36.42 5/21/70

Memorandum 70-54

Subject: Study 36.42 - Condemnation (The Right to Take--Taking for Future Use)

One aspect of the "right to take," which should be covered in a comprehensive eminent domain statute, is the extent to which a condemnor may exercise the right of eminent domain to take property for a "future use."

The Commission has previously considered this topic and made the following tentative decisions:

(1) Provisions contained in existing statutes that authorize takings for future use should be repealed and one general statute covering all condemnors should be included in the comprehensive eminent domain statute to deal with this matter.

(2) The test to be used to determine whether a taking for future use is permitted should be stated in general terms in the statute. The test in substance should be that developed by the California courts--whether there is "a reasonable probability of use of the property for the public use for which it is taken within a reasonable time." (The decision whether to use fixed time standards and presumptions based thereon to differentiate between a taking for a present use and a taking for a future use was deferred.)

(3) The statute should make clear that a taking for future use presents a public use issue and that the resolution declaring the necessity of the taking is not conclusive on whether a taking for future use is permitted under the general test to be stated in the statute. The procedure for contesting a taking for future use should be provided by the statute. The procedure should provide for a court determination of this issue. In drafting

the procedure, an attempt should be made to provide a single procedure to cover the public use issue--whether the issue is raised by a taking for future use, an excess taking, or a substitute taking. The procedure so developed should also be made applicable to other similar questions such as whether the taking is for a public use generally, whether the taking is for "a more necessary public use," and the like.

These decisions reflected the staff recommendations, and we believe they are sound. We have accordingly prepared two sections which attempt to preserve the substance of these decisions. (See Exhibit I--pink.) Section 400, we hope, can be tentatively approved for inclusion in the Comprehensive Statute. We are not satisfied with Section 401. The substance of subdivision (a) was previously approved and merely restates the existing judicially established rule. This, however, is merely the test for determining whether a taking is for a use that is "too future" or not. At the other end of the scale is the problem of determing whether the issue of future use is involved at all, i.e., is this a taking for a present use or for a future use. In theory, the condemnee could raise the issue of future use in practically every case and accordingly make the condemnor substantiate when and how he planned to use the property. The Commission should consider whether this should be permitted and, if not, whether some litmus test can be developed to identify those cases where the issue of future use is not justiciable. Subdivision (b) merely attempts to provide a focus for such consideration. Finally, for the benefit of the newer Commissioners, we have attached some selected background materials and a brief staff study that were distributed previously. You will need to read this material for background information if you have not already done so.

Respectfully submitted,

Jack I. Horton
Associate Counsel

Memorandum 70-54

EXHIBIT I

COMPREHENSIVE STATUTE § 400

Staff recommendation

Chapter 5. Future Use

§ 400. Authorization to acquire property for future use

400. The authority to acquire property by eminent domain for a public use includes authority to exercise the power of eminent domain to acquire property to be used in the future for that public use.

Comment. Section 400 continues prior case law and makes clear that statutory grants of condemnation power carry with them the power to condemn property in anticipation of the condemnor's future needs. See, e.g., Central Pac. Ry. v. Feldman, 152 Cal. 303, 309, 92 P. 849, 852 (1907); City of Los Angeles v. Pomeroy, 124 Cal. 597, 616, 57 P. 585, 591 (1899); San Diego Gas & Elec. Co. v. Lux Land Co., 194 Cal. App.2d 472, 480-481, 14 Cal. Rptr. 899, 904-905 (1961). Despite the existence of the implied power, condemnation for future use was formerly specifically authorized by statute for a few condemnors for particular purposes. See, e.g., Cal. Stats. 1968, Ch. 354, § 1, p. (former Cal. Sts. & Hwys. Code § 104.6) (Department of Public Works authorized to acquire real property for future highway needs); Cal. Stats. 1957, Ch. 2104, § 1, p. 3729 (former Cal. Water Code § 258) (Department of Water Resources authorized to acquire real property for future state dam

and water purposes). Section 400 obviates the need for these additional statutory statements which have accordingly been repealed. [n.b. the staff has not attempted to locate all of these provisions. This task has been postponed so that it may be performed together with other "clean-up tasks," such as designating the property interest that may be acquired, and so on.]

Note. Sections 400 and 401 as tentatively approved contain a general grant of authority to condemn for future use as well as general substantive limits upon such authority. The Commission has, however, tentatively determined that the Comprehensive Statute should make clear that a taking for future use presents a "public use" issue, i.e., whether such taking is for a "public use" presents a justiciable issue subject to court determination and a resolution declaring the necessity of the taking is not conclusive on whether the taking should be permitted. Statutory provisions dealing with this issue and providing a procedure for handling this and similar issues have not yet been drafted.

COMPREHENSIVE STATUTE § 401

Staff recommendation

§ 401. Limitation on acquisitions for future use

401. (a) Property may be taken for future use only if there is a reasonable probability that it will be used for the public use for which it is taken within a reasonable time.

(b) Subdivision (a) does not limit any taking where it is established that there is a reasonable probability that the property will be devoted to the use for which it is taken within 10 years.

(c) Where subdivision (b) is not applicable, the court shall determine whether, under all the circumstances of the particular case, the condemnor has established that the requirement of subdivision (a) is satisfied.

Comment. Subdivision (a) of Section 401 restates the judicially established substantive limit applied to acquisitions for future needs under prior law. See, e.g., San Diego Gas & Elec. Co. v. Lux Land Co., 194 Cal. App.2d 472, 480-481, 14 Cal. Rptr. 899, 904-905 (1961). See also East Bay Mun. Util. Dist. v. City of Lodi, 120 Cal. App. 740, 750-755, 8 P.2d 532, 536-538 (1932). The test is necessarily imprecise; the limitless diversity of engineering and financing problems involved preclude any more definite general rule.

However, to provide some certainty and forestall frivolous objections, subdivision (b) makes clear that no issue of future use is presented where there is a reasonable probability that property taken will be put to actual use in not more than 10 years. Where the issue is properly presented, the court under subdivision (c) should consider all the circumstances of the case--e.g., have funds for the project been appropriated, have plans been drawn and adopted, is the project a logical extension of existing improvements, is future growth likely and must the condemnor provide for such growth--to determine whether the requirement of subdivision (a) is satisfied.

