#36 1/20/70

Memorandum 70-11

Subject: Study 36 - Condemnation ("Winds of Change")

Attached is an article by David Levin, "New Directions in Land Acquisition and Land Use," which was published in the Wisconsin Law Review. The article has just come to my attention. Normally we do not send you general background articles on eminent domain because of the volume of material you must read for each meeting. In this case, however, I am sending you a copy of the article since it relates to three items on the agenda for the February meeting: moving expenses, future use, and joint acquisition by several agencies. The article will give you some idea of the current thinking in this field. Mr. Levin has, for many years, been a high official in the Bureau of Public Roads in Washington, D.C.

Respectfully submitted,

John H. DeMoully
Executive Secretary

NEW DIRECTIONS IN LAND ACQUISITION AND LAND USE

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The economic, social, and esthetic consequences upon America of ubiquitous highway construction have been profound. Mr. Levin speaks of some of these consequences and outlines governmental efforts to alleviate them. His focus is the Federal-Aid Highway Act of 1968 in relation to the displacement and relocation of the poor, the elderly, and the small businessman, but he also describes and analyzes other new approaches: advance right-of-way acquisition; joint development projects; and efforts to control highway amenities.

For some years, forces have been generating to change directions in land acquisition and land use. These pressures, ostensibly impotent for some time, now have surged forward. A series of changes have recently been effected, and still others are imminent. This article will briefly identify some of these emerging changes, indicate the implications each might have on pre-existing practice, and add some pertinent comment.

The magnitude of the more important public works programs has influenced this emerging trend. Highway construction and urban renewal account for the vast bulk of the public acquirement of private property in the nation. For federal-aid Interstate highways alone, approximately three-quarters of a million parcels of land will have been acquired when the Interstate System is completed by the mid-70's. This will involve an expenditure in excess of seven billion dollars for the land and property alone. Other highway programs will probably involve a comparable magnitude of acquisition and expenditure. Urban renewal programs probably involve acquisition of the same magnitude as highway takings.

A second force for change has been the realization that recent land acquisition policy and practice are the result of numerous inconsistencies between public agencies. Variations exist between federal, state, and local programs, not only horizontally, but vertically as well. Some agencies are more liberal in awarding property compensation than others; some pay greater moving costs than others; some use the Yankee "horse-trading" approach, while others adhere to a "one-price" policy; some require extensive documentation in connection with each transaction, while others maintain only the barest records.

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The nation's maturing as a democracy may also constitute a force for change. We are becoming aware that America must no longer limit its interests to the bare necessities of life, but that it must also be interested in the human and environmental values involved in technological progress.

I. MEETING HUMAN NEEDS IN LAND ACQUISITION PROGRAMS

Large-scale relocation of families, individuals, businesses, farms and nonprofit organizations, occasioned by federal and federally-assisted programs, raises basic questions of social welfare and public policy.[1] According to a recent survey by the Bureau of Public Roads,[2] it is estimated that as many as 56,000 individuals, farms, and businesses will be displaced annually, as a result of the federal-aid highway programs, for the next several years at least. As the magnitude of displacement has increased in recent years, there has been a growing concern by the President and the Congress over the impact of public works improvement on those who are forced to move. The concern is voiced particularly for the poor and elderly, and marginal and submarginal small businesses. It is these individuals and businesses that are most often adversely affected by government acquisition programs, and they are frequently incapable of coping with the adjustments of a forced move.[3]

Public authority has not been oblivious to the many problems of relocation. All levels of government are making some efforts, in varying degrees, to solve the difficulties by providing relief through relocation advisory assistance and moving cost payments. Among the best of the present authorizations involving relocation assistance is Section 30 of the Federal-Aid Highway Act of 1968.[4]

Section 501 contains a new declaration of legislative policy with respect to highway relocation assistance, indicating that persons,

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[1] For an excellent discussion of the legal aspects of relocation assistance, see Highway Research Board, National Academy of Sciences, *Relocation Assistance Under Chapter Five of the 1968 Federal-Aid Highway Act*, RESEARCH RESULTS DIGEST, Vol. 3, March, 1969; Bureau of Public Roads, Fed. Highway Admin., U.S. Dep't of Transportation, *Relocation Procedures—Sample State Statutes* (Circular Memo., Feb. 7, 1969).

