

Subject: Study 36.43 - Condemnation (Open Space Acquisition)

Attached are various background exhibits relevant to the acquisition of open space by eminent domain. We do not plan to discuss this supplement at the meeting, but you should find the material of interest.

Attached are:

- (1) Exhibit I (pink) - Staff Memo to the Assembly Committee on Local Government (contains good outline of problems and recommendations of staff of committee).
- (2) Exhibit II (yellow) - Opening Statement of Assemblyman Knox.
- (3) Exhibits III-VII (various colors) - Statements presented at hearing of Assembly Committee on Local Government.
- (4) Exhibit VIII (pink) - Legislative Counsel Opinion (also attached to basic memorandum)
- (5) Exhibit IX (yellow) - various versions of 1969 bill to allow condemnation for open space.

Since the 1969 hearing, legislation has been adopted that requires comprehensive planning for land uses, including open space requirements. You will note some of the testimony at the hearing pointed out the need for this and concluded that acquisition of open space should be in accord with such a plan and that any condemnation authority grant should be deferred until comprehensive planning was required.

You will also note that the 1969 bill took the approach of requiring voter approval before open space could be diverted to other uses and gave certain rights to the former owner. The Commission's staff recommends adoption of the substitute property requirement when open space is diverted to other uses. This conforms to the federal open space grant law and is consistent with the more recent thinking on the subject by the Advisory Commission on Intergovernmental Relations.

Respectfully submitted,

John H. DeMouilly  
Executive Secretary

Memo 70-6

EXHIBIT I

H R 470

(ACQUISITION OF OPEN SPACE LANDS THROUGH EMINENT DOMAIN)

Staff Memo to the Assembly Committee on Local Government

November 26, 1969

San Diego, California

The topic of this hearing is HR 470, which is a resolution asking for a study of the subject of AB 1365, a bill on open space lands and the use of eminent domain. As defined in the Government Code Section 6954, the preservation of open space land "would enhance the present or potential value of abutting or surrounding urban development, or would maintain or enhance the conservation of natural or scenic resources." The Joint Committee on Open Space Lands is presently studying proposals for a comprehensive state open space policy.

This hearing will only be concerned with the issues presented in AB 1365. AB 1365 proposes to use the power of eminent domain in the acquisition of open space lands. The Code of Civil Procedure authorizes cities and counties to use the power of eminent domain for many purposes. Among the specific purposes are the acquisition of land for public buildings, public utilities, highways, parks, drainage, sewerage, hydro-electric facilities, electrical power and slum clearance. For these purposes eminent domain can be used to acquire a fee -simple interest in the land or any lesser interest.

Of specific concern to the Committee today are those issues dealing with the proposal to extend to cities and counties the power of eminent domain for use in acquiring open space land. It is important that the discussion center on this proposal and its particular aspects without trying to bring in general comments on open space or on eminent domain. The questions to be answered are:

I. Should cities and counties have the power to acquire open space land through the use of eminent domain?

Existing law permits cities and counties to acquire the fee or any lesser interest in open space lands "by purchase, gift, grant, bequest, devise, lease, or otherwise." The use of eminent domain is not included in the "otherwise" part of the statute. According to the Legislative Counsel, "a city or county has no inherent power of eminent domain and can exercise the power only when authorized to do so by the Legislature." A few cities and counties have acquired what amounts to open space land by condemnation through the use of the park acquisition provisions. It is the Legislative Counsel's opinion that this acquisition would not be upheld if challenged in the courts, because the definition of a park implies improvements and maintenance for public use. This does not comply with the definition or intended use of open space lands. Open space lands are those areas of "great natural scenic beauty or whose existing openness, natural condition, or present state of use, if retained, would enhance the present or potential value of abutting or surrounding urban development, or would maintain or enhance the conservation of natural or scenic resources."

Two states presently permit acquisition of open space lands by condemnation. Connecticut's statutes are similar to California's with the addition of condemnation to the list of methods by which open space land can be acquired. Pennsylvania law differs greatly from other open space legislation. Land that is obtained in fee-simple by condemnation must be publicly offered for resale within two years of acquisition. The purchaser must take title subject to

the open space restrictions. This method benefits the government by utilizing a revolving fund for open space acquisition and it returns property at a reduced assessment to the tax rolls. The public benefits by being able to enjoy open space land. The new owner benefits by a lower tax assessment based on the binding open space restrictions.

As the Pennsylvania legislation shows, the acquisition of open space land involves three groups: the government, the public, and the landowner. Steps must be taken to protect the legitimate interests of all three and to allow no one group to take undue advantage of the others. The landowners need to have adequate warning and a full opportunity to make sure that their land is needed for open space purposes and that they will not have their land unjustly condemned. This protection can be maintained by requiring the local government to designate open space land which may be condemned in a master plan that is presented publicly and adopted formally by the legislative body. It could further be required that the legislative body hold hearings and vote on each proposed acquisition. This would allow all sides to make their presentations relating to the public need of the land.

To protect the interests of the public, AB 1365 proposed that the legislative body dedicate the land by ordinance for open space purposes. To abandon this open space dedication would require public hearings and a vote on a resolution of abandonment by the legislative body. Under certain circumstances, such as a large public protest, the question of abandonment could be put to a vote of the people. The difficulties of the abandonment procedure would soften

the pressure of developers wanting to develop open space land against the public interest.

The rationale for adding the power of eminent domain to the other methods of acquiring open space is that it gives cities and counties an alternative means of proceeding. While condemnation proceedings are cumbersome and often expensive, in certain situations it may be the only way to obtain important open space land. It is often suggested that local governments could accomplish the same end by strict zoning laws that would prevent development on open space lands. However, problems arise here because zoning restrictions provide no lasting assurance that open space will remain open. The Joint Committee on Open Space Land's preliminary report described the assessors' opinions of the permanence of zoning thusly:

In practice, assessors felt constrained to discount zoning in valuing land. They did so on the ground that zoning had no effect upon market value and therefore did not justify lower assessed valuation. The reason that zoning failed to have an effect on market value, according to the assessor, was that buyers knew that restrictions could be removed in one way or another when they, as landowners, desired to convert the use of the land.

Recommendation: Cities and counties should be able to use eminent domain along with the other methods for acquiring open space lands, subject to public hearings to adopt an open space general plan, and public hearings and formal votes for acquisition and abandonment. Consideration should also be given to the Pennsylvania idea of reselling open space land while retaining development rights.

II. Should the power to acquire less than fee interests by eminent domain be included?

The state under present law is permitted to acquire for scenic purposes the fee or any lesser interest, e.g. scenic easements, along highways by purchase, gift, condemnation, grant, or bequest. In California all open space land may be obtained in fee or any lesser interest by purchase, gift, grant, or bequest. In Pennsylvania, the government can condemn land for an easement, but the landowner has the right to force acquisition of the fee. On certain open space land the ownership of an easement that prevents development is just as effective as ownership in fee-simple and costs less. The experience of the Wisconsin Highway Commission shows that:

In rural areas where land is not yet ready for development, the cost of scenic easements is quite low as compared to the cost of fee-simple acquisition. This is particularly true when scenic easements are acquired over wetlands, flood plains, and areas where the scenic restrictions do not interfere with the continued use of the land for agricultural purposes and where development potential for other than agricultural uses is limited.

In his book, The Last Landscape, William Whyte describes the success of the fish and game people in Wisconsin:

They have secured easements on 200 miles of lake and river frontage and at a fraction of the fee-simple cost. For each dollar they get about three and a half feet of frontage with easements; only a half a foot with fee-simple. They have also covered some 9000 acres with wetland and hunting easements at an average cost of \$8.30 an acre. (Comparable fee-simple costs: \$26.00 an acre.)

Recommendation: Cities and counties should be allowed to acquire by eminent domain the fee or any lesser interest in open space land.

III. Should there be leasing restrictions on the power to acquire the fee or any lesser interest in open space land?

It is possible for a private individual to make use of open space land in ways that are compatible with the purposes of open space, such as: farming, grazing, wildlife refuge, and hunting. To provide local governments with a wider range of ways to obtain and use open space land at the least cost, the local government could be allowed to lease back land obtained by eminent domain for open space to be used in ways that are in accordance with open space purposes. The law presently allows cities and counties to lease back open space land that is obtained by purchase, gift, grant, bequest, devise, lease, or otherwise for use in ways that are "in accordance with the purposes" of open space.

Recommendation: Cities and counties should be allowed to lease back open space land acquired by condemnation for uses suitable to open space purposes.

IV. If abandoned, should the land be first offered to the previous owner at a specified price formula?

There are no provisions in existing condemnation law for land obtained by eminent domain then abandoned to be offered first to the previous owner. There are no provisions in open space law for land no longer necessary as open space to be offered first to the previous owner. The purposes of this proposal are based on the argument that since the land was taken from the owner against his will, he should be permitted to get it back if the government decides



to dispose of it. This proposal reduces the flexibility of cities and counties to make the best use of open space lands once that purpose is no longer necessary. The government may want to use it for another public purpose. A price formula further restricts cities and counties from the selling of the land at the best price by specifying a formula that supposedly predetermines a market value. There would also be high administrative costs for keeping track of the owner during the time the land is used as open space. There are also difficult problems of community property law, other forms of ownership, and the possibility of the owner dying that would have to be considered.

