#H-406 8/7/81

Memorandum 81-64

Subject: Study H-406 - Marketable Title (Abandoned Easements--staff draft)

Most improved land and much unimproved land is either benefited or burdened by easements. Easements tend to make the land and improvements more usable or beneficial. Thus the mere existence of the burden of an easement may not indicate that the title is unmarketable; it may only mean that when an easement becomes obsolete, it constitutes an unreasonable encumbrance.

Unlike the possibility of reverter and the right of entry, which impair marketability upon creation, the easement may never detract from marketability unless conditions materially change. In recent years there has been a trend among the states to limit reversionary interests by legislation but little tendency to limit easements. The major statutory limitations on easements appear in the various Marketable Title Acts.

In California an easement may be abandoned by nonuse accompanied by an intent to abandon. An abandoned easement may be removed of record if necessary, but this requires a judicial proceeding because there is no maximum duration for easements as there is for such property interests as leases and because abandonment does not (except in rare instances) appear of record. In addition, proof of intent to abandon may be difficult--nonuse alone is not enough to show abandonment.

Why not apply a Marketable Title scheme to easements as some other jurisdictions have done? An easement would endure for a specified period, e.g., 20 years, and would expire at the end of the period unless renewed by recordation of notice of intent to preserve. This would have the effect of getting rid of abandoned easements by operation of law simply by passage of time, without the need for a quiet title action. It would nonetheless enable a person who wishes to preserve an easement to do so.

The staff has misgivings about such a scheme. First, there is the problem of the large number of viable easements in existence. Requiring recordation of notices of intent to preserve all these interests would be quite burdensome, particularly for public utilities that have networks of lines running across thousands of parcels. Certainly publicly-owned easements for streets, highways, etc., would have to be excepted from any rerecording requirements.

The institutional easement holders such as public utilities and public entities are one problem. Perhaps a greater problem is the small easement holder who may be unaware that it is necessary to record a notice of intent to preserve a right of way or other easement, or even if aware may not have the resources to set up a long-term suspense file to trigger rerecordation at the end of the statutory period. This problem can be approached by statutorily preserving from extinction visible easements. However, there may be nonvisible easements such as drainage, light and air, solar, etc., that are in use but that a person relies upon and takes for granted and might not think of rerecording.

In the past Ronald P. Denitz of Tishman West Management Corp. has expressed concern to the Commission about the effect of rerecording requirements on nonvisible private utility easements such as underground water, sewage, and gas pipelines and underground electrical, telephone, and cable wiring. He is concerned that the economic life of commercial projects or developments requires that such items as these as well as parking covenants and rights of ingress and egress last as long as the project does, without the possibility of being extinguished by statute and without the necessity of someone having to monitor the calendar in order to file a continuation notice at any point in the life of the project.

These concerns must be balanced against the advantages to be gained by providing for automatic expiration of abandoned easements and against the burden of periodic rerecording. It is conceivable that people can learn to readjust their thinking in terms of the need to periodically record a notice of intent to preserve an easement they wish preserved.

There are alternatives to the standard rerecording scheme. One alternative is to permit an easement by its terms to endure longer than the statutory rerecording period. However, if this were authorized it is likely that every easement would be drafted to include a provision that the easement endures in perpetuity (or for a long period--say 999 years), thereby frustrating the purpose of a rerecording scheme. The statute would have to provide a maximum term for any easement, such as 99 years (corresponding to the maximum term for a ground lease). Would such a statute any longer serve a useful purpose? Would it make sense or be financially reasonable to require an easement holder such as a public utility to reacquire the easement every 99 years?

Another alternative is to permit the owner of the servient tenement to extinguish the easement by service of a notice of presumed abandonment on the easement holder if the easement holder has not rerecorded within the statutory period. If the easement holder then fails within a specified period thereafter to record notice of intent to preserve, the easement is extinguished. A few states have such a scheme for extinguishment of oil and gas leases. The major drawback of this scheme is that it depends upon the diligence and honesty of the servient tenement owner in making good service on the easement holder. Is there any assurance the easement holder will actually receive notice, particularly if it is in the interest of the owner of the servient tenement that the easement holder not record notice of intent to preserve? If the holder of the easement has moved or the title has changed due to sale, gift, devise, or descent, what tracing efforts should the owner of the servient tenement be subjected to?

