

Memorandum 79-42

Subject: Study H-700 - Vacation of Public Streets, Highways, and Service Easements (Comments on Tentative Recommendation)

The Commission's tentative recommendation on vacation of public streets, highways, and service easements basically consolidates existing provisions into a single uniform statute with little substantive or procedural change. A copy of the tentative recommendation is attached. The tentative recommendation was distributed among interested persons for comment this Spring, and the comments received are attached as Exhibits 1-5. This memorandum analyzes the comments.

§ 8306. Public service easement

The definition of public service easement in Section 8306 is drawn from the definition presently found in the Public Service Easements Vacation Law. The Los Angeles City Attorney (Exhibit 5) suggests some refinements in the definition, which the staff would revise to read:

8306. "Public service easement" includes all or part of +

~~(a) A right-of-way or easement~~ a right-of-way, easement, or use restriction acquired for public use by dedication or otherwise for sewers, pipelines, polelines, electrical transmission and communication lines, pathways, storm drains, drainage, canal, water transmission lines, and light and air, and other limited use public easements other than for street or highway purposes.

~~(b) An easement, except for street or highway purposes, dedicated or purportedly dedicated for public use by a plat or map filed or recorded in the office of the county recorder.~~

Comment. Section 8306 continues the substance of former Government Code Section 50432(c) making clear that water transmission lines and other limited use public easements are included within the meaning of public service easements, as well as use restrictions for such purposes. A public service easement acquired by dedication may be dedicated or purportedly dedicated for public use by a plat or map filed or recorded in the office of the county recorder.

§ 8308. Street; highway

The Los Angeles City Attorney (Exhibit 5) would broaden the definition of street and highway to provide:

8308. "Street" and "highway" include all or part of a public highway, road, street, avenue, alley, lane, drive, way, place,

court, trail, or other public right-of-way or easement, or purported public street or highway , and rights connected therewith, including but not limited to restrictions of access or abutters' rights, sloping easements, or other incidents to a street or highway .

Comment. Section 8308 continues the substance of former Section 8304 (city streets) and the provisions of Section 960.5 insofar as the provisions of Section 960.5 related to abandonment of county highways , and broadens them to include rights that are incidental to or immediately next to a street or highway .

Although this language would expand existing law, a local agency should be clearly authorized to abandon rights incidental to a street or highway along with the street or highway itself, and the staff recommends adoption of this change.

§ 8309. Vacation

The Los Angeles City Attorney (Exhibit 5) suggests that the definition of "vacation" be revised to read:

8309. "Vacation" ~~includes is the complete or partial~~ abandonment or termination of the public right to use a street and or highway easements and or public service easements and the closing of them from public use .

Although the draft in the tentative recommendation is drawn from existing law, it is not necessarily adequate. The proposed revision makes clear that some but not all rights in a public easement may be abandoned, and that abandonment cuts off only public rights and not private rights. Although these principals are established later in the substantive provisions, the staff agrees that it would be useful for the definitions to conform.

§ 8313. When planning commission action required

Existing law requires that when a public service easement is vacated in an area for which a master plan has been adopted, the city council or county supervisors must first submit the proposed vacation to the planning commission. The Commission's tentative recommendation extends this requirement to vacation of streets and highways as well.

The City Attorneys for Banning, Corona, and Desert Hot Springs (Exhibit 3) point out that this would simply add another procedural burden to the vacation process, and that city councils are most attuned

to existing public needs for use of streets and highways. Moreover, city staff members in fact bring the general plan to the attention of the city council as part of the vacation process. The Los Angeles City Attorney (Exhibit 5) has similar problems with the provision.

In light of these observations, the staff recommends that Section 8313 be rewritten to require the city council or county supervisors to consider any general plan, but not to refer the proposed vacation to the planning commission.

8313. If the proposed vacation of a street, highway, or public service easement is within an area for which a general or master plan is adopted, the legislative body of the local agency shall consider the general or master plan prior to vacating the street, highway, or public service easement. The legislative body may submit the proposed vacation to the local planning commission or planning agency and give the commission or agency an opportunity to report upon the proposed vacation.

Comment. Section 8313 supersedes former Government Code Section 50435 (public service easements) which required submission of the proposed vacation to the planning commission.

§ 8315. Limitation on vacation of state highway

Section 8315 refers to the California Highway Commission. The Stanislaus County Director of Public Works (Exhibit 2) and the Los Angeles City Attorney (Exhibit 5) point out that the Highway Commission has been replaced by the California Transportation Commission. The staff will make the change accordingly.

The section provides that a state highway may be vacated under the street and highway vacation statute only with the approval of the Transportation Commission. The Los Angeles City Attorney suggests that this be the exclusive means of vacating state highways, i.e., only a local agency and not the Transportation Commission could abandon a state highway. The problem with this suggestion is that it makes it impossible for the state to abandon a highway it no longer wants to maintain if the local agency does not approve the abandonment. We can accomplish some local control over state highway abandonment while still preserving the rights of the state by requiring the state to first offer to relinquish the state highway to the local agency before it abandons. If the local agency feels the need to keep the highway in use, it can accept

the relinquishment; if not, the state can abandon it. As a practical matter, this is most likely the procedure that is followed ordinarily anyway. See Sts. & Hy. Code § 73 (outlining relinquishment procedure and permitting local agency to object that the state highway is not needed for public use and that it should be abandoned by the Transportation Commission). Streets and Highways Code Sections 72 and 72.5 should be repealed and Section 835 amended as follows:

~~72. The commission may abandon any portion of a state highway which by reason of change in location of a state highway has been superseded and is no longer necessary for such purposes.~~

~~The abandonment shall be by resolution and certified copies thereof shall be filed with the board of supervisors and recorded with the county recorder in the county in which the abandoned highway is located.~~

Comment. Former Section 72 is superseded by Sections 835 (vacation of state highway superseded by relocation) and 836 (procedure for vacation).

~~72.5. In any proceeding for the abandonment of any state highway or part thereof, the commission may reserve and except from the abandonment the easement and right at any time, or from time to time, to construct, maintain, operate, replace, remove and renew sanitary sewers and storm drains and appurtenant structures in, upon, over and across any highway or part thereof proposed to be abandoned and pursuant to any existing franchise or renewals thereof, or otherwise, to construct, maintain, operate, replace, remove, renew and enlarge lines of pipe, conduits, cables, wires, poles, and other convenient structures, equipment and fixtures for the operation of gas pipe lines, telegraphic and telephone lines, railroad lines and for the transportation or distribution of electric energy, petroleum, and its products, ammonia, water, and for incidental purposes, including access to protect the property from all hazards in, upon and over the highway or part thereof proposed to be abandoned.~~

Comment. Former Section 72.5 is continued in Section 838 (authorization to reserve easements).

835. (a) Subject to subdivisions (b) and (c), The the commission may retain, relinquish to the city or county pursuant to Section 73, or may summarily vacate and abandon any portion of a State highway which portion has been superseded by relocation, except in case such .

(b) The commission shall not vacate and abandon any portion of a state highway unless the commission has first given a notice of relinquishment pursuant to Section 73 and the board of supervisors or the city council has protested within the prescribed 90-day

period that the highway is not needed for public use and should be abandoned by the commission.

(c) If vacation and abandonment would cut off all access to the property of any person which, prior to ~~such~~ relocation, adjoined the highway - The , the commission shall either retain ~~such~~ the highway or relinquish it to the county pursuant to Section 73 .

Comment. Section 835 is amended to require that prior to vacation and abandonment of a state highway superseded by relocation, the California Transportation Commission must first offer to relinquish the highway to the appropriate local agency. The commission may vacate and abandon the highway only if the offer of relinquishment is rejected by the local agency for the reason that the highway is not needed for public use and should be abandoned by the commission.

The staff notes that these changes will eliminate some of the overlap presently found in the provisions governing vacation of state highways. However, the remaining provisions, Sections 835-838, show some inadequacies in light of improvements we have made in the street and highway vacation statutes. When we first undertook this project, we made a decision to not deal with state highway vacation since that is a separate matter. Now that we have been through all the statutes, it would appear to be relatively easy to include state highways in the proposed statute with few changes. The staff believes this should be done--it will resolve defects in the existing state highway vacation provisions while contributing to the uniformity of our statute.

§ 8316. Combined proceedings

Section 8316 provides that several streets, highways, and easements may be included in the same proceeding. The Los Angeles City Attorney (Exhibit 5) suggests that for clarity the provision should authorize vacation of "portions" of streets, highways, and easements. We note that the definitions of streets, highways, and public service easements all include "all or part" of the easement. The staff would prefer to rely on the definitions; if this is not done, doubt will be cast on the intent of the language in sections where it is not spelled out that "portions" of streets, highways, and easements may be involved.

§ 8320. Resolution of intention

A number of clarifying revisions of a technical nature in Section 8320 are proposed by the Los Angeles City Attorney (Exhibit 5), which the staff suggests be adopted as follows:

8320. (a) The legislative body of a local agency may initiate a proceeding under this chapter by adopting a resolution of intention to vacate , which may be upon its own initiative or upon a petition or request of an interested person .

(b) The resolution of intention shall include all of the following:

(1) A declaration of the intention of the legislative body to vacate.

(2) A statement that the vacation proceeding is conducted under this chapter.

(3) A description of the general location and extent of the street, highway, or public service easement to be vacated and a reference to a map or plan which shows the portion or area to be vacated on file in the office of the clerk local agency . In the case of a street or highway, the description shall include its lawful or official name or the name by which it is commonly known. In the case of a public service easement, the description shall identify it with common certainty.

(4) The date, hour, and place for hearing all persons interested in the proposed vacation. The date shall be not less than 15 days from the adoption of the resolution.

(c) The resolution of intention shall be published or posted in the manner prescribed for the publication and posting of resolutions of the legislative body. The publication or posting of the resolution of intention shall be in addition to any publication of notice of hearing required by Section 8324 and the posting of notice of vacation required by Section 8326.

§ 8322. Petition to vacate

Section 8322 provides a procedure to enable property owners by petition to initiate vacation proceedings. The Los Angeles City Attorney (Exhibit 5) suggests the section is unnecessary and confusing since a local agency may always act upon petition anyway. The difference between Section 8322 and general provisions for acting upon petition is that where a petition is filed under Section 8322, the county must initiate vacation proceedings; it is not discretionary.

How significant is the right, upon petition, to compel the initiation of proceedings? Technically, it is not at all significant, since the county retains ultimate discretion, after going through the proceedings, to vacate the easement or not as it deems proper. As a practical matter, however, a person seeking vacation who is able to get proceedings moving and to present evidence at a public hearing is at a tremendous advantage over a person who must rely on the discretion of the local agency to initiate the proceedings.

The section appears to the staff to serve a useful, though limited, purpose and the staff would retain it. To minimize the possibility of confusion, the staff would revise the headline to read "Requirement of proceedings upon petition" and would revised subdivision (f) to read:

(f) Nothing in this section affects the right of the legislative body of a local agency to initiate a proceeding under this chapter upon its own initiative or upon a petition or request of an interested person or prevents the board of supervisors from vacating a street, highway, or public service easement without requiring the filing of a petition or charging costs if the board determines it is in the public interest to do so.

§ 8324. Publication of notice of hearing

The Los Angeles City Attorney (Exhibit 5) points out that posting a notice of vacation of a street or highway is ordinarily a more effective form of notice than publication, and questions the need for an additional publication of notice of hearing pursuant to this section over and above the normal publication of resolutions and ordinances.

Section 8324 does not require extra publications. It requires publication of notice of hearing only where the local agency has not published notice of the resolution of intention to vacate. See subdivision (c)(1). The staff believes this provision is important and should be retained.

§ 8326. Posting notice of vacation

Subdivision (a) of Section 8326 requires that notices be posted along a route to be abandoned not more than 300 feet apart (with a minimum of three notices regardless of the length of the route). The County Supervisors Association has forwarded us a suggestion from the Lassen County Director of Public Works that posting every 300 feet is burdensome in the case of a lengthy route. Existing law requires notices every 500 feet in the case of a county road.

What must be balanced here is the need of public users of the route against the cost to the public entity of giving the notice. The staff wonders how frequently very long routes are abandoned; we suspect that most abandonments are of alleyways and segments of one block or less, so that notice is not a real problem. The staff proposes that if the route to be abandoned exceeds a mile in length, notices be posted at each

intersection on the route and at one place approximately midway between each intersection. The staff believes that such a scheme would be most likely to impart notice to users of the route without requiring a mechanical application of notices over a lengthy unused route.

The notices shall be posted not more than 300 feet apart but at least three notices shall be posted. If the line of the street, highway, or public service easement proposed to be vacated exceeds one mile in length, the legislative body may, in lieu of posting not more than 300 feet apart, post notices at each intersection of the street, highway, or public service easement to be vacated with another street or highway and at one point approximately midway between each intersection, but at least three notices shall be posted.

§ 8327. Hearing; resolution of vacation

The Los Angeles City Attorney (Exhibit 5) points out that many vacations are conditioned upon replacement or substitute public improvements being dedicated or constructed by the person requesting the vacation, and suggests that recognition be given this fact along the following lines:

The resolution of vacation may provide that the vacation occurs only after conditions required by the legislative body have been satisfied and may instruct that the resolution of vacation not be recorded until the conditions have been satisfied.

The staff recommends this provision be added to Section 8327.

The Los Angeles City Attorney also would like to see language to the effect that the street or highway "or a portion thereof or a right therein" is vacated by the resolution of vacation. As pointed out above, the definitions of street, highway, and service easement all include "all or part" of the street, highway, and service easement, and the staff is reluctant to add such a provision to individual sections on a piecemeal basis as a matter of draftsmanship. We should revise the definitions to refer to "all or part of or any right in" the street, highway, or easement to resolve one aspect of the problem raised by the Los Angeles City Attorney.

§ 8330. Street or highway superseded by relocation

Section 8330 enables summary vacation procedures of streets and highways superseded by relocation except where the streets and highways are subject to certain reserved public service type easements. The Los

Angeles City Attorney (Exhibit 5) notes that public service easements generally may also be summarily vacated and proposes that some clarification be made. The staff agrees that the interrelation should be clarified and would revise Section 8330(b)(2) to read:

(b) A street or highway shall not be summarily vacated pursuant to this section if vacation would do either of the following:

(2) Terminate a public service easement an easement or right of a type described in Section 8340 unless the easement satisfies the requirements of Section 8333 .

Comment. An A public service easement or right referred to in subdivision (b)(2) one includes an easement or right of a type described in Section 8340 may be vacated in the manner prescribed in Section 8342 . See Section 8306.

To implement this revision, Section 8306 should be revised to include reserved easements:

8306. "Public service easement" includes all or part of:

(c) An easement or right of a type described in Section 8340.

Comment. Subdivision (c) is new. It is intended to enable use of standard vacation procedures for easements and rights-of-way reserved and excepted pursuant to Article 1 (commencing with Section 8340) (reservation of easements) of Chapter 5.

