

#36.204

12/2/71

Memorandum 71-88

Subject: Study 36.204 - Condemnation (Takings for State Purposes--Resolution of Necessity)

Summary

The draft provisions attached to this memorandum as Exhibits I through III seek to accomplish two basic goals: to supply uniform standards regulating the resolution of necessity of all public entities and to supply some measure of clarity with regard to what state agencies may condemn on behalf of and in the name of the state. The letter attached as Exhibit IV and the Legislative Analyst's report that accompanies this memorandum describe the condemnation authority of the various state agencies. See also the attached description of the State Public Works Board (blue).

Resolution of Necessity

The Commission has previously approved a scheme that requires all local public entities to adopt a resolution of necessity prior to commencement of an eminent domain proceeding. This scheme requires a majority vote of all of the members of the governing body of the local public entity and gives the resolution conclusive effect on aspects of public necessity for property within the territorial bounds of the local public entity.

The Commission has also previously approved the basic concept that the state be subject to similar requirements although no express language has heretofore been considered. Exhibit I is a staff draft of uniform provisions relating to the resolution of necessity intended to apply to all public entities,

state as well as local. This draft is a generalized version of the old provisions relating to local entities.

Condemnation Authority of State Agencies

The authority of the state to condemn property is scattered among several of the agencies of the state, which are authorized to condemn property on behalf of and in the name of the state. The interrelations among these various authorities are complex and often present the appearance of being contradictory. A clear statement of the state's condemnation authority and an allocation of that authority is needed. The 1969 report of the Legislative Analyst, entitled "A Survey of Land Acquisition and Disposal by State Agencies" accompanying this memorandum, makes concrete suggestions for the clarification of the state's land acquisition authority. It has been the staff's feeling, however, that it would be unwise to attempt to implement any departmental changes at a time when this matter is under consideration by the various state agencies involved. Consequently, the staff draft of uniform state provisions in Exhibits II and III is intended to clarify existing procedures only and to make but minor changes in the condemnation authority of the various agencies of the state.

Condemnation by the state. Although there are numerous state agencies involved in condemnation, not all of them condemn in the name of the state: The Regents of the University of California condemns property which it holds in its own name on behalf of the public trust known as the University of California; the State Reclamation Board condemns property for the Sacramento and San Joaquin Drainage District, a local public entity that holds the property in its own name.

The state itself takes and holds property through several of its agencies. While there are many state agencies authorized to condemn property in the name of the state, as a practical matter only four of these agencies have any kind

of a land acquisition staff. These four agencies are:

Public Works Board (uses staff of Department of General Services)
Department of General Services
Department of Water Resources
Department of Public Works

The staff recommends that the independent condemnation authority of the Department of General Services be merged with that of the Public Works Board (it already is for most purposes) and that the state's condemnation authority be consolidated in the Public Works Board, the Department of Water Resources, and the Department of Public Works. Also, the independent condemnation authority of the Regents of the University of California and the State Reclamation Board would be continued.

Public Works Board. The Property Acquisition Law provides that the Public Works Board is to accomplish acquisitions of real property for the state. Whenever a state agency is authorized to acquire property subject to the Property Acquisition Law, the effect is that the Public Works Board is to take the property at the request of the state agency. Whenever an appropriation of money is made for the acquisition of property subject to the Property Acquisition Law, the effect is that the Public Works Board is to take the property.

The result of this jurisdiction of the Public Works Board is that, for all practical purposes, the Public Works Board makes all acquisitions of property for the state from funds in the Capital Outlay section of the budget. See Exhibit IV and also the blue sheets attached. The only other sources of land acquisition money are the California Water Fund and the State Highway Fund.

The staff draft of Exhibits II and III in effect codifies this practice by making the Public Works Board the exclusive condemnor for the state (except for highways and water projects) and by repealing the condemnation authority purportedly granted to other agencies. While it is possible that some of

these agencies--such as the Department of General Services or the State Lands Commission--might in a rare case have had independent condemnation authority where an appropriation of funds was not made subject to the Property Acquisition Law, this possibility is so remote that the staff feels confident in its recommendation to replace the condemnation authority of these agencies by that of the Public Works Board.

Department of Water Resources. The Department of Water Resources has independent condemnation authority for state dam and water purposes. The staff draft continues this authority but incorporates the resolution of necessity provisions into the general Eminent Domain Code provisions. It should be noted that previously the department could condemn following a declaration of necessity by the Director of Water Resources, concurred in by the California Water Commission. The staff draft alters this requirement so that the commission alone adopts the resolution of necessity.

Department of Public Works. The Department of Public Works has independent condemnation authority for state highway purposes. The staff draft continues this authority but incorporates the resolution of necessity provisions into the general Eminent Domain Code provisions.

Respectfully submitted,

Nathaniel Sterling
Legal Counsel

EXHIBIT I

EMINENT DOMAIN CODE § 350

Staff draft December 1971

CHAPTER 2. RESOLUTION OF NECESSITY

§ 350. "Governing body" defined

350. As used in this chapter, "governing body" means:

- (a) In the case of a taking by a local public entity, the governing body of the local public entity.
- (b) In the case of a taking by the Sacramento and San Joaquin Drainage District, the State Reclamation Board.
- (c) In the case of a taking by the State Public Works Board pursuant to the Property Acquisition Law, Part 11 (commencing with Section 15850) of Division 3 of Title 2 of the Government Code, the State Public Works Board.
- (d) In the case of a taking by the Department of Public Works (other than a taking pursuant to Section 30100 of the Streets and Highways Code), the California Highway Commission.
- (e) In the case of a taking by the Department of Public Works pursuant to Section 30100 of the Streets and Highways Code, the California Toll Bridge Authority.
- (f) In the case of a taking by the Department of Water Resources, the California Water Commission.
- (g) In the case of a taking for the University of California, the Regents of the University of California.