[2] HOUSE COMM. ON PUB. WORKS, 90TH CONG., 1ST SESS., HIGHWAY RELOCATION ASSISTANCE STUDY (Comm. Print No. 9, 1968).

[3] Some of the more important elements that need to be considered and evaluated are: How the relocation affects the family's ability to meet society's minimum standards for quality and quantity of living space; the extent to which the family can fulfill its needs and desires in terms of housing and neighborhood characteristics, convenience to employment, community facilities, family and friends; the varied costs—financial, social, and emotional—which are involved in experiencing a forced change; and the effect of population redistribution on the city's environment. With respect to small business moves, the issues and problems are much the same as those of the individual, but related to the business activity.

[4] Federal-Aid Highway Act of 1968, 23 U.S.C. §§ 501-11 (Supp. IV, 1968-69). (Act of Aug. 23, 1968, Pub. L. No. 90-495, § 30, 82 Stat. 815.)

businesses, farmers and nonprofit organizations displaced because of federal-aid highway programs shall not suffer disproportionate injuries.[5] By section 502 state highway departments, in connection with specific project proposals, are to assure that the fair and reasonable relocation payments specified in the law will be made to displaced persons, that relocation assistance will be given to such persons, and that within a reasonable period of time before such displacement, there will be available a sufficient number of dwellings which are decent, safe, and sanitary, reasonably accessible to the places of employment of the displaced persons, and located in areas that are generally not less desirable than those from which these persons were displaced.[6]

Section 504 provides for 100 percent federal reimbursement of the first 25,000 dollars of such payments to any relocatee, until July 1, 1970, after which date, the pro rata share applicable to the particular project shall prevail.[7] Section 505 increases the level of all moving cost payments without a ceiling, but with certain limitations.[8] Section 506 authorizes an additive to the fair market value of property acquired, in the form of a replacement housing payment of up to 5,000 dollars, and provides for a similar additive in the form of a replacement rental housing payment for tenants of up to 1,500 dollars.[9]

Section 507 compensates the property owner for expenses incidental to the transfer of his property to the state, including: (1) expenses incurred for recording fees, transfer taxes and similar expenses; (2) penalties for prepayment of any bonafide mortgage on the property; and (3) the pro rata share of any real property taxes allocable to the period after title vests in the state or the state takes possession, whichever date is the earlier.[10] Finally, Section 508 requires an expanded level of relocation assistance services to displacees.[11]

Two new statutory standards have been written into the Act[12]—"decent, safe, and sanitary housing," and "comparable dwelling." The former has been defined to include the following:[13] a structure that is sound and in reasonably good repair and conforms with all local building and occupancy codes; a continuing and

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[5] *Id.* § 501.
[6] *Id.* § 502.
[7] *Id.* § 504. The pro rata share for Interstate projects is 90 (federal)—10 (state); for ABC federal-aid highway projects (primary, secondary, and urban connections) it is 50-50.
[8] *Id.* § 505.
[9] *Id.* § 506.
[10] *Id.* § 507.
[11] *Id.* § 508.
[12] *Id.* § 506.
[13] Bureau of Public Roads, Fed. Highway Admin., Dep't of Transportation, *Relocation Assistance and Payments—Interim Operating Procedures*, Instructional Memorandum 80-1-68 (Sept. 5, 1968).

adequate supply of potable water; adequate kitchen facilities, including a refrigerator, hot and cold running water, drains and, where customary, a sink and stove; a heating system adequate to provide 70 degree temperatures; toilet and bath facilities; artificial lighting for each room; two means of egress; and a space allotment of 150 square feet for the first person and 100 square feet for each additional inhabitant of the unit. Comparable dwellings are defined in terms of substantial similarity with respect to: the number of rooms; the area of living space; the type of construction (wood frame, stucco, etc.); age and state of repair; accessibility to public services and places of employment; and the type of neighborhood.[14]

A third new element incorporated in the 1968 Highway Act is the "additive." This term, now in common usage by the highway official, the lawyer, and the appraiser, means something above fair market value. Section 30 of the Federal-Aid Highway Act of 1968 provides for a liberalized schedule of federal-aid reimbursement for moving costs for residence, business, farm, or other displacement necessitated by a highway program.[15] Also, it provides for an additional payment to be made to owners of single-, two-, or three-family dwellings taken for highway purposes.[16] This payment is authorized only if the displaced individual owned and actually occupied the dwelling for at least a year before negotiations were begun to acquire the home for highway purposes. The payment is to be that amount, not in excess of 5,000 dollars which, when added to the acquisition price paid for the home, equals the average price required to purchase a *comparable dwelling* which is *decent, safe, and sanitary,* reasonably accessible to public services and places of employment, available on the private market, and adequate to accommodate the displaced owner. This additional payment is to be made only if the displaced owner buys and occupies a decent, safe, and sanitary dwelling within one year after the date on which he is required to move as a result of the project. This payment is not available if the owner receives an equivalent payment under state law of eminent domain.