§ 8334. Miscellaneous grounds for vacation

Section 8334 contains several grounds for summary vacation of streets and highways that presently are limited to county highways. The Los Angeles City Attorney (Exhibit 5) feels that the summary vacation grounds should apply equally to city streets as to county highways, and suggests clarifying revisions. The staff agrees:

8334. The board of supervisors legislative body of a county local agency may summarily vacate any of the following:

(a) An excess right-of-way of a street or highway not required for street or highway purposes.

(b) A portion of a street or highway that lies within property under one ownership and that does not continue through such ownership or end touching property of another.

Comment. Section 8334 continues the substance of subdivisions (b) and (c) of former Section 960.1 (county highways) and broadens them to include city streets, making clarifying changes .

§ 8335. Resolution of vacation

The resolution of vacation must include a precise description of the portion of the street, highway, or service easement to be vacated. The Los Angeles City Attorney (Exhibit 5) is concerned about the increased expense of vacation if a description must be given in words and figures, and suggests the following clarification to conform to existing practice in Los Angeles:

The description of the portion vacated may be by a precise map which is recorded or to which reference is made in the resolution and which is permanently maintained by the public entity.

The staff believes this is a reasonable procedure and recommends its addition to subdivision (b)(2). The Comment would be revised to read, "Paragraph (1) of subdivision (b) ~~is~~ and the reference to a precise description by map in paragraph (2) are new."

§ 8340. Authorization to reserve easements

A local entity that vacates a street or highway may reserve from the vacation an easement for maintenance, public utility, or other purposes including future street or highway use. The Los Angeles City Attorney (Exhibit 5) points out that the authority to reserve an easement for future street or highway use is inconsistent with the permission granted by statute to abandon the street or highway on the ground that it is unnecessary for present "or prospective" street or highway use.

The staff agrees that reservation of easements for future use is inconsistent with a finding that the street or highway is not necessary for prospective use. However, it is consistent with vacation by summary proceedings, which do not require that the local agency make a finding that the street or highway is unnecessary for prospective use as a street or highway. The staff recommends that the area of inconsistency be resolved by the following change:

8340. In a proceeding to vacate a street or highway, the local agency may:

(b) Reserve and except from vacation an easement for a future street or highway unless the local agency finds that the street or highway is unnecessary for prospective public use .

Comment. Subdivision (b) continues the substance of former Section 959.1(b) (county highways) and broadens it to include city

streets , making clear that it does not apply where the vacation is pursuant to Section 8327 (finding that street or highway unnecessary for prospective public use) .

§ 8341. Recitation in resolution of intention and resolution of vacation

In order to reserve an easement during vacation proceedings, a local agency must so recite in the resolution of vacation. If the agency intends to reserve the easement at the time it commenced the vacation proceedings, it must also so recite in its resolution of intention. The Los Angeles City Attorney (Exhibit 5) questions the need for two recitations and suggests that a single recitation in the resolution of vacation is sufficient. Also, the reserved easement should be describable by reference to a map. The staff agrees with these points and would revise subdivision (a) of Section 8341 to read:

8341. (a) In a proceeding to vacate a street or highway, if the legislative body determines that the public convenience and necessity require the reservation and exception of easements and rights-of-way for works enumerated in Section 8340, such reservations and exceptions shall be recited in the resolution of vacation in addition to any other matter required to be recited therein. If the legislative body intends to make such determination at the time the proceeding is initiated, the intention to make such reservations and exceptions shall also be recited in the resolution of intention, in addition to any other matter required to be recited therein. The recital may describe the reservations and exceptions by reference to a precise map which is recorded or to which reference is made in the resolution and which is permanently maintained by the public entity.

Comment. Section 8341 continues the substance of former Section 8331 and , broadens it to include county highways , and to impose substitutes the requirement that the reservations and exceptions be recited in the resolution of vacation for the requirement that they be recited in the resolution of intention . The provision for describing the reserved easements by reference to a map is new.

If a local entity that vacates a street or highway reserves from the vacation an easement for maintenance, public utility, or other purposes, any deeds and conveyances of the property formerly subject to the street or highway are subject to the reservation of easements. The Los Angeles City Attorney (Exhibit 5) questions the need for a provision in the statute so stating. The Southern California Edison Company (Exhibit 1), on the other hand, suggests that for clarity of title, the

deeds or conveyances should include an express statement of the reservation:

8341.

(b) Subsequent proceedings of the local agency in relation to the vacation, including a deed or conveyance to the owners of property underlying the street or highway or to other persons, are subject to and governed by the reservations and exceptions recited in the resolution of vacation and the deed or conveyance shall contain a recital to that effect .

The staff thinks this suggestion is a good one and recommends its adoption.

§ 8342. Summary vacation of easements

Section 8342 provides a procedure for vacating easements reserved from abandonment of a street or highway. The procedure is a hybrid, applying some features of a summary vacation proceeding and some features of a regular vacation proceeding. The Los Angeles City Attorney (Exhibit 5) questions the need for the procedure--the reserved easement can be vacated pursuant to ordinary vacation procedures, either summary or regular depending upon whether or not it qualifies for summary vacation (i.e., unused for five years). This proposal makes sense to the staff. In order to implement it, we would delete Section 8342 and define public service easement to include an easement reserved in street or highway vacation proceedings. See discussion under Section 8330.

§ 8351. Reservation of easement or disposition of fee

The Los Angeles City Attorney (Exhibit 5) would make technical revisions in Section 8351, as follows, which are acceptable to the staff:

8351. Except as otherwise provided in Chapter 5 (commencing with Section 8340) or in this chapter, on vacation of a street, highway, or public service easement:

(a) If the local agency owns only an easement, title to the property previously subject to the easement ~~reverts to the owner of the underlying fee~~ is thereafter free from the public easement.

(b) If the local agency owns the underlying fee title , the legislative body may dispose of the property as provided in this chapter.

§ 8352. Effect on private easements and other rights

Subdivision (a) of Section 8352 provides that vacation of the public easement in a street or highway does not destroy any private easements in the street or highway regardless of the manner of acquisition, including acquisition by "franchise." The Los Angeles City Attorney (Exhibit 5) points out that rights acquired pursuant to a franchise may not be equivalent to private property rights deserving protection, citing cases involving relocation costs of a public utility having structures located in streets that were abandoned. In light of these cases, the staff believes the word "franchise" should be stricken from subdivision (a).

Subdivision (b) continues a provision enacted in 1977 to the effect that nonuse of a private easement in an abandoned highway for a period of five years extinguishes the easement. The Los Angeles City Attorney questions this provision. The staff agrees that the provision is somewhat harsh and arbitrary. We recommend that it be deleted.

§ 8353. Easements claimed by reference to map or plat

When a street or highway is vacated, only the right of public use is lost; private easements are unaffected. Civil Code Section 812 provides for extinction of private easements in vacated streets or highways where the easements are claimed by reason of the purchase of a lot by reference to a map or plat showing the street or highway, and provides for preservation of such easements by recording of the claim within two years. These provisions are continued in Section 8353.

The Los Angeles City Attorney (Exhibit 5) suggests that these provisions are inadequate. The owner of the underlying property may need to know immediately whether there are any private easements claimed in order to develop the property. The City Attorney suggests a procedure whereby the property owner serves notice on possible private easement claimants; if the claimants fail to respond within 60 days, the easements are extinguished; if the claimants do respond within 60 days, they would have 90 days within which to bring suit to establish their claims.

Although the staff agrees that an expeditious procedure to determine claims of private easements would be desirable, we believe the

procedure proposed is a little too expeditious. A default procedure should not be used to cut off potentially important private easement rights. If the property owner is concerned, he or she can obtain quit-claim deeds or bring a quiet title action to determine adverse claims. In fact, under the Commission's proposed quiet title legislation, in rem relief would be a better remedy for the property owner than the quasi-in-rem procedure proposed by the City Attorney.

The staff would revise Section 8353 to make clear the availability of quiet title relief and to make clarifying changes suggested by the City Attorney:

8353. (a) Except as provided in subdivision (b), the vacation of a street or highway extinguishes all private easements therein claimed by reason of the purchase of a lot by reference to a map or plat upon which the street or highway is shown, other than a private easement **necessary for the purpose** of ingress and egress to the lot from or to ~~a~~ the street or highway.

(b) A private easement ~~described in subdivision (a)~~ claimed by reason of the purchase of a lot by reference to a map or plat upon which the street or highway is shown is not extinguished pursuant to subdivision (a) if ~~it is claimed by a person who~~ , within two years after the date the vacation is complete, the claimant records a verified notice that particularly describes the private easement that is claimed in the office of the recorder of the county in which the vacated street or highway is located.

(c) Nothing in this section shall be construed to create a private easement, nor to extend a private easement now recognized by law, nor to make the rights of the public in or to a street or highway subordinate to a private easement. Nothing in this section affects the right of the owner of the property that was subject to the vacated street or highway to commence an action to quiet title as against any claim of a private easement of any type, whether before or after recordation of a verified notice pursuant to this section.

Comment. Section 8353 continues the substance of former Civil Code Section 812 (city streets and county highways) but eliminates "necessity" as a criterion for extinction of a private easement of ingress and egress to a lot from or to a vacated street or highway . Section 8353 also makes clear that the procedure provided in this section does not foreclose the right of the property owner to establish title against claims of private easements by a quiet title proceeding.

§ 8355. Sale or exchange of excess property

The Los Angeles City Attorney (Exhibit 5) suggests some technical revisions in Section 8355 which appear to the staff to be proper:

8355. (a) If the legislative body of a local agency determines that property ~~heretofore or hereafter acquired by the local agency for previously subject to a street, highway, or public service easement purposes, is no longer necessary therefor use and in which the local agency has title is no longer needed by the public~~ , the legislative body may sell or exchange the property in the manner and upon the terms and conditions approved by the legislative body.

(b) Any conveyance pursuant to this section shall be executed on behalf of the local agency ~~by the clerk~~ . The purchase price shall be paid into the local agency treasury ~~to the credit of any fund, available for the same purposes, that the legislative body designates~~ .

Comment. Section 8355 continues the substance of former Sections 960.4 (county highways) and 1933 (city streets) and broadens them to include public service easements , and deletes unnecessary detail .

§ 8356. Conveyance to adjacent or fronting owners

Section 8356 is drawn from provisions originally enacted in 1951 enabling disposal of excess right-of-way property to abutting owners by the city "in such manner as it deems that equity requires." The Los Angeles City Attorney (Exhibit 5) believes that the section should be eliminated--"We see no reason why the legislature should command that the conveyance be only to 'adjacent or fronting owners.' It would appear to us that such land could be sold to any person."

Section 8356 does not mandate sale to abutting owners; it is permissive only. The staff reads the provisions as conferring on the city powers it does not presently have. Ordinarily, disposal of excess property is subject to public bid requirements. This provision allows direct negotiated transfers to abutting owners without going through regular procedures, as equity may require. The staff believes this authority is proper and should be retained. We will make technical changes along the lines of those made in other sections and will add clarification that the authority is permissive only:

8356. (a) Notwithstanding Section 8311, if a street or highway is vacated by a local agency under this part or under any other law or under its charter for the purpose of opening a new street or highway in lieu of that vacated, the legislative body of the local agency may, by resolution, unless otherwise provided in its charter, convey by deed its interest in the street or highway vacated to the owners of the lands adjacent to or fronting on the street or highway in such manner as it deems that equity requires.

(b) A resolution adopted pursuant to this section shall provide for the execution of the deed in the name of the local agency by at least two of its officials .

(c) If the fee in title to property occupied by the vacated street or highway has reverted to is owned by the local agency, the legislative body may impose any reasonable conditions, or demand compensation by exchange of lands, or otherwise, before conveying the property.

(d) The deeds provided for in this section shall not be delivered to the grantees named in the deeds until good and sufficient conveyances vesting in the local agency the title to the new street or highway opened in lieu of the street or highway vacated, are delivered to the local agency.

(e) The authority granted in this section is permissive and does not affect any authority the local agency may have to hold the property for public use, dispose of the property by public bid, or take any other action with respect to the property authorized by law.

Comment. Section 8356 continues the substance of former Sections 8370-8374 (city streets) and broadens it to include county highways, with the addition of subdivision (e) to make clear that the authority granted by this section is permissive and not mandatory .

§ 8360. Agreement between cities

Sections 8360 through 8363 recodify a procedure permitting cities to agree not to vacate a street running through them without each other's consent. A letter from the Stanislaus County Director of Public Works (Exhibit 2) suggests that this procedure be made available to counties as well. The letter evidences a misunderstanding of the procedure, however, since the justification is that, "It is not uncommon for two adjoining counties to abandon a road extending across a county line, and joint action could be taken in a matter similar to the intercity agreements."

The staff has no feel for the policies involved in this issue. Existing law is for some reason limited to cities. However, the agreements are voluntary, and the staff can see no reason not to allow counties to mutually restrain the abandonment of a road important to them. It would be a fairly simple drafting matter to convert "intercity agreements" to agreements "between local agencies." The staff will do this unless someone comes up with a reason not to.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

EXHIBIT 1
Southern California Edison Company



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Dear Sirs:

Re: Tentative Recommendation Relating to
Vacation of Public Streets, Highways
and Service Easements

Your tentative recommendation for §8341 (b) states the following:

(b) Subsequent proceedings of the local agency in relation to the vacation, including a deed or conveyance to the owners of property underlying the street or highway, are subject to and governed by the reservations and exceptions recited in the resolution of vacation.

I suggest that the above language be clarified by the addition of the following words at the end of the §8341 (b):

"and the deed or conveyance shall contain a recital to that effect."

The requirement of an express recital in the deed or conveyance would make for greater public awareness and make it more likely that title insurance companies would report such reservations and exceptions in their title reports and title policies. Imposing the requirement that the reservations and exceptions be recited in the resolution of vacation I consider insufficient. The statute should go further and have some language that the deed or conveyance will contain a recital referring to the reservations and exceptions recited in the resolution of vacation. This additional requirement

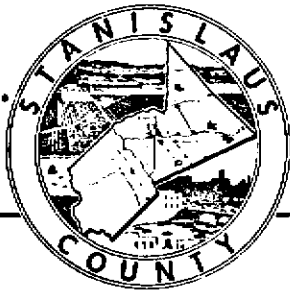
Page 2
June 6, 1979
State of California

will make for greater accuracy and knowledge about the
status of real property titles,

Sincerely,

Marvin D. Homer
Marvin D. Homer
Assistant Counsel

MDH;fb



OFFICE OF

COUNTY COUNSEL

COUNTY OFFICES BUILDING

P. O. BOX 74

MODESTO, CALIFORNIA 95353

PHONE 526-5376

GILBERT W. BOYNE
COUNTY COUNSEL**JOHN F. CHRISTENSEN**
SENIOR DEPUTY COUNTY COUNSEL**HARRY P. DRABKIN**
DEPUTY COUNTY COUNSEL**CARL O. WAGGONER**
DEPUTY COUNTY COUNSEL

August 13, 1979

California Law Revision Commission
Standford Law School
Standford, California 94305

In Re: Vacation of Public Streets, Highways and Service
Easements

Gentlemen:

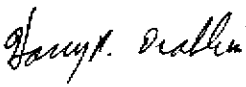
Your tentative recommendation relating to vacation of public streets, highways and service easements was referred to me by the Stanislaus County Bar Association. I in turn referred it to the Stanislaus County Director of Public Works, Mr. Richard G. Barhite, since he is thoroughly familiar and experienced in using the present statutes. I enclose his memorandum to me concerning his comments on this topic. I hope that they will be of some help to you.