EMINENT DOMAIN CODE § 350

Staff draft December 1971

Comment. Section 350 of the Eminent Domain Code gives content to the term "governing body" as used in Section 351 (resolution of necessity by governing body of public entity prerequisite to condemnation).

Subdivision (a). A local public entity is any public entity other than the state. Eminent Domain Code § 106. The governing bodies of such entities are specified by statute. E.g., Govt. Code §§ 23005 (board of supervisors governs county) and 34000 (legislative body of municipal corporation is board of trustees, city council, or other governing body).

Subdivision (b). The San Joaquin Drainage District, while by definition a local public entity (Eminent Domain Code § 106), is comparable in some ways to an agency of the state. Its work is in the interest of the entire state. See San Joaquin Drainage Dist. v. Riley, 199 Cal. 668, 251 P. 207 (1926). It is partially funded by the state. See Water Code § 8527. Its management and control are vested in a state agency--the Reclamation Board--which is its governing body. See Water Code § 8502.

Subdivision (c). Takings for all general state purposes (other than state highways, toll bridges, state water projects, and the University of California) are made by the State Public Works Board under the Property

EMINENT DOMAIN CODE § 350

Staff draft December 1971

Acquisition Law (Govt. Code § 15850 et seq.). Under former law, there may have been cases where the Department of General Services or other state agencies could condemn on behalf of the state under authority formerly found in Government Code Section 14661 or other provisions (basically where an appropriation was made not subject to the Property Acquisition Law), but this authority is not continued. See Govt. Code § 15855 and Comment thereto. It should be noted that the Public Works Board may condemn property only with the approval of the agency concerned. Govt. Code § 15853.

Subdivision (d). Takings for state highway purposes are accomplished on behalf of and in the name of the state by the Department of Public Works. Sts. & Hwys. Code § 102. The governing body for the Department of Public Works in such takings is the California Highway Commission. This continues a provision formerly found in Streets and Highways Code Section 102.

EMINENT DOMAIN CODE § 350

Staff draft December 1971

Subdivision (e). Takings for toll bridges and other transportation facilities designated by Streets and Highways Code Section 30100 are accomplished on behalf and in the name of the state by the Department of Public Works. Sts. & Hwys. Code § 30400. The governing body for the Department of Public Works in such takings is the California Toll Bridge Authority. Sts. & Hwys. Code § 30400. See also former Section 30404.

Subdivision (f). Takings for state water and dam purposes and for the Central Valley Project are accomplished on behalf and in the name of the state by the Department of Water Resources. Water Code §§ 250 and 11575. The governing body of the Department of Water Resources is the California Water Commission. This supersedes provisions formerly found in Sections 250 and 11581 of the Water Code that required a declaration of necessity by the Director of Water Resources with the concurrence of the Water Commission.

Subdivision (g). The Regents of the University of California, while comparable to an agency of the state, is a separate corporation administering the public trust known as the University of California. The Regents is authorized to condemn property for the university in its own name and is, therefore, the governing body of the university for purposes of Section 351. See Cal. Const., Art. IX, § 9 and Educ. Code § 23151. Cf. Educ. Code §§ 23201 and 23204.

EMINENT DOMAIN CODE § 351

Tentatively approved May 1971

Revised April 1971

Staff renumbering and revision

December 1971

§ 351. Resolution of necessity required

351. A public entity may not commence an eminent domain proceeding until its governing body has adopted a resolution of necessity that meets the requirements of this chapter.

Comment. Before a public entity begins condemnation proceedings, its governing body must adopt a resolution of necessity that meets the requirements of Sections 352 and 353. If the public entity fails to adopt such a resolution, or adopts a defective resolution, it may not condemn property. See California Condemnation Practice § 8.44 (Cal. Cont. Ed. Bar 1960); California Condemnation Law § 3.20 (Cal. Cont. Ed. Bar, 1971 draft).

Section 351 generalizes the provision, previously applicable to some but not all public entities, that a resolution of necessity is a condition precedent to condemnation. Compare, e.g., former Code Civ. Proc. § 1241(2) (resolution not required) with former Water Code § 8594 and former Govt. Code § 15855 (resolution required).

EMINENT DOMAIN CODE § 352

Tentatively approved May 1970
Revised June 1970
Revised April 1971
Staff renumbering and revision
December 1971

§ 352. Contents of resolution

352. The resolution of necessity shall contain all of the following:

(a) A general description of the proposed project with a reference to the specific statute or statutes authorizing the public entity to acquire property for such project.

(b) A description of the property to be acquired for the proposed project and its use in the proposed project.

(c) A declaration that the governing body of the public entity has found and determined each of the following:

(1) The public interest and necessity require the proposed project.

(2) The proposed project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.

(3) The property described in the resolution is necessary for the proposed project.

Comment. Section 352 prescribes the contents of the resolution of necessity by a public entity. The resolution is an administrative determination that the statutory prerequisites for taking particular property have been met. Section 352 supersedes various provisions that required a resolution of necessity by different public entities.