Recommendation: Cities and counties should not be restricted to offer abandoned open space land to the previous owner at a specified price.

It is the recommendation of the Local Government Committee staff that cities and counties should be allowed to use eminent domain to acquire the fee or any lesser interest in open space land with no restrictions on leasing such land for uses in accordance with open space purposes. Abandonment proceedings should be similar to park abandonment statutes with no advantages given to the previous owner and no price formula. Consideration should be given to the idea of offering for sale all open space land subject to the restrictions that would prevent development.

Memo 70-6  
EXHIBIT II  
ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT  
JOHN T. KNOX, CHAIRMAN

OPENING STATEMENT

November 26, 1969

This morning the members of the Local Government Committee are again pleased to be holding interim hearings in the City of San Diego. It is appropriate that we are meeting in the area which is not only one of the most beautiful in California, but has always led the state in the struggle to preserve a hospitable and aesthetic environment. The hearing today is of great importance to our host city. They sponsored the bill we are discussing on the subject of open space lands and the use of eminent domain. This bill would make possible the acquisition of open space land by condemnation, including some of those natural undeveloped canyons in San Diego.

Assembly Bill 1365 was introduced by Assemblyman Pete Wilson of San Diego in the last session. It was considered by this Committee, passed the Assembly, and was in the Senate Local Government Committee when the session ended. No bill permitting acquisition of open space lands by eminent domain has ever come this close to passage.

Assemblyman Wilson introduced the resolution asking for further study of the subject of his bill. The major subjects of his bill to be discussed today are (1) consideration of the use of the power of eminent domain to obtain open space lands, (2) inclusion of the power to acquire lesser interests such as scenic easements, (3) the advisability of requiring leasing restrictions on this publicly owned open space land, and (4) appropriate abandonment procedures.

It is important to remember while discussing these topics that the State of California has taken some important steps in the field of open space lands. The Joint Committee on Open Space Lands is working on various proposals for implementing open space policy. The Land Conservation Act and the Scenic Conservation Act are other examples of Legislative remedies to this problem.

Under our system of government, the final responsibility for preserving our open space environment resides in the cities and counties. Given the responsibility of home rule, our cities and counties need the tools to do the job. This is what we are considering today, giving cities and counties an additional tool to use to protect our open space lands.

Richard Brown  
Chairman CPO Policy Comm

STATEMENT OF THE SAN DIEGO COUNTY COMPREHENSIVE PLANNING ORGANIZATION ON  
ASSEMBLY BILL 1365 TO THE  
ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

As Chairman of the CPO Policy Committee, I am pleased to represent to this legislative committee the position of the Comprehensive Planning Organization on the proposed use of the power of eminent domain to acquire open space lands. I have reviewed the bill and the staff report and commend the authors of both. The bill provides for a highly desired step forward in the implementation of planning. It is a step long since overdue.

The committee staff who analyzed this bill have done an excellent job in articulating the need for and the means of acquiring open space by eminent domain, as well as pointing out effective and efficient use of open space lands and the most publicly beneficial methods of abandonment. In line with the committee's report I offer the following comments on our own local needs for the power of eminent domain, along with some constructive suggestions which I believe would enhance the power of government to acquire open space more cheaply, more effectively, and more fairly than if the bill were adopted in its present form.

In addition to serving as a metropolitan clearing house for grant applications, the Comprehensive Planning Organization is engaged in comprehensive regional planning. As a part of our planning program we have scheduled an Initial Open Space Study and Plan which will determine the most rational pattern and use of remaining open space lands. Our years of planning will most certainly be wasted if we do not have the tools with which to implement plans. The power of eminent domain is a necessary addition to the existing catalogue of implementation tools.

It is of great consequence that the issue of to whom this power is given be carefully considered.

The bill in its present form states "a city, or city and county" may acquire open space by

eminent domain. I believe there is need to clarify the meaning of "city and county."

Is it the intent of the bill in its present form that city and county be synonymous? If so, the only "city and county" granted the use of eminent domain for open space acquisition would be the City and County of San Francisco. In this form, the Comprehensive Planning Organization would oppose the bill.

If the meaning of "city and county" is such that a city and county in joint powers may utilize the power of eminent domain, the intent of the bill is in line with our thinking. Joint power use would necessarily be considerate of adopted local and regional plans and would provide for the implementation of plans which are in the best interest of the public.

Because we, in San Diego, are in the unique position of being a single-county region, we would not be opposed to the bill if it read in its final form, city or county. We would however, most strongly favor the term "city and county in joint power."

The committee's report highlights certain points which I would like to touch on now.

1. The committee states that the use of zoning to preserve open space is an undependable tool. We have seen from the rapid increase in land development in San Diego County that a more permanent alternative is needed to insure long term open space preservation.
2. I strongly concur with the staff's recommendation that cities and counties be allowed to acquire by eminent domain the fee or any lesser interest in open space land. While local governments should work toward the preservation of open space areas which will be of greatest benefit to the public, they should not be allowed to condemn any more land that is absolutely essential to their plans.

Acquisition of property in less than fee is often just as effective and certainly more economical than ownership in fee-simple. It considers both the public and the individual by providing open space without depriving an owner of all his wanted land.

3. The staff recommendation to allow leaseback of public open space land to a private individual to be used in ways that are compatible with open space purposes is an essential one. Without a leaseback power the use of eminent domain as an implementation tool lacks flexibility. Experience provides us with many examples of the fact that the cost to government of the acquisition of open space is but a fraction of the total costs of preservation and development. By leasing back lands to private individuals for suitable open space purposes, local government would be able to provide the public with more open space areas than if it had to assume the additional burden of development and maintenance.
4. The staff's fourth recommendation that cities and counties not be restricted to offer abandoned open space land to the previous owner at a specified price seems highly sensible. The recommendation is in keeping with the bill's intent to give city and county government a flexible tool for the acquisition of open space. At the same time the government is looking out for the interests of the public, it should have a free hand in dealing with land already acquired by eminent domain. Once a land owner has received an equitable price in full from the government he has no further claim to it. If he seeks such claim, this is a matter for the courts to decide. To tie public land to some future and

indefinite obligation to sell it to a former owner or his heirs would undoubtedly "cloud the title" and severely limit the government's future chance to get the highest and best use out of the land.

It is my belief that these recommendations concerned with the use of eminent domain are of great value not just to the city and county but to the public at large. I respectfully suggest that this bill be kept as simple and as clean as possible--giving the government the simplest and most flexible means for acquiring open space land and for holding it in public trust for all people.

RICHARD R. BROWN  
Policy Committee Chairman  
San Diego County Comprehensive Planning Organization

# LEAGUE OF CALIFORNIA CITIES

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Sacramento, Calif.  
November 24, 1969

TO: ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

FROM: Don Benninghoven, Assistant Director, League of California Cities

Gentlemen:

Unfortunately, it is not possible to appear before your committee on November 26, due to a previous commitment. We would at this time, however, like to indicate the support of the League for additional authority to acquire, through eminent domain proceedings, open space land needed for public purposes.

Certain lands which uniquely qualify because of their esthetic appeal or scarcity may only be permanently preserved for the general benefit of the public through actual purchase in fee. The public is just beginning to realize the importance of such parcels remaining in an undeveloped state, and consequently have sought a variety of ways to reduce the pressure for other uses.

One such means is the right of condemnation which has been cautiously used for park and recreation purposes to the advantage of us all. It is questionable whether or not "open space" can be condemned under this general authority. Development of park and recreational lands usually denotes an improved use of the land as differentiated from land remaining totally in its natural state.

A second consideration would be the opportunity to acquire, through eminent domain proceedings, an interest in the property less than full fee. Thus, this authority could be used to adequately compensate a land owner for restrictions on his land prohibiting development which would give a permanency to the public benefit of open space land in excess of what is now possible under zoning authority.

Two other slightly different approaches seem to have considerable merit. One would be the authority to acquire land at its market value and to resell such land as restricted by the governmental agency for open space purposes. In this way, the present owner would be able to obtain a full cash value for his property and the subsequent purchaser would buy the property with its limited value with the full knowledge that the land could only be used for farming or whatever restrictions were imposed on the land. This would seem to be equitable treatment, assuming of course that proper findings would be made of the public benefit accruing from the restrictions on the land.

Another possibility would be to purchase the land for open space purposes with the authority to lease back the property for agricultural purposes.



In all of the above alternatives, it would seem that limited finances plus the necessary eminent domain findings would adequately protect land owners from unnecessary or arbitrary use of condemnation authority. Additional assurance would be given in the statute by establishing certain guidelines which must be satisfied prior to condemning a property for open space purposes. This approach was taken in the Quimby Act (Section 11546, Business and Professions Code).

We would be happy to work with the committee and other interested groups in developing such guidelines if the committee feels it would be helpful.

