Department, the Office for Economic Adjustment is charged with assisting communities and employees affected by defense dislocations.

In California, the Governor's Advisory Panel on the Aerospace and Defense Industries has similar duties and the State Chamber of Commerce has formed a committee to study the problem.

These and other related efforts were undertaken in recognition of a serious problem. But adequate coordination is noticeably lacking.

The state government is uniquely fitted to act as a clearing house, a focal point, between the various agencies active in this field and interested business firms, labor unions, local governments, educational institutions and the like. All of the efforts enumerated above will succeed only if a successfully coordinated program is formed and executed. It is therefore incumbent upon the Legislature and the administration to proceed without delay toward formulating coordinated programs and plans to ease the transition of California's economy.

APPENDIX

Statement to
UNITED STATES SENATE SUBCOMMITTEE
on
EMPLOYMENT AND MANPOWER
The Honorable Joseph S. Clark, *Chairman*

Presented by

ASSEMBLYMAN ROBERT W. CROWN
Fourteenth Assembly District, California
Chairman, Assembly Interim Committee on Ways and Means,
Chairman, Subcommittee on Economic Development

November 7, 1963
Room 4232, New Senate Office Building
Washington, D.C.

INTRODUCTION

Senator Clark, members of the committee.

I am Robert Crown, member of the California Assembly and Chairman of the Ways and Means Committee. I also serve as Chairman of the Ways and Means Subcommittee on Economic Development.

Our subcommittee is pursuing a study mandated by a resolution which I introduced during the last session of the State Legislature. That resolution, noting the interrelation of the California economy and federal expenditures, directed that this relationship be studied and policies formulated which might make adjustment easier if there were changes in the patterns of federal spending.

It is a great pleasure for me to appear today before this distinguished committee and to share with you some of the findings of our study. We in California are deeply grateful for the dedication of this committee to a task which has such obvious implications for the future of our state. We also recognize that this concern of the federal government is vital to us because the alternatives for action by a state government are severely circumscribed by the imperatives of the national and international interest of the United States. We do not for a moment suggest that it should be otherwise. Our objective is simply to understand the forces which effect us so that we can take such action as may assure that our growth continue, that our workers have jobs and that our industries may compete equally in the markets of the nation and the world.

Your committee has already had substantial testimony on the subject of California's special concern presented by Mr. Paul W. Little, Chief of the Division of Public Employment Offices and Benefits Payments of the California Department of Employment at your hearing on June 6, 1963.

I will not duplicate his testimony which was, I believe, a thorough presentation and one which offered some promising suggestions for action.

I would, instead, like to speak as a legislator and set forth what I see as the legislative concern.

The task of legislative review of executive programs and budgets grows yearly more complex. Not alone, because of the increasing size of these budgets, but also because of the increasing complexity of the obligations of government. The budget of the State of California, approved last summer, was larger than the federal budget for 1933. Furthermore, the California budget included appropriations for atomic energy and radiation protection, for mental health and retardation research and funds for the development of the most ambitious water project ever undertaken by a state of the nation.

What may be unique to California is the speed with which these problems have come upon us and the relentless growth of our population which demands that we tackle our problems today for fear that they will be totally beyond our ability tomorrow.

The facts of our growth have, of course, affected the way we think about our problems and the way we attempt to solve them.

I would like, at this point, to borrow a figure of speech from the testimony which Mr. Little presented to you last summer.

Speaking of California's attitude toward problems, he said we were like a man leaning into the wind in order to keep his balance. I would only add that our responsibility today is to forecast the weather—so that, should the wind stop, we will not fall flat on our face.

For a legislator, this forecasting today requires an increasingly detailed understanding of the current state of the economy, an analysis of the assumptions underlying population and income projections and some idea of the long-range forces affecting our economy.

Armed with these, we must test the adequacy of executive actions and plans against our own understanding of the problems of government.

Acquiring this understanding is the purpose of the study which has been undertaken by the Assembly through its Ways and Means Subcommittee.

There are those who have, from time to time, suggested that no one from California should ever mention this figure. They fear that it will generate envy among our sister states. That may be one of the reactions, but I believe that the implications of these expenditures are too vital to be treated with anything but full candor. (See table on federal spending in California.)

In view of the magnitude of federal expenditures in California, it is no surprise that our overall growth rate shows a close relationship to the rate of increase of these federal expenditures.

From 1951 to 1962, for example, federal spending in California increased by 57 percent. During the same period, our population increased by 50 percent. (See chart on impact of federal spending.)

This pattern is illustrated by examples such as the growth of the Santa Clara County population during the decade of 1950-60. During this period, the population increased 161 percent. This expansion was directly related to the development of the major electronics complex in the area.

In contrast, the nearby San Francisco-Oakland area grew by only 31 percent during the decade.

This pattern of explosive growth related directly to a federal procurement program has been repeated in many of California's metropolitan areas and your committee is, of course, aware of other examples from nearly every other state of the nation.

THE FUTURE

This rate of increase with its constant spur to the economy of California is now the issue. If the present rate of increase of defense spending were to continue in California, it would, by 1970, reach \$12.5 billion and total federal spending, increasing at the current rate, would reach \$17.5 billion that year.

Testimony before your committee and elsewhere has indicated that the Administration expects the rate to fall and a plateau to be reached.

To draw again on Mr. Little's figure of speech, this would seem to mean that the wind is slowing and that California will have to stand more erect in the future.

COMPENSATORS

In discussing the future of the California economy, I have referred to our need for a strategy for growth, a design that takes into account changing demands of the federal agencies and focuses on the unmet needs of our society.

You have, I know, had many suggestions about the specifics of such a strategy offered by economists and other social scientists.

I will not present another such list of actions which might be taken. Rather, I would like to propose a model for state-federal cooperation which can, I believe, make it possible for the specific actions to be blueprinted to meet concrete situations in a state or region.

The first element of such cooperation, I think, is for greatly expanded support of research and development in the social sciences.

I think we have had ample demonstration that our uniquely American organization of research in our universities and in newer research and development institutes can pay huge dividends. I am aware, too, that such research is now being conducted at the Institute for Defense Analysis, the Rand Corporation and by economists and other social scientists working at our universities under federal research grants from various agencies.

The conduct of this research at the federal level or under the direction of federal agencies may have a built-in bias. In matters of national defense, our nation is one, and the only competition that is recognized is the competition from other nations. In economic research, however, it is necessary to recognize that we are 50 states and that the competition between the states is both historic and real.

If the federal government is to sponsor this research and at the same time avoid the conflicts resulting from competing state economies, I believe it can do so by shifting the responsibility to the state governments.

Toward this objective, I would urge that this committee consider encouraging state governments to establish research and development centers for the study of economics.

Secondly, I believe that we must step up our effort to apply the fruits of defense and space technology to the private sector of our economy.

Many development economists shared a hope that the federal effort to encourage conversion of defense and space technology would bear a heavy yield of new products and new jobs.

CALIFORNIA'S ECONOMY

At the outset, I must say that I believe that the economy of California is today strong and that its benefits are widely distributed. Saying this, I do not intend to deny that the economy may not be as strong as it should be, nor that the benefits are as widely distributed as they ought to be.

Nevertheless, the available figures do contribute to a sense of well-being and a feeling of accomplishment:

Personal income is expected to top \$52 billion this year. This will be \$3 billion above last year and represents a growth in personal income for Californians of 6 percent. The national percentage gain is, I believe, about 4.4 percent.

Retail sales are running about \$27.5 billion for this year and automobile sales are up 14 percent over last year.

Private construction is up 22 percent over last year.

These figures must be understood in relation to the facts of our population growth. We have today over 17.5 million people; more than live in any other state. Today, one of each ten Americans is a Californian and our projections indicate that there will be over 21 million Californians by 1970.

These millions have reaped rich rewards for themselves from our natural resources and from our manmade resources.

Chief among the manmade resources is our educational system, capped as it is by the University of California, our state colleges and the private institutions of higher education.

We are reassured by the knowledge that our highly trained labor force is better able to adjust to change than many and that our natural resources can sustain future growth.

Furthermore, we can, and do, take comfort from our recollection of the vigor with which our economy responded to the severe challenges of demobilization following World War Two and the Korean conflict.

In short, anyone who views the California economy as hovering on the brink of disaster is either unaware of our history or blind to its implications.

However, today is not yesterday and the lesson of history is instructive only to those who apply it to current reality.

CALIFORNIA TOMORROW

Probably the most critical factor in understanding California's future is an awareness of the special characteristics of our current population.

Our people are young, they are heavily concentrated in the working-age years and the members of men and women who will seek employment in California in the next decade constitute the basic need which the State of California faces today.

If we were to accept the current rate of unemployment of 6.3 percent, which I trust we will not, our industries in California would need to provide jobs for 1.7 million new workers before 1970. This means creating jobs for 300,000 each year.

Most of this demand for jobs results from natural increase rather than migration. Thus, it is foolhardy to believe that reduced opportunities for employment in California will constitute a brake to the expansion of our labor force. We simply must find these new jobs, or face the awful social cost of widespread unemployment.

SPUR TO GROWTH

In the past decade, many of our jobs have been created by private industry spurred by federal expenditures for defense and space procurement.

The committee is familiar with the indexes of federal spending in California. Most often mentioned in this connection is the fact that approximately 23 percent of all prime contracts awarded by the Department of Defense have gone to California firms. Recently, in reply to an inquiry from Senator Clair Engle, the National Aeronautics and Space Administration reported that 61 percent of NASA prime contracts were awarded to California firms.

For labor in California, this has had a profound meaning. According to reports of the California Department of Industrial Relations, 35.3 percent of our manufacturing workers were employed in aircraft, missiles and electronics. Thus, over one-third of our factory workers were involved in defense production and their jobs were responsive to the requirements of a single customer. (See chart on California's Manufacturing Employment.)

In addition to these contracts, federal funds flow into California in the form of federal payrolls, grants to the state, pensions and other direct benefits and in a variety of other ways. The subcommittee staff has been attempting to locate and evaluate these sources and while the list we now have is not complete, we know today that federal spending in California and federal payments to Californians exceed \$10 billion annually.

This does not seem to have happened.

The explanation for the low yield is not my subject, but I do have the impression that too much may have been expected of private business.

The costs, in scientific manpower and plant conversion, for using some sophisticated new space technology are often high and the returns are frequently doubtful.

One has only to look at the costs of research and development to understand why consumer products manufacturers do so little work in this area. Millions spent in research may not be recovered before a competitor is on the market with the same product, minus development costs.

If these economic factors have been the determinants, then I think government must engage more directly in designing the applications of the new technologies which can be used by American business. I recognize that organizing this effort will be difficult, but American genius for organization must be equal to the task.

The federal government may have already charted the course with the institute for applied technology at the University of Indiana. This activity, sponsored by NASA, with business support may be the pattern other states should be encouraged to follow.

Third, I think the federal government must assume responsibility for economic adjustment in defense and space along the lines of the assistance aspect of the Trade Expansion Act.

This act authorized "adjustment assistance" to industries adversely affected by competition resulting from treaties of the United States negotiated under the act.

Assistance may include technical information and aid in planning for the company, tax benefits to encourage modernization or diversification and guarantee of loans.

Benefits are also provided for workers with readjustment allowances, retraining assistance and relocation aid.

In support of these provisions of the Trade Expansion Act, President Kennedy said, "When considerations of national policy make it desirable to avoid higher tariffs, those injured by that competition should not be required to bear the full brunt of the impact. Rather, the burden of economic adjustment should be borne in part by the federal government."

I believe that this same policy should apply equally to actions "of national policy" which result in reductions of procurement by the federal government.

Finally, I think we must enter a new era of cooperation in public-private investment.

Again, the details of this cooperation must first be worked out between the federal government and the state. This will require close working relationships if we are to maximize the benefits of all public capital outlay investment.

To begin, we need to achieve a popular understanding that public works are "make wealth," not "make work." A new highway, a water project, or a university campus contribute wealth to the area. To maximize this contribution, the projects need to be located with a sense of the total needs of the area, the state or the region. Before there can be such a sense of need, we must engage in planning in a detail now usually lacking.

California's State Development Plan, financed with the aid of a \$376,000 federal planning grant, may prove to be such an effort and the financing of this plan may be a model for such activity by other states. These conclusions are by no means certain since the funding of the critical second phase of this development plan has not yet been approved by the federal agency involved.

If a state has such a plan, however, it can make its own capital outlay decisions more intelligently. Presumably, it could also encourage those federal investments which were consistent with the plan and could provide truly meaningful assistance to private enterprise to encourage the investment of private money.

This, then, is a model for federal-state action which can provide the framework within which specific local problems can be solved and solved in such ways that local and state competition does not have to be sacrificed:

1. Increased support for economic research and development.
2. Vastly increased effort to translate defense and space technology into new products and subsequently into new jobs.
3. Adjustment assistance for industries and workers disadvantaged by federal procurement policy decisions
4. State-federal-private cooperation in an effort to maximize the effects of investment.

I thank you for the opportunity to be here today.

FEDERAL SPENDING IN CALIFORNIA Statistical Analysis

Fiscal 1963 (all figures in millions) *

FEDERAL PAYROLL ¹	3,086.0
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Military	1,351.0
Civilian	1,735.0

FEDERAL PRIME CONTRACT AWARDS	7,311.9
-------------------------------	---------

Department of Defense ²	5,836.0
National Aeronautics and Space Administration ³ ..	1,098.0
Atomic Energy Commission ⁴	377.9

FEDERAL PAYMENTS TO INDIVIDUALS ⁵	1,461.0
--	---------

<i>Department of Agriculture</i>	15.6
<i>Department of Defense</i>	
Army National Guard	12.5
Air Force National Guard.....	7.6
<i>Department of Health, Education and Welfare</i>	
Education	5.2
Public Health	59.9
Welfare	2.8
Social Security ⁶	1,292.0
<i>Department of Labor</i>	
Unemployment Compensation	27.0
Retraining	3.9
National Science Foundation, <i>Research</i>	22.5
Veterans Administration, <i>Benefits</i>	12.0

PUBLIC WORKS AND FEDERAL FACILITIES	141.6
-------------------------------------	-------

Army Corps of Engineers	48.2
Bureau of Reclamation.....	67.7
General Services Administration.....	25.7

FEDERAL PAYMENTS TO STATE AND LOCAL GOVERNMENTS

FEDERAL PAYMENTS TO STATE AND LOCAL GOVERNMENTS *

825.1

<i>Department of Agriculture</i>	
Extension Service	2.7
School Lunch Program	9.1
Surplus Foods	11.3
Special Milk Program	8.8
Forests	4.3
Watershed Protection	5.2
<i>Department of Commerce</i>	
Highways	256.3
<i>Department of Defense</i>	
Civil Defense	2.3
National Guard8
Flood Protection	17.0
<i>Executive Office</i>	
Disaster Relief	1.0
Public Works Acceleration	1.3
<i>Department of Health, Education and Welfare</i>	
Education	67.8
Public Health	15.3
Welfare	351.6
<i>Department of the Interior</i>	
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Mineral Leasing	2.6
Miscellaneous1
<i>Department of Labor</i>	
Unemployment Compensation Administration	38.8
<i>Federal Aviation Agency</i>	
Airport Program	6.8
<i>Housing and Home Finance Agency</i>	
Urban Renewal	10.6
Planning	1.2
Public Housing	7.2
<i>Veterans Administration</i>	
State Care Homes	1.7

* Because all amounts are rounded off, they may not necessarily add up to the totals listed

¹ Survey of Current Business, Department of Commerce, Office of Business Economics, August 1964.

² Prime Contract Awards by State, Department of Defense, March 1, 1964

³ Annual Procurement Report, National Aeronautics and Space Administration, Fiscal Year 1963

⁴ Annual Financial Report, U.S. Atomic Energy Commission, 1963

MINORITY REPORT TO THE REPORT OF THE SUBCOMMITTEE
ON ECONOMIC DEVELOPMENT

While I recognize there is a place for activity by state government as a result of the decline or leveling off of federal defense and space activity in California, I have to dissent in part from the findings and recommendations of the Subcommittee on Economic Development in the following aspects:

(1) I oppose an additional state bureau to collect, publish and evaluate data relating to federal defense and state employment. Such material, as noted, is already available through other sources.

(2) I cannot endorse increased state or local spending simply because there has been a lessening of federal expenditures. This would, of necessity, increase state taxes, encourage business and industry to settle in other states and thus lessen the possibility that private enterprise could take up the slack resulting from the decline or leveling off of federal defense and space activity in California.

(3) Assuming that a favorable business climate can be obtained here in California, I believe the main responsibility for the development of goods and services rests with private enterprise and government planning and programing should be kept at a minimum.

Respectfully submitted,

CHARLES J. CONRAD

Highway & Freeway Planning

H.R. No. 463, 1963

H.R. No. 52, 1964

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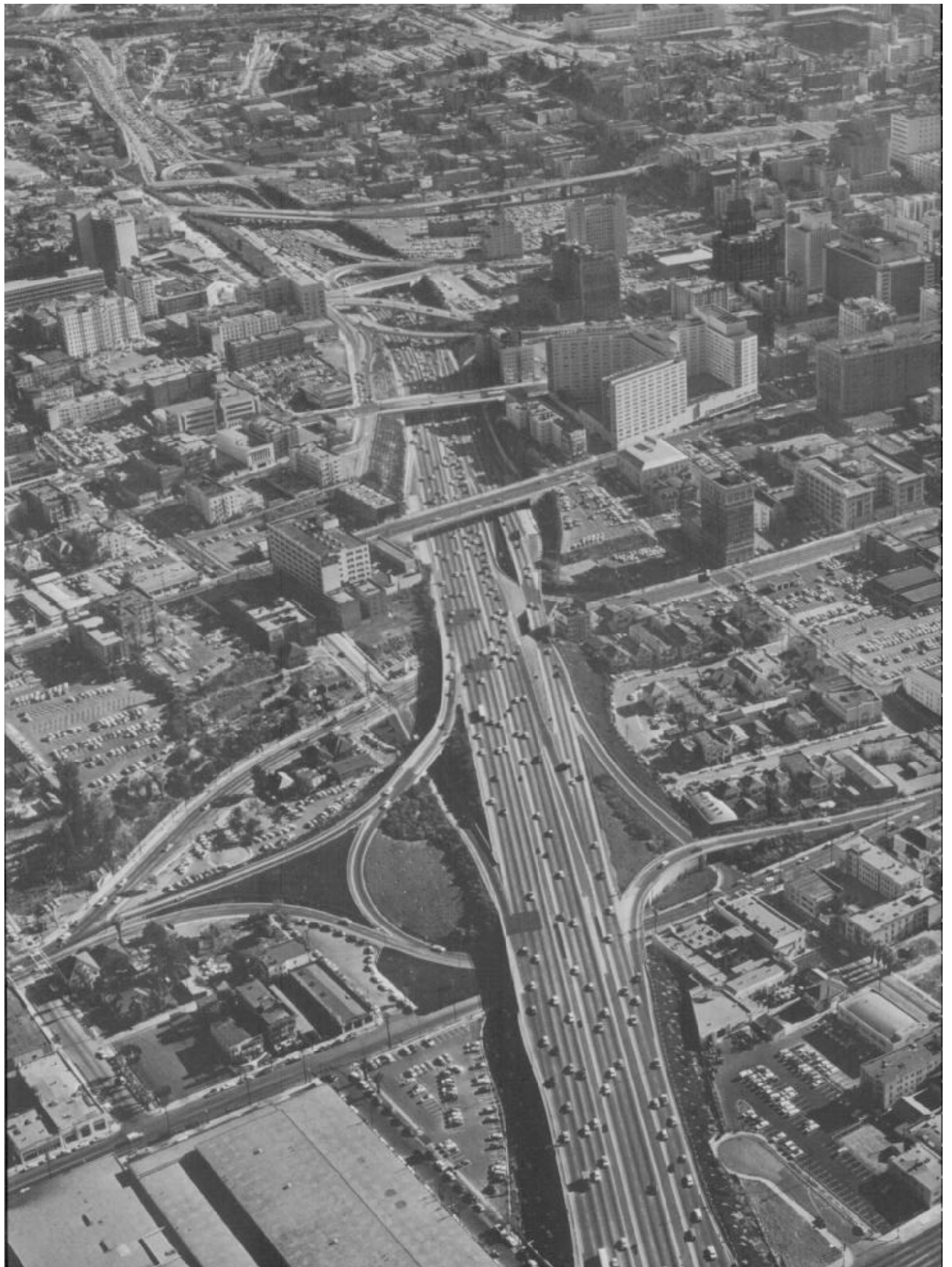
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LETTER OF TRANSMITTAL

CALIFORNIA STATE LEGISLATURE, ASSEMBLY COMMITTEE
ON NATURAL RESOURCES, PLANNING, AND PUBLIC WORKS

January 5, 1965

Hon. Jesse M. Unruh
Speaker of the Assembly, and
Honorable Members of the Assembly
State Capitol, Sacramento,
California

Gentlemen:

The Assembly Interim Committee on Natural Resources, Planning, and Public Works submits herewith Part I of its report to the Legislature on 1963-65 interim studies. This section of the report, which is devoted to the subject of highway and freeway planning, was undertaken pursuant to the provisions of House Resolution No. 463 of the 1963 General Session, and House Resolution No. 52 of the 1964 Budget Session.

This subject, which is of great importance to the orderly and responsible long-range development of the State of California, is becoming the focus of increasing controversy throughout the state. In accordance with the broad responsibilities of this committee for the development of sound policies in the field of comprehensive resources planning, an in-depth study of certain of the policies governing the existing planning process was conducted in the interim period just completed.

The attached report presents a broad review of the problem and sets forth the general conclusions and recommendations of the committee for the modifications of existing policies which seem indicated. These conclusions and recommendations are the result of an intensive series of public hearings held throughout the state over the last calendar year.

As outlined more fully in the attached report, your committee has concluded in general that under existing policies the highway and freeway planning process appears to place disproportionate emphasis on engineering and cost considerations in the evaluation of routing alternatives, and in certain areas the powers of the State Highway Commission appear to be in excess of those reasonably required to effectuate an orderly highway program in California. Because the impact of California's rapidly growing population on the unique resources of this state has increasing implications for its long-range

development, the committee urges the adoption of its recommended modifications of existing policies to ensure consideration of the total public interest in the highway and freeway planning process. While it is unlikely that complete agreement on the part of affected interests could ever be achieved in this complex and controversial matter, the committee feels that it would not be properly discharging its responsibility to the Legislature and the people of California if it

did not recommend what in its judgment is the best possible solution to the existing problem.

The committee expresses its deep appreciation to the many organizations, public officials, and private citizens who contributed so generously and responsibly to this study, and they should feel a sense of participation in whatever long-range improvements result from their contributions to this work.

Respectfully submitted,

Edwin L. Z'berg, Chairman
Burt M. Henson, Vice Chairman

Alfred E. Alquist
E. Richard Barnes
Harold E. Booth
Low Cusanovich
Pauline L. Davis

Leroy F. Greene
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INTRODUCTI

California has been blessed with an incredible variety and abundance of natural resources, perhaps unique for a single political entity anywhere in the world. And while Californians are grateful for these incomparable resources of land, water, minerals, wildlife, vegetation, climate, and scenery, they are beginning to recognize that these very resources have been among the most important factors contributing to the huge and rapidly expanding population in the state, and that this in turn is posing increasingly difficult problems of responsible resources management.

One dimension of this problem which is causing increasing concern everywhere in the state is the fact that because California is now the most populous state in the union, and with every forecast predicting continued accelerated growth, there is a very real need to transport large numbers of people and large quantities of goods from place to place at high speed, in maximum comfort and safety. And with California, at least for the present, an automobile-oriented society, this need is being translated into one of the most ambitious and costly highway-building programs ever seen anywhere.

Such a huge program, with annual expenditures now approaching one billion dollars, and an immediate statewide goal of the completion of some 12,000 miles of controlled-access freeway by the 1970's, is inevitably subject to criticism, and the California program has been no exception. In few other areas of public policy are choices more strikingly illustrated, and yet more exasperatingly difficult of resolution, than in the selection of a route for a highway or freeway, for in many instances a choice must be made to continue or change, at times radically, an existing land use. And this change, while desirable from the point of view of moving motor vehicles, is irreversible and frequently produces undesirable consequences to adjacent, competing land uses. While it may be true, as contended by state highway authorities, that prolonged controversy has developed in only a relatively small number of route adoptions, it is also true that many adopted locations have been made in areas where the change in land use was

not radical, the impact on resources minimal, and/or the population sparse. And, as will be discussed subsequently, perhaps existing policies tended to limit the opposition. However, in view of the anticipated rapid population increase and the growing public awareness and concern over the impact of freeways on urban areas and the dwindling natural resources of the state, controversies over route adoptions are likely to increase, not decrease.

Because of this, and assuming that the California highway program will continue at its present, or accelerated pace, for the foreseeable future, or at least until California public policy recognizes the need for statewide planning for alternative, more efficient means of regional transportation, it is essential that state policies provide the best possible means of planning for highways and freeways throughout California.

Accordingly, the Assembly Committee on Natural Resources, Planning, and Public Works was directed to evaluate the highway and freeway planning processes of the Highway Transportation Agency and State Highway Commission, to review the various criticisms which have been directed at these processes, and to recommend any modifications of existing state policies which seem indicated.

In examining this matter, the committee felt that the following questions were of basic importance:

1. *In the route determination and adoption process, what factors are taken into consideration, and what are the methods by which these factors are considered and presented to affected interests, by the Highway Transportation Agency and the State Highway Commission?*

2. *Do existing procedures (a) provide the community or area affected with sufficient advance information regarding possible highway or freeway routes, (b) include mechanisms by which local requirements and desires can be ascer-*

tained, and (c) provide an orderly process for the incorporation of these local requirements and desires into the route determination procedure?

3. What are and should be the relative roles of, and relationships between, the Highway Transportation Agency and State Highway Commission, and how responsive is the Commission to the total public interest?

4. What are the powers of the State Highway Commission, and are they wise delegations of authority by the Legislature?

In searching for answers to these questions, the committee examined existing statutory and administrative policies and procedures in detail, reviewed previous legislative and other studies, and heard exhaustive testimony from scores of witnesses in public hearings throughout the state.

The locations of these public hearings were considered by the committee to be representative of some of the more publicized controversies which have developed over route adoptions in various parts of the state, and some hearings placed emphasis on certain aspects of the freeway planning process. These open public hearings were held as follows:

San Francisco, December 19-20, 1963

Santa Monica, February 20, 1964

Beverly Hills, February 21, 1964

Prairie Creek Redwoods State Park

and Arcata, July 23-24, 1964

Sacramento, September 29, 1964

During the course of these public hearings, more than 100 witnesses presented testimony to the committee. As is the policy of the committee, each witness was requested some weeks in advance of the hearing to prepare and submit a written statement for review of the committee members prior to the hearing. Submission of this statement, the focus for which was suggested in the notice of hearing, en-

abled the members to become familiar with the testimony of each witness in advance of the hearing, and permitted more thoughtful exploration of the testimony at the time of the hearing. Also, it was emphasized that each hearing was open and public, and upon completion of the formal agenda, the opportunity was given for any additional witnesses to testify. No meeting of the committee was adjourned until all those present who wished to make a statement had been heard. Upon completion of the formal hearing schedule, the testimony and other relevant information was reviewed by the committee in executive session and this report was developed.

This report of the committee, which consists of findings, conclusions, and recommendations accompanied by supporting information, does not include specific proposed legislation. Because of the importance of this subject to the future development of California, and the many alternatives available for the modification of existing public policies governing the highway and freeway planning process, each of which would exercise a varying degree of influence, it was felt that the basic report should stand by itself, and rather than attempting to incorporate all of the possible modifications into one or a few specific legislative proposals, that these proposals should be developed and considered individually.

The committee wishes to acknowledge its sincere appreciation to the many individuals and organizations at every level of government and from every walk of life who so carefully and thoughtfully examined this problem and gave the committee their views. It has been impressed by the evident interest and sincerity of the many witnesses who appeared before it, and they are to be commended for their concern in the development and application of sound public policies, and the responsible nature of their testimony. The committee is especially grateful to the Highway Transportation Agency, the Resources Agency, the Office of Legislative Counsel, and to its own staff for the competent and effective manner in which the heavy demands of this study were met.



FINDINGS AND CONCLUSIONS

This evaluation by the Assembly Interim Committee on Natural Resources, Planning, and Public Works of the policies governing highway and freeway planning in California is not the first time that a legislative committee has examined this problem. In fact, various committees of both houses have been concerned almost continuously with the development of the statutory basis for the California highway program since the late 1930's, which was a period of rapid growth in the concepts leading to California's current freeway law.

However, most of these committees were oriented toward policy formulation in the field of highway transportation, and with the substantially smaller statewide population and limited freeway mileage of the 1940's and early 1950's, problems of conflicting urban and nonurban land use seldom developed. But with the rapidly accelerating postwar population growth and use of the automobile in California, the complexity and seriousness of those conflicts which did develop increased markedly. This situation led to the first examination in 1955 of the highway and freeway planning process by this committee, which was known then as the Assembly Committee on Conservation, Planning, and Public Works.

This first detailed review of the highway and freeway planning process by a policy committee not primarily oriented to highway transportation resulted in a rather critical report, and produced a series of recommendations for statutory modification of existing policies and procedures which would ensure that the planning process would be more responsive to the total public interest. In the years which have followed that report, some statutory and administrative changes have been made which parallel certain of these recommendations, but not all of them.

In this, the second major review of highway and freeway planning by a legislative policy committee primarily concerned with the broad problems of total resources planning and land use management, a broad spectrum of views, representing all shades of interest, was presented to the committee on the

basic questions cited in the introduction, much of it carefully thought out, documented, and articulated. Careful analysis and evaluation by the committee of the voluminous data available to it leads to the following findings and conclusions, which are discussed further in subsequent sections of this report.

1 Because it was not specifically under study at this time, and no independent engineering review was made, the committee makes no finding as to the validity of the consideration given to engineering and cost factors in the route selection process by the Highway Transportation Agency. However, in at least one instance, namely, the routing alternatives in the vicinity of Prairie Creek Redwoods State Park, a preliminary review prior to public hearing by an independent, experienced engineer established the general validity of the engineering and cost analysis of the Division of Highways.

2 Under existing administrative organization and procedures, primary emphasis in the evaluation of routing alternatives appears to be on engineering considerations and construction and so-called user costs. Although it is difficult to establish precisely, and major differences of opinion developed between the Highway Transportation Agency and affected interests as to the exact degree of consideration given to other factors such as community values, adjacent land values, effect on local tax rolls, and historical, recreational, aesthetic, and park values, the burden would appear to rest on the Highway Transportation Agency for three reasons: (a) if indeed all values are considered in the evaluation of routing alternatives, the conclusions are not always presented to the affected interests in a meaningful manner; (b) the organization structure, staffing, and administrative procedures of the Highway Transportation Agency and State Highway Commission—in which decisions at every level of the administrative hierarchy within the agency are considered and made by engineers—do not inspire confidence in the capacity of the agency, even if it indeed so does, to consider nonengineering and noncost factors in a truly significant way, and (c)

in reviewing several specific routing controversies, it appeared to the committee that there were serious questions concerning the efficacy of the agency's consideration of the total impact of a given routing alternative.

3 In spite of certain amendments to the Streets and Highways Code subsequent to the first report of this committee (notably Sections 210 through 215, added in 1961) establishing as state policy the requirement for close cooperation and coordination between the agency and the governing bodies of areas affected by proposed routings, and the adoption in 1958 by the commission of a revised procedure for route selection, some problems appear to remain with respect to the liaison between the state and the local interests affected. In some instances these difficulties appear to have resulted from inadequate advance information, and in others from an impression on the part of local interests that existing procedures and attitudes precluded meaningful consideration of their concerns.

4 Under existing policies and administrative organization, procedures, and staffing of the Highway Transportation Agency and State Highway Commission, it appears to be all but impossible for the commission, which holds the statutory responsibility and complete authority for final route determination, to receive any meaningful alternatives to the recommendation of a given route by the State Highway Engineer. This is a particularly significant and sensitive point because, as has been noted previously, the recommendation of the engineer is likely to be based predominantly on engineering and cost considerations, and in most instances it is the end product of a series of decisions made almost entirely by highway engineers from the lowest to the highest echelons within the Division of Highways. At no point on the staff of either the Highway Transportation Agency or the State Highway Commission, on a formalized, procedural basis, are specialists in other disciplines such as economics, landscape and design architecture, fish and wildlife, park and recreation management, history and sociology, agriculture, and urban and regional plan-

ning, to name some examples, brought actively into the planning process.

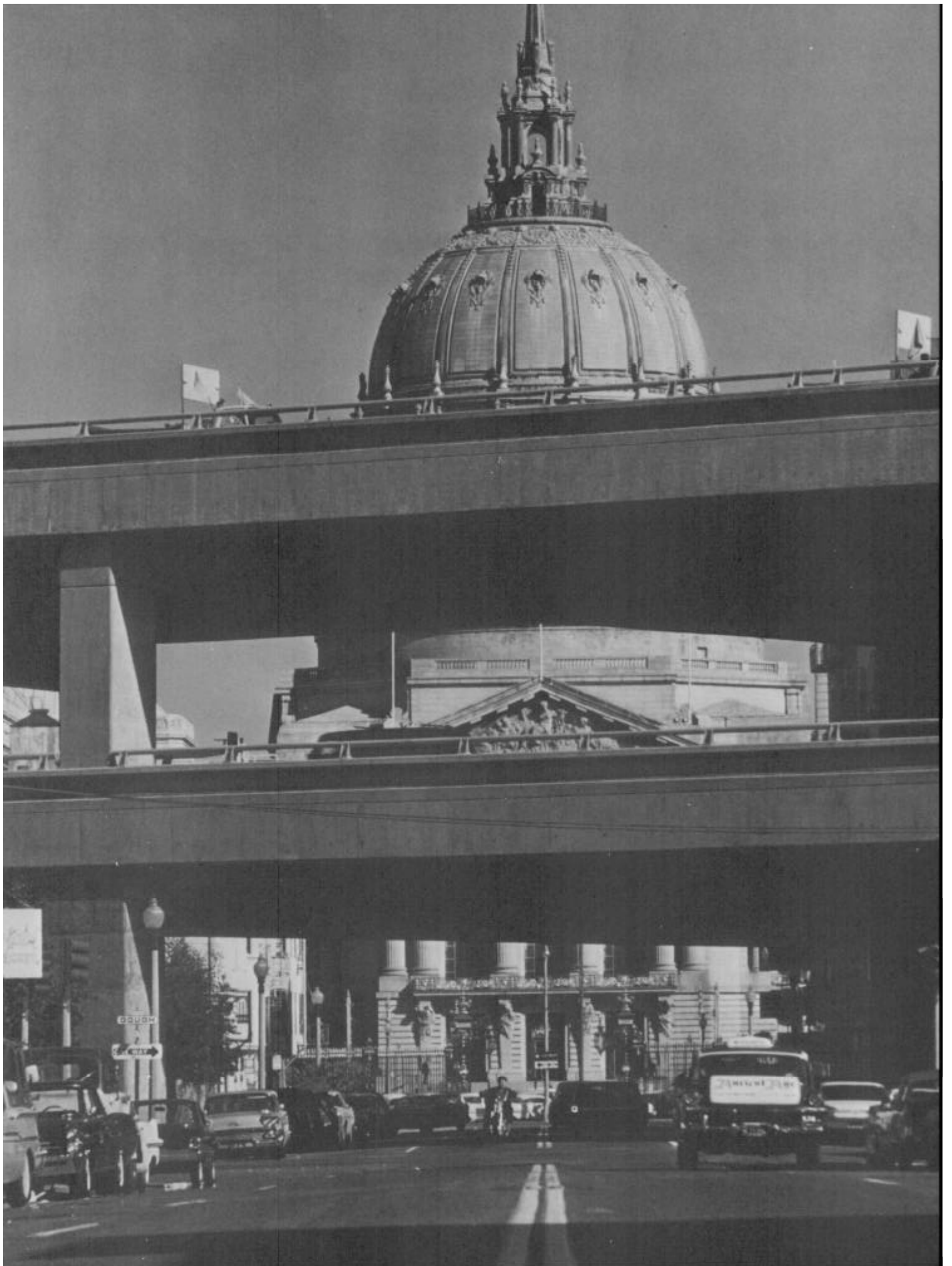
While it is a matter of serious concern that the present planning process within the Highway Transportation Agency appears to result in disproportionate emphasis on engineering and cost considerations in route determinations, the public could view this process with greater confidence if there existed an independent review body, so organized and staffed as to ensure full consideration of the total public interest in route adoptions. However, because of existing organizational relationships, the State Highway Commission does not meet this need.

Because of the significance of these organizational relationships to the route adoption process, the committee feels they should be explored in greater detail at this point.

The Highway Transportation Agency presently consists of three major departments, one of which is the Department of Public Works. The major division within the Department of Public Works is the Division of Highways, headed by the State Highway Engineer. In testimony before this committee, the State Highway Engineer stated: "It is the function and duty of the division to serve as the technical engineering staff of the Department of Public Works and the California Highway Commission in matters pertaining to the state highway system. . . . In the route selection process, the division has been delegated the responsibility for developing and analyzing pertinent data, recommending courses of action, and otherwise assisting the California Highway Commission in the route selection process."¹ It is thus clearly the responsibility of the Division of Highways to recommend given routing alternatives to the Highway Commission.