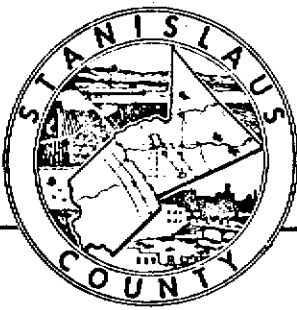
Thank you very much.

Very truly yours,

GILBERT W. BOYNE, County Counsel

By


Harry P. Drabkin, DeputyHPD/sr
Enclosure



Stanislaus County

Department of Public Works

1100 H STREET
MODESTO, CALIFORNIA 95354

ADMINISTRATIVE DIVISION 526-6550
ENGINEERING DIVISION 526-6552
ROAD DIVISION 526-6267
EQUIPMENT DIVISION 526-6561
SANITARY LANDFILL 522-5691

August 3, 1979

TO: Harry Drabkin, Deputy County Counsel

SUBJECT: Vacation of Public Streets, Highways and Service Easements

I have reviewed the tentative recommendations relating to abandoning public streets, highways and service easements as prepared by the California Law Revision Commission of the Stanford Law School. Briefly, the merits of having one set of abandonment or vacation proceedings probably outweigh the convenience of continuing with the existing statutes which are workable and have stood the test of litigation. I have worked with both the abandonment of County roads and vacation of city streets over the past years, and have really found no difficulty with either procedure. The new statutes appear to have been written by city-oriented people, which in itself is no problem because there are more cities than counties.

Following are comments regarding the proposed revisions:

1. Proposed Section 8315, Limitation on vacation of state highway refers to the California Highway Commission, now abolished and superseded by the California Transportation Commission.
2. Chapter 7, Inter-City agreements limiting vacation, Section 8360 et seq. should be broadened to include counties or county and city. It is not uncommon for two adjoining counties to abandon a road extending across a county line, and joint action could be taken in a matter similar to the inter-city agreements.

The proposed vacation proceeding appears to properly address the matter as now contained within the existing statutes, and in some cases, clarifies and simplifies the procedure. I would hope that it would not be necessary for the new statutes to be litigated all over again, for I think the existing laws have been properly reviewed by the courts over the many years they have been in existence.

RICHARD G. BARHITE, Director

RGB:jh

cc: Carl Waggoner
Boyce Lewis

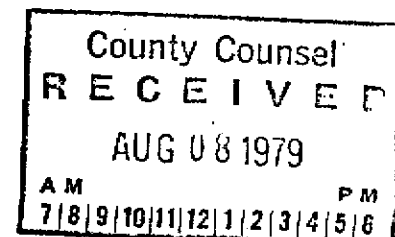


EXHIBIT 3
BEST BEST & KRIEGER
 LAWYERS

EUGENE BEST
 ARTHUR L. LITTLEWORTH
 JAMES B. CORISON
 GLEN E. STEPHENS
 WILLIAM R. DEWOLFE
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MICHAEL GRANT
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 ELIZABETH ANNE BIRD

RAYMOND BEST (1988-1987)
 JAMES M. KRIEGER (1913-1975)

4200 ORANGE STREET
 POST OFFICE BOX 1028
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 TELEPHONE (714) 686-1450

OFFICES IN
 PALM SPRINGS
 SUN CITY

August 14, 1979

California Law Revision Commission
 Stanford Law School
 Stanford, California 94305

Re: Tentative Recommendation Relating to
 Vacation of Public Streets, Highways and
 Service Easements

Gentlemen:

As City Attorneys for three cities, we welcome the opportunity to comment on the referenced tentative recommendation. We generally support the Commission's efforts at consolidating and clarifying the law on street vacations, and after reviewing the draft, we feel that the results are worthy of adoption by the Legislature with one exception. Proposed §8313 could be construed to add another step to the normal street vacation process, a step which we feel would add no benefit to the public but would entail additional costs to the entity attempting to vacate the street. If by the term "master plan" in §8313 the Commission means the circulation element of the applicable general plan, this new section would apparently require that all street vacations must first be considered by the Planning Commission. Approval by the Planning Commission is apparently not required, and a public hearing at the Planning Commission level is apparently not required, but in any case another step is added to the process.

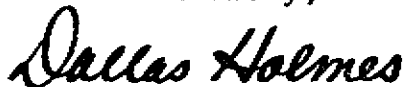
California Law Revision Commission
August 14, 1979

Page Two

Our experience with City Councils considering street vacations indicates that Council members are most attuned to existing public needs for continued use of streets and alleys, and City staff members can and do bring the general plan to the attention of the City Council as part of the existing process, if in fact the vacation would in any way impinge upon the general plan. Adding another step will add time and cost, without any foreseeable public benefit.

We thank you again for the opportunity to comment on your draft.

Yours sincerely,



Dallas Holmes
of Best, Best & Krieger
City Attorneys
Cities of Banning, Corona
and Desert Hot Springs

DH:jb

cc: Mayor and City Council,
Cities of Banning, Corona
and Desert Hot Springs
League of California Cities

EXHIBIT 4



**COUNTY SUPERVISORS
ASSOCIATION
OF CALIFORNIA**

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August 20, 1979

California Law Revision Commission
Stanford Law School
Stanford, CA 94305

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PETE SCHABARUM
Los Angeles County

County Administrative Officer:
M.G. WINGETT
Contra Costa County

County Counsel:
RICHARD J. MOORE
Alameda County

We circulated your proposal on "Tentative Recommendation relating to Vacation of Public Streets, Highways, and Service Easements" (see Attachment I) to all Road Commissioners, Public Works Directors, and Directors of Transportation in California counties.

We found the response to be favorable. Specific changes were suggested by Lassen County Department of Public Works (see Attachment II). If we receive any additional comments, we will forward them to you.

Sincerely,

Victor S. Pottorff
Legislative Assistant to the
Executive Director

VSP:cs

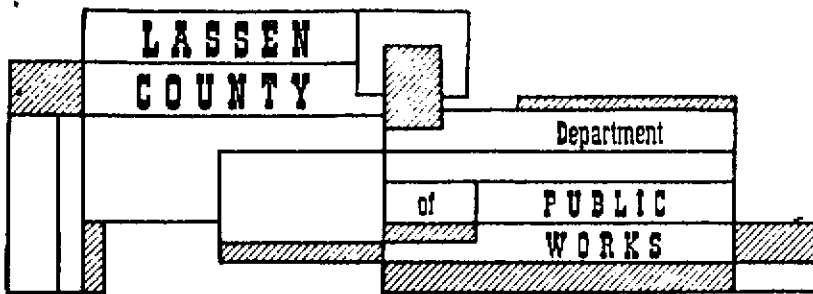
Attachments

Executive Director
RICHARD E. WATSON

Wm. D. McIntosh, *Director*

- J. R. Uptegrove — *Deputy, Administration*
- J. P. Tuholski — *Deputy, Operations*
- J. D. Mitchell — *Deputy, Design & Co. Surveyor*

June 19, 1979

C-1(a)
79-337

Victor Pottorff
C.S.A.C.
Suite 201
11th & L Building
Sacramento, CA 95814

Dear Vic:

This is relative to your memo concerning recommendations relating to "Vacation of Public Streets, Highways, and Service Easements." We have reviewed the proposal and can find no particular objection except for the requirement of posting notices every 300'. We would recommend something more like:

- (1) Approximately 3 notices on a road less than 1 mile in length
- (2) Approximately 5 notices on a road between 1 to 2 miles in length
- (3) Notices every one mile for roads 2-5 miles in length
- (4) Notices every 2 miles for roads over 5 miles in length

-----or something along those lines. A notice posted every 300' would be ridiculous on anything but a very short road or street to be vacated.

Sincerely,

Wm. D. McIntosh
Director

WDM/wb

OFFICE OF
CITY ATTORNEY
CITY HALL EAST
LOS ANGELES, CALIFORNIA 90012



BURT PINES
CITY ATTORNEY

August 27, 1979

California Law Revision Commission
Stanford Law Schools
Stanford, California 94305

re: Comments Relating to Law Revision Commission
Tentative Recommendation on Vacation of Public
Streets, Highways and Service Easements

Honorable Members:

The undersigned has read your staff's tentative recommendation regarding codification of the street vacation, etc. laws of the State of California. We have also sought the advice of the City Engineer of the City of Los Angeles relating to that recommendation. Based upon our experience in street vacation matters and the views of the Los Angeles City Engineer, we make the following comments on the proposal.

Generally, we favor the idea of combining the various provisions relating to street vacations in one place in the codes. We have many suggestions, however, relating to the language in the proposed sections, and we believe the language in the existing sections should be improved--and clarified--and not merely shuffled around. Therefore, we hope you consider our views in the spirit in which they are furnished, to write a better and more understandable law.

Section 8306

Subsections (a) and (b) are redundant to each other. Subsection (a) includes easements acquired by "dedication", thus there is no reason why a separate provision, Subsection (b), is necessary relating to easements dedicated by "plat or map." However, perhaps Subsection (a) should expressly exclude easements for street or highway purposes in its definition.

Perhaps it would be appropriate to further broaden the definition of easements to include certain other similar public easements, such as "water transmission lines" (which may or may not be synonymous with "canals"), "use restrictions", and other "limited use public easements."

Section 8308

It would appear to us that this section should also be broadened. We think it should include rights which are incidental to or immediately next to a public street. Therefore, we suggest that the definition in 8308 be continued with the following phrase: and rights connected therewith, including but not limited to restrictions of access or abutters' rights, sloping easements, or other incidents to a "street" or "highway."

Section 8309

We suggest a rewriting of the definition of "vacation." We believe it should be substantially as follows: "Vacation" is the complete or partial abandonment or termination of the public right to use a street or highway easement or a public service easement.

We suggest this to clarify (1) that the vacation may be of only certain rights under an easement, and reserving certain other rights (such as reserving the right to utilize a street easement for drainage purposes while abandoning the pedestrian or vehicle rights, or reserving the right to utilize the subsurface of a drainage easement while vacating the surface rights) and (2) to clarify that by vacating a street or a public service easement only the public's right to utilize the easement is terminated. Private rights to utilize continue and are not affected. Therefore, the term "vacation" does not, and should not include the closing of the facilities. Such may occur after a vacation, but it is not an inherent result of a street or public service easement vacation. I believe such a revision is necessary so the definition will conform to Civil Code Section 812, which you propose to incorporate as Section 8352 and 8353.

Section 8312-8315

Reading these two proposed sections together it appears clear that you intend that state highway may be vacated by a local legislative body with the approval of the California Transportation Commission. (The Highway Commission no longer exists. Its duties are now handled by the California Transportation Commission. However, the term "California Highway Commission" is still utilized in the Streets and Highways Code pursuant to Section 70 of the Code, which changes that term to refer to the Transportation Commission). However, it seems rather strange that a state highway may be both "vacated" by a local legislative body and "abandoned" by the Transportation Commission, the latter without local approval. (See Streets and Highways Section 72). It is our recommendation that only cities and counties be permitted to vacate state highways but subject to Transportation Commission approval; and that the power of the state to "abandon" be terminated. However, the state would still have the power to relinquish the highway when no longer needed for state highway purposes. (Streets and Highways Code §73).

We believe this is necessary in order to allow the local legislative body to have effective control of its internal transportation system, so that the state does not have the power to terminate public use of a highway which the local entity believes to be necessary for local traffic needs.

Section 8313

We think the words "acted upon" contained in Section 8313 are ambiguous and should be changed to reflect that approval of a vacation by the Planning Department is not required. I would suggest the provision be that the proposed vacation be "submitted to the local Planning Commission or Planning Agency" and that such commission or agency be given "an opportunity to report upon the proposed vacation."

Section 8316

Only a minor clarification is suggested and that is that following the words "public service easements" you insert " or portions thereof."

Section 8320

We believe the following changes should be made to 8320.

(a) This subsection should expressly recognize that vacations are generally initiated at the request of persons owning adjacent property or owning the property which is subject to the easement.

(b) (3) This subsection should be changed to clarify that the resolution should inform the public of the street to be vacated, not necessarily "describe" such street area in an engineering or legal sense; and should also clarify that the map which is on file is to show the area to be vacated, not necessarily the entire street. Further, local entities should be permitted to file such map with any reasonably convenient department, not necessarily with the clerk of the Council or the Board of Supervisors.

(c) It should be clarified that the publication or posting specified in this subsection is in addition to any publication or posting required by 8324.

Therefore, we suggest the following textual changes to 8320.

1. Following the presently proposed text of 8320 (a) you add: which may be upon its own initiative or upon a petition or request of an interested party.

2. In subsection (b)(3) the words "a description," and "description" should be replaced by the words "the designation" or "designation." We would also substitute for the words "the office of the clerk", the phrase: office of the local agency. Finally, I would add to the first sentence the phrase "which shows the portion or area to be vacated."

In subsection (c) we suggest that this section commence with the words "in addition to publication and posting as provided in Section 8324 and 8326." However, we suggest that publication under 8324, over and above normal publication of resolutions or ordinances, is unnecessary and will provide no additional effective notice.

Section 8322

We suggest that this section is unnecessary and is confusing. What it does is say that the county may act on a petition; and thereby implies that a city may not. I do not believe this is correct.

We believe proposed Section 8322 is unnecessary under your proposed statutory arrangements.

Section 8324

Your proposed Section 8324 adds a new requirement, publication in newspapers, over and above that presently required in street vacations. We think it unnecessary. Posting, as provided in Section 8326, is a much more effective notice.

Section 8327

Section 8327, among other matters, should recognize that after the hearing the legislative body might find that a portion of the easement is still needed for public use, but that such necessity does not interfere with vacation of the balance of the street or easement. Therefore, we suggest following the words "public service easement" on the third and fourth line you add: or a portion thereof or a right therein.

We suggest also that recognition be given to the fact that many vacations are conditioned upon replacement or substitute public improvements being dedicated or constructed by the person requesting the vacation. Therefore, we suggest the addition to the proposed section of: Such resolution may provide that the vacation occurs only after conditions required by the legislative body have been met and may instruct that no notice be recorded until the conditions have been met.

Section 8330

It would appear that you could clarify the intention of subsection (b) (2) by reciting that easements reserved pursuant to Section 8340 shall be vacated under either the provisions of Section 8333 or 8342. We do not believe that an unused public service easement derived from a street easement need be treated in a different manner than a public service easement obtained by any other means.

Section 8334

The provisions of 8334, for some reason, are proposed to apply only to county roads. We believe they should be applicable to city streets; and that it would be helpful for cities to have the power to summarily vacate portions of streets under the circumstances mentioned in 8334. Hence, the term "Board of Supervisors" should be replaced by "legislative body" and the word "County" should be replaced by the words "local agency."

Perhaps Subsection (b) should be clarified to make more certain that it is the entire street or highway which must lie within a single property, not just the portion proposed to be vacated. Also, it should be clarified that Subsection (b) only applies to cul-de-sacs, and not to streets which terminate at another street. Therefore, we suggest that the last phrase of Subsection (b) read: ...does not continue through such ownership or end touching property of another.