CONDEMNATION IN ANTICIPATION OF FUTURE NEEDS

It is well established in California that statutory grants[1] of general condemnation powers carry with them the power to condemn property in anticipation of the condemnor's future needs.[2]

The judge-made formula most frequently applied declares that the future requirements must be such as may be "fairly anticipated."[3] On its face, this is a somewhat imprecise standard. A more manageable approach is that which rejects future needs which are "contingent, uncertain or problematical" and asks instead whether there is "a reasonable probability of use of the property, within a reasonable time."[4]

Under either test, the issue turns upon the extent of the condemnor's commitment to the future project.[5] That is not to say that funds must be appropriated or plans and specifications drawn.[6] Some progress along those lines is, of course, persuasive. But the probable necessity of the property for future use can be shown in other ways, as by the condemnor's present involvement in improvements from which the future project would be a logical extension.[7] Similarly, the likelihood of future population growth--and the condemnor's peculiar obligation to serve all comers--may be highly significant.[8]

Despite the implied nature of the power, condemnation for future use has been specifically authorized by a few California statutes.[9] Such legislation, however, provides no guide lines beyond the bare permission given to condemn for "future needs,"[10] or for "future beneficial use,"[11] or for the "future proper development and control" of existing public uses.[12]

In this age of transcontinental expressways and interregional water distribution, the long-range exercise of eminent domain powers is obviously

essential.[13] The policy question confronting the legislative draftsman is whether to augment the currently uncomplicated code sections with some sort of verbal litmus that will indicate when so-called "future needs" are too future.

It is not recommended that such changes be undertaken. The case law distinction between "fairly anticipated" (i.e., reasonably probable) future uses and those which are mere possibilities[14] is an equitable one. Past that point, precision is impractical; the limitless diversity of engineering and financing problems involved, as well as the host of factors affecting construction lag times, militate against it. Substantively, the matter is best left where it is now--an issue of fact, to be resolved by the particular evidence. Public projects, and the planning for them, are too diverse to do otherwise.

There is, nevertheless, one procedural area where the need for a specific enactment is vital. Traditionally, "future use" problems have been treated as part of the question concerning the necessity for the condemnation, rather than as issues of public use.[15] The California Supreme Court held in 1959 that--where a statute gives conclusive effect to a condemnor's "necessity" determination--a condemnee cannot challenge (1) "the necessity for making a given public improvement," (2) "the necessity for adopting a particular plan therefor," or (3) "the necessity for taking particular property."[16] Yet, the same case left the door open for the condemnee to show "that the condemnor does not actually intend to use the property as it resolved to use it."[17] The ensuing years have done nothing to clear up the quandary of how proof of such negative intent is any different from proof that there is no necessity for taking the condemnee's land.[18] By the same token, in the "future use" cases, proof that an ostensibly future need was in fact speculative would establish both that "the condemnor does not actually intend to

use the property as it resolved to use it" and that there was no "necessity for taking [the] particular property."

No post-1959 cases have dealt with the latter problem. As a result, the only meaningful way to implement the court-made limitations[19] on condemnations for future use is to statutorily, and specifically, make justiciable the necessity for the particular taking.

FOOTNOTES

(Future Use)

1. See People v. Superior Court, 10 Cal.2d 288, 295-296, 73 P.2d 1221, 1225 (1937); People v. Garden Grove Farms, 231 Cal. App.2d 666, 673-674, 42 Cal. Rptr. 118, 122-123 (1965).

2. Central Pac. Ry. v. Feldman, 152 Cal. 303, 309, 92 P. 849, 852 (1907); City of Los Angeles v. Pomeroy, 124 Cal. 597, 616, 57 P. 585, 591 (1899); Spring Valley Water Works v. Drinkhouse, 92 Cal. 528, 532, 28 P. 681, 682 (1891); San Diego Gas & Elec. Co. v. Lux Land Co., 194 Cal. App.2d 472, 480-481, 14 Cal. Rptr. 899, 904-905 (1961); City of Hawthorne v. Peebles, 166 Cal. App.2d 758, 762, 333 P.2d 442, 444 (1959); Los Angeles County Flood Control Dist. v. Jan, 154 Cal. App.2d 389, 394, 316 P.2d 25, 28 (1957), disapproved on other grounds in People v. Chevalier, 52 Cal.2d 299, 305-307, 340 P.2d 598, 602-603 (1959); Hamaker v. Pacific Gas & Elec. Co., 59 Cal. App. 642, 646, 211 P. 265, 266 (1922); Vallejo & N.R.R. v. Home Sav. Bank, 24 Cal. App. 166, 174, 140 P. 974, 978 (1914); Northern Light & Power Co. v. Stacher, 13 Cal. App. 404, 407-408, 109 P. 896, 903 (1910); see East Bay Mun. Util. Dist. v. City of Lodi, 120 Cal. App. 740, 750-755, 8 P.2d 532, 536-538 (1932).

3. Central Pac. Ry. v. Feldman, supra note 2; Spring Valley Water Works v. Drinkhouse, supra note 2; San Diego Gas & Elec. Co. v. Lux Land Co., supra note 2; Vallejo & N. R.R. v. Home Sav. Bank, supra note 2.

4. East Bay Mun. Util. Dist. v. City of Lodi, 120 Cal. App. 740, 750-755, 8 P.2d 532, 536-538 (1932)(condemnation of property already held for

public use); accord, Board of Educ. v. Baczewski, 340 Mich. 265, 65 N.W.2d 810 (1954); see City of Los Angeles v. Pomeroy, 124 Cal. 597, 616, 57 P. 585, 591 (1899)("probable necessity"); compare 69 OKLA. STAT. ANN. § 46 (2) (Supp. 1967)("probable future needs").

5. See City of Los Angeles v. Pomeroy, supra note 4; San Diego Gas & Elec. Co. v. Lux Land Co., 194 Cal. App.2d 472, 480-481, 14 Cal. Rptr. 899, 904-905 (1961); East Bay Mun. Util. Dist. v. City of Lodi, supra note 4; Highway Research Board, National Research Council, Acquisition of Land for Future Highway Use xi (Special Report No. 27, 1957); compare State v. 0.62033 Acres of Land, 49 Del. 174, 112 A.2d 857 (1955); State Road Dep't v. Southland, Inc., 117 So.2d 512 (Fla. Dist. Ct. App. 1960); Board of Educ. v. Baczewski, supra note 4.

6. Carlor Co. v. City of Miami, 62 So.2d 897 (Fla. 1953); State Road Dep't v. Southland, Inc., supra note 5.

7. See City of Los Angeles v. Pomeroy, 124 Cal. 597, 616, 57 P. 585, 591 (1899); State Road Dep't v. Southland, Inc., 117 So.2d 512 (Fla. Dist. Ct. App. 1960).

8. See Central Pac. Ry v. Feldman, 152 Cal. 303, 309, 92 P. 849, 852 (1907); City of Los Angeles v. Pomeroy, supra note 7; Spring Valley Water Works v. Drinkhouse, 92 Cal. 528, 532, 28 P. 681, 682 (1891); Vallejo & N. R.R. v. Home Sav. Bank, 24 Cal. App. 166, 174, 140 P. 974, 978 (1914).

9. CAL. CODE CIV. PROC. § 1238(3),(13),(17)(West Supp. 1967); CAL. STS. & HWYS. CODE § 104.6 (West Supp. 1967); CAL. WATER CODE §§ 258 (West Supp. 1967), 11575.1 (West Supp. 1967); CAL. WATER CODE APP. § 60-5(5)(3 West Legis. Serv. 460 [1967]); see also CAL. GOVT. CODE §§ 7000-7001 (West 1966); CAL. PUB. RES. CODE § 6808 (West 1956).