EMINENT DOMAIN CODE § 352

Tentatively approved May 1970
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Subdivision (a). The resolution of necessity must contain a general description of the proposed project. A statement, for example, that the project is an "elementary school and grounds" or "right of way for a free-way" would satisfy this requirement.

The resolution also must make reference to the specific statute or statutes authorizing the exercise of the power of eminent domain for the project. Only persons authorized by statute to condemn for a particular public use can condemn for that use. Section 301. Such authorizing statutes may be of several types. The state, the University of California, cities, counties, and school districts, for example, may condemn any property necessary to carry out any of their powers or functions. See, e.g., Educ. Code §§ 1047 (school districts), 23151 (Regents of the University of California); Govt. Code §§ 15853 (Public Works Board), 25350.5 (counties), 37350.5 (cities). Many special districts have similar broad authority, but some may condemn only for limited or special purposes. Additionally, if the condemnor is acquiring property under authority of certain general public uses, it must specify that authority. E.g., Sections 401 (future use), 411 and 412 (substitute), 421 (excess), 450 (compatible use). The purpose of this subdivision is to enable a defendant better to determine whether the taking of his property is authorized.

EMINENT DOMAIN CODE § 352

Tentatively approved May 1970

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Subdivision (b). The resolution of necessity must contain a description of the property, right, or interest to be taken. See Section 101 ("property" defined). The description must be sufficiently precise to enable the owner to determine the physical extent and the interests sought. The resolution must also indicate in what way the property will be used for the proposed project.

Subdivision (c). The resolution of necessity must contain a declaration that the governing body of the public entity has found and determined the existence of each of the three elements of public necessity required by Section 302 to be established for a taking. See Section 302 and Comment thereto. This provision is modeled after similar provisions formerly applicable to various condemnors. See, e.g., Code Civ. Proc. § 1241(2), Water Code § 8595, Sts. & Hwys. Code § 25052.

EMINENT DOMAIN CODE § 353

Tentatively approved May 1970

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§ 353. Adoption of resolution

353. Except as otherwise provided by statute, the resolution must be adopted by a vote of a majority of members of the governing body of the public entity.

Comment. Section 353 states the general rule that, to be valid, the resolution of necessity must be adopted by a majority of all of the members of the governing body of the entity, not merely a majority of those present at the time of adoption. In the past, it was not clear whether a majority of those present could authorize condemnation. Cf. 52 Ops. Cal. Atty. Gen. 56 (1969)(majority of those present needed for city ordinance).

Section 353 continues the majority vote requirement for takings by the state. See, e.g., former Govt. Code § 15855 and Sts. & Hwys. Code § 102. Section 353 also continues the majority vote requirement formerly applicable to most takings by local public entities under numerous specific provisions superseded by Section 353. Section 353 supersedes the provision of former Code of Civil Procedure Section 1241(2) that made the resolutions of certain local public entities conclusive on necessity if the resolution was adopted by a two-thirds vote.

The introductory proviso of Section 353 recognizes that differing vote requirements may be imposed by special statute. See, e.g., Educ. Code § 23151 (two-thirds vote required for taking by Regents of the University of California).

EMINENT DOMAIN CODE § 354

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§ 354. Effect of resolution

354. (a) Except as otherwise provided by statute, a resolution of necessity adopted by the governing body of the public entity conclusively establishes the matters referred to in Sections 302 and 303.

(b) If the taking is by a local public entity and the property described in the resolution is not located entirely within the boundaries of the local public entity, the resolution of necessity creates a presumption that the matters referred to in Sections 302 and 303 are true. This presumption is a presumption affecting the burden of producing evidence.

(c) For the purposes of subdivision (b), a taking by the State Reclamation Board for the Sacramento and San Joaquin Drainage District is not a taking by a local public entity.

Comment. Section 354 provides a uniform rule governing the effect to be given to a resolution of necessity. It continues the conclusive effect given to the resolution in state takings. See, e.g., former Govt. Code § 15855. It supersedes numerous sections of various codes that afforded disparate treatment of the resolution of necessity of various types of local public entities and generalizes the conclusive effect given the resolution of certain local public entities by former Code of Civil Procedure Section 1241(2).

EMINENT DOMAIN CODE § 354

Tentatively approved May 1970
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Subdivision (a). Under Section 354, a valid resolution of necessity conclusively establishes the matters of public necessity specified in Sections 302 and 303 and required by Section 352 to be stated in the resolution as found and determined by the entity (1) in all takings by local public entities where the property taken is entirely within the boundaries of the condemning entity and (2) in all takings by state entities, regardless of the location of the property taken. Giving the resolution this conclusive effect has been upheld against an assertion that the failure to give the property owner notice and a hearing on necessity and proper location before the condemnor, or a hearing on necessity and proper location in the condemnation proceeding, makes the condemnation an unconstitutional taking without due process of law. Rindge Co. v. County of Los Angeles, 262 U.S. 700 (1923), aff'g County of Los Angeles v. Rindge Co., 53 Cal. App. 166, 200 P. 27 (1921); City of Oakland v. Parker, 70 Cal. App. 295, 233 P. 68 (1924).