Section 8335

An implication is contained in Subsection (b) (2) that there must be a "precise description" in the "legal" or "engineering" sense. This would increase the expense of vacation by requiring that such a description be formulated in words and figures. Therefore, we suggest the following phrase be added to Subsection (b) (2):

The description of the portion vacated may be by a precise map which is placed of record or to which reference is made in the resolution and which is permanently maintained by the public entity.

This would allow the City of Los Angeles to continue the procedure it follows of describing vacated areas by reference to book and page of "vacation maps" maintained by the City Engineer.

Section 8340

I am somewhat concerned and confused by Subdivision (b). It would seem that a finding that a street or road is "unnecessary for present or prospective use" (Section 8327) is totally

inconsistent with reserving an easement "for a future street or highway." It would seem that if the legislative body determines it is necessary to protect a possible future use of the street or highway, it cannot determine that it is not necessary for prospective public use. We believe there should be some clarification.

Section 8341

In order to reserve easements under the proposed section, it will be necessary to so recite in the resolution of intention as well as in the resolution of vacation. We would suggest that one or the other is unnecessary. Further, we would suggest that it should be made unnecessary though permissible to recite the intention to reserve easements in the resolution of intention, so that if it is brought to the attention of the legislative body in the public hearing that an easement should be reserved, such can be done at that time without reopening the entire matter.

We also believe that provision should be inserted in 8341 to clarify that reserved easements may be designated and their limits described by reference to a map on file with the public entity.

With respect to Subdivision (b) we do not have any idea what is intended thereby. Perhaps it will prohibit forever the subsequent vacation or abandonment of such reserved easements. We wonder if this is necessary or desirable.

Section 8342

We suggest that this section be eliminated. We believe an easement derived from a street easement should be treated the same as any other easement. If unused, according to the standards of Section 8333, a summary of vacation should be permitted. If in use, conventional vacation proceedings should be conducted. It seems unnecessary to continue the substance of Section 8332 under your new arrangement.

Section 8351

Our comments relating to this section are technical, in that title to the property does not "revert" to the owner of the underlying fee, the owner has always owned the property subject to the easement. Also, the term "underlying fee" is inaccurate, as a "fee" is a concept, not something that lies beneath an easement. Therefore, to make 8351 somewhat more acceptable academically, I suggest that Subsection (a) should read: If the local agency owns only an easement, title to the property previously subject to the easement is thereafter free from the public easement." (I insert the word "public" to clarify that any private easements are not extinguished). Also in Subdivision (b) the phrase "underlying fee" should be replaced by the word "title."

Section 8352

With respect to Subsection (a) we object to the last phrase which includes "a franchise" as a right which is not subject to extinguishment by vacation. We believe this is a substantial substantive change in the law, a change in property law which has long been relied upon by public agencies and private persons.

A franchise granted by a public agency to utilize a street is not a protected "property right." Upon vacation of a street easement, the franchise rights end, and any relocation of the public utility facility must be done at the expense of the utility company. California authority for this position is contained in Pacific Telephone and Telegraph vs. Redevelopment Agency of Redland, 75 Cal. App. 3d 957, 963 (1977); Pacific Telephone and Telegraph vs. Redevelopment Agency of Glendale, 87 Cal. App. 3d 296-299 (1978) and East Bay Municipal Utility District vs. Richmond Redevelopment Agency, 93 Cal. App. 3d 346-350 (1979). Out of state authority to the same affect is supplied by Union Electric Company vs. Land Clearance, etc. for St. Louis, 555 S/W 2d 29, (MO, 1977). There is also federal authority, General Telephone vs. United States, 216 F. Sup. 388 (SD Calif., 1963).

Therefore, I suggest you reconsider whether you wish to change by this statute what appears to be established California and United States law.

With respect to Subdivision (b) I question the validity of a "conclusive presumption of abandonment" from five years non-use. It would seem that this would be the equivalent of a taking of the owner's property without due process. It would also seem that there should be some way that an owner of property could preserve his easement necessary or desirable for the future use of adjacent or nearby property other than physical "use of the easement." I suggest such a means in my comment to Section 8353.

Section 8353

We believe this section requires substantial revision. In the first place, does the vacation extinguish all easements unless a notice is filed within two years, or does it extinguish easements which are not "necessary for the purpose of ingress and egress", while "necessary" easements exist for a five-year period, or longer if in use, even though no notice is filed.

We would eliminate the use of the term "necessary." It would seem that a more proper term to use would be "private easement of ingress and egress." That term would be defined by reference to California case law, including but not limited to Breidert vs. Southern Pacific Company, 61 Cal. 2d 659 (1964).

Such easements, whether necessary or merely desirable, should be preserved when public rights are abandoned or vacated.

However, you should also recognize that street vacations are generally prompted by request of interested persons who wish to develop or improve adjacent private property, and when the street does not really serve any public or private purpose. They must know within a relatively short period of time whether there is a claim of a private easement in the vacated area. We suggest that a procedure be established whereby a person seeking to utilize a vacated street area may give notice to persons who would possibly have a claim of private easement (by giving such notice to the occupant of the property and to the person who is identified as the owner on the last equalized assessment roll). Thereafter, such person would have a period of 60 days within which to record and serve a notice of a claim of easement, otherwise the law will presume that he has no private easement.

In order to foreclose frivolous claims tying up a property indefinitely, I would further suggest that such claimants be required to file an action in the Superior Court within 90 days after the recording of such notice, or that it be conclusively deemed that the easement has been abandoned.

Of course, the person desiring to make use of the former street area will have to make an intelligent determination of who has or might claim such an easement, and will still be subject to claims from persons who do not receive notice. However, unless unusual circumstances exist, it is unlikely that any owner of property beyond the next intersecting street has such a claim.

Section 8355

We would suggest a rewriting of this section to clarify that a street or public service easement cannot be sold, but that only a title previously subject to an easement may be sold. We further suggest that you eliminate a direction that the conveyance deed be signed by any particular individual. In the City of Los Angeles our deeds are executed by the Mayor after authorization by ordinance. We do not believe the legislature should compel the City of Los Angeles to change this local procedure.

Therefore we suggest a revision of Section 8355 as follows:

(a) If the legislative body of a local agency determines that property previously subject to a street, highway or public service use and in which the local agency has title is no longer needed by the public the legislative body may sell or exchange the property in the manner and upon the terms and conditions approved by the legislative body.

(b) Any conveyance pursuant to this section shall be executed on behalf of the local agency. The purchase price shall be paid into the local agency treasury.

Section 8356

We suggest that this section be eliminated. We see no reason why the legislature should command that the conveyance be only to "adjacent or fronting owners." It would appear to us that such land could be sold to any person; provided that this does not cause interference with the private easement of ingress and egress owned by the "adjacent or fronting owners" or the other easements (light, air, and view) which owners of land have in adjacent streets.

At the request of your commission or of your staff the undersigned would be pleased to amplify the above comments, if such seems necessary, or to explain further our reasons therefor, and/or to answer any questions which you may have.

Thank you for the opportunity to comment on this matter.

Yours very truly,

BURT PINES, City Attorney

By



NORMAN L. ROBERTS
Assistant City Attorney

NLR:bc
485-5414

cc: Mr. Arthur Dennis
Division Engineer

Carlyn F. Galway, Sr. Staff Attorney
League of California Cities
1400 K Street
Sacramento, CA 95814

STATE OF CALIFORNIA
CALIFORNIA LAW
REVISION COMMISSION

RECOMMENDATION

relating to

VACATION OF PUBLIC STREETS, HIGHWAYS,
AND SERVICE EASEMENTS

September 1979

CALIFORNIA LAW REVISION COMMISSION
Stanford Law School
Stanford, California 94305

September 13, 1979

To: THE HONORABLE EDMUND G. BROWN JR.
Governor of California and
THE LEGISLATURE OF CALIFORNIA

The Law Revision Commission was authorized by Resolution Chapter 65 of the Statutes of 1978 to study whether the law relating to the abandonment or vacation of public streets and highways by cities, counties, and the state should be revised. The Commission herewith submits its recommendation to consolidate the existing abandonment and vacation procedures into a single uniform statute.

Respectfully submitted,

Beatrice P. Lawson
Chairperson

RECOMMENDATION

relating toVACATION OF PUBLIC STREETS, HIGHWAYS,
AND SERVICE EASEMENTS

The statutes providing procedures for abandoning and vacating public streets and highways are found in a number of places in the Streets and Highways Code.¹ One statute governs abandonment and vacation of city streets and a parallel but separate statute governs county highways, while a third provides summary vacation procedures for state highways.² A similar statute in the Government Code provides for abandoning and vacating public service easements.³ These provisions, while generally comparable, display unnecessary inconsistencies and divergencies.

The Commission recommends that the various abandonment and vacation provisions be repealed and be replaced by a single general statute governing vacation of all public streets, highways, and service easements. This will reduce the bulk of the statutes by about one third while providing a clear, uniform, and comprehensive procedure.

The Commission also recommends that, where an offer of dedication of property for a right of way has been made to a local agency pursuant to the Subdivision Map Act⁴ or general law⁵ but the offer of dedication has not been accepted, the local agency may terminate the offer by summary vacation proceedings. This would change existing law, which requires ordinary vacation proceedings.

1. See, e.g., Sts. & Hy. Code §§ 100.2, 100.3 (freeway interceptions); 835-838 (abandonment and vacation of state highways); 954-960.5 (county highways); 1930-1934 (summary vacation of city streets); 8300-8374 (Street Vacation Act of 1941).
2. Compare Sts. & Hy. Code §§ 954-960.5 (county highways) with §§ 8300-8374 (city streets) and §§ 835-838 (state highways).
3. Gov't Code §§ 50430-50445 (Public Service Easements Vacation Law).
4. Gov't Code § 66477.2.
5. Gov't Code § 7050.

Four general rules have been followed in preparing the recommended legislation:

- (1) Only technical and minor substantive changes in the basic vacation procedures have been made.
- (2) Where two related provisions conflict, that which appears most consistent with the general scheme of the statute has been selected.
- (3) Where a problem is addressed by one statute but not by others, the statute addressing the problem has been preserved.
- (4) Where statutes are similar but are differently worded, the language of the more recently enacted statute has been preferred.

The Commission's recommendation would be effectuated by enactment of the following measure:

An act to repeal Sections 812 and 812.5 of the Civil Code, to amend Sections 7050 and 66477.2 of, and to repeal Article 5 (commencing with Section 50430) of Chapter 2 of Part 1 of Division 1 of Title 5 of, the Government Code, and to amend Sections 73, 954, 954.5, and 960.5 of, to repeal and add Part 3 (commencing with Section 8300) to Division 9 of, to repeal Sections 72, 72.5, 100.23, 955, 956, 956.8, 957, 957.5, 958, 959, 959.1, 960, 960.1, 960.2, 960.3, and 960.4 of, and to repeal Chapter 5 (commencing with Section 835) of Division 1 and Chapter 5 (commencing with Section 1930) of Division 2.5 of, the Streets and Highways Code, relating to vacation of public streets, highways, and service easements.

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

O U T L I N EPART 3. PUBLIC STREETS, HIGHWAYS, AND SERVICE
EASEMENTS VACATION LAW

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- § 8300. Short title
- § 8301. Application of definitions
- § 8302. Adoption of resolution
- § 8303. Clerk
- § 8304. Legislative body
- § 8305. Local agency
- § 8305.5. Public entity
- § 8306. Public service easement
- § 8307. Resolution
- § 8308. Street; highway
- § 8309. Vacation

CHAPTER 2. GENERAL PROVISIONS

- § 8310. Liberal construction
- § 8311. Alternative procedure
- § 8312. Allocation of authority between city and county
- § 8313. Applicability of general or master plan
- § 8314. Limitation where right of way useful as nonmotorized transportation facility
- § 8315. Limitation on vacation of state highway
- § 8316. Combined proceedings
- § 8317. Proof of publication and posting

CHAPTER 3. GENERAL VACATION PROCEDURE

- § 8320. Resolution of intention
- § 8321. Requirement of proceedings upon petition
- § 8322. Publication of notice of hearing
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- § 8324. Hearing; resolution of vacation
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- § 8330. Street or highway superseded by relocation
- § 8330.5. State highway superseded by relocation
- § 8331. Impassible streets and highways
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- § 8335. Resolution of vacation
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CHAPTER 5. RESERVATION AND PRESERVATION OF EASEMENTS

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- § 8340. Authorization to reserve easements
- § 8341. Recitation in resolution of intention and resolution of vacation

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- § 8350. Extinction of public easements
- § 8351. Reversion of easement or disposition of fee
- § 8352. Effect on private easements and other rights
- § 8353. Easements claimed by reference to map or plat

Article 2. Disposition of Excess Property

- § 8355. Sale or exchange of excess property
- § 8356. Conveyance to adjacent or fronting owners
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CHAPTER 7. AGREEMENTS LIMITING VACATION

- § 8360. Agreement between local agencies
- § 8361. Ratification of prior agreements
- § 8362. Limitation of power to vacate streets and highways
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VACATION OF PUBLIC STREETS, HIGHWAYS,
AND SERVICE EASEMENTS

Streets & Highways Code §§ 8300-8363 (added)

SECTION 1. Part 3 (commencing with Section 8300) is added to Division 9 of the Streets and Highways Code, to read:

PART 3. PUBLIC STREETS, HIGHWAYS, AND SERVICE
EASEMENTS VACATION LAW

CHAPTER 1. SHORT TITLE AND DEFINITIONS

§ 8300. Short title

8300. This part may be cited as the Public Streets, Highways, and Service Easements Vacation Law.

Comment. Section 8300 supersedes former Section 8300 (Street Vacation Act of 1941) and former Government Code Section 50430 (Public Service Easements Vacation Law).

406/480

§ 8301. Application of definitions

8301. Unless the provision or context otherwise requires, the definitions in this chapter govern the construction of this part.

Comment. Section 8301 makes clear that this chapter provides special definitions applicable only to this part. For other definitions and rules of construction applicable to this part, see Sections 1-29. See also Section 8345 ("public body" defined).

999/359

§ 8302. Adoption of resolution

8302. "Adoption" of a resolution includes passage or enactment of a resolution.

Comment. Section 8302 relates to adoption of an ordinance as well as a resolution. See Section 8307 ("resolution" includes ordinance).

406/479

§ 8303. Clerk

8303. "Clerk" includes a person or officer who is clerk of a legislative body.

Comment. Section 8303 continues the substance of former Section 8303 (city streets) and former Government Code Section 50432(a) (public service easements).

§ 8304

999/549

§ 8304. Legislative body

8304. "Legislative body" means:

(a) In the case of a county or city and county, the board of supervisors.

(b) In the case of a city, the city council or other body which by law is the legislative body of the government of the city.

(c) In the case of the California Transportation Commission, the commission.

Comment. Section 8304 continues the substance of former Section 8302 (city streets) and broadens it to include the county board of supervisors and the California Transportation Commission. See also Gov't Code § 50002 (legislative body defined).

999/360

§ 8305. Local agency

8305. "Local agency" means county, city, or city and county.

