

Revised June 19, 1969

<u>Time</u>	<u>Place</u>
June 26 - 7:00 p.m. - 10:00 p.m.	Catamaran Motor Hotel
June 27 - 9:00 a.m. - 5:00 p.m.	3999 Mission Boulevard
June 28 - 9:00 a.m. - 12:00 noon	San Diego, California 92109

FINAL AGENDA

for meeting of

CALIFORNIA LAW REVISION COMMISSION

San Diego

June 26, 27, and 28, 1969

JUNE 26 - 7:00 p.m. - 10:00 p.m.

1. Approval of Minutes of June 6-7 Meeting (sent 6/16/69)
2. Administrative Matters
3. 1969 Legislative Program Report (enclosed)
4. Study 63.20-40 - Evidence Code (Marital Privilege)
 Memorandum 69-81 (sent 6/11/69)
 Tentative Recommendation (attached to Memorandum)
5. Study 74 - Rule Against Perpetuities
 Memorandum 69-78 (sent 6/16/69)
 Tentative Recommendation (attached to Memorandum)
6. Analysis of Comments on Tentative Recommendations
 - a. Study 12 - Taking Instructions to Jury Room
 Memorandum 69-82 (sent 6/13/69)
 Tentative Recommendation (attached to Memorandum)
 - b. Study 66 - Quasi-Community Property
 Memorandum 69-73 (sent 6/13/69)
 Tentative Recommendation (attached to Memorandum)
 - c. Study 52.20 - Sovereign Immunity (Prisoners and Mental Patients)
 Memorandum 69-70 (sent 6/18/69)
 Tentative Recommendation (attached to Memorandum)
 - d. Study 36.55 - Condemnation (Arbitration)
 Memorandum 69-74 (sent 6/16/69)
 Tentative Recommendation (attached to Memorandum)

Revised June 19, 1969

- e. Study 65.20 - Inverse Condemnation (Right to Survey and Examine Property)

Memorandum 69-75 (sent 6/17/69)
Tentative Recommendation (attached to Memorandum)

- f. Study 36.25 - Condemnation (Byroads)

Memorandum 69-72 (enclosed)
Tentative Recommendation (attached to Memorandum)

JUNE 27 - 9:00 a.m. - 5:00 p.m.

Completion of items scheduled for June 26 if those items not completed on June 26.

7. Study 36.85 - Condemnation (Litigation Expenses)

Memorandum 69-66 (sent 4/28/69)
First Supplement to Memorandum 69-66 (sent 5/28/69)
Second Supplement to Memorandum 69-66 (sent 6/11/69)

8. Study 36.40 - Condemnation (Excess Condemnation)

Memorandum 69-77 (enclosed)
Memorandum 69-83 (to be sent)

9. Study 36.30 - Condemnation (Substitute Condemnation)

Memorandum 69-61 (sent 3/20/69)
Draft Statute (attached to Memorandum)
Research Study (attached to Memorandum)

10. Study 65.40 - Inverse Condemnation (Aircraft Noise Damage)

Memorandum 69-69 (sent 6/9/69)
Research Study (attached to Memorandum)

JUNE 28 - 9:00 a.m. - 12:00 noon

11. Study 65.25 - Inverse Condemnation (Water Damage)

Memorandum 69-79 (sent 6/13/69)
Draft Statute (attached to Memorandum)

12. Study 65.30 - Inverse Condemnation (Land Stability)

Memorandum 69-80 (sent 6/16/69)
Draft Statute (attached to Memorandum)

13. New Topic

Memorandum 69-76 (enclosed)

Completion of work on items scheduled for June 27 if not completed on June 27.

