

Memorandum 79-24

Subject: Study H-700 - Abandonment and Vacation of Public Streets and Highways (Staff Draft of Tentative Recommendation)

A topic that was added to our agenda last session by the Legislature, not at the request of the Commission, is abandonment and vacation of public streets and highways. The Legislature was apparently concerned about the proliferation of statutes governing abandonment and felt that we should take a look at them to see if we could make any sense out of and put some order in them.

The staff's review of the statutes indicates that they are not that bad. They are generally good statutes, although there is quite a bit of fragmentation--there are separate but similar statutes for city streets and county highways, as well as public service easements. The staff has prepared the attached draft to repeal the existing provisions and replace them by a single procedural statute. The staff considers that it has made only one change of any substance--where an offer of dedication for street purposes is made under the Subdivision Map Act and the offer has not been accepted, the local agency can terminate the offer by summary vacation rather than going through the long vacation procedure presently required.

If the Commission approves this draft, we will distribute it to interested persons--particularly cities, counties, and title insurers--for review and comment.

Respectfully submitted,

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STAFF DRAFT

TENTATIVE RECOMMENDATION

relating toVACATION OF PUBLIC STREETS, HIGHWAYS,
AND SERVICE EASEMENTS

The procedures for abandoning and vacating public streets and highways are found in a number of places in the Streets and Highways Code.¹ The procedures for abandoning and vacating city streets and county highways are parallel but separate.² Another similar procedure 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The Commission recommends that the various abandonment and vacation provisions be repealed and be replaced by a single general statute governing vacation of all public streets, highways, and service easements.⁴ This will reduce the bulk of the statutes by about one fourth while providing a clear and uniform 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 Act⁵ or general law⁶ 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); 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).
3. Gov't Code §§ 50430-50445 (Public Service Easements Vacation Law).
4. The recommended legislation would not affect the existing provisions relating to state highways.
5. Gov't Code § 66477.2.
6. 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 954, 954.5, and 960.5 of, to repeal and add Part 3 (commencing with Section 8300) to Division 9 of, to repeal Sections 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 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 E

PART 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
- § 8306. Public service easement
- § 8307. Resolution
- § 8308. Street; highway
- § 8309. Vacation

CHAPTER 2. GENERAL PROVISIONS

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- § 8311. Alternative procedure
- § 8312. Allocation of authority between city and county
- § 8313. When planning commission action required
- § 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

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- § 8321. [Reserved]
- § 8322. Petition to vacate
- § 8323. [Reserved]
- § 8324. Publication of notice of hearing
- § 8325. [Reserved]
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- § 8328. Recordation of resolution

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- § 8330. Street or highway superseded by relocation
- § 8331. Impassible streets and highways
- § 8332. Freeway interception
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- § 8335. Resolution of vacation
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- § 8340. Authorization to reserve easements
- § 8341. Recitation in resolution of intention and resolution of vacation
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- § 8346. Requests for notice; index of requests
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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

CHAPTER 7. INTERCITY AGREEMENTS LIMITING VACATION

- § 8360. Agreement between cities
- § 8361. Ratification of prior agreements
- § 8362. Limitation of power to vacate streets
- § 8363. Recordation of agreements

VACATION OF PUBLIC STREETS, HIGHWAYS,
AND SERVICE EASEMENTS

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

SEC. . 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).

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.

Comment. Section 8304 continues the substance of former Section 8302 (city streets) and broadens it to include the county board of supervisors. 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).

405/880

§ 8306. Public service easement

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

(a) A right-of-way or easement acquired for public use by dedication or otherwise for sewers, pipelines, polelines, electrical transmission and communication lines, pathways, storm drains, drainage, canal, and light and air.

(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) (public service easement).

§ 8307

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 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.

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.

406/218

§ 8309. Vacation

8309. "Vacation" includes the abandonment of street and highway easements and public service easements and the closing of them from public use.

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.

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 local agencies.

(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. This part is not the exclusive means by which a local agency 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. 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.

968/710

§ 8313. When planning commission action required

8313. A street, highway, or public service easement may be vacated pursuant to this part within the area for which a master plan is adopted only after the proposed vacation is submitted to and acted upon by the planning commission.

Comment. Section 8313 continues the substance of former Government Code Section 50435 (public service easements) and broadens it to include city streets and county highways.

§ 8314

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 with the approval of the California Highway Commission.