Comment. Section 8305 is drawn from Government Code Section 50001 (local agency defined).

968/901

§ 8305.5. Public entity

8305.5. "Public entity" means local agency or the California Transportation Commission.

Comment. Section 8305.5 is new.

405/880

§ 8306. Public service easement

8306. "Public service easement" includes all or part of or any right in:

(a) A right of way, easement, or use restriction acquired for public use by dedication or otherwise for sewers, pipelines, polelines, electrical transmission and communication lines, pathways, storm drains, drainage, canal, water transmission lines, light and air, and other limited use public easements other than for street or highway purposes.

(b) An easement or right of a type described in Section 8340.

Comment. Subdivision (a) of Section 8306 continues the substance of former Government Code Section 50432(c) (public service easement), making clear that water transmission lines and other limited use public easements are included within the meaning of public service easements, as well as use restrictions for such purposes. A public service easement acquired for public use by dedication may be dedicated or purportedly dedicated for public use by a plat or map filed or recorded in the office of the county recorder.

Subdivision (b) is new. It is intended to enable use of standard vacation procedures for easements and rights of way reserved and excepted pursuant to Article 1 (commencing with Section 8340) (reservation of easements) of Chapter 5.

406/205

§ 8307. Resolution

8307. "Resolution" includes ordinance.

Comment. Section 8307 supersedes former Section 8305 (ordinance includes resolution).

406/210

§ 8308. Street; highway

8308. "Street" and "highway" include all or part of or any right in a state highway or other public highway, road, street, avenue, alley, lane, drive, way, place, court, trail, or other public right of way or easement, or purported public street or highway, and rights connected therewith, including but not limited to restrictions of access or abutters' rights, sloping easements, or other incidents to a street or highway.

Comment. Section 8308 continues the substance of former Section 8304 (city streets) and the provisions of Section 960.5 insofar as the provisions of Section 960.5 related to abandonment of county highways, and broadens them to include rights that are incidental to or immediately next to a street or highway.

406/218

§ 8309. Vacation

8309. "Vacation" is the complete or partial abandonment or termination of the public right to use a street or highway or public service easement.

Comment. Section 8309 continues the substance of former Section 8306 (city streets) and former Government Code Section 50432(b) (public service easements) and broadens them to include county highways and state highways.

406/478

CHAPTER 2. GENERAL PROVISIONS

§ 8310. Liberal construction

8310. This part shall be liberally construed in order to effectuate its purposes.

Comment. Section 8310 continues former Section 8301 (city streets).

406/475

§ 8311. Alternative procedure

8311. (a) The procedures provided in this part are alternative procedures for vacating streets, highways, and public service easements. The authority granted in this part is alternative to any other authority provided by law to public entities.

(b) The provisions of this part do not apply to or affect any other provision of this code. If proceedings are commenced under this part, the provisions of this part, and no other provisions of this code, apply to the proceedings.

Comment. Section 8311 continues the substance of the first two paragraphs of former Section 8308 (city streets) and former Government Code Section 50431 (public service easements) and broadens them to include county highways and state highways. This part is not the exclusive means by which a public entity may close a street or highway. See, e.g., Sections 100.2, 941.2, 1801 (closure at freeway interception); but see Section 8332 (vacation in connection with closure at freeway interception). See also Section 942.5 (closure of county highway).

406/211

§ 8312. Allocation of authority between city and county

8312. Except as provided in Section 8315, pursuant to this part, a city legislative body may vacate all or part of a street, highway, or public service easement within the city and a board of supervisors may vacate all or part of a street, highway, or public service easement within the county but outside a city.

Comment. Section 8312 continues the substance of former Section 8320 (city streets) and the first paragraph of former Government Code Section 50436 (public service easements) and broadens them to include county highways. A state highway may not be vacated except by the California Transportation Commission. See Section 8315.

968/710

§ 8313. Applicability of general or master plan

8313. If the proposed vacation of a street, highway, or public service easement is within an area for which a general or master plan is adopted by a local agency, the legislative body of the public entity shall consider the general or master plan prior to vacating the street, highway, or public service easement. The legislative body may submit the proposed vacation to the local planning commission or planning agency and give the commission or agency an opportunity to report upon the proposed vacation.

Comment. Section 8313 supersedes former Government Code Section 50435 (public service easements) which required submission of the proposed vacation to the planning commission.

406/456

§ 8314. Limitation where right of way useful as nonmotorized transportation facility

8314. A street, highway, or public service easement shall not be vacated pursuant to this part except in compliance with Section 2381.

Comment. Section 8314 makes clear that a right of way may not be vacated unless the legislative body determines that the right of way is not useful as a nonmotorized transportation facility. See Section 2381.

07/428

§ 8315. Limitation on vacation of state highway

8315. A state highway may be vacated under this part only by the commission.

Comment. Section 8315 supersedes of the last sentence of former Section 8308 (city streets), which appeared to permit vacation of a state highway by a city. A state highway may be vacated only by the California Transportation Commission pursuant to Section 8330.5.

§ 8316. Combined proceedings

8316. One or more streets, highways, and public service easements, whether or not contiguous, may be included and vacated in the same proceeding.

Comment. Section 8316 continues the substance of the second paragraph of former Section 8322 (city streets) and the second paragraph of former Government Code Section 50436 (public service easements) and broadens them to include county highways and state highways.

406/961

§ 8317. Proof of publication and posting

8317. (a) Proof of publication of a notice shall be made by affidavit, pursuant to the Code of Civil Procedure. Proof of the posting of a notice shall be made by affidavit of the person posting it, reciting the facts of the posting.

(b) An officer required to have any notice published or posted shall file the affidavit in his or her office. Failure to do so does not invalidate proceedings under this part. An affidavit so filed is prima facie evidence of the facts stated in it.

Comment. Section 8317 continues the substance of former Section 8307 (city streets) and former Government Code Section 50433 (public service easements) and broadens them to include county highways.

405/890

CHAPTER 3. GENERAL VACATION PROCEDURE

§ 8320. Resolution of intention

8320. (a) The legislative body of a local agency may initiate a proceeding under this chapter by adopting a resolution of intention to vacate, which may be upon its own initiative or upon a petition or request of an interested person.

(b) The resolution of intention shall include all of the following:

(1) A declaration of the intention of the legislative body to vacate.

(2) A statement that the vacation proceeding is conducted under this chapter.

(3) A description of the general location and extent of the street, highway, or public service easement to be vacated and a reference to a map or plan which shows the portion or area to be vacated on file in the office of the local agency. In the case of a street or highway, the description shall include its lawful or official name or the name by which it is commonly known. In the case of a public service easement, the description shall identify it with common certainty.

(4) The date, hour, and place for hearing all persons interested in the proposed vacation. The date shall be not less than 15 days from the adoption of the resolution.

(c) The resolution of intention shall be published or posted in the manner prescribed for the publication and posting of resolutions of the legislative body. The publication or posting of the resolution of intention shall be in addition to any publication of notice of hearing required by Section 8322 and the posting of notice of vacation required by Section 8323.

Comment. Subdivision (a) of Section 8320 indicates that a proceeding may be initiated by resolution. For initiating a proceeding upon petition, see Section 8321. Paragraphs (1) and (2) of subdivision (b) continue the substance of former Sections 956.8 (county highways) and 8321 (city streets) and former Government Code Section 50437 (public service easements). The remainder of subdivision (b) and subdivision (c) continue the substance of the first portion of the first paragraph of former Section 8322 (city streets) and former Government Code Section 50438 (public service easements) and broaden them to include county highways.

405/889

§ 8321. Requirement of proceedings upon petition

8321. (a) Ten or more freeholders may petition the board of supervisors to vacate a street or highway under this chapter. At least two of the petitioners shall be residents of the road district in which some part of the street or highway proposed to be vacated is situated and be taxable therein for street or highway purposes.

(b) Five or more freeholders may petition the board of supervisors to vacate a public service easement under this chapter. At least one of

the petitioners shall be a resident of the township in which the public service easement proposed to be vacated is situated.

(c) The residence address of each petitioner shall be set forth in the petition.

(d) The board of supervisors may require the person filing the petition to deposit an amount reasonably sufficient to defray the expenses of investigations, mailings, publications, and postings under this chapter. The deposit shall be made with the county officer designated by the board. Upon completion of the proceedings, any unused portion of the deposit shall be refunded to the person who filed the petition. If the costs exceed the deposit, the county shall bear the excess costs.

(e) Upon the filing of a petition and the making of the deposit, if any, required under this section, the board of supervisors, by order, shall fix the date, hour, and place of the hearing on the petition. At least two weeks before the day set for the hearing, the clerk of the board shall mail a notice of the date, hour, and place of the hearing to each of the petitioners at the address set forth in the petition.

(f) Nothing in this section affects the right of a legislative body to initiate a proceeding under this chapter upon its own initiative or upon petition or request of an interested person or prevents the board of supervisors from vacating a street, highway, or public service easement without charging costs if the board determines it is in the public interest to do so.

Comment. Subdivision (a) of Section 8321 continues the substance of former Section 957 (county highways). Subdivision (b) continues the substance of former Government Code Section 50439 (public service easements). Subdivision (c) is included to permit compliance with the mailing requirement of subdivision (e). Subdivisions (d) and (f) continue the substance of former Section 957.5 (county highways) and broaden it to include public service easements. The first sentence of subdivision (e) is drawn from provisions of former Section 958 (county highways) and former Government Code Section 50440 (public service easements). The second sentence of subdivision (e) is new.

§ 8322. Publication of notice of hearing

8322. (a) Except as provided in subdivisions (b) and (c), notice of the date, hour, and place of the hearing on the resolution of intention or petition to vacate shall be published for at least two successive weeks prior to the hearing in a daily, semiweekly, or weekly newspaper published and circulated in the local agency conducting the proceeding and which is selected by the legislative body for that purpose or by the clerk or other officer responsible for the publication where the legislative body has not selected any newspaper for that purpose.

(b) If the proceeding is conducted by a city and there is no daily, semiweekly, or weekly newspaper published and circulated in the city, the notice shall be published in some newspaper published in the county in which such city is located.

(c) Notice need not be published under this section in either of the following cases:

(1) Where the resolution of intention is published in a newspaper pursuant to subdivision (c) of Section 8320.

(2) Where there is no daily, semiweekly, or weekly newspaper published and circulating in the county in which the local agency conducting the proceeding is located.

Comment. Section 8322 is adapted from Section 5061 (The Improvement Act of 1911) and supersedes portions of former Section 958 (county highways) and Government Code Section 50440 (public service easements) and broadens the publication requirement to include city streets.

405/381

§ 8323. Posting notice of vacation

8323. (a) At least two weeks before the day set for the hearing, the legislative body shall post conspicuously notices of vacation along the line of the street, highway, or public service easement proposed to be vacated. The notices shall be posted not more than 300 feet apart but at least three notices shall be posted. If the line of the street, highway, or public service easement proposed to be vacated exceeds one mile in length, the legislative body may, in lieu of posting not more than 300 feet apart, post notices at each intersection of the street,

highway, or public service easement to be vacated with another street or highway and at one point approximately midway between each intersection, but at least three notices shall be posted.

(b) The notices shall state the day, hour, and place of hearing and shall refer to the adoption of the resolution of intention or to the filing of the petition.

(c) The notices shall describe the street, highway, or public service easement proposed to be vacated. In the case of a street or highway, the description shall include its lawful or official name or the name by which it is commonly known. In the case of a public service easement, the description shall identify it with common certainty. A map or plan showing the location of the street, highway, or public easement proposed to be vacated is sufficient compliance with this subdivision.

Comment. Section 8323 is based on and supersedes a portion of former Section 955 (county highways), a portion of the third sentence of former Section 958 (county highways), the last portion of the first paragraph of former Section 8322 (city streets), and former Government Code Section 50441 (public service easements). The last sentence of subdivision (c) is new.

404/178

§ 8324. Hearing; resolution of vacation

8324. (a) At the hearing, the legislative body shall hear the evidence offered by persons interested.

(b) If the legislative body finds, from all the evidence submitted, that the street, highway, or public service easement described in the resolution of intention or petition is unnecessary for present or prospective public use, the legislative body may adopt a resolution vacating the street, highway, or public service easement. The resolution of vacation may provide that the vacation occurs only after conditions required by the legislative body have been satisfied and may instruct the clerk that the resolution of vacation not be recorded until the conditions have been satisfied.

Comment. Section 8324 continues the substance of the first two sentences of former Sections 956 (county highways), 959 (county highways), and 8323 (city streets) and former Government Code Section 50442 (public service easements), with the addition of language to make clear that the legislative body may impose conditions for vacation.

§ 8325. Recordation of resolution

8325. (a) The clerk shall cause a certified copy of the resolution of vacation, attested by the clerk under seal, to be recorded without acknowledgment, certificate of acknowledgment, or further proof in the office of the recorder of the county in which the property is located. No fee shall be charged for recordation.

(b) Upon such recordation, the vacation is complete.

Comment. Subdivision (a) of Section 8325 continues the substance of the third sentence of former Section 956 (county highways), the second sentence of former Section 960 (county highways), the second paragraph of former Section 8324 (city streets), and former Government Code Section 50445 (public service easements), and is comparable to Section 8336.

Subdivision (b) supersedes the portions of former Sections 960 (county highways) and 8324 (city streets) and former Government Code Section 50444 (public service easements) that gave effect to the vacation upon the making of an order of vacation.

9751

CHAPTER 4. SUMMARY VACATION

Article 1. Authority

§ 8330. Street or highway superseded by relocation

8330. (a) The legislative body of a local agency may summarily vacate a street or highway that has been superseded by relocation.

(b) A street or highway shall not be summarily vacated pursuant to this section if vacation would do either of the following:

(1) Cut off all access to a person's property which, prior to relocation, adjoined the street or highway.

(2) Terminate a public service easement unless the easement satisfies the requirements of Section 8333.

Comment. Section 8330 continues the substance of subdivision (a) of former Section 960.1 (county highways) and of former Section 1930 (city streets). A public service easement includes an easement or right of a type described in Section 8340. See Section 8306.

§ 8330.5. State highway superseded by relocation

8330.5. (a) Subject to subdivisions (b) and (c), the commission may retain, relinquish to a local agency pursuant to Section 73, or summarily vacate a state highway that has been superseded by relocation.

(b) The commission shall not vacate a state highway unless the commission has first given a notice of relinquishment pursuant to Section 73 and the legislative body has protested within the prescribed 90-day period that the highway is not needed for public use and should be vacated by the commission.

(c) If vacation of a state highway would cut off all access to the property of any person which, prior to relocation, adjoined the highway, the commission shall either retain the highway or relinquish it pursuant to Section 73.

Comment. Section 8330.5 continues the substance of the first sentence of former Section 835 and adds the requirement that prior to vacation of a state highway superseded by relocation, the California Transportation Commission must first offer to relinquish the highway to the appropriate local agency. The commission may vacate the highway only if the offer of relinquishment is rejected by the local agency for the reason that the highway is not needed for public use and should be abandoned by the commission. The authority to vacate a state highway under this section includes authority to vacate a portion of the highway or any right or interest in the highway. See Section 8308 ("highway" defined).