June 20, 1969

LEGISLATIVE PROGRAM FOR 1969

Enacted as Law

SB 98 (powers of appointment) - Ch. 155

SB 99 (powers) - Ch. 113

SB 102 (fictitious business names) - Ch. 114

SB 104 (specific performance of contracts) - Ch. 156

SB 105 (additur and remittitur) - Ch. 115

SCR 16 (continues authority to study topics) (adopted by Assembly, June 18)

Sent to Governor

SB 103 (psychotherapist-patient privilege)

Approved by Assembly; Senate Concurrence in Assembly Amendments Pending

SCR 17 (authorizes study of six new topics)

Approved by Assembly Judiciary Committee; to be Heard by Assembly Ways
and Means Committee

SB 100 (claims against public entities)

Defeated; Reconsideration Granted; on Inactive File in Assembly

SB 101 (leases)

MINUTES OF MEETING

of

CALIFORNIA LAW REVISION COMMISSION

JUNE 26, 27, AND 28, 1969

San Diego

A meeting of the California Law Revision Commission was held in San Diego June 26, 27, and 28, 1969.

Present: Sho Sato, Chairman
Thomas E. Stanton, Jr., Vice Chairman
Lewis K. Uhler
Richard H. Wolford
William A. Yale

Absent: Alfred H. Song, Member of the Senate
Carlos J. Moorhead, Member of the Assembly
Roger Arnebergh
John D. Miller
George H. Murphy, ex officio

Messrs. John H. DeMouilly, Clarence B. Taylor, Jack I. Horton, and John L. Cook, members of the Commission's staff, also were present.

The following observers also were present:

William M. Bitting, Hill, Farrer & Burrill, Los Angeles
Donald Clark, San Diego County Counsel's Office
John N. McLaurin, Hill, Farrer & Burrill, Los Angeles
James T. Markle, Department of Water Resources
Ken Nellis, Department of Public Works
Willard A. Shank, California Attorney General's Office
Terry Smith, Los Angeles County Counsel's Office
Charles Spencer, Department of Public Works
Gerald J. Thompson, Assistant County Counsel, Santa Clara County

Comments of Commissioner Miller: With respect to each item on the agenda, Commissioner Miller submitted written comments. A copy of these comments was provided each Commissioner, and the comments were considered in connection with each particular matter.

Minutes
June 26, 27, and 28, 1969

NEW TOPICS

The Commission considered Memorandum 69-76 and the suggestion that the problem of allocation of loss among insurers who have covered the same liability would be a suitable topic for Commission study. After discussion, the Commission believed that the topic would constitute a major undertaking, that the Commission does not now have the time or resources to devote to such an undertaking, and that the insurance industry itself is best able to resolve the problem either internally or by securing the enactment of any necessary legislation. Based on these considerations, the Commission decided not to request authority to study this topic.

Minutes
June 26, 27, and 28, 1969

STUDY 12 - TAKING INSTRUCTION TO JURY ROOM

The Commission considered Memorandum 69-82 and the attached tentative recommendation. The Commission determined not to submit a recommendation to the Legislature, but rather to request authority to drop this topic. This decision was based on the opposition to the recommendation by the Judicial Council, and the request to remove this topic from further Commission consideration should point out that the recommendation would have required the Judicial Council to formulate the rules and procedures for implementing the taking of instructions to the jury room and the Council's opposition, therefore, indicates further efforts would be wasted.

Minutes
June 26, 27, and 28, 1969

STUDY 36.25 - CONDEMNATION (BYROADS)

The Commission considered Memorandum 69-72, the exhibits attached thereto, including amended SB 68, and the tentative recommendation and background study relating to the right to take byroads. The following action was taken:

(1) The staff was directed to amend Section 1238.8 to provide, in substance, that, where a public entity furnishes or offers to furnish an access road under that section, such access road will be treated as a part of the improvement and will, therefore, be taken into consideration in determining damages to any property that would otherwise be cut off from access to a public road.

(2) Consideration was given to providing a limited power to a private person to condemn land for access purposes. However, no agreement was reached concerning the nature and extent of such power and, therefore, no change in this aspect of the recommendation was made.

Minutes
June 26, 27, and 28, 1969

STUDY 36.30 - CONDEMNATION (SUBSTITUTE CONDEMNATION)

The Commission considered Memorandum 69-61, the background study attached thereto, and a revised draft statute (dated 6/25/69) distributed at this meeting.