Another alternative is to make it easier to show abandonment of the easement--a prescribed period of nonuse, say five years, without a showing of intent to abandon, would be sufficient to establish abandonment. This would enable the owner of the servient tenement to obtain title insurance free of the easement on the basis of inquiry by the title insurer concerning the nonuse period. It would also simplify quiet title litigation over whether an abandonment has in fact occurred. However, it would not accommodate the needs of the easement holder where the easement is acquired for future use or development, or where there is a temporary cessation of use with intent to continue the use in the future; moreover, nonuse of nonvisible easements is difficult to establish.

In the staff's opinion none of these approaches alone offers a satisfactory means of clearing the record of abandoned easements when weighed against the burden it would impose on holders of viable easements. The only feasible approach the staff can see in this area is a combination of requirements that will adequately protect the easement holder.

The staff prefers a scheme similar to the one the Commission has adopted for dormant mineral rights--nonuse of an old easement for a specified period combined with the ability to rerecord and extend the interest of record. This will enable clearing of obsolete easements while still permitting the easement holder to preserve an easement in perpetuity by a fairly simple act. Treating easements the same way mineral rights are treated also makes theoretical sense since mineral

rights are simply a special form of easement--a profit a prendre or right to remove material from land as opposed to a general servitude on land.

Attached to this memorandum is a staff draft of a statute to terminate easements of record if they are at least 20 years old and haven't been in use for 5 years. The easement holder can save such apparently obsolete easements from extinction for 20 years at a time by recording a notice of intent to preserve the easement. Publicly-held easements are excepted from the statute, as are "conservation easements" that may be made perpetual under certain circumstances pursuant to statute. The staff draft also does not cover negative easements (such as for light and air), which require the servient tenement owner to refrain from using the land in a certain way. A scheme based on nonuse would be inappropriate for negative easements, which we will deal with later in conjunction with equitable servitudes.

The staff does not know whether public utilities and other institutional easement holders will abide such a statute. The staff suggests the Commission consider making an exception for public utility easements--the burden of rerecording for thousands of parcels would be tremendous and could generate substantial opposition in the Legislature to the Commission's whole endeavor.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

STAFF DRAFT

TENTATIVE RECOMMENDATION

relating to

ABANDONED EASEMENTS

Almost all improved land and much unimproved land is either benefitted or burdened by easements.[1] Easements tend to make the land and the improvements thereon more usable or beneficial. Thus the mere existence of the burden of an easement may not indicate that the title is unmarketable; it may only mean that when these interests become obsolete, they constitute an unreasonable encumbrance.[2]

If an easement acquired by prescription becomes obsolete, it can be extinguished through nonuse.[3] If an easement acquired by grant becomes obsolete, nonuse alone is not sufficient to extinguish the easement;[4] the intent to abandon the easement must also be shown.[5]

Clearing record title of an easement created by grant that is obsolete thus requires a judicial proceeding and a difficult proof question--intent to abandon. The fact that an easement has not been used for a long period of time is not itself sufficient to infer an abandonment.[6] Similarly, the mere fact that the holder of an easement fails to maintain and repair it, or selects an alternative route, is insufficient to infer an abandonment.[7]

---

1. 1 A. Bowman, Ogden's Revised California Real Property Law § 13.1 (1974).

2. L. Simes & C. Taylor, The Improvement of Conveyancing by Legislation 223 (1960).

3. Civil Code § 811(4).

4. See discussion in 3 B. Witkin, Summary of California Law, Real Property § 374 (1973); 1 A Bowman, Ogden's Revised California Property Law § 13.50 (1974); 3 H. Miller & M. Starr, Current Law of California Real Estate § 18:64 (rev. 1977).

5. See discussion in 3 B. Witkin, Summary of California Law, Real Property § 376 (1973); 1 A. Bowman, Ogden's Revised California Property Law § 13.49 (1974); 3 H. Miller & M. Starr, Current Law of California Real Estate § 18:66 (rev. 1977).

6. See, e.g., Vallejo v. Scally, 192 Cal. 175, 219 P. 63 (1923).

7. See discussion in 3 H. Miller & M. Starr, Current Law of California Real Estate § 18:64 (rev. 1977).

The difficulty of clearing the record of an abandoned easement impairs the value and marketability of property even though the easement is obsolete. As a general rule, if an easement is relatively old and has been unused for a period of time, the easement should be subject to extinguishment without a showing of actual intent to abandon.[8] The Law Revision Commission recommends that if an easement is at least 20 years old and has been unused for at least 5 years continuously, that the easement be extinguished by operation of law.[9] The five-year nonuse period is sufficiently long to ensure that the easement is actually obsolete, yet sufficiently short that a title insurer will be able to inspect the property and make inquiries adequately to insure title without the necessity of a judicial proceeding. The five-year nonuse period also corresponds to the five-year nonuse period for extinguishment of a prescriptive easement.[10]

To accommodate cases where the easement holder's nonuse is merely temporary or where the easement is held for future use, the Law Revision Commission further recommends that the easement holder be permitted to extend the duration of the easement for a period of 20 years at a time by recording a notice of intent to preserve the easement.[11] This will provide a relatively simple but effective means of ensuring preservation of the easement through periods of nonuse.