In fairness to persons who rent their dwellings, the 1968 Highway Act provides[17] that any individual or family displaced from a dwelling not eligible to receive a payment under the displaced-owner provision, who lawfully occupied that dwelling for not less than 90 days before acquisition negotiations were begun, shall also receive an additional payment. This payment to tenants and owners may not exceed 1,500 dollars. It is to be calculated as that amount necessary to enable such person to rent for up to two

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[14] *Id.*
[15] 23 U.S.C. § 505 (Supp. IV, 1968-69).
[16] *Id.* § 506(a).
[17] *Id.* § 506(b).

years (or to make a down payment on the purchase of) a decent, safe, and sanitary dwelling of standards adequate to accommodate such individual or family in areas at least as desirable as those from which he was displaced.

It is important to note in connection with these "additive" payments that the basic concept of fair market value has not been corrupted. Fair market value has been and continues to be the basic measure of just compensation for property taken for public purposes. The additives are payments over and above fair market value, authorized for reasons of social and public policy.

Another set of policies, designed to take some of the rough spots out of the acquisition of private property for federal-aid highway purposes, have been written into section 35 of the Federal-Aid Highway Act of 1968.[18] Provisions of this section require the Secretary of Transportation, before approving projects, to obtain assurances from state highway departments that: (1) every reasonable effort will be made to acquire property by negotiation; (2) construction will be scheduled to the greatest extent practicable so that no person will be required to move without 90 days' written notice; and (3) before initiating negotiations, each state shall establish a price for property believed to be just compensation under the laws of that state and make a prompt offer at that price.[19]

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[18] *Id.* § 141.

[19] S.1, 91st Congress, 1st Session (1969), the so-called Muskie Bill, is a uniform relocation assistance proposal, to be applicable to all 17 federal or federally-assisted programs involving land acquisition. In addition to the three acquisition policies indicated above, this bill includes a number of others, as follows:

1. Real property shall be appraised before the initiation of negotiations, and the owner or his designated representative shall be given an opportunity to accompany the appraiser during his inspection of the property.

2. Any decrease in the value of real property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for the proposed public improvement, other than that due to physical deterioration within the reasonable control of the owner, will be disregarded in determining the compensation for the property.

3. If the head of the federal agency concerned does not require a building, structure, or other improvement acquired as a part of the real property, he shall, where practicable, offer to permit its owner to remove it. As a condition of removal, an appropriate agreement shall be required whereby the fair value of such building, structure, or improvement for removal from the real property, as determined by such agency head, will be deducted from the compensation otherwise to be paid for the real property, however such compensation may be determined.

4. If the head of a federal agency permits an owner or tenant to occupy the real property acquired on a rental basis for a short term or for a period subject to termination by the Government on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.

The various 1968 Highway Act provisions recognize that past acquisition practices have often worked hardships on the families and businesses displaced. Planners have failed to recognize that the cost of resettlement rather than the value of the condemned property is the crucial figure for the displaced. In addition, undue haste in the name of bureaucratic efficiency has left residents with bitter feelings of being inconsequential figures in the path of progress. The 1968 Highway Act attempts to remedy these past failings through its increased compensation levels and its attention to the amenities of property acquisition for highway purposes. Other public acquisition programs remain as they were.

II. ACQUISITION OF PROPERTY FOR FUTURE HIGHWAY USE

Present inadequacies that necessitate the acquirement of property for future highway use stem from the characteristics of a dynamic and affluent society. A common error of the past has been our failure to take fully into account the fact that the population and the economy are expanding year by year. Because of the failure to compensate for this wholesome growth, some highway facilities have prematurely become functionally obsolete. The accommodations made have involved needlessly high costs.

There is urgent need to plan a network of highways capable not only of servicing the needs of the million vehicles of the present, but also one which anticipates those of the future. An element of this anticipation is the need to reserve or acquire the routes of future highways as soon as they are capable of being identified.