In conclusion, the League strongly supports additional authority for local government to provide uniquely qualified open space, which, if not protected, would be lost forever.

EXHIBIT V  
STATEMENT BY SUPERVISOR JACK WALSH  
BEFORE THE ASSEMBLY COMMITTEE ON  
LOCAL GOVERNMENT, STATE BUILDING,  
ROOM B-109, 10:00 A.M.

NOVEMBER 25, 1969

YOU HAVE ASKED THAT TESTIMONY BE RESTRICTED TO THE QUESTION OF WHETHER CITIES AND COUNTIES SHOULD BE PERMITTED TO PRESERVE OR CREATE OPEN SPACE BY FULL OR PARTIAL CONDEMNATION. MAY I SUGGEST THAT THIS DECISION IS SIMPLY AN ANSWER TO THE MORE IMPORTANT QUESTION:

IS OPEN SPACE NECESSARY AND CAN IT BE SECURED WITHOUT CONDEMNATION?

WITH YOUR PERMISSION, I WILL DIRECT MY REMARKS TO THAT QUESTION BUT WILL AVOID THE IMPOSSIBLE TASK OF COVERING THE WHOLE SUBJECT OF OPEN SPACE IN THIS BRIEF TIME. I WILL ALSO VIEW OPEN SPACE NOT AS THE VAST AREAS OF DESERT, WILDERNESS OR FOREST WHICH OFTEN ENJOY THE SANCTUARY OF STATE OR NATIONAL PARK OR FOREST DESIGNATION, BUT AS THE BREATHING SPACES WITHIN OUR URBANIZED AREA AND ITS ACCESSIBLE ENVIRONS.

IN PREPARATION FOR YOUR HEARING I WROTE THREE DOZEN LOCAL COLLEGE PROFESSORS WHO ARE ECOLOGISTS, BIOLOGISTS, OCEANOGRAPHERS OR ARE FROM OTHER DISCIPLINES RELATED TO THE ENVIRONMENT. NOT UNEXPECTEDLY, THEY WERE UNANIMOUS IN THEIR SUPPORT OF THE ABSOLUTE NEED FOR OPEN SPACE - OR THE CONTROL OF VISUAL AND SOCIAL CONCENTRATIONS AS ONE EXPRESSED THE CONCEPT. OF PARTICULAR NOTE, HOWEVER, WAS THEIR SERIOUS CONCERN FOR THE CONSEQUENCES OF FAILING TO BE MORE SELECTIVE IN LOCATING OUR URBAN MACHINERY.

MANY OF THE WORLD'S LARGE CITIES, AND AMERICAN CITIES IN PARTICULAR, HAVE NOT SYSTEMATICALLY PLANNED FOR URBAN OPEN SPACE. RECENT

STUDIES BY COMMISSIONS ON VIOLENCE AND RIOTS CITE OVER-CROWDING, AND LACK OF SPACE TO BE ALONE OR AWAY FROM NOISY TENEMENTS, AS A CONTRIBUTING FACTOR TO SOCIAL DISRUPTIONS. MENTAL HEALTH PROGRAMS ARE ALSO EMPHASIZING THE NEED FOR INDIVIDUALS TO BE ABLE TO ASSOCIATE WITH AN IDENTIFIABLE "COMMUNITY" - ONE OF MANAGEABLE SIZE AND RECOGNIZABLE AS SUCH. HOW DO YOU FIND A COMMUNITY EXCEPT BY DEFINING IT WITH NATURAL TOPOGRAPHIC BOUNDARIES OR SOCIALLY CREATED "OPEN SPACE"?

THE CITY OF SAN DIEGO MASTER PLAN RECOGNIZES THIS HUMAN NEED FOR COMMUNITY IDENTIFICATION WHEN IT SUGGESTS WE BECOME OF A METROPOLITAN MATRIX OF CENTRALLY ORIENTED COMMUNITY NUCLEI. THEY AND THE COUNTY ARE TRANSLATING THESE CONCEPTS INTO REALITY THROUGH THE FORMATION OF CITIZEN AND PROFESSIONAL PLANNING ORGANIZATIONS THAT HAVE DRAWN LINES TO MARK OFF COMMUNITIES AND ARE DEVELOPING THEIR INDIVIDUAL IDENTITIES. THOUSANDS OF PEOPLE ARE OR HAVE BEEN PART OF OVER TWENTY SUCH EFFORTS SUPPORTED BY MORE THAN \$1 MILLION OF PROFESSIONAL STAFF SERVICES. WE HAVE ALSO PASSED THE "ACID TEST" BY REZONING LAND TO CONFORM TO THESE COMMUNITY PLANS, INCLUDING DOWN ZONING CONSIDERABLE AREAS TO CONTROL DENSITY. PRESERVING OPEN SPACE WILL BE AN ESSENTIAL TOOL IN THIS PROCESS.

THE ANCIENT CITIES OF GREECE, THE ROMANS, MAYAN AND AZTEC CULTURES AND COLONIAL SPANISH CITIES OF THE NEW WORLD INSTINCTIVELY RECOGNIZED THE ESSENTIAL ELEMENT OF LARGE OPEN SPACES WITHIN AND PART OF THEIR CITIES. WHERE DID WE GO WRONG?

IF YOU ESTABLISH THE NEED FOR OPEN SPACE THEN THE ONLY QUESTION TO BE ANSWERED IS WHETHER CONDEMNATION RIGHTS ARE ESSENTIAL. I WILL ANSWER THAT BY ASKING IF OUR STREET AND HIGHWAY NETWORK, SCHOOL AND PARK SYSTEM COULD HAVE BEEN DEVELOPED WITHOUT IT.

I URGE YOUR SUPPORT OF THE STAFF RECOMMENDATIONS AND WOULD ALSO LIKE TO INCLUDE IN YOUR RECORDS A RESOLUTION ADOPTED BY THE SAN DIEGO COUNTY BOARD OF SUPERVISORS IN SUPPORT OF THESE CONCEPTS.

No. 99

Re Urging State Legislature to }  
Enact Laws Granting Local }  
Jurisdictions Power of Eminent }  
Domain to Acquire Open Space }  
Lands . . . . . }

On Motion of Supervisor Boney, seconded by Supervisor Scheidle, the following resolution is adopted by the Board of Supervisors of the County of San Diego:

WHEREAS, the Board of Supervisors finds that the land area of this County is of a fixed quantity and the open space portions of this land area are rapidly being eliminated by rapid growth of urban and suburban development; and

WHEREAS, many such open areas possess scenic, aesthetic, recreational, social, and economic values, and there is an expressed citizen need and desire for the retention of such areas in their present open state; and

WHEREAS, the San Diego County Comprehensive Planning Organization expects to undertake an Initial Open Space Study and Plan (Job 5371) within its Comprehensive Planning Program to determine the most rational pattern of open space lands, and various other local jurisdictions within the State are expected to undertake similar plans; and

WHEREAS, such plans once adopted will be ineffectual without adequate tools for their implementation; and

WHEREAS, one of the most essential implementation tools for the acquisition of open space lands is the power of eminent domain; and

WHEREAS, legislation does not now exist within State law empowering local jurisdictions to condemn lands for open space purposes; NOW  
THEREFORE

BE IT RESOLVED THAT the Board of Supervisors of the County of San Diego urges the Legislature of the State of California to enact legislation or to amend existing appropriate legislation so as to enable counties and cities to exercise the power of eminent domain in the acquisition of the fee title or lesser interest in open space lands when acting to implement a duly adopted open space plan.

PASSED AND ADOPTED by the Board of Supervisors of the County of San Diego, State of California, this 27th day of October, 1969, by the following vote:

AYES: Supervisors Walsh, Boney, Scheidle, Austin, and Cozens  
NOES: Supervisors None  
ABSENT: Supervisors None

STATEMENT BY THE CALIFORNIA FARM BUREAU FEDERATION  
TO THE ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Presented by Donald Dressler, Legislative Assistant  
November 26, 1969  
San Diego, California

Mr. Chairman and members of the Committee, I would like to express appreciation on behalf of the California Farm Bureau Federation for this opportunity to appear before you. We are concerned about the problem of eminent domain as proposed in A.B. 1365 because many agricultural enterprises operate in and near cities, on open space lands.

We feel that the problem of using eminent domain for open space land should not be considered in isolation. As you are aware, the Joint Committee on Open Space Lands, chaired by Assemblyman Knox, will soon present a report to the California Legislature, and it is anticipated that legislation will be proposed as a result. Not knowing what recommendations will be made at that time, we cannot be sure how this proposal will match those proposals. At this time it would appear that the power of eminent domain should be considered as part of the total problem of open space. Because of uncertainty on our part as to what the Joint Committee will present, we feel that we cannot take definite positions on A.B. 1365. However, we do have some suggestions for your consideration.

