

Memorandum 74-52

Subject: Study 36.300 - Condemnation Law and Procedure (State Condemnation Authority and Special District Statutes)

BACKGROUND

The Commission published two tentative recommendations in addition to the one containing the comprehensive eminent domain law: Condemnation Authority of State Agencies and Conforming Changes in Special District Statutes. This memorandum reviews these two tentative recommendations.

The staff suggests that we do not reprint the two tentative recommendations. Instead, we suggest that any revisions in these tentative recommendations be noted in some manner in our Recommendation Proposing the Eminent Domain Law. We think this is an appropriate way to deal with these two tentative recommendations because it will save substantial printing costs and the changes needed are relatively few in number.

CONDEMNATION AUTHORITY OF STATE AGENCIES

Department of General Services. The Department of General Services (Exhibit I - pink) approves the tentative recommendation but recommends that it go further and eliminate the acquisition functions of those state agencies not now engaged in acquisition functions. While the staff has no objection to such a revision, we believe it goes beyond the scope of the recommendation. Perhaps such a proposal can be made by the Department of General Services to the legislative committees that consider our proposed legislation and, if the proposal meets the approval of the legislative committees, the bill introduced to effectuate the Commission's recommendation can be amended accordingly.

Wildlife Conservation Board. We have received only one other comment (Exhibit II - yellow) not previously considered on the tentative recommendation relating to Condemnation Authority of State Agencies. The comment concerns Section 1348 of the Fish and Game Code, which is proposed to be amended on page 1064 of the tentative recommendation. The Wildlife Conservation Board objects to the revision of this section, pointing out that the section as it presently exists is working fine and needs no revision. The Department of General Services agrees with the Wildlife Conservation Board. Accordingly, the staff recommends that the only revision of the section be the technical change proposed in the last three lines of the section as set out on page 1064 of the tentative recommendation. The Comment to the section would be revised to read:

Comment. Section 1348 is amended to insert a reference to the part of the Government Code which constitutes the Property Acquisition Law.

The staff wants to retain an amendment to Fish and Game Code Section 1348 in the recommended legislation to avoid renumbering the entire bill.

To conform to the revision of Section 1348 of the Fish and Game Code, the staff recommends that Section 15855, which is proposed to be added to the Government Code on page 1071 of the tentative recommendation, be revised to read:

15855. (a) Notwithstanding any other provision of law, except as provided in subdivision (b), the State Public Works Board is the only state agency that may exercise the power of eminent domain to acquire property needed by any state agency for any state purpose or function.

(b) Subdivision (a) does not affect or limit the right of the Department of Transportation, Department of Water Resources, State Reclamation Board, or the Regents of the University of California to exercise the power of eminent domain. Subdivision (a) does not affect or limit the exercise of the power of eminent domain by the Department of Fish and Game pursuant to Section 1348 of the Fish and Game Code.

To conform to the revision of Section 1348 of the Fish and Game Code, the staff recommends that Section 1245.210 (dealing with the resolution of necessity) be amended to add an additional subdivision to read:

1245.210. As used in this article, "governing body" means:

* * * * *

(h) In case of a taking by the Department of Fish and Game for the Wildlife Conservation Board pursuant to Section 1348 of the Fish and Game Code, the Wildlife Conservation Board.

Technical revisions. When the results of actions by the 1974 session of the Legislature are available, we will revise the sections contained in the tentative recommendation to incorporate any amendments made to those sections by the 1974 session. Also, we will check 1974 enactments to determine whether any additional conforming changes are needed.

CONFORMING CHANGES IN SPECIAL DISTRICT STATUTES

Although some concern has been expressed orally concerning this tentative recommendation, we received only one written comment on the tentative recommendation. The oral comments are concerned with provisions of a special district statute that are continued in a modified form in the general provisions of the general eminent domain statute recommended by the Commission; the person concerned about the special district statute plans to review the general statute and to submit comments on that if the general provision is unsatisfactory.