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5. In no event shall the head of a federal agency either advance the time of condemnation, or defer the condemnation and the deposit of funds in court for the use of the owner, in order to compel an agreement on the price to be paid for the property. If an agency head cannot reach an agreement with the owner after negotiations have continued for a reasonable time, he shall promptly institute condemnation proceedings and, at the same time or as soon thereafter as practicable, file a declaration of taking and deposit funds with the court in accordance with the Act of February 26, 1931, 40 U.S.C. 258a (1964), if possession is required prior to the entry of the judgment in the condemnation proceeding.

6. If an interest in real property is to be acquired by exercise of the power of eminent domain, the head of the federal agency concerned shall, except as to property to be acquired under section 25 of the Tennessee Valley Authority Act of 1933, 16 U.S.C. 831x (1964), require the Attorney General to institute formal condemnation proceedings. No federal agency head shall intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his property.

7. If only a portion of a parcel of real property is to be acquired, thereby leaving the unacquired portion without economic use, the head of the federal agency concerned shall offer to acquire the entire property.

8. In determining the boundaries of a proposed public improvement, the head of the federal agency concerned should take into account human considerations, including the economic and social effects of such determination on the owners and tenants of real property in the area, in addition to engineering and other factors.

Significant benefits which can be harvested by the public from an appropriate program of acquiring property for future highway use include:

(1) Right-of-way costs will be minimized by forestalling costly development of land ultimately required for highway purposes.

(2) There can be more orderly, deliberate, and beneficial relocation of persons, businesses, farms, and other existing uses of property at lower economic and social costs.

(3) More orderly development of communities will be achieved by the early identification and reservation of highway locations.

(4) Private developers and property owners will be enabled to plan their private land uses and development wholly consistent, physically and functionally, with an ultimate highway plan.

(5) Highway improvement activities will be facilitated by the provision of more leadtime which the advance acquisition of right-of-way makes possible. Advance engineering planning and design will be stimulated, thereby making possible a more rational and deliberate approach to the provision of a modern highway plant.

(6) Without the pressure of short deadlines, negotiations with property owners can be much more serene and satisfactory from every point of view. Public relations generally will be facilitated.

A few illustrations of cost savings effected by advance right-of-way acquirement are noteworthy. In Birmingham, Alabama, a large undeveloped shopping center site was purchased by the Alabama State Highway Department in 1959 for 275,000 dollars, although the property was not needed for highway purposes until recently. This represented a savings of several million dollars in land and improvement costs which would have been incurred had the shopping center been built. The Arizona Highway Department purchased a five-acre tract in East Phoenix for 57,700 dollars. One of the largest Phoenix builders had optioned this property in order to build a large condominium apartment project. Had the project been built, many thousands of additional dollars of right-of-way cost would have been involved. In another state a new trailer park was acquired for highway purposes at a cost of 200,000 dollars, although the land value amounted to only 32,000 dollars. Had the parcel been purchased before the construction of the trailer park, 168,000 dollars might have been saved.

Since 1952, California has used an advance right-of-way acquisition revolving fund of 30 million dollars, with which it has purchased property valued at 66 million dollars. If these acquisitions had not been made and normal improvements permitted to pro-

ceed, the costs in the future to the state would have approximated 366 million dollars. In 1965, the capital outlay for highway right-of-way in California was 178 million dollars; the savings, through advance purchases by this fund alone, amounted to approximately 14 per cent of the total right-of-way costs.

Advance acquisition is not an Aladdin's Lamp, however. It has some potential shortcomings that must be reckoned with. For example:

(1) Great care must be taken in the administration of a program of advance right-of-way acquisition to make sure that commitments are not made only to be abandoned after further study is made.

(2) In areas of stable land use, potential advantages may be questionable. Economic and social returns from the application of the concept will be greatest in the undeveloped suburban and urban fringe areas of metropolitan places and in downtown areas where land uses are being upgraded or are rapidly changing.

(3) When improved property is purchased in advance of need, the state must maintain the acquired properties if neighborhood deterioration is to be avoided. Under these circumstances, the state may be plagued with all the usual problems associated with a landlord and tenant relationship. If properties remain vacant, vandalism can become an acute problem.