The State Highway Commission, which is ostensibly a separate, policymaking body with the funda-

¹ *California Legislature, Assembly Interim Committee on Natural Resources, Planning, and Public Works, transcript, July 24, 1964, p. 52.*



mental responsibilities of precising highway and freeway routes and adopting annual expenditure programs of the Division of Highways, is in fact so tightly bound organizationally and administratively to the Highway Transportation Agency as to be in effect a creature of the agency. This is clearly established by certain peculiar organizational relationships—unique in state government—wherein the permanent Chairman of the Highway Commission is also the Administrator of the Highway Transportation Agency (which includes the Division of Highways), and the Administrative Officer of the Highway Commission is also the Director of Public Works (which includes the Division of Highways). These ties are completed administratively by the fact that the seven-member lay commission, which frequently reflects disproportionate representation of certain sectors of the public, has no staff of its own, and as stated above, relies on the Division of Highways for staff assistance.

Although individual commissioners may contend that they are able to consider the total public interest in adopting highway and freeway routes, this would appear to be in spite of, rather than because of, existing organizational procedures and relationships, which as has been discussed, provide no formalized method for considering the total public interest within the Division of Highways, or for ensuring that it is presented to the commission prior to route adoption. The unfortunate result of this situation, in a growing number of cases, is that interests affected by a given routing alternative, where they are financially able, are forced to rely upon their own resources to present to the commission an alternative to the recommendation of the Engineer, and the expense and seeming futility of this process tends to discourage those lacking the resources for independent analyses. Such a situation would not appear to be in the public interest.

5 With respect to the powers of the Highway Commission, the committee recognizes and appreciates the need for an independent highway author-

ity with sufficient powers to ensure the orderly progress of the state highway program. The committee also recognizes, however, that the delegation of powers by the Legislature should not be in excess of those required to effect this orderly highway program. In reviewing these powers, the committee concludes that in at least two areas the commission appears to hold authority which is in excess of that reasonably required.

a. Section 103 of the Streets and Highways Code provides that a resolution of the commission, declaring that the public interest and necessity requires the acquisition of a given parcel of property, is **conclusive** evidence that the proposed highway or freeway "is planned or located in a manner which will be most compatible with the greatest public good and the least private injury."² The implications of this major delegation of power are manifold, and are the basis for much of the criticism of California highway policy. The fundamental result, however, has been to establish by implication that highways represent the highest and best use of land in California, and the powers of eminent domain may be used to substantiate this if it proves necessary.

The practical consequence of this grant of power by the Legislature is to remove decisions of the State Highway Commission from even the judicial review of the courts, for the California Supreme Court has stated that under this statute the courts may not decide the issue of the necessity of a certain highway location. The committee views this absolute delegation of power, and the lack of any provision for appeal from a decision of the commission, even to the courts, with serious concern. It should also be noted that this power might well be construed as giving the commission an unfair advantage in the route selection process, and may operate to discourage those who might otherwise make a positive contribution.

b. Section 103.5 of the Streets and Highways Code gives the commission the authority to condemn

² California Streets and Highways Code, Article 3, Section 103

by eminent domain even property dedicated to park purposes, however it may have been dedicated, when the commission has determined by resolution that such property is necessary for state highway purposes. The committee finds this a most extraordinary grant of power, and seriously questions its justification. In spite of responsibility given under the law to the State Park Commission for the protection of state park property dedicated for park purposes, and the implementing policy statements

of the Park Commission to hold these lands against the pressures of expediency, which includes highways, it has not been granted the commensurate authority with which to carry out its responsibility. The committee finds it difficult to agree with those who argue that through highways and freeways have little or no impact on park values, but feels that in any event, this decision is not one which can logically and defensibly be made by highway authorities.

RECOMMENDATIONS

What the Committee Recommends . . . With Respect to Planning for Highways and Freeways

1. The Highway Transportation Agency, through its Department of Public Works and Division of Highways, should be specifically directed to consider, in a formalized procedure equivalent to that devoted to engineering and cost considerations, *all* factors, translated into costs whenever feasible, affected by the location of a highway or freeway, including but not limited to such factors as community values; recreational, aesthetic, and park values; historical values; adjacent land values, impact on local tax rolls; and total projected regional transportation requirements, and a full and complete report thereon be made available to the general public and widely publicized in the area affected no less than 60 days prior to the first scheduled public hearing by the Division of Highways. This report should also include the following information:
 - a. Comments by the State Office of Planning on the proposed routing alternatives based on its evaluation of the coordination of these proposed routing alternatives with (1) other public works projects, (2) regional transportation requirements, (3) regional recreational needs, and (4) local and regional land use master plans
 - b. Comments by the State Resources Agency on the proposed routing alternatives based on its evaluation of the impact of these proposed routing alternatives on the long-range recreational and commercial potential of the natural resources in the area affected
 - c. Cost estimates of all adjacent, connecting, and continuation segments, to preclude the adoption of two connecting "least expensive" segments which might, in total, be more costly than a combined alternative through the same area.
 - d. A presentation of the long-range plans as they are currently known for the highway and freeway network in the region containing the proposed routing alternatives

- e. Graphic portrayal, by means of sketches and preliminary scale models where appropriate, of selected significant portions of the routing alternatives requested by affected interests, showing the general appearance and basic design features of the highway or freeway as it will appear upon completion of construction. Provision should be made to share these costs with the local community.
2. The requirement that all state highways be laid out on the "most direct and practicable locations as determined by the commission"³ should be repealed. It should be required that this consideration be given high, but not overriding, priority in the route selection process.
3. Prior to the initiation of route selection studies, and during the period of preliminary discussion, general agreement should be reached between the Highway Transportation Agency and the local governing board and planning body as to the most logical segment to be studied for route adoption. In the event agreement cannot be reached, provision should be made for formal appeal by local interests to the Highway Commission for final determination.
4. To ensure complete impartiality, the public hearing by the Division of Highways should be conducted by an independent hearing officer not on the staff of the Highway Transportation Agency.
5. In the event a public hearing by the commission on a final route adoption is not requested by the local governing body, a formalized procedure should be established whereby the commission would be required to hold such a public hearing upon petition of a reasonable segment of the local community. In special situations where route adoptions are of statewide interest or when so directed by legislative resolution, in addition to any hearing in the area affected, the commission should hold a public hearing in one of the recognized population centers of the state.

³ *California Streets and Highways Code, Division 1, Chapter 1, Article 3, Section 90*

- 6 Upon adoption of a given highway or freeway route, the commission should make a full report available to the general public in the area affected which outlines in detail the basis for the decision
7. The Highway Transportation Agency and State Highway Commission should review their respective operating procedures to ensure that the policies set forth by the Legislature governing route adoptions, especially those policies contained in Sections 210 through 215 of the Streets and Highways Code, and implemented by procedural resolutions, are being scrupulously and fully observed

. . . With Respect to Organization and Staffing

- 1 To enable the Highway Transportation Agency to carry out its broader planning responsibilities, it should be specifically authorized and directed to add specialists to its staff and administrative hierarchy, who by training and experience are qualified to analyze the impact of various routing alternatives on such factors community, recreational, aesthetic, park, historical, and adjacent land values, local tax rolls, and regional transportation requirements. Such specialists should include, but are not limited to, disciplines such as economics, landscape and design architecture, fish and wildlife, management, park and recreation management, history and sociology, agriculture, and urban and regional planning
- 2 To enable the California Highway Commission to function as an independent policymaking body, with the capacity to consider the total public interest in making decisions on route adoptions, the following organizational and administrative changes should be made
- a The close organizational ties to the Highway Transportation Agency should be eliminated by
- 1 Relieving the Administrator of the Highway Transportation Agency of his additional responsibility as Chairman of the

California Highway Commission. He may remain as an *ex officio* member of the commission, not eligible for the chairmanship. The chairman should be chosen, as is the usual practice, periodically by vote of the members

- 2 Relieving the Director of the Department of Public Works of his additional responsibility as Administrative Officer of the California Highway Commission. If an administrative officer is required in addition to the secretary of the commission, he should be appointed by the commission, and should not serve also on the staff of the Highway Transportation Agency
- b The close administrative ties to the Highway Transportation Agency should be eliminated by providing the commission with a limited, independent staff of specialists in such disciplines as engineering, economics, landscape and design architecture, fish and wildlife management, park and recreation management, history and sociology, agriculture, and urban and regional planning. This staff should have the basic responsibility of providing the commission with an independent evaluation of all routing proposals of the Highway Transportation Agency. Based on the presentations of the agency and all other affected interests, the staff would be responsible for recommending a routing alternative to the commission, or remanding the proposals to the agency for further study
- c To make the commission more broadly representative of the total public interest, and to preclude an imbalance of representation, the membership should be geographically based and should represent certain broad areas of society, including, but not limited to, representatives of (1) a county board of supervisors, (2) a city council, (3) a planning commission, (4) business, (5) labor, (6) conservation interests, (7) the general public, and (8) certain specified disciplines such as economics, architecture, history, engineering

. . . With Respect to Powers of the Highway Commission

1. Section 103 of the Streets and Highways Code should be amended to change from conclusive to rebuttable the effect of a resolution of the commission stating that the public interest and necessity requires the acquisition of a given parcel of property. Such an amendment would provide the opportunity for a decision of the commission to be appealed to the courts, and in such an instance would enable the judicial process to operate in the determination of whether a highway or freeway routing is planned and located in such a manner that will be most compatible with the greatest public good and the least private injury. It would also remove the implied state policy that highways represent the highest and best use of land in California.
2. Section 103.5 of the Streets and Highways Code should be either (a) repealed, which would ex-

empt all lands dedicated to park purposes from the eminent domain authority of the commission, or (b) amended to make the exercise of such eminent domain authority contingent on the approval of park administering authorities, which in the case of the state would be the State Park Commission. The committee feels that this section is an excessive and unreasonable delegation of power by the Legislature and operates to diminish the exercise of responsibilities placed by law upon other state agencies. Ample precedent for amending this statute can be found in Section 101.3, which requires approval by the Reclamation Board of any plans by the Department of Public Works for a bridge or other structure across any river or drainage channel or basin under the jurisdiction of the board, and also in Section 100.2, which requires the department to enter into an agreement with local authorities prior to closing any city street or county highway with any freeway.

THE HIGHWAY AND FREEWAY PLANNING PROCESS

As It Now Exists

The policies by which California provides the highways necessary to accommodate its ever-increasing numbers of motor vehicles have been in a continual state of evolution since the turn of the century, and are likely to continue to change as new needs and problems arise in the years ahead. The present state highway system owes its inception to the adoption of a constitutional amendment in 1902, and over the years the Legislature has constantly expanded the extent of the network and modified the standards and tools by which it is effectuated. And as legislative policies have changed, a parallel change is usually noted in the organization and procedures of the executive agencies responsible for implementing these policies.

The currently existing process for highway and freeway planning is set forth in numerous sections of the Streets and Highways Code and in a procedural resolution of the California Highway Commission which has been incorporated in the State Administrative Code. These basic directives have resulted in the series of procedural steps presently followed by the Division of Highways.

Because a clear understanding of the existing process is essential to a full appreciation of the significance of proposed modifications, the statement to the committee outlining the procedural steps it is indicated are currently followed in each district of the Division of Highways is quoted as follows:⁴

"1. INCLUSION OF PROJECT IN STATEWIDE PLANNING PROGRAM

"Annually, the Division of Highways prepares and submits to the California Highway Commission for consideration a planning program of proposed highway improvements, which is a projection of future needs and a tentative fiscal plan for meeting these needs, covering a 7- to 10-year period. This program is based upon such factors as safety, the importance of the route from a traffic service standpoint, current deficiencies as determined by periodic estimate of state highway needs, adequate lead time, revenue predictions based on past ex-

perience, legislative controls relative to minimum highway expenditures within each state highway district, as specified under Section 188.8 of the Streets and Highways Code, and minimum expenditures within each county, as required by Section 188.9 of the Streets and Highways Code, maintenance of a reasonably balanced program of expenditures in successive years, continuity of projects which have been financed in part in prior years, and the recommendations of local officials and civic groups. The planning program is a tentative general schedule used as a guide for planning purposes.

"2. ISSUANCE OF ENGINEERING WORK AUTHORIZATION FOR PLANNING STUDIES

"Following the establishment of the project in the statewide planning program, upon request by the district engineer, a preliminary engineering work authorization is issued by the headquarters office of the Division of Highways. This constitutes authority to proceed with the engineering studies for the route. In special cases where the local jurisdictions have requested the initiation of studies in order that local community planning may proceed with knowledge of a future freeway location, a preliminary engineering work authorization may be issued for determination of the routing of a freeway not scheduled for construction within the planning program period.

"3. NOTIFICATION OF INITIATION OF STUDIES

"Upon approval of the work authorization request, the District Engineer of the Division of Highways furnishes written notice to each legislator, within whose district the project is located, and the appropriate local governing body that study of the route location for the project is about to commence. At this time attention of the local governing body is called to Section 75.5 of the Streets and Highways Code, which provides that on request of any city or county affected, and where such

⁴California, Assembly, Interim Committee on Natural Resources, Planning, and Public Works, transcript, July 24, 1964, p. 58.

city or county furnishes appropriate information, the department will present at the public hearings, in addition to the estimated user benefits, the effect that the selection of alternate routings would have upon community values.

"A preliminary meeting is held with local officials and/or their technical and planning staffs, to announce the commencement of studies and to receive any information which may be pertinent to the routing.

"4 ACCUMULATION OF ENGINEERING DATA AND COORDINATION OF STUDIES

"The engineering data is assembled by the Division of Highways, copies of any local master plans are obtained, information is compiled with respect to existing and planned land use, current and proposed transportation facilities or circulation elements and present and projected traffic desires. Preliminary mapping is obtained and, where appropriate, field survey work is undertaken to determine foundation and drainage conditions, material sites, etc. Various alternate route locations are developed and reviewed in the field.

"During the period following initiation of studies, other affected municipal, state and federal agencies are notified of the proposed improvement. As the studies progress, meetings or conferences are held with the interested agencies and with the technical and planning staffs of the local jurisdictions to correlate with their planning, to exchange information and to resolve possible points of conflict. As a result of these conferences, additional alternates may be developed or adjustments may be made in previously studied lines to better adapt to existing facilities or planned improvements of others within the study area.

"Estimates are made for each of the studied alternates, including but not limited to such elements as construction and rights-of-way costs, number of residential, industrial and commercial improvements required, acreage of various types of agricultural land required (where appropriate) and the anticipated benefits to the highway user. In addition, at this time consideration is given to the effect

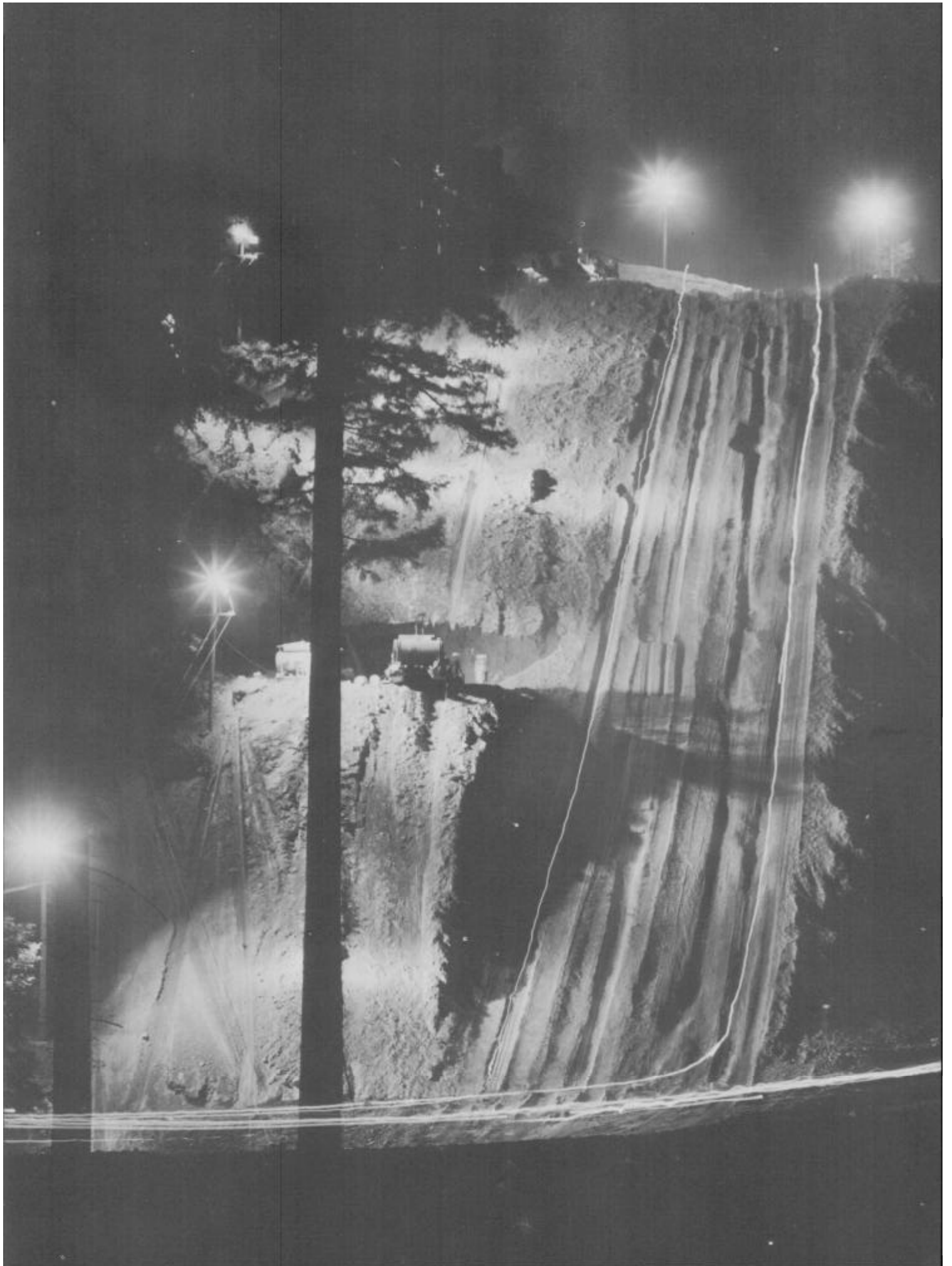
upon such community features as schools, parks, churches, hospitals and other factors both existing and planned.

"At this stage, the studies, in general, are of a basic nature with the details of design pursued only to the extent necessary to permit proper comparison of alternates and to determine the feasibility of each. The more intricate design work, as a rule, is not undertaken until after the routing has been adopted. Time and cost factors make it extremely impractical to develop detailed designs for each of the many alternate routings investigated during the preliminary planning stage. However, where there is a special problem which requires more detailed study to determine the feasibility or the acceptability of a particular segment of one or more of the alternate routings under consideration, such study is undertaken during the preliminary planning phase preceding route adoption. In some instances where the aesthetic features or impact upon the surrounding community are of particular concern, a detailed scale model may be constructed. In order to avoid unnecessary expenditure of public funds, however, the extent of model work undertaken is generally restricted to the particular area in question or a representative segment thereof.

"In view of studies made of a scenic highway system, pursuant to Senate Concurrent Resolution No. 39 (1961 General Session), Senate Concurrent Resolution No. 4 (1962 First Extraordinary Session) and Senate Bill No. 1467, enacted at a recent session, the Division of Highways has issued two circular letters pertaining to the scenic aspects of highways on that system.

"5 SUBMISSION OF PROJECT REPORT

"Upon completion of the preliminary studies, a project report is submitted for review by the headquarters office of the Division of Highways. This report sets forth the reasons for and nature of the proposed highway improvement and its relation to route, area and local planning, presents the engineering data developed, and summarizes



the results of the conferences, meetings and contacts with other affected agencies

"Following a field review of the proposal, a staff review by the applicable headquarters departments of the division, and resolution of any differences, the project report is approved for purposes of proceeding in accordance with the commission procedural policy

"6 PRESENTATION OF ENGINEERING DATA TO LOCAL OFFICIALS AND THEIR TECHNICAL STAFFS

"Upon approval of the project report, the district office of the division further discusses the project with the local officials and presents the engineering data which have been developed. The results of this meeting are then reported to headquarters preparatory to scheduling a public hearing. If any additional studies of feasible alternates are requested by the local officials, such studies are undertaken before proceeding with a public hearing

"7 PUBLIC HEARING

"The division then holds a public hearing to acquaint the local citizens and organizations with the studies, and to obtain additional information, particularly with regard to the effect upon the community. This hearing is well publicized in advance in the local news media, the legislators within the area involved, the local jurisdictional bodies and other affected municipal, state and federal agencies are informed of the hearing by letter and invited to attend. In addition, the hearing is usually preceded by one or more public display of maps in the area to further inform interested individuals

"Generally, the district engineer of the Division of Highways or a member of his staff presides over this public hearing. Where major controversy appears probable, a division employee not employed in the district office may preside

"At the public hearing the various studied alternate freeway locations are presented without a preference

"All interested public officials, representatives of civic organizations or local groups and individuals are afforded the opportunity to speak or submit a statement for record. The hearing is informal in nature and there is no requirement or provision for the administering of oaths to the witnesses. This is primarily to encourage full participation on the part of those in attendance

"8 REVIEW OF RESULTS OF PUBLIC HEARING

"A transcript of proceedings of the public hearing is made and a report is prepared summarizing the results of the hearing and containing statements, documents and letters presented for record. The State Highway Engineer and his staff review the engineering studies and the data presented at the public hearing, and copies of the report and transcript are also forwarded for the attention of the members of the California Highway Commission. In some cases, as a result of the information received at the public hearing, additional studies are undertaken and a further public hearing is held before the State Highway Engineer reaches a decision with respect to the freeway routing

"9 SUBMITTAL OF RECOMMENDATION TO THE CALIFORNIA HIGHWAY COMMISSION

"Following review of all the project data, including the engineering studies, the results of the conferences with the local officials and the information presented at the public hearing or hearings, the State Highway Engineer submits a report to the California Highway Commission together with a recommendation for a specific routing and the basis for this selection

"10 ADOPTION OF RESOLUTION OF INTENTION BY HIGHWAY COMMISSION

"Upon receipt of the State Highway Engineer's recommendation and review of the data, including the report and transcript of the hearing proceedings, the commission if it so concurs adopts a reso-

lution declaring its intention to consider the location of the freeway. In line with this, upon the advice of the commission, the State Highway Engineer notifies the local governing bodies and the local press of the commission's intention and asks the local governing bodies if a public hearing by the commission is desired. Such notification advises that the commission or designated members thereof will hold a public hearing on the proposal, if requested to do so by the local legislative bodies within 30 days after the first regular meeting of such bodies following receipt of such notification.

"11. PUBLIC HEARING BY THE CALIFORNIA HIGHWAY COMMISSION

"If any of the affected governing bodies requests a public hearing, such a hearing is held by the California Highway Commission. The commission may also hold a public hearing on its own motion if deemed appropriate by members of the commission themselves.

"As a general rule, the chairman of the California Highway Commission presides at this public hearing. As in the case of the division's hearing, liberal advance publicity is given so that all who are interested may attend.

"At this public hearing, the State Highway Engineer or his representative presents the results of the engineering studies, the State Highway Engineer's recommendation, and the basis therefor. All interested persons, official bodies and civic groups or organizations are afforded an opportunity to be heard. A transcript of the proceedings is made for further review by the members of the commission and a report of the findings made by the commissioners present at the hearing is subsequently prepared.

"12. ROUTE ADOPTION

"After the hearing by the California Highway Commission, if such a hearing is held, or after the expiration of a 30-day period following the notice to the local authorities if no hearing is requested, the Highway Commission takes the neces-

sary action to adopt the routing. The adopted routing may or may not conform to the recommendation of the State Highway Engineer depending upon the findings of the commission.

"13. ISSUANCE OF ENGINEERING WORK AUTHORIZATION FOR DETAIL DESIGN

"Following adoption of the routing, a design work authorization is issued for the completion of surveys and plans. The division then proceeds with such detailed designs as are necessary to negotiate a freeway agreement with the local jurisdiction.

"14. EXECUTION OF FREEWAY AGREEMENT

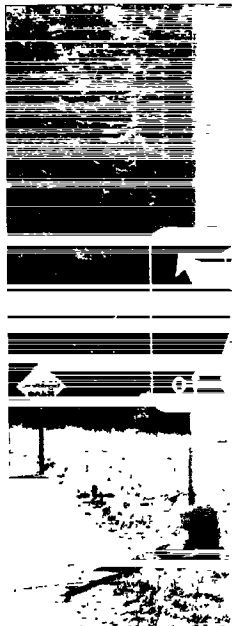
"Under the provisions of Section 1002 of the Streets and Highways Code, the Department of Public Works is authorized to enter into an agreement with the affected city council or county board of supervisors to close any city street or county highway at or near its point of interception with any freeway, or to make provision for carrying such city street or county highway over or under or to a connection with the freeway and may do any or all work on such city street or county highway as is necessary therefor. This section of the Streets and Highways Code further provides that no city street or county highway shall be closed either directly or indirectly by the construction of a freeway excepting pursuant to such an agreement or while temporarily necessary during construction operations. It also provides that no city street, county road or other public highway shall be opened into or connected with any freeway without the consent of the California Highway Commission.

"When the designs have progressed to the point where it is feasible to do so, a freeway agreement is negotiated with the local officials covering such features as the closing or altering of local streets and roads, the location of interchanges and separations, and the construction of frontage roads. This involves a closely coordinated working relationship between the division staff and the local technical and planning staffs to properly integrate the free-

way plan with the existing and planned local road network. The importance of the street or road from the local system and traffic circulation standpoint, existing and estimated traffic desires, present land use and planned area development, along with cost and effect upon freeway operation, are factors

which are mutually taken into consideration by the division and the local staffs in determining the treatment to be provided at each intersection of the freeway with a city street or county road.

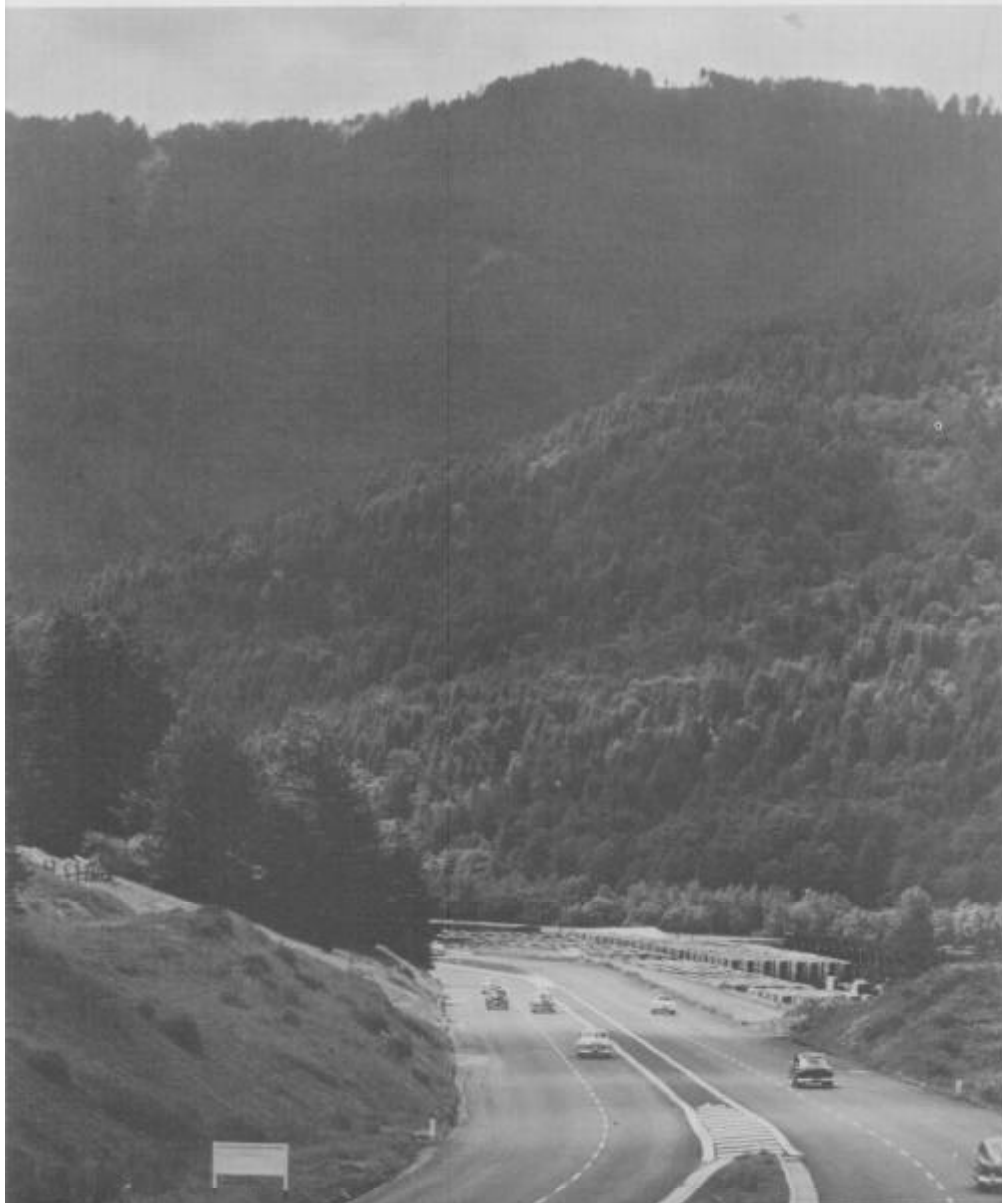
"Depending upon the situation and circumstances, the freeway agreement may indicate the



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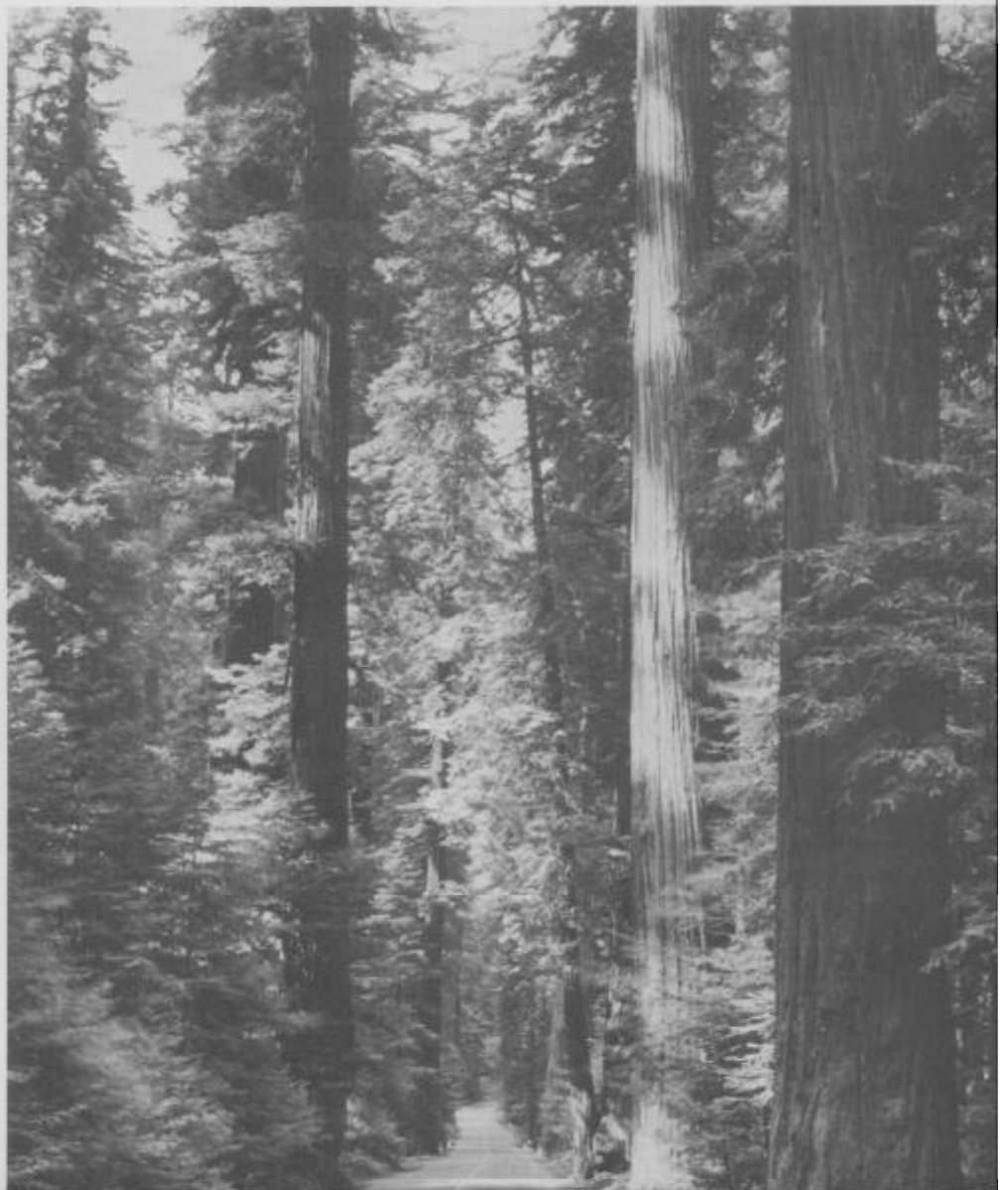
"Depending upon the situation and circumstances, the freeway agreement may indicate the



various design features by symbol only. The intricate design details and interchange geometries are worked out later. In other instances, it may be appropriate to show on the freeway agreement exhibit map the geometric features of interchange design, in which event considerable detailed design

work must be accomplished prior to execution of the agreement.

“Following execution of the freeway agreement by the local jurisdiction and the Director of Public Works, the Division of Highways proceeds with the final design plans.”



The Need for Modification

That there is substantial and growing concern on the part of the public in California over some aspects of the currently existing highway and freeway planning process is evident from the prolonged controversies erupting in many areas of the state, and from the expressions of alarm being voiced with increasing frequency by the news media, the average citizen, and many distinguished and articulate individuals and organizations in all walks of life. While it is no doubt true that a certain amount of this concern would exist regardless of where a particular freeway were to be placed, the volume and nature of the criticisms coupled with the responsible manner in which they are presented is compelling evidence that current public policies are not doing the best possible job of protecting the total public interest.

Although it is obviously impossible to cite anything approaching the complete text of the voluminous written and verbal testimony which was presented to the committees over the last year, the following excerpts from verbal and written statements are representative of some of the testimony on various aspects of present policies which were presented to the committee. The complete text of these remarks is included in the hearing transcripts available in the committee office.

... Concerning the General Problem

Hon. Harold Ball, Mayor, City of Manhattan Beach

"Gentlemen, I sincerely hope that you find some way to bring the people back into freeway planning. While too much politics in freeway planning might produce chaos, too little planning produces frustration, apathy, and inevitably hatred. I sincerely believe that you have given too much power to the division and that they in turn have not allowed our cities to play on the team. We are effectively benched until the fourth quarter when the game has already been decided. Many other groups, such as the Metropolitan Highway Transportation and Engineering Board and the local division are the coaches and have chosen all the

players, the referee, and the field of play. We in the grandstand and on the bench can only root or boo until we get tired of the game. Apparently our only remedy is with you legislators." (Transcript, Santa Monica, February 20, 1964, p. 36.)

Allan Tomko, Director, Center for Planning and Development Research, University of California at Berkeley; Architectural and Urban Critic, San Francisco Chronicle

"... I would say flatly to the State Legislature that this Goliath bureaucratic organism is presently out of your control, out of control of the taxpayer, and out of control of everyone... The point I am trying to make is that the State Division of Highways must be subjected to rational political control if politics is the exercise of reason in public affairs, and you must erect a political apparatus to control these people who are ostensibly public servants..." (Transcript, Sacramento, September 29, 1964, p. 128.)

Edward J. Weisig, Vice President, California Citizens Freeway Association

"... Next year, 1965, the California Legislature has an opportunity to amend the Highway Act and stop the freeway revolt now racing over the state. With all this increasing controversy, we keep in mind that the commission and the Division of Highways are at present untouchable, either by vote or through the courts..." (Transcript, Santa Monica, February 20, 1964, p. 60.)

Mrs. Helen Keeley, Vice Mayor, City of Laguna Beach

"... The subject of your inquiry is one of significance to all the people in the state, and of particular interest to the people of Laguna Beach. Certainly we know that the freeway system, as it has developed to this time, has been a major influence on the growth of the entire State... Essentially, I propose a challenge to the critical and implicit assumption of highway designers—that the space between the points joined by a freeway is a social wasteland, devoid of human significance... It is my purpose here to suggest that

space and its social structure wherein a freeway is being considered needs to be completely understood in great detail by the engineer to avoid harmful effects and to fulfill the potential advantages that a freeway may have for the area . . ." (Transcript, Beverly Hills, February 21, 1964, p. 215, 216, 217.)

Louis Bagdala, Vice President, Malibu Community Organizations Freeway Committee, Inc.

" . . . Due to controversies which have arisen in many California communities in connection with the adoption of freeway routes, it is apparent that action at the legislative level is desirable if the best freeway routes are going to be adopted in the State of California. Bitter battles have occurred in Malibu, Beverly Hills, Ojai, San Francisco, Chico, Newport Beach, Carmel, Monterey, and other communities—these bitter controversies have aroused the people to the point that public opinion demands that procedures and criteria of the California Division of Highways as established by the California Highway Commission be examined in the clear light of day and that attention be given by the California Legislature to remedy this situation . . ." (Transcript, Santa Monica, February 20, 1964, p. 88.)

Bruce Kilgors, Sierra Club

" . . . The Sierra Club is greatly encouraged by the interest being shown by the California Legislature and particularly by this committee in finding a solution to the growing conflict between plans for new freeways and the preservation of scenic park and wilderness country. . . . We need proper evaluation of what use constitutes the highest public use of a segment of land; there should be careful consideration of the fact that the least expensive alternative is not necessarily the best for the long-range public interest; and elected and appointed public officials and all citizens should realize that the alternatives offered by capable highway engineers may not include all the alternatives the public should consider before it makes the final decision on a highway location . . ." (Transcript, Arcata, July 24, 1964, p. 162.)