The Commission approved the following statute:

Article . Acquisition of Property for Exchange

1. Definitions. As used in this article:

(a) "Necessary property" means property to be used for a public use for which the public entity is authorized to acquire property by eminent domain.

(b) "Property to be exchanged" means property to be exchanged for necessary property.

2. Condemnation of property to be exchanged for property already devoted to public use. (a) A public entity may acquire by eminent domain property to be exchanged if:

(1) The person with whom the property is to be exchanged has agreed in writing to such exchange; and

(2) The necessary property is devoted to or held for some public use and the property to be exchanged will be devoted to or held for the same public use.

(b) If a public entity is required by agreement or by a judgment in a condemnation action to relocate any street, road, highway, railroad, canal, public utility facility, or other property subject to or devoted to public use, the public entity may exercise the right of eminent domain to acquire such property as is reasonably necessary to permit it to comply with such agreement or judgment.

(c) The resolution, ordinance, or declaration authorizing the taking of property under this section shall specifically refer to this section and shall recite a determination by the officer or body adopting the resolution, ordinance, or declaration that the property is necessary for the purpose specified in subdivision (a) or (b) of this section. The determination in the resolution, ordinance, or declaration that the taking of the property to be exchanged is necessary is conclusive.

Minutes
June 26, 27, and 28, 1969

3. Condemnation of property to be exchanged for property not already devoted to public use. (a) A public entity may acquire by eminent domain property to be exchanged if:

(1) The owner of the necessary property has agreed in writing to the exchange and, under the circumstances of the particular case, justice requires that he be compensated in whole or in part by the property to be exchanged rather than by money;

(2) The property to be exchanged is to be exchanged for property needed for a public improvement and is adjacent to or in the immediate vicinity of the public improvement; and

(3) Taking into account the relative hardship to both owners, it is not unjust to the owner of the property to be exchanged that his property be taken so that the owner of the necessary property may be compensated by the property to be exchanged rather than by money.

(b) The resolution, ordinance, or declaration authorizing the taking of property under this section shall specifically refer to this section and shall recite a determination by the officer or body adopting the resolution, ordinance, or declaration that the property is necessary for the purpose specified in this section. The public entity has the burden of proof as to the facts that justify the taking of the property. However, the resolution, ordinance, or declaration creates a presumption that the taking of the property to be exchanged is justified under this section. This presumption is a presumption affecting the burden of producing evidence.

4. Special statutes not affected. This article does not limit any authority a public entity may have under any other provision of law to acquire property for exchange purposes nor does it limit any authority a public entity may have to acquire, other than by eminent domain, property for exchange purposes.

A tentative recommendation on substitute condemnation is to be prepared for consideration at a future meeting.

Minutes
June 26, 27, and 28, 1969

STUDY 36.40 - CONDEMNATION (EXCESS CONDEMNATION)

The Commission considered Memorandum 69-77 and the draft statute attached thereto relating to excess condemnation, i.e., the taking of physical or financial remnants. The Commission recognizing that greater uniformity and certainty is needed in these areas directed the staff to prepare a draft statute which provides the following:

(1) Authorizes the voluntary acquisition of any variety of physical or financial remnant;

(2) Authorizes the taking of physical remnants, i.e., remainders of such size or shape as to be of little value to their owners;

(3) Where a partial taking leaves a remainder landlocked and it is economically unfeasible to provide access, authorizes the entity to take such remainder, unless the owner waives all severance damage (or a proper portion of severance damage) attributable to such remainder; and

(4) Defines "excessive severance damages" as damages in excess of 75% of the "before" value of the remainder. Authorizes the entity to take the remainder to avoid paying excessive damages, subject to the landowners' right to remit a portion of his severance damages and retain the remainder. Permits the landowner to compel the acquisition of the remainder where there would otherwise be excessive severance damage.

STUDY 36.55 - CONDEMNATION (ARBITRATION)

The Commission considered Memorandum 69-74 and the attached tentative recommendation and the suggested amendments handed out by the staff at the meeting. The suggested amendments were adopted to the extent indicated below.