The California Farm Bureau Federation opposes extension of the power of eminent domain. As you are aware, use of the power by a public entity poses real problems. There are the problems of shifting the burden of property tax to other property owners when land is taken off the tax base and the danger of taking land out of economic production. Also, there is the real danger of taking land which has an emotional value to the

property owner which no money can replace. However, we are aware that restrained use of the power may well be more appropriate than burdensome land use restrictions which will reduce land values with no accompanying compensation and which in effect may constitute condemnation. Restraint should be used in granting the power of eminent domain to open space lands to keep the exercise of the power at a minimum.

We feel there may be merit in the suggestion that the state should adopt a state open space policy, and stipulate open space guidelines for local governments. Additionally, local governments should be required to have an open space element in their general plan which coincides with the state guidelines. Local land use programs, including use of the power of eminent domain and zoning should be required to be in compliance with the general plan. We would also suggest that variances from the general plan not be allowed. Instead, the general plan would have to be amended to allow a use of land not compatible with the general plan in its original state. In line with this proposal, we suggest that the power of eminent domain for open space purposes be limited to purchases which are in furtherance of the general plan. Also, we favor the suggestion of the staff memoranda prepared for this hearing, that the local legislative body be required to hold hearings and also vote separately on each proposed acquisition.

We suggest that consideration be given to extending the power only to government entities which can demonstrate a need for the power. Cities tend to have the problem of dense population and may be pressed to purchase open space within their city limits for their needs. In no event should this power be used in the extension of city boundaries. That cities may need the power, however, does not necessarily support giving counties

the power. At this time, we counsel against extending the power to county governments, even if cities are granted the power.

We suggest particular attention be given to the problem of whether the power of eminent domain should be available to acquire a fee interest only or a lesser interest as well. Much can be said in favor of allowing lesser than fee interests to be acquired. Condemnation has undesirable aspects. Land is, as mentioned above, taken out of the tax base and often out of economic production. If less than fee interests can be taken, and still serve the open space needs of the community, these harsh effects may be lessened. It is quite possible to foresee that development rights of some type may be acquired from an agricultural land owner, not interfering with his economic activity and still keeping the land in an open state. Where farm operations are compatible with open space use, and the farmer wishes to continue operations, shouldn't he be able to?

There is a very real likelihood that open space lands, acquired by a city, may at some future date be abandoned by the city for that purpose. Since the landowner, at the time of acquisition was forced to sell, we feel that he should have an opportunity to reacquire the property on a fair basis.

We feel there is another problem of eminent domain which should be brought to your attention. When a public entity purchases land which, prior to the purchase, was part of local government tax bases at a time of year when the taxes have not yet been collected or computed, the entire amount of the property tax or a pro rata portion of the amount, is denied the local entity.



This, in many cases, results in a deficit condition in the funding of the a agency's budget. In many circumstances, the amount involved is so minor as to cause no concern to the agency. There are, however, occasional situations in which the amount of tax loss is sufficient to result in measurable curtailment of the agencies' activities. Some kind of in lieu payments should be considered to deal with this problem.

In conclusion, I would like to commend this Committee for their attention to the problem of open spaces. We are seriously concerned about the problem and hope we may be of help to you as you deal with it.

Thank you, Mr. Chairman and members of the Committee, for giving us this opportunity to present the thinking of the California Farm Bureau Federation.

Memo 70-6 EXHIBIT VII  
**CALIFORNIA CATTLEMEN'S ASSOCIATION**

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LIKELY



**STATEMENT  
OF THE CALIFORNIA CATTLEMEN'S ASSOCIATION  
BEFORE THE  
ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT  
INTERIM HEARING  
RELATING TO HR 470 - EXTENDING  
THE POWER OF EMINENT DOMAIN FOR ACQUIRING  
OPEN SPACE LANDS**

November 26, 1969  
San Diego, California

**TO: Members of the Assembly Committee on Local Government**

**SUBJECT: AB 1365 - Pate Wilson authorizing power of eminent domain for  
acquiring open space lands**

**Members of the Committee:**

The California Cattlemen's Association appreciates this opportunity to express its members' views to this Committee on the subject of extending the power of eminent domain for the purpose of acquiring open space land.

Our organization, representing some 3,500 producing cattlemen in California, is strongly opposed to this proposal embodied in AB 1365 for some very basic reasons.

First and foremost, the term "open space" is at best a very ambiguous term. Each one of you probably has a different interpretation of what open space means. In its broadest sense open space can mean any parcel of property which is not fully developed. Without some rather clear-cut definitions the language suggested in the original draft of this bill could subject every parcel of agricultural land in this state to immediate condemnation as open space land. While we recognize that practically this could not happen, the fact remains that under the

broad and undefined term of "open space" every farmer's or rancher's property could be subjected to a condemnation proceeding, at any time, and for as simple a reason as the fact that someone thought it should be preserved in perpetuity for its scenic value.

If the power of eminent domain is to be extended, it should be confined to specific, well-defined properties which are truly needed in the public interest, and where existing methods of land restriction or acquisition cannot be used. The proposed legislation does not fit either of these two conditions in our opinion. It uses the shotgun approach which could riddle agriculture and other property owners as well, and from what we understand of the impetus behind the bill, the problem could be solved under existing police powers.

We recognize that, due to a lack of vision and planning, many urban areas are in need of additional open space lands. We suggest that through existing police powers, such as zoning restrictions, a local governing body can preserve an area in more or less its present state and thereby keep any currently existing open space land in open space. Much argument always ensues as to just how much power a local governing body has in the area of zoning, but we suspect that if the zoning power is strong enough to force agricultural operations out of an area, as it has often been used to do, it must be strong enough to keep an open space area in open space. To the degree that the staff comments are correct, i.e. "that zoning restrictions provide no lasting assurance that open space will remain open," then appropriate action should be taken to either get a stronger zoning law or a stronger-willed local government. Expanding another police power is neither fair nor appropriate.

We submit further that the whole question of open space policy is currently being vigorously studied by a Joint Committee on Open Space Lands, chaired by

Chairman of this Committee, Assemblyman John Knox. The subject matter of AB 1365 should be referred to this Joint Committee rather than run the risk of arriving at a divergent approach to the problem.

As we noted in our statement to the Joint Committee on Open Space Lands, agricultural land use has already preserved most of the privately held open space land in California. Agriculture will continue to provide open space for the scenic enjoyment of thousands of people so long as tax laws and other overly restrictive regulations and assessments do not force them out of business. In short agriculture is the best friend of open space. But agriculture cannot survive with unrestricted eminent domain such as AB 1365 would provide for. Therefore, it appears to us that AB 1365 is against the best interests of those who desire to preserve the maximum amount of open space.

In conclusion we suggest that out of the studies of the Joint Committee on Open Space Lands will come some basic policy decisions and an open space program for the state. We hope that it will not contain a broad carte blanche authorization for acquiring open space lands, but that is where this decision should be made - not by a separate committee. Some of the suggestions outlined by this Committee staff may well be incorporated in the proposals which will eventually come out of the Joint Open Space studies.

We urge that this Committee take no action on the subject matter of AB 1365 but rather refer it, and the work which the staff has done in this area, to the Joint Committee on Open Space Lands.

In answer to the specific questions posed by the Committee staff:

(1) We are opposed, at this time, to extending to cities and counties the power of eminent domain to acquire open space lands.

(2) We are opposed, at this time, to granting cities and counties power to acquire less than fee interests in open space lands by eminent domain. This has some possibilities on a parcel-by-parcel basis, provided the landowner is adequately compensated for the interest taken and the assessed value of the land reflects the restricted use.

(3) We agree that if open space land is acquired through eminent domain or otherwise, the governing body should be allowed to lease back for uses compatible with retaining the land as open space.

(4) If open space lands are acquired through condemnation and are later found not to be needed for this purpose, the original owner should have the first right to purchase them back at a specified price formula.

Thank you for the invitation to present testimony at this hearing.

Sincerely,

*Wm. B. Staiger*

William B. Staiger, Secretary  
California Cattlemen's Association

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OWEN K. KUNS  
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Memo 70-6

EXHIBIT VIII

# Legislative Counsel of California

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Sacramento, California  
October 24, 1969

Honorable John T. Knox  
2114 State Capitol

Eminent Domain - #17885

Dear Mr. Knox:

## QUESTION

May a city or county acquire open space lands under the authority to acquire property by eminent domain for use as public parks?

We have assumed, for the purposes of this opinion, that by "open space" lands you mean lands having the characteristics set forth in Section 6954 of the Government Code.\*

## OPINION

In our opinion a city or county may not acquire open space lands under the authority to acquire property by eminent domain for use as public parks.

\* Section 6954 of the Government Code reads as follows:

"6954. For the purposes of this chapter an 'open space' or 'open area' is any space or area characterized by (1) great natural scenic beauty or (2) whose existing openness, natural condition, or present state of use, if retained, would enhance the present or potential value of abutting or surrounding urban development, or would maintain or enhance the conservation of natural or scenic resources."

ANALYSIS

The California Supreme Court, in the case of People v. Superior Court of San Bernardino County (10 Cal. 2d 288, 295) stated:

"It is a well established legal principle that although the power of eminent domain is inherent in sovereignty, nevertheless neither the state itself nor any subsidiary thereof may lawfully exercise such right in the absence of precedent legislative authority so to do."