Balancing benefits against drawbacks, Congress authorized a program of future right-of-way acquisition in Section 7 of the Federal-Aid Highway Act of 1968.[20] The section establishes a right-of-way revolving fund to be available for expenditure without regard to the fiscal year for which authorized. The Secretary of Transportation, upon request of a state highway department, may advance money without interest to the state for use in acquiring rights-of-way for future construction of highways on any federal-aid system, as well as for making payments for moving or relocating persons, businesses, and farms caused by such acquisition. Actual construction of a highway on the rights-of-way acquired under this subsection must commence within not less than two nor more than seven years following the end of the fiscal year in which the Secretary approves the advance of funds. Where a state does not commence construction of a project within the stated time limits, the moneys advanced are to be recredited to the revolving

[20] 23 U.S.C. § 108 (Supp. IV, 1968-69). The Act also authorizes 100 million dollars for each of the fiscal years 1970, 1971, and 1972 to be appropriated to the Right-of-Way Revolving Fund. Amounts apportioned under this subsection are not considered authorization of appropriations for the Interstate System for purposes of section 209(g) (Byrd amendment) of the Highway Revenue Act of 1956, ch. 462, tit. II, 70 Stat. 397.

fund out of other federal-aid highway funds apportioned to the state. Funds apportioned to a state shall remain available for obligation for advances to such state until October 1 of the fiscal year for which the apportionment is made. Funds not advanced or obligated by then revert to the revolving fund and are available for advance to any state, taking into consideration the state's need and ability to use such advances.

The legal status of advance acquisition at the state level is not always clearly defined. Twenty-six states and Puerto Rico have statutes specifically authorizing the acquisition of lands for future highway use.[21] In 26 of these jurisdictions, the legal authority is granted to the state highway department, but in Wisconsin the authority is vested in the Milwaukee County Expressway Commission. In addition, in Wisconsin, 15 other states[22] and the District of Columbia, authority to acquire lands for future highway use is implied by the statutes or by court decisions. Accordingly, in 43 jurisdictions, there is either express or implied authority to anticipate the future in highway land acquisition activities.

III. JOINT DEVELOPMENT AND MULTIPLE USE OF HIGHWAY RIGHTS-OF-WAY

Increasingly, the highway official is interested in providing highways that are reasonably compatible with their environment. The joint development concept will make this goal possible.[23] Joint development can stimulate other local programs by which a city can meet some of its needs for better housing, parks, playgrounds, open space, and commercial redevelopment by combining them with planned freeway improvement. In such a joint development, the concept is not merely one of thrusting a new highway through a built-up urban area, but rather it is one of designing and executing a plan which would improve an entire corridor having multiple and complementary uses, as part of a total urban environment.

Such an approach can conserve *space*, *money*, and *time* for the city. In the same space that may have been devoted to substandard housing, or blighted commercial uses, a freeway can be built, together with replacement housing for those displaced, and other vital community and commercial facilities, with room left for recreational areas or just plain open space. Within the area that might

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[21] Alaska, Arkansas, Arizona, California, Colorado, Connecticut, Florida, Idaho, Indiana, Kansas, Louisiana, Maryland, Michigan, Montana, Nebraska, Nevada, New Jersey, New Mexico, North Dakota, Ohio, Oklahoma, Puerto Rico, Utah, Virginia, Washington, West Virginia, Wisconsin.

[22] Delaware, Iowa, Kentucky, Maine, Mississippi, Missouri, New Hampshire, New York, North Carolina, Oregon, South Carolina, South Dakota, Tennessee, Texas, Wyoming.

[23] For a perceptive discussion of the subject, see the recently published textbook, R. WRIGHT, THE LAW OF AIRSPACE (1968).

be acquired for joint development, a new highway can be constructed so as to require only a permanent three-dimensional easement, or an "air tunnel," leaving the remainder of the space available for other uses.

The economics of joint development is probably its greatest asset. In the past, urban freeways have been designed so as to use a minimum width of right-of-way, in order to minimize the displacement disruption of community life. In acquiring land for such a minimum right-of-way, however, the highway official must pay not only for the land and improvements acquired, but also for damages to the remaining nonacquired properties. In urban areas especially, such severance damages are compensated for by payments for the decreased value of the remaining property resulting from the taking of only a part of the entire original property. Studies have indicated that in many cities the cost of acquiring a whole block of property would be only slightly greater than the cost of acquiring the minimum freeway right-of-way and paying the severance damages.[24]

Interest in the joint use concept is developing in more than a dozen major cities as well as in numerous smaller communities. In the District of Columbia, for example, a three-block section of the Inner Leg Freeway is being considered for one of the most dramatic applications of the joint use concept. This project will involve building a tunnel section of Interstate highway. Increased capacity replacement housing, some town houses, a church, playground facilities, open spaces, and other community accommodations will also be provided.