28/842

§ 8331. Impassable streets and highways

8331. The legislative body of a local agency may summarily vacate a street or highway if both of the following conditions exist:

(a) For a period of five consecutive years the street or highway has been impassable for vehicular travel.

(b) No public money was expended for maintenance on the street or highway during such period.

Comment. Section 8331 continues a provision formerly found in Section 954 that related to abandonment of unnecessary county highways and broadens the provision to include city streets. A county highway that is described in Section 8331 may be designated a stock trail instead of being vacated. See Section 954.

§ 8332. Freeway interception

8332. The legislative body of a local agency may summarily vacate a street or highway pursuant to an agreement entered into with the department pursuant to Section 100.2 to close the street or highway at or near the point of its interception with a freeway.

Comment. Section 8332 supersedes subdivision (a) of former Section 100.23 (city streets and county highways) and makes clear that the action of the local agency is to be taken pursuant to this part. Nothing in this section precludes closure of a street or highway without vacation pursuant to Sections 100.2, 941.2, and 1801. See Section 8311 and Comment thereto.

406/248

§ 8333. Unused public service easements

8333. The legislative body of a local agency may summarily vacate a public service easement in any of the following cases:

(a) The easement has not been used for the purpose for which it was dedicated or acquired for five consecutive years next preceding the proposed vacation.

(b) The date of dedication or acquisition is less than five years and more than one year next preceding the proposed vacation, and the easement was not used continuously since that date.

Comment. Section 8333 continues the substance of the first paragraph of former Government Code Section 50443 (public service easements).

38/658

§ 8334. Miscellaneous grounds for vacation

8334. The legislative body of a local agency may summarily vacate any of the following:

(a) An excess right of way of a street or highway not required for street or highway purposes.

(b) A portion of a street or highway that lies within property under one ownership and that does not continue through such ownership or end touching property of another.

Comment. Section 8334 continues the substance of subdivisions (b) and (c) of former Section 960.1 (county highways) and broadens them to include city streets, making clarifying changes.

Article 2. Procedure§ 8335. Resolution of vacation

8335. (a) The legislative body may vacate a street, highway, or public service easement pursuant to the authority provided in this chapter by adopting a resolution of vacation.

(b) The resolution of vacation shall state all of the following:

(1) That the vacation is made under this chapter.

(2) The name or other designation of the street, highway, or public service easement, and a precise description of the portion vacated. The description of the portion vacated may be by a precise map which is recorded or to which reference is made in the resolution and which is permanently maintained by the public entity.

(3) The facts under which the summary vacation is made. If the vacation is made pursuant to Section 8332, the statement shall include the date of the agreement. The resolution is prima facie evidence of the facts stated.

(4) That from and after the date the resolution is recorded, the street, highway, or public service easement vacated no longer constitutes a street, highway, or public service easement.

Comment. Subdivision (a) of Section 8335 continues the substance of the first sentence of former Section 72 and the second sentence of former Section 836 (state highways), the first sentence of former Section 1931 (city streets), and the first sentence of former Section 960.2 (county highways), and broadens them to include public service easements. See also former Section 100.23(a) (city streets and county highways).

Subdivision (b) continues the substance of former Section 100.23(b) (city streets and county highways) and the second paragraph of former Government Code Section 50443 (public service easements). Paragraph (1) of subdivision (b) and the reference to a precise description by map in paragraph (2) are new.

38/659

§ 8336. Recordation of resolution

8336. (a) The clerk shall cause a certified copy of the resolution of vacation, attested by the clerk under seal, to be recorded without acknowledgment, certificate of acknowledgment, or further proof in the

office of the recorder of the county in which the property is located. No fee shall be charged for recordation.

(b) On such recordation, the vacation is complete.

Comment. Section 8336 continues the substance of the second and third sentences of former Section 836 and a portion of the second sentence of former Section 72 (state highways), the first sentence of former Section 100.23(c) (city streets and county highways), and the second, third, and fourth sentences of former Sections 960.2 (county highways) and 1931 (city streets) and broadens those provisions to include public service easements and makes revisions to conform the provisions to Section 8325.

406/208

CHAPTER 5. RESERVATION AND PRESERVATION OF EASEMENTS

Article 1. Reservation of Easements

§ 8340. Authorization to reserve easements

8340. In a proceeding to vacate a street or highway:

(a) A public entity may reserve and except from the vacation the easement and right at any time, or from time to time, to construct, maintain, operate, replace, remove, and renew sanitary sewers and storm drains and appurtenant structures in, upon, over, and across a street or highway proposed to be vacated and pursuant to any existing franchise or renewals thereof, or otherwise, to construct, maintain, operate, replace, remove, renew, and enlarge lines of pipe, conduits, cables, wires, poles, and other convenient structures, equipment, and fixtures for the operation of gas pipelines, telegraphic and telephone lines, railroad lines, and for the transportation or distribution of electric energy, petroleum and its products, ammonia, water, and for incidental purposes, including access to protect such works from all hazards in, upon, and over the street or highway proposed to be vacated.

(b) A local agency may reserve and except from vacation an easement for a future street or highway unless the local agency finds that the street or highway is unnecessary for prospective public use.

Comment. Subdivision (a) of Section 8340 continues the substance of former Sections 72.5 and 838 (state highways), 959.1(a) (county highways), 1934 (city streets), and 8330 (city streets).

Subdivision (b) continues the substance of former Section 959.1(b) (county highways) and broadens it to include city streets, making clear that it does not apply where the vacation is pursuant to Section 8324 (finding that street or highway unnecessary for prospective public use).

406/246

§ 8341. Recitation in resolution of intention and resolution of vacation

8341. (a) In a proceeding to vacate a street or highway, if the legislative body determines that the public convenience and necessity require the reservation and exception of easements and rights of way for works enumerated in Section 8340, such reservations and exceptions shall be recited in the resolution of vacation, in addition to any other matter required to be recited therein. The recital may describe the reservations and exceptions by reference to a precise map which is recorded or to which reference is made in the resolution and which is permanently maintained by the public entity.

(b) Subsequent proceedings of the public entity in relation to the vacation, including a deed or conveyance of title to or an interest in the property, are subject to and governed by the reservations and exceptions recited in the resolution of vacation and the deed or conveyance shall contain a recital to that effect.

Comment. Section 8341 continues the substance of former Section 8331, broadens it to include county and state highways, and substitutes the requirement that the reservations and exceptions be recited in the resolution of vacation for the requirement that they be recited in the resolution of intention. The provisions for describing the reserved easements by reference to a map and requiring that deeds or conveyances recite any reserved easements are new.

28/453

Article 2. Preservation of Public Easements

§ 8345. "Public body" defined

8345. As used in this article, "public body" means a city or special district as defined in Section 54775 of the Government Code.

Comment. Section 8345 supersedes the first paragraph of former Civil Code Section 812.5.

§ 8346. Requests for notice; index of requests

8346. (a) A public body may request a local agency for notice of proceedings to vacate a street or highway.

(b) Every local agency shall maintain an index of requests for notice of vacation proceedings received pursuant to this section. The index shall be made available to the public upon request.

Comment. Section 8346 continues the substance of the fifth paragraph of former Civil Code Section 812.5.

404/986

§ 8347. Notice of vacation proceeding

8347. If a public body has requested notice of the vacation proceeding under Section 8346, the local agency shall give written notice of the vacation proceeding to the public body within 15 days after:

(a) The adoption of a resolution of intention or the filing of a petition to vacate.

(b) The adoption of the resolution of vacation in cases not covered by subdivision (a).

Comment. Section 8347 supersedes the first sentence of the third paragraph of former Civil Code Section 812.5.

404/985

§ 8348. Determination that public easement is required

8348. (a) Within 30 days after receipt of the notice of the vacation proceeding, the public body may:

(1) Determine that public convenience and necessity require a public easement to maintain, operate, replace, remove, or renew its existing works installed in the street or highway that is the subject of the vacation proceeding; and

(2) File for record in the office of the recorder in the county in which the vacated street or highway is located, a verified notice of its public easement so determined over the street or highway or part thereof that is particularly described in the notice.

(b) Failure to record the notice of public easement within 30 days after receipt of the notice of the vacation proceeding extinguishes the right of the public body to a public easement.

(c) If the local agency fails to give the required notice of the vacation proceeding, the public body may determine and record notice of its public easement at any time within 180 days after recordation of the resolution of vacation. The failure of the public body to record its notice within the 180-day period extinguishes the right of the public body to a public easement over the vacated street or highway.

Comment. Section 8348 continues the substance of a portion of the second paragraph, the second sentence of the third paragraph, and the fourth paragraph of former Civil Code Section 812.5.

404/973

§ 8349. Limitations of article

8349. Nothing in this article shall be construed to:

(a) Affect any reservation or the right to reserve easements pursuant to this chapter or any other provision of this code.

(b) Make the rights of the public in or to a street or highway subordinate to a public easement determined pursuant to this article.

Comment. Section 8349 continues the substance of the sixth paragraph of former Civil Code Section 812.5.

404/967

CHAPTER 6. EFFECT OF VACATION

Article 1. Effect on Property Rights

§ 8350. Extinction of public easements

8350. Except as provided in Chapter 5 (commencing with Section 8340), the vacation of a street, highway, or public service easement extinguishes all public easements therein.

Comment. Section 8350 continues the substance of a portion of the second paragraph of former Civil Code Section 812.5 (city streets and county highways), the first sentence of former Section 960 (county highways), a portion of the first paragraph of former Section 8324 (city streets), and former Government Code Section 50444 (public service easements), and broadens them to include state highways.

§ 8351. Reversion of easement or disposition of fee

8351. Except as otherwise provided in Chapter 5 (commencing with Section 8340) or in this chapter, on vacation of a street, highway, or public service easement:

(a) If the public entity owns only an easement, title to the property previously subject to the easement is thereafter free from the easement.

(b) If the public entity owns the title, the legislative body may dispose of the property as provided in this chapter.

Comment. Section 8351 continues the effect of former Section 837 (state highways), the third sentence of former Section 960 (county highways), former Sections 960.3 (county highways) and 1932 (city streets and reserved easements), a portion of the first paragraph of former Section 8324 (city streets) and former Government Code Section 50444 (public service easements).

404/966

§ 8352. Effect on private easements and other rights

8352. (a) Except as provided in Section 8353, vacation of a street, highway, or public service easement pursuant to this part does not affect a private easement or other right of a person (including but not limited to the state, a public corporation, or a political subdivision, other than the local agency adopting the resolution of vacation) in, to, or over the lands subject to the street, highway, or public service easement regardless of the manner in which the private easement or other right was acquired.

(b) A private easement or other right described in subdivision (a) is subject to extinguishment under the laws governing abandonment, adverse possession, waiver, and estoppel.

Comment. Section 8352 is drawn from former Government Code Section 50434 (public service easements) and continues the substance of and broadens the last sentence of former Section 100.23 (city streets and county highways) and the second paragraph of former Section 960 (county highways), and broadens them to include state highways. The conclusive presumption of abandonment by nonuse found in former Section 960 is not continued.

§ 8353. Easements claimed by reference to map or plat

8353. (a) Except as provided in subdivision (b), the vacation of a street or highway extinguishes all private easements therein claimed by reason of the purchase of a lot by reference to a map or plat upon which the street or highway is shown, other than a private easement of ingress and egress to the lot from or to the street or highway.

(b) A private easement claimed by reason of the purchase of a lot by reference to a map or plat upon which the street or highway is shown is not extinguished pursuant to subdivision (a) if, within two years after the date the vacation is complete, the claimant records a verified notice that particularly describes the private easement that is claimed in the office of the recorder of the county in which the vacated street or highway is located.

(c) Nothing in this section shall be construed to create a private easement, nor to extend a private easement now recognized by law, nor to make the rights of the public in or to a street or highway subordinate to a private easement. Nothing in this section affects the right of the owner of property that was subject to the vacated street or highway to commence an action to quiet title as against any claim of a private easement of any type, whether before or after recordation of a verified notice pursuant to this section.

Comment. Section 8353 continues the substance of former Civil Code Section 812 (city streets and county highways) and broadens them to include state highways, but eliminates "necessity" as a criterion for extinction of a private easement of ingress and egress to a lot from or to a vacated street or highway. Section 8353 also makes clear that the procedure provided in this section does not foreclose the right of the property owner to establish title against claims of private easements by a quiet title proceeding.

Article 2. Disposition of Excess Property§ 8355. Sale or exchange of excess property

8355. If the legislative body of a public entity determines that property previously subject to a street, highway, or public service easement, title to which is owned by the public entity, is no longer needed by the public:

(a) In the case of property owned by a local agency, the legislative body may sell or exchange the property in the manner and upon the terms and conditions approved by the legislative body.

(b) In the case of property owned by the state, the department shall dispose of the property as provided in Section 118.

Comment. Subdivision (a) of Section 8355 continues the substance of portions of former Sections 960.4 (county highways) and 1933 (city streets) and broadens them to include public service easements.

Subdivision (b) continues the substance of the last sentence of former Section 837 (state highways).

26/258

§ 8356. Conveyance to adjacent or fronting owners

8356. (a) Notwithstanding Section 8311, if a street or highway is vacated by a local agency under this part or under any other law or under its charter for the purpose of opening a new street or highway in lieu of that vacated, the legislative body of the local agency may, by resolution, unless otherwise provided in its charter, convey by deed its interest in the street or highway vacated to the owners of the lands adjacent to or fronting on the street or highway in such manner as it deems that equity requires.

(b) If title to the property occupied by the vacated street or highway is owned by the local agency, the legislative body may impose any reasonable conditions, or demand compensation by exchange of lands, or otherwise, before conveying the property.

(c) The deeds provided for in this section shall not be delivered to the grantees named in the deeds until good and sufficient conveyances vesting in the local agency the title to the new street or highway opened in lieu of the street or highway vacated, are delivered to the local agency.

(d) The authority granted in this section is permissive and does not affect any authority the local agency may have to hold the property for public use, dispose of the property by public bid, or take any other action with respect to the property authorized by law.

Comment. Section 8356 continues the substance of former Sections 8370-8374 (city streets) and broadens it to include county highways, with the addition of subdivision (d) to make clear that the authority granted by this section is permissive and not mandatory.

968/905

§ 8357. Funds from sale of excess property

8357. The purchase price for any property sold by the legislative body of a local agency pursuant to this article shall be paid into the local agency treasury to the credit of any fund, available for the same purposes for which the property was used, that the legislative body designates.

Comment. Section 8357 continues the substance of the last sentence of former Sections 960.4 (county highways) and 1933 (city streets).

26/257

CHAPTER 7. AGREEMENTS LIMITING VACATION

§ 8360. Agreement between local agencies

8360. A local agency may, by written contract, agree with another local agency that a street or highway running from either of the local agencies to, in, through, or across any heretofore or hereafter incorporated territory of the other local agency may only be closed or vacated by the other local agency upon the consent and agreement of both local agencies.

Comment. Section 8360 continues the substance of former Section 8350 (city streets) and broadens it to include county highways.

405/929

§ 8361. Ratification of prior agreements

8361. A written agreement between any local agencies heretofore made and heretofore ratified by the respective legislative bodies of both local agencies and providing against the closing of streets or highways mentioned in Section 8360, except in accordance with the terms of the agreement, is hereby ratified and declared valid.