Dr. John French, Vice President, Tract No. 7360 Association, Los Angeles

" . . . To me, and to my association, the legislative act inadvertently created a colossus, a state agency which can ruthlessly roll over and through communities without any regard for the wishes of its citizens . . ." (Transcript, Sacramento, September 29, 1964, p. 123.)

Hon. Rodger M. Hutchins, Mayor, City of Stockton

" . . . The result of the lengthy and relatively secret planning of the Division of Highways finally is brought to light in a public hearing before the city council. These people as laymen are asked to approve situations many times without their own advisers having been given the time to be acquainted with why the decisions are being recommended that way by the Division of Highways . . ." (Transcript, San Francisco, December 20, 1963, p. 136.)

Dale T. White, Contractor, Fresno

" . . . It is my purpose to present evidence through the means of this statement to show that the present procedures as formulated and imposed by the existing authorities fail drastically in the granting to communities of any practical or equitable opportunity for the expression of the wishes, views, or desires of those persons whose interests and property are destined to be most affected by the decision made relating to highway and freeway developments. Furthermore, such procedures fail to give or grant any assurance that when presented, the same will find acceptance where practical and reasonable . . . Unfortunately, the public generally, as well as those persons or individuals most directly and seriously affected by any proposed freeway routing or construction, have by now been thoroughly indoctrinated by the course of events respecting freeways in other areas, and by propaganda, to bring about the belief that it is completely useless for any citizen to raise or voice objections. This conditioning of the public mind results from the great number of press releases originating from widely separated areas in the state, reporting upon the arbitrary rejection by the high-

way authorities of objections raised in such communities by individual citizens and committees. This has happened so often, and continued to such an extent, that an attitude of defeatism on the part of the people seems to close in whenever freeway routing or construction is proposed or contemplated in or near any city or town, or whenever it appears to threaten some cherished scenic or historic spot. We believe that if the people erred in granting too much power to highway authorities, with the result they have rendered themselves powerless against such wrecking of cities, as has already happened elsewhere, and is now threatened for Fresno, then it is high time the people themselves do something about it. It is axiomatic that the same agency that grants any power to any authority possesses also the power to revoke, rescind, or curb such powers, and we hope and believe the Assembly Committee to whom this statement is delivered, can and will take steps to bring about a better and more just set of procedures to govern the activities by the state in its relation to the rights of communities and citizens as they are being affected by highway, expressway, and freeway routes and construction." (Transcript, San Francisco, December-20,-1963,-p 170, 172, 182)

Hon William C Blake, Supervisor, City and County of San Francisco, Chairman, Transportation Committee, Board of Supervisors

" I do know that there should be some planning of freeways in a municipality such as San Francisco. We are a small area and we feel that when a freeway is built in San Francisco, it must be built to serve all of the people of San Francisco, not just the downtown section. It must be designed and planned with community values. Now our State Division of Highways is interested in money. They keep saying to us, 'we have to watch the tax dollar, we have to get the most out of our money.' Well, just the other day they had a freeway hearing here in San Francisco and I told them, 'I am not interested in how much it costs, if it costs too much we can't build the freeway then, because we are not going to destroy

San Francisco.' I think that they must design the freeways and if the federal government does not have the money in the allocations of California, then we will have to go to some other source. The people of San Francisco do not like the planning and engineering that has been done. They have told me and the public press has told me this where in the beginning they were not very strong, but now they have taken a second look at it, and they are opposed to these structures." (Transcript, San Francisco, December 20, 1963, p 156, 158, 161)

Dr. Wallace May, California Roadside Council

" It is difficult for the California Roadside Council to understand why another state agency, specifically the Division of Highways, is permitted to usurp park lands for highway purposes and to, in many cases, destroy forever the intrinsic values inherent in these park lands." (Transcript, Arcata, July 24, 1964, p 239)

Donald C Biggs, Director, California Historical Society

" I firmly believe that historical as well as economic values should and must be considered in determining the routing of freeways and highways. The very existence of important historic sites and structures is their claim to preservation. While some other documents may individually be more important, the most dramatic history to most people is visible history, the three dimensional places where the past lived and can still be sensed. It behooves freeway planners, I think, to recall the fate of those architects and builders of Roman temples, which were built by tearing down magnificent Greek temples on the same site and using the same materials, and the fate of the Romanesque in early Christian architects and builders, who in turn, destroyed the Roman temples to build their own churches. All could have existed side by side in an observable history of taste and style and, if you like, progress." (Transcript, Sacramento, September 29, 1964, p 136)

*Wilham P Gray, Attorney at Law; Coordinator,
Western Freeway Council, Los Angeles*

" And so it would seem to me that we find a planning staff so constituted with its expertise limited to the engineering factor, and suppose they make a recommendation based upon their experience to the commission. Now it may be the commission might have among its personnel people who are better versed in determining these other things that I have been talking about, and yet once a planning staff makes its recommendation to a commission, it is awfully difficult to turn it down because that inherently constitutes an expression of lack of full regard, kind of letting down the staff that has done so devoted a job in presenting the report. And so accordingly, gentlemen, it would seem to me that a tentative conclusion I would submit for your consideration is that the staff of the commission, now its name is the Division of Highways, have a broader base to include expertise in other fields than those you might expect to find in engineering. " (Transcript, Beverly Hills, February 21, 1964, pp 190, 191)

Walter C Franc, Vice President, Conference of California Historical Societies

" The conference represents over 100 organizations throughout the State of California and contains over 80,000 members. I have been authorized to speak for them. We are deeply concerned with the destruction of California landmarks throughout the state. The mushrooming population of the state, the careless redevelopment of the older parts of our cities, and the witless urge to bulldoze history into dust has destroyed much of great value and threatens what we have left. We have found that the construction of state highways poses a continuous threat to our historic sites. At the present time, the two Mother Lode towns of Nevada City and Sutter Creek are definitely threatened. We have the ironic situation where the State of California builds a highway to the Mother Lode and then destroys the Mother Lode to build the highway. I point out that the town of San Andreas has been

virtually destroyed as far as the tourist attractions are concerned, by the building of Highway 49 through the heart of the city. What is discouraging is that there is no way to require the evaluation of the cultural, the aesthetic, and the historic in the building of state highways. Now of course, it is admitted that freeways serve a useful purpose at the moment, although a century from now they may easily be as obsolete as the canals that molder through the East and the Midwest. We may question whether these highway structures should destroy the beauty and the historic interest of California for the mere purpose of transportation. Freeways are neither the best nor the cheapest method of transporting people and goods. The whole State of California should not be leveled, bulldozed, graded, and destroyed to supply roads. There is an element of absurdity in leveling redwood forests so that tourists may fly through the Redwood Empire at 65 miles an hour. There's an element of tragedy in the destruction, not only of Old Sacramento, but the Mother Lode towns, so that tourists can travel to see historic sites that no longer exist. " (Transcript, Sacramento, September 29, 1964, p 62)

*Wilham G Wells, Attorney at Law; Member,
Santa Monica Causeway-Freeway Commission*

" The supporters of the present system of freeway route selection have repeatedly dismissed local community objections to this procedure as merely disgruntled and prejudicial outbursts against all freeway construction. While this view may have once been prevalent, it is obvious that the freeway concept of transportation is an integral and permanent part of our urban community existence, and not something restricted solely to traffic and transportation problems. The furor of local citizens' groups, I submit, is dedicated to the proposition that the job of freeway route selection is not merely for the sterile judgment of traffic engineers and cost accountants, but requires the services of design architects, landscape architects, land planners, public recreational agencies, soci-

ologists, psychologists, and other specialists which I classify in the category of community development specialists Under the policies presently in effect, it would appear to be a fair statement that far too often freeways have been crude in design and located primarily on grounds of expediency and economy

It is obvious that the construction of efficient, effective, and attractive freeways demands a total community development concept This means the integration of all aspects of community development into a whole that is satisfying both to its residents and motorists, and integrated with its surroundings The time has come for California to consider the impact of freeways in terms not merely of limiting adverse effects but also of achieving positive opportunities for appreciation of value, for development of new land uses, and for changing land use through urban renewal (Transcript, Santa Monica, February 20, 1964, pp 144, 145, 146, 147)

Mrs Faye S Hove, Member, Board of Directors, California Citizens Freeway Association; Vice President, Malibu Community Organizations Freeway Committee, Inc

"The California Highway Commissioners are the sculptors of the face of California. Only the California Legislature has the power to provide the tools Let us hope you will have the vision to choose the tools well Surely we can plan for the future needs of California without destroying our beautiful state in the process . ." (Transcript, Arcata, July 24, 1964, p 314)

Concerning the Consideration of Nonengineering and Noncost Factors in the Planning Process William G Wells, Attorney at Law; Member, Santa Monica Causeway-Freeway Commission

Under the policies presently in effect, it would appear to be a fair statement that far too often freeways have been crude in design and located primarily on grounds of expediency and economy A recent publication by the Division of Highways states that a proposed freeway route is evaluated by three basic criteria (1) highway user savings and traffic service; (2) cost of construction

and right-of-way; and (3) effect of proposed facility on the community through or around which it passes This publication states further that the first two are estimated by the Division of Highways but that the third matter requires the aid of the public and public officials in determining the effect The statements are persuasive of the conclusion that the Division of Highways does not in fact give serious consideration to factors other than traffic service and cost The freeway design, urban landscape architecture, land planning, public recreational effects, sociological, psychological, and aesthetic considerations and other ramifications of the freeway route based on a total community development is apparently ignored or reduced to the part-time and often amateur efforts of public officials and local citizens In most instances, these latter community development matters have received little or no consideration

"The entire concept of route selection and design requires study and review by a competent task force in which there is representation for each of the community development specialists previously mentioned to insure that future freeway route selection through the Division of Highways will include recognition of these factors

"1 Integrated land-use objectives for the metropolitan area to determine the location of freeway-rail transportation corridors and all available methods of transportation

"2 The transportation corridor must be consciously designed as a compact integrated part of the urban community development area

"3 Evaluation of the transportation corridor must include the effects of the so-called community development considerations.

"I would like to draw the committee's attention to a publication titled *The Architectural Forum*, the October 1963 issue, which is devoted—a large portion—to the design and problems in regard to freeways I am pleased to note that there is a statement in here with regard to California . . .

"In planning two major new freeway connections to the Golden Gate Bridge, the State of California engaged landscape architects Lawrence Halprin and Associates as consultants on aesthetics

Significantly, Halprin was brought in before freeway routes were established, and was made an integral part of our study team, in the words of one state engineer "The state perhaps got more than it bargained for Halprin found the literature of urban freeway design somewhat sparse, so he began by producing a freewheeling creative study of the subject, covering 16 typed pages, accompanied by sketches. At a progress report on the freeway plans presented to the San Francisco Board of Supervisors in July 1963, Halprin gave a six-point summary of the design principles he had found (1) The linear pattern of country freeways is on the whole inappropriate in the city, it cuts across existing grids, disrupts neighborhood patterns and leaves odd, difficult-to-integrate pieces, urban freeways should follow the grid of the city (2) The right-of-way, with variable median strips and planted bridges and shoulders is inappropriate in cities because it wrecks havoc with existing structures, takes too much land off the tax rolls; and separates neighborhoods by great swaths cut through a city's fabric (3) Urban freeways should fit into existing and projected land use and topographic patterns, to wit, it should go between neighborhoods, not through them, or it should go between two different land uses, such as industrial and residential, or utilize topographic changes by sliding along low hills, so they cannot be seen (4) Urban freeways should be condensed and concentrated, not spread out. They should employ urban, not rural aesthetics. Accordingly, they should use multilevel, split-level, depressed, and elevated groupings to facilitate concentration of the roadbed. As a byproduct, connections across freeways from one side to the other become much easier to achieve (5) Urban freeways should be integrated with the city and not simply be corridors through it. They should pass through buildings, have shops, restaurants, and parking garages integrated into their structure (6) Freeways should be built as a part of a total community development, not unilaterally. They can take the lead in generating amenity in a city in new or rebuilt areas by hav-

ing parks and playgrounds pass under them, new structures built over them."

"Ultimately, and this I think is the most important thing I wish to leave here today, it is the design of the environment of a freeway which counts more than the structure itself." (Transcript, Santa Monica, February 20, 1964, pp 145, 146, 147, 148.)

William P. Gray, Attorney at Law; Coordinator, Western Freeway Council, Los Angeles

"Gentlemen, the Division of Highways as presently constituted, is composed of devoted engineers. But to an engineer, as I visualize it, a freeway is a thing of joy and beauty forever and they work with them, they know the merits of them, and yet their whole training is not necessarily adapted to considering these other things that I have been talking about. So it seems to me that a planning staff composed of highway engineers, and social engineers, and trained community planners, if you please, is more likely to come up with a better considered result. With respect to the effect upon property values in the neighborhood, the effect upon the municipal tax rolls. In one of the basic designs of the current Beverly Hills Freeway as submitted by the division, they have come to the conclusion that one particular route would cost \$6 million less than some of the alternate routes, that is construction and acquisition, but we are planning to be able to present to the public hearing the fact that the property that would be condemned being removed from the tax rolls would equal several million dollars per year in loss of revenue to the local planning bodies. Not only that, it would be our contention that the decline in other property values that would be left would be up in the tens or perhaps hundreds of millions of dollars over a short period of time. Now these are things as far as we know the division has not yet given consideration to." (Transcript, Beverly Hills, February 21, 1964, pp 186, 187.)

Hon Leonard Horwin, Mayor pro Tem, City of Beverly Hills

" It may well be that an east-west freeway between the present Ventura Freeway and Santa Monica Freeway is necessary, but we are also cognizant that there is no inevitability in the particular route, design, or manner of construction, and that mistake or failure in this regard could inflict upon our city damages to its beauty, character, design, and values greater than the benefits received from a freeway. We must further bear in mind, based on the experience of other communities, that savings on initial cost of a freeway by adoption of route and design least costly to the state, may be far more than outweighed by removal of property from tax rolls and impact on natural and aesthetic values of the terrain or community through which it passes, with the consequence of actual public revolt against certain locations and designs as in the cases of San Francisco and Monterey. Short-term savings will be more than forgotten in terms of long-range adverse effects and losses.

"We must consider too that any increased costs to the State of California incident to construction of the freeway in such a way as to preserve the beauty and quality of the City of Beverly Hills may be offset in part by savings through brevity, directness, and quality of the route thus achieved, and also through use of existing rights of way to the maximum extent possible. Further, such increases in initial cost may be offset by the reduction in loss of community property values and taxes." (Transcript, Beverly Hills, February 21, 1964, p 291)

A E Worthington, President, League of Orange Coast Civic Associations

" The Division of Highways is charged with the responsibility of evaluating all the traffic-associated economies of alternative freeway alignments. This duty comprises a major part of the effort involved in design of a freeway, and brings in the planning and road departments of the counties,

and communities involved. It is well organized and planned, and by and large results in a superior traffic service product. California's freeway system ranks with the finest highway system in the world, adequate evidence of the quality of the traffic planning.

"But the engineers are given another duty, to quote Section 75.5 of the Streets and Highways Code, 'estimates shall also be presented of the effect that the selection of either route would have upon community values, including but not limited to property values, state and local public facilities.'

"This legislation is testimony to the acceptance of the concept that human and economic values should play a role in freeway planning, but how can it be implemented? The engineers of the Division of Highways are competent, trained in civil and mechanical engineering and other specialized fields of road and traffic work. Most of their studies involve areas in which social and economic values do not introduce important conflicts into the decisions. This is evidenced by the fact that much of the mileage of freeways adopted is done without recourse to formal hearings before the commission. Thus the division's engineers are neither as specifically trained nor as experienced in the evaluation of human values as in the prediction of future traffic needs. Furthermore, the planning staffs of the city and county administrations are also seldom involved in the broad and sweeping implications of changing community attributes that may arise with the routing of a freeway through a specific area. They generally perform their local function with the guidance of a general plan and a zoning code that in the first place may have had the experienced and professional guidance of a reputable firm of planning consultants. Evaluation of the impact of a freeway on a community is a problem frequently beyond the training and experience of a community's planning department. Consequently, although the Division of Highways does its best, it is certain that the evaluation of the effects of the various freeway alternatives on the community does not receive the detailed and complete review that is



afforded the questions of engineering cost, traffic service, and user benefit . ” (Transcript, Beverly Hills, February 21, 1964, pp 229, 230.)

Colonel Ray Adams, President, Home Owners of South Westwood, Inc

“ . In estimating costs and benefits of alternate freeway routes, the Division of Highways estimates costs of construction and of right-of-way acquisition, and estimates user benefits over the first 20 years of freeway life, but does not estimate and take into consideration the effect of the freeway on the values of real property that is located in the near vicinity of the route

“On August 21, 1963, District VII of the Division of Highways gave a briefing to officers of property owner associations regarding alternate routes under consideration for the Beverly Hills Freeway. No estimates of the effect on the values of nearby real property were presented. When a member of the audience questioned this omission, the District Engineer for Planning replied in substance that the Division of Highways did not estimate those effects, did not know how to estimate them, and did not believe that anyone else did know how to estimate them. That in their experience the value of nearby property was not affected more than 1 to 1½ percent

“I shall now present the necessity for estimating the effect of freeway location on the values of nearby real property, and of taking this effect into consideration as a cost

“Decline in the value of property near to the route of a new freeway, and retardation of its subsequent appreciation in value, are costs to the owner caused by the location of the freeway. The owner is a member of the body of taxpayers and this cost is just as real to him as actual disbursement in the form of tax payment. The economic effect of this cost on the community is just as real as money taken out of the local economy by taxes. With tax assessments based on market value, the tax base is reduced by these costs. The costs differ from the direct costs of construction and right-of-way acquisition only in two ways: the money

does not flow in and out of the state treasury, and the cost is not equitably distributed over the entire body of taxpayers.

“Good-quality, single-family, residential property is the type most likely to suffer decline in value. The values of other types of property may be enhanced, particularly commercial and industrial property, and possibly high-rise apartments. Where enhancement will occur, the foregoing arguments apply in reverse and the enhancement should be estimated and taken into consideration as a benefit.

“I speak from direct experience as an officer in the US Army Corps of Engineers and cite these facts because I believe that in the 36 years that have passed since first enactment of federal flood control legislation, the thinking of some very excellent minds in the Senate, the House, and the corps has been applied to this subject. I submit that the inclusion of all economic costs and economic benefits is just as much required in the economic comparison of freeway routes as in the determination of economic feasibility of a river basin project; and that the estimation of all economic costs and benefits is just as feasible with respect to a proposed freeway as it is with respect to a proposed river basin project.

“I have been privileged to interchange views on this subject with Dr. Neil H. Jacoby, dean of the Graduate School of Business Administration, UCLA, and an eminent and nationally recognized economist. Dr. Jacoby is a director of the Home Owners of South Westwood, Inc, and I know Dr. Jacoby to be an eloquent proponent of both the necessity and feasibility of estimating and including all economic costs and benefits in freeway route comparisons . ” (Transcript, Santa Monica, February 20, 1964, pp 70-74)

Edward T. Telford, District VII Highway Engineer, Los Angeles

CHAIRMAN Z'BERG “Then, as I gather it, there has been no study—no specific study made to determine what the effect will be on property values adjacent to any of the alternatives. Probably the reason

you haven't is because it is not standard procedure to do this, is that right?"

MR. TELFORD "It is a deeper question than that, Mr. Chairman. We have extensive experience in that field, but we would rather others, particularly the local agencies, at this time would come to us with their views on these matters. We, for example, do buy and sell in this district a good many million dollars worth of property. We find, for example, that we can at a profit to the state dispose of excess partial takes after the freeway is built, but to bring that factor—and the fact of the gain in value into the picture, I don't think is appropriate. We have asked that these communities bring to us and discuss with us their position on these things, and I think that it is quite important instead of trying to point out to them and guide their hand in bringing these about, that we ask them to give us the benefit of their thinking."

CHAIRMAN Z'BERG "But at any rate, as I gather it, you don't feel that it's appropriate, so you have not made any study to determine what the future either of the loss or gain in land value will be if 'A' is adopted or if 'B' is adopted. This has not been your policy in the past, and at the present time it's not your policy to do this."

MR. TELFORD. "It is not part of our policy to do this as a part of a specific route. We have done considerable work in general terms based on past experience" (Transcript, Beverly Hills, February 21, 1964, p. 214)

Walter C. Frame, Vice President, Conference of California Historical Societies

"... the existence of a treasure trove of historical sites in the area of Old Sacramento had no effect whatever upon either the engineers or the Highway Commission. The meeting of the Highway Commission to consider the effect upon history of the freeway construction in the spring of 1962 was a farce conducted in utter disregard of either decency or good taste. The meeting was held in a hearing room which would not hold one-quarter of the people who were called to the meeting. The

first two hours were devoted to witnesses in praise of the freeway . . . Before the opposition speakers had finished their testimony, various members of the commission left the hearing room. The matter was taken under advisement and no public disclosure has ever been made of their findings, if any were made . . .

"Now there is no question concerning the historic values to be destroyed in the construction of the freeway through Old Sacramento. Of the 25 California registered landmarks in the City of Sacramento, seven are situated in the center of the proposed freeway. One of these sites, the Big Four Headquarters, has been proposed as a federal landmark, one of the two in Sacramento. In five of these seven landmarks, the original buildings are preserved. The great majority of the landmarks in Sacramento are merely building sites.

"Of the remaining portion of Old Sacramento, the part that is presently preserved, only five original buildings listed as state landmarks remain. The greater portion of this area will have to be completely reconstructed.

"Some comments should be made concerning the structures to be destroyed by the freeway. The Big Four Headquarters Building was originally the Stanford Store and the Huntington-Hopkins Building adjoining. The upper floor of these structures became the headquarters of the Central Pacific during its construction until about the year 1870. During that period, the address, 54 K Street, was the most famous address in the world. All you had to do on the docks at Hamburg was to put 54 K Street and they knew exactly where this material was going. The building's use as a railroad museum is obvious.

"The Western Hotel built in the fifties, and rebuilt in 1875 after a fire, is of first importance in the history of the West. If I may call your attention to the fact, the State of California is now spending many thousands of dollars in restoring the Pico House in Los Angeles as an early-day hostelry. The Western Hotel is an older structure

of far greater historical importance and with great possibilities for development

"The D O Mills Bank was the foundation of the Mills fortune and the origin of the Bank of California Its development as a museum of early-day banking is obvious

"The Sacramento *Bee* office, as far as I can determine, is the only original newspaper structure in California at the present time. As a museum of early newspaper history and early printing, it would be invaluable It may also be noted that the Sacramento *Bee* has offered to put the building to use with this thought in mind

"The loss of these structures is a tragic blow to California In addition, there are many buildings of the fifties in the area which would make an integrated city of the time and the era, the only place in the United States which could offer such a construction " (Transcript, Sacramento, September 29, 1964, p 64)

N K Mendelsohn, President, California City Development Company

" As a business enterprise we studied the general area of downtown Sacramento, the Old Sacramento area in particular, and the relation between the riverfront and the capitol area There's lots of California left and lots still to save and many more freeways still to be put in And anything which can come out of this kind of deliberation which can lead to the improvement of the mechanics of properly evaluating all of the factors relating to the propriety of one freeway route as against another freeway route I think will be a tremendous service to California Our preliminary analysis and study in association with a firm of community facilities planners in Pasadena headed by Mr Wayne Williams, whose particular strength in planning happens to be recreational values, social values, and community values, led to a letter to the State Highway Commission in which we, in effect, stated that based on the review we then made of all the materials available to us, the determination and the decision to put a freeway

right through Second and Third Streets, was, in our opinion, the worst possible decision that could be made in terms of the preservation of social and historical values in Old Sacramento . . . From the standpoint of the preservation of social and historical values, there is hardly an alternative that would not have been better than the alternative which was actually chosen through Second and Third Streets. We have just heard Mr DeTurk and Mr Neasham point out that the background of this issue was a study which determined that there were important historical and community values inherent in those old structures in the old area which is called Old Sacramento And then we heard both of them say that the ultimate layout of this freeway, the ultimate route of this freeway physically moves through a portion of this Old Sacramento, foregoing the rebuilding, the tearing down and the rebuilding and the resetting on another physical place of some of these buildings which are important Now, the importance of an historical area is not purely in the bricks and mortar, it's not just the particular structure If you picked up the Hastings Building and moved it into the middle of Mississippi, you would not be preserving history because that isn't where it belonged The way to preserve historical materials, historical areas, is to preserve those areas, if possible, intact To preserve those areas, furthermore, according to a study which we ultimately did and which was called Old Sacramento, which was prepared by community facilities planners, the preservation of those areas would be not only dead museum areas, but if possible, would function in a new way and creatively integrate with new development commercial areas around them " (Transcript, Sacramento, September 29, 1964, p 19)

Hero E Rensch, Research Historian; Coauthor of a Report on the Significance of Old Sacramento to the California State Division of Beaches and Parks, 1958

" The preservation and restoration of historic Old Sacramento City can have real mean-

ing and universal lasting attraction only when viewed in its larger perspective as a unit—local, regional and national. The magnitude of its historical impact does not rest primarily on the fame of a few individual buildings, outstanding as these were. Its tremendous significance in the state and national scene rests, first and last, on its overall historical and architectural perspective within the framework of the close-knit geographical unit that comprised the heart-center of the growing Sacramento City during the second half of the 19th century.

In the long controversy over the intrusion of a freeway bisecting the remaining segment of the Old City, the crucial primary necessity of its preservation as an integrated unit, historical, cultural, and geographical, has been ignored by all but a few. Plans developed within the framework of the proposed freeway are a distortion of the historical facts. They demolish the integrity of one of the most unique and vital cities of the West—Old Sacramento City, whittled down by the Second-Third Street Freeway to a meager four riverfront blocks and walled off from the modern downtown business core, will lose forever its essential character and far-reaching influence in the history of the state and of the nation. The North-South freeway will tear the heart out of the Old Capital City, wiping out many of its finest treasures and making restoration as a unit impossible. Without the freeway its unity will be preserved and integrated with the beautiful new shopping, civic and cultural centers and pedestrian malls of downtown Sacramento. Preserved and maintained inviolate within its original geographical setting, Old Sacramento would become the outstanding historical park in the West, 'ripe for development into a major national and international historic attraction,' as Allan Tenko has so forcefully stated. Restored as a unit, it would become the center and gateway to a vast recreational area, stretching from San Francisco Bay and the river delta along the miles of river parks, riding, and hiking trails into the High Sierra, and north

into Yuba, Trinity, Lassen, and Shasta recreation regions. The true historical perspective is breathtaking. . . ." (Transcript, Sacramento, September 29, 1964, p. 148)

Alfred J. Stern, Chairman, State Park Commission

" . . . The responsibility of the State Park Commission for protecting the state park system is clearly recognized. Its enforceability depends upon specific statutory authority, and the establishment of a body of policy by which the state agencies are directed.

"The express authority is that contained in Section 506 of the Public Resources Code, which states in part: 'The commission shall establish general policies for the guidance of the Director of Natural Resources (now Director of Parks and Recreation) and the Chief of the Division of Beaches and Parks in the administration, protection, and development of the state park system.'

"Section 5003 of the Public Resources Code states in its opening sentence: 'The department shall administer, protect, and develop the state park system for the use and enjoyment of the public.'

"Pursuant to its statutory authority and responsibility the State Park Commission has established a statement of policy for the guidance of the Director of Parks and Recreation and the Chief of the Division of Beaches and Parks in the administration, protection, and development of the state park system, which states in part: 'These lands shall be firmly held against the pressures of expediency, i.e., for use for highways, school sites, parking lots, public buildings, utilities, or other nonconforming uses. This is a determined warning against dissipation of irreplaceable park system land. Only after full determination that plans and lands of equal usefulness to other purposes are impossible to achieve in any other manner, can encroachment be considered. Expediency has no place in basic determination of use.'

"Pursuant to this basic general policy the staff of the Division of Beaches and Parks, and members

of the State Park Commission have time and again made pointed objection to any routing of projected freeways through any state park

"Section 5001 5 of the Public Resources Code, which we hold to be as binding upon the Division of Highways as it is upon the Division of Beaches and Parks, legislates against encroachment in the following language: 'State parks, which consist of relatively spacious areas of outstanding scenic or wilderness character—*preserved as nearly as possible in their original or natural condition and providing opportunity for appropriate types of recreation where such will not destroy or impair the features and values to be preserved* Commercial exploitation of resources is prohibited'" Italicizing added

"In addition to the statement of policy previously referred to, the State Park Commission further expresses its statutory responsibility by resolutions adopted from time to time, such as declarations of purpose, and also by studies and resolutions accepting proffered gifts, including those consisting of the memorial groves in Prairie Creek Redwoods State Park.

"The resolution adopted as declaration of purpose for Prairie Creek Redwoods State Park states as follows 'The purpose of Prairie Creek Redwoods State Park is to make available to people forever, for their inspiration and enjoyment, in a condition of unimpaired ecological integrity, the great forests of the Prairie Creek Basin and adjacent areas west to the sea, including the wild ocean beach, together with all related scenic, historic, scientific and recreational values and resources of the area.'

"With respect to the special responsibilities which may have been assumed by the state in accepting the donated memorial groves, I will state that individual contributions from citizens throughout the United States have been in large part responsible for the establishment of a great portion of our redwood park lands Much of this land consists of the memorial groves found in

Prairie Creek Redwoods State Park, as well as Jedediah Smith State Park The destruction of such groves might well result in a wave of reaction from past donors as well as those even now being asked to contribute to the cause, that might seriously impair the donation of park lands to the State of California Such results could be measured in dollars which could easily exceed by many times the cost of a few short miles of additional freeway and the user benefits which would result from the adoption of a route entirely outside the park

"In two instances we have prime examples of where we were able to work with the Division of Highways without impairing the integrity of the parks involved, namely, Castle Crags State Park and San Buenaventura State Beach In both situations the integrity of the park was still kept intact, while the Division of Highways was able to realign or relocate its highway to meet the required improvement

"There are, of course, instances where no amount of trading will replace the elements intended to be utilized Obviously, portions of watershed, the ecology of which would be disturbed; or wilderness beach, the nature of which would be 'civilized' by imposition of freeways or highways, could be re-compensated only by substitution of another like watershed or another like beach *In the instance [of the proposed freeway in the vicinity] of Prairie Creek Redwoods State Park there is, in neither case, such other possible substitution .*

"[In response to a question from Assemblyman Belotti concerning the so-called 'tree-for-a-tree' proposal]: The only way that we could replace these values would be as previously suggested by your chairman, to replace it with another beach, in its entirety, of like kind, or to replace the forest with an entire new watershed to make sure the integrity would not be disturbed Mr Erreca mentioned the fact that he has not been convinced that a freeway through here would impair this state park. There is not anyone in this room who will be alive when this mistake, if it should prove to be a mistake, would make itself self-apparent and obvious to the people, and of course then it is too late to correct it.

"[In response to a question from Assemblyman Cusanovich] We do not have in our state park system any other beach equivalent of Prairie Creek Beach . ." (Transcript, Arcata, July 24, 1964, p 99)

Charles A DeTurk, Director, California Department of Parks and Recreation

" . . . It is well established in law that the actions of one Legislature are not binding on those that follow Yet a score and two years later [following the 1939 legislative policy concerning the responsibility of the department to administer and protect the state park system], in 1961, an almost entirely new California Legislature, expressing new ideas, concepts, aspirations, and intentions, continues to insist that the values and integrity of the state park system remain the responsibility of park personnel, and these persons remain charged with a solemn responsibility—the preservation of that tiny portion of our scenic landscape retained as it is and was for us and those who will follow It is apparent that the intent of the Legislature is clear It is obvious that any attempt to violate the trusts placed with the State Park Commission and the Department of Parks and Recreation is an expression of disdain for the actions of the Legislature

"We ask that approval for any encroachment onto state park lands be made mandatory and that the matter be determined by the State Park Commission

"You have been apprised of the feelings of Californians through the editorials of the state's newspapers, nearly all of whom express especial concern about the activities of the Division of Highways I do not intend to take up your time with attempts to out-engineer the engineers I will say that I do not feel they have any business telling us how to run a park, how to design a park or what is a park That is our business

"And that is why I state that if a bridge and approach roads are constructed across Emerald Bay, that if the sacred groves of Prairie Creek are trespassed or if its adjoining Gold Beach is desecrated, or if specific portions of a score of

other state parks are violated, there no longer truly exists a park—in theory, by legislative definitions, or in fact

"Californians and their friends from throughout the world visit the state parks or Yosemite, the nation's first state park, because of the grandeur, the splendor, the magnificence When a rollicking, ill-conceived freeway is constructed through the hearts of parks, the whole purpose of the park is destroyed, as well as the reason for anyone visiting it These can never be replaced . . .

"Sections 5003 and 50015 of the Public Resources Code specifically instruct that I protect the park values, and, unless those park values are protected, I cannot grant an easement A freeway through Prairie Creek or an expressway across Emerald Bay is a destruction of, not protection of, park values.

"The grave disasters which threaten at Prairie Creek and Emerald Bay are responsibilities of the Division of Highways The issues will most surely go to the courts if the Division of Highways makes any effort to proceed with the beach route or enlarge the present route at Prairie Creek It is not inconceivable that a law written in 1937 and yet to be tested in the courts insofar as state parks are concerned will resolve in favor of parks

"[In response to a question from Chairman Z'berg] . . . We realize that it is impossible [for the freeway] to skip every corner of it, and there is a location which, in our opinion, would be a satisfactory one and it skirts the park on the east, taking some redwoods out of the lower right hand corner ." (Transcript, Arcata, July 24, 1964, p 122.)

Edward F Dolder, Chief, California Division of Beaches and Parks

" There is no area or zone within this natural unit where a freeway could be located without causing destructive intrusion and ruinous division. This kind of a manmade installation has disastrous effect on such a natural province—disastrous to the habitat of the plants and animals involved, and even more far-reaching in its effects on man's enjoyment of such a natural scene . . .



Any suggestion that a freeway is necessary or desirable to enable the public to enjoy park scenery is not only incompatible with park procedures but totally unacceptable in terms of park planning and principles. Granted that it is desirable to have freeways pass through scenic country—it is impossible to avoid this along the north coast. Within a park, however, enjoyment of the park features would be greatly reduced in the presence of a freeway for all visitors except those who remained on the freeway itself, and so did not actually enter the park proper. The Beach Route Freeway would cleave through the heart of the Blanche Hinman Garland Memorial Grove at the north end of the park, within which a great cut 225 feet deep and 680 feet wide would be created where the freeway would pass through Ossagon Ridge. This would constitute an appalling breach of trust by the State of California toward the donor of this memorial grove, in addition to making a tremendous scar on the park as a whole. The Beach Route Freeway would cause further destruction of park values by occupying the beach itself, and thus preventing its enjoyment as a park resource by persons not actually using the freeway. Still further, it would make either impossible or not worthwhile the development of hundreds of badly needed campsite facilities, both at the north near Ossagon Creek and toward the south in the Wolf Creek Basin.

The alternative to this path of destruction is the so-called East Ridge Freeway route, which, except for one small corner, would bypass the entire park on the east side. In urging this route, we are requesting a route admittedly less desirable from an engineering standpoint, but still well within the standards set by the Division of Highways, a route admittedly more costly in dollars than the beach route (although probably not as much more costly, as the tabulated estimates indicate), an additional cost in dollars which is set off against the conservation of park values which are priceless and irreplaceable.

“It is our fervent belief that the people cannot afford *not* to spend the additional costs in today’s

dollars of highway funds in order to protect a priceless heritage from damage, depreciation, or destruction.” (Transcript, Arcata, July 24, 1964, p. 142.)

Hugo Fisher, Administrator, Resources Agency of California

“In this rapidly growing state, where acceleration of development continually intensifies the pressure of competing demands upon available space and resources, the need for construction of highways, one of the most potent of all agents of change, often comes into sharp and dramatic conflict with other social needs. The introduction of a new road may drastically alter the face of city and countryside. Thus, it is no longer desirable or even feasible, in many instances, merely to choose the shortest, cheapest route for the location of a highway. This is a fact which the Legislature has recognized, as the statutes demonstrate.

“The hearings being conducted here today are evidence that natural resources are among the factors which may be most affected by a highway. This is so, not only when a question of great public interest arises, as at Prairie Creek or Emerald Bay, but every time a highway comes into contact with a river, a forest, or the seashore. Fish spawning grounds may be destroyed by excavation of gravel from river banks. Pollution of streams occurs. Deer are threatened by roads cutting across areas they are accustomed to traverse. . . . Unique scenery may be disfigured by the gash which an expressway cuts. Recreational use of a park is incompatible with a highway which carves it in two. If we are to preserve and enhance the value of natural resources to the public, careful account must be taken of them in highway planning.” (Transcript, Arcata, July 24, 1964, p. 119.)

Mrs. Margaret Ownings, Member, State Park Commission

“We are now dealing with a broad, far-sighted principle as we witness an acceleration of two growing alternate factors in land and resource use in our state. The first factor is our expanding population with its accompanying de-

lands. . . . The second factor is a sudden shocked awareness by citizens throughout the state that these expanding demands will gradually intrude upon—ravage and erase the natural scenic values of the lands now held in trust as state parks—unless we stand firm to protect them from any ingress. . . . By the year 2000, these park lands will be accentuated beyond our present comprehension—accentuated because the surrounding lands will be appropriated for urban expansion. But the clearest example of this accentuation will be the self-contained world of our redwood parks which will stand alone, an expression of continuity—as the surrounding forests are lumbered. . . . These park lands will increase in value—will increase in use—will increase in appreciation and educational purposes as the present quantity of wild scenic and recreational areas disappear. The State Park Commission is enjoined by the state to hold these park lands against the pressures of expedience. But the commission is powerless to carry out this responsibility while the Division of Highways retains the right to cross through these lands at its own discretion. . . . Prairie Creek Redwoods State Park now stands as a symbol of this test. . . ." (Transcript, Arcata, July 24, 1964, p. 115.)