10. CAL. STS. & HWYS. CODE § 104.6 (West Supp. 1967); CAL. WATER CODE §§ 258 (West Supp. 1967), 11575.1 (West Supp. 1967).

11. CAL. WATER CODE APP. § 60-5(5)(3 West Legis. Serv. 460 [1967]).

12. CAL. CODE CIV. PROC. § 1238 (3)(13)(17)(West Supp. 1967).

13. See State Road Dep't v. Southland, Inc., 117 So.2d 512 (Fla. Dist. Ct. App. 1960); Highway Research Board, National Research Council, Acquisition of Land for Future Highway Use ix (Special Report No. 27, 1957).

14. See notes 3 & 4 supra.

15. See authorities cited in note 2 supra.

16. People v. Chevalier, 52 Cal.2d 299, 307, 340 P.2d 598, 603 (1959); see Rindge Co. v. County of Los Angeles, 262 U.S. 700, 708-709 (1923)

17. People v. Chevalier, supra note 16, at 304, 340 P.2d at 601.

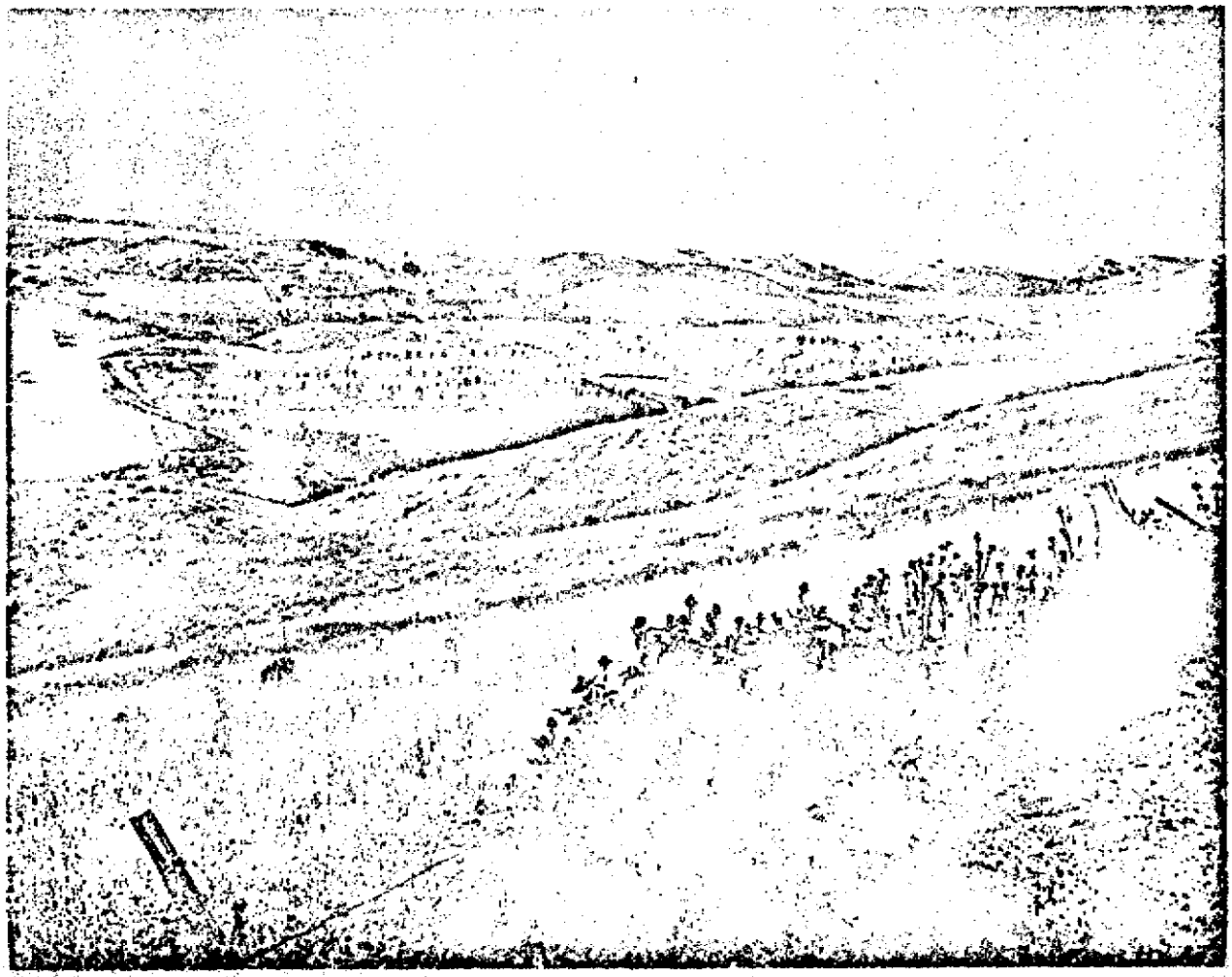
18. See People v. Superior Court, 68 Cal.2d 206, 436 P.2d 342, 65 Cal. Rptr. 342 (1968).

19. See notes 3 & 4 supra and accompanying text.

August 1968

ADVANCE LAND ACQUISITION BY LOCAL GOVERNMENTS

U.S. Department Of Housing and Urban Development / Washington, D.C.



SETTING OF THE PROBLEM

The purchase of land by local governments will have to increase heavily in the years to come. A conservative estimate of expenditures for real estate places the figure at about 12 percent of the entire projected capital budgets for state and local governments. Thus, expenditures for land (and existing structures) are expected to come to about $4 billion a year in the decade immediately ahead (p. 10).

The increased need for public expenditure on land will result partly from the large increase in the number of people in the country, most of whom will wish to live in cities. Population estimates by the Bureau of the Census range from increases of somewhere between 85 and 161 million people by the year 2000. This could easily double the urbanized area of the country (p. 10). Corresponding increases will be required for new public facilities just to maintain the level of public services now ordinarily provided by state and local governments. But standards for urban and state services are rising, just as are all aspects of the standards of living enjoyed by the inhabitants of this increasingly affluent society. Indeed, the sorts of services that require relatively large amounts of land, such as recreation, schools, and transportation, tend to increase faster than most other government services.

These extensive acquisitions of land by public bodies will almost inevitably be made at prices subject to a substantial rising trend. This is indicated by the three major studies reviewed in Chapter 6, which showed average rates of rise in land prices of 8, 10, and 10 percent per year, respectively, for the years 1946 to 1964, 1950 to 1962, and 1960 to 1964.

In the face of these implacable trends, how can local governments contrive to acquire efficiently the properties that they will need as sites for the services they will provide? Clearly if they wait until the land must be put to use, the most appropriate properties will have been preempted by the very private development that created the need for the additional government services. Moreover, whatever sites are eventually acquired, it is likely that the cost will be much higher than if they had been bought earlier.

One answer to the dilemma is to anticipate the need for land and purchase it in advance. The importance of this approach has been recognized by the federal government in several recent pieces of legislation. They aim to aid local governments to acquire land in advance for use in recreation, airports, urban renewal and other purposes.

