

#36.43

5/30/75

Memorandum 75-46

Subject: Study 36.43 - Eminent Domain (AB 278--Open Space)

Assembly Bill 278 includes the provisions recommended by the Law Revision Commission to permit cities and counties to condemn property to maintain open space.

We had proposed to amend Sections 6950, 6952, 6953 of, and to add Sections 6955 and 6956 to, the Government Code. However, a bill has passed the Senate to accomplish this same purpose. We propose that the substance of this bill be inserted into Assembly Bill 278 in place of the provisions referred to above. Attached (green sheets) is the text of the provisions we proposed to insert into Assembly Bill No. 278. Attached (yellow) is the text of Section 65560 of the Government Code; this section is relevant to subdivision (b) of Section 65574 on page 2 of the attached green sheets.

The significant change the suggested substitution would make is that only development rights could be required in agricultural land unless the owner consents to the acquisition of the fee interest.

Also attached (pink) is a letter of opposition to AB 278.

Respectfully submitted,

John H. DeMouilly  
Executive Secretary

SEC. 2. Article 10.7 (commencing with Section 65571) is added to Chapter 3 of Title 7 of the Government Code, to read:

Article 10.7. Open-Space Condemnation

65571. The Legislature hereby finds and declares as follows:

(a) That the continuing rapid growth and expansion of urban development is encroaching upon or eliminating many open-space lands. Such lands, if preserved and maintained in their present open state, would constitute important physical, social, aesthetic or economic assets to existing or impending urban and metropolitan development.

(b) That existing deficiencies of open-space lands in the state are becoming more acute, and as the state's population increases, that unless existing open-space lands are preserved, the health and well-being of future generations will be significantly impaired.

(c) That the acquisition of open-space lands is necessary for the preservation of sound and orderly land development patterns and for the maintenance of the economies of the state and local communities.

(d) That it is in the best interest of the state to preserve open-space lands for the economic and social well-being of the state and its citizens and for the advancement of the public health, safety and general welfare.

(e) That to effect the preservation of open-space lands, cities and counties may acquire any interest or right in any privately owned open-space land by condemnation and that the acquisition of interests and rights in any privately owned land for the preservation of open space constitutes a public purpose for which public funds may be expended or advanced.

65572. The Legislature hereby finds and declares that this chapter is not intended, and shall not be construed, as authorizing any city or county to exercise its power of condemnation to acquire any privately owned lands for open-space purposes in a manner which will increase, limit or otherwise affect the authority or ability of cities and counties to regulate the use of land within their jurisdictions. This section is not intended to increase, decrease or otherwise affect the rights of any city or county to exercise such police powers as are delegated to them by or through the Constitution of the State of California.

65573. "Open-space land" means any parcel or area of land or water upon which buildings are not located, which meets the definition of open space established in Section 65560.

] need to amend

65574. (a) Subject to the limitations of this article, a city or county may acquire by eminent domain the fee or any lesser right or interest in any privately owned open-space land designated in an open-space element adopted pursuant to Article 10.5 (commencing with Section 65560).

(b) Where the property to be acquired is open-space land described in paragraph (2) of subdivision (b) of Section 65560, unless the owner of the property expressly consents to the acquisition by eminent domain of the fee interest in the property, the city or county may acquire under this section only such right or interest less than a fee as is necessary to preserve the existing open-space character of land.

(c) Where property is sought to be acquired pursuant to this section:

(1) The complaint and the resolution of necessity shall refer specifically to this section.

(2) The resolution of necessity, in addition to the requirements imposed by Section 1245.230 of the Code of Civil Procedure, shall include a finding that the open-space lands to be acquired are necessary for the long-term benefit of the public.

(d) Notwithstanding Section 1245.250 of the Code of Civil Procedure, where property is sought to be acquired under this section, the resolution of necessity adopted pursuant to Section 1245.220 of the Code of Civil Procedure is not conclusive on the matters referred to in Section 1240.030 of the Code of Civil Procedure.

65575. Any open-space land acquired by any city or county pursuant to this article shall not be used for any purpose which is inconsistent with the open-space purposes for which the land was acquired or which is inconsistent with the definition of open space contained in Section 65573. Pursuant to the provisions of this section, any city or county may lease back any open-space land acquired pursuant to this article under such covenants or other contractual restrictions as will limit the future use of the property in accordance with the purposes of this article.

65576. Any open-space land acquired by any city or county pursuant to this chapter shall not be conveyed, transferred, exchanged or granted other than to a public agency or to a city, county or the state for open-space uses unless the governing body of the city or county after a public hearing shall find that all of the following conditions are met:

(a) The proposed conveyance, transfer, exchange or grant is required for a public purpose and is in the public interest.

(b) There are other open-space lands of as nearly feasible equivalent location and use and of equal or greater fair market value at the time of the conveyance, transfer, exchange or grant of ~~the~~ such open-space land.