Hon. W. F. Landis, Supervisor, Fifth District, County of Humboldt

" . . . Prairie Creek Beach is an unpolished gem and could be developed into one of the most beautiful and enjoyable scenic areas in the State of California, if not in the nation.

"Let us not forget a freeway is built to get people to a place or through a place—let us not use a freeway to destroy the very resource of beauty they and we wish them to see.

"The recreational resource such as this wild, clean, and undisturbed beach are few in the state as well as the nation. Now we have the choice to save this beautiful beach for posterity. A recreational resource such as Prairie Creek Beach can, unlike harvesting old growth timber, be used over and over again forever. . . ." (Transcript, Arcata, July 24, 1964, p. 205.)

Bruce M. Kilgore, Sierra Club

" . . . While we are not experts in highway engineering, we feel we can justly claim a certain degree of expert judgment in scenic beauty and wilderness values . . . It is the Sierra Club's firm conviction that freeways are non-park-oriented highways primarily for express traffic, and cannot be compatible with natural parks no matter how well designed they may be . . ." (Transcript, Arcata, July 24, 1964, p. 182.)

General Frederick B. Butler, Retired, U.S. Army Corps of Engineers

" . . . I believe there are instances when other than engineering and fiscal considerations must be taken into account by the engineer and by the administrative body in which is reposed authority and decision. Conflict of use interest must be weighed. Money values alone cannot govern. For example, in this Prairie Creek situation, it is necessary to review why the people of the State of California directed that a park status be established for a general area; why public moneys have been appropriated to procure ownership; why private gifts from home and abroad have been accepted to augment public funds in this procurement; and what effect a highway, a railroad, a power project (or an industry) would have on the attainment and enjoyment of the previously determined role of the area . . ." (Transcript, Arcata, July 24, 1964, p. 159.)

Robert W. Jasperon, Trustee for Conservation; General Counsel, Conservation Law Society of America

" . . . In considering the proposed relocation of U.S. Route 101 in Humboldt County, the State of California has both a moral and a legal obligation to bypass the Prairie Creek Redwoods State Park and its memorial redwood groves. [A brief review of] the history of Prairie Creek will show that the state accepted in trust for state park purposes the lands and forests which constitute this park . . . The authorities in California and elsewhere are emphatic on the proposition that the use of dedi-

cated park lands for a through highway is inconsistent with the use of those lands for park purposes . . ." (Transcript, Arcata, July 24, 1964, p. 161.)

Neil Cunningham, Attorney at Law; former Deputy Attorney General, State of California; President, California Marine Parks and Harbors Association

" . . . No one seems to appreciate or understand the gravity involved in the violation of the trust imposed by the State Park Bonds Act of 1927 adopted by vote of the people, or any subsequent act of our Legislature which provided funds for the purchase of these wonderful redwood groves and other properties in which private donations were made to meet the matching provisions . . ." (Transcript, Arcata, July 24, 1964, p. 175.)

Martin Litton, Menlo Park, California

" . . . The Olympic National Park in Washington is world-renowned for its Olympic, or Roosevelt, elk. Yet only in California do these beautiful animals roam freely over a wholly representative segment of their natural range — the area between Prairie Creek and the Pacific Ocean. Nowhere else may they be seen at liberty on an ocean shore. At present, though this beach is not much changed in appearance from the moment it was first seen by white men, it is readily accessible to everybody. The elk, unafraid of the surf fishermen, the motorists on the modest but adequate beach road, or the strollers on the sand and in Fern Canyon, are often there to be seen—but only because they can move safely between the beach and the forested ravines and bluffs. I leave to your imaginations what would happen to this unique and wonderful pageantry if a freeway were to be built on the beach at the foot of Gold Bluffs . . ." (Transcript, Arcata, July 24, 1964, p. 235.)

John Kenneth Decker, Economist and Planner, Trustees for Conservation

" . . . In summary, the economic analysis of the alternative routes, through the park and outside the park, indicate that further study by the Divi-

sion of Highways will confirm the appraisal presented here that the routing of a freeway through the park is uneconomic and that a route outside the park should be selected from other alternatives . . ." (Transcript, Arcata, July 24, 1964, p. 158(a).)

Betty M. Forry, Chairman, State Recreation Commission

" . . . The Recreation Commission concurs with the recommendation made by the State Park Commission to route the proposed freeway to the east of the Prairie Creek State Park. This route would neither spoil the spectacular Gold Bluffs shoreline nor necessitate cutting irreplaceable redwood groves inside the park . . ." (Transcript, Arcata, July 24, 1964, p. 211(a).)

Rudolf W. Becking, Forest Research Consultant, Associate Professor, Forestry, Humboldt State College, Arcata, California

" . . . During the past four years I have specialized in redwood ecology and have studied the life history of the redwoods intimately. Through these intensive studies I feel qualified to advise you concerning their preservation . . . In order to preserve redwoods effectively, large areas—preferably whole watershed—are needed. Too many of our state parks are very limited in area for this purpose . . . Many of these state parks are in danger of their long-range preservation because the areas are indeed too small for maintaining their natural ecological balance. Therefore, any infringement in these state parks becomes irreparable. Any redwood cut may be the start of this process of decline, and we have preciously little virgin acres to spare . . . To serve the recreational values scenic routes are to be developed in the redwood forests for slow traffic for leisure and enjoyment. The construction of freeways through the redwood forests will add little to the scenery and enjoyment of the redwood forests by the people. The recreational values are in direct conflict with the freeway design . . ." (Transcript, Arcata, July 24, 1964, p. 149(a).)

Ralph W. Chaney, Professor of Paleontology Emeritus, University of California at Berkeley; Discoverer of the Dawn Redwood

" Once we begin to defer to other considerations in conservation of our chosen areas, then we start down the path to losing it all. In centuries to come and as a paleontologist—I must beg your leave to look both centuries back and centuries forward—as a paleontologist I cannot but help wondering what Prairie Creek Redwood State Park is going to look like after it has been whittled down to suit the needs of all comers in the next thousand years. It seems to me, and you have heard far more direct evidence than I can provide, that our state parks should remain inviolate, selected because of their excellence, because of their beauty, their scientific value, their accessibility, they must remain at an irreducible minimum. Of all the state parks I know, there is none which meets so fully the requirements of beauty, scientific value, and accessibility as Prairie Creek Redwoods State Park. "

(Transcript, Arcata, July 24, 1964, p. 153)

Carney J. Campion, General Manager, Redwood Empire Association

" Over the past 40 years, leaders in the promotion and development of this spectacular area have recognized the most important single factor still lacking to realize optimum development is adequate transportation. This is true whether one considers development as full utilization of our natural resources or the preservation of these resources to be set aside as a vast park or recreational area. For until the average citizen can reach this area in comfort, convenience and safety, it will not be possible to realize and develop fully its tremendous potential.

"No other area in California is as dependent on highway transportation as ours. Railroads do not exist between here and Grants Pass, Oregon. Only every-other-day train service is available between Eureka and Willits, and no passenger service south of Willits. The Redwood Highway is the transportation and economic lifeline of the entire Redwood

Empire. Its development to adequate standards is absolutely essential.

"The California Highway Commission recognized this need when in 1959 it designated the Redwood Highway as a part of the state's 12,500-mile system to be constructed as freeways and expressways. The ultimate dream of a freeway from San Francisco to the Oregon line cannot be realized too soon. The old highway—that is those sections not yet constructed to freeway standards—has been obsolete for years. We support and welcome public pressure to construct adequate and safe highways, and indeed this pressure is continuous and persistent.

"Against the background of highway needs we encounter another important consideration which complicates highway construction. This consideration is our majestic redwood groves and parks. The *Sequoia sempervirens* are world renowned, and in good conscience we subscribe to the premise that all reasonable means should be made to sustain the publicly owned parks and groves in perpetuity. We compliment the Division of Highways and the California Highway Commission for their cognizance and established policy supporting this philosophy. Far from being the villains they have been painted, these agencies have done infinitely more to protect and preserve scenic values, in a practical way, and for the benefit of all the people, than their detractors would have you believe.

"The conflict of interest between trees and adequate transportation facilities is not an isolated conflict between a grove and a highway or a park and a highway. It is an extensive problem involving many miles of highways, numerous parks and literally millions of trees.

"According to figures furnished to us by the Humboldt County Board of Trade, Humboldt County alone has 48,356 acres of state parks. In addition to state parks, there exist city and county parks, historical landmarks and vast acreage of national forest lands, and all must be given consideration in highway location and construction. Obviously, all of these areas cannot be avoided completely by

highways In the final analysis, unless adequate transportation facilities are provided to serve them, they will never fulfill their intended purpose

"The very existence of many of our parks is due to the fact that highway construction in the early days made access to them possible Most of the parks were established around the obsolete highway And it is interesting for us to note that some thoughts on future park expansions center around not only on the existing highway, but around and/or adjacent to routes agreed upon and adopted for future freeway construction Some people oppose improvements on the Redwood Highway, but it is difficult to understand their protests when we consider the groves and parks were made possible by access If we may, let's look at the record and review some of the past highway problems in which REA has shared, in working out fair and equitable solutions One of the first problem areas involving parks and highways was in southern Humboldt County where magnificent redwood forests have been preserved in perpetuity and are collectively identified as Humboldt Redwoods State Park During years of close working relationships and splendid cooperation of the Division of Highways and Division of Beaches and Parks, and their respective commissions, they agreed on a 50-mile relocation between the Humboldt county line and Jordan Creek, a route which was adopted by the Highway Commission in 1956 It is popularly known as the Redwood Parks Bypass with those areas bypassed being called 'The Avenue of the Giants'

"Prior to the Highway Commission's route adoption, the State Park Commission in early 1956 passed a resolution approving this general location in principle, giving its tacit approval for the Highway Commission to proceed Mr Newton B Drury, presently executive director of the Save-the-Redwoods League and at that time Chief of the Division of Beaches and Parks, wrote the following statement to Mr Frank B Durkee, then Director of the Department of Public Works

"We are all most appreciative of the thorough and cooperative way in which your depart-

ment and the Division of Highways have worked with us toward solution of this problem'

"Such an endorsement of the 50-mile route relocation should have terminated the problems in southern Humboldt, but, unfortunately it hasn't The antihighway ultrapreservationists continue to agitate for relocation of the not-yet-constructed sections, and criticize the sections now completed or under construction

"Thankfully, 18 miles of the 50-mile relocation are open to traffic, and another 14 miles presently are under construction. Certainly it is our hope that time is going to permit each of you to view personally the freeway through the 'Avenue of the Giants'

"Today, there are 26 state parks near or adjacent to state highways in the counties of Del Norte, Humboldt and Mendocino Mutual agreement has been reached by park and highway interests on 15 relocation routes Of 10 or 11 areas not yet resolved, Prairie Creek State Park appears to be the one remaining problem area which is evidenced by the interest being shown here today

"Briefly, let's take a look at the makeup of Prairie Creek State Park It's 50 miles north of Eureka and completely surrounds the Redwood Highway for a distance of about eight miles The park comprises 10,298 acres There are 100 campsites and 25 picnic units The park is about four miles wide at its greatest width There is considerable beach frontage, about $\frac{1}{2}$ mile wide and $4\frac{1}{2}$ miles long, which is in private ownership It should be noted that condemnation of some of the latter land has been sought for the immediate vicinity of Fern Canyon. Between the beach and park boundary there is a timber area comprising mostly second-growth spruce — not redwoods — logged over as far back as World War I for use in aircraft construction

"The splendors of this park are made available to the public by the present highway, built in the 1920's well before the memorial groves were dedicated We feel that the Division of Highways is to

be complimented for the thoroughness in which present studies have been carried out for route relocation and for its farsightedness in conceiving the present route as a comparable scenic alternate such as we enjoy through the 'Avenue of the Giants'

"There are two points which give Redwood Empire Association cause for concern. The first of these is the calculated campaign centered around the Prairie Creek route relocation and also around a current study of a proposed Redwood National Park, which by inference leads the American public to believe that our *Sequoia sempervirens* is within weeks of being liquidated. The campaigners imply that every last tree standing should be placed in public ownership if future generations are to see them at all. The totally false impression is given that, through wanton destruction, the last of these trees are soon to be logged off. The deepest guilt is being resorted to by the proponents of this theory to accomplish their objective.

"The Division of Highways, the Highway Commission, and the integrity of the men who comprise these organizations are maligned when route studies relating to the Redwood Highway through forested areas are undertaken. The division is depicted as television 'bad men' in black hats who wield chain saws at midnight to deceive and despoil the public. We maintain that the record shows otherwise, and that our highway planners have done a dedicated job of preserving the balance between safe roads and scenic values, and we cite the 'Avenue of the Giants' and its bypass as a case in point.

"I have previously cited figures showing that many thousands of acres of the most scenic and majestic redwood groves are held in perpetuity for the public to enjoy. Certainly to this end the Save-the-Redwoods League, as well as farsighted timber owners in the counties concerned, deserve a vote of gratitude. Industrial forest owners have cooperated in assuring the most accessible and spectacular groves be preserved in perpetuity for the public to enjoy. Today, parcels are being held by compa-

nies after many years of the companies continuing to pay taxes in groves which will not be cut but still await state acquisition. But in measuring a number of trees against a number of fatalities and injuries we must honestly face the fact that a few more trees will be made expendable.

"We can quickly dispel some of the misleading propaganda when we refer to a recent study by Frank and Dean Solinsky, Inc. (noted forest consultants), which reveals that of the total old growth redwood (*Sequoia sempervirens*) there is a standing volume of approximately 19 billion board feet — 37.5 percent is in public ownership and 62.5 percent in private ownership.

"Not to belabor statistics — but we note 227,000 acres of publicly owned redwood forests — 118,000 acres which are old growth forests and 109,000 acres are young growth. Of the 227,000 acre total, 91,000 acres are state park lands. I wonder how many of us appreciate that 91,000 acres is equal to a 1-mile-wide and 144-mile-long stretch of redwood forests. This would tend to indicate that we have not cut our last redwood, nor are we about to!

"The second disturbing point, and it dovetails with the one just discussed, is the attack being perpetrated by a few local groups and individuals upon the integrity of the California Highway Commission and its duly authorized, proven and successful procedures in administering the expenditure of gasoline tax funds for highway purposes. It is personally distressing, and to our way of thinking totally unjust and damaging. To the Legislature of California must go credit for fostering the finest state highway program in the nation, and there is no reason for wholesale change when we view the record of accomplishments.

"Again, as in the past, it is pertinent to let it be known that the Redwood Empire Association has for over 40 years championed the cause of safe and adequate highways, and yet, at the same time, we have fought side by side with some of the present anti-highway interests for programs to establish the finest park system in America.

"The administering of our state highway budget of some \$700 million has been accomplished without scandal or political domination. The efforts to alter proven and time-tested procedures would lead to political chaos.

"We appear here today to reiterate our support which has been given to Governor Brown, that we will do everything in our power to improve highway safety and diminish the slaughter on our highways.

"In closing, bringing the Redwood Highway to a full freeway status can't happen fast enough, and we assure our continued support to the citizens throughout the Redwood Empire to continue our fight for safe and adequate highways, and at the same time press for growth and development which will be an enhancement to the entire Redwood Empire." (Transcript, Arcata, July 24, 1964, p. 225.)

J. C. Womack, California State Highway Engineer

"Impact on the park is nominal for either beach route. Impact on the park of the bluff route is essentially the same as that of the beach routes since the southern exits are also identical to those of the beach lines. There is, however, one important difference. Fern Canyon must be crossed with a bridge. This structure could be aesthetically designed to be as unobtrusive as possible, but would still present a serious problem between highway and park.

"Impact on community, recreational, historical, aesthetic, and park values—these are intangibles which are difficult to measure in terms of dollars or other concrete values. However, these factors are considered important and the division has given considerable thought to this aspect of the problem of providing a proper highway in this area.

"This portion of US 101 is a part of the scenic highway system which provides for special consideration in developing state highways through the more scenic areas of the state, both in the interest of preserving the present native values and affording the motorist an opportunity to view them. With this in mind, the location ultimately selected

will be designed and constructed to harmonize with the natural setting and take advantage of view to the greatest extent feasible.

"Each of the studied alternate routings are believed to have certain advantages and disadvantages in this respect.

"Conversion of the existing highway to a freeway through the center of Prairie Creek Redwoods State Park would undoubtedly have the greatest initial impact on the park. Once the road were constructed, however, and the natural setting restored, the extent of intrusion would probably not be noticeable to the average citizen. This location would afford all the motorists the finest view of the redwoods. Since it has the least amount of steep grades, truck noise would cause less disturbance to park visitors than on other alternates.

"The ridge route which passes through cutover land throughout most of its length would offer the least slightly view of the country and would require heavy cuts and fills due to the rugged terrain. However, it would open up some restricted vistas of mountains and canyons typical of the north coast country. With the passing of time, the scenic aspects of the route should improve as regrowth takes over, but it will be many years before an appreciable change takes place. Because of the extent of steep grades on this alternate, truck noise would be quite evident.

"The location along the beach is potentially the most scenic of the routes studied. With this location, the traveler will be exposed to views of wide beaches, 200-foot-high vertical bluffs, and native stands of spruce and redwood. This line does involve a heavy cut through the wooded ridge near the north end of the project, which would initially detract from the scenic aspects of a relatively small portion of the route. However, the lasting effects would be minimized by planting as has been done to the slopes on those portions of freeway which have been completed in the southern part of the county.

"The bluff line would provide the driver with only occasional glimpses of the beach and the

ocean below due to the extremely heavy grading involved and the need to position the roadway far enough back from the ridge to avoid damage from possible sloughing. However, vista points could be developed for southbound traffic at selected locations. These would provide excellent vantage points because the viewer would be 200 to 300 feet above the beach and ocean. This line would cross Fern Canyon. To avoid despoiling this beautiful natural phenomenon, plans for this alternate include a 900-foot-long, aesthetically compatible bridge to span the canyon.

"In connection with the subject of impact on the park, of a total of over 10,000 acres in Prairie Creek Redwoods State Park, the maximum park land required by any alternate is slightly over 100 acres. Similarly, of some 180,000 or so redwoods in Prairie Creek Redwoods State Park, the maximum number of park trees required by any line is 500. With respect to this feature, it is our intention to furnish the park comparable wooded land in replacement for that required by the highway.

"Aesthetic and park values were a prime consideration in the location of all of the various alternates from the standpoint of fitting each alternate to the existent terrain as closely as feasible in order to minimize any possible detrimental effect on these values. In this respect, neither of the studied beach lines, with minor exception, touch any portion of the beach within the state park.

"The effect of a freeway location on the beach is subject to differences of opinion, depending on the viewpoint of each individual. One viewpoint is that such construction would ruin the 'wild' aspect of the beach. We understand that Beaches and Parks proposes an access road to the beach in lieu of the freeway.

"On the other hand, many people are convinced that the freeway should be located on the beach to provide a new scenic tourist attraction and to permit enjoyment of the beach by the maximum number of people. This viewpoint further contends that the freeway will do no actual damage to this wide beach, since the land it would occupy is only

a small percentage of the beach, leaving an adequate area for recreation. This beach is eight miles long and the length of freeway on the beach would be three miles, leaving five miles of beach untouched. The beach required for highway purposes is privately owned property not within present Prairie Creek State Park boundaries.

"This beach is only one of several in the northwest area. There is a 3-mile, 700-foot-wide similar beach five miles south of Cape Mendocino and an 8-mile, 300-foot-wide beach north of Crescent City.

"The bluff line has been located parallel to and a safe distance back from the rim of the steep rugged bluffs along Gold Beach. This line, except for about a mile at the north end, does not pass through any park redwoods. It has been projected through the second growth spruce and alder lying between the edge of the park and the top of the bluff. The average width of right-of-way required would be greater for the bluff line than for the beach line. This is due to the heavy grading required by the deep ravines running down from the park area to the bluff. The top of the bluff is not flat, it is cut up by several canyon-like ravines. The placing of the highway on this location would involve very little usable land and have a minimum effect on the ocean beach to coast range integrity of the park.

"Expanding the existing two-lane highway to four-lane freeway standards would have little effect on present ocean beach to coast range redwood relation of the park.

"Placing the highway on a ridge line location would also have little effect on the overall relation between the park and beach. The ridge location does infringe on the park area but does not significantly affect the above relationship.

"Indications are that only a small part of the Roosevelt elk in the park use the beach. The various herds do not, as a rule, cover a great deal of ground in their search for food. The ridge herds, valley herds, and beach herds spend most of their time in their own individual environment. The actual effect on the elk would probably be somewhat the same for any of the alternates. We understand that

further studies are now being made on the habits of these elk." (Transcript, Arcata, July 24, 1964, p. 40.)

John Erreca, Director, California State Department of Public Works; Administrative Officer, California State Highway Commission

CHAIRMAN Z'BERG: "... To what degree will the past history and to what degree will the intent of the Park Commission be considered, and what is the weight and effect that will be given to the fact that the Highway Commission has never before adopted a route that the Park Commission has disapproved . . .?"

MR. ERRECA: "That is pretty hard to tell because I would still like to get a report from the subcommittees [of the Highway and Park Commissions] as to what their thinking might finally be to guide us.

"Now, I'll admit that we are at odds as to which routes are the most practical and will serve the community. I can see their position why they would like to have anything avoid the parks that might

perhaps mar the beauty of the park, desecrate it, or call it whatever you want, but I do not think that we are in the process of doing those things. I think that we are being unjustly accused. I don't say that freeways are ugly *per se*; I think freeways can be beautiful and can also add to the beauties of the natural surroundings, and I am hoping that we can reason this thing out. Also, money is a considerable consideration. These are public monies and I think that we should try to get the most out of our dollars that we can. I know we are accused of being, tending to be too much that way, but nevertheless, somebody has to pay the bill and if these people are going to pick a route or get a route that is going to deny them other improvements up here, they are going to wait several years for other necessary improvements because your formulas, I mean the legislative formula, is so set up that these people do not get the money in this area that other areas get, you know. And even the areas that get a lot of money are still short of freeways . . ." (Transcript, Arcata, July 24, 1964, p. 19.)



ASSEMBLYMAN BELOTTI: "I want to quote here from a letter written by Governor Brown to Mr Bradford 'I propose that you tell the public that redwoods needed from Prairie Creek Redwoods State Park and Jedediah Smith Redwoods State Park, no matter how few, will be replaced in kind by expansion of the state park boundaries at the expense of state highway funds' Do you believe that that would resolve the problem insofar as the cutting of trees, if you cut a tree here that you might replace with a tree in kind maybe several miles away? Are you in agreement with a proposal of that kind?"

MR ERRECA: "I think that wherever it is practical and wherever the park people say this can be done without altering the integrity of their park system, I think it can be done in places . . ." (Transcript, Arcata, July 24, 1964, p 20)

CHAIRMAN Z'BERG: "The Assembly in its wisdom passed a resolution that there be a hearing [on Prairie Creek alternate routes] either in San Francisco or Los Angeles . . . I wanted to have it clear in my mind if the fact was that you have not closed your mind to the holding of a hearing in accordance with that resolution . . ."

MR ERRECA: "Mr. Chairman, we always listen to whatever our legislative bodies ask us because we are a creature of the Legislature . . . I would also add, Mr. Chairman, I think that when that matter comes up, I think that a hearing in all due fairness has to be held up here where the people are affected by whatever decisions we make. Then any subsequent hearings that are needed, I am quite sure we would be willing to listen to people in San Francisco or Los Angeles, although privately I may think that perhaps it is none of their business, because I am a strong believer in local home rule, and I think people that are affected by these things should have the biggest voice in this thing . . ."

CHAIRMAN Z'BERG: ". . . Would you be saying that you don't feel that any impact on the park, and any decision that is made by park people that one of the routes might destroy for practical purposes the integrity of the state park, which is,

of course, enjoyed by the people of Los Angeles as well as the people up here, is strictly a local matter, and that the people throughout California should not be given an opportunity to present their views in an area that perhaps they can get to a little easier. You are certainly not saying this controversy is strictly a local controversy, are you . . . ?"

MR ERRECA: "No, it is not local. It is just like anything else. Somebody cranked up quite a controversy here and we have to face it, but I would never buy the first proposition that we are going to ruin any park. You see, that has not been proven to me . . ." (Transcript, Arcata, July 24, 1964, p 21)

CHAIRMAN Z'BERG: "The final decision as to where the freeway is going to go rests with the Highway Commission because, as I understand it by statute, when the Highway Commission makes a route adoption, that is the conclusive presumption and is irrefutable. But in arriving at that decision, I am concerned as to what the factors are, what the information is that the commissioners use. For example, in the staff of the Division of Highways, can you tell me what personnel you have, if any, who are trained in wildlife management and were trained in the park values, what staff does the Division of Highways itself have, or do you rely for your information upon the Division of Beaches and Parks?"

MR ERRECA: "We rely on their information. We work with them. We work with all agencies that are reflected in any highway routing . . ."

CHAIRMAN Z'BERG: "I would take it then that if the information that you are going to rely upon, as far as your expert information on park values, wildlife values, and those sorts of things, comes from the Division of Beaches and Parks, and if they tell you that this will destroy a great deal of the park, that you accept that as the fact but that you would then route whatever route it is that you finally select accepting that as a fact. Is that a fair statement?"

MR. ERRECA "Well, we gather facts from every source we can. I mean, we still have to weigh these facts and we have to balance all the information we have."

CHAIRMAN Z'BERG. "I understand that. Speaking now about just these values, not money considerations, or safety or any of those things, I'm speaking now about park values, about wildlife values, and those sorts of values. Is there any information that you get, any sources of information that you have, other than the Division of Beaches and Parks, which will allow you to make a judgment on these values?"

MR. ERRECA. "Well, Mr. Chairman, you are asking me a question that I cannot answer because, really, the commission has not heard this matter formally, so we really do not know what their sources are. We will get this information when it is presented to us. I am quite sure that perhaps Mr. Helwer or somebody else could answer that a lot better than I could."

Sam Helwer, District I Highway Engineer, Eureka, California

CHAIRMAN Z'BERG. "To kind of boil it down in a nutshell, the real controversy here between the Park Commission and the division is not really over redwoods so much as it is the integrity of the park and what they consider to be the important park value, that is, the beach. Would you say this is about right?"

MR. HELWER. "I am very happy that you made that observation, Mr. Chairman. This is the observation that I have been trying to make to the public for a long time. This is not a controversy over redwood trees. I mean, it *should not be* a controversy over redwood trees, because every one of the alternate lines requires redwood trees out of the park, and as a matter of fact, the line that has been requested or favored by the people that are conservation minded actually takes more redwood trees out of the park than some of the other lines. So the question is, the beach. That is what the controversy should be about."

CHAIRMAN Z'BERG. "So that then, as I take it, the position of the park people then is that any proposal that would substitute a like number of redwoods for a certain number of redwoods that are going down, really does not meet the problem head on, and that their position is that if the beach route is adopted that that destroys the park irrespective of whether redwoods are added on to the park or not."

MR. HELWER. "This is their position, as I understand it, but the 'tree for a tree' solution still should solve that part of this problem."

CHAIRMAN Z'BERG. "Well, you are not going to substitute a 'beach for a beach,' are you?"

MR. HELWER. "No, sir. That is going a little too far." (Transcript, Arcata, July 24, 1964, p. 23.)

CHAIRMAN Z'BERG. "As a result of the division hearing, I assume that there were numbers of people that testified about the saving of the park and of the redwoods and that sort of thing. In the formulation of your opinion that you directed to the state engineer, what significance did you give to the fact that this is a park, and that there are park values affected, and that the park people were unanimous in opposing any route through the park, except for the ridge route?"

MR. HELWER. "Mr. Chairman, I have been district engineer up here for nearly eight years and I have had problems involving parks during all the time I have been here and I have always given consideration to parks and park values. And I did the same thing in regard to this project."

CHAIRMAN Z'BERG. "Now, on your local staff itself, do you have a forester or a landscape architect on the..."

MR. HELWER. "No, sir, we do not."

CHAIRMAN Z'BERG. "What information then did you rely upon as to what damage or infringement might be done to this particular park as a result, let us say, of the beach route? Would you have to rely upon the Division of Beaches and Parks?"

MR. HELWER. "To a great extent."

CHAIRMAN Z'BERG "And as I understand it, they were unanimous in saying that this was going to greatly damage the park, so I assume then that your opinion included that fact, that whatever your recommendation was, it included as a fact that there were going to be park values that were going to be damaged."

MR. HELWER "Well, I took it into consideration"

CHAIRMAN Z'BERG "In making your recommendation, do you go outside the local area or outside the local Division of Beaches and Parks to determine defects upon parks, in other words, do you get any statewide help in making your local decision or do you rely upon the local information that you have?"

MR. HELWER "Well, these projects are not developed or decided overnight. We have been studying this project officially for about three years. One of my first official trips in this district shortly after I came here was to take the trip through Prairie Creek State Park in the company of Mr. Newton Drury."

CHAIRMAN Z'BERG "Are there any authorities in the state that you consider to be outstanding authorities outside of and/or in addition to the local Division of Beaches and Parks?"

MR. HELWER "Some of the Forest Service people, I believe, are qualified along this field."

CHAIRMAN Z'BERG "What I am getting at is that other than relying upon the Division of Beaches and Parks as to their statement that park values were going to be damaged seriously, did you seek any additional help or information from other people knowledgeable in parks and/or park practices?"

MR. HELWER "I think I had better just answer that 'No'" (Transcript, Arcata, July 24, 1964, p. 26)

... Concerning the Need for Nonengineering Specialists on the Planning Staff of the Highway Transportation Agency

J. C. Womack, California State Highway Engineer

"With respect to the assignments of

individual staff members and the decisions made at the various levels in the administrative organization, in general, the detailed work is performed at the working level in the district under the supervision of professional engineers and subject to further review and approval by the top level planning staff in the district, including finally the district engineer. In general, the major steps are further reviewed in the headquarters office of the Division of Highways at the department head level or higher and the final decision with respect to recommendation of a highway location to the California Highway Commission is made by the State Highway Engineer.

"To expand upon this further, the following comments cover the decisions made at the various levels on a step-by-step basis.

"Inclusion of Project in Statewide Planning Program (Initial Determination of Need):

The decision relative to the determination of the need for a highway improvement at the district level is made by the district engineer. His recommendations in this regard are contained in the district's long-range planning program submitted annually to headquarters office for review. This tentative program is reviewed on a project-by-project basis by headquarters planning staff and the top level management of the division, including personal review by the State Highway Engineer.

The decision is based on such factors as safety, the importance of the route from a traffic service standpoint, current deficiencies, fiscal considerations, and the recommendations of local officials and civic groups.

"Issuance of Engineering Work Authorizations: Authority to approve requests for initiation of engineering studies on projects included in an approved planning program is delegated to the assistant advance planning engineer in headquarters. Decisions to undertake engineering studies on major projects not included in an approved planning program are made at the level of deputy state highway engineer or higher.

"Accumulation of Engineering Data and Coordination of Studies: The engineering data

for the most part is developed at the working level in the district under the supervision of *professional engineers*, and subject to the review of the *assistant district engineer—planning*, and the *district engineer*. With regard to the possible alternate routes to be studied, a number of factors enter into the determination and a number of individuals at various levels from different organizations or agencies enter into the decisions. Numerous meetings are held with other state, federal, or local governmental agencies or civic groups to coordinate with their planning to receive information and to obtain their thinking with respect to the studies. Suggestions or requests received in these meetings are investigated. Locations shown on local master plans are also included in the division's studies. Topographic features, legislative controls, community and cultural development, and relative traffic desires are other factors which play a major part in determining the possible alternate locations. After the initial studies have been completed, the data is reviewed by the *district advance planning engineer*, the *assistant district engineer*, and finally by the *district engineer*. At any stage of this review a decision may be made to investigate additional alternates, or to delete those which obviously offer no advantage from either an engineering, community or area development standpoint.

“ *Submission of Project Report*: The final decision at the district level relative to the adequacy of studies is made by the *district engineer*, who submits under his signature a project report to headquarters. This report is reviewed in detail by the various affected headquarters departments. This detailed staff review is at the *senior and supervising highway engineer* levels. It is then presented before a review board consisting of the department heads (*principal highway engineer level*) of the advance planning, design, traffic, and programs and budgets departments as well as reviewers at the *supervising highway engineer* level representing the advance planning, design, traffic, bridge, and operations departments. This board considers the completeness of the studies, the rela-

tive merits of the proposal, the type of improvement proposed in relation to the need, the feasibility of the various studied alternates and their advantages and disadvantages from the standpoint of compatibility with the local community planning or area development, scenic and aesthetic values, traffic service features, and cost. As a result of this review, the district may be requested to undertake additional studies. Similarly, at this stage some of the studied alternates may be eliminated from further consideration for engineering reasons, excessive community or area disruption, inadequate traffic service, or extremely high cost without other compensating advantages. The final decision in headquarters with respect to project report approval is made at the *assistant state highway engineer level* or higher.

“ *Presentation of Engineering Data to Local Officials and Their Technical Staffs*: At the time the data is presented to the local officials, they are requested to furnish their comments relative to the adequacy of the studies. Decisions in this respect, in general, are made by the heads of the planning and engineering departments of the local jurisdiction or by representatives of the city council or board of supervisors, depending upon the individual case. This could involve the undertaking of additional studies or the elimination of some alternates which were previously investigated at the request of an agency or jurisdiction but found to be unsatisfactory.

“ *Public Hearing*: The decision to proceed with a public hearing following receipt of a report on the results of discussion outlined above is made at the level of *assistant state highway engineer* or higher, depending upon the complexities of the project and the general degree of public interest. At this time a final determination is made with respect to the alternate locations to be presented at the public hearing.

“ *Review of Results of Public Hearing*: The results of the public hearing are first reviewed by the *district engineer* and his staff. The *district engineer* then submits his recommendation to the



State Highway Engineer relative to the routing along with project data, including study report and transcript. Again a complete review is made by headquarters planning staff with special emphasis on suggestions made or data brought out at the public hearing. *Headquarters advance planning engineer* then submits a recommendation to the *State Highway Engineer*, through the *assistant and deputy state highway engineers, planning*. If it is deemed that additional field investigation is necessary in order to evaluate suggestions, then further studies are ordered. This may be at the initiation of the *district engineer* or at headquarters' request at a level extending from *advance planning engineer (department head)* to *State Highway Engineer*. In the cases where these additional studies are made and the suggestions prove feasible (as determined by the *State Highway Engineer* in conjunction with *district engineer* and headquarters planning staff), then a second public hearing is held in the area to explain the results of the additional studies. A report and transcript of all hearings are furnished each member of the California Highway Commission.

“ . . . *Submittal of Recommendation to the California Highway Commission*: The final decision with respect to a recommendation to the California Highway Commission is made by the *State Highway Engineer*.

“ . . . *Route Adoption*: The final decision with respect to adoption of a routing rests with the California Highway Commission. The *State Highway Engineer* assists in this selection by furnishing the commission complete information concerning the studies, including a summary of the public reaction, transcripts of proceedings of all public hearings, his recommendation and the basis upon which he arrives at this recommendation. The *State Highway Engineer* also furnishes the commission with any additional reports or information the commission may desire to assist it in reaching a decision. In addition, of course, the commission obtains a great deal of information on its own . . . ”
(Transcript, Arcata, July 24, 1964, p. 53.)

... Concerning the Need for Dissemination of More Complete Information Prior to the First Public Hearing by the Division of Highways

Hon. Rodger M. Huckins, Mayor, City of Stockton

"The city council was less satisfied with the presentations of the district in the case of the Crosstown Freeway for the reason that the presentations made on behalf of the district failed to inform the council adequately of the alternatives posed by the possibility of different designs. As an example, the district in this case indicated the construction would be an elevated freeway. The city council's continued request for further information, which possibly the district office was unable to provide, led to the condition contained in the city council resolution referring to a 'viaduct'.

"The points which we wish to get across to the committee are two: (1) The problem the city council faced at the time of the route adoption was essentially this: three alternative alignments were presented. The council and the community were asked to express their views and presumably to approve and recommend to the highway commission one which they favor. From the standpoint of alignment they favor the one ultimately selected. However, we may not have been so disposed had we been provided the information which we requested concerning the ultimate design features, that is, whether the division proposed a dirt-filled freeway or a viaduct freeway. Local legislative bodies should be given more design information before they are requested to make decisions. (2) Small-scale maps presented to local agencies by district offices throughout the state fail to adequately inform the governing body of the implications set forth by such maps. As an example, a circle is shown for an interchange. In the agreement concerned with the Westside Freeway, that circle occupies about four square blocks or approximately eight acres. Recent detailed planning two years later reveals that the interchange will occupy approximately 60 acres, removing a considerably greater amount of assessed valuation in an industrial district. This obviously affects many property owners who, according to all information pro-

vided the city during the agreement stages, felt they were not to be affected.

"Thus, many private and public problems seemingly solved really are only now coming to light. The city council in its attempt to protect the interests of residents of the city had so little information to go on that it could not do so. An experience of this type multiplied in various areas throughout the state causes unnecessary apprehension. The knowledge of the Division of Highways engineers should be shared with the local jurisdictions.

"In the same way, the district information provided the legislative body is inadequate in describing what the construction is to be. In this case, the district did not define what an elevated freeway constituted. Through the lack of the district office's providing this information, unnecessary suspicions arise as to what is really to be done. The community is placed in a hopeless position to find out design treatment. This would appear to be unnecessary and could be prevented by having district offices make more complete presentations.