A number of local governments have themselves begun to acquire land before it is actually needed. The results of a questionnaire survey (reported in Chapter 2) suggest that somewhat less than 30 percent of the cities of over 50,000 inhabitants in the United States carry on some sort of advance acquisition activity. However, the programs tend to be small—typically less than six acquisitions per year. Schools and parks are the most usual purposes for which cities acquired property in advance, though other specific future facilities were sometimes covered. No large-scale plans for influencing orderly land development were reported.

The European picture of advance land acquisition by governments is quite different. Many countries in Europe have active policies for acquiring undeveloped land in order to control the pattern of urban extension. Of these Stockholm, where much of the land surrounding the central city was acquired early in the century, is the most famous example (see Chapter 9).

THE VALUE OF ADVANCE LAND ACQUISITION TO LOCAL GOVERNMENTS

Though the records are sparse, advance land acquisition in this country seems capable of producing good results. For example, two case studies of advance acquisition programs, on which Chapters 7 and 8 report, illustrate what can be accomplished. For a sample of 17 school sites acquired in advance of need by Montgomery County, Maryland, the average dollar saving has been $50,000 per site after all costs have been taken into account. Of a sample of 21 sites which Richmond, Virginia has acquired in advance for expressways, street widenings and school additions, the average saving (after an allowance for mistaken expectations) was $32,000 per site. In addition to the dollar savings there were other benefits that in some cases were more important than the dollar-measured benefits. In Montgomery County the program makes it possible to get the sites best suited for schools before private development forecloses the opportunity. And in Richmond, advance land acquisition has strengthened and has become an integral part of the planning process, enabling the city to make long range plans for its future construction projects with the knowledge that the necessary sites will not be put to some incompatible use in the interim.

WEIGHING THE ADVANTAGES AND DISADVANTAGES OF ACQUIRING LAND IN ADVANCE

A major purpose of this study is to provide a framework for considering both the benefits and the costs to the public of acquiring land in advance of need. "Benefits" should be regarded as any advantage and "costs" as any disadvantage regardless of how adequately they can be evaluated. Actually, most of the costs and a substan-

tial part of the benefits of advance acquisition can be measured in dollars, at least in an approximate fashion, and where this is possible it has been done. But several of the benefits are hard to quantify; these must nevertheless, be weighed in order to arrive at a judgment. What are the benefits of advance land acquisition? And what are the costs?

How benefits should be measured is contingent on whether or not land that has been purchased in advance can be sold as readily as it is bought. Land should, of course, be sold if it becomes evident that it will not be needed for its intended or a substitute purpose. But it should also be sold if it turns out that other equally acceptable properties becomes available at a lower cost. How cost should be defined is indicated by examining the benefits of advance acquisition. However, these benefits would need to be defined differently were it not for the assumption, which is made throughout this study, that sales are made if and when they should be.

1. *Forestalling price rises.* A major benefit is the saving to the local government when land is bought early and prices subsequently rise. Savings occur not only because of the general upward trend in the price of land, but also because land prices commonly jump during conversion from rural to urban use. For areas in the path of urban extension, this saving alone will often outweigh all cost of the advance acquisition. (The Montgomery County program is a case in point.)

2. *Getting the "best site."* "Obtaining the best location" was the most usual reason designated as "most important" by cities reporting on their advance acquisition programs.

Some sites are typically much better suited to a particular public purpose than are others. Advance acquisition can make it possible to acquire these best sites for a school, a park, or whatever, before private development has greatly increased their cost. Indeed, were it not for the right of eminent domain, private development might entirely bar many developed properties from subsequent public use. But even though governments can condemn land, they must pay to acquire it and pay to acquire and demolish any new construction that has taken place; in addition, relocation problems and political embarrassment may ensue. Advance acquisition forestalls these additional costs and thereby makes it possible to acquire "best sites" at a cost which is advantageous in view of the capacity of the land to provide the government service for which it is desired.

3. *Improvement in the pattern of related land uses.* Advance acquisition can encourage desired private land development by offering practical evidence of intended future provision of public facilities and services. This will act to strengthen the planning process of the local government and to reduce the uncertainty attached to other public and private investment decisions which are affected by the location of future public facilities. This is, of course, a very difficult benefit to evaluate, and requires considerable judgment as to its importance in different circumstances.

4. *Improved procedures for site selection.* A probable benefit from undertaking a program of advance acquisition is an improvement in the procedures of selecting sites for public facilities. There is more time to study site requirements if selection is made in advance, and there is more opportunity for coordinating the selection of sites of all public facilities.

5. *Return on temporary use.* Land being held for future use can produce income while it is being held, or can serve some useful public purpose.

Of this list of benefits, numbers 1 and 5 are readily subject to dollar measures, while numbers 3 and 4 are almost impossible to value in dollars and number 2 is intermediate. Thus, the advantage of any particular advance acquisition is likely to consist of a combination of both dollar-measurable and intangible benefits.

The principles for measuring benefits numbers 1 and 2 are difficult to summarize. Suffice it to say that their sum is a function of the difference between what is paid for a

property and what the government would be willing to pay at the time the property is to be put to use. However, the market price of the land at that date provides a floor below which the benefit cannot fall, providing, of course, sale is unimpeded. The determinants of what governments should be willing to pay are discussed in Chapter 4.

The costs of advance acquisition, on the other hand, are usually amenable to dollar measurement. They are:

1. *Cost of capital.* The money invested in land sometimes needs to be borrowed and therefore involves an interest cost. But even if money is available without new borrowing, there is actually a cost of tying it up in land: the benefit of other uses to which it could be put must be given up. This "opportunity cost" is also measured by the interest rate. When the local government can borrow additional funds without impairing its credit rating, a good case can be made for using the borrowing rate on municipal bonds as the cost of capital that is tied up by the advance land acquisition.

2. *Lost property taxes.* Since advance land acquisition removes property from the tax rolls, the local government loses a stream of property taxes that would be paid if the land were left in private ownership until the time of actual need. The size of the foregone taxes depends, of course, on the property tax rate. But it also depends on the assessed valuation that is appropriate. If no private construction is prevented by the acquisition, the assessed value of the existing property can be used, though it should be adjusted for an expected rise in property values. If the advance acquisition prevents new private construction which would otherwise have taken place, the tax loss on the new improvements must also be considered, unless there is reason to believe that the improvements would simply be displaced to another part of the municipality.

3. *Management expenses.* There are administrative expenses associated with running an advance acquisition program. Most of these tend to be of an overhead variety. They include the expense of ongoing acquisition planning and the general provisions for managing acquired property. In areas where there is already a planning organization and real estate department, this is probably not a large cost, but in smaller communities it may be more of a problem.

THE DECISION TO ACQUIRE

The major benefits of acquiring land in advance must in some sense be added together and the costs subtracted in order to judge the net advantage or disadvantage and, thereby, whether the particular advance acquisition is worth undertaking. The analysis concentrates, of course, only on the matter of the advantage of acquiring land *in advance* and assumes that an expected need for land has been established.