General reaction

The Commission, after reviewing the comments on the tentative recommendation, concluded that the principle of the tentative recommendation is sound. Arbitration would permit an expeditious determination in cases where court congestion now makes a rapid resolution of the controversy impossible. The Commission was advised that some public agencies indicated an interest in trying the procedure on a pilot program basis. The Commission determined that the recommended legislation should merely authorize arbitration. If the system works, then consideration might be given to permitting the property owner to compel arbitration. But the development of a compulsory statute would present difficult problems as to how the arbitrator might be appointed.

Section 1273.01

This section was revised to read as follows:

1273.01. As used in this chapter, "public entity" includes the State, the Regents of the University of California, a county, city, district, public authority, public agency, and any other political subdivision or public corporation in the State.

Section 1273.02

This section was revised to read substantially as follows:

1273.02 (a) Any person authorized to acquire property for public use may enter into an agreement to submit, and submit to arbitration in accordance with the agreement, any controversy as to the compensation to be made in connection with the acquisition of the property.

(b) For the purposes of this section, in the case of a public entity, "person" refers to the particular department, officer, commission, board, or governing body authorized to acquire the property on behalf of the public entity.

Section 1273.03

This section was revised to read as follows:

1273.03. (a) Where property is already devoted to a public use, the person authorized to compromise or settle the claim arising from a taking or damaging of such property for another public use may enter into an agreement to submit, and submit to arbitration in accordance with the agreement, any controversy as to the compensation to be made in connection with such taking or damaging.

(b) For the purposes of this section, in the case of a public entity, "person" refers to the particular department, officer, commission, board, or governmental body authorized to compromise or settle the claim arising from the taking or damaging of its property.

Right to rescind the agreement

The Commission considered various suggestions concerning the right of the condemnee to rescind the agreement if (1) he is not represented by counsel when the agreement was signed, (2) the agreement is not approved by the Office of the Attorney General, or (3) the agreement does not contain certain key provisions in bold face. The conclusion was that the property owner must seek the advice of an attorney in this circumstance. A suggestion was made that the agreement be effective only if it is signed by the property owner after he has sought the advice of an attorney. The Commission determined not to include any specific provision relating to the rescission of the agreement.

Section 1273.04

The revision of this section as set out on page 10 of Memorandum 69-74 was approved.

Section 1273.06

The substance of the revision set out on pages 11 and 12 of Memorandum 69-74 was approved. However, item (1) in that revision should be modified to make clear that the expenses on abandonment include expenses in preparing for and during judicial proceedings in connection with the acquisition.

Section 1273.07

This section should be revised to permit recording a notice of pending arbitration instead of the entire agreement and also should provide a means for clearing the record upon conclusion of the arbitration.

Exchange of valuation information

Whether valuation information should be exchanged can be dealt with in the agreement or, if nothing is provided in the agreement, by decision of the arbitrator as to whether he wants such an exchange. However, such an exchange should not be required in every case. No provision to deal with this matter should be included in the statute.

Parties

The arbitration proceeding would bind only parties to the proceeding. The public entity would have to make any persons whose interests it seeks to take parties to the proceeding.

Procedure to be followed on Recommendation

The staff is to revise the tentative recommendation to reflect the changes made as listed above. The revised recommendation is to be sent to each Commissioner and he is to be provided approximately 10 days within which to review and suggest editorial revisions. Unless some significant problem not previously discussed is raised, the recommendation should then be sent to the printer. The recommendation is to be included on the agenda for the September meeting and any comments from interested persons on the revised recommendation can also be considered at that time. The revised recommendation should be sent to persons and organizations that have or will actually submit comments on it.

STUDY 36.85 - CONDEMNATION (LITIGATION EXPENSES)

The Commission considered Memorandum 69-66 and the First and Second Supplements to that memorandum and also Memorandum 69-74.