(c) Any lands or money received by the city or county as a result of ~~the~~ such conveyance, transfer, exchange or grant of ~~the~~ such open-space land shall be used for open-space purposes.

Government Code Section 65560

**§ 65560. Definitions**

(a) "Local open-space plan" is the open-space element of a county or city general plan adopted by the board or council, either as the local open-space plan or as the interim local open-space plan adopted pursuant to Section 65563.

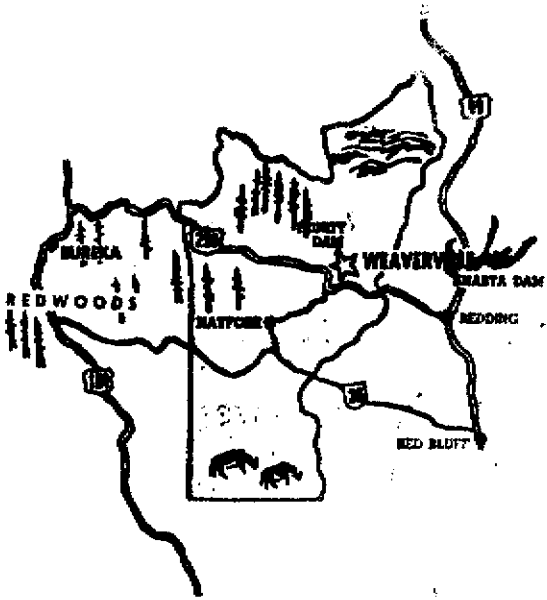
(b) "Open-space land" is any parcel or area of land or water which is essentially unimproved and devoted to an open-space use as defined in this section, and which is designated on a local, regional or state open-space plan as any of the following:

(1) Open space for the preservation of natural resources including, but not limited to, areas required for the preservation of plant and animal life, including habitat for fish and wildlife species; areas required for ecologic and other scientific study purposes; rivers, streams, bays and estuaries; and coastal beaches, lakeshores, banks of rivers and streams, and watershed lands.

(2) Open space used for the managed production of resources, including but not limited to, forest lands, rangeland, agricultural lands and areas of economic importance for the production of food or fiber; areas required for recharge of ground water basins; bays, estuaries, marshes, rivers and streams which are important for the management of commercial fisheries; and areas containing major mineral deposits, including those in short supply.

(3) Open space for outdoor recreation, including but not limited to, areas of outstanding scenic, historic and cultural value; areas particularly suited for park and recreation purposes, including access to lakeshores, beaches, and rivers and streams; and areas which serve as links between major recreation and open-space reservations, including utility easements, banks of rivers and streams, trails, and scenic highway corridors.

(4) Open space for public health and safety, including, but not limited to, areas which require special management or regulation because of hazardous or special conditions such as earthquake fault zones, unstable soil areas, flood plains, watersheds, areas presenting high fire risks, areas required for the protection of water quality and water reservoirs and areas required for the protection and enhancement of air quality.



HISTORICAL  
**Trinity County**

• WEAVERVILLE, CALIFORNIA  
 96093

BOARD OF SUPERVISORS  
 BOX AK

May 21, 1975

Assemblyman Alister McAlister  
 State Capitol  
 Sacramento, California 95814

Dear Assemblyman McAlister:

WC800

Enclosed is a copy of Resolution No. 48-75, adopted  
 by the Board May 19, 1975, urging the defeat of  
 Assembly Bill 278.

Very truly yours,

TRINITY COUNTY BOARD OF SUPERVISORS

By *Barbara M. Rhodes*  
 Clerk of the Board

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AES	
AC	
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RESOLUTION NO. 4B-75

WHEREAS, Assembly Bill 278 would add the unnecessary authority for condemnation of property for open space purposes by local agencies; and

WHEREAS, Assembly Bill 278 opens up for litigation issues on necessity and other matters; and

WHEREAS, the general effect of AB 278 is to expand the authority of local agencies to condemn while complicating condemnation procedures.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of the County of Trinity urges the California Legislature to defeat Assembly Bill 278.

BE IT FURTHER RESOLVED that a copy of this resolution be sent to Senator Randolph Collier, Assemblywoman Pauline Davis and Assemblyman McAlister.

PASSED AND ADOPTED by the Board of Supervisors of the County of Trinity, State of California, at a regular meeting of said Board held on the 19th day of May, 1975, by the following vote:

AYES: Supervisors Harrison, Bush, Adrian, Yutz, Wixson

NOES: None

ABSENT: None

/s/ Eugene Wixson

CHAIRMAN - Board of Supervisors of the  
County of Trinity, State of California.

ATTEST:

HELEN J. SMITH  
County Clerk and Ex-Officio Clerk of the  
Board of Supervisors of the County of  
Trinity, State of California.

By /s/ Barbara M. Rhodes  
Deputy