"As related to you earlier, the city council did conditionally approve in December 1961, the route for the Crosstown Freeway. Despite that, in February 1963 a letter was received from the district engineer, together with a letter from the State Highway Engineer, asking the city council to enter into a formal freeway agreement not in conformity with the council resolution. We are advised that this would prevent the city from having any further control over the design treatment of this structure. Approximately 30 square blocks of urban developed property and associated assessed valuation within the City of Stockton will be used in this roadway. The local legislative body feels a responsibility to make their decisions after they are presented the facts and not before. This is a significant decision affecting many properties. More than twice as many properties will not be touched by highway right-of-way agents adjoining this route on either side as are to be purchased. Access, appearance, etc., are of more than momentary importance to these properties.

"Frankly, we are not here to grind our local ax or try to ask you as a legislative committee to enter into a problem at the local level. What we are here for is to make the point that unnecessary amounts of time pass without any action on the part of district offices. We would suggest that district offices be required to work continually with local jurisdictions at staff level on planning. We understand that this will now be taking place due to federal legislation. We believe it is constructive.

"The negotiation pattern is such that district offices spend anywhere from 1 to 10 years drawing plans for specific sections of new routes, without taking into their confidence the local areas as to which routes seem to have merit or lack of merit. In fact, much of the information which the Division of Highways is gathering can be of fundamental use to the local jurisdiction in that time period in the installation of signals, in the coordination of major street patterns, in the coordination of construction, in the coordination of new subdivision developments, etc. In all of these areas the community and the state can work for the mutual betterment of the community, which is the state. We are not taking advantage of the almost numberless opportunities which are available.

"The result of the lengthy and relatively secret planning of the Division of Highways finally is brought to light in a public hearing before the city council. These people as laymen are asked to approve situations many times without their own advisers having been given the time to be acquainted with why the decisions are being recommended that way by the Division of Highways.

"As we have mentioned before, when two or more alternative proposals are made for a route through a community, it does make a difference how that route should be constructed. We should have the opportunity of examining material which the division has prepared to justify their position. We should have an opportunity to constructively criticize their economic criteria.

"A depressed route through a neighborhood has a different effect than an elevated community dividing route, and first cost is not always last cost. We

feel through greater mutual exchange, which must come from state officials, less mistakes will be made and wiser expenditures of money will result.

"If the Division of Highways in its wisdom is able to design a structure which can reduce the tremendously frictional effect of such new construction, those advantages should be obtained. If the Division of Highways has come up with subsequent designs, then they should make them public and they should be shown in sufficient detail to be readily understood and presented in sufficient time prior to the public hearing so that complete review and constructive discussion can take place.

"In some cases side benefits can be obtained for the community through intelligent design. Those side benefits, although relatively few should be obtained wherever possible to minimize the tremendously disruptive effects which continue for many years in the community and have unmeasured economic effect.

"All of us recognize the positive and beneficial effects of the freeway system in California. Sound, logical, mutual actions can make it be a continually improving freeway system.

"A placement of a freeway in the urban environment can be done in a number of ways. When done properly recognition will be made by the designers that the cost of construction must include those factors which will result in lasting long-term benefit to the community as well as those that are a physical requirement due to soil tests or the dimension of the traffic which is going to use the roadway. Community values must not be ignored. These roadways are for human beings to be placed in human environments." (Transcript, San Francisco, December 20, 1963, pp 134-139)

Hon. Harold Ball, Mayor, City of Manhattan Beach

"The Highway Commission, in its mandate from the Legislature to build a freeway system, most emphatically states individually and collectively that the Legislature and hence the people wanted freeways to be free of politics. While this noble statement of ideals doesn't always square

with the facts in the case, it does nevertheless point to a critical need in freeway planning. If freeways are to be removed from politics and hence from people, and we have abrogated our right to govern if the statement has validity, there must be some way that community appeals can be made.

"If you in your mandate to the commission fail to do more than designate an approximate route, we the people are left with precisely no remedy at all, since a route or right-of-way is never designated or studied as an integral unit but is segmented. In other words, if a segment of right-of-way, after all the hearings by the department, is purchased in points such as Newport Beach, International Airport and Malibu, all of the rest of the deliberations, hearings, etc., are after the fact since there is only one way within narrow limits to tie the rest of the freeway to these already chosen points.

When I attempted to raise the above fact or issue before a hearing of the department, I was told that a short segment of the freeway at a distance had no relation to our own case. This idea is patently ridiculous and has been ever since the two railroads managed to meet in Utah in the last century.

"Assume then, that the Coast Freeway is to be designed. Wouldn't it be quite logical to first call meetings in each area and all areas together work out some of these problems, at least with the leadership, before extensive work is done and hearings are scheduled for even one part? I believe that if this had been done nearly every coastal community from Santa Barbara to San Diego would have indicated that a freeway paralleling the ocean should be constructed inland (approximately four miles) and each community then served by ordinary service links that are perpendicular to the freeway and to the ocean. As it is now they have forcefully cracked a couple of us 'tough nuts' and all the rest will just get tied in. Our only remedy now, unless this committee can bring in some light, is to seek removal of the Coast Freeway from the log when

you consider this in 1965." (Transcript, Santa Monica, February 20, 1964, p. 35, 36)
Assemblyman Greene. Comments to John Legarra, Deputy State Highway Engineer

ASSEMBLYMAN GREENE "To go a point further here in explanation of what's in my mind, Mr Legarra. The public can't be asked to understand a technical presentation, you know, unless it is put in form. In general terms, they can't understand the technical terms of it. I would suggest to you, sir, that it might be worthy of consideration, that the maps you use to publicize immediately before and use during such hearings, might to a greater extent be aerial photographs of the area in question, rather than a line drawing on a map. This aerial photograph would actually show by definition the full extent of the right-of-way width.

"Of course, you have mentioned that in some specific instances you go to models. I would suggest that there might be reason for you to consider whether you do often enough use renderings and other means of perspective drawing as opposed to models, which are extremely expensive, naturally, to advertise your wares." (Transcript, San Francisco, December 19, 1963, p. 23)
Chairman Z'berg: Dialogue with John Legarra, Deputy State Highway Engineer and Emerson Rhyner, Counsel, State Department of Public Works

CHAIRMAN Z'BERG "I would like to pursue one or two things if I could with regard to models and design of freeways. It seems to me—that many times the controversy over freeways is as much what kind of a freeway is being built as where the freeway is being located. Would you agree?"

MR LEGARRA "I don't think that is true in the average case. There are exceptions and I think you pointed out one in Stockton which at the time of the hearing, now that you brought it up, was concerned about the problem of viaduct in a certain place."

CHAIRMAN Z'BERG "San Francisco is a good example of another one, I imagine, isn't it?"

MR. LEGARRA: "San Francisco is another one and in most cases where these problems arise, and where this is an important aspect in determining where the freeway should go, we do go into the detail of design, including the preparation of models if necessary for critical areas and more typical areas."

CHAIRMAN S'BERG: "Have you ever had the criticism after a route has been adopted that the people who adopted the route didn't know what kind of a freeway was going to be built and had they known this, perhaps they might not have adopted the route?"

MR. RHYMER: "Yes. I think the most outstanding example is the Embarcadero Freeway, Mr. Chairman, and strangely enough we did have an exact model of that at the freeway hearing but it didn't overcome the problem. They are not always the absolute answer although models can be extremely beneficial."

CHAIRMAN S'BERG: "In arriving at your estimates of costs for the various alternate routes you obviously must have some idea of what the freeway is going to be like, don't you, to come up with a cost figure?"

MR. LEGARRA: "Yes, Mr. Chairman."

CHAIRMAN S'BERG: "All right. Then if you have done that, you have determined, for example, whether it's going to be depressed or whether it is going to be elevated in arriving at your cost figures, have you?"

MR. LEGARRA: "Yes. The point I'd like to caution you there is that these estimates are prepared on what we consider a comparable basis for the alternates. It could be in the actual design that portions which we indicated would be at ground level will be depressed actually when you get into the final design and negotiations with the city, or vice versa."

CHAIRMAN S'BERG: "Well, if you have taken into account what the freeway is going to be like in coming up with your cross figures, do you publicize this at the time you indicate your alternate routes? That route A is going to be an elevated freeway; route B is going to be depressed; route

C is going to be elevated here and depressed there; and route D is going to be a tunnel or something else?"

MR. LEGARRA: "Ordinarily what we say is that the basis of these estimates is this, whatever it is—grade line or elevated or depressed or whatever it might be, but unless the detail has been worked out, not only by the division but also with the local people, we don't know at that point exactly what it is going to be and the people are informed that in the detailed design that this could change. Now there are special areas in which it is extremely important that they know whether it's going to be depressed or not. In those cases we will go into more detailed design."

CHAIRMAN S'BERG: "But you have a fairly good idea of what the freeway is going to be like, don't you, in order to be able to come up with a cost figure?"

MR. LEGARRA: "We have, yes. We have a tentative idea, a preliminary idea which is subject to change in the detailed design."

CHAIRMAN S'BERG: "Right. But this tentative idea, do you publicize it along with the route?"

MR. LEGARRA: "We don't make this a major portion of the presentation, Mr. Chairman, but the information is available there to describe to anyone who is interested in that phase of it."

CHAIRMAN S'BERG: "Isn't that one of the problems, that the public isn't interested until they become affected, and oftentimes the individual person and the public doesn't know where to go to get the information perhaps; or he is not even aware of what is happening until a hearing is held. From a standpoint of letting the public think you are concerned what the public cares about, don't you think perhaps you ought to make this a more major portion of your presentations and make it clear from the beginning? Perhaps with the drawings as I think Mr. Greene suggested, or from models, what the freeways are going to look like tentatively if route A is adopted or route B is adopted or route C is adopted?"

MR. LEGARRA: "This could be done, but again we would have to qualify it when we present it at that point. . . ." (Transcript, San Francisco, December 19, 1964, pp. 70-74.)

Chairman Z'berg: Dialogue with Emerson Rhyner, Counsel, Department of Public Works

CHAIRMAN Z'BERG: ". . . Would you like to comment on why the Division of Highways opposed legislation which would have authorized or required models of freeways before you adopt the routes?"

MR. RHYNER: "We pointed out to the committees, Mr. Chairman, that making the use of models mandatory would be expensive and time consuming. You take a 7-mile stretch of freeway location with 5 or 6 alternates—for this you've got 7 times 5 in 35 miles there and . . ."

CHAIRMAN Z'BERG: "But you already have your tentative freeway so why can't you make a tentative model?"

MR. RHYNER: "No, you'd present all the alternates, Mr. Chairman, so you would have to make a model of each alternate for this extremely lengthy thing and it would be expensive and time consuming. That was the basis of our comments to the committee. This, I think, went further than your suggestion of where models were impractical and too costly that some other type picture or diagram might be of much more use."

CHAIRMAN Z'BERG: "Well, you wouldn't see the same objection to drawings then perhaps?"

MR. RHYNER: "I think that tempers it greatly, Mr. Chairman, as far as cost and delays are concerned." (Transcript, San Francisco, December 19, 1964, p. 78.)

Mrs. Ariel Sloan, Secretary, San Bruno Anti Freeway 229 Association

MRS. SLOAN: ". . . I think our views are not covered as much as they should be newspaperwise either and I do not feel that the public, the whole public, is informed completely and in enough detail as there are still people in San Bruno who don't even know what is happening. We tried to reach as many as possible, but they actually don't know. And, of course, there are new people coming in,

sales of homes and new people coming in and they are not informed of what is going on. We have people right in our own neighborhood who have moved in and did not even know that there was such a thing as a freeway going through until they had bought the property and were all settled. I feel that people are very much in the dark as far as these freeways are concerned and I am saying this from our own experience. And I think that is why we organized, in order to inform the public. . . ." (Transcript, San Francisco, December 19, 1963, p. 121.)

J. L. Ayers, President, Malibu Community Organizations Freeway Committee, Inc.

MR. AYERS: "I wish to preface my talk here by endorsing in detail the statements made by Mayor Ball of Manhattan Beach. I think that his statements covered a lot of the problems in Malibu to an excellent amount, and we can do no better than he did in giving a case for the beach communities."

"I shall talk about how the three main criteria are determined and used by the California Division of Highways and the Highway Commission in the selection of a freeway route. By profession, I am an engineering manager, specializing in cost and engineering data. I am, therefore, giving a professional opinion on two of the three criteria: the costs of construction and right-of-way and the highway users' savings."

"Firstly, the costs of construction and right-of-way. After years of preparations by the highway engineers, we are presented with a one- or two-page cost summary. No supporting data is made available; it is not possible for the general public, qualified or not, to check the costs for validity. In Malibu, we have reason to doubt that the costs presented are valid. We want to know the basis for cost determination and actual detail values used in arriving at the estimates. These items must be checked out for validity and possible errors, before we can accept them."

"I am told by the highway engineers that costs are estimated on present-day values. Is this not a peculiar way to estimate the costs of acquisitions that will be made in 2 to 8 years, and construction

that will start about 10 years hence? Costs projected ahead using available business trends and data would be more valid. In Malibu, I am confident that the cost differentials between routes would not be so noticeable if the normal business practice of projecting or planning ahead were used.

"Now for the highway users' savings I have heard this explained in various ways. At a meeting on the Malibu Freeway on September 19, 1961, it was said that this would 'involve some rather complicated calculations using nationally accepted methods', whatever that means. It is indeed a complicated procedure. It was derived as a textbook exercise and has never been anything else. It is my considered opinion that the estimates used in these calculations could never be validated in a practical manner. To do so would require a survey of every motor vehicle driver in this state. Each driver would have to give exacting details of every trip in any motor vehicle on every day of the year. This is obviously impossible. We are left, therefore, with nothing but theory and 'guesstimates'. I find it impossible to justify major decisions based on unvalidated information.

"The third criterion, the effect of the proposed freeway on the communities through or around which it passes, is one that I am not professionally qualified to analyze. But then, who is? The Division of Highways is not—and this is admitted publicly. Are members of the Highway Commission qualified? If so, what are their qualifications? How then is this criterion established? We are told by the Division of Highways that public meetings are held to let all interested people express their opinions, etc. But what qualifications do the general public have to determine the effects of a freeway on a community? What qualifications do the people have who review public meeting data for the state? The answers are obvious. This whole process compounds ignorance with ignorance. For the job to be done properly, an independent and qualified survey team should examine this criterion for the

community and the state. I refer here to the preliminary survey 'Impact of a Coastal Freeway on the Malibu Community' * containing a letter written by Dr. Richard T. Morris, who is qualified on this subject. Dr. Morris writes, 'As a social scientist, it is quite evident to me that there exist techniques and personnel who are competent to do research which will measure and estimate such effects upon a community, and if the (Highway) Commission is serious about its third criterion, it should make every effort to establish procedures to carry out such research study on a sound and competent basis.'

"To this date no such serious approach has been made. Not only is nothing being done by qualified personnel, but state agencies involved are using questionable methods to cast doubt on the data presented by local citizens on behalf of the community." (Transcript, Santa Monica, February 20, 1964, p. 82-85.)

Louis Rugsdale, Vice President, Malibu Community Organizations Freeway Committee, Inc.

"The procedure of the California Division of Highway Engineers is to present various alternate route cost studies of a particular segment of a route prior to adoption. It is apparent that a complete evaluation of any route cannot be made unless costs are known for all routes so that comparisons may be made. Comparative cost data must be complete, current and comprehensive. In the case of Malibu various cost studies were presented. An examination of the record reveals that in the case of right-of-way costs the most detailed studies were made along the narrow Malibu coastal shelf in connection with route segments which were of greatest interest to the engineers. Those inland routes which preserve the prime residential and recreational land along the Malibu Coast were slighted or ignored. The consensus of opinion of land developers, real estate brokers and appraisers

* Submitted for the record and available for review in the Committee Office.

is that the costs of right-of-way along the coastal segments preferred by the engineers were too low as to market value and the costs of the right-of-way inland were too high as to market value. In other words the Highway Engineer devised costs which were favorable to the routes first developed by the engineers and obviously preferred by the engineers. In order to obtain cost data on inland routes it was necessary for the California Assembly to pass House Resolution 430, June 1963. Even subsequent to H R 430 being passed, the engineers have not given equal consideration to routes preferred by the community on the basis of right-of-way cost. This is a serious matter and is deserving of attention at the legislative level.

"Some three weeks ago the Malibu Community Organizations Freeway Committee obtained a new study map from the District VII Engineer. This map had been exposed to certain people in Malibu without the knowledge of the Malibu Freeway Committee. This map represents a variation of the California chief engineer's recommendation made to the California Highway Commission in October 1963, in Sacramento. In this instance we observe the District VII Engineer's staff assume the position of promoters of a particular segment of a freeway route. Unpublicized meetings have been arranged and field tours made with a small group. This is a procedure that is current in Malibu and is subject to criticism on the basis that all studies should be given wide exposure to all of the community. In fact, it is the stated method of procedure of the Highway Commission for all studies, all routes, all maps, etc., to be shown to the whole community which is affected by a proposed route or segment of a route. You may well ask: Has the chief engineer of California made his recommendation based upon the best estimate within the requirements of his office? Or is the aforementioned procedure being followed by the engineers to promote a division in the Malibu community by dangling a redesign of a segment of the engineer's recommended route as a promise of 'something' just

before the California Highway Commission hearing to be held here on February 25, 1964?

"The public record will show that around the state it is common practice in the Division of Highways procedure to study a segment of a route rather than by careful application of engineer's methods to insure that the complete route is included in the studies. The District VII Engineer has explained that there is not enough staff available to study complete routes so that the job must be undertaken through segment studies. Of course, enabling legislation may describe terms such as El Rio to San Juan Capistrano and one does not expect one study between these locations. But my contention is that the integrity of a community should not be compromised by segment studies. I believe that the engineer can undertake the study of a route in each community in order that the overall effect on community values may be analyzed prior to adoption of any segment in compliance with existing criteria. This is such a serious matter that legislation should be passed which would require that studies may be conducted only for complete routes and segmentation should be prohibited by law. Such legislation should require that route studies be conducted and adopted on the basis of community boundaries, legal or historic. This would result in procedure that would require examination and decision based upon the whole rather than the part. A change in procedure would be invaluable in the case where one segment requires a special structure such as a causeway. The point is that where a special type structure such as a causeway is required only a complete route should be adopted as one segment affects another and premature adoption of a particular segment may render proper planning of the special structure impossible." (Transcript, Santa Monica, February 20, 1964, p. 89-93.)

Dennis Patrick, Resident of Malibu, California

"As a resident of Malibu, a beautiful 26-mile-long, very narrow coastal community, stretching north and west to Santa Monica, I am best

acquainted with the pending decision of a freeway location in Malibu, the one we have just been discussing. And I would like to add that the reason I am here as a private citizen is that I am beginning to get the feeling that what I say does not count. However, my remarks will apply to the criteria for freeway locations for all of the scenic communities of California which, in fact, includes the whole state. The entire coastline of California, from Oregon to the Mexican border, is a God-given natural resource which must be given an A-1 priority in planning for the recreational and residential needs of California's exploding population of the future. Major transportation arteries can, and should, be planned to pass by and provide access to, recreational and residential areas. Not to pass through and remove these resources so vitally needed for the future. For example, the freeway route recommended for Malibu would remove one-fourth of the land potential for recreational, residential, and commercial development, and by its very course aims a loaded gun towards the beach all the way to Santa Monica. A member of the Los Angeles County Regional Planning staff appeared in Malibu recently to explain, forecast development for the area. He indicated a capability in the area for a population of 96,000 30 years hence, and then conceded that potential land area for 24,000 residents would be removed if the presently recommended route is adopted. I should like to state, first of all, that where I live will not be affected by any of the planned freeways that are going anywhere, so I am only here from an altruistic point of view. Yes, procedurally we are most concerned in Malibu with the renderings, the overlays, the pictures, the information that has been given to us, because we're also intelligent people. We also are completely uninformed as a whole. Our various groups along various beaches—some of them don't even know that it is happening, and we are still trying to wake one another up, because the average guy sitting down there says—well, that's up there, and it doesn't affect me. He doesn't know it will affect him until next week. So, in essence the average citizen is put into a terrible position

of having to organize himself, in a sense to defend himself from an organization that is supported by his own tax money. It's a very difficult thing.

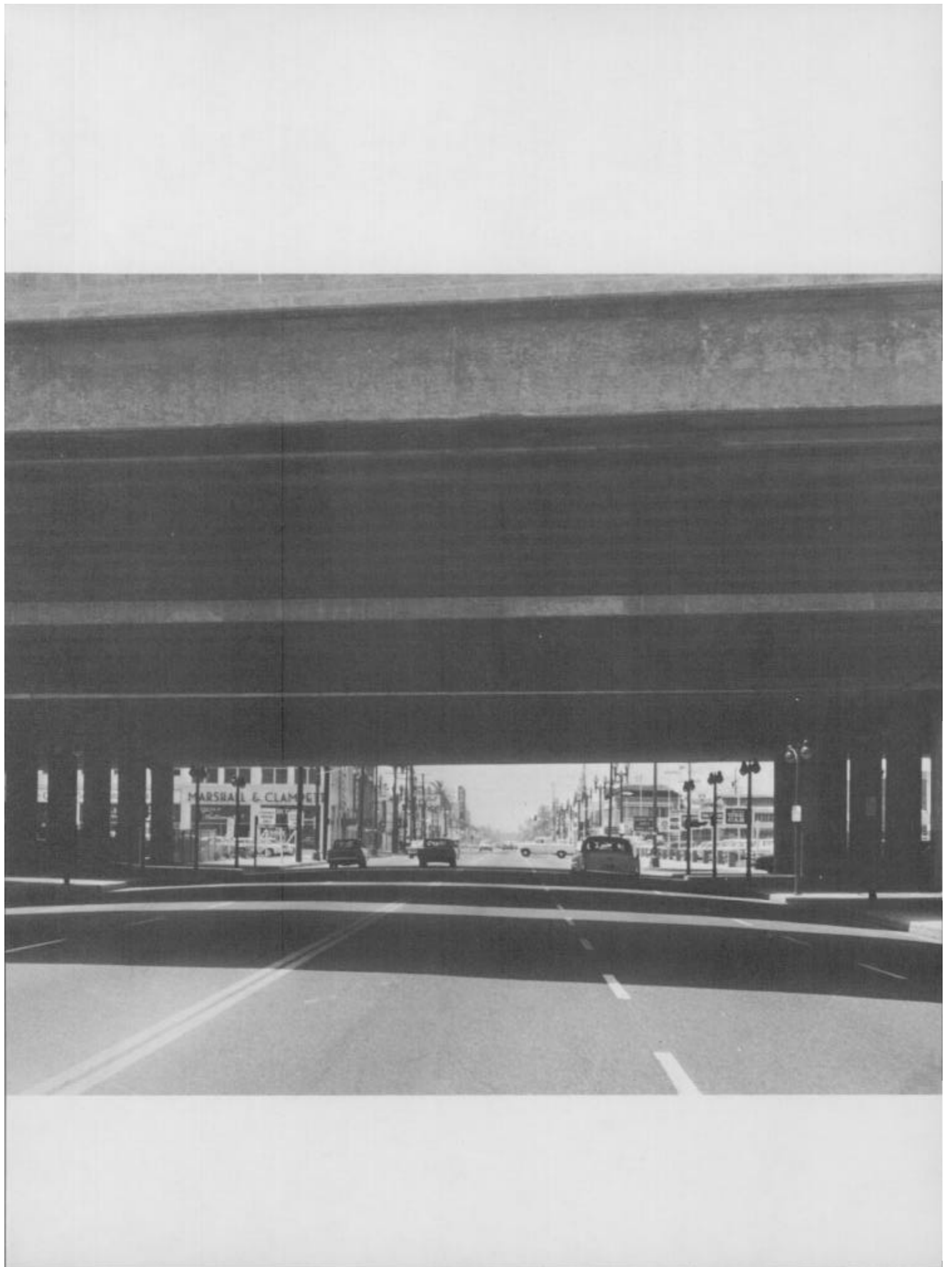
"I am concerned by two things. All of the renderings to date for this freeway portion which will be under discussion on February 25, and which shows a freeway proposed between Oxnard and Malibu Canyon, to the uninitiated eye, and to the engineering eye, from some of my friends, shows a ribbon of concrete that comes west to east, stopping short of Malibu Canyon in a block of concrete. It shows another ribbon of concrete coming over Malibu Canyon north to south, stopping dead a mile and a half away from it—and they stop. Now, as an intelligent human being I know that they must join, but nowhere does the Highway Commission state to me, or indicate to me, or give me any idea of how much property, how much of the plans for the entire Malibu community—which includes a library, a city hall, a sheriff's station, schools, a hospital—will be taken up by that interchange, which could take up 40 to 50 acres, I understand. I don't know; they don't tell me; and they are apparently not required by law to show me. But it does have a bearing in my community, and I wish to know. I have children. Are they going to school there, or do we move?"

CHAIRMAN Z'BERG: "Well, are you making a point that the proposed freeway has not been exhibited by way of model, we'll say, or scale, or "

MR. PATRICK: "That's right. We are asked to pass or give our opinions on a presentation which is utterly incomplete for the average uninformed, nonengineering, affected citizen to judge."

CHAIRMAN Z'BERG: "At the previous public hearing that was held, were there models which indicated where interchanges were to be?"

MR. PATRICK: "No. We have also tried and many, many times apparently to find out if there has been cooperation between the Highway Commission and other agencies of government affecting different other aspects of our way of life. And, I am told to refer you to the testimony that's on page 56 of the testimony Mrs. Hove just referred to, of which you have copies. It reads almost like a motion



picture script, with the average public just demanding and asking questions and getting no answers

"I realize that as an uninitiated citizen it could seem that I am wasting your time, but the emotional aspects do belong here in a sense, because I am also concerned with the coastal perimeter of the western rim of the United States of America. And I do not understand why, when you are presented with what is called a scenic route, at sea level where you can see nothing, you have a mountain area which could be the Riviera of America."

CHAIRMAN Z'BERG "One significant point, I think that you're making is—correct me if I'm wrong—that at these hearings you've been unable to determine exactly where the route would be, where the interchanges would be, and what it would look like is that right?"

MR PATRICK "Yes. The average guy like me has a feeling that no matter what I do, no matter how I protest, no matter where I seek my information, in a sense legally it says you may come and present your case, sir, and when it's all over, we'll do what we want to do anyhow. And that's a dreadful feeling to have in the United States of America. And, unfortunately, I'm sure it was no one's intent to have it grow this way, but this is the feeling in the State of California today, and it is growing. And there it will affect the Legislature and everybody else concerned in our government. And I'm sorry I speak only of the emotional aspects, but they are the one's that concern me. Do I have a right to speak? Does my opinion count?" (Transcript, Santa Monica, February 20, 1964, p. 113-118)

Chairman Z'berg: Dialogue with Walter C. Frame, Vice President, Conference of California Historical Societies

CHAIRMAN Z'BERG "When, about, were you first aware of the fact that a freeway was being considered here through this historic area?"

MR FRAME "In 1960, when I was president of the Sacramento County Historical Society, and I have appeared at every hearing."

CHAIRMAN Z'BERG "Now about when, with relationship to the first hearing, do you think that you and/or the public began to be aware of the fact that a freeway may go through this particular area?"

MR FRAME "Shortly before the hearing. As the freeway was first projected, you know, it was in Yolo County, then the recommendation was made after the planning of it, to the Highway Commission, that it be run through Old Sacramento and at that time we got excited. Of course, it takes time to build up public interest, but we did, and finally, at the time of the hearing before the commission present 15,000 signatures on petitions against the freeway at that location."

CHAIRMAN Z'BERG "Is there any merit to the comment that is sometimes made that the public is not really aware of where a route is going until about the time of the first hearing and by that time it is rather late to generate?"

MR FRAME "I think that is true. I think that that is certainly true that if plans are kept secret and then suddenly several alternatives are put in and they get the neighbors fighting over which alternative, and then the highway chooses the position it wants."

CHAIRMAN Z'BERG "Do you have any suggestions or comments relative to any type of procedure that might galvanize public thinking or bring unofficial public bodies into the picture earlier?"

MR FRAME "I believe that the Highway Department knows years in advance where they are going to run these freeways and I think they should make their ideas public far longer than the notices they give. I further agree with the statement that the hearings should be held before an independent hearing officer."

CHAIRMAN Z'BERG "You made some comment relative to the way the hearing was held. The room was not big enough, was that it?"

MR FRAME "The room was not big enough, the various speakers were insulted by the presiding officer, except, of course, those who spoke in favor of the freeway. The presiding officer made it perfectly clear that he had made up his mind and

was not really interested in the hearing, but that it had been forced upon him and he was going to hold it."

CHAIRMAN Z'BERG "Now, at the time of the first hearing, were models available of the various alternate routes?"

MR FRAME "No."

CHAIRMAN Z'BERG "When, in the course of the chronology, were models made available?"

MR FRAME "They were not available until long after the route of the freeway was determined."

CHAIRMAN Z'BERG "Prior to the adoption, scale models had not been made?"

MR FRAME "They were not made."

CHAIRMAN Z'BERG "What was the nature of the last hearing that was held before the Highway Commission? Was that a hearing by the commission on the route itself, or what was it?"

MR FRAME "It was announced that it was not a hearing on the route; that the route was fixed, but that they would listen to us on the question of historic values. However, they didn't listen to us and they made no findings as far as we know."
(Transcript, Sacramento, September 29, 1964, p 67)

Chairman Z'berg and Assemblyman Soto: Dialogue with John Legarra, Deputy State Highway Engineer and Emerson Rhyner, Counsel, Department of Public Works

CHAIRMAN Z'BERG "Let me go back one step further to something you said that when the plan is devised, by bringing into early discussions the city and the county, that you feel that the controversy has been resolved, or at least this shows that you have had a good highway route adopted because the governmental agencies don't object. Would you say that what happened in Sacramento was an absence of controversy when all these people appeared and opposed what was going to happen, even though the city and the county said yes, they wanted it. Now the mere fact that you program with the city and the county doesn't necessarily mean, does it, that you have touched bases with all people and interests concerned with community values?"

MR RHYNER "That is very probably true in certain cases, Mr Z'berg. We almost have to go on the basis that we are dealing with the elected representatives of these people and if the elected representatives don't follow their wishes, they won't stay in office. This is our representative form of government as we have seen it, and while we hear from the citizens at the public hearings and so forth, in developing a correlation, say, of land use with freeways, as Mr Greene was mentioning should be done, you almost have to work with local planning agencies and with city officials to do this. Certainly there were a great many citizens in Sacramento, as we all know, who didn't agree with their elected representatives."

CHAIRMAN Z'BERG "And I think they probably felt that it was the policy of the Division of Highways that you would work with the elected officials and that you felt this was a representative form of government and so therefore, the wishes of the official city organization and the official county organization was that which should control. But if that is the policy, then isn't the very purpose of your hearing being destroyed, namely, you are manifesting that you are letting the public testify for the purpose of perhaps changing what this official body has said and in the end result get something different if their voice is all powerful; so if the policy is that you believe it is a representative form of government and you are only going to pay attention to the cities and the counties, then isn't the question properly asked, and I would ask it and the public asks it, why do you pretend to have a public hearing?"

MR RHYNER "I think, Mr Z'berg, you have to have a combination of both. We studied, I believe, 87 alternates in Sacramento for the three routes. We spent a great deal of money, not only in engineering studies, but in a combination master plan study with the city. We held several public hearings where the interested citizens were invited to attend and voice their views. Those views were considered."

CHAIRMAN Z'BERG. ". . . So that the Division of Highways shouldn't rely necessarily only on the official position of the city and the county and that it is well for the division to also try to find out if they can, what local interests, local groups, might have to say about freeway routings Is that right?"

MR LEGARRA. "May I add one point to that? Specifically in Sacramento—to give you an idea as to why a public hearing was held by the Division of Highways—there were actually two public hearings held. The first public hearing that was held, it wasn't under discussion, the route that was finally adopted. As a result of this hearing and further studies that were made, we came up with another alternate and finally it was on the master plan that was adopted, so you must admit that the first public hearing created some benefit to us and to others who were studying this freeway problem."

CHAIRMAN Z'BERG. "I am not grading that freeway, saying it is good or bad, here today, certainly, but don't you think that the public sometimes thinks—rightly or wrongly—that your first statement was what controls, and going back to this business about the impartial hearing officer—this is all part of the impression the public gets, again rightly or wrongly, that the deck is stacked before they get in. For example, if you think that the combination of the official position and the weight of the body politic, the grass roots, is good, wouldn't it be feasible to look at some methods of procedure where you could obtain the thinking of local groups earlier than you now do? It is my impression that what happens is that in the early formulation of your proposed routes, you deal primarily with the official bodies, so that when the routes are proposed is about the first time that the citizens, generally, have an idea of what is going on. Don't you think that sometimes they feel that then it is almost too late for them to do anything about this? Do you think that you might be thinking about some ways of developing some citizen participation earlier than you now do?"

MR REYNER. "I think that this might be warranted, Mr Chairman, and it is certainly worth looking into. I think that anything we can do to assure the citizens that we are taking into consideration what they feel is right about the thing is important. In our Division of Highways hearings, several alternates are presented, our district engineers are instructed to make it extremely clear if they can to the people present that no decision has been made on those alternates at all. Maybe people get that impression at that stage—maybe they do—regardless of what we say and if some machinery can be worked up to draw them in earlier and avoid this, it might well be very helpful. We will most certainly look into it."

CHAIRMAN Z'BERG. "I would appreciate any suggestions you might have along that line, because wouldn't you agree that it would require some machinery or initiation on the part of the state because the public—the mass of people—don't even know that there is going to be a freeway until all of a sudden they read in the paper that there is going to be a public hearing and these are the routes, so that if we are going to get the public interested earlier, it would take some initiative on the part of the Division of Highways or somebody else in advance to go out and attempt to get the public reaction."

MR REYNER. "That may well be, Mr Chairman, and we will look into it and send the committee our thoughts on it."

CHAIRMAN Z'BERG. "Now you spoke about hearings. I think you were going to cover that, perhaps a little bit later before the Highway Commission. It is my understanding that the policy is that a hearing is granted by the Highway Commission—the ultimate decider—when an official body of the city or the county asks for a hearing. If it should develop that there is a substantial body of opinion which disagrees with the city and/or the county, and they want a hearing, don't you think there should be some machinery in law so that those people—if we could determine they were a substantial number of people—should have the right to a hearing?"

MR LEGARRA "First of all, I don't know if we had proceeded that far in the presentation, but there is machinery in the policy of the California Highway Commission to do exactly what you are saying. They can, on their own motion, call for a hearing at any time."

CHAIRMAN Z'BERG "I know they can but they don't have to."

MR LEGARRA "They don't have to, that's right. But they do occasionally do this for various reasons."

CHAIRMAN Z'BERG "Don't you think it would be wise if there were, in fact, a substantial body of people that wanted a hearing, that they should have the right to have a hearing before the ultimate authority that is going to decide this momentous question as to where this freeway is going to go?"

MR LEGARRA "I think everyone should be heard. Naturally, in this procedure that has been set up, everyone has the opportunity to be heard. I believe your question was they could be heard directly before the California Highway Commission."

CHAIRMAN Z'BERG "Yes, as to whether or not they should have the right to be heard."

MR LEGARRA "Obviously, the first reaction would be yes, but they should get it through their elected officials, and this is something certainly, that I don't quite know how to answer."

CHAIRMAN Z'BERG "Supposing that you had a provision in law that said if 5 percent of the people in the city through which a freeway was going, were to petition, and this would be a substantial body certainly, then a hearing would mandatorily be held. Do you think that would be reasonable?"

MR RHYNER "Well I think that is a matter of legislative policy, Mr Chairman, as to whether or not the Legislature at this point in the freeway location procedure, wants to go behind the legislative body. I would just comment on one phase of it and I don't know what the effect would be, I just bring this up. I don't know if it would cause substantial delay or not—I can't answer that at this time."

CHAIRMAN Z'BERG "Well, if you have a demand from the people in a city—the City of Sacramento

has 200,000 people—if you have 10,000 people in the City of Sacramento that sign a petition and say 'We would like to have a hearing.' Now if those people are denied a hearing, don't you think this again leads to building up more of this feeling which perhaps exists that the people aren't being given a fair hearing? If 10,000 people in the City of Sacramento sign a petition and say 'We want a hearing' and if they are not granted a hearing, don't you think those people are going to think Well, what's the use of fighting city hall or fighting the Division of Highways?"

MR LEGARRA "I am sure we see and understand what you are saying, Mr Chairman. Again, I would think that the most appropriate place and the most effective place that any group like that could request such a hearing would be through their elected officials who represent not only them but the rest of the people in the city or county."

CHAIRMAN Z'BERG "Let's say they disagree with the elected officials, don't you think they should have a right to be heard before the man or the commission that ultimately decides this tremendously important question?"

MR RHYNER "Well, as I say, Mr Chairman, I think that's a matter of legislative policy as to whether you want to go behind your elected representatives at this point. As far as the Division of Highways is concerned, the only question would be one of substantial delay and I don't know whether it would cause that or not. There is another thing of carrying out these hearings on and on and on which in some cases, is not warranted. Again, I hate to comment on something which seems to me personally, to be a legislative policy."

CHAIRMAN Z'BERG "Well, we establish legislative policy by passing legislation and one of the ways we do it is by finding out from people what they think. That is the reason why I am asking you. I don't want to legislate in the dark, if you have an opinion, I would like to hear it. Am I correct, then, that if it would not be a delaying type of thing, that you can't see anything wrong with it? Would that be a fair statement?"