"Present Values." One technical problem is encountered immediately: only comparable things can be added, and a benefit that will be received, or a cost incurred, in the future is not comparable to one received today. The benefit is less valuable if it is put off since it will be enjoyed for fewer years. The future cost is less burdensome since the resources can be put to other uses in the meantime.

In connection with advance acquisition, both costs and benefits occur at different times and to put them all on a comparable basis it is necessary to convert each to a single point in time—the time when the decision must be made. This can be done by using the well known technique of the discounting method appropriate to converting every cost and every benefit to its "present value." Thus, the benefit of appreciation in the value of property is felt at the time that the property is put to use (had it not been bought in advance, one would have had to pay more for it at that time). If, say, $10,000 is paid for land to be used in ten years, at which time it is expected to be worth $18,000, the benefit today is not $8,000, but the sum that would have to be invested today to grow to $8,000 ten years hence. At any discount rate selected, the present value of a benefit received or cost incurred in any future year can be looked up in standard mathematical tables. To illustrate, if the annual cost of waiting

is put at 4 percent, the benefit from a dollar received five years hence is worth today 82 cents. If it were received ten years hence, it would be worth 68 cents today; thus, the present value of the $8,000 appreciation is $5,400. Similarly, a cost of one dollar incurred ten years hence hurts only 68 cents worth if the advantage of waiting (the earnings of the dollar in the meantime) is put at 4 percent. How this principle is applied to the costs and benefits of advance acquisition is described in a general way in Chapter 3 and examined in more detail in Chapters 4 and 5.

Uncertainty in Estimating Costs and Benefits. Granted then that all costs and benefits have to be converted to their present values there still remains the problem of arriving at an estimate of what they are expected to be. For the major costs, the estimates are straightforward since tax rates and the appropriate interest cost can be determined with reasonable confidence. For benefits, estimation is often more difficult: Does it seem likely that land prices will rise and, roughly, how fast? How much more productive is a site that can be acquired now but would probably be unavailable in later years? Questions of this sort need to be answered. Chapter 6 examines the circumstances in which answers may be more confident or less confident. For some sorts of benefits, such as improved planning and selection procedures, dollar value estimates, however vague, are virtually impossible; nevertheless, they must not be ignored.

Judging the Net Advantage. Expected costs then are relatively measurable and sure; expected benefits can range from measurable and sure through various degrees of measurability and probability. This suggests a procedure of evaluation.

Say costs come to about 6 percent a year (4 percent interest and 2 percent tax). Then if prices can be quite confidently predicted to rise at least at this rate (as in Montgomery County), or when the cost of demolishing new construction would bring the price rise well over the 6 percent figure (as in Richmond), advance acquisition is clearly worthwhile. The benefit of better sites, improved planning, and the like are simply an additional bonus. At other times, uncertainty about the course of prices will imply that the benefit of the best site needs to be evaluated, albeit roughly, to decide whether benefits may be expected to exceed a 6 percent rate. Analogously, under still other circumstances intangible benefits may need to be carefully evaluated.

The analysis implies that good *average* results are easier to achieve than are clear benefits in each undertaking. At best the *chances* of what will occur can be evaluated, but unpredictable occurrences will inevitably influence the actual outcome. This fact carries an important message about how to organize an advance acquisition program.

ADMINISTERING ADVANCE ACQUISITION

Sometimes a large acquisition must be viewed as an entity, and acquisition is not justified unless it seems clear that the most adverse results that are at all likely can be tolerated, and the more likely ones clearly advantageous.

Pooled Programs. But for many sorts of acquisition problems the work should be set up so that *average* results dictate the success of the program. To this end it is important to consolidate acquisition of as many kinds of sites as possible in one department. As previously mentioned, it is also essential that the department be free to sell properties when they turn out not to be needed, or when cheaper or more suitable alternatives become available.

Other Guides. Proper administration can provide other ways of reducing the risk of adverse results. They are discussed at the end of Chapter 10. The ways include proper accounting systems, interdepartmental information systems, and selection of appropriate techniques of reserving land. Finally, results can be improved through cooperation among local governments and by utilization of the powers of the federal government to bring a wider framework to bear on the definition and pursuit of public advantage from anticipating the need for land.

90th Congress
1st Session } COMMITTEE PRINT NO. 8

ADVANCE ACQUISITION OF HIGHWAY RIGHTS-OF-WAY STUDY

A STUDY TRANSMITTED BY THE SECRETARY OF THE DEPARTMENT OF TRANSPORTATION TO THE CONGRESS, AS REQUIRED BY THE FEDERAL-AID HIGHWAY ACT OF 1966 (PUBLIC LAW 89-574, 89TH CONG., SEPT. 13, 1966)

JULY 1967

Printed for the use of the Committee on Public Works

U.S. GOVERNMENT PRINTING OFFICE
81-710 WASHINGTON : 1967

STUDY OF ADVANCE ACQUISITION OF HIGHWAY RIGHTS-OF-WAY

Summary of Conclusions and Recommendations

Highway officials have long recognized the need to reserve the routes of future highways as soon as they were identified. All too often, without the appropriate legal and financial tools, they are compelled to watch helplessly as unimproved land is developed and improved property changed to even more intensive uses without being able to acquire those portions that would inevitably be needed for future highway use. These highway officials know that the taxpayers want public highways to be constructed but that they will protest vigorously if the facilities cost too much because expensive improvements must be removed to permit construction.

In recognition of the increasing need to acquire lands for future highway use, the Congress, in the Federal-Aid Highway Act of 1966, directed the Secretary of Commerce to undertake a study of the advance acquirement of highway right-of-way for the Federal-aid highway systems. In the study, emphasis was to be given to the provision of adequate time for the disposal of improvements located on rights-of-way, the relocation of affected persons and businesses, methods of financing advance acquisition, and related matters.

Pursuant to this mandate, the Bureau of Public Roads has reviewed the existing literature and materials which have been produced on this subject matter in the past; has sought new and current data from the State highway departments related to elements of advance right-of-way acquisition; and has consulted with the Committee on Right-of-Way of the American Association of State Highway Officials. It has also obtained pertinent materials from the files of the Special Subcommittee on the Federal-Aid Highway Program and valuable suggestions on advance acquisition from its staff.

Future or advance right-of-way acquisition may mean different things to different persons. It is considered for the purpose of this report to be the acquirement of real property for highway purposes at least 2 years prior to its need for highway construction.

Vast sums of money already have been spent and more will be expended to make public highways the most efficient channels of transportation that we know how to provide. The 1965 right-of-way cost estimate for the Interstate System alone was $7.2 billion including the amount expended before January 1, 1965; of this, it is estimated that approximately $3 billion of right-of-way remains yet to be acquired. Additionally, considerable sums are being spent each year for other public highways, both on and off the Federal-aid highway systems for rights-of-way, and untold amounts will be involved in right-of-way acquisition programs that are needed but as yet unauthorized, especially in the urbanized areas of the Nation. If these investments of the efforts of men and resources are to yield the

maximum of beneficial results, past mistakes, particularly those of omission, must serve as guides for future conduct.