---

8. Negative easements, such as for light and air, are excepted from this rule since the fact of nonuse is difficult to ascertain.

9. This rule should not apply to "conservation easements" that are perpetual in duration pursuant to Civil Code Section 815.2.

10. Civil Code § 811(4).

11. Recordation of a notice of intent to preserve for 20 years would not affect the ability of the servient tenement owner to show an actual abandonment should it occur before expiration of the 20-year period.

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

An act to add Title 5 (commencing with Section 880.020) to Part 2 of Division 2 of the Civil Code, relating to easements.

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

12763

Civil Code §§ 880.020-886.040 (added)

SECTION 1. Title 5 (commencing with Section 880.020) is added to Part 2 of Division 2 of the Civil Code, to read:

TITLE 5. MARKETABLE RECORD TITLE

CHAPTER 1. GENERAL PROVISIONS

Article 1. Construction

§ 880.020. Declaration of policy and purposes

880.020. (a) The Legislature declares as public policy that:

(1) Real property is a basic resource of the people of the state and should be made freely alienable and marketable to the extent practicable.

(2) Interests in real property and defects in titles created at remote times, whether or not of record, often constitute unreasonable restraints on alienation and marketability of real property.

(3) Such interests and defects produce litigation to clear and quiet titles, cause delays in real property title transactions, and hinder marketability of real property.

(4) Real property title transactions should be possible with economy and expediency. The status and security of recorded real property titles should be determinable to the extent practicable from an examination of recent records only.

(b) It is the purpose of the Legislature in enacting this title to simplify and facilitate real property title transactions in furtherance of public policy by enabling persons to rely on record title to the extent provided in this title, subject only to the limitations expressly provided in this title and notwithstanding any provision or implication to the contrary in any other statute or in the common law. This title shall be liberally construed to effect the legislative purpose.

Comment. Subdivision (a) of Section 880.020 is drawn from North Carolina marketable title legislation, N.C. Gen. Stat. § 47B-1 (19__). The declaration of public policy is intended to demonstrate the significance of the state interest served by this title and the importance of the retroactive application of the law to the effectuation of that interest. See In re Marriage of Bouquet, 16 Cal.3d 583, 592, 546 P.2d 1371, ____, 128 Cal. Rptr. 427, ____ (1976) (upholding changes in the community property laws as retroactively applied).

A statute may require recordation of previously executed instruments if a reasonable time is allowed for recordation. See discussion in 1 A. Bowman, Ogden's Revised California Real Property Law § 10.4 at 415-16 (1974). The burden on holders of old interests of recording a notice of intent to preserve is outweighed by the public good of more secure land transactions. See, e.g., Wichelman v. Messner, 250 Minn. 88, 121, 83 N.W.2d 800, 825 (1957) (upholding Minnesota marketable title legislation):

> A number of marketable title acts have been passed by various states. Such limiting statutes are considered vital to all who are engaged in or concerned with the conveyance of real property. They proceed upon the theory that the economic advantages of being able to pass uncluttered title to land far outweigh any value which the outdated restrictions may have for the person in whose favor they operate. These statutes reflect the appraisal of state legislatures of the 'actual economic significance of these interests weighed against the inconvenience and expense caused by their continued existence for unlimited periods without regard to altered circumstances.' . . . They must be construed in the light of the public good in terms of more secure land transactions which outweighs the burden and risk imposed upon owners of old outstanding rights to record their interests.

Subdivision (b) is drawn from Section 9 of the Model Marketable Title Act. If the application of a particular statute or common law rule conflicts with the provisions of this title, this title governs.

12750

§ 880.030. Effect on other law

880.030. Nothing in this title shall be construed to:

(a) Extend the period for bringing an action or doing any other required act under a statute of limitation.

(b) Limit application of the principles of waiver and estoppel.

(c) Affect the operation of any statute governing the effect of recording or failure to record, except as specifically provided in this title.