Comment. Section 8361 continues the substance of former Section 8351 (city streets) and broadens it to include county highways.

§ 8362. Limitation of power to vacate streets and highways

8362. Whenever a written agreement has been heretofore made and ratified by Section 8361 or is hereafter made as provided for in Section 8360, each contracting local agency has a public interest in the continued opening and use of any street or highway provided for in the agreement, and the legislative body of the local agency in which the street or highway is located, shall only have power to close or vacate the street or highway in accordance with the laws of this state and in accordance with the written agreement evidenced by an effective resolution carrying into effect the written agreement and passed by the legislative body of the other local agency.

Comment. Section 8362 continues the substance of former Section 8352 (city streets) and broadens it to include county highways.

§ 8363. Recordation of agreements

8363. Every agreement between local agencies heretofore or hereafter made in accordance with the provisions of this chapter, shall be recorded in the office of the county recorder of each county wherein lies any of the property through or across which the street or highway runs which is to be or heretofore has been closed or vacated.

Comment. Section 8363 continues the substance of former Section 8353 (city streets) and broadens it to include county highways.

CONFORMING CHANGES

SERVITUDES

Civil Code § 812 (repealed)

SEC. 2. Section 812 of the Civil Code is repealed.

~~812. The vacation or abandonment, pursuant to law, of streets and highways shall extinguish all private easements therein claimed by reason of the purchase of any lot by reference to a map or plat upon which such streets or highways are shown, other than a private easement necessary for the purpose of ingress and egress to any such lot from or to a public street or highway, except as to any person claiming such easement who, within two years from the effective date of such vacation or abandonment or within two years from the date of the enactment of this section, whichever is later, shall have recorded in the office of the recorder of the county in which such vacated or abandoned streets or highways are located a verified notice of his claim to such easement over all or any part of any such street or highway which is particularly described in such notice. Nothing in this section shall be construed to create any such private easement, nor to extend any such private easement now recognized by law, nor to make the rights of the public in or to any street or highway subordinate to any such private easement.~~

Comment. The substance of former Section 812 is continued in Streets and Highways Code Section 8353.

26/251

Civil Code § 812.5 (repealed)

SEC. 3. Section 812.5 of the Civil Code is repealed.

~~812.5. As used in this section, "local agency" means a city or special district as defined in Section 54775 of the Government Code and "public body" means a city, county, or city and county.~~

~~The vacation or abandonment, pursuant to law, of any street or highway shall extinguish all public easements therein, except as to a local agency which determines after receipt of notice of the vacation or abandonment proceedings that public convenience and necessity require a public easement to maintain, operate, replace, remove, or renew its existing works installed therein.~~

A public body proposing vacation or abandonment of a street or highway shall, within 15 days after adoption of a resolution or ordinance of intention to vacate or abandon, give written notice of such intention to any local agency which has requested notice of such action. A local agency making a determination of public convenience and necessity for continuance of a public easement for its existing works may, within 30 days of receipt of such notice, file for record in the office of the recorder in the county in which the vacated or abandoned street or highway is located a verified notice of its public easement over all or part of any such street or highway which is particularly described in such verified notice.

Failure of a local agency to record the notice of its public easement within 30 days of receipt of the notice of intent to vacate or abandon shall extinguish its right to a public easement over all or part of the street or highway being vacated or abandoned except that where there is a failure by the public body to give the required notice of intent, such local agency may record its notice of public easement at anytime within 180 days of recordation of the instrument constituting the vacation or abandonment by the public body. In such cases the failure of the local agency to record its notice within the 180-day period shall extinguish its right to a public easement over all or part of the vacated street or highway.

Every public body shall maintain an index of requests for notice of intent to vacate or abandon which it received pursuant to the provisions of this section. Such index shall be made available to the public upon request.

Nothing in this section shall be construed to affect any reservation or the right to reserve easements pursuant to Sections 72.5, 959.1, or 8330 of the Streets and Highways Code, nor to make the rights of the public in or to any street or highway subordinate to any such public easement.

Comment. The first paragraph of former Section 812.5 is superseded by Streets and Highways Code Section 8345. The substance of the second paragraph is continued in Streets and Highways Code Sections 8348 and 8350. The first sentence of the third paragraph is superseded by Streets

and Highways Code Section 8347. The second sentence of the third paragraph and the fourth paragraph are continued in Streets and Highways Code Section 8348. The fifth paragraph is continued in Streets and Highways Code Section 8346. The sixth paragraph is continued in Streets and Highways Code Section 8349.

7825

DEDICATION OF REAL PROPERTY FOR PUBLIC PURPOSES

Government Code § 7050 (amended)

SEC. 4. Section 7050 of the Government Code is amended to read:

7050. With the consent of the city, county, or city and county as the case may be an irrevocable offer of dedication of real property for any public purpose, including but not limited to streets, highways, paths, alleys, including access rights and abutter's rights, drainage, open space, public utility or other public easements, parks, or other public places, may be made pursuant to this section. Such offer of dedication shall be executed, acknowledged, and recorded in the same manner as a conveyance of real property. Such offer of dedication, when recorded in the office of the county recorder, shall be irrevocable and may be accepted at any time by the city council of the city within which such real property is located at the time of acceptance or, if located in unincorporated territory, by the board of supervisors of the county within which such real property is located.

Such offer of dedication may be terminated and the right to accept such offer abandoned in the same manner as is prescribed for the ~~abandonment or summary~~ vacation of streets or highways by Part 3 (commencing with Section 8300) of Division 9 of ~~or by Chapter 2 of Division 2 of~~ the Streets and Highways Code ~~; whichever is applicable~~. Such termination and abandonment may be by the city council of the city within which such real property is located, or, if located in unincorporated territory, by the board of supervisors of the county within which such real property is located.

The procedure prescribed by this section shall be alternative to any other procedure authorized by law.

Comment. Section 7050 is amended to authorize summary vacation proceedings for unaccepted offers of dedication of property for public purposes.

PUBLIC SERVICE EASEMENTS VACATION LAW

Government Code §§ 50430-50445 (repealed)

SEC. 5. Article 5 (commencing with Section 50430) of Chapter 2 of Part 1 of Division 1 of Title 5 of the Government Code is repealed.

Comment. The substance of former Sections 50430-50445, relating to the Public Service Easements Vacation Law, is continued in new Part 3 (commencing with Section 8300) of Division 9 of the Streets and Highways Code (the Public Streets, Highways, and Service Easements Vacation Law). The disposition of the former provisions is as follows:

<u>Former Provision</u> <u>(Government Code)</u>	<u>New Section</u> <u>(Streets & Highways Code)</u>
50430	8300
50431	8311(a)
50432(a)	8303
50432(b)	8309
50432(c)	8306
50433	8317
50434	8352
50435	8313
50436 1st ¶	8312
50436 2nd ¶	8316
50437	8320(b)
50438	8320(b)-(c)
50439	8321(b)
50440	8322
50441	8323
50442	8324
50443 1st ¶	8333
50443 2nd ¶	8335(b)
50444	8321(e), 8325(b), 8350, 8351
50445	8325(a)

SUBDIVISION MAP ACT

Government Code § 66477.2 (amended)

SEC. 6. Section 66477.2 of the Government Code is amended to read:

66477.2. (a) If at the time the final map is approved, any streets, paths, alleys, right-of-way for local transit facilities such as bus turnouts, benches, shelters, landing pads and similar items, which directly benefit the residents of a subdivision, or storm drainage easements are rejected, the offer of dedication shall remain open and the legislative body may by resolution at any later date, and without

further action by the subdivider, rescind its action and accept and open the streets, paths, alleys, right-of-way for local transit facilities such as bus turnouts, benches, shelters, landing pads and similar items, which directly benefit the residents of a subdivision, or storm drainage easements for public use, which acceptance shall be recorded in the office of the county recorder.

(b) In the case of any subdivision fronting upon the ocean coastline or bay shoreline, the offer of dedication of public access route or routes from public highways to land below the ordinary high water mark must be accepted within three years after the approval of the final map; in the case of any subdivision fronting upon any public waterway, river or stream, the offer of dedication of public access route or routes from public highways to the bank of the waterway, river or stream and the public easement along a portion of the bank of the waterway, river or stream must be accepted within three years after the approval of the final map; in the case of any subdivision fronting upon any lake or reservoir which is owned in part or entirely by any public agency including the state, the offer of dedication of public access route or routes from public highways to any water of such lake or reservoir must be accepted within five years after the approval of the final map; all other offers of dedication may be accepted at any time.

(c) Offers of dedication which are covered by ~~subsection~~ subdivision (a) may be terminated and abandoned in the same manner as prescribed for the ~~abandonment or~~ summary vacation of streets by Part 3 (commencing with Section 8300) of Division 9 of ~~or by Chapter 2~~ (commencing with Section 940) of Division 2 of, the Streets and Highways Code ~~and whichever is applicable~~ .

(d) Offers of dedication which are not accepted within the time limits specified in subdivision (b) shall be deemed abandoned.

(e) Except as provided in Sections 66499.16, 66499.17 and 66499.18, if a resubdivision or reversion to acreage of the tract is subsequently filed for approval, any offer of dedication previously rejected shall be deemed to be terminated upon the approval of the map by the legislative body.

Comment. Section 66477.2 is amended to authorize summary vacation proceedings for unaccepted offers of dedication under the Subdivision Map Act.

968/907

CALIFORNIA TRANSPORTATION COMMISSION

Streets & Highways Code § 72 (repealed)

SEC. 7. Section 72 of the Streets and Highways Code is repealed.

~~72. The commission may abandon any portion of a state highway which by reason of change in location of a state highway has been superseded and is no longer necessary for such purposes.~~

~~The abandonment shall be by resolution and certified copies thereof shall be filed with the board of supervisors and recorded with the county recorder in the county in which the abandoned highway is located.~~

Comment. The substance of the first sentence of former Section 72 is continued in Section 8330.5 (vacation of state highway superseded by relocation). The substance of the second sentence is continued in Sections 8335 (resolution of vacation) and 8336 (recordation of resolution).

968/908

Streets & Highways Code § 72.5 (repealed)

SEC. 8. Section 72.5 of the Streets and Highways Code is repealed.

~~72.5. In any proceeding for the abandonment of any state highway or part thereof, the commission may reserve and except from the abandonment the easement and right at any time, or from time to time, to construct, maintain, operate, replace, remove and renew sanitary sewers and storm drains and appurtenant structures in, upon, over and across any highway or part thereof proposed to be abandoned and pursuant to any existing franchise or renewals thereof, or otherwise, to construct, maintain, operate, replace, remove, renew and enlarge lines of pipe, conduits, cables, wires, poles, and other convenient structures, equipment and fixtures for the operation of gas pipe lines, telegraphic and telephone lines, railroad lines and for the transportation or distribution of electric energy, petroleum, and its products, ammonia, water, and for~~

incidental purposes, including access to protect the property from all hazards in, upon and over the highway or part thereof proposed to be abandoned.

Comment. The substance of former Section 72.5 is continued in Section 8340(a) (authorization to reserve easements).

968/915

Streets & Highways Code § 73 (amended)

SEC. 9. Section 73 of the Streets and Highways Code is amended to read:

73. The commission shall relinquish to any county or city any portion of any state highway within such county or city which has been deleted from the state highway system by legislative enactment, and such relinquishment shall become effective upon the first day of the next calendar or fiscal year, whichever first occurs after the effective date of such legislative enactment. It may likewise relinquish any portion of any state highway which has been superseded by relocation. Whenever the department and the county or city concerned have entered into an agreement providing therefor, or the legislative body of such county or city has adopted a resolution consenting thereto, the commission may relinquish, to any such county or city, any frontage or service road or outer highway, within the territorial limits of such county or city, which has a right-of-way of at least 40 feet in width and which has been constructed as a part of a state highway project, but does not constitute a part of the main traveled roadway thereof. The commission may also relinquish, to a county or city within whose territorial limits is located, any nonmotorized transportation facility, as defined in Section 156, constructed as part of a state highway project if the county or city, as the case may be, has entered into an agreement providing therefor or its legislative body has adopted a resolution consenting thereto.

Relinquishment shall be by resolution. A certified copy of such resolution shall be filed with the board of supervisors or the city clerk, as the case may be. A certified copy of such resolution shall also be recorded in the office of the recorder of the county where such

land is located and, upon such recordation, all right, title, and interest of the state in and to such portion of any state highway shall vest in the county or city, as the case may be, and such highway or portion thereof shall thereupon constitute a county road or city street, as the case may be.

The vesting of all right, title, and interest of the state in and to such portions of any state highways heretofore relinquished by the commission, in the county or city to which it was relinquished, is hereby confirmed.

Prior to relinquishing any portion of a state highway to a county or a city, except where required by legislative enactment, the department shall give 90 days' notice in writing of intention to relinquish to the board of supervisors, or the city council, as the case may be. Where the resolution of relinquishment contains a recital as to the giving of the notice, adoption of the resolution of relinquishment shall be conclusive evidence that the notice has been given.

The commission shall not relinquish to any county or city any portion of any state highway which has been superseded by relocation until the department has placed the highway, as defined in Section 23, in a state of good repair. This requirement shall not obligate the department for widening, new construction, or major reconstruction, except as the commission may direct. A state of good repair requires maintenance, as defined in Section 27, including litter removal, weed control, and tree and shrub trimming to the time of relinquishment.

Within the 90-day period, the board of supervisors or the city council may protest in writing to the commission stating the reasons therefor, including, but not limited to, objections that the highway is not in a state of good repair, or is not needed for public use and should be ~~abandoned~~ vacated by the commission. In the event that the commission does not comply with the requests of the protesting body, it may proceed with the relinquishment only after a public hearing given to the protesting body on 10 days written notice.

Comment. Section 73 is amended to conform to the terminology of the Public Streets, Highways, and Service Easements Vacation Law. See Section 8309 (vacation defined).

DEPARTMENT OF TRANSPORTATION

Streets & Highways Code § 100.23 (repealed)

SEC. 10. Section 100.23 of the Streets and Highways Code is repealed.

~~100.23. (a) The city council or the board of supervisors may, by ordinance or resolution, authorize the recordation of a notice that a portion of a city street or county highway, as the case may be, under its jurisdiction has been abandoned or vacated pursuant to an agreement entered into pursuant to Section 100.2.~~

~~(b) The notice shall include the date of the agreement, the name or other designation of the street or highway, a precise description of the portion abandoned or vacated, and state that that portion of the street or highway, from and after commencement of the construction of the state freeway, no longer constitute a public street or highway.~~

~~(c) The notice shall be recorded in the office of the county recorder of the county in which the street or highway is located. The notice or its recordation shall not affect any private property right which may exist in the area described in the notice.~~

Comment. Subdivision (a) of former Section 100.23 is superseded by Sections 8332 and 8335, which make clear that the action of the local agency is to be taken pursuant to the general provisions for summary vacation of public streets and highways.

The substance of subdivision (b) is continued in Section 8335(b).

The substance of the first sentence of subdivision (c) is continued in Section 8336. The substance of the second sentence is continued in Section 8352(a).