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 acquirement 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 having to meet short deadlines, negotiations with property owners can be much more serene and satisfactory from every point of view. Public relations generally will be facilitated.

These advantages notwithstanding, advance acquisition is not an Aladdin's Lamp. It has some potential shortcomings that must be reckoned with—

(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 and policing can become an acute problem.

A few illustrations of cost savings effected by advance right-of-way acquirement are noteworthy. In the Birmingham area of Alabama, a large undeveloped shopping center site, purchased by the State highway department in 1959, will not be needed for highway purposes until some time this year; the site was purchased for $275,000, and 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 5-acre tract in East Phoenix for $57,700; 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.

The economics of advance right-of-way acquisition can be approached negatively, so to speak, as well as positively as has been done in the foregoing illustration. In one State, for example, a new trailer park was acquired for highway purposes costing $200,000. The land value amounted to only $32,000. Had the parcel been purchased before construction of the trailer park, $168,000 might have been saved.

Since 1952, California has used an advance right-of-way acquisition revolving fund of $30 million with which the State has purchased property estimated at $66 million. If these acquisitions had not been made and normal improvements permitted to proceed, the costs in the future to the State would have approximated $366 million. The indicated savings, therefore, are estimated at $300 million, over a 12-year period, or an average of $25 million per year. In 1965, the capital outlay for highway right-of-way in California was $178 million; the savings, through advance purchases, from this fund alone, amounted to approximately 14 percent of its total right-of-way costs. In addition, the State acquires in advance to a considerable extent from current funds.

It has been generally recognized that under many circumstances it would be in the public interest to acquire property for future highway rights-of-way. The inquiry may then be made as to whether such an activity is now authorized under existing Federal-aid laws. The answer is in the affirmative. For all Federal-aid highway systems, including the Interstate System, right-of-way acquisition can be financed, in the usual Federal pro rata, out of each State's annual apportionment from Federal Highway Trust Funds as long as 7 years in advance of construction. For the most part, this time period has been found to be adequate, though in a few isolated instances it has not.

The legal status of advance acquisition at the State level is not so clearly defined. Statutes specifically authorizing the acquisition of lands for future highway use have been found in 27 jurisdictions.[1] In 26 of these jurisdictions, the legal authority is granted to the highway department, but in Wisconsin, the authority is bestowed on the Milwaukee County Expressway Commission. In addition, in 16 other States[2] and the District of Columbia, authority to acquire lands for future highway use is implied by the statutes or by court decisions in those jurisdictions. Accordingly, in 43 jurisdictions, there is either express or implied authority to anticipate the future in highway land acquirement activities.

It does not follow, from the fact that many States have express or implied authority to acquire property for future highway use, that such authorizations are fully utilized or are completely adequate to deal with a full range of advance acquisition problems. The contrary actually prevails. Necessary or desirable elements of authority and practice are dealt with in several recent studies, discussed later in this report. The elements include such matters as an appropriate declaration of legislative policy, a delegation of authority to acquire lands for future highway use, definition of future use, standards for the exercise

[1] 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.

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

of the power, type of interest to be acquired, the power to sell lands no longer needed, power to lease, application to improved or unimproved lands, financing, definition of terms, intergovernmental relationships, and other matters.

A completely adequate legislation authorization to acquire lands for future highway use is useless unless the financial resources to do the job are somehow provided. At the Federal level, while funds available for Federal-aid highway improvement may be used for advance right-of-way acquisition, this use is in competition with the demands for physical contruction of highways. The level of Federal-aid highway funding authorized is insufficient to encourage much, if any, acquisition of property for future highway use; it is barely sufficient to finance interstate and other Federal-aid construction programs. From the State side, 12 of the States [3] have established specific funds for advance acquisition, of varying size and adequacy in terms of the need. The magnitudes range from $300,000 in Delaware to $50 million in New York. Additionally, seven other States set aside funds of various sizes for this purpose from budgeted highway funds. All but three States have indicated that present funding practices are inadequate for advance acquisition purposes. A corollary benefit from an advance right-of-way program would accrue from more orderly relocation practices. In accordance with Federal regulations, and in many instances under their own statutes, State highway departments advise owners and occupants of property needed for highway purposes of relocation advisory assistance that is available. Past experience indicates that approximately 3 percent of individuals and businesses forced to vacate have done so with 30 days or less after notice; 76 percent between 30 and 180 days; and the remaining 21 percent have vacated after 180 days or more. States sometimes grant 30 to 90 days rent-free occupancy. The most prevalent method of disposing of improvements is through public auction or sealed bid. The time required varies. After vacation of the improvement, an average of 2 months are required for advertisement, sale, and removal.

The management of property acquired in advance of need is an essential element of any advance acquisition activity. Of the 50 States, the District of Columbia and Puerto Rico, 48 jurisdictions have legal authority to lease, and 37 of these make use of this power to some extent. Management expenses range from 3 to 30 percent of gross rental income, excluding real estate taxes. Federal funds participate in all elements of property management except for real estate tax-payment, an exception that will bear further policy study. Seven States must pay real estate taxes on properties used for other than highway purposes, and three of these States must make such payments only if the property is income producing.

Tables 1 and 2 summarize some advance acquisition data by States.

The outright acquisition of property in advance of need is but one of several different methods of making sure that the lands needed for future highway purposes will be available at reasonable cost. It may be the best of such methods, since it makes use of the power of eminent domain and immediate compensation is paid for the property taken.

Other ways of achieving the same goals involve reservations of various kinds under the State police power, as is done by or for the State highway departments in nine of the States. Additionally, in 37 States, varying degrees of coordination and cooperation have been effected between the highway departments and local government agencies having reservation authority under the police power.

[3] Arizona, California, Connecticut, Delaware, Maryland, New Jersey, New York, North Carolina, Tennessee, Virginia, West Virginia, and Wisconsin.