Comment. Subdivision (a) of Section 880.030 is drawn from Section 7 of the Model Marketable Title Act and Section 3-308 of the Uniform Simplification of Land Transfers Act (1977). Subdivision (b) is new; notwithstanding the maximum record duration or period of enforceability of interests in property pursuant to this title, the owner of an interest may waive or be estopped from asserting the interest within the prescribed time. Subdivision (c) is drawn from Section 7 of the Model Act.

Article 2. Application of Title

§ 880.240. Interests excepted from title

880.240. The following interests are not subject to expiration pursuant to this title:

(a) The interest of a person using or occupying real property and the interest of a person under whom a person using or occupying real property claims, to the extent the use or occupancy would have been revealed by reasonable inspection or inquiry.

(b) An interest of the United States or pursuant to federal law in real property that is not subjected by federal law to the recording requirements of the state and that has not terminated under federal law.

(c) An interest of the state or a local public entity in real property.

(d) A conservation easement pursuant to Chapter 4 (commencing with Section 815) of Title 2.

Comment. Subdivision (a) of Section 880.240 is drawn from Section 3-306(2) of the Uniform Simplification of Land Transfers Act (1977). Subdivision (a) makes clear that if a person in possession claims under another person, whether by lease, license, or otherwise, the interest of the other person does not expire.

Subdivision (b) is drawn from Section 6 of the Model Marketable Title Act and Section 3-306(4) of the Uniform Act. The Comment to the Model Act states, "The exception as to claims of the United States would probably exist whether stated in the statute or not."

Subdivision (c) is comparable to provisions in a number of jurisdictions that have enacted marketable record title legislation.

Subdivision (d) recognizes that a conservation easement may be created that is perpetual in duration. Section 815.2.

12345

Article 3. Preservation of Interests

§ 880.310. Notice of intent to preserve interest

880.310. (a) If the time within which an interest in real property expires pursuant to this title depends upon recordation of a notice of intent to preserve the interest, a person may preserve the person's interest from expiration by recording a notice of intent to preserve the interest before the interest expires pursuant to this title. Recordation of a notice of intent to preserve an interest in real property after the interest has expired pursuant to this title does not preserve the interest. The running of the time within which an interest expires pursuant to

this title is not suspended by the disability or lack of knowledge of any person or tolled for any other reason.

(b) Recordation of a notice of intent to preserve an interest in real property does not preclude a court from determining that an interest has been abandoned or is otherwise unenforceable pursuant to other law, whether before or after the notice of intent to preserve the interest is recorded, and does not validate or make enforceable a claim or interest that is otherwise invalid or unenforceable.

Comment. Subdivision (a) of Section 880.310 is drawn from Sections 2(d) and 4(a) of the Model Marketable Title Act and Sections 3-303(3) and 3-305 of the Uniform Simplification of Land Transfers Act (1977). Subdivision (a) imposes no limit on the number of times a notice of intent to preserve may be recorded; so long as the interest has not expired at the time of recordation, preservation of an interest in perpetuity is possible. If a person owns a part interest in real property, the notice of intent preserves only the part interest owned by the person for whom the notice is recorded.

Subdivision (b) is drawn from Section 3-309 of the Uniform Act, with the addition of language to make clear that a notice of intent to preserve does not affect the validity of any interest in real property under law apart from this title.

12342

§ 880.320. Who may record notice

880.320. A notice of intent to preserve an interest in real property may be recorded by any of the following persons:

(a) A person who claims the interest.

(b) Another person acting on behalf of a claimant if the claimant is under a disability, unable to assert a claim on his or her own behalf, or one of a class whose identity cannot be established or is uncertain at the time of recording the notice of intent to preserve the interest.

Comment. Section 880.320 is drawn from the third sentence of Section 4(a) of the Model Marketable Title Act and Section 3-305 of the Uniform Simplification of Land Transfers Act (1977).

§ 880.330. Contents of notice

880.330. Subject to all statutory requirements for recorded documents:

(a) A notice of intent to preserve an interest in real property shall be in writing and signed and verified by or on behalf of the claimant.

(b) The notice shall contain all of the following information:

(1) The name and mailing address of the claimant.

(2) A description of the interest claimed. The description shall include a reference by record location to the recorded document that creates or evidences the interest.

(3) A legal description of the real property in which the interest is claimed. The description may be the same as that contained in the recorded document that creates or evidences the interest.