MR RHYNER "Yes, I think so, Mr Chairman, without going into the percentage of people involved, and so on, whether or not hearings would be held, whether or not warranted and so forth, because a very small portion of the people desired them "

ASSEMBLYMAN SOTO "I would like to pursue that particular point that you were discussing just now I think that we shouldn't overlook this too lightly If the local authorities request hearing, then the commission will provide the opportunity for another hearing, but it seems as though legislative bodies, agencies, departments have a tendency to lose contact with the real feeling of the people in the areas that are going to be affected by policies and by actions we pass and adopt And it would seem only appropriate to give some consideration to this area so that we do not get away from this concept, or forget that we have people who are being affected and these people have, I think, a right to be heard We are dealing here with properties, and I think that we are ignoring certain human or humane rights that people have a right to express, and to make available to those bodies that are to be hearing views, and I don't think we would be properly acting if we were to go over this and not give it proper consideration I think that this is an area where possibly by giving it consideration, we may be able to do away with some of the controversy and some of the bad reflection that is made upon departments, agencies and legislative bodies "

MR RHYNER "I might comment on this very briefly, if I may, Mr Chairman One thing that possibly hasn't been thought out is that any citizen, or any group of citizens, may come before the Highway Commission at any time, at any of their meetings, or by letter, and request action from that commission They could bring in a petition signed by a certain number of people, for instance, and say, 'We would like a hearing ' They can appear personally before the commission and ask for the same thing They are never barred from appearing before the commission and appealing to them The

commission may not agree, obviously, the commission must make decisions, but they always have that chance to appear, and if anyone wants to bring a petition signed by 20 percent of the people in town asking for anything, they have that right to do it "

ASSEMBLYMAN SOTO "Then it isn't the prerogative only of the local officials—the local government agency—to request a hearing by the commission?"

MR RHYNER "No The people can request it and then it is up to the commission to determine whether or not, in spite of the fact that the city council has said 'We don't want it ' In spite of that fact, the commission determines, it weighs everything—what has gone before and the number of people on the petition, and so on—decides that you are going to have a hearing and they will go ahead and have it And they have done this thing They have held hearings where local agencies didn't request it "

ASSEMBLYMAN SOTO "Where a local agency did not request and were in opposition to holding another public hearing, you did give the people the right to hold that hearing?"

MR RHYNER "There have been instances like that haven't there, Mr Legarra?"

MR LEGARRA "I don't recall any exactly in that status, Mr Soto, where the official bodies have actually gone on record feeling that the subject had been heard sufficiently and everybody had been given a chance to be heard and that no further hearings by the commission were necessary Once they have taken that action, I don't recall any case where the commission has, on its own motion, held a hearing They have, however, held hearings without a request from local authorities On their own motion, they have held hearings because of the controversy in the area This is part of their policy "

ASSEMBLYMAN SOTO "So their policy is flexible enough then, if there is sufficient controversy and interest, and people do express the wish that they want to be heard, then the department will make available the time "

MR LEGARRA "Yes, there have actually been cases where when the State Highway Engineer makes a recommendation to the commission, he, in his recommendation, recommends that the commission hold a hearing, not requesting the local authorities whether or not they want the hearing, but because of the conditions, he recommends to the commission that they hold a hearing on their own motion. This has been done in the past and it is not uncommon. The only other thing that I would like to point out—I don't think there is any question in anybody's mind that everybody should be heard—I am sure that the procedure provides that opportunity, including the submission of any data that they want to the California Highway Commission or to the Division of Highways. I don't think anybody has ever been prevented from presenting his views on any freeway matter."

CHAIRMAN Z'BERG "To keep the record straight, and get it clear, if the public entities say they don't want a hearing, then no matter how many people in the local community desire a hearing, no matter how great the controversy is, the Highway Commission does not have to grant them a hearing, and as a matter of fact, you can't recall any instance where they have. That's correct, is it not?"

MR RHYNER "That's correct, but they could, Mr. Chairman."

CHAIRMAN Z'BERG "I understand that they could, but there is no mandatory right for the public to be heard and, as a matter of fact, in the experience of you gentlemen who have been in the division for a long time, they have not. Isn't that right?"

MR LEGARRA "To the best of my knowledge, Mr. Chairman."

CHAIRMAN Z'BERG "And can you think of anything that has been more controversial in Sacramento over the last four or five years than the North-South Freeway, that has engendered more pages of newspaper articles, letters to the paper, petitions, signatures, debates on television than the locating of that freeway route—that incidentally was the city's and the county's position to not have a hearing?"

MR RHYNER "You are right, Mr. Chairman, that that was certainly very controversial. I would like to point out two things about it, however. Number one, the commission did afford the opportunity to people who did not want the line that was chosen to appear before the commission and ask for a hearing. I think they took all day with them and then the commission decided itself it was not in the best interest to them—I guess that is what they decided because they didn't hold the hearings."

"Number two, the city council which decided they didn't want the hearings, I believe, they were all returned to the Council, with maybe one exception—the majority of the people backed them on it. I just like to point out those two facts." (Transcript, San Francisco, December 19, 1963, pp. 39-51.)

... Concerning the Need for an Independent State Commission with an Independent Review Staff

Assemblyman Greene: Dialogue with John Legarra, Deputy State Highway Engineer

ASSEMBLYMAN GREENE "Mr. Legarra, I recall the department's testimony indicated that the head of the Transportation Agency, if I recall your language, is an ex officio member of the Highway Commission. Would you care to tell us what you mean by that?"

MR LEGARRA "Yes, Mr. Greene, first of all, as you mentioned, the Chairman of the California Highway Commission now is the Administrator of the Highway Agency rather than the Director of Public Works as it was prior to this last year. The expression "ex officio" means that the mere fact that he has that position automatically makes him the chairman of the commission."

ASSEMBLYMAN GREENE "Is he a voting member of the commission?"

MR LEGARRA "Yes, he is. He is one of the seven members on the commission."

ASSEMBLYMAN GREENE "Would you care to comment on the ability of the chairman of the commission to render a just and equitable verdict if he does have these two positions referred to?"

MR LEGARRA "As it now stands, there is another step between the Division of Highways and

the chairman of the commission as this new legislation has required. But in answer to your question, Mr. Chairman, as far as the recommendation that is made by the commission, it is not made by the Director of Public Works or anyone else in the department. It is made by the Division of Highways, by the State Highway Engineer."

ASSEMBLYMAN GREENE: "Well, in short you are saying that the highest man within the State Highway Department is not the man that is sitting on this Highway Commission, it is his boss?"

MR. LEGARRA: "His boss was sitting on the Highway Commission and at this stage I guess if you wanted to go higher, yes, his boss is also sitting on the Highway Commission. But the point I am trying to bring out is that the recommendation before the Highway Commission is not the recommendation of the Director of Public Works nor is it the recommendation of the administrator of the agency. It is the recommendation solely of the

State Highway Engineer." (Transcript, San Francisco, December 20, 1964, pp. 103-104.)

Edward J. Wenig, Vice President, California Citizens Freeway Association

"... From the standpoint of the California Citizens Freeway Association, we believe definitely that the Director of Public Works should be removed as a voting member and chairman of the commission, but make mandatory his acting and attending the commission meeting in an advisory capacity only. This is a strange setup that we think is very urgent in the matter of change. Now the director at present not only directs but submits freeway plans of his subordinates, the engineers—if you see what I mean—as a member of the commission. The situation is reminiscent of the old system that was existing in the pre-American period, mayor, judge, lawgiver in the pueblos of long ago..." (Transcript, Santa Monica, February 20, 1964, p. 64.)



Chairman Z'berg: Discussion with Emerson Rhyner, Counsel, Department of Public Works

CHAIRMAN Z'BERG "Has any thought ever been given, or have you heard anybody advocate, and has there been any reaction to suggestions that the Highway Commission should perhaps be modeled more after the Public Utilities Commission in that since this is such a major state activity now and so much money is being spent—with 50 route adoptions a year or 500 miles a year, or something like that—perhaps the Highway Commission should be as the Public Utilities Commission, appointed with full-time members, with perhaps their own staff, so that when hearings are held, the hearings are held not by the engineer, and that recommendations are not made by the engineer. But rather the engineer makes recommendations to somebody who works for the Highway Commission, and then that person makes recommendations to the Highway Commission. Has this approach to setting routes been suggested, do you know? And if so, do you know what reaction there has been to it?"

MR RHYNER "I think it has been discussed from time to time, Mr Chairman. My own personal observation has been that I think we are all very proud of our present Highway Commission, most of us at least. They donate their time practically. They get a small per diem. They are busy business men, it's true, but they spent a lot of time on it. Because it is a donation of time, you get men of extremely high caliber that you'd have to pay a tremendous salary to get them if they were going on full-time basis. Because they donate their time, they are very dedicated. I don't say that you wouldn't get this with a full-time commission. I don't know. I do know that under this procedure, in my opinion, we have gotten a very dedicated group of men who try to call it like they see it without any axe to grind one way or another. Now as far as the staff is concerned, I don't know the reason for having a staff. This has been discussed off and on by a great many people, too, and maybe some decision should be reached on it. It's a question that—some people have said, 'We don't trust

the State Highway Engineer; we have to have somebody to check him so we need a staff there'—but nobody has ever indicated to me one way or the other that the State Highway Engineer has ever been false to the commission on the figures which he has presented. So I don't know really what the basis is for the staff, although I will certainly concede that the matter is worthy of looking into, and it has been discussed. Yes." (Transcript, San Francisco, December 19, 1964, pp 75-76)

Assemblyman Greene: Comments to Robert B Bradford, Chairman, State Highway Commission; Administrator, Highway Transportation Agency

"I think that your Highway Commission itself must finally consider that when it takes action in an area, where so far you don't readily concur, that you must have a staff, small in size and numbers, which would give to you other than the Highway Department's point of view on the question you are solving. And you must have a staff that would include the landscape architect, the economist, and even, for that matter, the technician, the engineer that is not an employee of the State of California, and is not of the Highway Department, someone who belongs to you, to say 'All right, the Highway Department, they are technicians, we are technicians, and we agree with what they said. They are telling you something that is quite right.' On the other hand, if you had some staff here to say 'Well, we get a different balance here than they do because we are measuring some things other than what they do. It is a narrow point of view.' And the problem is that you have a narrow point of view assigned to you by law on a very, very broad, based question and it cannot help but get worse because as time goes on our urban society gets more complex, not less. And as Mr Henson says, there's an astronomical sum that must be spent in the future and we don't seem to be reaching out for a different solution. We are using the traditional solution to a problem that is endlessly becoming more complex. You must find a different solution, a different way of going about finding this." (Transcript, Sacramento, September 29, 1964, p 102)

Mr. Edward J. Wenig, Vice President, California Citizens' Freeway Association

CHAIRMAN Z'BERG " Your suggestion that the Highway Commission be modeled after the Public Utilities Commission, I think does have some merit. What I gather you are saying is not that the Highway Commission have less power or authority. In effect, what you're saying is that they should have more, because you would then want them to have their own independent staff to review the actions and workings of the Division of Highways. This is in essence what you are saying, is it not?

MR. WENIG "Well, it could be interpreted that way. But I feel an independent review staff seems to have a great deal of merit if it is based upon nonpolitical considerations—depending on how it is set up, whether it is full salaried or not, and how competent the situation is. What I'm trying to say is that the commission needs help, and needs help in spelling out procedures, for the confidence of all the people of California." (Transcript, Santa Monica, February 20, 1964, p. 69.)

John Tyler, Vice Chairman, Southern California Chapter, the Nature Conservancy

" I would like to follow up what has been said here and take up these ideas that I've heard presented today. One of them, that the Highway Commission is autocratic. It has been admittedly so stated here, and I feel that it should be less autocratic, and the only way to make it less autocratic is to make a more balanced outlook. Apparently it is using primarily engineering economists, there are no geologists, conservationists, or recreationists involved. And, here this committee is hearing testimony given by various learned people on various aspects, but if that commission has no knowledgeable concept of their own, they cannot make an adequate judgment. So, if you have strictly engineers hearing testimony of scientists, it is not going to have the same meaning as if you have a proportion of scientists in on the commission. In other words the makeup of the commission is possibly wrong, and this is why it has received the reputation of

being autocratic. Because its decisions do not have a broad enough basis of concept.

"The lead time of seven years seems to be rather an inflexible situation, but it doesn't mean that in this lead time of seven years something can't be done to broaden the knowledge of the lay people as to what is in the planning stages, so that before decisions are made to details, that some of these concepts can be taken into consideration." (Transcript, Santa Monica, February 20, 1964, pp. 127-128.)

William P. Gray, Attorney at Law; Coordinator Western Freeway Council

" It seems to me that the administrative body charged with selecting a freeway route, whether it is called the Highway Commission or something else, should be advised by a staff whose expertise covers all of the considerations appropriate to such route selection. It was said down in Santa Monica yesterday when I was listening in that maybe the Highway Commission shouldn't be the one to select the freeway route, maybe it should be a planning commission of some kind. Well, be that as it may, there is going to be an administrative body whose job it is to select the freeway route and whether you call it the Highway Commission or something else is beside the point, and yet such a commission should have a staff whose expertise covers the whole field. Right now as I understand it, and incidentally let me say again I might be wrong in some of my basic assumptions and if I am wrong, certainly the committee will know better, or the Highway staff will correct me, but the commission staff so far is the Highway Division. The Highway Division makes the claim and we certainly can't fault them on that. They really know their business as far as determining cost of acquisition and cost of construction are concerned, and they also can count the number of families that would be displaced by a freeway route as well as anybody and, also, they are probably pretty good at looking into the crystal ball into the future and determining where the freeway could be placed where it would serve the

most motorists We have no doubt but what they are very well able to do those things

"But there are many other factors that go into the selection of a highway that it seems to me that almost by their own informal admission, the commission is not staffed or does not have the training or the expertise to give fully appropriate attention to I am sure you all understand what I have in mind

"I have listed some of the factors that our engineers, our planning engineers that we have hired in this matter, say are really of considerable importance in determining the location of the freeway" (Transcript, Beverly Hills, February 21, 1964, pp 184-186)

Robert B Bradford, Chairman, State Highway Commission; Administrator, Highway Transportation Agency

" . It has been suggested in a few places that the Highway Commission should employ a new and totally separate staff from the State Department of Public Works and the Division of Highways In fact, some comments along this line have gone so far as to impugn the integrity of state highway engineers and, in fact, the entire profession of engineering To impugn the integrity of

engineers as such does a great deal of harm and no good Socially and politically it tends to undermine the processes of government just as it does to impugn the integrity of legislators as a group or police or prosecutors or park superintendents as groups With respect to the proposal that the commission have its own staff, the present commission members might agree to a very limited degree, but not with a view toward escaping from the influence of the most famous highway engineering and planning staff in the world . " (Transcript, Arcata July 24, 1964, p 16)

John Evreca, Director, State Department of Public Works

" Mr Chairman, as you know, there has been a district hearing in reference to this particular highway [routing in the vicinity of Prarrte Creek Redwoods State Park], and the commission really has not received this information formally We have not had a recommendation from the highway engineer, but of course, we also read papers and we are quite aware of the controversy and naturally, I think most of the commissioners have their minds made up as to what in their mind is the best route " (Transcript, Arcata, July 24, 1964, p 18)

ALTERNATIVES

During the course of investigating the complex highway and freeway planning process, a wide range of alternatives for modifying existing state policies was suggested to the committee. The basic premise of the great majority of these alternatives, which individually and collectively would have varying influence on the existing process, is to provide a more positive and effective means by which the total public interest is considered and in practice reflected in the selection of precise highway and freeway routes by the State of California.

As has been pointed out in previous sections of this report, these decisions on highway and freeway routes have a substantial and often immediate impact on the development of the surrounding area, and taken in total, they have a profound influence on the future development of the State of California. It is for this reason that the committee considers it absolutely essential that California public policy provide the best possible methods which can be devised to govern the route adoption process. Conceding the fact that it is obviously impossible to please all affected interests in something as complex as determining the location of a major transportation arterial, the widespread, statewide dissatisfaction on the part of so many responsible citizens and organizations with the existing process convinces the Committee that current policies do not meet the test of providing the best possible methods of route selection.

The Committee also recognizes, however, the dangers of placing the kind of restrictions on the executive agencies responsible for highway and freeway planning which could unreasonably and unnecessarily restrict the orderly progress of the state highway program. It is also aware that fear of the enactment of such restrictions is in many instances the basis of opposing any change in existing policies.

The committee is confident, however, that between these two extremes a balanced policy can be developed which neither vests any government agency with omnipotence nor restricts its ability to carry out its statutory responsibilities. One of

the foundations of the democratic process is an effective system of checks and balances, and the committee rejects any suggestion that the California highway program must be a major exception to this proven concept.

Although the committee received a large number and variety of suggestions, careful analysis reveals that the large majority fall into the following categories:

A. The Existing Highway and Freeway Planning Process

1. Procedures and Criteria

- a. Require by law the formalized consideration and presentation of nonengineering and noncost factors in route location studies by both the Highway Transportation Agency and State Highway Commission.
- b. Establish a more effective procedure for wide dissemination of more complete information on advance planning in the affected area, for a longer period of time in advance of the first public hearing by the Division of Highways
- c. Provide a more effective way in which the views of affected interests can be presented and considered in route location studies by both the Highway Transportation Agency and State Highway Commission.

2. Organization and Staffing

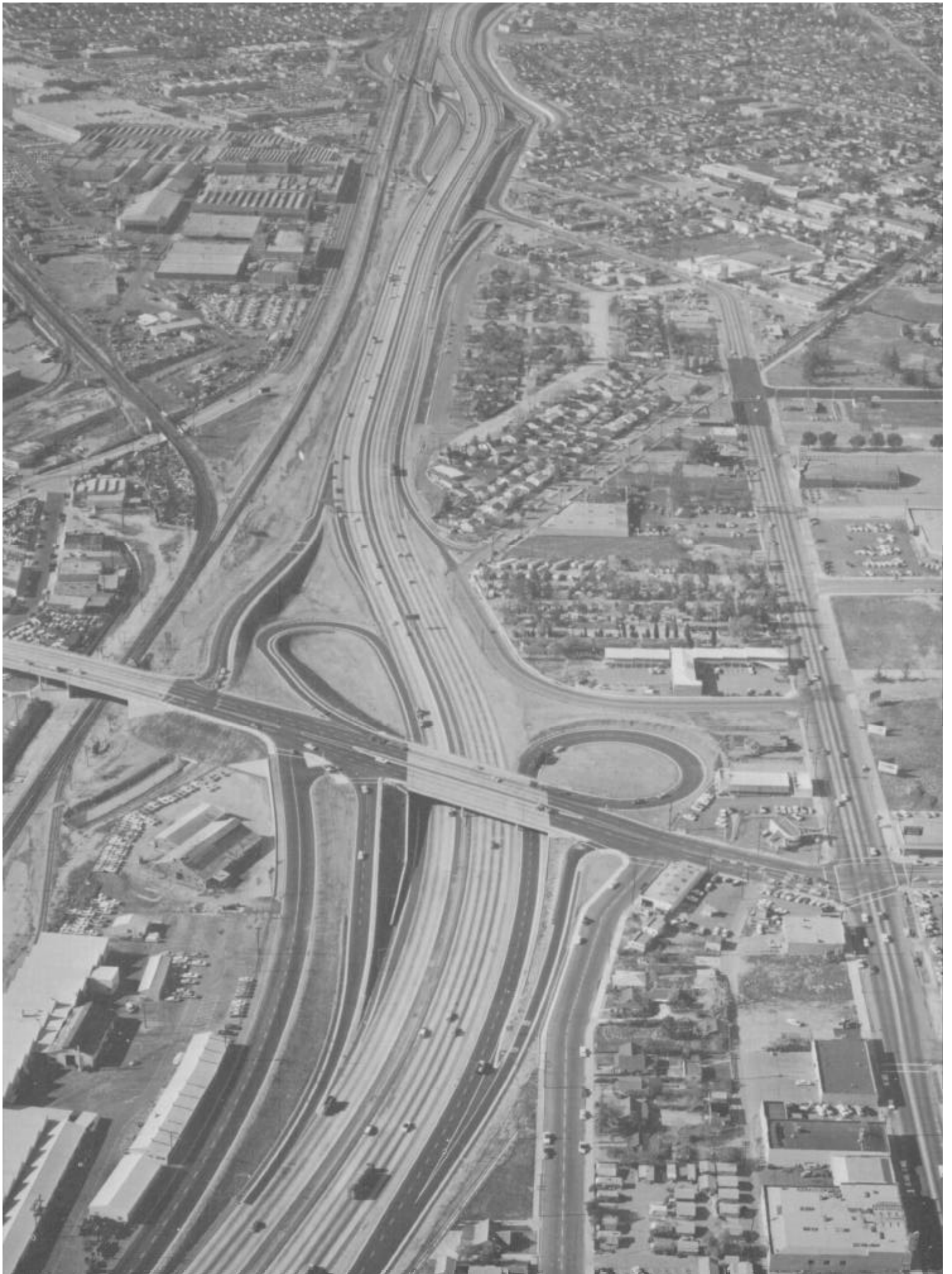
- a. Require by law the addition of nonengineering specialists to the planning staff of the Highway Transportation Agency
- b. Establish a truly independent State Highway Commission, with a broader base of representation independent of the Highway Transportation Agency, and a limited broad-based staff with the responsibility of evaluating the total public interest in proposed routing alternatives and making an independent recommendation to the State Highway Commission.

B. The Powers of the Highway Commission

- 1 Provide opportunity under the law for the appeal of decisions of the State Highway Commission to the courts
- 2 Exempt property dedicated to park purposes from the eminent domain authority of the State Highway Commission

As noted previously, it is the feeling of the committee that this report should stand as an exposition of deficiencies which exist in the public policies governing the highway and freeway plan-

ning process in California, and that its recommendations represent the comprehensive approach which is essential to making these policies more responsive to the total public interest. It is anticipated that over a period of time, specific legislation will be tailored to achieve enactment of these recommendations, on the basis that the implementation of any portion of the recommended program, in addition to other proposals not specifically set forth in this report, will have a salutary effect on the existing process



APPENDIX

WITNESSES APPEARING BEFORE THE COMMITTEE OR SUBMITTING STATEMENTS

San Francisco, December 19-20, 1963

Hon Edward M Gaffney, Assemblyman,
San Francisco
Emerson Rhyner, Counsel, State Department of
Public Works
John A Legarra, Deputy State Highway Engineer
Don Benninghoven, League of California Cities
Leonard S. Mosias, San Francisco
Chamber of Commerce
Mrs. Ariel Sloan, Secretary, San Bruno
Anti Freeway 229 Association
Joseph Sinclair, District IV Highway Engineer,
San Francisco
Don Wilson, County Engineer, County of San
Mateo
Hon Rodger M Huckins, Mayor, City of Stockton
Frank Fargo, City Manager, City of Stockton
Hon William C. Blake, Supervisor, City and
County of San Francisco, Chairman,
Transportation Committee, San Francisco
Board of Supervisors
Dale T White, Contractor, Fresno
Hon Emanuel P. Razeto, Chairman, Alameda
County Board of Supervisors
C Clarke Williams, Oakland Chamber of
Commerce
James T Pott, Acting Director, Department of
Public Works, County of Santa Clara
Virgil Anderson, California State
Automobile Association
Hon Charles W Meyers, Assemblyman,
San Francisco
Mrs. Helen Reynolds, California Roadside Council
Clifford J. Geetz, City Engineer, City and
County of San Francisco
Richard Blackburn, Public Works Department,
City of San Jose

Santa Monica, February 20, 1964

Hon. Robert S Stevens, Assemblyman,
Santa Monica

Emerson Rhyner, Counsel, State Department
of Public Works
John A Legarra, Deputy State Highway Engineer
Edward T. Telford, District VII
Highway Engineer, Los Angeles
Hon Harold Ball, Mayor, City of
Manhattan Beach
Estelle C Roberts, California Citizens
Freeway Association
Edward J Wenig, Ojai Valley Citizens
Freeway Association
Colonel Ray Adams, President, Home Owners of
South Westwood, Inc
J. L. Ayers, President, Malibu Community
Organizations Freeway Committee, Inc.
Louis Ragsdale, Vice President, Malibu
Community Organizations Freeway
Committee, Inc
Mrs Faye Hove, Member, Malibu Community
Organizations Freeway Committee, Inc
Dennis Patrick, Malibu
Clifford Kennedy, Simi Valley
Chamber of Commerce
Joseph N Appleton, Simi Valley
Chamber of Commerce
John Tyler, Vice Chairman, Southern California
Chapter, The Nature Conservancy
Ralph Stone, President, Brentwood
Community Federation
Elmer Bieck, President, West Side
Taxpayers Association
William G Wells, Attorney at Law, Member,
Santa Monica Causeway-Freeway Commission
Fred Hillman, Los Angeles
Sybren Tymstra, Ojai, California
Richard K Bowler, Automobile Club of
Southern California
Alan Benson, Sycamore Park Property
Owners Association
Thomas Doyle, Malibu

Beverly Hills, February 21, 1964

Hon. Leonard Horwin, Mayor,
City of Beverly Hills
William P. Gray, Attorney at Law; Coordinator,
Western Freeway Council
Mrs Helen Keeley, Vice Mayor, City of
Laguna Beach
Hon. Fred C Jones, Councilman,
City of Inglewood
A. E. Worthington, President, League of Orange
Coast Civic Associations
Evelyn Gayman, Conservation Chairman,
Desomount Club
Vinson Brice, President, West Los Angeles
Improvement Association
Jo Van Ronkel, Beverly Hills
Improvement Association
John Donahue, California Citizens
Freeway Association
Joseph Kammen, Santa Monica Homeowners
Association
Rex Lotery, Southern California Chapter, A I.A.

Arcata, July 23-24, 1964

Hon Carl L Christensen, Jr, State Senator,
Humboldt County
Hon Frank P Belotti, Assemblyman,
Humboldt County
Robert B Bradford, Chairman, California
Highway Commission; Administrator,
Highway Transportation Agency
John Erreca, Director, Administrative Officer,
California Highway Commission, Director,
State Department of Public Works
Emerson Rhyner, Counsel, State Department of
Public Works
J C Womack, State Highway Engineer,
California Division of Highways
John Legarra, Deputy State Highway Engineer,
California Division of Highways
Sam Helwer, District I Highway Engineer, Eureka
Alfred J Stern, Chairman, State
Park Commission

Mrs. Margaret Owings, Member,
State Park Commission
Hugo Fisher, Administrator, Resources Agency
Charles A DeTurk, Director, State Department
of Parks and Recreation
Edward F Dolder, Chief, State Division of
Beaches and Parks
Dr Ralph Chaney, Professor of Paleontology,
Emeritus, University of California
General Frederick B Butler, Retired,
U. S Army Corps of Engineers
Robert B Jasperson, Attorney at Law, Trustees
for Conservation; General Counsel,
Conservation Law Society of America
Neil Cunningham, Attorney at Law, Former
Deputy Attorney General, State of California
John Kenneth Decker, Economist and Planner
Bruce M. Kilgore, Sierra Club
Dr. Kurt Munchheimer, Sierra Club
Nathanel Owings, Architect; Vice Chairman,
Advisory Committee on Master Plan for
Scenic Highways, State of California
Hon Norman R. Robertson, Chairman, Humboldt
County Board of Supervisors
Hon William F Landis, Supervisor, Fifth
District, Humboldt County
Hon Fred Thevenin, Mayor, City of Eureka
Hon Harold Del Ponte, Chairman, Del Norte
County Board of Supervisors
Carney J Campion, General Manager, Redwood
Empire Association
Martin Lotton, Menlo Park
Dr. Wallace May, California Roadside Council
A J Gosselin, California State
Chamber of Commerce
Don Cave, Greater Eureka Chamber of Commerce
William Hover, Arcata Area
Chamber of Commerce
Fred Landenberger, North Coast Timber
Association; Humboldt Taxpayers League
Lowell Chapman, Controller, Arcata
Redwood Company
S. K McGaughey, President, McNord
Lumber Company

Dr. Norman Christensen, Eureka
 Albion J. Whitney, Chairman, Redwood Chapter,
 Sierra Club
 Bruce E. Palmer, Representative, Sierra Club
 of Humboldt County
 Mrs. Frank W. Lee, Eureka
 William M. Van Fleet, A.I.A., Eureka
 Mrs. Faye S. Hove, Member, Board of Directors,
 California Citizens Freeway Association
 Louis D. Ragsdale, President, Malibu Community
 Organizations Freeway Committee, Inc.
 Jo Hindley, Secretary, Ferndale
 Chamber of Commerce
 Robert E. Johnson, Weyerhaeuser Company
 Jackson Price, Acting Director, National Park
 Service, U. S. Department of the Interior
 Betty M. Forry, Chairman, State
 Recreation Commission
 Henry M. Weber, Conservation Chairman,
 California Garden Clubs, Inc.
 Harold G. Sharp, Regional Parks Association
 Ralph H. Barnes, Chairman, Planning Commission,
 County of Humboldt
 Virgil Anderson, California State
 Automobile Association
 D. J. Steele, Division Engineer, U. S. Bureau of
 Public Roads
 George H. Allen, Ph.D., Associate Professor of
 Fisheries, Humboldt State College
 Bonnie Bensonelli, Eureka

Sacramento, September 29, 1964

Charles A. DeTurk, Director, State Department of
 Parks and Recreation
 Dr. Aubrey Neasham, Consultant, Sacramento
 Historic Landmarks Commission
 N. K. Mendelsohn, President, California City
 Development Co.
 Frank Durkee, Vice Chairman, Redevelopment
 Agency of the City of Sacramento

Allan Temko, Director, Center for Planning
 and Development Research, University
 of California at Berkeley, Architectural
 and Urban Critic, San Francisco *Chronicle*
 Herb Silvius, Chairman, Citizens Committee
 for the Central City Study
 Walter C. Frame, Vice President, Conference
 of California Historical Societies
 Donald C. Biggs, Director, California
 Historical Society
 Charles E. Hoagland, Sacramento City-County
 Chamber of Commerce
 Robert B. Bradford, Chairman, California
 Highway Commission; Administrator,
 Highway Transportation Agency
 J. C. Womack, State Highway Engineer,
 California Division of Highways
 John Legarra, Deputy State Highway Engineer,
 California Division of Highways
 Dr. John French, Vice President, Tract No. 7260
 Association, Los Angeles
 Richard L. Rathfon, Planning Director,
 City of Sacramento
 Hero E. Rensch, Research Historian, Coauthor,
 Report on Old Sacramento, State Division of
 Beaches and Parks, 1958
 Harold Altman, Publicity Chairman, Conference
 of California Historical Societies
 Edward J. Wenig, Director, Ventura
 County Historical Society
 Alfred W. Bowman, President, California
 Citizens Freeway Association
 Louis Ragsdale, President, Malibu Community
 Organizations Freeway Committee, Inc.
 Mrs. Faye S. Hove, Vice President, Malibu Com-
 munity Organizations Freeway Committee, Inc.
 Mrs. Helen Keeley, Vice Mayor,
 City of Laguna Beach
 Erwin Meier, County Executive, County of Yolo
 Hon. Paul J. Gruber, Mayor, City of Newport Beach

**STATE OF CALIFORNIA
OFFICE OF LEGISLATIVE COUNSEL
3021 STATE CAPITOL
SACRAMENTO, CALIFORNIA**

May 19, 1964

Hon Edwin L Z'berg
Assembly Chamber

State Highways No. 5734

Dear Mr Z'berg:

You have asked the questions stated and considered separately below, relating to state highways.

QUESTION NO 1

Does the Governor of California have the power to direct the Division of Highways not to build a highway in a given location because of its damaging effect on the public interest?

OPINION AND ANALYSIS NO 1

We find no constitutional or statutory provisions giving this power to the Governor. As to the location of state highways, it is the California Highway Commission, not the Division of Highways, which determines the location of state highways on routes authorized by law (Secs 71, 75, S. & H C.) The law requires the Department of Public Works, acting through the Division of Highways, to lay out and construct state highways on the locations determined by the commission (Sec 90, S & H C)

QUESTION NO 2

Does the Legislature have the power to withhold appropriations necessary for operation of the Division of Highways (or are gas tax funds available, outside of legislative channels?

OPINION AND ANALYSIS NO 2

The existing provisions under which money in the State Highway Fund is continuously appro-

riated for expenditure for state highways (Secs 182, 183, S & H.C.), and under which the California Highway Commission allocates, and the Division of Highways expends, such money (Secs. 75, 143 1, 186, 187, 188, 188 8, 188 9, S. & H.C.), are statutory provisions only and they may be altered at any time by the Legislature Thus, the Legislature could repeal the continuous appropriation of money in the State Highway Fund and make annual appropriations to the Division of Highways.

It should be noted, however, that most of the money in the State Highway Fund comprises highway user tax revenues which are subject to the restriction contained in Article XXVI of the California Constitution that they be used only for highway purposes Thus, while the Legislature may control the expenditure of such money through appropriations, it may not appropriate such money for purposes other than highway purposes

QUESTION NO. 3

What is the relationship between the Division of Highways of the Department of Public Works and the California Highway Commission?

OPINION AND ANALYSIS NO 3

The California Highway Commission and the Division of Highways are both part of the Depart-

ment of Public Works (Sec 70, S & H C , Sec 14005, Gov C)

In general, the commission determines the location for state highways on routes authorized by law (Secs 71, 75, S & H C), designates portions of the State Highway System as freeways (Secs 100 3, 254, S & H C), and allocates the money in the State Highway Fund for expenditure on state highways Secs 75, 143 1, 188, 188 8, 188 9, S & H C)

In general, the Department of Public Works, acting through the Division of Highways, lays out and constructs state highways on the locations determined by the commission (Sec 90, S & H C), lays out and constructs freeways on the portions of the State Highway System designated as such by the commission (Sec 100 1, S & H C), and improves and maintains state highways (Sec 91, S & H C)

It might be noted that while the Director of Public Works is not a member of the California Highway Commission, he serves as the administrative officer of the commission; and the Division of Highways is required to transmit its recommendations affecting the activities of the commission directly to the commission and to the administrative officer thereof (Sec 70, S & H C)

QUESTION NO 4

What is the role of the Administrator of Highway Transportation in decision making regarding routes through redwood parks? Is his position and power defined in the State Constitution or in the legislation? To whom is he responsible?

OPINION AND ANALYSIS NO 4

The Administrator of Highway Transportation is the executive officer in charge of the Highway Transportation Agency, which consists of the following departments Public Works, Motor Vehicles, California Highway Patrol Secs 13975, 13976, Gov C) The administrator is appointed by the Governor, subject to confirmation by the Senate, and holds office at the pleasure of the Governor (Sec 13976, Gov C) The office of administrator is a statutory office created by Chapter 2073 of the

Statutes of 1961 The administrator has the power of general supervision over, and is directly responsible to the Governor for, the operations of each department, office and unit within the agency He may issue such orders as he deems appropriate to exercise any power or jurisdiction, or to assume or discharge any responsibility, or to carry out or effect any of the purposes vested in any department of the agency (Sec 13978, Gov C) He is required to develop and report to the Governor on legislative, budgetary, and administrative programs to accomplish comprehensive, long-range, coordinated planning and policy formulation in the matters of public interest related to the agency (Sec 13979, Gov C)

As stated previously, the California Highway Commission determines the location of state highways on routes authorized by law (Secs 71, 75, S & H C) The Administrator of Highway Transportation is an ex officio member and the chairman of the commission (Sec 70, S & H C)

Thus, particularly in his capacity as chairman and member of the California Highway Commission, the Administrator of Highway Transportation has a role in decision-making regarding routes through redwood parks

QUESTION NO 5

Can a county board of supervisors or a city council disapprove a routing selected by the California Highway Commission?

OPINION AND ANALYSIS NO 5

We find nothing in the Streets and Highways Code which specifically gives a county board of supervisors or a city council the power to disapprove a routing selected by the commission

Section 100 2 of the Streets and Highways Code, however, provides, in part, as follows

"100 2 The department (Department of Public Works) is authorized to enter into an agreement with the city council or board of supervisors having jurisdiction over the street or highway and, as may be provided in such agreement, to close any city street or county

highway at or near the point of its interception with any freeway or to make provision for carrying such city street or county highway over or under or to a connection with the freeway and may do any and all work on such city street or county highway as is necessary therefor. No city street or county highway shall be closed, either directly or indirectly, by the construction of a freeway except pursuant to such an agreement or while temporarily necessary during construction operations.

Thus, under this section, no city street or county road may be closed, either directly or indirectly, by the construction of a freeway (other than temporarily during construction operations) except pursuant to an agreement between the Department of Public Works and the city council or board of supervisors involved. Such an agreement may provide for the closing of the street or highway at or near the point of its interception with the freeway or for carrying such street or highway over or under or to a connection with the freeway.

Since, with few exceptions, the construction of a freeway would almost invariably necessitate the closing of at least some city streets or county highways, the effect of the failure of the city council or board of supervisors involved to sign such a freeway agreement would probably be to block the construction of the freeway by the Department of Public Works.

QUESTION NO 6

What constitutional authority is given to the California Highway Commission and the Division

of Highways and how can a change in this authority be brought about?

OPINION AND ANALYSIS NO 6

No constitutional authority is given to either the commission or the division. There is, however, express authorization for the Legislature to establish a system of state highways and to pass all laws necessary or proper to construct and maintain the same (Calif Const, Art IV, Sec 36).

In this connection, we note that it was in 1921 that the Legislature first created a Department of Public Works and a Division of Highways therean, and specifically provided for the existence of the California Highway Commission (Ch 607, Stats 1921). Thus, the commission and the division are both creatures of statutes. It is, therefore, our opinion that their power or authority may be modified or repealed by legislative act.

QUESTION NO 7

What judicial relief can be sought if an individual or a group of citizens feels that the powers of the California Highway Commission or the Division of Highways are being exceeded or that those agencies have abused their discretion?