Comment. Section 8315 continues the substance of the last sentence of former Section 8308 (city streets).

8330

§ 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.

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 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.

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.

(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 street, highway, or public service easement to be vacated and a reference to a map or plan on file in the office of the clerk. 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.

Comment. Subdivision (a) of Section 8320 indicates that a proceeding may be initiated by resolution. For initiating a proceeding upon petition, see Section 8322. 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 broadens them to include county highways.

07/440

§ 8321. [Reserved]

§ 8322. Petition to vacate

8322. (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 prevents the board 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.

Comment. Subdivision (a) of Section 8322 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.

999/560

§ 8323. [Reserved]

3055

§ 8324. Publication of notice of hearing

8324. (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 8324 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 extends the publication requirement to include city streets.

101/190

§ 8325. [Reserved]

§ 8326. Posting notice of vacation

8326. (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.

(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 8326 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.

§ 8327. Hearing; resolution of vacation

8327. At the hearing, the legislative body shall hear the evidence offered by persons interested. 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 of vacation vacating the street, highway, or public service easement.

Comment. Section 8327 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).

§ 8328. Recordation of resolution

8328. (a) The clerk shall cause a certified copy of the resolution of vacation, attested by the clerk under seal, to be recorded 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. The first sentence of subdivision (a) of Section 8328 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). The second sentence of subdivision (a) is the same as a provision of 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 an easement or right of a type described in Section 8340.

Comment. Section 8330 continues the substance of subdivision (a) of former Section 960.1 (county highways) and of former Section 1930 (city streets). An easement or right of a type referred to in subdivision (b)(2)--one of a type described in Section 8340--may be vacated in the manner prescribed in Section 8342.

§ 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.

406/252

§ 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).

§ 8334. Miscellaneous grounds for vacation

8334. The board of supervisors of a county 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 end touching property of another.

Comment. Section 8334 continues the substance of subdivisions (b) and (c) of former Section 960.1 (county highways).

406/234

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) A statement 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.

(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) 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 sentences of former Sections 1931 (city streets) and 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) is new.

§ 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 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 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 8328.

406/208

CHAPTER 5. RESERVATION AND PRESERVATION OF EASEMENTS

Article 1. Reservation and Vacation of Easements

§ 8340. Authorization to reserve easements

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

(a) 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) Reserve and except from vacation an easement for a future street or highway.

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

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

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. 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.

(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.

Comment. Section 8341 continues the substance of former Section 8331 and broadens it to include county highways and to impose the requirement that the reservations and exceptions be recited in the resolution of vacation.

405/413

§ 8342. Summary vacation of easements

8342. (a) With respect to an easement reserved and excepted from the vacation of a street or highway, the legislative body may summarily vacate the easement by adoption of a resolution.

(b) The resolution shall be adopted at a hearing for which notices, at least 30 days prior to the hearing, have been posted conspicuously along the easement proposed to be vacated. The notice shall give the

date, hour, and place of the hearing and shall be posted not more than 300 feet apart, with a minimum of three notices to be posted.

(c) The clerk shall cause a certified copy of the resolution, attested by the clerk under seal, to be recorded in the office of the county recorder of the county in which the easement is located. No fee shall be charged for recordation. Upon such recordation, the easement is extinguished.

(d) This section applies only to easements occupied solely by facilities of the local agency summarily vacating the easement.

Comment. Section 8342 continues the substance of former Section 8332 (city streets) and broadens it to include county highways, and subdivision (c) of Section 8342 is revised to conform to Section 8336.

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.

18/549

§ 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 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 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).

65/181

§ 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 local agency owns only an easement, title to the property previously subject to the easement reverts to the owner of the underlying fee free from the easement.

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

Comment. Section 8351 continues the substance of 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).

§ 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, whether by franchise, grant, contract, use or occupancy, or otherwise.

(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. The nonuse of the private easement or other right for a period of five consecutive years constitutes a conclusive presumption of abandonment.

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).

§ 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 necessary for the purpose of ingress and egress to the lot from or to a street or highway.

(b) A private easement described in subdivision (a) is not extinguished if it is claimed by a person who, within two years after the date the vacation is complete, 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.

Comment. Section 8353 continues the substance of former Civil Code Section 812 (city streets and county highways).

405/957

Article 2. Disposition of Excess Property

§ 8355. Sale or exchange of excess property

8355. (a) If the legislative body of a local agency determines that property hereto or hereafter acquired by the local agency for street, highway, or public service easement purposes, is no longer necessary therefor, 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.