The view was expressed that the need for compensation for litigation expenses (or some other alternative scheme for reducing the expense of litigation) arises primarily because injustice now results in some cases where the property owner cannot afford to contest the amount offered such as a case where the value of the property is not great and the difference between the amount offered and the market value of the property is not more than \$2,000 to \$5,000. For example, the owner of a residence having the market value of \$23,000 cannot afford to contest an offer of \$20,000 for his home even though he has only a \$3,000 equity in the home.

Various suggested solutions to this problem were reviewed:

(1) The "Ayer solution"--cost-allocation of trial expenses keyed to the demand of the condemnee as well as the condemnor. See research study published in the Stanford Law Review. Ayer, Allocating the Costs of Determining "Just Compensation", 21 Stan. L. Rev. 693 (1969).

(2) The so-called "jurisdictional offer"--a scheme used in a significant number of states that imposes on the condemnor the condemnee's trial expenses when the ultimate award in the particular case exceeds the condemnor's pre-trial offer by a specified percentage, such as 10 or 25 percent. Many of the persons who commented on the Commission's study on this aspect of condemnation law and procedure recommended this as the best solution to the problem.

Minutes
June 26, 27, and 28, 1969

(3) Compulsory arbitration upon demand of the property owner. The California Real Estate Association and others have recommended this solution to the problem.

(4) Creation of a state review board that would review the case upon demand of the property owner. The owner would be bound by the decision of the board which would be for an amount not less than the condemnor's offer. The condemnor would have a right to appeal--i.e., to obtain a trial de novo in the superior court. In effect, this procedure would be analogous to the property owner being the plaintiff in a small claims court case. This suggestion was made by the staff in Memorandum 69-74.

(5) Make the provisions of Assembly Bill 1756 (adding Section 998 to the Code of Civil Procedure), relating to offers by a party to compromise, applicable to eminent domain actions.

It was noted in discussion that:

(1) The so-called jurisdictional offer provision would lead to a substantial increase in litigation.

(2) The use of arbitration on a voluntary basis should be tried for a time before any consideration is given to compulsory arbitration. Moreover, compulsory arbitration would create difficult problems insofar as appointment of the arbitrator and other provisions of the arbitration agreement would be concerned. In fact, it would probably be necessary to prescribe the procedure in detail in the statute.

(3) The other solutions listed above were not considered to be appropriate solutions to the problem.

During the discussion, it was concluded that condemnation cases are unique in the sense that public entities advise the Commission that they

Minutes
June 26, 27, and 28, 1969

do not offer more than the appraisal report indicates is the market value in an effort to compromise a case, even where the condemnor knows that there is little, if any, doubt but that the condemnee will recover the amount he suggests as a compromise, or more, if the case goes to trial.

Professor Sato moved that this aspect of condemnation law be dropped from further Commission consideration and not be reconsidered unless and until someone comes up with what appears to be a promising solution to the problem that has not been considered by the Commission. The motion was adopted unanimously. The procedure provided by Assembly Bill 1756 (relating to offers by a party to compromise) was not considered to be a promising solution even if that bill is enacted by the Legislature.

Minutes
June 26, 27, and 28, 1969

STUDY 52.20 - SOVEREIGN IMMUNITY (PRISONERS AND MENTAL PATIENTS)

The Commission considered Memorandum 69-70, the attached exhibits, and the Tentative Recommendation submitted therewith. Section 854.4 of the recommendation was amended to provide:

854.4. As used in this chapter, "mental illness or addiction" means any condition for which a person may be detained, cared for, or treated in a mental institution or in a facility designated by a county, pursuant to Chapter 2 (commencing with Section 5150) of Part 1 of Division 5 of the Welfare and Institutions Code .

The staff was directed to determine whether any further clarification is necessary to restrict the general immunity conferred by Section 854.8 to inpatients and to expand the specific discretionary immunities to cover all types of mental illness or addiction. Subject to this determination, the recommendation was approved for printing. Any conforming changes to reflect legislation enacted in 1969 should be made before the recommendation is finally printed.