The Bureau of Public Roads has already taken a long step toward putting joint development into effect, by its approval of the "whole-block taking" idea as was recently done in New Orleans. In that city 78 properties are directly affected which would normally be reduced to substandard lots, undesirable from the standpoint of good city planning, substandard in housing qualities, and detrimental to the values of adjacent properties. The additional cost of the properties will approximate 615,000 dollars and constitute about 12.3 percent of the aggregate right-of-way cost. These areas

[24] For example, a minimum freeway right-of-way might require only 40 percent of the area of a city block, for its construction needs. Because of severance damages, however, the cost of acquiring this right-of-way might actually equal 80 percent or more of the cost of acquiring the whole block. The state highway department or some local agency—such as a public corporation or authority—could acquire and clear the full block, then sell back to the highway department the space needed for the freeway. Thus, the acquiring agency would have available for development all of the 60 percent remaining land, which would have cost no more than 40 percent of the total. The highway improvement would thus contribute effectively toward underwriting the cost of other development, with no increase in its own planned highway expenditure.

will probably be converted into open space, or park and recreational areas with non-highway funds.

The Bureau of Public Roads will consider any joint use proposal a state tenders for review. In order to make a timely start in this most important program, however, the Bureau is urging states to consider public or private uses under existing or proposed highway structures. The logic of giving such projects priority is quite simple. The highway department controls the areas under and adjacent to highway structures, and can, without the complexities of other types of projects, go forward with development of these areas. Moreover, if these are the right-of-way areas or areas where a highway purpose could be justified, federal-aid funds may be used to provide the collateral facilities under the structures. Sweeping generalization as to qualification for federal-aid reimbursement cannot be made at this time, but the Bureau of Public Roads intends to accommodate any logical and compatible use proposals that the states will offer.

In considering the kind of uses that would be most appropriate for under-structure application, note should be taken of several common sense guidelines. The kind of uses which should be favored would involve the greatest public use. While community facilities would be favored, this could include private uses which cater to public needs, such as a buinesss plaza. Uses should be entirely compatible in design with the immediate neighborhood and environs of the section of highway involved, and they should seek to upgrade and enhance the neighborhood. In connection with these activities, several alternative uses might be proposed to the communities involved, with proposed designs roughly sketched so that they can be visualized more readily. A good illustration of this approach may be found in the proposals currently being developed by the Louisiana Department of Highways for sections of Interstate Highway 310 along Elysian Field Avenue in New Orleans. The state has suggested, in the alternative, such uses as playgrounds; mini-parks, including bicycle and foot paths, seating areas, and play areas; public service buildings, such as fire and police stations; community facilities; an aquarium and aviary; basketball courts; and areas devoted to hydroponics and tropical botanics.

Since the enactment of Section 111 of Title 23 on June 29, 1961, the Bureau of Public Roads has partially or completely processed 231 requests from 40 states and the District of Columbia for permissive joint use of highway land for nonhighway purposes. Of the requests, 105 involve vehicle parking under structures;[25] 75

[25] Of the 105 parking requests, 24 were from California, 12 from Illinois, nine from New York, six from Ohio, five from Missouri and Wisconsin, and two or more from Massachusetts, Oregon, Washington, Connecticut, Florida, Tennessee, Texas, Colorado, North Carolina, Kentucky, Kansas, Louisiana, and Utah.

involve other miscellaneous uses under structures, 20 contemplate uses over the traffic lanes, and 33 uses are within adjacent areas of the travel way.

A wide variety of public purposes are reflected in the nonparking requests. Among the various projects are a United States subpost office in Sacramento, California; a fire station in Orleans Parish, Louisiana; and public parks and other recreational developments in at least a dozen cities throughout the nation. Marinas or wharf areas were approved within the highway right-of-way in Sioux City, Iowa; Louisville, Kentucky; and Wheeling, West Virginia; a fishing platform in Klamath Falls, Oregon; and a bridle path along a rest area in New Jersey.