A city or county has no inherent power of eminent domain and can exercise the power only when authorized to do so by the Legislature (City & County of San Francisco v. Ross, 44 Cal. 2d 52, 55).

The Code of Civil Procedure lists specific public uses for which the power of eminent domain may be exercised (Secs. 1238-1239.4, C.C.P.). Subdivision (3) of Section 1238, Code of Civil Procedure, authorizes the condemnation of property for use as, among other things, "public parks." A "park" has been defined as "a piece of ground set apart and maintained for public use, and laid out in such a way as to afford pleasure to the eye as well as opportunity for open air recreation" \*\* (County of Los Angeles v. Dodge, 51 Cal. App. 492, 506).

In 1959, the Legislature enacted Chapter 12 (commencing with Sec. 6950) of Division 7 of Title 1 of the Government Code, which specifically authorizes cities and counties to acquire "the fee or any lesser interest or right in real property in order to preserve ... open spaces and areas for public use and enjoyment" (Sec. 6950, Gov. C.). Section 6954 (which is in Chapter 12),

set forth in full in a footnote on page 1 of this opinion, defines "open space" or "open areas" for purposes of the chapter. No provision of that chapter authorizes, either directly or by necessary implication, the acquisition of "open space" by means of eminent domain.

We think that a reasonable comparison of the definitions of "park" and "open space" set forth above

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\*\* Emphasis added.

Honorable John T. Knox - p. 3 - #17885

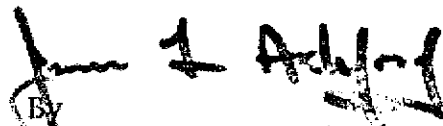
indicates that the two are not identical concepts of land use. It is well settled that statutes authorizing the exercise of the power of eminent domain must be strictly construed (Central Pacific Ry. Co. v. Feldman, 152 Cal. 303, 306).

Therefore, we conclude that the authorization in Section 1238, Code of Civil Procedure, to acquire property for use as public parks cannot be interpreted to allow condemnation for "open space." If the Legislature had intended to extend the power of eminent domain to allow acquisition for "open space" purposes, it would have been an easy matter to so provide when specific provisions defining and authorizing acquisition of "open space" lands were enacted (see Chapter 12 (commencing with Section 6950), Division 7, Title 1, Government Code).

We conclude, therefore, that a city or county may not acquire open space lands under the authority to acquire property by eminent domain for use as public parks.

Very truly yours,

George H. Murphy  
Legislative Counsel

A handwritten signature in dark ink, appearing to read "James L. Ashford", is written over the typed name and title.

By  
James L. Ashford  
Deputy Legislative Counsel

JLA:cs



Memo 70-6

**EXHIBIT IX**

AMENDED IN SENATE AUGUST 1, 1969

AMENDED IN ASSEMBLY JULY 16, 1969

AMENDED IN ASSEMBLY JUNE 30, 1969

AMENDED IN ASSEMBLY JUNE 10, 1969

AMENDED IN ASSEMBLY MAY 28, 1969

AMENDED IN ASSEMBLY MAY 20, 1969

CALIFORNIA LEGISLATURE—1969 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1365**

Introduced by Assemblymen Wilson, Knox, and McCarthy

March 28, 1969

REFERRED TO COMMITTEE ON LOCAL GOVERNMENT

*An act to add Section 1239.5 to the Code of Civil Procedure,  
relating to open-space lands.*

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

- 1 SECTION 1. Section 1239.5 is added to the Code of Civil
- 2 procedure, to read:
- 3 1239.5. In order to insure sound and proper urban and
- 4 metropolitan development, a city, or city and county, may
- 5 expend public funds to acquire by eminent domain, the fee or
- 6 any lesser interest in real property within such city, or city
- 7 and county, for the purpose of conserving open-space areas.
- 8 Whenever a city, or city and county, acquires by eminent
- 9 domain the fee or any lesser interest in real property for the
- 10 purpose of conserving open-space areas, the legislative body
- 11 of that city, or city and county, shall, by ordinance, dedicate

**LEGISLATIVE COUNSEL'S DIGEST**

AB 1365, as amended, Wilson (L.Gov.). Open-space lands.

Adds, Sec. 1239.5, C.C.P.

Specifically permits a city or city and county to expend public funds to acquire interests and rights the fee interest in real property within the city or city and county for preservation of open spaces for public use and or enjoyment by eminent domain.

Requires real property acquired by eminent domain by a city or city and county for open spaces and areas to be dedicated, by ordinance of the city legislative body, to the preservation of open spaces and areas for public use and or enjoyment. Declares that such ordinance may not

1 such property to the conservation of open-space areas, as de-  
 2 fined in Section 6554 of the Government Code, for the public  
 3 use and enjoyment. Such ordinance shall not be repealed,  
 4 unless a majority of the qualified electors of that city, or city  
 5 and county, voting on the proposition at a citywide election  
 6 vote in favor of such repeal. In the event of such repeal, the  
 7 property so acquired and dedicated, shall, if it is to be sold  
 8 within a period of 10 years after the acquisition thereof, be  
 9 offered first to the owner from whom it was acquired or his  
 10 heirs or devisees at a price equal to the amount paid following  
 11 amount:

12 (a) The original price paid by the city or city and county.

13 (b) Plus the taxes which would have been paid on the prop-  
 14 erty if it had been retained in private ownership.

15 (c) Plus reasonable interest on the original purchase price,  
 16 as determined by the legislative body of the city or city and  
 17 county.

18 For purposes of subdivision (b), the county assessor shall  
 19 assess the property as of the date it is determined to sell such  
 20 property at its full cash value, and such value shall be adjusted  
 21 by the ratio prescribed by Section 401 of the Revenue and  
 22 Taxation Code. For each fiscal year that the property was  
 23 owned by a city or city and county, the value of such property  
 24 shall be increased or decreased in the same proportion that the  
 25 average assessed value of all taxable property within the city  
 26 or city and county increased or decreased in each such year.  
 27 The total tax rate in effect in the tax code area in which the  
 28 property is located for all taxing agencies and revenue dis-  
 29 tricts for each such year shall be applied to determine the total  
 30 tax due and owing.

31 At the expiration of ten years following acquisition of prop-  
 32 erty by a city or city and county pursuant to this section, the  
 33 owner from whom it was acquired or his heirs or devisees shall  
 34 have the right of first refusal to purchase the property at its  
 35 market value, as determined by the county assessor.

36 Real property acquired pursuant to this section, while owned  
 37 by a city or city and county, shall not be rented or leased to  
 38 any private person or entity.

39 such owner at the time of acquisition. Real property acquired  
 40 pursuant to this section shall not be rented or leased to any  
 41 private person or entity.

be repealed except by two-thirds or greater a majority vote of the quali-  
 fied voters of the city or city and county voting thereon.

Provides that if ordinance is repealed, property acquired by eminent  
 domain and so dedicated must, if sold, be first offered to owner from  
 whom acquired, his heirs or devisees, at a specified amount equal to con-  
 demnation award.

Prohibits lease or rental of such real property to private person or  
 entity while owned by a city or city and county.

Vote—Majority; Appropriation—No; Sen. Fin.—No; W. & M.—No.

AMENDED IN ASSEMBLY JULY 16, 1969  
AMENDED IN ASSEMBLY JUNE 30, 1969  
AMENDED IN ASSEMBLY JUNE 10, 1969  
AMENDED IN ASSEMBLY MAY 28, 1969  
AMENDED IN ASSEMBLY MAY 20, 1969

CALIFORNIA LEGISLATURE--1969 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1365**

Introduced by ~~Assemblyman Wilson~~ Assemblymen Wilson,  
Knox, and McCarthy

March 28, 1969

REFERRED TO COMMITTEE ON LOCAL GOVERNMENT

*An act to add Sections 6050.1, 6052.1 and 6053.1 to the Government Code* SECTION 1239.5 TO THE CODE OF CIVIL PROCEDURE, relating to open-space lands.

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

- 1 SECTION 1. Section 1239.5 is added to the Code of Civil
- 2 Procedure, to read:
- 3 1239.5. In order to insure sound and proper urban and
- 4 metropolitan development, a city, or city and county, may
- 5 expend public funds to acquire by eminent domain the fee or
- 6 any lesser interest in real property within such city, or city
- 7 and county, for the purpose of conserving open-space areas.
- 8 Whenever a city, or city and county, acquires by eminent
- 9 domain the fee or any lesser interest in real property for the

LEGISLATIVE COUNSEL'S DIGEST

AB 1365, as amended, Wilson (L.Gov.). Open-space lands.

Adds Secs. 6050.1, 6052.1 and 6053.1, Gov.C., Sec. 1239.5, C.C.P.

Specifically permits a city to expend public funds to acquire interests and rights in real property within the city for preservation of open spaces for public use and enjoyment by eminent domain; as well as by purchase, gift, grant, bequest, devise, lease or otherwise.