OPINION AND ANALYSIS NO 7

A writ of mandate would be the proper remedy to be sought in such instance (see Sec 1085 et seq. C. C. P.). Under such a writ, a court may overturn an administrative action if it is shown that the agency acted in excess of its jurisdiction or abused its discretion by acting arbitrarily, capriciously, or fraudulently (see *McDonough v Goodcell* (1939), 13 Cal 2d 741, 747-749).

Very truly yours,

A C MORRISON, *Legislative Counsel*

By ROBERT E PROALPS, JR
Deputy Legislative Counsel

**STATE OF CALIFORNIA
OFFICE OF LEGISLATIVE COUNSEL
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SACRAMENTO, CALIFORNIA**

May 11, 1964

Hon Edwin L Z'berg
Assembly Chamber

State Highways Through State Parks—No. 5623

Dear Mr. Z'berg:

You have asked the questions set forth below relating to the acquisition of a state highway right-of-way through a state park by the Department of Public Works

QUESTION NO. 1

Can the department condemn park land which has been granted to the state for park purposes?

OPINION NO. 1

Yes

ANALYSIS NO 1

Sections 102 and 103 5 of the Streets and Highways Code provide

"102 In the name of the people of the State of California, the department [Department of Public Works] may condemn for state highway purposes, under the provisions of the Code of Civil Procedure relating to eminent domain, any real property or interest therein which it is authorized to acquire. The department shall not commence any such proceeding in eminent domain unless the commission [California Highway Commission] first adopts a resolution declaring that public interest and necessity require the acquisition, construction or completion by the State, acting through the department, of the improvement for which the

real property or interest therein is required and that the real property or interest therein described in such resolution is necessary for the improvement "

"103 5 The real property which the department may acquire by eminent domain, or otherwise, includes any property dedicated to park purposes, however it may have been dedicated, when the commission has determined by such resolution that such property is necessary for state highway purposes."

We think that pursuant to the authority contained in Sections 102 and 103 5, it is clear that the department can condemn park land which has been granted to the state for park purposes (see *People v City of Los Angeles* (1960), 179 Cal App 2d 558, 572-74; *Barry v. Dept. of Public Works* (1962), 197 Cal App 2d 359, 361)

QUESTION NO 2

Can the department use State Highway Fund money to condemn land to exchange for state park land which is proposed to be used for highway right-of-way purposes?

OPINION NO 2

Yes.

ANALYSIS NO 2

The department is authorized by various provisions of law to expend money from the State Highway Fund for the acquisition of land for state highways (see generally Art 5 (commencing with Sec 182), Ch 1, Div. 1, S & H.S.)

Sections 104 and 104 2 of the Streets and Highways Code provide, in part:

"104 The department may acquire, either in fee or in any lesser estate or interest, any real property which it considers necessary for state highway purposes. Real property for such purposes includes, but is not limited to, real property considered necessary for any of the following purposes:

"(b) For the purposes of exchanging the same for other real property to be used for rights of way

"104 2 Whenever property which is devoted to or held for some other public use for which the power of eminent domain might be exercised is to be taken for state highway purposes, the department may, with the consent of the person or agency in charge of such other public use, condemn, in the name of the people of the State of California, real property to be exchanged with such person or agency for the real property so to be taken for state highway purposes. This section does not limit the authorization to the department to acquire, other than by condemnation, property for such purposes."

Thus, the department is authorized to use State Highway Fund money to condemn land for exchange purposes in the situation presented here.

We do not think that the Legislature's authorization in this regard violates any constitutional requirement. The only applicable provision of which we are aware is Article XXVI of the California Constitution.

Article XXVI provides in substance that "all moneys collected from any tax now or hereafter

imposed by the State" upon the use of motor vehicle fuel and certain other highway revenues "shall be used exclusively and directly for highway purposes." These highway revenues largely make up the State Highway Fund (Sec. 2108, S & H C, Secs 42270, 42273, Veh C; Secs 8351, 8353, 9301, 9302, R & T C). The plain import of Article XXVI is to prohibit the diversion of gasoline tax funds to nonhighway purposes. As was stated in the ballot argument* in favor of the measure which added Article XXVI to the Constitution:

"The proposed constitutional amendment when adopted by the voters, will effectively and permanently prevent diversion of gasoline tax funds to purposes other than those now provided by law.

"Despite the seemingly large amounts of money spent annually for street and highway maintenance and development, the demands of constantly growing traffic make it imperative that the gasoline tax and registration fees be protected in every possible manner against diversion for nonhighway purposes. In other states where 'diversion' has taken place, it has been ruinous to the proper development of adequate street and highway facilities."

Article XXVI further provides that the revenues covered thereby may be used "for the payment for property, including but not restricted to rights of way, taken or damaged for such purposes." Thus, land so acquired is expressly subjected to the same limitation as the funds used in its acquisition. That is, the land must be acquired for "highway purposes."

Article XXVI does not contain any express provision relating to exchange of land. This matter has been left by the Legislature to the discretion of the California Highway Commission. There is nothing in the language of Article XXVI which in-

* Proposition 3, appearing on the 1938 general election ballot

dicates an intention to restrict the Legislature except in connection with the use of motor vehicle fuel tax and certain other highway revenues. Treating Article XXVI as a restriction on the power of the Legislature, the normal rule of construction would not permit extending the restriction by implication beyond its specific language. The Legislature has all power not denied to it by the Constitution, and the rule is firmly established that any restriction or limitation on the Legislature's power should be strictly construed and that any doubt should be resolved in favor of the existence of the Legislature's power (*Dean v Kuchel* (1951), 37 Cal 2d 97, 100).

Thus we think the department can constitutionally use State Highway Fund money to condemn land for exchange purposes, inasmuch as the ultimate goal to be attained is the acquisition of land for a highway right-of-way (see *Dohany v. Rogers* (1930), 74 L Ed 904, 909-910).

QUESTION NO 3

Is there any limitation as to the size, value or location of the land to be used for exchange purposes, and what standards are used to determine whether there is a proper exchange? Would the number of redwood trees on the respective parcels of land involved have any legal significance?

OPINION AND ANALYSIS NO 3

We are unaware of any statutory provisions expressly limiting the department's authority with respect to the size, value or location of land to be used for exchange purposes with respect to state highways in state parks.

The Legislature has provided, with respect to condemnation of property, that the department may condemn property "for state highway purposes" after a declaration by resolution of the California Highway Commission that the public interest and necessity require the acquisition of the property (Sec 103, S & H C). The resolution of the commission is conclusive as to the public necessity of the public improvement, the necessity for the property and that the improvement is

planned or located in a manner most compatible with the greatest public good and least private injury (Sec 103, S & H C). The above provisions contained in Section 103 and the provisions of Sections 104 and 104 2, quoted above, comprise the only statutory standards for exchanges of property for other property to be used for rights-of-way.

The California courts have held that Section 103 constitutes a grant of legislative power to the commission and if a taking of property is for a "public use" and "just compensation" is paid, the condemnation is not open to attack concerning the "necessity" of the condemnation even though fraud, bad faith or abuse of discretion is alleged (*People v Chevalier* (1959), 52 Cal 2d 299, 306-07; *Barry v Dept. of Public Works* (1962), 199 Cal. App 2d 359, 361-64).

Insofar as the question of whether or not a "public use" is involved in highway condemnation cases, the courts have characterized the question as one of what is the proposed purpose for which the land is to be used, i.e. is it to be used for some purpose related to highways, and, as to these matters only, the department's action is subject to court review as to fraud, bad faith, or abuse of discretion (see *People ex rel Dept of Public Works v. Lagiss* (1963), 223 A C A 24, 38-42).

It might be contended that Article XXVI of the California Constitution limiting the use of highway revenues to "highway purposes" places a limitation upon the commission and the department with respect to the value of the respective parcels of land. In other words, there might be a basis for a contention that if the land condemned for exchange purposes is more expensive than the state park land which is exchanged and used for the highway right of way, the expenditure of State Highway Fund money for the more expensive land violates the spirit of Article XXVI.

However, we do not believe that it can be said, as a matter of law, that such an exchange of more expensive land for the state park land needed for highway right-of-way purposes would violate the

spirit of Article XXVI. The commission and the department are given a great amount of discretion in the location and construction of state highways (e.g., see Secs. 71, 75, 90, 92, 100.1, 100.2, 102, 103, 103.5, 104, 104.3, S. & H.C.). There undoubtedly are many factors, other than merely the minimum state highway traffic needs or the least expensive property to be acquired, which the commission and the department consider in connection with the location and construction of state highways (e.g., see Secs. 75.5, 100.2, 104, 104.3, S. & H.C.). As stated by the California Supreme Court, in *Holloway v. Purcell* (1950), 35 Cal. 2d 220, at 231-232:

"The Legislature has adopted a policy of free-way construction in the public interest. It has properly delegated to the highway commission the authority to determine when and where freeways will be constructed, and it has properly required that the authority be exercised in accord with the needs of the public interest."

In our opinion the determination of the commission and the department as to the public interest

to be served in expending State Highway Fund money for such an exchange of land, even if the state park land ultimately to be used for the highway right-of-way is less expensive than the land for which it is exchanged, would be upheld by the courts unless it were shown that such determination was made arbitrarily, capriciously, or fraudulently (*McDonough v. Goodell* (1939), 13 Cal. 2d 741, 747-748).

Your final question is concerned with the legal significance of the number of redwood trees on the respective parcels of land involved. There are two conflicting public interests involved in the situation under discussion; namely, the construction of safe and adequate state highways and the preservation of redwood trees, which are an irreplaceable natural resource of the state. The means by which this conflict can best be resolved would certainly be a factor which the commission and the department may consider in determining what is in the best public interest in the location and construction of the state highway. To this extent, therefore, the number of trees on the respective parcels of land involved would have legal significance.

Very truly yours,
A. C. MORRISON
Legislative Counsel

By SHERWIN C. MACKENZIE, JR.
Deputy Legislative Counsel

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July 9, 1964

Hon. Edwin L. Z'berg
219 Forum Building
Sacramento, California

State Highways Through State Parks—No. 6444

Dear Mr. Z'berg:

You have asked several questions with respect to the construction of state highways through state parks which we shall set forth and answer separately below.

QUESTION NO. 1

What is the statutory authority giving the Department of Public Works the power to condemn park land for state highway purposes, and what are some of the alternatives available to exempt such park land from this eminent domain power?

OPINION AND ANALYSIS NO. 1

Sections 102 and 103.5 of the Streets and Highways Code provide:

"102. In the name of the people of the State of California, the department [Department of Public Works] may condemn for state highway purposes, under the provisions of the Code of Civil Procedure relating to eminent domain, any real property or interest therein which it is authorized to acquire. The department shall not commence any such proceeding in eminent domain unless the commission [California Highway Commission] first adopts a resolution declaring that public interest and necessity require the acquisition, construction

or completion by the state, acting through the department, of the improvement for which the real property or interest therein is required and that the real property or interest therein described in such resolution is necessary for the improvement."

"103.5. The real property which the department may acquire by eminent domain, or otherwise, includes any property dedicated to park purposes, however it may have been dedicated, when the commission has determined by resolution that such property is necessary for state highway purposes."

We think that pursuant to the authority contained in Sections 102 and 103.5, it is clear that the department can condemn park land which has been granted to the State for park purposes (see *People v. City of Los Angeles* (1960), 179 Cal. App. 2d 558, 572-574; *Barry v. Dept. of Public Works* (1962), 199 Cal. App. 2d 369, 381).

As to the alternatives available to exempt such park land from this eminent domain power, Section 103.5 of the Streets and Highways Code could be amended to exempt either *all* park land or only state park land, depending upon how broad an exemption is desired.

QUESTION NO 2

What is the statutory authority giving the Department of Parks and Recreation the authority and responsibility for the protection and administration of state parks in connection with roads and highways through state parks, and what are some of the alternatives available to increase this authority with respect to the use of the eminent domain power of the Department of Public Works?

OPINION AND ANALYSIS NO. 2

Sections 5003, 5003 5, and 5012 of the Public Resources Code provide, in pertinent part

"5003 The department [Department of Parks and Recreation] shall administer, protect, and develop the state park system for the use and enjoyment of the public. The department may establish rules and regulations not inconsistent with law for the government and administration of the state park system."

"5003 5. The department is authorized to provide means of ingress to and egress from all state parks in order to provide ready access thereto by the public and to provide means of ingress and egress to highways and roads across state parks from lands separated from such highways and roads by state parks, and for that purpose may enter into contracts or agreements with cities, counties, and other political subdivisions of the State and with other state agencies or with persons, firms or corporations for the acquisition, construction, and maintenance of suitable roads, trails, and pathways

"When application is received by the department, other than under Section 5012, from any person, firm or corporation for right-of-way across a state park for ingress and egress to a highway or road from their lands separated from such highway or road by the state park, the department shall determine whether any reasonable access exists outside the boundaries of the park, or could be economically

constructed. Where reasonable access does not exist or cannot be economically constructed outside the boundaries of the park, the department shall grant a permit for right-of-way across the park over such route and subject to such conditions and construction and maintenance specifications as the department may determine which will cause minimum alteration to the physical features of the park and minimum interference with the use of the park by the public. The permittee shall at his own expense construct and maintain the means of ingress and egress in accordance with the terms and conditions set forth in the permit, non-compliance with which in any part shall be due cause for revocation of such permit. The department may require a permittee or permittees to allow the use of such means of ingress and egress by any other applicant whose lands are similarly situated. The department shall grant a permit for such use under terms and conditions imposed upon existing users, upon payment of a reasonable compensation for construction and maintenance of the road, by the applicant to the existing permittee, or permittees."

"5012 The department may, upon application by the proper authorities, grant permits and easements for the following purposes and upon such terms as the department may prescribe

"(a) To a public agency for public roads"

Sections 122 and 123 of the Streets and Highways Code provide.

"122 Whenever jurisdiction over any highway within a state park has been relinquished to the authority charged by law with the management and control of such park, the department [Department of Public Works] may construct, improve or maintain such highway. *Any construction, improvement or maintenance of highways, other than state highways, within state parks shall be subject to*

the approval of the park authority." (Emphasis added)

"123 The provisions of Section 122 shall neither affect nor limit the department's authority, possession or control of any state highway even though any portion of such state highway is located within a state park "

As can be seen from the above provisions, the Department of Parks and Recreation has complete control of the location and construction of roads and highways, *other than state highways*, in state parks

As to the alternatives available to increase the authority of the Department of Parks and Recreation with respect to the use of the eminent domain power of the Department of Public Works

(1) If Section 103.5 of the Streets and Highways Code were amended (as discussed in Opinion and Analysis No 1) to exempt state park land from this eminent domain power, the authority of the Department of Parks and Recreation would be increased, since then the Department of Public Works would be required to obtain from the Department of Parks and Recreation, by purchase or grant, the necessary land or easements for state highways through state parks

(2) If it is not desired to completely exempt state park land from this eminent domain power, Section 103.5 of the Streets and Highways Code could be amended to condition the exercise of this power with respect to state park land upon approval by the Department of Parks and Recreation, the State Park Commission, the Administrator of the Resources Agency, or some other state officer or agency.

QUESTION NO 3

What is the statutory or other basis under which the state acquired donated memorial groves of redwood trees in the state parks, and of the obligations, if any, which the state assumed by accepting these donated trees? Also, what legal consequences, if any, might result from the State violating the terms of the trust?

OPINION AND ANALYSIS NO 3

Sections 5005, 5006, 5006 1, and 5009 of the Public Resources Code provide, in pertinent part:

"5005 The Department [Department of Parks and Recreation] may receive and accept in the name of the people of the State any gift, devise, grant, or other conveyance of title to or any interest in real property, including water rights, roads, trails, and rights-of-way, to be added to or used in connection with the park system It may receive and accept gifts, donations, contributions, or bequests of money to be used in acquiring title to or any interest in real property, or in improving it as a part of or in connection with the State Park System, or to be used for any of the purposes for which the Division of Beaches and Parks is created It may also receive and accept personal property for any purpose connected with the park system "

"5006 The department, with the consent of the Department of Finance, may acquire by purchase or by condemnation proceedings brought in the name of the people of the State of California title to or any interest in real and personal property which the department deems necessary or proper for the extension, improvement, or development of the state park system The department shall attempt to purchase property by negotiation with the owner before it commences condemnation proceedings

"Proceedings for the condemnation of any real or personal property or any interest therein shall be taken under the provisions of the Code of Civil Procedure relating to eminent domain The department shall not commence any such proceedings unless the director [Director of Parks and Recreation] first issues a declaration declaring that public interest and necessity require acquisition by the State of the property or interest therein, described in the declaration, and that such acquisition is necessary and proper for the ex-

tension, improvement, or development of the state park system "

"5006 1 The declaration of the director shall be prima facie evidence

"(a) Of the public necessity of such proposed acquisition

"(b) That such real or personal property or interest therein is necessary therefor

"(c) That such proposed acquisition is planned or located in a manner which will be most compatible with the greatest public good and the least private injury "

"5009 The State Park Contingent Fund is continued in existence All moneys collected or received from *gifts or bequests*, or from municipal or county appropriations or donations for improvements or additions to the State Park System shall be deposited in the State Treasury to the credit of the contingent fund All moneys so deposited shall be used for the improvement or administration of State parks, or the acquisition of additional lands and properties for the State Park System, *in accordance with the terms of the gift, bequest or municipal or county appropriations or donation from which the moneys are derived* " (Emphasis added)

Under the above statutory provisions the Department of Parks and Recreation may either accept donations of real or personal property for use in the state park system or accept donations of money for use in acquiring real or personal property, by purchase or condemnation, for use in the state park system

We have no information as to exactly how all of the memorial groves of redwood trees in the state parks were acquired by the state, but it probably was by either or both of the two methods just mentioned

Insofar as the Department of Parks and Recreation is concerned, we think it is clear that it holds such memorial groves in trust for use for state park purposes, and, in the case of a donation of a

memorial grove by private individuals, such use must, generally speaking, be in accordance with the terms of the instrument under which they were donated (Sec 5005, P R C , *Slavich v. Hamilton* (1927), 201 Cal 299, *Hall v Fairchild-Gilmore-Wilton Co* (1924), 66 Cal App 615; *Harter v. San Jose* (1904), 141 Cal 659; *Mulvey v Wangenheim* (1913), 23 Cal App 268)

However, as stated earlier, notwithstanding the fact that land (including land containing a memorial grove of redwood trees) has been dedicated to state park purposes, such land may be condemned by the Department of Public Works for state highway purposes (Secs 102, 103 5, S & H.C ; *People v City of Los Angeles* (1960), 179 Cal App 2d 558, 572-574, *Barry v Dept of Public Works* (1962), 199 Cal App 2d 359, 361) Whether or not compensation would be required to be paid to the original donors of the park land would depend upon whether they are considered to have an interest in the land entitling them to participate in the condemnation award, and thus, of course, would depend largely upon the language of the instrument under which the donation was made.

Of interest in this connection is the case of *People v City of Los Angeles*, supra, which involved the condemnation of land in Griffith Park (a city park in Los Angeles), a portion of which land was donated under a grant containing the following clause

"(T)o be used as a public park . And this gift and grant is made, and said property is hereby conveyed . upon the further condition that the name of said park now established by ordinance of said city, to wit, 'Griffith Park' be continued as the official name and designation of said park, and whenever said tract of land hereby conveyed, or any part thereof shall cease to be used as a park . . and if said city shall at any time change the official name of said park . then the lands hereby conveyed shall immediately upon the happening of either of said events, revert to said parties of the first part or their heirs."

The court held that the above clause created a condition subsequent and that the land did not automatically revert to the donor upon a breach of the condition, but the holder of the reversionary interest merely had the right to reenter and declare the termination of the estate (179 Cal. App 2d 558, 570-571) The court further stated that no deed provision can legally curtail or prohibit the lawful exercise of the state's power of eminent domain, and that the constitutional inhibition against the impairment of contracts by a state is not a limit on any statute authorizing the state or any department thereof to exercise the power of eminent domain (179 Cal App 2d 558, 573) Finally, the court held that while it is true that when a reversionary interest is condemned the reversioner must be compensated, the particular reversioner involved had no interest in the estate which justified his participation in the award The court pointed out that his reversionary interest terminated at the time the state condemned the interest of the City of Los Angeles, at that time there had been no disuse and the estate being enjoyed by the city might otherwise have continued forever, and thus the right of the reversioner was remote, speculative, and a mere possibility of no value capable of estimate (179 Cal App 2d 558, 574-575).

QUESTION NO 4

(a) How are state highway funds allocated to county groups, highway districts, and counties (particularly Humboldt County, in which Prairie Creek Redwoods State Park is located)?

(b) What are the legal consequences, if any, of choosing other than the least expensive route through Prairie Creek Redwoods State Park?

(c) What alternatives are available for funding a more expensive route without jeopardizing Humboldt County's allocation of highway funds?

OPINION AND ANALYSIS NO 4

(a) For the purpose of allocation of money in the State Highway Fund available for the construction of state highways, the counties of the state are divided into two groups, County Group No 1

and County Group No 2. Group No. 2 consists of the Counties of San Luis Obispo, Kern, Mono, Tulare, Inyo, Santa Barbara, Ventura, Los Angeles, San Bernardino, Orange, Riverside, San Diego, and Imperial. Group No 1 consists of the remainder of the counties in the state (Sec 187, S & H C)

The California Highway Commission is required to allocate 45 percent of the construction money in the State Highway Fund for expenditure in Group No 1 and 55 percent for expenditure in Group No 2 (Sec. 188, S & H.C.) At this point, it is important to note the impact of federal expenditures on state highways Projects which are to be eligible for federal aid are determined by the federal and state highway administrators jointly, so that the expenditure of federal funds will not necessarily conform to this 45-55 split of State Highway Fund money The state law requires, therefore, that if more federal-aid funds are spent in one county group than in the other, state funds shall be allocated to the county group receiving the lesser expenditure of federal funds so as to balance the total state and federal expenditures at the 45-55 split (Sec 825, S & H.C.).

As to the state highway construction funds allocated for expenditure in County Group No 1, and those allocated for expenditure in County Group No 2, during the four-year period commencing July 1, 1963, and ending June 30, 1967, and during each four-year period thereafter, 70 percent of such amounts in each county group is required to be allocated for expenditure in the individual state highway districts, or portions thereof, in each county group in accordance with certain percentages (Sec 188 8, S & H C)

The percentages for the 1963-1967 period are set forth and provision is made for the determination by the commission of the percentages in each subsequent four-year period on the basis of an estimate of construction needs for a 10-year period less estimates for construction expenditures budgeted prior to the commencement of the period (Sec 188 8, S & H C)

For the purposes of such allocations, the state highway districts are declared to be those established by the Department of Public Works for administrative purposes as of June 30, 1960 (See 188 8, S & H C)

It is further required (subject to the limitation discussed in the next paragraph) that notwithstanding the minimum percentages which are specified or determined pursuant to Section 188 8, during each four-year period there must be allocated and expended at least \$1,000,000 in Alpine County, \$1,000,000 in Sierra County, and \$4,000,000 in each of the remaining counties (See 188 9, S & H C) For example, if, under the Section 188 8 minimum expenditure percentages and the commission's proposed budgets for state highway construction in District I in County Group No 1 (which includes Humboldt County), only \$3,000,000 would be allocated for expenditure in Humboldt County in a particular four-year period, Section 188 9 would require the commission to revise its budgets for that four-year period so that another \$1,000,000 would be allocated and expended in Humboldt County

The above requirement of Section 188 9 would be subject to the limitation that if, during any four-year period, the commission determines that all the state highway construction needs in a particular county which were included in the estimate upon which the Section 188 8 percentages were based will be eliminated by expenditure of a lesser sum than provided for in Section 188 9, such lesser sum shall be allocated and expended in the county during that four-year period (See 188 9, S & H C)

As mentioned earlier, Section 188 8 requires 70 percent of the state highway construction funds allocated for expenditure in each of the two county groups to be allocated and expended during each four-year period in state highway districts in the respective county groups in accordance with certain percentages. Subject to the requirements of Section 188 9 (discussed in the two preceding paragraphs), the remaining 30 percent in each county group

would be "free money" and could be allocated by the commission for expenditure on state highways anywhere in the particular county group

As can be seen from the above explanation, Humboldt County is entitled to have a minimum of \$4,000,000 expended for construction of state highways in the county during each four-year period. Actually, the amount which will be expended in the county may be more, depending upon the amount allocated for expenditure in District I for the four-year period under the percentages specified in Section 188 8, and the amount of such allocation budgeted for expenditure in Humboldt County. Also, the commission may expend all or a portion of the so-called "free money" available for expenditure anywhere in County Group No 1 on state highway projects in Humboldt County.

(b) As to the legal consequences, if any, of choosing other than the least expensive route through Prairie Creek Redwoods State Park, we do not think that there would be any legal consequences at the state level.

It might be contended that Article XXVI of the California Constitution limiting the use of highway revenues to "highway purposes" places a limitation upon the commission and the department with respect to the choice of routes. In other words, there might be a basis for a contention that if the route chosen is more expensive than another which might be chosen, the expenditure of State Highway Fund money for the more expensive route violates the spirit of Article XXVI.

However, we do not believe that it can be said, as a matter of law, that such a choice of a more expensive route through a state park would violate the spirit of Article XXVI. The commission and the department are given a great amount of discretion in the location and construction of state highways (e.g., see Sees 71, 75, 90, 92, 100 1, 100 2, 102, 103, 103 5, 104, 104 2, S & H C). There undoubtedly are many factors, other than merely the minimum state highway traffic needs or the least expensive property to be acquired, which the com-

mission and the department consider in connection with the location and construction of state highways (e.g., see Secs 755, 1002, 104, 1043, S & H C) As stated by the California Supreme Court, in *Holloway v Purcell* (1950), 35 Cal 2d 220, at 231-232

"The Legislature has adopted a policy of free-way construction in the public interest It has properly delegated to the highway commission the authority to determine when and where freeways will be constructed, and it has properly required that the authority be exercised in accordance with the needs of the public interest "

In our opinion the determination of the commission and the department as to the public interest to be served in expending State Highway Fund money for a route other than the least expensive route through Prairie Creek Redwoods State Park would be upheld by the courts unless it were shown that such determination was made arbitrarily, capriciously, or fraudulently (*McDonough v Goodcell* (1939), 18 Cal 2d 741, 747-748)

At the federal level, it is conceivable that, in its role in approving projects involving a federal-aid highway (and the state highway through the Prairie Creek Redwoods State Park (US 101) is part of the federal-aid primary system), the Bureau of Public Roads of the Department of Commerce might object to the choosing of a route other than the least expensive route through the state park However, we note the following provision contained in the regulations adopted by the bureau

" *The conservation and development of natural resources, the advancement of economic and social values, and the promotion of desirable land utilization, as well as the existing and potential highway traffic and other pertinent criteria are to be considered when selecting highways to be added to a Federal-aid system or when proposing revisions of a previously approved Federal-aid system* " (23 CFR, Sec 16(e), emphasis added)

(c) As to the alternatives available for funding a more expensive route without jeopardizing Humboldt County's allocation of highway funds

(1) As indicated in (a) of this Opinion and Analysis No 4, the California Highway Commission could, under the provisions we have explained, allocate County Group No 1 "free money" for the construction of the more expensive state highway through Prairie Creek Redwoods State Park Such an allocation would not jeopardize Humboldt County's right to its usual allocations of construction money in the State Highway Fund Even if the commission allocated money from the minimum or "usual" allocations of State Highway Fund construction money available for construction of state highways in State Highway District I for this project, while this would naturally reduce the amount of funds available for other state highway projects in the state highway district, it would not, as a matter of law, jeopardize the rights of the counties in said district (including Humboldt County) to their usual allocations of construction money in the State Highway Fund

(2) Donations of money or land from individuals or private groups could be used

(3) Appropriations could be made from the General Fund For example, in 1956 money was appropriated from the State Park Fund (which fund has been abolished, with money for state park purposes now appropriated from the General Fund (see Sec 5010, PRC, as amended by Ch 2164, Stats 1959, and Ch 892, Stats 1961)) for acquisition of property for, and construction of, portions of the same state highway as is involved with respect to the Prairie Creek Redwoods State Park The appropriations referred to were contained in Items 407 and 4071 of the Budget Act of 1956 (Ch 1, Stats 1956), which read as follows

"407—For acquisition of real property, construction, and any other expenditures applicable to the State Park System

lated to the relocation of the Redwood Highway, Humboldt County Route 1, Sections A, B, C, and D, Division of Beaches and Parks, Department of Natural Resources, payable from the State Park Fund -----

800,000

Notwithstanding any other provisions of law the appropriation made by this item shall remain available for expenditure until June 30, 1961

407.1—For expenditure under contract with the Division of Highways, Department of Public Works, for the purpose of relocating the Redwood Highway, Humboldt County, Route 1, Section D, extending from the vicinity of Pepperwood to the vicinity of Dyer-ville, Division of Beaches and Parks, Department of Natural Resources, payable from the State Park Fund-----

2,605,000

provided, that any expenditure from the appropriation made by this item shall be matched by the expenditure of a like or greater amount from the State Highway Fund for the same purpose which expenditure from the State Highway Fund shall be subject to Sections 188, 188 4 and 825 of the Streets and Highways Code, provided further, that notwithstanding any other provision of law the appropriation made by this item shall remain available for expenditure until June 30, 1961 "

QUESTION NO 5

What is the authority and responsibility of the Bureau of Public Roads to act in the event of an

irreconcilable conflict between the Department of Parks and Recreation and the Department of Public Works over the routing of a state highway (which is part of the federal-aid system) through a state park?

OPINION AND ANALYSIS NO. 5

We are aware of no such authority or responsibility vested in the Bureau of Public Roads by federal law

Of course, the bureau approves federal-aid projects (23 U.S.C.A. 105) and surveys, plans, specifications, and estimates (23 U.S.C.A. 106, 109, 110), and inspects and approves the construction of such projects (23 U.S.C.A. 114). In carrying out these functions, the bureau could inject its views with respect to a dispute between the Department of Parks and Recreation and the Department of Public Works as to the routing of a federal-aid highway through a state park. In this connection, we call your attention again to the following provision contained in the regulations adopted by the bureau:

" . . . *The conservation and development of natural resources, the advancement of economic and social values, and the promotion of desirable land utilization, as well as the existing and potential highway traffic and other pertinent criteria are to be considered* when selecting highways to be added to a Federal-aid system or when *proposing revisions of a previously approved Federal-aid system* " (23 C.F.R., Sec. 16(c); emphasis added.)

QUESTION NO 6

What is the statutory or other authority for the so-called "tree-for-a-tree" proposal, which contemplates the use of State Highway Fund money for the purchase or condemnation of private land containing redwood trees to offset state park land containing redwood trees which is to be used for state highway purposes?

OPINION AND ANALYSIS NO 6

The Department of Public Works is authorized by various provisions of law to expend money from the State Highway Fund for the acquisition

of land for state highways (see generally Art. 5 (commencing with Sec 182), Ch. 1, Div. 1, S & H C)

Sections 104 and 104 2 of the Streets and Highways Code provide in part:

"104 The department may acquire, either in fee or in any lesser estate or interest, any real property which it considers necessary for state highway purposes. Real property for such purposes includes, but is not limited to, real property considered necessary for any of the following purposes:

"(b) For the purposes of exchanging the same for other real property to be used for rights of way

"104 2 Whenever property which is devoted to or held for some other public use for which the power of eminent domain might be exercised is to be taken for state highway purposes, the department may, with the consent of the person or agency in charge of such other public use, condemn, in the name of the people of the State of California, real property to be exchanged with such person or agency for the real property so to be taken for state highway purposes. This section does not limit the authorization to the department to acquire, other than by condemnation, property for such purposes."

Thus, the department is authorized to use State Highway Fund money to condemn land for exchange purposes in the situation presented here.

We do not think that the Legislature's authority in this regard violates any constitutional requirement. The only applicable provision which we are aware is Article XXVI of the California Constitution.

Article XXVI provides in substance that "all taxes collected from any tax now or hereafter levied by the State" upon the use of motor vehicles, fuel and certain other highway revenues

"shall be used exclusively and directly for highway purposes." These highway revenues largely make up the State Highway Fund (Sec 2108, S & H C.; Secs. 42270, 42273, Veh C; Secs 8351, 8353, 9301, 9302, R & T C.) The plain import of Article XXVI is to prohibit the diversion of gasoline tax funds to nonhighway purposes. As was stated in the ballot argument* in favor of the measure which added Article XXVI to the Constitution:

"The proposed constitutional amendment when adopted by the voters, will effectively and permanently prevent diversion of gasoline tax funds to purposes other than those now provided by law

"Despite the seemingly large amounts of money spent annually for street and highway maintenance and development, the demands of constantly growing traffic make it imperative that the gasoline tax and registration fees be protected in every possible manner against diversion for nonhighway purposes. In other states where 'diversion' has taken place, it has been ruinous to the proper development of adequate street and highway facilities."

Article XXVI further provides that the revenues covered thereby may be used "for the payment for property, including but not restricted to rights-of-way, taken or damaged for such purposes." Thus, land so acquired is expressly subjected to the same limitation as the funds used in its acquisition. That is, the land must be acquired for "highway purposes."

Article XXVI does not contain any express provision relating to exchange of land. This matter has been left by the Legislature to the discretion of the California Highway Commission. There is nothing in the language of Article XXVI which indicates an intention to restrict the Legislature except in connection with the use of motor vehicle fuel tax and certain other highway revenue. Treat-

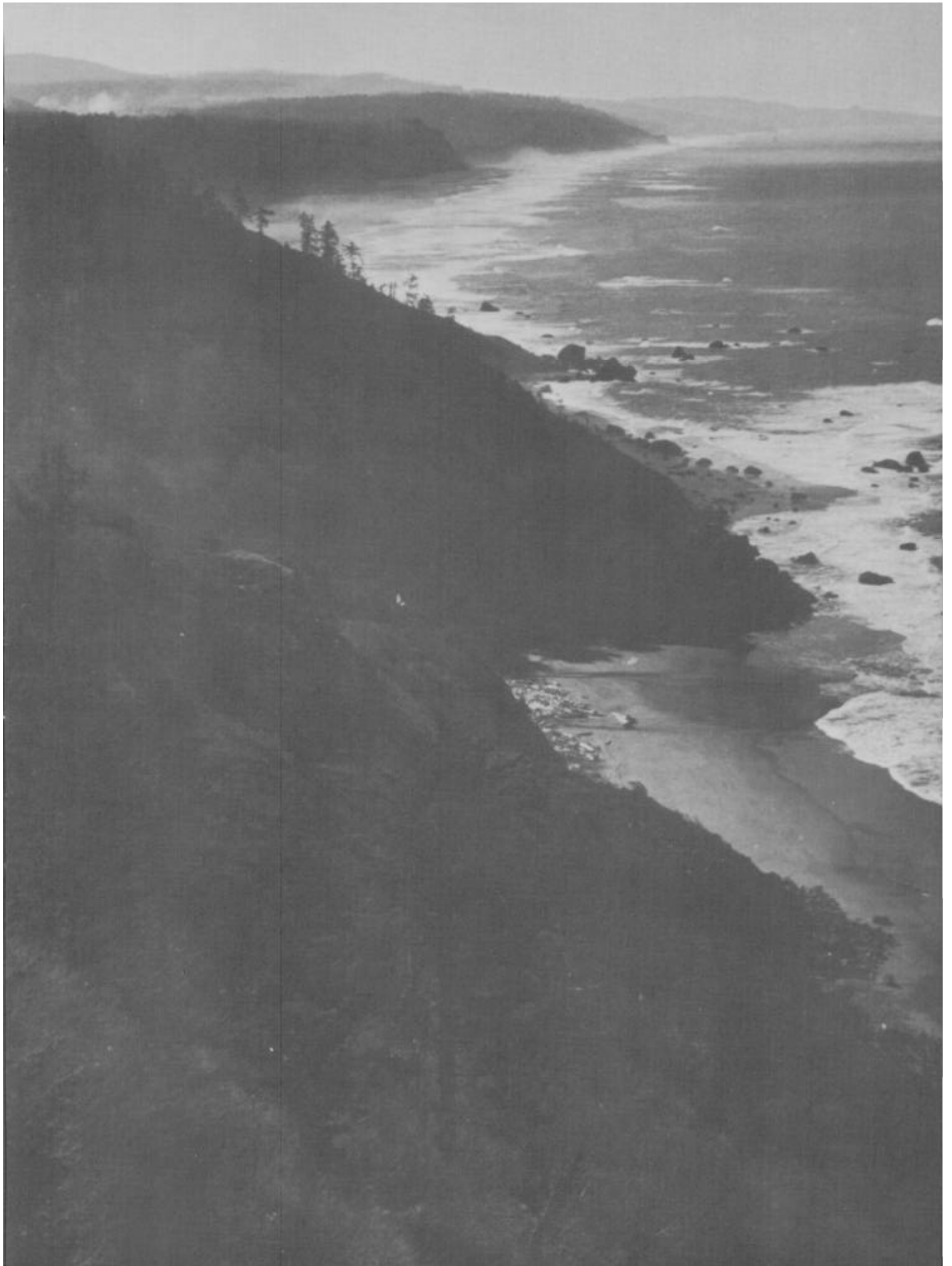
* Proposition 3, appearing on the 1938 general election ballot

ing Article XXVI as a restriction on the power of the Legislature, the normal rule of construction would not permit extending the restriction by implication beyond its specific language. The Legislature has all power not denied to it by the Constitution, and the rule is firmly established that any restriction or limitation on the Legislature's power should be strictly construed and that any doubt should be resolved in favor of the existence

of the Legislature's power (*Dean v Kuchel* (1951), 37 Cal 2d 97, 100)

Thus we think the department can constitutionally use State Highway Fund money to purchase or condemn privately-owned land containing redwood trees for exchange purposes, inasmuch as the ultimate goal to be attained is the acquisition of land for a highway right-of-way (see *Dohany v. Rogers* (1930), 74 L. Ed 904, 909-910)

Very truly yours,
A. C. MORRISON
Legislative Counsel
By RAY H. WHITAKER
Deputy Legislative Counsel



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Assembly Interim Committee Reports

1963-1965

Volume 26

Number 8

THE PACIFIC SOUTHWEST WATER PLAN

A REPORT OF THE
ASSEMBLY INTERIM COMMITTEE ON WATER
TO THE CALIFORNIA LEGISLATURE

Assembly Concurrent Resolution 1, 1963 First Extraordinary Session

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November 8, 1963



Published by the
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Letter of Transmittal

CALIFORNIA LEGISLATURE
ASSEMBLY COMMITTEE ON WATER
Carley V. Porter, Chairman

November 8, 1963

HONORABLE JESSE M. UNRUH, *Speaker of the Assembly*
MEMBERS OF THE ASSEMBLY
State Capitol
Sacramento 14, California

GENTLEMEN:

Pursuant to Assembly Concurrent Resolution 1 of the First Extraordinary Session of 1963, the Assembly Interim Committee on Water herewith submits a report on the "Pacific Southwest Water Plan" proposed by Secretary of the Interior Stewart L. Udall.