Various industrial uses have been approved also. A coal conveyor belt crosses under an Interstate highway bridge in Tilton, Illinois; a grain conveyor system hauls grain over the expressway in Kansas City, Kansas; and a crushed stone conveyor crosses under the Interstate highway at Lansing, Michigan. Land under and adjacent to highways is being used for new or for continuation of old industrial uses in a score of other cities.

Mass transit rail stations have been approved in the median or areas adjacent to expressways in Boston and Chicago; special railroad facilities, including scenic and amusement railroads, have been approved in several cities; and even sky-rides have been proposed in Covington, Kentucky and Quincy, Illinois.

Many states and municipalities have discovered various uses: as storage areas for highway maintenance equipment and materials; as a city police pistol range; and as sites for monuments and memorials. The Little Rock school system was allowed to use part of the land acquired for highway drainage control as a high school athletic field; and Boy Scout facilities use highway right-of-way in New York and Pittsburgh. Two major structures have been approved in the District of Columbia: an office-hotel complex and the new Department of Labor Building.

Numerous other joint development projects are currently in the proposal or planning stages. Most show the same imaginative land use planning displayed in the already completed joint use projects.[26]

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[26] The following proposed joint use projects are presently under study:

(1) Boston, Massachusetts: A portion of I-95, the Southwest Expressway, located in the Jamaica Plain section from Forest Hill to Jackson Square, as now designed, utilizes embankment sections. A study is to be made to consider depressed sections. Proposed uses of adjacent areas would be for "park-like sites."

(2) Bettendorf, Iowa: A section of I-74 in the Park McManus area has possible uses under joint development for park and playground areas, and utilization of space under viaduct sections for

IV. CONTROL OF HIGHWAY AMENITIES

A. *Control of Outdoor Advertising*

Increasing interest has been focused, in recent years, on the regulation of certain kinds of land uses within the transportation corridors. This emphasis was aptly put by President Johnson in his message on natural beauty, sent to Congress on February 8, 1965:

> More than any country ours is an automobile society. For most Americans the automobile is a principal instrument of transportation, work, daily activity, recreation and pleasure. By making our roads highways to the enjoyment of nature and beauty we can greatly enrich the life of nearly all of our people in city and countryside alike.
>
> The roads themselves must reflect, in location and design, increased respect for the natural and social integrity and unity of the landscape and the communities through which they pass.

This message was followed by a White House Conference on Natural Beauty, on May 24-25, 1965[27] and the enactment of the Highway Beautification Act of 1965.[28] Under the Act,[29] control of

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parking or commercial development.

(3) Council Bluff, Iowa: The city has an urban primary project that would permit possible joint use under viaduct sections for parking in connection with a manufacturing concern, as well as possible commercial or industrial development. There is also the possibility of two "whole block takings" for a joint urban renewal project or a complete land-use change.

(4) Omaha, Nebraska: A feasibility study of joint development in this city's I-480 project is a possibility. Through the viaduct sections, development may be possible both under and adjacent to the structure. GSA has also expressed an interest in the area for a motorpool.

(5) Louisville, Kentucky: Current plans call for a span over I-64, known as Riverside Expressway, with a promenade deck or belvedere which will overlook the Ohio River.

(6) Cedar Rapids, Iowa: This city has a proposed urban primary project designed on an embankment section. A study is to be made to consider a viaduct section which would utilize an area for parking, as well as areas for the development of business sites adjacent to the structure.

(7) Detroit, Michigan: The construction of the Rouge River Bridge on I-75 offers the following joint use possibilities: a recreation center; a small industrial development; a machine shop; and a tool company.

(8) Nashville, Tennessee: A possible slab over I-40 is under consideration in order to develop several three- or four-story office buildings.

(9) Baltimore, Maryland: The Franklin-Mulberry corridor of I-70N is being considered for an "air rights" consolidated school site.

[27] An account of the proceedings can be obtained from the U.S. Government Printing Office under the title BEAUTY FOR AMERICA.

[28] Highway Beautification Act of 1965, 23 U.S.C. §§ 131, 135, 136, 319 (Supp. I, 1965).