Requires real property acquired by eminent domain by a city for open spaces and areas to be dedicated, by ordinance of the city legisla-

1 purpose of conserving open-space areas, the legislative body  
 2 of that city, or city and county, shall, by ordinance, dedicate  
 3 such property to the conservation of open-space areas for the  
 4 public use and enjoyment. Such ordinance shall not be re-  
 5 pealed, unless a majority of the qualified electors of that city,  
 6 or city and county, voting on the proposition at a citywide  
 7 election vote in favor of such repeal. In the event of such  
 8 repeal, the property so acquired and dedicated, shall, if it is to  
 9 be sold, be offered first to the owner from whom it was acquired  
 10 or his heirs or devisees at a price equal to the amount paid  
 11 such owner at the time of acquisition. Real property acquired  
 12 pursuant to this section shall not be rented or leased to any  
 13 private person or entity.

14 **Section 1.** Section 6050.1 is added to the Government  
 15 Code, to read:

16 6050.1. It is the further intent of the Legislature in enact-  
 17 ing this chapter to provide a means whereby any city may  
 18 acquire by eminent domain, and through the expenditure of  
 19 public funds, the fee or any lesser interest or right in real  
 20 property within such city in order to preserve through limita-  
 21 tion of their future use, open space and areas for public use  
 22 and enjoyment.

23 **Sec. 2.** Section 6052.1 is added to the Government Code,  
 24 to read:

25 6052.1. The Legislature further declares that it is neces-  
 26 sary for sound and proper urban and metropolitan develop-  
 27 ment, and in the public interest of the people of this state for  
 28 any city to expend or advance public funds for, or to acquire  
 29 by eminent domain the fee or any lesser interest or right in  
 30 real property within such city to acquire, maintain, improve,  
 31 protect, limit the future use of or otherwise conserve open  
 32 spaces and areas within their respective jurisdictions.

33 Whenever a city acquires by eminent domain any interest  
 34 in real property in order to preserve open spaces and areas  
 35 for public use and enjoyment, the legislative body of the city  
 36 shall, by ordinance, dedicate such real property to the preser-  
 37 vation of open spaces and areas for public use and enjoyment.  
 38 Such ordinance shall not be repealed without the assent of  
 39 two-thirds of the qualified electors thereof voting at the next

tive body, to the preservation of open spaces and areas for public use  
 and enjoyment. Declares that such ordinance may not be repealed  
 except by two-thirds or greater vote of the qualified voters of the city  
 voting thereon.

Provides that if ordinance is repealed, property acquired by eminent  
 domain within last 10 years and so dedicated must, if sold, be first  
 offered to owner from whom acquired, his heirs or devisees, at amount  
 equal to condemnation award.

Prohibits lease or rental of such real property to private person or  
 entity.

Vote—Majority; Appropriation—No; Sen. Fin.—No; W. & M.—No.

1 citywide election. In the event of such repeal, any property  
2 acquired and so dedicated by the city, through the use of emi-  
3 nent domain shall, if sold, be first offered to the owner from  
4 whom it was acquired or his heirs or devisees at a price equal  
5 to the award of condemnation paid the owner at the time of  
6 acquisition. No real property acquired by eminent domain  
7 pursuant to this section shall ever be leased or rented to any  
8 private person or private entity of whatever character.

9 Sec. 3. Section 6053.1 is added to the Government Code,  
10 to read:

11 6053.1. The Legislature further declares that the acqui-  
12 sition of interests or rights in real property for the preservation  
13 of open spaces and areas constitutes a public purpose for  
14 which public funds may be expended or advanced, and that  
15 any city may acquire, by eminent domain, the fee or any lesser  
16 interest, development, right, easement, covenant or other con-  
17 tractual right necessary to achieve the purposes of this chapter.  
18 Any city may also acquire, by eminent domain, the fee to any  
19 property within such city for the purpose of conveying or leas-  
20 ing said property back to its original owner or other person  
21 under such covenants or other contractual arrangements as  
22 will limit the future use of the property in accordance with  
23 the purposes of this chapter.

AMENDED IN ASSEMBLY JUNE 30, 1969

AMENDED IN ASSEMBLY JUNE 10, 1969

AMENDED IN ASSEMBLY MAY 28, 1969

AMENDED IN ASSEMBLY MAY 20, 1969

CALIFORNIA LEGISLATURE—1969 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1365**

Introduced by Assemblyman Wilson

March 28, 1969

REFERRED TO COMMITTEE ON LOCAL GOVERNMENT

*An act to amend Sections 6950, 6952, and 6953 of, and to add Section 6952.1 to, AN ACT TO ADD SECTIONS 6950.1, 6952.1 AND 6953.1 TO the Government Code, relating to open-space lands.*

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

- 1 SECTION 1. Section 6950 of the Government Code is
- 2 SECTION 1. Section 6950.1 is added to the Government
- 3 Code, to read:
- 4 6950.1. It is the further intent of the Legislature in enact-
- 5 ing this chapter to provide a means whereby any city may
- 6 acquire by eminent domain, and through the expenditure of
- 7 public funds, the fee or any lesser interest or right in real
- 8 property within such city in order to preserve through limita-
- 9 tion of their future use, open spaces and areas for public use
- 10 and enjoyment.

**LEGISLATIVE COUNSEL'S DIGEST**

AB 1365, as amended, Wilson (L.Gov.). Open-space lands.

Adds Secs. 6950.1, Amends Secs. 6950, 6952, and 6953, and adds Sec. 6952.1 and 6953.1, Gov.C.

Specifically permits a county or city to acquire interests and rights in real property within the county or city for preservation of open spaces for public use and enjoyment by eminent domain, as well as by purchase, gift, grant, bequest, devise, lease or otherwise.

Requires real property acquired by eminent domain by a county or city for open spaces and areas to be dedicated, by ordinance of county

1 SEC. 2. Section 6952.1. is added to the Government Code,  
2 to read:

3 6952.1. The Legislature further declares that it is neces-  
4 sary for sound and proper urban and metropolitan develop-  
5 ment, and in the public interest of the people of this state for  
6 any city to expend or advance public funds for, or to acquire  
7 by eminent domain the fee or any lesser interest or right in  
8 real property within such city to acquire, maintain, improve,  
9 protect, limit the future use of or otherwise conserve open  
10 spaces and areas within their respective jurisdictions.

11 Whenever a city acquires by eminent domain any interest  
12 in real property in order to preserve open spaces and areas  
13 for public use and enjoyment, the legislative body of the city  
14 shall, by ordinance, dedicate such real property to the preser-  
15 vation of open spaces and areas for public use and enjoyment.  
16 Such ordinance shall not be repealed without the assent of  
17 two-thirds of the qualified electors thereof voting at the next  
18 citywide election. In the event of such repeal, any property  
19 acquired and so dedicated by the city, through the use of emi-  
20 nent domain shall, if sold, be first offered to the owner from  
21 whom it was acquired or his heirs or devisees at a price equal  
22 to the award of condemnation paid the owner at the time of  
23 acquisition. No real property acquired by eminent domain  
24 pursuant to this section shall ever be leased or rented to any  
25 private person or private entity of whatever character.

26 SEC. 3. Section 6953.1 is added to the Government Code,  
27 to read:

28 6953.1. The Legislature further declares that the acquisi-  
29 tion of interests or rights in real property for the preservation  
30 of open spaces and areas constitutes a public purpose for  
31 which public funds may be expended or advanced, and that  
32 any city may acquire, by eminent domain, the fee or any lesser  
33 interest, development right, easement, covenant or other con-  
34 tractual right necessary to achieve the purposes of this chapter.  
35 Any city may also acquire, by eminent domain, the fee to any  
36 property within such city for the purpose of conveying or leas-  
37 ing said property back to its original owner or other person  
38 under such covenants or other contractual arrangements as

or the city legislative body, to the preservation of open spaces and areas for public use and enjoyment. Declares that such ordinance may not be repealed except by two-thirds or greater vote of the qualified voters of the county or city voting thereon.

Provides that if ordinance is repealed, property acquired by eminent domain within last 10 years and so dedicated must, if sold, be first offered to owner from whom acquired, his heirs or devisees, at amount equal to condemnation award.

Prohibits lease or rental of such real property to private person or entity.

Vote—Majority; Appropriation—No; Sen. Fin.—No; W. & M.—No.

1 will limit the future use of the property in accordance with  
2 the purposes of this chapter.

3 amended to read:

4 6050. It is the intent of the legislature in enacting this  
5 chapter to provide a means whereby any county or city may  
6 acquire, by purchase, eminent domain, gift, grant, bequest, de-  
7 vice, lease or otherwise, and through the expenditure of public  
8 funds, the fee or any lesser interest or right in real property  
9 within such county or city in order to preserve, through limi-  
10 tation of their future use, open spaces and areas for public use  
11 and enjoyment.