A valid resolution precludes judicial review of the matters specified in Sections 302 and 303 even where it is alleged such matters were determined by "fraud, bad faith, or abuse of discretion." See People v. Chevalier, 52 Cal.2d 299, 340 P.2d 598 (1959). However, the resolution is conclusive only on the matters specified in Sections 302 and 303; it does not affect in any way the right of a condemnee to challenge a taking on the ground that the project is not an authorized public use or on the ground that the condemnor

EMINENT DOMAIN CODE § 354

Tentatively approved May 1970

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does not intend to put the property to its declared public purpose. See Sections 301 and 2102. Nor does the conclusive presumption granted the resolution on matters of necessity affect the right of a condemnee to contest the right to take his property on specific statutory grounds provided in the Eminent Domain Code. See Sections 401 (future use), 412 and 413 (substitute), 421 (excess), and Chapter 8 (commencing with Section 450) of Division 4 (compatible and more necessary use). Likewise, the condemnor must demonstrate its compliance with any other requirements and regulations governing the institution of public projects. Cf. Comment to Section 302.

The initial proviso of Section 354 recognizes that there may be exceptions to the uniform conclusive effect given the resolution of necessity. One important exception is in subdivision (b) (extraterritorial acquisitions by local public entity). Another exception is in Government Code Section 6953 (city or county acquisitions for open space).

Subdivision (b). Subdivision (b) provides that a resolution of necessity of a local public entity creates a presumption affecting the burden of producing evidence with regard to the public necessity if the resolution is not entirely within the boundaries of the local public entity. See Evid. Code § 604.

EMINENT DOMAIN CODE § 354

Tentatively approved May 1970
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Subdivision (b) continues the portion of former Code of Civil Procedure Section 1241(2) that denied conclusive effect of a resolution to property lying outside the territorial limits of certain local public entities. Under that provision, necessity and proper location were justiciable questions in the condemnation proceeding. See City of Hawthorne v. Peebles, 166 Cal. App.2d 758, 333 P.2d 442 (1959); City of Carlsbad v. Wight, 221 Cal. App.2d 756, 34 Cal. Rptr. 820 (1963); City of Los Angeles v. Keck, 14 Cal. App.3d 920, Cal. Rptr. (1971). Subdivision (b) extends this limitation of the resolution of necessity to all local public entities condemning property outside their territorial jurisdiction.

Subdivision (c). The limitation contained in subdivision (b) is not applicable to acquisitions for the Sacramento and San Joaquin Drainage District. Acquisitions for this local public entity are undertaken by the State Reclamation Board. See Water Code § 8590 and Eminent Domain Code § 350 and Comment thereto. The conclusive effect given resolutions of the board by former Water Code Section 8595 is continued under subdivisions (a) and (c).

EXHIBIT II

GOVERNMENT CODE § 15853

Staff draft December 1971

PROPERTY ACQUISITION LAW

(Govt. Code §§ 15853, 15854, 15855, 15856, 15858, 15859)

Government Code § 15853 (amended)

Sec. . Section 15853 of the Government Code is amended to read:

15853. (a) The board ~~shall~~ is authorized to select and acquire,
in the name of and on behalf of the State, with the consent of the state
agency concerned, suitable-and-adequate the fee or any lesser right or
interest in any real property necessary for such-purposes-as-may-be
specified-in-the-legislation-making-funds-available-for-such-acquisition
any state purpose or function .

(b) Where moneys are appropriated by the budget act for any fiscal
year or by any other act for the acquisition of land or other real
property, either (1) subject to the provisions of the Property Acquisition
Law , or (2) for any state agency for whom property is acquired by the
board, such moneys and acquisitions shall be subject to the provisions
of this part and ~~said~~ such moneys shall be expended in accordance
herewith, with the provisions of this part, notwithstanding any other
provisions of law.

~~The-board-may-acquire-any-interest-in-real-property-pursuant-to~~
~~this-part-which-it-deems-advisable.~~

GOVERNMENT CODE § 15853

Staff draft December 1971

(c) The board may acquire furnishings which the owner thereof agrees to sell and which are contained within improvements acquired by the board. Cost of acquisition of such furnishings shall be charged to the appropriation available for acquisition of the real property.

Comment. Government Code Section 15853 is amended to make clear that the Public Works Board may acquire property for any public use by the state. The choice of property is subject to the approval of the agency for which the board undertakes the acquisition. Any funds available for the acquisition are disposed of pursuant to the provisions of this part. With some significant exceptions, the Public Works Board is the agency that condemns property needed for the use of the state. See Section 15855.

Note: The extent to which a condemnor may or must acquire personal property in an eminent domain proceeding is a matter under study by the Law Revision Commission.

GOVERNMENT CODE § 15854

Staff draft December 1971

Government Code § 15854 (amended)

Sec. . Section 15854 of the Government Code is amended to read:

15854. Property shall be acquired pursuant to this part by condemnation in the manner provided for in ~~Title 7-(commencing with Section 1237)-of Part 3-of~~ the Eminent Domain Code of Civil Procedure , and all money paid from any appropriation made pursuant to this part shall be expended only in accordance with a judgment in condemnation or with a verdict of the jury or determination by the trial court fixing the amount of compensation to be paid. This requirement shall not apply to any of the following:

- (a) Any acquisitions from the federal government or its agencies.
- (b) Any acquisitions from the University of California or other state agencies.
- (c) The acquisitions of parcels of property, or lesser estates or interests therein, for less than five thousand dollars (\$5,000), unless part of an area made up of more than one parcel which in total would cost more than five thousand dollars (\$5,000) which the board by resolution exempts from this requirement.
- (d) Any acquisition as to which the owner and the state have agreed to the price and the State Public Works Board by unanimous vote determines that such price is fair and reasonable and acquisition by condemnation is not necessary.

