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Memorandum 69-37

Subject: Study 65.- Inverse Condemnation (Concussion, Vibration, and Interference With Land Stability)

The attached draft statute is an attempt to extend the Albers rule to all instances of disturbance of soil stability. Included are disturbances caused by concussion and vibration as well as removal of subjacent and lateral support and imposition of fill. Again the Comment to the initial section of the draft statute summarizes existing law and indicates the intended changes; a more detailed analysis of existing law is contained in Part IV of the Research Study (pages 39-41, 48-49).

As in the area of water damage, the staff believes that the draft statute makes very little, if any, change in existing law although it might be better received if its limitations were expressly stated.

At least one matter that should be noted is that, unlike the water area, here the public entity must take the conditions as it finds them. That is, the property owner may already have disturbed the natural conditions, e.g., by construction of an improvement or creation of a fill. Section 875 would impose a responsibility to maintain the status quo. This precise issue seems to have not been previously raised--nor is it discussed in the Research Study. However, both Reardon and Albers fail to suggest that any distinction need be made in such a situation.

Again we expect not only to discuss the draft statute but those further areas of consideration that the statute may lead into.

Respectfully submitted,

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DRAFT STATUTE

Article 3. Interference With Land Stability

Section 875

875. Except as provided by statute, a public entity is liable for all physical damage to property and all expenses which the owner reasonably and in good faith incurs in an effort to minimize damage to his property proximately caused by the disturbance of soil stability by an improvement as deliberately designed and constructed by the public entity.

Comment. Section 875 states the basic conditions of and limitations upon the liability of public entities for actual direct physical damage resulting from the disturbance of soil stability by public improvements as deliberately designed and constructed. The section complements the existing statutory liability for dangerous conditions and for negligence generally in the same fashion as Section 870. See the Comment to Section 870. Similarly, this section is qualified by the duty of a property owner to take all reasonable steps available to him to minimize his loss. See Sections 875.2 and 870.2 and the Comments thereto.

Section 875 is intended to cover all forms of interference with land stability. Included therefore are situations of removal of both lateral and subjacent support, imposition of fill, as well as concussion and vibration. In each of these areas, without regard to fault, and subject only to the owner's duty to minimize his damage, this section imposes liability on the public entity for all physical damage proximately caused by the disturbance of the existing soil stability conditions by a public improvement. The section simply restates former law with respect to the removal of subjacent

support (Porter v. City of Los Angeles, 182 Cal. 515, 189 Pac. 105 (1920); Reardon v. San Francisco, 66 Cal. 492, 6 Pac. 317 (1885)) and the imposition of fill (Albers v. County of Los Angeles, 62 Cal.2d 510, 42 Cal. Rptr. 89, 398 P.2d 129 (1965)). Similarly, at least with regard to developed areas, strict inverse liability for concussion and vibration damage appeared to be the former rule. See, e.g., Los Angeles County Flood Control Dist. v. Southern Cal. Bldg. & Loan Ass'n, 188 Cal. App.2d 850, 10 Cal. Rptr. 811 (1961). Where lateral support was disturbed by a public improvement, prior cases are consistent with a rule of strict inverse liability (see, e.g., Kaufman v. Tomich, 208 Cal. 19, 280 Pac. 130 (1929); Veteran's Welfare Board v. City of Oakland, 74 Cal. App.2d 818, 169 P.2d 1000 (1946)), but fail both to explicitly establish this rule and to make inapplicable the fault requirement of Civil Code Section 832. Section 875 makes clear that any distinction between removal of subjacent and lateral support does not apply in cases involving the deliberate design and construction of public improvements. Similarly, while California appears generally to require a showing of negligence as a basis of liability where blasting occurs in a remote or unpopulated area (see Houghton v. Loma Prieta Lumber Co., 152 Cal. 500, 93 Pac. 82 (1907)), the issue of inverse liability for damage resulting from such concussion and vibration seems never to have arisen and has, therefore, never been answered. Section 875 makes clear that there is to be no distinction made in the rules governing liability for damage caused by concussion or vibration whether the public improvement be located in a remote or unpopulated area or in a populated, developed area; in both instances, the public entity is liable for direct physical damage proximately caused by the public improvement as deliberately designed and constructed.

Section 875.2. Owner's duty to minimize loss

875.2. A public entity is not liable under Section 875 for physical damage which the public entity establishes could have been avoided by reasonable steps available to the owner of the property damaged to minimize his loss.

Comment. See Section 870.2 and the Comment thereto.