The one written comment we received is attached as Exhibit III (green). The writer is concerned that there are some special districts operating under repealed statutes, and we have not made any conforming change in the repealed statutes. We believe that no conforming changes are needed in these repealed statutes although we cannot guarantee that we have checked

all the amendments and additions that were made to each such statute prior to its repeal. To make such a check would be a substantial undertaking, and we do not believe that it is a worthwhile use of Commission staff resources. If some problem is discovered in the future, the Commission can recommend an appropriate conforming amendment. Since these repealed special district statutes are ones enacted long ago, they will not contain provisions relating to excess, substitute, future use, and the like. Those are the types of provisions we need to be sure we eliminate.

The staff plans to check 1974 enactments to make necessary conforming changes in new special district statutes enacted in 1974 and to pick up any amendments to the sections contained in our tentative recommendation. These conforming changes will be the same in substance as those now contained in our tentative recommendation; since they will involve no Commission policy decisions, the staff plans to note the changes needed in some manner in our recommendation relating to the proposed general eminent domain law, but we do not plan to reprint the special district recommendation.

There are also a few special district statutes that contain provisions similar to those we eliminated from the generally used special improvement acts by legislation enacted at the 1974 session upon Commission recommendation. We do not plan to make similar changes in these special district statutes. To do so would require a substantial staff and Commission effort far in excess of any benefit to be achieved by revising the particular special statutes. If the Commission wishes, the problem can be considered in follow-up legislation at a future session. The staff would give the problem a very low priority.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

STATE OF CALIFORNIA—RESOURCES AGENCY

RONALD REAGAN, Governor

DEPARTMENT OF FISH AND GAME

WILDLIFE CONSERVATION BOARD

1416 NINTH STREET
SACRAMENTO, CALIFORNIA 95814

August 21, 1974

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

Dear Mr. DeMouilly:

The tentative recommendations of the Law Revision Commission were considered by the Wildlife Conservation Board and Legislative Advisory Committee at a meeting on August 20, 1974.

There was considerable discussion of the tentative recommendations for change in Section 1348 of the Fish and Game Code and the possible effects on continued, successful operation of the Wildlife Conservation Board program.

This was followed by the Board and Legislative Advisory Committee adopting a joint resolution stating that they consider it in the best interests of the WCB program to retain existing acquisition authority and condemnation prerogatives under Sections 1348 and 1349. This action, in effect, opposes the tentative recommendations by the Law Revision Commission to amend Section 1348.

A copy of the resolution is enclosed for your information.

Sincerely,

A handwritten signature in cursive script that reads "Chester M. Hart".

Chester M. Hart
Executive Officer

CMH:ak

Enc.

cc: Mr. Fletcher, Mr. Arnett, Mr. Fryer
Senators Carpenter, Marler, Walsh
Assembly Members Davis, Keene, Powers

EXCERPT FROM MINUTES
Wildlife Conservation Board Meeting
August 20, 1974

"IT WAS MOVED BY SENATOR CARPENTER, SECONDED BY MR. ARNETT, AS A JOINT MOTION, THAT THE WILDLIFE CONSERVATION BOARD DETERMINES THAT IT IS IN THE BEST INTEREST OF THE WILDLIFE CONSERVATION BOARD PROGRAM TO RETAIN EXISTING LAND ACQUISITION AUTHORITY AND CONDEMNATION PREROGATIVES UNDER SECTION 1348 AND SECTION 1349 OF THE FISH AND GAME CODE, AND STAFF IS HEREBY INSTRUCTED TO SO NOTIFY THE CALIFORNIA LAW REVISION COMMISSION.

"PASSED UNANIMOUSLY."

I, CHESTER M. HART, Executive Officer of the Wildlife Conservation Board, hereby certify that the foregoing is a true and correct copy of action taken by the Wildlife Conservation Board in a meeting assembled in Sacramento on August 20, 1974.