GOVERNMENT CODE § 15854

Staff draft December 1971

(e) Any acquisition as to which the owner and the State Public Works Board have agreed to arbitrate the amount of the compensation to be paid in accordance with Chapter 3 (commencing with Section 1273.01) of Title 7 of Part 3 of the Code of Civil Procedure.

Government Code § 15854.1 (repealed)

Sec. . Section 15854.1 of the Government Code is repealed.

~~15854.1.--The board shall not select or acquire a site for
the use of the California State Colleges unless, prior to the
selection, the trustees have, by resolution, approved of the
selection of the site.~~

Comment. Section 15854.1 of the Government Code is superseded by
the more general restriction upon the authority of the Public Works Board
to acquire property with the consent of the agency concerned. See Section
15853.

Government Code § 15855 (repealed)

Sec. . Section 15855 of the Government Code is repealed.

~~15855.--Before-commencing-condemnation-proceedings-the-board shall-adopt-a-resolution-declaring-that-public-interest-and-necessity requires-the-acquisition,-construction,-or-completion-by-the-State-of the-improvements-for-which-the-real-property-or-interest-therein-is required-and-that-the-real-property-or-interest-therein-described-in the-resolution-is-necessary-for-the-improvement.~~

~~The-resolution-of-the-board-shall-be-conclusive-evidence:~~

~~(a)--Of-the-public-necessity-of-the-proposed-public-improvement.~~

~~(b)--That-the-real-property-or-interest-therein-is-necessary-for the-improvement.~~

~~(c)--That-the-improvement-is-planned-or-located-in-a-manner-which will-be-compatible-with-the-greatest-public-good-and-the-least-private injury.~~

Comment. Section 15855 is superseded by the more general provisions of Chapter 2 (commencing with Section 350) of Division 4 of the Eminent Domain Code, relating to resolutions of necessity.

GOVERNMENT CODE § 15855

Staff draft December 1971

Government Code § 15855 (added)

Sec. . Section 15855 is added to the Government Code, to read:

15855. (a) Notwithstanding any other provision of law, except as provided in subdivision (b), the State Public Works Board is the only state agency that may exercise the power of eminent domain to acquire property needed by any state agency for any state purpose or function.

(b) Subdivision (a) does not affect or limit the right of the Department of Public Works, Department of Water Resources, State Reclamation Board, or the Regents of the University of California to exercise the power of eminent domain.

Comment. Government Code Section 15855 is added to make clear that, subject to some significant exceptions, the Public Works Board is the agency that condemns property needed for state purposes. The exceptions are specified in subdivision (b):

(1) The Department of Public Works. See Sts. & Hwys. Code §§ 102 (state highway) and 30100 (toll bridges).

(2) The Department of Water Resources. See Water Code §§ 250 and 11575 (state dam and water projects).

GOVERNMENT CODE § 15855

Staff draft December 1971

(3) The State Reclamation Board. See Water Code § 8590 (Reclamation Board condemns for Sacramento and San Joaquin Drainage District).

(4) The Regents of the University of California. See Educ. Code § 23151 (University of California).

Section 15855 supersedes former provisions of numerous codes that granted various agencies of the state independent condemnation authority. E.g., provisions formerly found in Fish & Game Code § 1348 (Department of Fish and Game), Govt. Code §§ 14661-14662 (Director of General Services), Govt. Code § 54093 (Department of Parks and Recreation), Mil. & Vets. Code § 437 (Adjutant General), Pub. Res. Code § 5006 (Department of Parks and Recreation), and Pub. Res. Code § 6808 (State Lands Commission).

GOVERNMENT CODE § 15856

Staff draft December 1971

Government Code § 15856 (repealed)

Sec. . Section 15856 of the Government Code is repealed.

~~15856.---In-any-condemnation-proceeding-brought-for-the-acquisition
of-real-property-pursuant-to-this-part,-the-use-for-which-the-property
is-condemned-shall-be-deemed-a-public-use-more-necessary-than-any-other
public-use-to-which-the-property-is-devoted-at-the-time-the-action-is
commenced.~~

Comment. Government Code Section 15856 is superseded by the more general provisions of Article 2 (commencing with Section 460) of Chapter 8 of Division 4 of the Eminent Domain Code, relating to condemnation for more necessary public use. Section 463 of the Eminent Domain Code provides that use by the state is more necessary than use by any other person. See Section 463 and Comment thereto.

GOVERNMENT CODE § 15858

Staff draft December 1971

Government Code § 15858 (repealed)

Sec. . Section 15858 of the Government Code is repealed.

~~15858.--Whenever property which is devoted to or held for some other public use for which the power of eminent domain may be exercised is taken for state purposes pursuant to this part, with the consent of the person or agency in charge of such other public use, the board may condemn other real property and exchange it with such other person or agency for the real property to be taken for state purposes.--Transfer of the property so acquired shall be made in accordance with the stipulation entered into pursuant to Section 15857.~~

Comment. Government Code Section 15858 is superseded by the more general provisions of Eminent Domain Code Sections 410-412, relating to condemnation of property for substitute purposes. See especially Section 411 and Comment thereto.

GOVERNMENT CODE § 15859

Staff draft December 1971

Government Code § 15859 (repealed)

Sec. . Section 15859 of the Government Code is repealed.