TABLE 1. PERTINENT ADVANCE ACQUISITION DATA BY STATES

State	Statutory authority to acquire for future use	Special funding for advance acquisition	Advance planning program period in years	Minimum engineering requirements before acquisition	Legal authority to—				Purchase for protection or hardship	Protection by use of police power		Extent of advance acquisition
					Purchase excess takings	Condemn excess takings	Lease or rent	Sell excess		By State law	By cooperation with local boards	
Alabama	None		1	Preliminary Design	No	No	Yes	Yes	Both		All development	General.
Alaska	Explicit		1	do	Yes	Yes	Yes	Yes	do	All improvements		Minor.
Arizona	do	$500,000	5	do	Yes	Yes	Yes	Yes	do		Zoning	General.
Arkansas	do		3	do	Yes	Yes	Yes	Yes	do		None	Limited.
California	do	30,000,000	5–10	Location fixed	Yes	Yes	Yes	Yes	do	Subdivision	Building and zoning	Extensive.
Colorado	do	(2)	1	Final Design	Yes	Yes	Yes	Yes	Hardship		None	Limited.
Connecticut	do	2,000,000	3–6	do	Yes	No	Yes	Yes	Protective		do	Minor.
Delaware	Implicit	300,000	1	Preliminary Design	Yes	Yes	Yes	Yes	Hardship	Improvement	Building and zoning	Limited.
Florida	Explicit		1	Final Design	Yes	Doubtful	Yes	Yes	Both		do	Minor.
Georgia	None		1	Preliminary Design	Yes	No	Yes	Yes	do		do	Limited.
Hawaii	do		1	do	Yes	Yes	Yes	Yes	do		All development	Minor.
Idaho	Explicit		5	Final Design	Yes	Yes	Yes	Yes	do		do	Do.
Illinois	None		1	Preliminary Design	Remnants only.	No	Yes	Yes	do		Building and zoning	Do.
Indiana	Explicit	(2)	3		Yes	Yes	Yes	Yes	do	All improvements	All development	General.
Iowa	do	(2)	5	Preliminary Design	Yes	No	Yes	Yes	do		None	Do.
Kansas	do		5	Final Design	Yes	Yes	Yes	Yes	Hardship		All development	Minor.
Kentucky	Implicit		1	Preliminary Design	Yes	Yes	Yes	Yes	do		Zoning	Do.
Louisiana	Explicit		1	do	Yes	No	Yes	Yes	Both		Building and zoning	Do.
Maine	Implicit		2	Final design	Yes	Yes	Yes	Yes	Hardship		None	Do.
Maryland	Explicit	5,000,000	6	Prelim design	Landlocked only.	Landlocked only.	Yes	Yes	Both		All development	General.
Massachusetts	None		1	do	No	No	Yes	Yes	do		Zoning	Limited.
Michigan	Explicit		5	Location fixed	Yes	Yes	Yes	Yes	do		Building and zoning	Do.
Minnesota	None		5	Prelim design	Yes	Yes	Yes	Yes	do		do	Minor.
Mississippi	Implicit		2	do	Yes	Yes	No	Yes	do		None	Do.
Missouri	do	(2)	5	do	Yes	Yes	Yes	Yes	do		Building and zoning	Extensive.
Montana	Explicit		3	do	Yes	Yes	Yes	Yes	Hardship	Improvement		Minor.
Nebraska	do		2	do	Yes	No	Yes	Yes	Both		Subdivision	Do.
Nevada	do		1	do	Yes	Yes	Yes	Yes	do		All development	Do.
New Hampshire	Implicit		4	do	Yes	Yes	Yes	Yes	do		Building	Do.
New Jersey	Explicit	4,000,000	2	Location fixed	Yes	Yes	No	Yes	do		All development	Limited.
New Mexico	do		3 and 5	Prelim design	Yes	No	Yes	Yes	do		Building	Minor.
New York	Implicit	50,000,000	6	do	Remnants only.	Remnants only.	Yes	Yes	do		Building and zoning	Limited.
North Carolina	do	1,500,000	5	do	Yes	No	Yes	Yes	do		do	General.
North Dakota	Explicit		5	do	Yes	Yes	Yes	Yes	Protective		Building	Do.
Ohio	do	(2)	5	do	Yes	Yes	Yes	Yes	Both		Building and zoning	Limited.
Oklahoma	do		2	do	Yes	Yes	Yes	Yes	Protective		do	Minor.
Oregon	Implicit		2–5	do	Yes	Yes	Yes	Yes	Both		Zoning	Do.

Pennsylvania	None			6	do	No	No	Yes	No	do	Improvement		Limited.
Rhode Island	do			1	do	Remnants only.	Remnants only.	Yes	Yes	do		Building and zoning	Do.
South Carolina	Implicit			1	do	Yes	No	Yes	Yes	Hardship		None	Minor.
South Dakota	do			1	do	Yes	Yes	No	Yes	do		do	Do.
Tennessee	do	5,000,000		5		Yes	No	Yes	Yes	Protective		Building and zoning	Do.
Texas	do	(2)		6	Prelim. design	No	No	No	Yes	Both		All development	Extensive.
Utah	Explicit	(2)		3	do	Yes	No	Yes	Yes	do		Building and zoning	Limited.
Vermont	None			3–6	Final design	No	No	Yes	Yes	do		None	Minor.
Virginia	Explicit	4,117,000		3 and 9	Prelim. design	Yes	Yes	Yes	Yes	do		Building and zoning	General.
Washington	do			6	do	Yes	No	Yes	Yes	do	Improvement	do	Minor.
West Virginia	do	2,000,000		3 and 6	Location fixed	Yes	No	Yes	Yes	Protective		None	General.
Wisconsin	Implicit	5,000,000		2 and 10	do	Yes	Yes	Yes	Yes	do	Subdivision	All development	Do.
Wyoming	do			1	Prelim. design	No	No	Yes	Yes	None		None	Minor.
District of Columbia	do			6	do	Yes	Yes	Yes	Yes	Hardship		Building and zoning	Do.
Puerto Rico	Explicit			2 and 3	Final design	Yes	Yes	Yes	Yes	do	Improvement	do	Limited.

[1] Means that State statute specifically authorized advance acquisition.
[2] From highway funds budgeted for normal acquisition.
[3] Means that a State judicial decision authorized advance acquisition.

TABLE 2

CLASSIFICATION OF STATES BY EXISTING LAW AND PROCEDURE TO ACQUIRE IN ADVANCE OF NEED 1/

State	Legal Authority	Appreciable Funding	Advance Planning Program	Authority to Acquire on Prelim. Plan	Authority to Acquire Excess Lands: Purchase	Authority to Acquire Excess Lands: Condemnation
Alabama				x		
Georgia				x	x	
Nevada				x	x	x
Illinois				x		
Massachusetts				x		
Minnesota			x	x	x	
Pennsylvania			x	x		
Rhode Island	x1			x		
Vermont			x			
Alaska	x			x	x	x
Arkansas	x		x		x	x
Florida	x				x	
Idaho	x			x	x	x
Kansas	x		x	x	x	
Kentucky	x		x	x	x	
Louisiana	x			x	x	
Maine	x				x	x
Michigan	x		x	x	x	x
Mississippi	x			x	x	x
Montana	x		x	x	x	x1
Nebraska	x			x	x	
Nevada	x			x	x	x
New Hampshire	x		x	x	x	x
New Mexico	x		x	x	x	
North Dakota	x		x	x	x	x
Ohio	x		x	x	x	x
Oklahoma	x			x	x	x
Oregon	x		x		x	x
South Carolina	x			x	x	
South Dakota	x			x	x	x
Washington	x		x	x	x	
Wyoming	x			x	x	
Dist. of Columbia	x		x		x	x
Puerto Rico	x		x		x	x
Colorado	x	x			x	x
Delaware	x	x		x	x	x
New Jersey	x	x		x	x	x
Connecticut	x	x	x		x	
Maryland	x	x	x	x		
New York	x	x	x	x	x	
Texas	x	x	x	x		
Iowa	x	x	x	x	x	
North Carolina	x	x	x	x	x	
Tennessee	x	x	x	x	x	
Utah	x	x	x	x	x	
West Virginia	x	x	x	x	x	
Arizona	x	x	x	x	x	x
California	x	x	x	x	x	x
Indiana	x	x	x	x	x	x
Missouri	x	x	x	x	x	x
Virginia	x	x	x	x	x	x
Wisconsin	x	x	x	x	x	x

1/ In terms of the elements contained in this table, the States at the lower end of the tabulation generally appear to be better equipped to go forward with advance acquisition than the others. For example, the States at the beginning of the table do not have legal authority to proceed, funding, etc. The States at the lower end of the table possess the several elements necessary to go forward with an advance acquirement program.