968/917

VACATION AND ABANDONMENT OF STATE HIGHWAYS

Streets & Highways Code §§ 835-838 (repealed)

SEC. 11. Chapter 5 (commencing with Section 835) of Division 1 of the Streets and Highways Code is repealed.

Comment. The substance of former Sections 835-838, relating to vacation and abandonment of state highways, is continued in new Part 3 (commencing with Section 8300) of Division 9, relating to the Public Streets, Highways, and Service Easements Vacation Law. The disposition of the former provisions is as follows:

<u>Former Provision</u> <u>(Streets & Highways Code)</u>	<u>New Section</u> <u>(Streets & Highways Code)</u>
835	8330.5
836	8336
837 1st & 2nd sentences	8351
837 3rd sentence	8355
838	8340

7829

COUNTY HIGHWAYS

Streets & Highways Code § 954 (amended)

SEC. 12. Section 954 of the Streets and Highways Code is amended to read:

954. All county highways which for a period of five consecutive years are impassable for vehicular travel, and on which during such period of time no public money is expended for maintenance, are unnecessary highways ~~subject to abandonment pursuant to Section 960.2 or as herein provided~~. The board of supervisors of any county on its own motion, or on the petition of any interested taxpayer of the county, ~~may abandon any such unnecessary highway or~~ may designate such county highway a stock trail. The board of supervisors shall cause notices to be posted upon such stock trails, and also at the entrance of such stock trails, directing all persons to drive all untethered stock thereon.

After a stock trail has been established or designated as provided in this chapter, the county is not liable for death or injury to a vehicle owner or operator or passenger, or for damage to a vehicle or its contents, resulting from a dangerous condition of the stock trail.

Such stock trails shall not be included in the term "maintained mileage of county roads" as that term is used in Chapter 3 (commencing with Section 2100) of Division 3.

Comment. The portions of Section 954 that related to abandonment of unnecessary highways are continued in Sections 8324 and 8331.

10/034

Streets & Highways Code § 954.5 (amended)

SEC. 13. Section 954.5 of the Streets and Highways Code is amended to read:

954.5. (a) The board of supervisors may, by resolution, terminate the maintenance of any county highway if it finds that the highway is unnecessary for the public convenience.

(b) Evidence that a county highway is unnecessary for the public convenience shall be taken at a public hearing set in accordance with the procedures for ~~the abandonment of a county highway in Sections 955 and 956~~ vacation of a public street, highway, or service easement in Sections 8323 and 8324 . Notice of such hearing shall be mailed to the owner of any property served by that portion of a county highway subject to the termination of maintenance. A county highway may be deemed unnecessary for the public convenience on the basis of any of the following:

(1) The county highway does not provide the primary access to occupied properties.

(2) Traffic on the county highway is intermittent and of low volume.

(3) The county highway is impassable for more than six months and there is no demand that it be reopened.

(c) A certified copy of the ~~order~~ resolution terminating maintenance shall be recorded as provided in Section 956 8328 .

(d) If the board of supervisors resumes maintenance of a county highway on which maintenance was terminated under this section, a notice of maintenance shall be recorded in the office of the county recorder.

(e) If a determination is made that maintenance is no longer necessary, the county shall post signs clearly visible from the traveled highway at the beginning and end of the highway and at any intersection on the highway indicating that the county no longer maintains the highway. The sign shall read as follows: "This road is not maintained.

_____ County is not responsible for any loss or injury suffered by reason of its use." The county shall provide adequate maintenance to ensure that the signs remain posted in the appropriate places and the message is legible. Once such action is taken and duly recorded and the required signs are posted, the county shall not be held liable for the death of or injury to a vehicle owner, operator, or passenger, or for

damage to a vehicle or its contents, resulting from a dangerous condition on such highway.

Comment. Section 954.5 is amended to reflect that the substance of former Sections 955 and 956 is continued in Sections 8323-8325.

7830

Streets & Highways Code § 955 (repealed)

SEC. 14. Section 955 of the Streets and Highways Code is repealed.

~~955. Upon the filing of such petition, the board shall by order fix a day for the hearing of the petition, and shall post notices conspicuously along the line of the highway proposed to be abandoned at least two weeks prior to the day fixed for the hearing. Such notices shall be posted not less than five hundred feet apart, but at least three shall be posted. Such notices shall state the filing of such petition and the time and place of the hearing.~~

Comment. Former Section 955 is superseded by Section 8323.

7831

Streets & Highways Code § 956 (repealed)

SEC. 15. Section 956 of the Streets and Highways Code is repealed.

~~956. The board shall, on the day fixed for the hearing, or on the day to which the hearing is postponed or continued, hear the petition and the evidence offered in support thereof. If the board finds from such evidence that all or some part of the highway is unnecessary within the meaning of section 954, the board shall make its order abandoning all or such part of the highway. The clerk shall cause a certified copy of such order, attested by the clerk under the seal of the board, to be recorded in the office of the county recorder.~~

Comment. The substance of former Section 956 is continued in Sections 8324 and 8325.

Streets & Highways Code § 956.8 (repealed)

SEC. 16. Section 956.8 of the Streets and Highways Code is repealed.

~~956.8. The board may, by resolution, declare its intention to abandon any county highway.~~

Comment. The substance of former Section 956.8 is continued in Section 8320(b)(1).

Streets & Highways Code § 957 (repealed)

SEC. 17. Section 957 of the Streets and Highways Code is repealed.

~~957. Any ten freeholders, two of whom are residents of the road district in which some part of the highway affected is situated, and are taxable therein for highway purposes, may petition the board to abandon all or any part of any county highway.~~

Comment. The substance of former Section 957 is continued in subdivision (a) of Section 8321.

Streets & Highways Code § 957.5 (repealed)

SEC. 18. Section 957.5 of the Streets and Highways Code is repealed.

~~957.5. The board may require payment of reasonable fees for filing petitions or applications for abandonment of all or any part of a county highway to defray the expense of investigations, publications and postings. The applicant or petitioner shall deposit such estimated cost with the county officer designated by the board and upon completion of the proceedings any unused portion of the deposit shall be refunded to the applicant or petitioner and in the event the costs exceed the deposit the county shall bear such excess costs. Nothing herein contained shall be construed to prevent the board from abandoning all or any part of a county highway without requiring the filing of an application or petition or charging such costs where the board determines it is in the public interest to do so.~~

Comment. The substance of former Section 957.5 is continued in subdivisions (d) and (f) of Section 8321.

Streets & Highways Code § 958 (repealed)

SEC. 19. Section 958 of the Streets and Highways Code is repealed.

~~958.~~ Upon the making of such resolution of intention or filing of such petition, the board shall by order fix a day for hearing the resolution or petition and shall give notice to all freeholders in the road district of the time and place fixed for the hearing. Such notice shall be given by publication in a newspaper of general circulation published in the county and designated in the order by the board, for at least two successive weeks prior to the day fixed for the hearing. The board shall also conspicuously post a similar notice along the line of the highway proposed to be abandoned at least two weeks prior to the day fixed for the hearing.

Comment. The substance of the first sentence of former Section 958 is continued in Sections 8320(b)(4) and 8321. The second sentence is superseded by Section 8322. The substance of the last sentence is superseded by Section 8323.

Streets & Highways Code § 959 (repealed)

SEC. 20. Section 959 of the Streets and Highways Code is repealed.

~~959.~~ The board shall, on the day fixed for the hearing, or on the day to which the hearing is postponed or continued, hear the evidence offered by any party interested. If the board finds, from all the evidence submitted, that any county highway described in the petition, or any part of such highway, is unnecessary for present or prospective public use, the board may make its order abandoning such highway, or part thereof.

Comment. The substance of former Section 959 is continued in Section 8324.

Streets & Highways Code § 959.1 (repealed)

SEC. 21. Section 959.1 of the Streets and Highways Code is repealed.

~~959.1.~~ In any proceeding for the abandonment of any county highway or part thereof, the board may in its order

(a) Reserve and except from the abandonment the easement and right at any time, or from time to time, to construct, maintain, operate, replace, remove and renew sanitary sewers and storm drains and appurtenant structures in, upon, over and across any highway or part thereof proposed to be abandoned and pursuant to any existing franchise or renewals thereof, or otherwise, to construct, maintain, operate, replace, remove, renew and enlarge lines of pipe, conduits, cables, wires, poles, and other convenient structures, equipment and fixtures for the operation of gas pipelines, telegraphic and telephone lines, railroad lines and for the transportation or distribution of electric energy, petroleum and its products, ammonia, water, and for incidental purposes, including access to protect the property from all hazards in, upon and over the highway or part thereof proposed to be abandoned.

(b) Reserve and except from abandonment an easement for a future public road.

Comment. The substance of former Section 959.1 is continued in Section 8340.

7838

Streets & Highways Code § 960 (repealed)

SEC. 22. Section 960 of the Streets and Highways Code is repealed.

960. Upon the making of such order of abandonment, the public easement in the highway or part abandoned ceases except to the extent reserved in the order of abandonment or retained pursuant to Section 812.5 of the Civil Code. The clerk shall cause a certified copy of such order to be recorded in the office of the county recorder. Where the county owns in fee the property on which the abandoned highway was located, the board of supervisors may dispose of the property as provided in Section 960.4, subject to any easements reserved in the order of abandonment or retained pursuant to Section 812.5 of the Civil Code.

No such abandonment of the highway or disposal of the highway property shall extinguish any existing private easement of access, regardless of origin, appurtenant to lands abutting the highway. Any such private easement, however, shall be subject to extinguishment under

the laws of this state governing abandonment, adverse possession, waiver, and estoppel. The nonuse of any such private easement for a period of five consecutive years shall constitute a conclusive presumption of abandonment.

Comment. The substance of the first sentence of former Section 960 is continued in Section 8350. The substance of the second sentence is continued in subdivision (a) of Section 8325. The substance of the third sentence is continued in Section 8351.

The substance of the second paragraph is continued in Section 8352, with the exception of the conclusive presumption of abandonment by nonuse, which is not continued.

7839

Streets & Highways Code § 960.1 (repealed)

SEC. 23. Section 960.1 of the Streets and Highways Code is repealed.

~~960.1. The board of supervisors of any county may retain or may summarily vacate and abandon~~

~~(a) Any portion of a county highway which portion has been superseded by relocation, except in case such abandonment would cut off all access to the property of any person which, prior to such relocation, adjoined the highway.~~

~~(b) Any excess right-of-way of a county highway not required therefor.~~

~~(c) Any portion of a county highway which lies within land under one ownership and which does not end touching the land of another.~~

Comment. The substance of subdivision (a) of former Section 960.1 is continued in Section 8330. The substance of subdivisions (b) and (c) is continued in Section 8334.

7840

Streets & Highways Code § 960.2 (repealed)

SEC. 24. Section 960.2 of the Streets and Highways Code is repealed.

~~960.2. The board of supervisors may act to abandon any easement or to vacate any highway, mentioned in Section 954 or 960.1, by resolution. A certified copy of such resolution shall be recorded in the office of the county recorder. No fee shall be charged for such recordation. On such recordation, the abandonment or vacation is complete.~~

Comment. The substance of the first sentence of former Section 960.2 is continued in Section 8335(a). The substance of the second, third, and fourth sentences is continued in Section 8336.

7841

Streets & Highways Code § 960.3 (repealed)

SEC. 25. Section 960.3 of the Streets and Highways Code is repealed.

~~960.3. On abandonment of an easement or the vacation of a highway, when the county owns only an easement, title thereto reverts to the owner of the underlying fee except as otherwise provided in Section 959.1. Where the county owns the property on which the vacated highway was located in fee, the board of supervisors may dispose of the property as provided in Section 960.4.~~

Comment. The substance of former Section 960.3 is continued in Section 8351.

7842

Streets & Highways Code § 960.4 (repealed)

SEC. 26. Section 960.4 of the Streets and Highways Code is repealed.

~~960.4. Whenever the board of supervisors determines that any real property or interest therein, heretofore or hereafter acquired by the county for highway purposes, is no longer necessary for such purposes, the county may sell or exchange such real property or interest therein in the manner and upon the terms and conditions approved by the board of supervisors. Any such conveyance shall be executed on behalf of the county by the chairman of the board of supervisors, and the purchase price shall be paid into the county treasury to the credit of any fund, available for highway purposes, which the board of supervisors designates.~~

Comment. The substance of former Section 960.4 is continued in Sections 8355 and 8357.

7843

Streets & Highways Code § 960.5 (amended)

SEC. 27. Section 960.5 of the Streets and Highways Code is amended to read:

960.5. The term "county highway" as used in Sections 954 to ~~960.4, inclusive, relating to abandonment, and~~ 954.5 shall be deemed to

include, but not be limited to, any public highway, road, street, avenue, alley, lane, drive, way, place, court or trail, or any purported county highway, public highway, road, street, avenue, alley, lane, drive, way, place, court or trail.

Comment. Section 960.5 is amended to reflect the deletion of provisions relating to abandonment from Sections 954 to 960.4, inclusive. See Section 8308 (defining "street" and "highway" for purposes of vacation and abandonment).

7844

SUMMARY VACATION AND ABANDONMENT OF STREETS

Streets & Highways Code §§ 1930-1934 (repealed)

SEC. 28. Chapter 5 (commencing with Section 1930) of Division 2.5 of the Streets and Highways Code is repealed.

Comment. The substance of former Sections 1930-1934, relating to summary vacation of city streets, is continued in new Part 3 (commencing with Section 8300) of Division 9, relating to the Public Streets, Highways, and Service Easements Vacation Law. The disposition of the former provisions is as follows:

<u>Former Provision</u> <u>(Streets & Highways Code)</u>	<u>New Section</u> <u>(Streets & Highways Code)</u>
1930	8330
1931 1st sentence	8335
1931 remainder	8336
1932	8351
1933 1st sentence	8355
1933 2nd sentence	8357
1934	8340(a)

7845

STREET VACATION ACT OF 1941

Streets & Highways Code §§ 8300-8374 (repealed)

SEC. 29. Part 3 (commencing with Section 8300) of Division 9 of the Streets and Highways Code is repealed.

Comment. The substance of former Sections 8300-8374--the Street Vacation Act of 1941--is continued in new Part 3 (commencing with Section 8300) (the Public Streets, Highways, and Service Easements Vacation Law). The disposition of the former provisions is as follows:

Sta. & Hy. Code §§ 8300-8374

<u>Former Provision</u> <u>(Streets & Highways Code)</u>	<u>New Section</u> <u>(Streets & Highways Code)</u>
8300	8300
8301	8310
8302	8304
8303	8303
8304	8308
8305	8307
8306	8309
8307	8317
8308 1st & 2nd ¶	8311
8308 3rd ¶	8312, 8315
8320	8312, 8320
8321	8320(b)
8322 1st ¶	8320, 8323
8322 2nd ¶	8316
8323	8324
8324 1st ¶	8325(b), 8350, 8351
8324 2nd ¶	8325(a)
8330	8340(a)
8331	8341
8332	8306, 8333
8350	8360
8351	8361
8352	8362
8353	8363
8370	8356(a)
8371	8356(a)
8372	8356(b)
8373	8356(c)
8374	8356(d)