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) 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 property occupied by the vacated street or highway has reverted to 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.

Comment. Section 8356 continues the substance of former Sections 8370-8374.

26/257

CHAPTER 7. INTERCITY AGREEMENTS LIMITING VACATION

§ 8360. Agreement between cities

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

Comment. Section 8360 continues the substance of former Section 8350 (city streets).

405/929

§ 8361. Ratification of prior agreements

8361. A written agreement between any cities heretofore made and heretofore ratified by the respective legislative bodies of both cities 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).

§ 8362. Limitation of power to vacate streets

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 city 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 city 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 city.

Comment. Section 8362 continues the substance of former Section 8352 (city streets).

§ 8363. Recordation of agreements

8363. Every intercity agreement 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).

CONFORMING CHANGES

SERVITUDES

Civil Code § 812 (repealed)

SEC. . 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. . 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. . 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.

7826

PUBLIC SERVICE EASEMENTS VACATION LAW

Government Code §§ 50430-50445 (repealed)

SEC. . 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 (Government Code)</u>	<u>New Section (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	8322(b)
50440	8324
50441	8326
50442	8327
50443 1st ¶	8333
50443 2nd ¶	8335(b)
50444	8322(e), 8328(b), 8350, 8351
50445	8328(a)

SUBDIVISION MAP ACT

Government Code § 66477.2 (amended)

SEC. . 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 (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 ~~7~~, ~~or by Chapter 2 (commencing with~~

Section 940) of Division 2 of, the Streets and Highways Code , 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.

7828

DEPARTMENT OF TRANSPORTATION

Streets & Highways Code § 100.23 (repealed)

SEC. . 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).

7829

COUNTY HIGHWAYS

Streets & Highways Code § 954 (amended)

SEC. . 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 8327 and 8331.

10/034

Streets & Highways Code § 954.5 (amended)

SEC. . 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 8326 and 8327 . Notice of such hearing shall be mailed to the owner of any property fronting on 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) The provisions of this section shall only apply to the Counties of Riverside and San Bernardino.

Comment. Section 954.5 is amended to reflect that the substance of former Sections 955 and 956 is continued in Sections 8326-8328.

7830

Streets & Highways Code § 955 (repealed)

SEC. . 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 8326.

7831

Streets & Highways Code § 956 (repealed)

SEC. . 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 8327 and 8328.

7832

Streets & Highways Code § 956.8 (repealed)

SEC. . 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).

7833

Streets & Highways Code § 957 (repealed)

SEC. . 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 8322.

Streets & Highways Code § 957.5 (repealed)

SEC. . 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 8322.

Streets & Highways Code § 958 (repealed)

SEC. . 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 8322. The second sentence is superseded by Section 8324. The substance of the last sentence is superseded by Section 8326.

Streets & Highways Code § 959 (repealed)

SEC. . 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 8327.

Streets & Highways Code § 959.1 (repealed)

SEC. . 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, telegraphs 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.

Streets & Highways Code § 960 (repealed)

SEC. . 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 renunciation 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 8328. The substance of the third sentence is continued in Section 8351.

The substance of the second paragraph is continued in Section 8352.

Streets & Highways Code § 960.1 (repealed)

SEC. . 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. . 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. . 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.

Streets & Highways Code § 960.4 (repealed)

SEC. . 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 Section 8355.

Streets & Highways Code § 960.5 (amended)

SEC. . 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 Sections 8308 (defining "street" and "highway" for purposes of vacation and abandonment).

SUMMARY VACATION AND ABANDONMENT OF STREETS

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

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

7845

STREET VACATION ACT OF 1941

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

SEC. . 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:

<u>Former Provision</u> (Streets & Highways Code)	<u>New Section</u> (Streets & Highways Code)
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, 8326
8322 2nd ¶	8316
8323	8327
8324 1st ¶	8328(b), 8350, 8351
8324 2nd ¶	8328(a)
8330	8340(a)

<u>Former Provision</u> <u>(Streets & Highways Code)</u>	<u>New Section</u> <u>(Streets & Highways Code)</u>
8331	8341
8332	8342
8350	8360
8351	8361
8352	8362
8353	8363
8370	8356(a)
8371	8356(a)
8372	8356(b)
8373	8356(c)
8374	8356(d)