Chester M. Hart

Executive Officer

DEPARTMENT OF FISH AND GAME

WILDLIFE CONSERVATION BOARD

1416 NINTH STREET
SACRAMENTO, CALIFORNIA 95814

September 13, 1974

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

Dear Mr. DeMouilly:

Part of our previous correspondence regarding the Law Revision Commission's tentative recommendations for amendment to Section 1348 of the Fish and Game Code has dealt with the position of the Department of General Services on this matter.

For your information, enclosed is a recent letter from General Services which clarifies and restates their present position, "...that Section 1348 should not be amended, but should remain unchanged."

This expressed position by General Services in effect supports the action taken by the Wildlife Conservation Board and Legislative Advisory Committee on August 20, 1974, which was transmitted to you by my letter of August 21st.

If you desire any further information that we can supply on this matter, please let us know.

We would appreciate being informed as early as possible of any further recommendations of the Law Revision Commission regarding Sections 1348 or 1349 of the Fish and Game Code, or other recommendations that would affect the authority of the Wildlife Conservation Board.

Sincerely,

A handwritten signature in cursive script that reads "Chester M. Hart".

Chester M. Hart
Executive Officer

Enclosure

cc: Wildlife Conservation Board Members
Peter Fletcher, G. Ray Arnett, Edward Fryer
Legislative Advisory Committee
Senate Members - Carpenter, Marier, Walsh
Assembly Members - Davis, Keene, Powers

CMH:mc

OFFICE OF THE
COUNTY COUNSEL



COUNTY OF SANTA CRUZ

GOVERNMENTAL CENTER

701 OCEAN STREET SANTA CRUZ, CALIFORNIA 95060

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HOWARD E. GAWTHROP
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August 21, 1974

CLAIR A. CARLSON
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DWIGHT L. HERR
JAMES M. RITCHEY
GORDON C. ROBERTS, JR.
A. TERRY SLOCUM
ASSISTANTS

California Law Revision Commission
SCHOOL OF LAW
Stanford University
Stanford, California 94305

Gentlemen:

Re: Tentative Recommendation Relating to Condemnation Law and Procedure - Conforming Changes in Special District Statutes - January, 1974.

A quick reading of the above recommendation indicates that one special district act was not included. We have the Pajaro Storm Drain Maintenance District in Santa Cruz County alive and functioning.

Said District was formed under the Storm Drain Maintenance District Act of 1939 (Chapter 1100, Stats. 1939). We continue to condemn property under Section 11, thereof.

The above Act of 1939 was repealed by Chapter 1001, Statutes of 1953, with a savings clause (see attached) which permits Pajaro District to continue as before.

How one legally conforms the condemnation procedure under the repealed 1939 Act with the proposed revised laws is a question we have not researched.

I trust the above information will be of value.

Very truly yours,

OFFICE OF THE COUNTY COUNSEL

By C. A. Carlson
C. A. CARLSON, Chief
Deputy County Counsel

ES	
MS	
AG	
AA	

CAC:or

CHAPTER 1001

An act to repeal Chapter 1100 of the Statutes of 1939, relating to storm drain maintenance districts.

In effect
September 8,
1953

[Approved by Governor June 4, 1953. Filed with
Secretary of State June 5, 1953.]

The people of the State of California do enact as follows:

Repeal

SECTION 1. Chapter 1100, of the Statutes of 1939, is hereby repealed.

Effect

The repeal, effectuated by this act, shall not affect the organization, existence, or powers of any district heretofore created, by, or organized pursuant to said chapter. Any such district shall continue to exist and may exercise any of the powers conferred upon it by said chapter as fully as if said chapter had not been repealed.

The people of the State of California do enact as follows:
Section 1. Chapter 1100, of the Statutes of 1939, is hereby repealed.
The repeal, effectuated by this act, shall not affect the organization, existence, or powers of any district heretofore created, by, or organized pursuant to said chapter. Any such district shall continue to exist and may exercise any of the powers conferred upon it by said chapter as fully as if said chapter had not been repealed.