Also allied to the legal authority to acquire property for future highway use is the power to acquire, and later dispose of, so-called excess lands, that is, land finally determined to be not needed for the highway improvement itself. Such takings arise partly in connection with the taking of entire parcels or tracts of land where portions will be left and partly from unavoidable revisions as project plans actually are drawn. Approximately 42 States are involved in this practice, but a few have no eminent domain powers to acquire land beyond actual and detailed needs.

POLICIES OF THE BUREAU OF PUBLIC ROADS

Three policies of the Bureau of Public Roads deserve special comment. In view of the difficulties which have been encountered by some of the States, the Bureau is proposing to alter its previous policy on real property taxes. Such taxes will now become eligible for Federal-aid reimbursement where such taxes are presently required by State law, and then only as an offset against property management income. If the recommendations of this report are implemented, the difficulties associated with the eligibility for Federal-aid reimbursement of interest or holding charges paid by the States will become largely academic. Because the resources will have been provided by Federal funds, no interest charges would be involved.

Finally, following program approval, authorization by the Bureau of Public Roads shall constitute its commitment to participate, in the ratio established for the class of project involved, in the properly supported net costs of the subject property even though the property, or a portion of it, is eventually determined to be surplus to highway needs. This should effectively eliminate any further difficulties in this area.

RECOMMENDATIONS

The following recommendations are derived from the assembly, analysis, and evaluation of considerable data obtained from various sources and from the recognized needs for advance acquisition in connection with the Federal-aid highway programs:

i. Need for advance acquisition

There is a present need for the acquisition of property in advance of highway use, especially in the undeveloped suburban and urban fringe areas of metropolitan areas and where land uses are undergoing rapid changes. It is recommended that the Congress amend the Federal-aid highway laws to authorize a revolving fund from the highway trust fund for the advance acquisition of rights-of-way for future construction of highways on the Federal-aid highway systems and that such funds be limited to the purchase of parcels more than 2 years in advance of construction; and that the present 7-year limitation on use of Federal funds for right-of-way acquisition be continued, subject to the conditions set forth in recommendation v.

ii. Magnitude of revolving funds

While State right-of-way revolving funds have been found to be helpful, indeed, they are found only in a handful of States and are generally inadequate in magnitude when measured in terms of the need.

Accordingly, it is recommended that a Federal-aid revolving fund be established in the amount of $300 million, to be established in $100 million increments over a 3-year period.

This amount was estimated in the following manner: The States estimated that $1.7 billion could be used advantageously during the next 5 years for advance acquisition, or approximately $345 million annually. These data were evaluated in light of the recent past performance of the States in connection with interstate right-of-way acquirement and the estimated capabilities of the States to go forward promptly with an accelerated right-of-way acquisition program. A sum of $100 million annually for the next 3 years was so derived. It is assumed that after 3 years the fund will become truly revolving in the sense that advances previously made by it will be repaid the fund, enabling it to make advances for other projects.

The Federal-aid right-of-way fund would be available for making interest-free advances to the States to be used for advance purchases more than 2 years before construction is to commence. Regulations will be formulated which will define how the fund may be used, project eligibility, time periods permitted, repayment to the fund, applicability of other Federal-aid regulations, and other pertinent matters. For an advance acquisition program to be fully successful, it will be necessary to permit Federal-aid participation in all the costs of advance acquisition and property management incidental thereto, with offsets from rental incomes and other receipts.

iii. Sources of funds

The following possible sources of funds to finance advance acquisition through the Federal-aid mechanism are recommended for consideration:

(1) The highway trust fund.

(2) Intrayear loans or advances from the general fund to the highway trust fund during period when the available balances in the highway trust fund may not be sufficient for this purpose. Advances or loans so made would not be exempt from the provisions of section 209(g), Federal-Aid Highway Act of 1956, the "Byrd amendment."

iv. Coordination with relocation assistance

It is recommended that the States be required, as a part of any federally financed advance acquisition program, to provide a fully adequate program dealing with the displacement and relocation of individuals, businesses, nonprofit organizations, and farms. The advantages of so doing are very real and tangible.

v. Administration of the program

In the execution of the program, it is suggested that no advance right-of-way shall be acquired prior to at least one public hearing and firm establishment of location. Nor shall any advance right-of-way be acquired for a project in an urban area unless the project is deemed to be consistent with the comprehensive transportation plan developed for the metropolitan area as a whole under the provisions of section 134 of title 23, and section 204 of the Demonstration Cities Act.

The Federal Highway Administration intends to establish priorities for the selection of projects for advance acquirement, if that becomes necessary as a result of competition for the funds available, to favor those projects going to construction within a 3- to 5-year period.

No advance acquisition may be approved for projects, the construction of which would require authorization beyond the latest year for which the interstate highway program is authorized.

Each State will receive its share of each year's advance acquisition funds based upon a composite ABCI formula, providing it can demonstrate within 6 months that it will use the funds in that year. Funds in excess of any State's needs during any year will be pooled and distributed according to criteria established by the Secretary.

PROBLEMS ANTICIPATED

It is anticipated that a substantially new program of the kind recommended in this study will generate a few special problems of its own. Much new legal authority at the State level will need to be obtained if the States are to take full advantage of advance acquisition on Federal-aid projects with Federal funds. Additionally, any substantial advance acquistion program will seriously burden existing State highway department right-of-way personnel who, with few exceptions, already are working at capacity; in this connection, a right-of-way training program of appropriate design must be encouraged if advance acquisition becomes a reality.

Within the past few years, many States have instituted organizational and procedural revisions brought about by an increased awareness of management needs. Several have installed the Critical Path Method or other program control devices to assist in the coordination of resources, and the forecasting of long- and short-range cost and manpower requirements. In most States however, engineering operations will need to be accelerated to provide the means of going forward with an advance acquirement program. Finally, a new dimension in internal highway department coordination may need to be achieved in order to realize the maximum benefits of the kind of program here envisioned.

CONCLUSION

An advance acquisition program of reasonable size is most desirable. Care must be exercised that advance acquisition is not overdone; otherwise it can result in future embarrassment of the highway program. This must be steadfastly guarded against. If the concept of advance acquirement is applied with wisdom and restraint, it will generate considerable benefit and conserve valuable highway dollars. It is believed that such a proper balance could be achieved.