During the past 19 years many proposed projects have been submitted to the State of California for comments pursuant to the provisions of the 1944 Federal Flood Control Act. Preparation of the State's comments is the responsibility of the Governor and, to our knowledge, the Legislature has not previously made specific comments on projects during the 90-day review period. The Pacific Southwest Water Plan, however, is so important that it is incumbent upon this Committee to make its views known and to formulate appropriate comments on the policy considerations involved. The proposed Plan, as submitted to the Governor, deeply involves the State Water Facilities, including an enlargement of the California Aqueduct through the Central Valley and into Southern California in a joint federal-state undertaking.

It is the conclusion of this Committee that there should be no State acceptance of the proposed Plan or commitment to alter the State Water Facilities *without the express approval of this Legislature.*

In the accompanying report are detailed statements of the Committee on various elements of the proposed Plan which are summarized at the end of the report. These comments are the result of Staff analysis and a public hearing on the Plan held since the August release of the proposal.

Respectfully submitted,

CARLEY V. PORTER, *Chairman*
Assembly Interim Committee on Water

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EDWIN L. Z'BERG
(in part)*

* See page 16 for additional comments by Mr. Z'berg.

INTRODUCTION

On August 26, 1963, Secretary of the Interior Stewart L. Udall submitted his Pacific Southwest Water Plan to the Governors of the five Pacific Southwest States with a request, pursuant to the Flood Control Act of 1944, for comments from the states within a 90-day period.

Pursuant to Assembly Concurrent Resolution 1 of the First Extraordinary Session of 1963, the Assembly Interim Committee on Water held a joint hearing with the Senate Fact Finding Committee on Water Resources on the "Pacific Southwest Water Plan" in Sacramento on October 31, 1963. This report constitutes the comments of the Assembly Interim Committee on Water regarding the Plan. These comments are made because of the importance of the Plan to California and because the Committee feels the Legislature should be on record on this proposal.

The proposed plan, as submitted to the Governor, involves the State Water Project, including an enlargement of the California Aqueduct through the Central Valley and into Southern California in the form of a joint Federal-State undertaking.

Ostensibly the Plan was developed partially to compensate California for water losses which are alleged result from the United States Supreme Court Opinion in *Arizona v. California*, the Colorado River Decision, even though the full impact of that decision is not now known until the Court's decree is issued and other matters, including a shortage formula, are resolved. Assembly Concurrent Resolution authorizes this Committee to make a comprehensive study of the effect of the decision on state water planning.

The Committee believes that a number of general observations are appropriate before making specific comments on the Pacific Southwest Water Plan. The delay of transmittal from Secretary Udall to Governor Brown makes it clear that the Plan is being submitted to California for review, comment and recommendation.

The period of 90 days allowed is short for any comprehensive review. In addition, the impression has been that water agencies and others commenting on the Plan must be both constructive and attempt to make the Plan feasible by their suggestions and comments. Constructive review is commendable; however, California water interests do not have the responsibility to suggest alternatives to make the Plan feasible to the Department of Interior. The Legislature, like other agencies of state and local government, do not have the facilities to improve on the work of the Department of the Interior, which has one of the largest water oriented planning staffs in the

world. The comments in this report, therefore, will only express the views of the Committee in a generally constructive approach.

In preparing for the hearing on the Plan held on October 31, certain information was requested from the United States Department of the Interior and the State Department of Water Resources. Most of this material had not previously been available to water agencies and groups to assist them in their review of the Plan. The Committee could not help but note the limited information available to the public and that responsible officials of government have contributed little factual information to engender public understanding of the Plan and facilitate its analysis. In particular, there has been little factual information available to aid in judging the reasonableness of the proposed enlargement of the State Water Facilities to supply 1,200,000 acre-feet of water to Southern California. It is difficult for the public to conduct its affairs wisely if it is not fully informed.

Perhaps the most perplexing question posed by the Pacific Southwest Water Plan is whether the differing policies California applies to the State Water Facilities, compared to policies for projects constructed by the Bureau of Reclamation, can or should be reconciled. With the possible exception of irrigation water pricing, the general reaction in California toward the Plan has constituted a resounding endorsement of the basic principles of planning, financing, contracting, repayment and water rights under which the State Water Facilities are being constructed. It is clear that both the Legislature and water agencies of California would prefer that state policies rather than federal policies should apply insofar as California's interests in the Pacific Southwest Water Plan are concerned.

It is doubtful that Congress would be interested in reshaping federal policy to comply with the wishes of California and it is likewise doubtful that most other states would accept such a change in federal policy. On the other hand, as will be noted below, it might well disrupt the State's water program if federal policies were applied to any federal features which competed with or served the same areas as the State Water Facilities. So serious is this problem that it may be necessary to maintain a distinct separation of state and federal service areas as has already been done in the San Joaquin Valley between the federal Central Valley Project's San Luis Division and the State's Kern County service area.

A final general observation may be in order. The committees asked several questions of the Department of the Interior regarding the projects outlined in

Phase II of the Plan. The responses were either indefinite or that no information was available at this time. For example, with regard to the Havasu Aqueduct which would transport Northern California water of high cost in the opposite direction to the Colorado River Aqueduct, the Department of the Interior stated that this aqueduct was "a suggestion

that has been made and was included in order to get comments from the State of California." In view of the nonspecific nature of Phase II, this Committee cannot recommend approval of or comment on that portion of the Plan except to recommend that the salvage of water be moved from Phase II to Phase I and undertaken as soon as possible.

I. WATER SUPPLY AND DEMAND

During public discussions of the Pacific Southwest Water Plan, the need for delivery of 12 million acre-feet of new water supplies to Southern California has not been adequately justified.

It is unfortunate that basic water supply and demand data, which forms the justification for half of the Plan's proposed enlargement of the State Water Project, was not studied more carefully by the Department of the Interior Task Force. Robert T. Pafford, Jr., Director of the Bureau of Reclamation's Region II, explained the Task Force's acceptance of the Department of Water Resources' data in this regard in the following excerpt from his testimony at the Committee's hearing:

"QUESTION 3a: The plan proposes to market 1,200,000 acre-feet of water in Southern California to replace the Colorado River water and to meet growing future demands. How have these two factors been combined to arrive at the 1,200,000 acre-foot figure?"

"ANSWER: The 1,200,000 acre-foot diversion to Southern California was based upon a suggestion received from the California Department of Water Resources. This, we understand, reflects the possibility that under the Supreme Court opinion in *Arizona v. California*, et al., when read in conjunction with California's estimate of future water supply available from the Colorado River, would result in a loss to California of at least 962,000 acre-feet of water from the Colorado River, including 300,000 acre-feet of agricultural water and 662,000 acre-feet of the supply of the Metropolitan Water District of southern California. The 1,200,000 acre-foot diversion from northern California to southern California is designed to offset this loss, and at the same time provide some additional water to help meet growing demands, to the Metropolitan Water District of southern California."

No basis has been advanced why the Department of Water Resources suggested that 238,000 acre-feet a year above the Colorado River loss is needed "to help meet growing demands to the Metropolitan Water District of Southern California" when, as indicated below, more than that amount is certain to be available to that District from the uncontracted yield of the presently sized State Water Facilities.

The Metropolitan Water District's estimates of imported water requirements through 1990 (as of September 7, 1961) were included in Table 46 of the District's Report No. 810 and were introduced into the record at the Committee's hearing by Assemblyman Lanterman. These data, rather than those in the Department of Water Resources' *Bulletin No. 78*, were used because these data are more recent and since the District comprises the major water user in Southern California affected by the Court's decision and served by the State Water Facilities. A summary of this table indicates total imported water needs (including Colorado River supplies) for the Metropolitan Water District, the San Bernardino Valley Municipal Water District and the Upper San Gabriel Municipal Water District (now a part of the Metropolitan Water District) service areas as follows:

Year	Acre-feet
1960 (actual)	933,827
1965	1,275,800
1970	1,605,800
1975	1,947,000
1980	2,271,700
1985	2,573,600
1990	2,865,600 ¹

¹Mr. Robert Skinner, General Manager, Metropolitan Water District, indicated "it was assumed that the amount of available from local sources would remain about the same as it has during the last 20 years. Since these two areas have been a period of drought, occurrence of a wet year would reduce the demands for supplemental water to those shown . . ."

The Metropolitan Water District and San Bernardino Valley Municipal Water District currently have contracts for a maximum annual entitlement of 4,400,000 acre-feet from the State Water Facilities of 1,590,000 acre-feet. The Committee, in evaluating the above data, finds that the State will continue to receive 4,400,000 acre-feet of water annually from the Colorado River.

State Director of Water Resources William Warner testified at the Committee's hearing that

"While I believe it appropriate to now assume that California will be successful in efforts to protect its rights to a basic supply of 4.4 million acre-feet, it should be recognized that this is far from a certainty. With the probability that the . . ."

mainstream water supply will diminish to six million acre-feet by the year 2000, and with allocation of that quantity by the proration formula proposed by the Special Master, California's share from the Colorado could amount to as little as 3.5 million acre-feet." (Emphasis added)

Acceptance of the Master's shortage formula, however, presupposes California's lack of success in protecting its rights to 4,400,000 acre-feet.

In its June 3, 1963 Opinion, the U.S. Supreme Court specifically gave the Secretary of the Interior the authority to devise a shortage formula, concluding that "... Congress still has broad powers over this navigable international stream. Congress can undoubtedly reduce or enlarge the Secretary's power as it wishes."

This Committee believes it unnecessary at this time to assume other than that California will receive 4,400,000 acre-feet annually. The Committee further believes that authorizing legislation for any program of regional development involving California supplies from the Colorado River must recognize California's claim to 4,400,000 acre-feet of Colorado River water as determined in *Arizona v. California*. Such legislation should include a shortage formula guaranteeing this amount, if necessary.

If 4,400,000 acre-feet of water from the River annually is maintained, the loss within California would be 962,000. This loss would fall upon:

- a) Imperial and Coachella Valleys and Palo Verde Irrigation District ----- 300,000 acre-feet²
(102,050 used in 1962)
- b) Metropolitan Water District of Southern California ----- 662,000 acre-feet

Mr. Warne testified at the Committee's hearing that if the State signs a contract with the Kern County Water Agency for a maximum annual entitlement of 1,000,000 acre-feet there remains at this time 868,000 acre-feet of uncontracted water out of the State Water Facilities' annual firm yield of 4,000,000 acre-feet.³ Mr. Warne estimated that if all potential contractors who have expressed interest sign State Water Service contracts by the contracting deadline of December 31, 1963 there will still be at least 344,000 acre-feet of water per year available for option by the Metropolitan Water District and other contractors in Southern California under Article 8 of the State's Water Service contracts

²The Coachella Valley County Water District, which is included in this group of users, is in the service area of the State Water Facilities with a maximum entitlement of 20,000 acre-feet a year of municipal and industrial water

³See Mr. Warne's statement to California Water Commission, October 17, 1963, for details

Using this 344,000 figure, a conservative estimate, and considering only sources now reasonably certain to be available, the estimated imported water needs and estimated available supplies in the Southern California Service Area of the State Water Facilities receiving a reduction in Colorado River supplies are nearly in balance in 1990 without taking more water from Northern California and with an increase in the State's aqueduct only along the lower reaches

	Acre-feet	Acre-feet
Total imported water need (1990) -----		2,865,600
Imported Water Supplies		
Existing Sources:		
Colorado River -----	550,000	
	Acre-feet	Acre-feet
State of California -----	1,590,000	
(Metropolitan Water District, San Bernardino Valley Municipal Water District)		
New Sources:		
Minimum surplus available under State Contract Option -----		344,000
New Los Angeles Owens River Supply -----		152,000
Waste Water Reclamation -----		200,000
Total estimated available supply (1990) -----		2,836,000
	Deficiency	29,600

The Los Angeles Department of Water and Power announced early this year its plans to build the additional capacity noted above into its Owens River Aqueduct. The Los Angeles County Sanitation Districts' July 1963 report, "A Plan for Water Re-Use," outlined a program to conserve "nearly all of the readily reclaimable water now available at strategic locations throughout the districts." The initial projects proposed, based upon today's water use, would reclaim more than 100,000 acre-feet of water annually at an estimated capital cost of \$20,000,000. Additional amounts would be available for reclamation as water use increases. Undoubtedly, more efficient use of available supplies by California users can be accomplished and will aid the over-all supply problem

In addition to the new supplies available to Southern California as noted above, the Pacific Southwest Water Plan itself suggests substantial water savings along the Colorado and in both Arizona and California by reclamation and salvage operations. These

salvage and reclamation amounts may be summarized as follows:

Type	Amount Salvaged (ac/ft Annually)	Estimated Cost
Lining of All-American and Coachella Branch Canals (Phase II) -----	500,000	\$105,000,000
Phreatophyte control (Phase I) -----	100,000	9,200,000
Channelization of River (Phase I) -----	190,000	
Ground Water recovery project near Yuma (Phase I) -----	220,000	38,800,000
Reclamation of municipal and industrial waste waters in Arizona (Phase II) -----	200,000	18,000,000
	1,210,000	\$171,000,000

Thus, 1,210,000 acre-feet could be made available relatively soon through reclamation and salvage operations which are significantly less expensive than bringing water from new conservation facilities in Southern California.

The Committee believes that all reclamation and salvage proposals should be commenced immediately and not be delayed until Phase II. The Committee further believes that California users should obtain priority on salvaged water to insure that its

\$500,000,000 investment in the Colorado River Aqueduct is protected.

The Committee also believes that present efforts to develop effective evaporation control techniques should be accelerated. Approximately 1,000,000 acre-feet of water annually is lost from evaporation on Colorado River reservoirs.

In discussing water supply and needs for the period after 1990, recognition must be made of the fact that by that time saline conversion techniques may make major water transfer projects such as those contemplated for Phase II of the Plan unnecessary.

In addition to matters of water supply in Southern California, serious questions have been raised as to the amount of water available within California for use in this State and for export. At the Committee's hearing, representatives of the Department of the Interior and the State Department of Water Resources presented directly contradictory estimates of the amount of water available for export from the State.

The Committee also feels that before any comprehensive development of Colorado River supplies is presented to the Congress an accurate inventory of the water supply of the Colorado River must be made because there is substantial disagreement over the actual supply of the River. In the Pacific Southwest Water Plan, more conservative estimates of the River's runoff were used for water supply than for computation of power revenues.

II. PACIFIC SOUTHWEST DEVELOPMENT FUND

Very little information is available on the operation of this Fund, which is basically a device for funding construction costs of projects in the Plan and for providing some repayment assistance. Under the Plan, it appears that the Fund would receive all project revenues from which all operation, maintenance, replacement, and repayment costs would be taken. The Fund is not an account which would merely spread the repayment burden over different purposes and projects of the Plan. The Fund would build up a reserve which would be available by appropriation for construction purposes.

Presumably, during the first decades of operation of the Plan, the federal treasury would be the sole source of construction funds since there would be no surplus in the Fund. As long as this situation occurs, the burden of subsidies as proposed in the Plan would fall on the federal treasury which would not be fully repaid. However, when construction money is taken from the Fund, the burden of subsidies would not fall directly on the federal treasury but would fall on the water and power users of the southwest by reducing the repayment of the money advanced from

the Fund for construction purposes. The incidence of the burden of subsidies would, therefore, be different in the Plan compared to the usual federal project. Since subsidy to irrigation is a national policy objective, the costs should be borne at the federal level and not shifted to a particular part of the country and a particular group of water and power users.

There is reason for concern with the Department of the Interior's tendency to overcome objections to the Plan by suggesting that payments can be made from the Fund to achieve equity of treatment. Until alternative policies and plans have been thoroughly evaluated, payments from the Fund should not be the answer to many of these questions. Rather, such suggestions only demonstrate the possible abuses which might occur if control of the assets in the Fund is placed exclusively in Washington, D C, while contributing the money to the Fund is the responsibility of only a small segment of the country.

Because the Department of the Interior has testified that there is no detailed information on the operation of the Fund, the incidence of payments into the Fund and the receipt of benefits or subsidies from

the Fund can only be speculated. Most of the population of the Pacific Southwest is in Southern California and most of the power generated by the Plan will probably be sold there. Likewise, most of the power generated at Bridge and Marble Canyon Power Plants is expected to be peaking power and the market for such peaking may be mainly in Southern California.

Lacking contrary evidence, it can be assumed that California will contribute much of the surplus power revenues which will go to subsidize water users in Arizona. It may be possible that Southern California will even subsidize the transmission of Northern California water to Arizona. Such a result from the operation of the Fund would be improper when Southern California will pay the full costs of the Northern California Water it gets from the State Water Facilities. If it is not possible to supply water to Arizona except through subsidy, then such subsidy should be

at the federal level. It should not fall on Southern California which in many forms of industry, commerce and agriculture is directly competitive with Arizona.

Although much attention has been directed toward questions of water rights and water supply in considering the Pacific Southwest Water Plan, the real heart of the Plan is in the Fund. Without the Fund, the Plan would be beyond implementation in its present form. The concept of the Fund as contained in the Plan is at direct variance with the existing policies of the federal government with regard to the operation of subsidies and with most of the policies used in financing the State Water Facilities. The Committee believes the Fund should not be accepted by California until these problems are resolved, its details of operation are clearly spelled out, and until a draft of language implementing it is available.

III. POWER REVENUES

The principal source of revenues to the Pacific Southwest Development Fund is from surplus power revenues of the Colorado River projects. Beginning in 1990 when Hoover Dam costs will be repaid, the Plan proposes to double the power rate to 4 mills per kwh. This revenue, plus revenues from Bridge Canyon at 6 mills per kwh, constitute most of the power revenues accruing to the Fund. The Plan shows all power costs repaid by 1998 on a system basis. Thereafter, the surplus power revenues will be available for construction and other purposes through the Development Fund.

It may be noted that the year 1998 is 35 years away. By that time developments in nuclear energy or other sources of energy may have seriously limited or modified the market for hydroelectric power. Without complete study, it should not be assumed that a market for power at a price level adequate to support the proposed water project construction will exist in 1998 and extend to the year 2044. For example, the Department of Water Resources is already giving detailed study to the use of nuclear energy for the Tehachapi Mountain pumplift of the State Water Facilities.

Although almost no data are available, the marketing of power from the Colorado River in Southern California has not been demonstrated to offer any

advantages to California except as another source of competitively priced power. The only apparent advantage would occur if an excess of the surplus power revenues were returned to California over its contributions. This does not appear likely since the 4 mill power from Hoover Dam alone will accrue \$595,817,000 by 2044 and California will contribute most of this revenue, but the net municipal and industrial water supply assistance for the entire Plan is only \$399,725,000.

The principle that power users should subsidize municipal and industrial water users has not received wide acceptance in California and within the Legislature not only because there is no need for subsidy but also because very frequently the water and power users are the same persons and there is no advantage in paying the costs of water through one's power bill. Finally, it should be recognized that if there is equity in California's contention that it needs all its water for itself and, therefore, should export none to other states, then there is no basis to secure in California the benefits of development of power sites in Arizona. If California merely wishes to secure large quantities of low cost hydroelectric power, the Pacific Northwest may be a better source of supply than the energy deficient Colorado River.

IV. CONTRACTING POLICIES

Consonant with the financing of the major portion of the costs of the State Water Facilities by general obligation bonds, the contracting policies of the State require that the beneficiaries of the project repay the

project costs, i.e., pay principal and interest on general obligation water bonds. The full faith and credit of the State of California has been pledged on the water bonds, and to the extent that project

do not pay principal and interest costs of the bonds, the State's General Fund and the taxpayers of the State must make up any deficiency. The Pacific Southwest Water Plan proposes to extend the State's aqueduct into Southern California in order to permit the Federal Government to market 200,000 acre-feet of water in Southern California, at least 238,000 acre-feet of new water which is not Colorado River replacement water. Sale of this water at the proposed price of \$40 per acre-foot could jeopardize the marketing of State water in the area. It is unlikely that the Federal Government will consent to withholding its water from the market in Southern California until all of the State's water is being fully used. Inevitably, efforts would be made by water agencies, even though they have contracts with the State, to secure the cheaper water. Under such circumstances, it would not be surprising if cheaper federal water, subsidized by Southern California through the Pacific Southwest Development Act, would replace more expensive State water. This turn could undermine the repayment structure of

the State Water Facilities and thus require assistance from the General Fund, most of the revenues of which are also secured from Southern California.

The proposed \$40 per acre-foot price for federal water is achieved by assuming both a subsidy from the Development Fund and that the Department of the Interior would pay only the incremental cost of enlarging the State's aqueduct into Southern California in order to deliver the water. It is obviously unrealistic for the State to permit an incremental approach which would cheapen federal water and thus assist in underpricing State water, even without subsidy. (Although the State's transportation charge capital cost component in its contracts is fixed and not subject to unilateral revision by contractors, there may be many political and legal means of escaping from its payment if alternative cheaper water should become available.) Only complete separation of State and federal service areas, as has been done in the San Joaquin Valley, appears to be acceptable if subsidized federal water is not to upset the State Water Facilities.

V. WATER RIGHTS

Before the adoption of any regional plan for water development involving interstate water transfers is made, federal-state water rights relationships must be clarified. Recent federal court decisions, including *California v. California*, have tended to imply parallel federal authority to control and develop the water resources of the United States. Different views of this authority have been advanced by various federal agencies, however, and the situation facing an area included in a federal project is one of uncertainty. The Congress, through authorizing statutes for individual projects, should make specific limitations on this broad assertion of authority.

The problems presented by an assumption of parallel federal authority are underscored by the fact that a large proportion of the runoff in the mountain areas of California originates on federally reserved or controlled lands.

The State's insistence that federal projects conform to state water laws has arisen many times with reference to federal development in California. It is significant, and the problem is given great emphasis by many of California's basic concepts of water rights, and laws vary considerably from federal practice.

This Committee believes that the needed clarification of federal-state water rights relationships can be accomplished through legislation such as S.B. 1275 which is now pending before the Congress.

The Pacific Southwest Water Plan suggests the inclusion in its authorizing legislation of protection for

areas of origin within any state and among the states themselves by means of provisions similar to those included in the New Melones Project authorization of 1962. The New Melones provision makes exportations of water from the Stanislaus River Basin subordinate to the existing and anticipated future needs within the Basin, as determined by the Secretary of the Interior.

In his testimony at the Committee's hearing Mr. Warne presented an excellent comparison of the New Melones legislation and the protection afforded California projects by the County of Origin (Water Code Section 10505) and Watershed Protection (Water Code Sections 11460-11463) provisions of State law, under which the State Water Facilities will be constructed and operated. The latter statutes provide substantially more protection to areas of origin than the federal New Melones statute.

Additional protection to areas of origin is afforded by the concept and the financing of the State Water Facilities through provisions of the authorizing Burns-Porter Act requiring construction of additional facilities to replenish the Delta and the areas of origin when water use in these areas increases. Such a provision has no precedent in federal project authorizations.

This Committee believes that any regional plan of water development must include adequate protection both to areas within states and to the states themselves in which water for export originates. The

Committee believes that such protection must be included in the authorizing legislation of any project to be effective. It further believes that the type of protection offered by the New Melones authorization is not sufficient for this purpose. This protection

should more closely approximate California's area of origin and watershed protection statutes and should include the philosophy of replacement development for areas of origin similar to that provided for California's State Water Facilities.

VI. LOCAL PROJECTS

The Pacific Southwest Water Plan is essentially a collection of local water supply projects augmented by a project to import Northern California water into Southern California and Arizona. According to testimony presented to the Committee by Department of the Interior officials, there is no direct relationship or correlation between the local projects in the Plan and the operations of the Fund. They stated the only relationship is that the Fund "would be a source of financial assistance which could be used to achieve optimum development of water resources for the Pacific Southwest."

In California, local projects involved in waste water reclamation and ground water recharge have proceeded without federal participation. In fact, California has been a leader in the development of these techniques. California has also been active in the development of saline water conversion, having financed half the costs of the Point Loma Demonstration Plant, having maintained a substantial research program at the University of California and having maintained a program in the Department of Water Resources to survey new developments in saline water conversion and to review their applicability to California's water problems. Also, the study of ground water problems in California made by this Committee during the past interim concluded that California water agencies are presently doing a good job in ground water management although more needs to be done in the future.

The local projects included in the Plan for Arizona essentially serve irrigation and municipal and industrial water demands through Bureau of Reclamation projects (and their traditional associated subsidies) with the addition of subsidy to municipal and industrial water users. However, the Plan proposes no financial assistance for local water features in California. No reason, other than the need for subsidy in Arizona, has been advanced for including Arizona local projects in the Plan. From the point of view of California, local projects located in either State can remain as local projects without serious detriment to California and therefore need not be included in the overall Plan.

The need to salvage water along the Colorado River is not entirely a local or a regional undertaking but appears to have elements of both. As noted above, the work should be given a high priority and undertaken with appropriate participation by federal, state and local agencies in lieu of drying up the Colorado River Aqueduct. If the Federal Government has proposals to stimulate ground water recharge or construction of saline conversion plants (other than the Southern California plant included in the Plan) or waste water reclamation facilities in California these should be welcomed by California and the forms of cooperation worked out.

VII. COORDINATED PLANNING

In recent years there has slowly evolved a series of coordinated water development activities between the State of California and the Bureau of Reclamation. The joint construction of the San Luis Project by the Department of Water Resources and Bureau of Reclamation has been conspicuous in its success. More recently the Department of Water Resources and other state departments have participated with the Bureau of Reclamation and other federal agencies in a coordinated planning approach to the solution of the problems of the Sacramento-San Joaquin Delta.

The Interagency Delta Committee, which is the coordinated planning mechanism that has evolved after much thought, effort and wasted motion relating to Delta planning, has given evidence of being a con-

structive approach to the problem and is presently the only hope for its solution. Proposals have been made by the Department of Water Resources for greater degree of coordination of planning between state and federal agencies in the North Coastal area.

A mechanism for complete coordination of the efforts between all state, federal and local agencies vital to the development of water resources in California, either with or without the Pacific Southwest Water Plan. In addition to the areas mentioned above coordinated planning with respect to salvage of Colorado River water should be undertaken immediately. Other areas also need attention. Lacking any better mechanism at present, the approach used by the Interagency Delta Committee is suggested for most

consideration, particularly that aspect which involves agreement on general objectives before efforts at detailed project planning are begun.

Unfortunately, the Pacific Southwest Water Plan was prepared during a short period of time by a task force in Washington, D.C. It does not demonstrate familiarity with the progress being made by the Regional Office of the Bureau of Reclamation and other Federal agencies in developing coordinated planning machinery with the State of California. In fact, by

proposing that the Bureau of Reclamation construct a peripheral canal in the Delta, it negates much work that has already been done and makes further cooperation by the Bureau of Reclamation difficult. The Committee hopes that serious consideration will be given to furthering the cause of coordinated planning and, if the need develops for a formal agency to facilitate state, federal and local participation in any plan adopted, that the creation of such an agency will be fully studied. Otherwise, there is no means of implementing a number of proposals in the Plan.

VIII. EAST SIDE CANAL

Two important aspects of the Pacific Southwest Water Plan could not be given full consideration by the Committee, both because of the lack of data and the immensity of the problems involved.

One is the question of the present and future need for water in Arizona, assuming the construction in form of the Central Arizona Project. It must be assumed that there will be demand for more water in Arizona than will be furnished by the Central Arizona Project, if only because of the size of the present groundwater overdraft.

Because of the lack of showing that additional capacity is needed now in the State Water Facilities to transport water to Southern California and because of other serious financial, contracting and subsidy problems involved in federal enlargement of the State Water Facilities (as noted in sections above) the Committee believes that the State should oppose joint participation by the Federal Government in enlarging the State's aqueduct.

If additional water is needed by Arizona, and it is factually demonstrated that Northern California is the only reasonable source of such water, and if the problems of securing the supply from California can be resolved, then the Committee prefers that such water be transmitted to Arizona through enlargement of the East Side Canal. This would be federal water within federal facilities, thereby eliminating planning and insuring minimum problems in policy conflict such as with the 160 acre limitation. The second aspect of the Plan which the Committee does not fully consider was the impact of such enlargement of the East Side Canal on the schedule for authorizing and constructing the Canal. The need for additional funds to enlarge the East

Side Canal and to include substantial capacity before repayment capability exists in Arizona may seriously reduce the willingness of Congress to provide funds for an early start of construction on the Canal. The Committee accepts the assurances of the Secretary of the Interior that enlargement of the East Side Canal would not reduce the efforts of the Department of the Interior to secure its early authorization and construction. The Secretary has not been willing to predict the impact on Congress, however, and neither can the Committee. It, therefore, remains an unresolved question whether the enlargement of the East Side Canal would reduce the chances of its early authorization and construction by Congress, but it must be recognized that such an event could occur.

In suggesting that the Department of the Interior provide any increased capacity to transport water to Arizona in its own East Side Canal, the Committee is influenced by the fact that the Department of the Interior has proposed enlarging the State's aqueduct even though it is now partly under construction and the time for making revisions is almost nonexistent. In contrast the East Side Canal is not yet authorized and there is time to revise it.

With the construction of the Central Arizona Project and the State Water Facilities there will be major new water supplies provided for both Arizona and Southern California. Therefore, the urgency of immediately constructing increased aqueduct capacity to meet uncertain future demands in these areas does not appear sufficient to warrant intruding upon the construction of the State Water Facilities. In fact, some delay in the construction of capacity to serve Arizona might be both engineeringly and economically desirable, as well as being logical.

SUMMARY

The Committee concludes that it would be desirable for the Pacific Southwest Water Plan to incorporate the basic policies developed for the State Water Facilities. Since this is not likely to occur, the State

Water Facilities and the features of the Pacific Southwest Water Plan should be kept relatively separate. Local projects in the Plan can stand alone without detriment to California. Water supply data available

to the Committee do not justify the enlargement of the State's aqueduct into Southern California as a result of *Arizona v. California*. In no event should the aqueduct be enlarged without a contract for repayment and no agency has suggested signing such a contract.

If any agency in the service area of the State Water Facilities should propose to contract for more water than the present 4,000,000 acre-foot yield, it should be furnished by the Department of Water Resources through enlargement of the State's aqueduct following appropriate legislative review. If additional water in excess of the yield of the Central Arizona Project is eventually needed in Arizona after development of comprehensive plans to transport it, water rights assurances should be contained in the authorizing legislation to protect California and areas of origin. The Federal Government should deliver the water to Arizona through an enlargement of the East Side Canal, thereby keeping State and federal facilities separate

Salvage and reclamation of water in the Colorado River system should be undertaken immediately by cooperative endeavors and first priority on this water should go to California water agencies that have lost any entitlement as a result of *Arizona v. California*. California must insist on its entitlement of 4,400,000 acre-feet from the Colorado River and any authorizing legislation for any Pacific Southwest Water Plan or derivative of it should guarantee this amount and, if necessary, contain a formula for sharing any shortages. Finally, the Committee believes the Pacific Southwest Development Fund offers no net advantage to California but may result in subsidy by Southern California to Arizona's water projects.

For these reasons, among others, this Committee is unable to support the Pacific Southwest Water Plan and strongly urges the Governor that no commitment to the Plan be made without the express approval of the Legislature.

ADDITIONAL COMMENTS

December 4, 1963

Honorable Carley V. Porter
Chairman, Assembly Interim
Committee on Water
Room 2144, State Capitol
Sacramento 14, California

Dear Mr Porter

This will refer to the report of the Assembly Interim Committee on Water transmitted to the Honorable Jesse M. Unruh, Speaker of the Assembly, and to Members of the Assembly, under date of November 8, 1963, regarding the Pacific Southwest Water Plan proposed by Secretary of the Interior Udall.

You will recall that I had approved the report of the Assembly Water Committee in part. In connection with my partial approval I should like to direct your attention to the following items included in the report upon which I should like to take exception.

1. On page 3 of the Committee's report it is indicated that with the possible exception of irrigation water pricing, the general reaction in California toward the Plan has constituted a resounding endorsement of the basic principles of planning, financing, contracting, repayment and water rights under which the State Water Facilities are being constructed. The report further states that it is clear that both the Legislature and water agencies of California would prefer that State policies rather than federal policies should apply insofar as California's interest in the Pacific Southwest Water Plan are concerned.

I do not believe that the adverse comments made against the Pacific Southwest Water Plan constitute

any such resounding endorsement. The principles adopted for the State plan assume entirely different circumstances than those, for example, upon which the Federal Central Valley Project in California is founded. Our experience with the State project has made it abundantly clear that agriculture in Northern and Central California cannot afford to contract for irrigation water under the price which would be required by the State Water Program. While it is true that there may be a limited quantity of water contracted for by Kern County for agricultural water under the State Water Program, it is abundantly clear that other agricultural areas in California are being forced to abandon any interest in the State Project because of the high price of State water and the uncertainties of future escalation regarding said prices. Furthermore, the State policies regarding allocation of costs and subsidies are such that they provide little assistance to Northern and Central California agriculture. If these areas are going to be able to continue to prosper and develop to their fullest potential from an agricultural standpoint, it cannot be done under the basic policies set forth in the State Water Development Program.

I believe the experience of Northern and Central California in contracting with the Bureau of Reclamation under the policies which govern the Federal Central Valley Project make this abundantly clear.

2. The Assembly Water Committee report makes no mention of the fact that the Pacific Southwest Water Plan proposes to divert, initially, 1.2 million acre-feet of new water supplies to Southern California without providing additional conservation storage. In the pre-

sentation of the Pacific Southwest Water Plan it has been suggested that this initial 1.2 million acre-feet would be only surplus water. Water supply studies were not submitted by the Secretary of the Interior to support the contention that only surplus water would be taken out of Northern California to supply the initial 1.2 million acre-feet demand in Southern California. As a matter of fact, I believe the evidence will show that the primary sources of surplus water in the Sacramento-San Joaquin Delta at this time exist by virtue of the fact that Folsom Reservoir has been constructed and that the water using facility, namely the Folsom South Canal, has not yet been authorized or been constructed. In addition, the same can be said with respect to the Sacramento Valley canals.

It therefore appears that much of the water which might be diverted to Southern California under the first phase of the Pacific Southwest Water Plan would be those supplies which temporarily exist in the delta because Folsom South Canal and the Sacramento Valley canals have not yet been constructed. Obviously, if the Pacific Southwest Water Plan constructs transmission facilities to deliver 1.2 million acre-feet of water to Southern California it is going to be extremely difficult to recover this water from Northern California's needs when they come into being.

Furthermore, there becomes the question as to who would be responsible for insuring the construction of additional conservation features in Northern California to replace the 1.2 million acre-feet of water which the report says will be diverted to Southern California on an interim basis.

3 The Pacific Southwest Water Plan omits mention of works which will be required in the Sacramento-San Joaquin Delta in order to convey either the 1.2 million acre-feet to Southern California initially, or ultimately the 2.4 million acre-feet to Southern California and Arizona. It is very possible that such diversion could be made to the detriment of the entire Sacramento-San Joaquin Delta area. Assurances must

be given to this area and details must be provided to indicate precisely how the Pacific Southwest Water Plan proposes to accomplish large additional diversions out of the Sacramento-San Joaquin Delta.

4. The Assembly Water Committee report suggests that consideration should be given to enlarging the East Side Canal as a means of transmitting water to Arizona, should it be necessary. I am not willing to support this recommendation until more information is available regarding the possible impact of such a suggestion on the proposed East Side Canal. As you know, the East Side Canal is in an advanced state of planning by the Bureau of Reclamation and a report should be ready shortly for transmitting to Congress, recommending the authorization for such a facility. The proposed East Side Canal is vitally needed to supply supplemental water to the east side of the San Joaquin Valley at a price within the ability of this area to pay for agricultural purposes. Before I would approve any plan to enlarge the East Side Canal for possible service of water to Arizona I would need to be assured that such a plan would not delay the early authorization for construction of the proposed East Side Canal and, secondly, that it would have no influence on the prices for agricultural water which have been proposed by the Bureau of Reclamation from that facility to areas in the San Joaquin Valley.

With the above exceptions I have approved the Assembly Water Committee's report which was forwarded on November 8, 1963. In view of the importance of my exceptions, to agriculture in Northern and Central California in particular, I would request that you forward a copy of this letter to all persons who received a copy of your November 8 report so that they might be apprised of the reasons why I limit my approval of the Assembly Water Committee report to a partial concurrence, or that it be included in the final report of the Committee.

Very truly yours,
EDWIN L. Z'BERG

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