Comment. Section 880.330 is drawn from portions of Sections 4(a) and (5) of the Model Marketable Title Act and from Sections 2-302(b) and 2-308(b) of the Uniform Simplification of Land Transfers Act (1977). Under subdivision (b), if the interest is a restriction that affects the use or enjoyment of more than one parcel of real property that was created by a recorded document containing a general description of all of the parcels, the legal description required may be the same as the general description. The introductory portion of Section 890.330 makes clear that all other statutory requirements must be complied with. See, e.g., Section 1170 (recorded document must be duly acknowledged or proved and certified).

12338

§ 880.340. Form of notice

880.340. Subject to all statutory requirements for recorded documents, a notice of intent to preserve an interest in real property shall be in substantially the following form:

RECORDING INFORMATION

Recording requested by:
After recording return to:

FOR USE OF COUNTY RECORDER

Indexing instructions. This notice must be indexed as follows: Grantor and grantee index--claimant is grantor.

NOTICE OF INTENT TO PRESERVE INTEREST

This notice is intended to preserve an interest in real property from extinguishment pursuant to Title 5 (commencing with Section 890.010) of Part 2 of Division 2 of the Civil Code (Marketable Record Title).

Claimant — Name:
Mailing address:

Interest — Description (e.g., mineral rights, power of termination, easement):
Record location of document creating or evidencing interest:

Real Property — Legal description (may be same as in recorded document creating or evidencing interest):

I assert under penalty of perjury that this notice is not recorded for the purpose of slandering title to real property and I am informed and believe that the information contained in this notice is true.

Signed:_____ Date:_____

_____
(claimant)

_____
(person acting on behalf of claimant)

State of _____,

County of _____, ss.

On this _____ day of _____, in the year _____, before me (here insert name and quality of officer), personally appeared _____, known to me (or proved to me on the oath of _____) to be the person whose name is subscribed to the within instrument, and acknowledged that he (she or they) executed the instrument.

Signed: _____ Official Seal:

Office: _____

Comment. Section 880.340 incorporates the requirements of Section 880.330 (contents of notice). The introductory portion of Section 880.340 makes clear that all other statutory requirements must be complied with. See, e.g., Gov't Code § 27361.6 (printed forms).

12327

§ 880.350. Recording and indexing notice

880.350. (a) A notice of intent to preserve an interest in real property shall be recorded in the county in which the real property is situated.

(b) The county recorder shall index a notice of intent to preserve an interest in real property in the index of grantors and grantees. The index entry shall be for the grantor, and for the purpose of this index, the claimant under the notice shall be deemed to be the grantor.

Comment. Section 880.350 is drawn from a portion of Section 5 of the Model Marketable Title Act. The manner of recording the notice is prescribed in Government Code Section 27322 and the fee for recording is prescribed in Government Code Section 27361 et seq.

12326

§ 880.360. Slander of title by recording notice

880.360. A person shall not record a notice of intent to preserve an interest in real property for the purpose of slandering title to the real property. If the court in an action or proceeding to establish or quiet title determines that a person recorded a notice of intent to preserve an interest for the purpose of slandering title, the court shall award against the person the cost of the action or proceeding, including a reasonable attorney's fee, and the damages caused by the recording.

Comment. Section 880.360 is comparable to provisions in a number of jurisdictions that have enacted marketable record title legislation, and makes clear that recordation of a notice of intent to preserve an interest under this title is not privileged. Section 890.360 does not affect the elements of the cause of action for slander of title and codifies the measure of recovery for slander of title, with the addition of reasonable attorney's fees. See 4 B. Witkin, Summary of California Law Torts § 328 (8th ed. 1974).

§ 880.370. Grace period for recording notice

880.370. If the period prescribed by statute during which a notice of intent to preserve an interest in real property must be recorded expires before, on, or within five years after the operative of the statute, the period is extended until five years after the operative date of the statute.

Comment. Section 880.370 is drawn from Section 10 of the Model Marketable Title Act and Section 7-701(d) of the Uniform Simplification of Land Transfers Act (1977) (two years).

10911

[CHAPTER 2. ANCIENT MORTGAGES AND DEEDS OF TRUST]

[CHAPTER 3. DORMANT MINERAL RIGHTS]

[CHAPTER 4. UNEXERCISED OPTIONS]

[CHAPTER 5. POWERS OF TERMINATION]

10359

CHAPTER 6. ABANDONED EASEMENTS

§ 886.010. "Easement" defined

886.010. As used in this chapter, "easement" means a burden or servitude upon land, whether or not attached to other land as an incident or appurtenance, that allows the holder of the burden or servitude to do acts upon the land.