The Commission will determine at its September 1969 meeting whether this recommendation should be combined with the other sovereign immunity and inverse condemnation recommendations to be submitted to the 1970 Legislature.

Minutes
June 26, 27, and 28, 1969

STUDY 63.20-40 - EVIDENCE CODE (MARITAL PRIVILEGE)

The Commission considered Memorandum 69-81 and the Tentative Recommendation attached thereto. The Commission determined that the recommendation should be redistributed for comment to a selected group with a covering letter indicating that this recommendation is identical to one previously distributed, that the Commission had reexamined the recommendation after the expression of some concern by certain legislators had caused its withdrawal from the current session of the Legislature and determined to make the same recommendation. Because the earlier recommendation had been previously approved by this same group, the Commission directed the staff to have this recommendation sent to the printer during the summer.

Minutes
June 26, 27, and 28, 1969

STUDY 65.20 - INVERSE CONDEMNATION (RIGHT TO ENTER,
SURVEY, AND EXAMINE PROPERTY)

The Commission considered Memorandum 69-75, the exhibits attached thereto, and the tentative recommendation submitted therewith. The following action was taken:

(1) Subdivision (a) of Section 1242 was amended to provide in substance:

(a) Any person having the power of eminent domain may enter upon property and make studies, surveys, tests, soundings, appraisals or engage in similar activities reasonably related to the purpose for which the power may be exercised. Before making such entry and undertaking such activities, the person shall secure:

(1) The written consent of the owner to enter upon his property and to undertake such activities; or

(2) An ex parte order for entry from the superior court in the county where the property is located.

(2) Section 1242.5, which provided a notice and deposit procedure to secure an entry order where substantial damage is anticipated, was deleted. Some concern was expressed that deletion could cause possible constitutional problems or alternatively could produce an unduly restrictive interpretation and application of Section 1242. The argument advanced was that the California Constitution provides that property must not be taken or damaged without compensation first being made. In the absence of a prior payment or deposit provision, it could be asserted that the statutory scheme provided is unconstitutional or alternatively that Section 1242 must be construed as authorizing only activities that will not result in substantial damage. It was decided, however, that the cumbersome procedure provided by Section 1242.5 was unnecessary and that the owner's inverse condemnation remedy under Section 815.8 would provide adequate relief.

Minutes
June 26, 27, and 28, 1969

(3) Section 815.8 was amended to provide:

815.8. Notwithstanding Section 821.8, a public entity is liable for actual damage to property or for substantial interference with the possession or use of property where such damage or interference arises from an entry upon the property by the public entity to make studies, surveys, tests, soundings, appraisals or engage in similar activities.

Subdivision (b) of Section 815.8 was deleted.

(4) The staff was directed to revise the tentative recommendation to reflect the changes listed above and to redistribute the revised recommendation for comment.

Minutes
June 26, 27, and 28, 1969

STUDY 65.25 - INVERSE CONDEMNATION (WATER DAMAGE)

The Commission considered Memorandum 69-79, the attached draft statute, and related materials discussing the issues of multiple causation and apportionment of damages. The Commission believed that the latter issues are ones that are best left to judicial handling. The Commission approved the draft statute presented as the basis for a tentative recommendation and directed the staff to prepare such recommendation for future consideration.

Minutes
June 26, 27, and 28, 1969

STUDY 65.30 - INVERSE CONDEMNATION (INTERFERENCE WITH LAND STABILITY)

The Commission considered Memorandum 69-80 and the draft statute attached thereto. The Commission approved the draft statute as the basis for a tentative recommendation and directed the staff to prepare such recommendation for future consideration.

Minutes
June 26, 27, and 28, 1969

STUDY 65.40 - INVERSE CONDEMNATION (AIRCRAFT NOISE DAMAGE)

The Commission considered Memorandum 69-69 and Professor Van Alstyne's background research study dealing with noise damage from operation of aircraft. The Commission determined that a draft statute relating to this topic should be prepared by the staff for the Commission's future consideration. The statute should reflect the following preliminary, tentative policy decisions:

(1) No requirement of overflights to support compensation should be imposed.