~~15859.--The board may abandon any condemnation proceeding.--Nothing in this part extends the time specified in Section 1255a of the Code of Civil Procedure for the abandonment of condemnation proceedings.~~

Comment. Government Code Section 15859 is superseded by the more general provisions of Eminent Domain Code Section 2500, relating to the right to abandon an eminent domain proceeding and specifying time limits thereon.

EDUCATION CODE § 23151

Tentatively approved March 1970

Revised April 1970

Revised June 1970

Staff revision December 1971

EXHIBIT III

UNIVERSITY OF CALIFORNIA

Education Code § 23151 (amended)

Sec. . Section 23151 of the Education Code is amended to read:

23151. The Regents of the University of California may condemn any property ~~or interest therein for the public buildings and grounds~~ necessary to carry out any of the powers or functions of the University of California ~~under the provisions of the Code of Civil Procedure relating to eminent domain~~ . The Regents of the University of California shall not commence any such proceeding in eminent domain unless it first adopts a ~~resolution~~ by a two-thirds vote ~~declaring that the public interest and necessity require the acquisition, construction or completion by the Regents of the University of California of the public improvement for which the property or interest therein is required and that the property or interest therein described in such resolution is necessary for the public improvement~~ a resolution that meets the requirements of Chapter 2 (commencing with Section 350) of Division 4 of the Eminent Domain Code .

Comment. Section 23151 is amended to make clear that the condemnation authority of the Regents of the University of California is broad enough to acquire any property or right or interest in property necessary to carry out

EDUCATION CODE § 23151

Tentatively approved March 1970

Revised April 1970

Revised June 1970

Staff revision December 1971

the functions of the University of California even though the property is to be acquired for a project that does not clearly fall within the former language "public buildings and grounds of the University of California."

Before the Regents may commence an eminent domain proceeding, it must adopt by a two-thirds vote a resolution of necessity that satisfies the requirements of Chapter 2 (commencing with Section 350) of Division 4 of the Eminent Domain Code.

EDUCATION CODE § 23152

Staff draft December 1971

Education Code § 23152 (repealed)

Sec. . Section 23152 of the Education Code is repealed.

~~23152.--The-resolution-of-the-Regents-of-the-University-of-California-shall-be-conclusive-evidence:~~

~~(a)-Of-the-public-necessity-of-such-proposed-public-improvement.~~

~~(b)--That-such-property-or-interest-therein-is-necessary-therefor.~~

~~(c)--That-such-proposed-public-improvement-is-planned-or-located in-a-manner-which-will-be-most-compatible-with-the-greatest-public-good and-the-least-private-injury.~~

Comment. Section 23152 of the Education Code, specifying the effect given to the resolution of necessity of the Regents of the University of California, is superseded by Section 35⁴ of the Eminent Domain Code.

STATE COLLEGE SYSTEM

Education Code § 24503 (amended)

Sec. . Section 24503 of the Education Code is amended to read:

24503. The board, for the purposes of this article (commencing with Section 24501), has power and is hereby authorized, in addition to and amplification of all other powers conferred upon said board by the Constitution of the State of California or by any statute of the State of California:

(a) To acquire subject to the Property Acquisition Law, Part 11 (commencing with Section 15850) of Division 3 of Title 2 of the Government Code, by grant, purchase, gift, devise, or lease, ~~ex-by-the-exercise-of-the-right-of-eminent-domain~~, and to hold and use any real or personal property necessary or convenient or useful for the carrying on of any of its powers pursuant to the provisions of this article (commencing with Section 24501).

(b) To construct, operate and control any project.

(c) To fix rates, rents or other charges for the use of any project acquired, constructed, equipped, furnished, operated or maintained by the board, or for services rendered in connection therewith, and to alter, change or modify the same at its pleasure, subject to any contractual obligation which may be entered into by the board with respect to the fixing of such rates, rents or charges.

(d) To enter into covenants to increase rates or charges from time to time as may be necessary pursuant to any such contract or agreement with the holders of any bonds of the board.

Staff draft December 1971

(e) At any time and from time to time, with the approval of the State Board of Control, to issue revenue bonds in order to raise funds for the purpose of establishing any project or of acquiring lands for any project, or of acquiring, constructing, improving, equipping or furnishing any project, or of refinancing any project, including payment of principal and interest on revenue bond anticipation notes, or for any combination of such purposes, which bonds may be secured as hereinafter provided.

(f) At any time and from time to time, with the approval of the State Board of Control, to issue revenue bond anticipation notes pursuant to Section 24503.1.

~~(g) To exercise, subject to the Property Acquisition Law, Part 11 (commencing with Section 15850) of Division 3 of Title 2 of the Government Code, the right of eminent domain for the condemnation of private property or any right or interest therein.~~

~~(h)~~

(g) To adopt such rules and regulations as may be necessary to enable the board to exercise the powers and to perform the duties conferred or imposed upon the board by this article (commencing with Section 24501).

~~(i)~~

(h) Nothing contained in this section or elsewhere in this article shall be construed directly or by implication to be in anywise in derogation of or in limitation of powers conferred upon or existing in the board by virtue of provisions of the Constitution or statutes of this state.

EDUCATION CODE § 24503

Staff draft December 1971

Comment. Section 24503 of the Education Code is amended to make clear that the Trustees of the State Colleges do not have any independent condemnation authority. The State Public Works Board may condemn property for state college purposes with the consent of the trustees. Govt. Code §§ 15853-15855.