12 Sec. 2. Section 6052 of the Government Code is amended  
13 to read:

14 6052. The legislature hereby declares that it is necessary  
15 for sound and proper urban and metropolitan development,  
16 and in the public interest of the people of this state for any  
17 county or city to expend or advance public funds for, or to ac-  
18 quire by purchase, eminent domain, gift, grant, bequest, devise,  
19 lease or otherwise, the fee or any lesser interest or right in real  
20 property within such county or city to acquire, maintain, im-  
21 prove, protect, limit the future use of or otherwise conserve  
22 open spaces and areas within their respective jurisdictions.

23 Sec. 3. Section 6052.1 is added to the Government Code,  
24 to read:

25 6052.1. Whenever a county or city acquires by eminent  
26 domain any interest in real property in order to preserve  
27 open spaces and areas for public use and enjoyment, the leg-  
28 islative body of the county or city shall, by ordinance, dedicate  
29 such real property to the preservation of open spaces and  
30 areas for public use and enjoyment. Such ordinance shall  
31 not be repealed without the assent of two-thirds of the quali-  
32 fied electors thereof voting at the next countywide election,  
33 with respect to county ordinance, or citywide election, with  
34 regard to city ordinance. In the event of such repeal, any  
35 property acquired and so dedicated by the county or city,  
36 through the use of eminent domain shall, if sold, be first of-  
37 fered to the owner from whom it was acquired or his heirs or  
38 devisees at a price equal to the award of condemnation paid  
39 the owner at the time of acquisition. No real property acquired  
40 by eminent domain pursuant to this section shall ever be leased  
41 or rented to any private person or private entity of whatever  
42 character.

43 Sec. 4. Section 6053 of the Government Code is amended  
44 to read:

45 6053. The legislature further declares that the acquisition  
46 of interests or rights in real property for the preservation of  
47 open spaces and areas constitutes a public purpose for which  
48 public funds may be expended or advanced, and that any  
49 county or city may acquire, by purchase, eminent domain, gift,



1 grant, bequest, devise, lease or otherwise, the fee or any lesser  
2 interest, development right, easement, covenant or other con-  
3 tractual right necessary to achieve the purposes of this chapter.  
4 Any county or city may also acquire the fee to any property  
5 within such county or city for the purpose of conveying or  
6 leasing said property back to its original owner or other person  
7 under such covenants or other contractual arrangements as  
8 will limit the future use of the property in accordance with  
9 the purposes of this chapter.

AMENDED IN ASSEMBLY JUNE 10, 1969

AMENDED IN ASSEMBLY MAY 28, 1969

AMENDED IN ASSEMBLY MAY 20, 1969

CALIFORNIA LEGISLATURE--1969 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1365**

Introduced by Assemblyman Wilson

March 28, 1969

REFERRED TO COMMITTEE ON LOCAL GOVERNMENT

*An act to amend Sections 6950, 6952, and 6953 of, and to add Section 6952.1 to, the Government Code, relating to open space lands.*

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

- 1 SECTION 1. Section 6950 of the Government Code is
- 2 amended to read:
- 3 6950. It is the intent of the Legislature in enacting this
- 4 chapter to provide a means whereby any *county or city* may
- 5 acquire, by purchase, eminent domain, gift, grant, bequest, de-
- 6 vise, lease or otherwise, and through the expenditure of public
- 7 funds, the fee or any lesser interest or right in real property
- 8 within such *county or city* in order to preserve, through limi-
- 9 tation of their future use, open spaces and areas for public use
- 10 and enjoyment.

**LEGISLATIVE COUNSEL'S DIGEST**

AB 1365, as amended, Wilson (L.Gov.). Open space lands.

Amends Secs. 6950, 6952, and 6953, and adds Sec. 6952.1, Gov.C.

Specifically permits a *county or city* to acquire interests and rights in real property within the *county or city* for preservation of open spaces for public use and enjoyment by eminent domain, as well as by purchase, gift, grant, bequest, devise, lease or otherwise.

Requires real property acquired by *eminent domain* by a *county or city* for open spaces and areas to be dedicated, by ordinance of *county or city* legislative body, to the preservation of open spaces and areas for

1 SEC. 2. Section 6952 of the Government Code is amended  
2 to read:

3 6952. The Legislature hereby declares that it is necessary  
4 for sound and proper urban and metropolitan development,  
5 and in the public interest of the people of this state for any  
6 *county or city* to expend or advance public funds for, or to ac-  
7 cept by, purchase, eminent domain, gift, grant, bequest, devise,  
8 lease or otherwise, the fee or any lesser interest or right in real  
9 property within such *county or city* to acquire, maintain, im-  
10 prove, protect, limit the future use of or otherwise conserve  
11 open spaces and areas within their respective jurisdictions.

12 SEC. 3. Section 6952.1 is added to the Government Code,  
13 to read:

14 6952.1. Whenever a ~~city~~ *acquires county or city acquires*  
15 *by eminent domain* any interest in real property in order to  
16 preserve open spaces and areas for public use and enjoyment,  
17 the legislative body of the *county or city* shall, by ordinance,  
18 dedicate such real property to the preservation of open spaces  
19 and areas for public use and enjoyment. Such ordinance shall  
20 not be repealed without the assent of two-thirds of the qualified  
21 electors thereof voting at the next *countywide election, with*  
22 *respect to county ordinances, or citywide election, with regard*  
23 *to city ordinances*. In the event of such repeal, any property  
24 acquired and so dedicated by the *county or city*, through the  
25 use of eminent domain shall, if sold, be first offered to the  
26 owner from whom it was acquired or his heirs or devisees at  
27 a price equal to the award of condemnation paid the owner at  
28 the time of acquisition. No real property ~~dedicated~~ *acquired*  
29 *by eminent domain* pursuant to this section shall ever be leased  
30 or rented to any private person or private entity of whatever  
31 character.

32 SEC. 4. Section 6953 of the Government Code is amended  
33 to read:

34 6953. The Legislature further declares that the acquisition  
35 of interests or rights in real property for the preservation of  
36 open spaces and areas constitutes a public purpose for which  
37 public funds may be expended or advanced, and that any  
38 *county or city* may acquire, by purchase, eminent domain, gift,  
39 grant, bequest, devise, lease or otherwise, the fee or any lesser  
40 interest, development right, easement, covenant or other con-

public use and enjoyment. Declares that such ordinance may not be re-  
pealed except by two-thirds or greater vote of the qualified voters of  
the *county or city* voting thereon.

Provides that if ordinance is repealed, property acquired by eminent  
domain within last 10 years and so dedicated must, if sold, be first  
ffered to owner from whom acquired, his heirs or devisees, at amount  
qual to condemnation award.

Prohibits lease or rental of such real property to private person or  
ntity.

Vote—Majority; Appropriation—No; Sen. Fin.—No; W. & M.—No.

1 tractual right necessary to achieve the purposes of this chapter.  
2 Any *county or city* may also acquire the fee to any property  
3 within such *county or city* for the purpose of conveying or  
4 leasing said property back to its original owner or other person  
5 under such covenants or other contractual arrangements as will  
6 limit the future use of the property in accordance with the  
7 purposes of this chapter.

AMENDED IN ASSEMBLY MAY 28, 1969

AMENDED IN ASSEMBLY MAY 20, 1969

CALIFORNIA LEGISLATURE—1969 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1365**

**Introduced by Assemblyman Wilson**

March 28, 1969

REFERRED TO COMMITTEE ON LOCAL GOVERNMENT

*An act to amend Sections 6950, 6952, and 6953 of, and to add Section 6952.1 to, the Government Code, relating to open space lands.*

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

- 1 SECTION 1. Section 6950 of the Government Code is
- 2 amended to read:
- 3 6950. It is the intent of the Legislature in enacting this
- 4 chapter to provide a means whereby any city may acquire, by
- 5 purchase, eminent domain, gift, grant, bequest, devise, lease or
- 6 otherwise, and through the expenditure of public funds, the

**LEGISLATIVE COUNSEL'S DIGEST**

AB 1365, as amended, Wilson (L.Gov.). Open space lands.

Amends Secs. 6950, 6952, and 6953, and adds Sec. 6952.1, Gov.C.

Specifically permits a city to acquire interests and rights in real property within the city for preservation of open spaces for public use and enjoyment by eminent domain, as well as by purchase, gift, grant, bequest, devise, lease or otherwise.

Requires real property acquired by a city for open spaces and areas to be dedicated, by ordinance of city legislative body, to the preservation of open spaces and areas for public use and enjoyment. Declares that such ordinance may not be repealed except by two-thirds or greater vote of the qualified voters of the city voting thereon.

Provides that if ordinance is repealed, property acquired by eminent domain within last 10 years and so dedicated must, if sold, be first offered to owner from whom acquired, his heirs or devisees, at amount equal to condemnation award.

Prohibits lease or rental of such real property to private person or entity.

Vote—Majority; Appropriation—No; Sen. Fin.—No; W. & M.—No.

1 fee or any lesser interest or right in real property within such  
2 city in order to preserve, through limitation of their future  
3 use, open spaces and areas for public use and enjoyment.