(2) The basic general standard should require that the aircraft noise, and accompanying vibrations, fumes, and lights be of such frequency and magnitude that (a) they materially interfere with use of the claimant's property (b) in such a substantial and physically disagreeable manner as to significantly deprive plaintiff of the enjoyment of his property and (c) thereby cause a significant diminution of the market value of the property for its highest and best use.

(3) Specific statutory standards related to the quantum and quality of noise imposition should be provided. Proof of noise imposition above the statutory standards should raise a rebuttable presumption that diminution of property value resulted from aircraft operations. Proof that noise did not exceed these standards should raise a presumption that diminution of property value did not result from these aircraft operations. The staff was directed to attempt to obtain expert assistance for the Commission to determine what appropriate standards would be.

(4) The statute should make clear that no compensation will be awarded

Minutes
June 26, 27, and 28, 1969

for (a) possible diminution of value due principally to mere personal annoyance, loss of pleasure, or unjustified fear and apprehension of physical injury from objects falling from the aircraft or from possible crash landings of aircraft, or (b) loss of value based principally on reduction or elimination of speculative future developmental prospects for use of the affected land.

(5) The Commission believed it was unnecessary in view of both the general and specific standards to be provided under paragraphs (2) and (3) for any additional provisions relating to (a) the distance from the affected property of the flight paths flown by offending aircraft, (b) the effect of violations of regulations designed to reduce noise through control of aircraft operations, or (c) the comparative impact on neighboring property.

(6) Appropriate provisions should be included that insure that the compensation recoverable under this statute is apportioned properly to those injured. Consideration should be given to protecting not only the "landowner" but also the lender whose security is impaired by aircraft noise damage. On the other hand, windfalls to subsequent purchasers of land depressed in value should be avoided.

(7) The public entity should be permitted to serve written notice upon all potentially affected property owners when the governing body of the public entity concludes that an early settlement of potential noise damage liabilities created by its airport operations would be advisable. Such notice could serve to establish both a starting date for application of the appropriate statute of limitations and the identity of potential claimants. However, adequate procedural safeguards must be furnished.

The entity should not be permitted to compel premature determinations of damage or preclude recovery for future losses.

(8) The public entity should be authorized to propose a "physical solution" to the problem such as a program of soundproofing the claimant's home or other building at the entity's expense, the amount of compensation to be awarded to be determined in light of the condition of the building in its "after" condition. A "short-term lease of the right to inflict noise damage in the future" should be authorized, damages to be computed at the end of the lease period for actual experience during the lease period. The court should be authorized to render a conditional judgment, giving the public entity a reasonable period of time to enact zoning changes that would permit the use of the land for a purpose that would completely offset any detriments flowing from aircraft noise and reduce the fiscal impact of aircraft noise claims to negligible proportions.

Finally, the staff was directed to attempt to elicit from those involved in the problems of airport operations views, opinions, and suggestions regarding the above proposals, as well as possible alternative solutions.

Minutes
June 26, 27, and 28, 1969

STUDY 66 - QUASI-COMMUNITY PROPERTY

The Commission considered Memorandum 69-73 and the attached tentative recommendation. The Commission approved the recommendation for printing. Any conforming changes (renumbering of sections, and so on) needed to reflect enactments of the 1969 Legislature should be made before the recommendation is finally printed.

Minutes
June 26, 27, and 28, 1969

STUDY 74 - CIVIL CODE SECTION 715.8 (RULE AGAINST PERPETUITIES)

The Commission considered Memorandum 69-78, the attached materials, and the tentative recommendation submitted therewith. The Commission directed the staff to contact Professors Dukeminier, Powell, and Rabin, Dean Halbach, and certain private attorneys, and solicit their views as to the necessity and desirability of Section 715.8 and the effect of repeal of that section. If it is indicated that the repeal of this single section is both desirable and feasible, the staff was further directed to prepare a revised tentative recommendation which deals concisely with this subject, supplemented, if necessary, by a broader background study.