Comment. Section 886.010 provides a special definition of an easement for the purposes of this chapter. This chapter applies only to affirmative easements; negative easements are governed by Chapter [not yet drafted]. This chapter applies to all affirmative easements, whether appurtenant or in gross. Contrast Sections 801 and 803 ("easement" is an appurtenant servitude).

§ 886.020. Expiration of abandoned easement

886.020. (a) Except as otherwise provided in this section, an easement of record expires at the later of the following times:

(1) Twenty years after the date the instrument creating, reserving, transferring, or otherwise evidencing the easement is recorded.

(2) Twenty years after the date a notice of intent to preserve the easement is recorded.

(b) If an easement is used at any time during a period of five years immediately preceding the time prescribed in subdivision (a), the easement does not expire at the time prescribed in subdivision (a) but expires at such later time as the easement is unused for a continuous period of five years.

(c) This section applies notwithstanding any provision to the contrary in the instrument creating, reserving, transferring, or otherwise evidencing the easement or in another recorded document unless the instrument or other document provides an earlier expiration date.

(d) For purposes of this section, an instrument does not create, reserve, transfer, or otherwise evidence an easement unless the instrument makes specific reference to the easement.

Comment. Section 886.020 provides for expiration of an unused easement after 20 years or such later time as the easement has been unused for a five-year period, notwithstanding a longer or an indefinite period provided in the instrument creating the easement. The expiration period is consistent with the five-year period prescribed by statute for extinguishment for disuse of a prescriptive easement. See Section 811(4). This reverses prior law that an easement obtained by grant cannot be lost by mere nonuse. See, e.g., discussion in 3 B. Witkin, Summary of California Law, Real Property § 376 (1973); 1 A. Bowman, Ogden's Revised California Property Law § 13.49 (1974); 3 H. Miller & M. Starr, Current Law of California Real Estate § 18:66 (rev. 1977).

The expiration period can be extended for up to 20 years at a time by recordation of a notice of intent to preserve the easement before the easement expires. See Section 880.310 (notice of intent to preserve interest). Recordation of a notice of intent to preserve the easement does not necessarily preclude abandonment of the easement pursuant to general principles governing abandonment for nonuse upon a showing of intent to abandon. See Section 880.310 (notice of intent to preserve interest); see also discussion in 3 B. Witkin, Summary of California Law, Real Property § 374 (1973); 1 A. Bowman, Ogden's Revised California Property Law § 13.50 (1974); and 3 H. Miller & M. Starr, Current Law of California Real Estate § 18:64 (rev. 1977).

Subdivision (d) makes clear that in the case of an appurtenant easement, a transfer of the dominant tenement without reference to the easement does not start the twenty-year period running anew, even though such a transfer may be effective to convey the easement. Sections 1084, 1104.

Easements held by public entities are not subject to expiration pursuant to this section. See Section 880.240 (interests excepted from title).

10350

§ 886.030. Effect of expiration

886.030. Expiration of an easement pursuant to this chapter makes the easement unenforceable and is equivalent for all purposes to a termination of the easement of record and a release of the easement to the fee owner of the servient tenement, and execution and recording of a termination and release is not necessary to terminate and release or evidence the termination and release of the easement.

Comment. Section 886.030 provides for the clearing of record title to real property by operation of law after an easement expired under Section 886.020 (expiration of easement for nonuse). Title can be cleared by judicial decree prior to the time prescribed in Section 886.020 in case of an abandonment of the easement. See Comment to Section 886.020.

10157

§ 886.040. Transitional provision

886.040. Subject to Section 880.370 (grace period for recording notice), this chapter applies on the operative date to all easements, whether executed or recorded before, on, or after the operative date.

Comment. Section 886.040 makes clear the legislative intent to apply this chapter immediately to existing easements. Section 880.370 provides a five-year grace period for recording a notice of intent to preserve an easement that expires by operation of this chapter before, on, or within five years after the operative date of this chapter. See Section 880.370 (grace period for recording notice) and the Comment thereto.

27945

Uncodified Section (added)

SEC. 2. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the Legislature finds and declares that there are savings as well as costs in this act which, in the aggregate, do not result in additional net costs.

Comment. Section 2 recognizes that any costs of recording and indexing notices of intent to preserve an interest are offset by the fees for recording and indexing pursuant to Government Code Section 27361 et seq.