4 SEC. 2. Section 6952 of the Government Code is amended  
5 to read:

6 6952. The Legislature hereby declares that it is necessary  
7 for sound and proper urban and metropolitan development,  
8 and in the public interest of the people of this state for any  
9 city to expend or advance public funds for, or to accept by,  
10 purchase, eminent domain, gift, grant, bequest, devise, lease  
11 or otherwise, the fee or any lesser interest or right in real  
12 property within such city to acquire, maintain, improve, pro-  
13 tect, limit the future use of or otherwise conserve open spaces  
14 and areas within their respective jurisdictions.

15 SEC. 3. Section 6952.1 is added to the Government Code,  
16 to read:

17 6952.1. Whenever a city acquires any interest in real prop-  
18 erty in order to preserve open spaces and areas for public use  
19 and enjoyment, the legislative body of the city shall, by ordi-  
20 nance, dedicate such real property to the preservation of open  
21 spaces and areas for public use and enjoyment. Such ordinance  
22 ~~shall not be repealed except by a two-thirds or greater vote~~  
23 ~~of the qualified voters of the city. shall not be repealed without~~  
24 ~~the assent of two-thirds of the qualified electors thereof voting~~  
25 ~~at the next citywide election. In the event of such repeal, any~~  
26 ~~property acquired and so dedicated by the city, through the use~~  
27 ~~of eminent domain shall, if sold, be first offered to the owner~~  
28 ~~from whom it was acquired or his heirs or devisees at a price~~  
29 ~~equal to the award of condemnation paid the owner at the~~  
30 ~~time of acquisition. No real property dedicated pursuant to~~  
31 ~~this section shall ever be leased or rented to any private person~~  
32 ~~or private entity of whatever character.~~

33 SEC. 4. Section 6953 of the Government Code is amended  
34 to read:

35 6953. The Legislature further declares that the acquisition  
36 of interests or rights in real property for the preservation of  
37 open spaces and areas constitutes a public purpose for which  
38 public funds may be expended or advanced, and that any  
39 city may acquire, by purchase, eminent domain, gift, grant,  
40 bequest, devise, lease or otherwise, the fee or any lesser inter-  
41 est, development right, easement, covenant or other contractual  
42 right necessary to achieve the purposes of this chapter. Any  
43 city may also acquire the fee to any property within such city  
44 for the purpose of conveying or leasing said property back to  
45 its original owner or other person under such covenants or  
46 other contractual arrangements as will limit the future use of  
47 the property in accordance with the purposes of this chapter.

AMENDED IN ASSEMBLY MAY 20, 1969  
CALIFORNIA LEGISLATURE—1969 REGULAR SESSION  
**ASSEMBLY BILL** **No. 1365**

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Introduced by Assemblyman Wilson

March 28, 1969

REFERRED TO COMMITTEE ON LOCAL GOVERNMENT

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*An act to amend Sections 6950, 6952, and 6953 of, AND TO  
ADD SECTION 6952.1 TO, the Government Code, relating  
to open space lands.*

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

- 1 SECTION 1. Section 6950 of the Government Code is  
2 amended to read:  
3 6950. It is the intent of the Legislature in enacting this  
4 chapter to provide a means whereby any ~~county or~~ city may  
5 acquire, by purchase, ~~condemnation~~ eminent domain, gift,  
6 grant, bequest, devise, lease or otherwise, and through the ex-  
7 penditure of public funds, the fee or any lesser interest or  
8 right in real property *within such city* in order to preserve,  
9 through limitation of their future use, open spaces and areas  
10 for public use and enjoyment.  
11 SEC. 2. Section 6952 of the Government Code is amended  
12 to read:  
13 6952. The Legislature hereby declares that it is necessary  
14 for sound and proper urban and metropolitan development,

LEGISLATIVE COUNSEL'S DIGEST

AB 1365, as amended, Wilson (L.Gov.). Open space lands.

Amends Secs. 6950, 6952, and 6953, and adds Sec. 6952.1, Gov.C.

Specifically permits a city ~~cities and counties~~ to acquire interests and rights in real property *within the city* for preservation of open spaces for public use and enjoyment by ~~condemnation~~ eminent domain, as well as by purchase, gift, grant, bequest, devise, lease or otherwise.

*Requires real property acquired by a city for open spaces and areas to be dedicated, by ordinance of city legislative body, to the preservation of open spaces and areas for public use and enjoyment. Declares that such ordinance may not be repealed except by two-thirds or greater vote of the qualified voters of the city.*

Vote—Majority; Appropriation—No; Sen. Fin.—No; W. & M.—No.

1 and in the public interest of the people of this state for any  
2 ~~county or city~~ to expend or advance public funds for, or to  
3 accept by, purchase, ~~condemnation eminent domain~~, gift,  
4 grant, bequest, devise, lease or otherwise, the fee or any lesser  
5 interest or right in real property *within such city* to acquire,  
6 maintain, improve, protect, limit the future use of or other-  
7 wise conserve open spaces and areas within their respective  
8 jurisdictions.

9 *SEC. 3. Section 6952.1 is added to the Government Code,*  
10 *to read:*

11 *6952.1. Whenever a city acquires any interest in real prop-*  
12 *erty in order to preserve open spaces and areas for public use*  
13 *and enjoyment, the legislative body of the city shall, by ordi-*  
14 *nance, dedicate such real property to the preservation of open*  
15 *spaces and areas for public use and enjoyment. Such ordinance*  
16 *shall not be repealed except by a two-thirds or greater vote*  
17 *of the qualified voters of the city.*

18 ~~Sec. 3.~~

19 *SEC. 4. Section 6953 of the Government Code is amended*  
20 *to read:*

21 *6953. The Legislature further declares that the acquisition*  
22 *of interests or rights in real property for the preservation of*  
23 *open spaces and areas constitutes a public purpose for which*  
24 *public funds may be expended or advanced, and that any*  
25 *county or city may acquire, by purchase, ~~condemnation emi-~~*  
26 *nent domain, gift, grant, devise, lease or otherwise,*  
27 *the fee or any lesser interest, development right, easement,*  
28 *covenant or other contractual right necessary to achieve the*  
29 *purposes of this chapter. Any ~~county or city~~ may also acquire*  
30 *the fee to any property *within such city* for the purpose of*  
31 *conveying or leasing said property back to its original owner*  
32 *or other person under such covenants or other contractual ar-*  
33 *rangements as will limit the future use of the property in*  
34 *accordance with the purposes of this chapter.*



CALIFORNIA LEGISLATURE--1969 REGULAR SESSION

ASSEMBLY BILL

No. 1365

Introduced by Assemblyman Wilson

March 28, 1969

REFERRED TO COMMITTEE ON LOCAL GOVERNMENT

*An act to amend Sections 6950, 6952, and 6953 of the Government Code, relating to open space lands.*

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

- 1 Section 1. Section 6950 of the Government Code is  
2 amended to read:  
3 6950. It is the intent of the Legislature in enacting this  
4 chapter to provide a means whereby any county or city may  
5 acquire, by purchase, *condemnation*, gift, grant, bequest, de-  
6 vise, lease or otherwise, and through the expenditure of public  
7 funds, the fee or any lesser interest or right in real property  
8 in order to preserve, through limitation of their future use,  
9 open spaces and areas for public use and enjoyment.  
10 Sec. 2. Section 6952 of the Government Code is amended  
11 to read:  
12 6952. The Legislature hereby declares that it is necessary  
13 for sound and proper urban and metropolitan development,  
14 and in the public interest of the people of this state for any  
15 county or city to expend or advance public funds for, or to  
16 accept by, purchase, *condemnation*, gift, grant, bequest, devise,  
17 lease or otherwise, the fee or any lesser interest or right in real  
18 property to acquire, maintain, improve, protect, limit the fu-  
19 ture use of or otherwise conserve open spaces and areas within  
20 their respective jurisdictions.

LEGISLATIVE COUNSEL'S DIGEST

AB 1365, as introduced, Wilson (L.Gov.). Open space lands.

Amends Secs. 6950, 6952, and 6953, Gov.C.

Specifically permits cities and counties to acquire interests and rights in real property for preservation of open spaces for public use and enjoyment by condemnation, as well as by purchase, gift, grant, bequest, devise, lease or otherwise.

Vote—Majority; Appropriation—No; Sen. Fin.—No; W. & M.—No.

1     Sec. 3. Section 6953 of the Government Code is amended  
2     to read:  
3     6953. The Legislature further declares that the acquisition  
4     of interests or rights in real property for the preservation of  
5     open spaces and areas constitutes a public purpose for which  
6     public funds may be expended or advanced, and that any  
7     county or city may acquire, by purchase, *condemnation*, gift,  
8     grant, bequest, devise, lease or otherwise, the fee or any lesser  
9     interest, development right, easement, covenant or other con-  
10    tractual right necessary to achieve the purposes of this chap-  
11    ter. Any county or city may also acquire the fee to any prop-  
12    erty for the purpose of conveying or leasing said property  
13    back to its original owner or other person under such cove-  
14    nants or other contractual arrangements as will limit the fu-  
15    ture use of the property in accordance with the purposes of  
16    this chapter.