DEPARTMENT OF FISH AND GAME

Fish & Game Code § 1348 (amended)

Sec. . Section 1348 of the Fish and Game Code is amended to read:

1348. The board shall ~~authorize~~ approve the acquisition of such lands, rights in land, water, or water rights as may be necessary to carry out the purposes of this chapter. ~~The board may authorize such acquisition by the department, but the department shall not acquire any of such property by eminent domain proceedings except such property as may be necessary to provide access roads or rights of way to areas to be used for fishing the coastal waters of the Pacific Ocean, and then only if the board of supervisors of the affected county has agreed by resolution to such proceedings for each parcel of land and has further agreed by resolution to maintain the road or right of way.~~ Any such acquisition shall be made by the State Public Works Board, which is hereby empowered to effect such acquisitions pursuant to the Property Acquisition Act Law, Part 11 (commencing with Section 15850) of Division 3 of Title 2 of the Government Code.

FISH & GAME CODE § 1348

Staff draft December 1971

Comment. Section 1348 of the Fish and Game Code is amended to delete the acquisition authority of the Department of Fish and Game and to require that the property acquisitions approved by the Wildlife Conservation Board be accomplished only through the Public Works Board, subject to the provisions of the Property Acquisition Law. See Govt. Code § 15850 et seq. Such acquisition may be by eminent domain. Govt. Code § 15854.

DIRECTOR OF GENERAL SERVICES

Government Code § 14661 (repealed)

Sec. . Section 14661 of the Government Code is repealed.

~~14661.--The director may institute and maintain in the name of the state condemnation proceedings for the acquiring of any land authorized by law to be obtained for any state agency, except land to be acquired by the Department of Public Works for highway purposes, if no other state agency is specifically authorized and directed to institute such proceedings.~~

Comment. Section 14661 of the Government Code is obsolete because condemnation of real property for state agencies is to be accomplished by the Public Works Board under the Property Acquisition Law (Section 15850 et seq.) with the exception of condemnations by those agencies that have been specifically authorized to condemn property under independent statutory grants. Three agencies of the state, other than the Public Works Board, that may condemn property **are** the Department of Public Works (Sts. & Hwys. Code §§ 102 and 30400), the Department of Water Resources (Water Code §§ 250 and 11575), the Regents of the University of California (Educ. Code § 23151), and the State Reclamation Board--Sacramento and San Joaquin Drainage District (Water Code § 8593).

GOVERNMENT CODE § 14662

Staff draft December 1971

DIRECTOR OF GENERAL SERVICES

Government Code § 14662 (amended)

Sec. . Section 14662 of the Government Code is amended to read:

14662. The Director of General Services may acquire ~~,-by-condemna-~~
~~tion-or-ether-means,~~ any easements or rights-of-way which he determines
to be necessary for the proper utilization of real property owned or
being acquired by the state.

This section does not apply to land, easements, or rights-of-way
to be acquired by the Department of Public Works.

Comment. Government Code Section 14662 is amended to make clear that
the Director of General Services has no independent condemnation authority.
All acquisitions by eminent domain for the state are accomplished by the
Public Works Board with limited exceptions. See Govt. Code §§ 15853-15855.
The authority of the Public Works Board to condemn any right or interest in
property, including easements and rights of way, necessary for the proper
utilization of real property owned or being acquired by the state is expressed
in Eminent Domain Code Section 304 (right to acquire property for related
and protective purposes).

GOVERNMENT CODE § 54093

Staff draft December 1971

DEPARTMENT OF PARKS AND RECREATION

Government Code § 54093 (amended)

Sec. . Section 54093 of the Government Code is amended to read:

54093. The Department of Parks and Recreation, on behalf of the State, may acquire by appropriate means ~~,-including-by-right-of-
domain,~~ easements in property owned, operated or controlled by any city, county or other local agency in order to provide free public access to any public beach. However, any such easement shall terminate if the property is developed by the city, county or other public agency in a manner which would not be compatible with the use of such easement for access purposes and if the city, county or other public agency refunds to the State the amount of money the State paid for such easement.

Comment. Government Code Section 54093 is amended to make clear that the Department of Parks and Recreation has no independent condemnation authority. Any condemnation of property is to be accomplished by the Public Works Board. See Govt. Code §§ 15853-15855. The state's right to condemn property owned by local public entities is expressed more generally in Chapter 8 (commencing with Section 450) of Division 4 of the Eminent Domain Code (acquisition of property appropriated to public use).

MILITARY & VETERANS CODE § 437.

Staff draft December 1971

ADJUTANT GENERAL

Military & Veterans Code § 437 (amended)

Sec. . Section 437 of the Military and Veterans Code is amended to read:

437. ~~Under the provisions of the Code of Civil Procedure relating to eminent domain, the~~ The Adjutant General, in the name of the people of the State of California, with the approval of the Department of General Services, may ~~condemn~~ acquire any property necessary for armory purposes. ~~Armories are hereby declared to be public uses.~~

Comment. Military and Veterans Code Section 437 is amended to make clear that the Adjutant General does not have the power of eminent domain. Condemnations for state purposes are made by the Public Works Board. See Govt. Code §§ 15853-15855.

The last sentence of Section 437, declaring armories a public use, is deleted as unnecessary. See Eminent Domain Code § 300.

MILITARY & VETERANS CODE § 438

Staff draft December 1971

Military & Veterans Code § 438 (repealed)

Sec. . Section 438 of the Military and Veterans Code is repealed.