[29] *Id.* § 131.

outdoor advertising along the Interstate System and the prime highways was to be achieved by January 21, 1968. Effective control under this law means that: (1) advertising on the premises where the activities are located is not subject to federal regulation; (2) outdoor advertising in commercial or industrial areas, zoned or unzoned, is authorized, with criteria as to size, spacing and lighting of signs to be agreed upon by the states and the Secretary of Commerce, taking into account customary use; and (3) except for the above exceptions, billboards are prohibited within 660 feet of the edge of the right-of-way along the Interstate System and primary highways. Motels, restaurants, service stations and other businesses catering to the motoring public will be assisted by signs erected at appropriate places on the Interstate System giving specific information (including names and brands) of interest to the traveling public.

The exercise of zoning authority was left to the states and local governments. However, signs lawfully in existence as of September 1, 1965, are not required to be removed until July 1, 1970, even though they are in "control areas." Just compensation is authorized to be paid to the owners of signs which have to be removed and to owners of property on which the signs are located, with the compensation costs to be shared between the states (25 percent) and the federal government (75 percent).

Those states which entered agreements to control outdoor advertising under the previous law would continue to receive the federal bonus payment if the states continue to maintain the control as required under those agreements or under the terms of the new legislation, whichever control is more strict.

The outdoor advertising provisions of the Highway Beautification Act of 1965 were modified somewhat by the Federal-Aid Highway Act of 1968. The two important changes were: (1) whenever a state, county or local zoning authority has made a determination of customary use, such determination will be accepted in lieu of controls by agreement in the zoned commercial and industrial area within the geographic jurisdiction of such authority;[30] and (2) no sign, display or device shall be required to be removed if the federal share of the just compensation to be paid upon removal of such sign, display or device is not available to make such payment.[31]

B. Control of Junkyards

As part of the effort to improve the aesthetics of the nation's more important transportation corridors, the Highway Beautification Act of 1965 also sought to regulate junkyards.[32] Control

[30] *Id.* § 131(d).
[31] *Id.* § 131(j).
[32] *Id.* § 136.

of the establishment and maintenance of junkyards along the Interstate and primary systems is to be achieved by January 1, 1968. The control area is 1,000 feet from the edge of the right-of-way. Screening through the use of plantings, fences or other appropriate means is considered effective control. Junkyards which cannot be screened do not have to be removed until July 1, 1970. Junkyards located in zoned or unzoned industrial areas are not subject to control. As with billboard control, just compensation is authorized to be paid for the screening or removal of junkyards with the costs to be shared by the states and federal government, with the federal government paying 75 percent.

C. *Highway Landscaping and Scenic Enhancement*

For many years, the Bureau of Public Roads has encouraged efforts to improve the appearance of highway corridors through appropriate landscape treatment. The Highway Beautification Act of 1965 added significant legislative support to such efforts.[33] Under the Act states are offered an amount equal to 3 percent of apportioned federal-aid highway funds, which amount does *not* have to be matched by the states. This allocation would be used for landscape and roadside development, and for scenic preservation and enhancement. These funds may be used in areas adjacent to and within the right-of-way. In most cases, however, the cost of landscaping right-of-way and providing roadside rest areas will continue to be a part of the "cost of construction" on the highway project, as is the case under the present and long established law providing for matching funds. Eminent domain authority will not be used, however, to force a person to sell his dwelling for scenic strips adjacent to the right-of-way.

D. *Enforcement Provisions*

The federal-aid law has provided economic sanctions for use in policing compliance with the outdoor advertising and junkyard provisions. Federal-aid funds apportioned to any state on or after January 1, 1968, shall be reduced by 10 percent if the state has not made provision for effective control of outdoor advertising[34] or junkyards.[35] However, the Secretary of Transportation may waive reduction in apportionments if he determines such action to be in the public interest. The procedure to be followed when reductions are made are prescribed in the Act.[36] Before any reduction, the Secretary is required to give the state at least 60 days notice and an opportunity for a hearing. If the decision is adverse to the state, it may appeal the matter to a Federal District Court

[33] *Id.* § 319.
[34] *Id.* § 131(b).
[35] *Id.* § 136(b).
[36] *Id.* § 131(*l*).

for that state. While the court action is pending, the Secretary may not reapportion the amount withheld from the state, but is required to hold this available for later apportionment in accordance with the final judgment of the courts.

V. CONCLUSION

The foregoing by no means exhaust the trends and developments constituting new directions in land acquirement and land use. A whole gamut of environmental factors have now come to the fore, including such matters as noise, pollution of all kinds, design, compatibility of contiguous land uses, rodent control, and the preservation of natural resources. These changes involve both the public and private sectors and increasingly demand that the two sectors work together toward solutions.