~~438.--Prior-to-the-commencement-of-condemnation-proceedings,-the
Adjutant-General-shall-declare-in-writing-that-the-public-interest-and
necessity-require-the-purchase-or-acquisition-of-the-property-by-the
state.--Upon-filing-with-the-Department-of-General-Services,-such
declaration-shall-be-prima-facie-evidence-(a)-of-the-public-necessity
for-the-acquisition-of-such-property;-(b)-that-such-property-is-neces-
sary-therefor;-and-(c)-that-such-property-is-planned-or-located-in-the
manner-which-will-be-most-compatible-with-the-greatest-good-and-the
least-private-injury-~~

Comment. Military and Veterans Code Section 438 is superseded by the more general provision of Chapter 2 (commencing with Section 350) of Division 4 of the Eminent Domain Code, relating to resolutions of necessity.

PUBLIC RESOURCES CODE § 5006

Staff draft December 1971

DEPARTMENT OF PARKS AND RECREATION

Public Resources Code § 5006 (amended)

Sec. . Section 5006 of the Public Resources Code is amended to read:

5006. The department, with the consent of the Department of Finance, may acquire ~~by-purchase-or-by-condemnation-proceedings-brought-in-the name-of-the-people-of-the-State-of-California~~ title to or any interest in real and personal property which the department deems necessary or proper for the extension, improvement, or development of the state park system. The department shall attempt to purchase property by negotiation with the owner before ~~it~~ the State Public Works Board may commence commence condemnation proceedings.

~~Proceedings-for-the-condemnation-of-any-real-or-personal-property or-any-interest-therein-shall-be-taken-under-the-provisions-of-the-Code of-Civil-Procedure-relating-to-eminant-domain.--The-department-shall-not commence-any-such-proceedings-unless-the-director-first-issues-a-declaration-declaring-that-public-interest-and-necessity-require-aquisition by-the-State-of-the-property-or-interest-therein,-described-in-the declaration,-and-that-such-aquisition-is-necessary-and-proper-for-the extension,-improvement,-or-development-of-the-state-park-system-~~

PUBLIC RESOURCES CODE § 5006

Staff draft December 1971

Comment. Section 5006 is amended to make clear that the Department of Parks and Recreation has no independent condemnation authority. Acquisitions by eminent domain for the state are made by the Public Works Board. Govt. Code §§ 15853-15855.

The requirement that the Director of Parks and Recreation declare the public interest, necessity, and propriety of the acquisition for the state park system is superseded by the more general provisions of Chapter 2 (commencing with Section 350) of Division 4 of the Eminent Domain Code (resolution of necessity).

Note: The requirement that an attempt be made to purchase property by negotiation prior to initiation of eminent domain proceedings is a concept the Commission has under consideration. Cf. Govt. Code § 7267.1 (public entities must make reasonable effort to acquire property expeditiously by negotiation).

PUBLIC RESOURCES CODE § 5006.1

Staff draft December 1971

Public Resources Code § 5006.1 (repealed)

Sec. . Section 5006.1 of the Public Resources Code is repealed.

~~5006.1.--The-declaration-of-the-director-shall-be-prima-facie-evidence;~~

~~(a)--Of-the-public-necessity-of-such-proposed-acquisition;~~

~~(b)--That-such-real-or-personal-property-or-interest-therein-is
necessary-therefor.~~

~~(c)--That-such-proposed-acquisition-is-planned-or-located-in-a-manner
which-will-be-most-compatible-with-the-greatest-public-good-and-the-least
private-injury.~~

Comment. Section 5006.1 of the Public Resources Code, specifying the effect given a declaration of necessity of the Director of Parks and Recreation, is superseded by Chapter 2 (commencing with Section 350) of Division 4 of the Eminent Domain Code. Under these provisions, the Public Works Board adopts a resolution of necessity for property required by the department, and that resolution is given conclusive effect on the issues formerly mentioned in this section. See Eminent Domain Code §§ 350, 352, 354.

PUBLIC RESOURCES CODE § 6808

Staff draft December 1971

STATE LANDS COMMISSION

Public Resources Code § 6808 (amended)

Sec. . Section 6808 of the Public Resources Code is amended to read:

6808. The commission, if it deems such action for the best interests of the State, may ~~condemn~~, acquire , and possess in the name of the State any right of way or easement, including surface rights, for any operation authorized or contemplated under this chapter, that may be necessary for the development and production of oil and gas from State-owned land and for their removal, transportation, storage, and sale. ~~The commission may, for such purposes, in the name of the people of the State, institute condemnation proceedings pursuant to Section 14 of Article I of the Constitution and the Code of Civil Procedure relating to eminent domain. -- The acquisition of such interests is hereby declared a public use.~~

~~Prior to the institution of such condemnation proceedings, the commission shall adopt a resolution declaring that the public interest and necessity require the acquisition of such interest in lands for the purpose of performance of the duties vested in the commission by this chapter and that the interest in the lands described in the resolution is necessary therefor. -- The resolution shall be conclusive evidence.~~

PUBLIC RESOURCES CODE § 6808

Staff draft December 1971

~~(a)--Of-the-public-necessity-of-such-proposed-public-use.~~

~~(b)--That-such-property-is-necessary-therefor.~~

~~(c)--That-such-proposed-public-use-is-planned-or-located-in-the
manner-which-is-most-compatible-with-the-greatest-public-good-and-the
least-private-injury.~~

Comment. Section 6808 of the Public Resources Code is amended to make clear that the State Lands Commission may not condemn property. Acquisitions of property by eminent domain are to be accomplished under the Property Acquisition Law by the Public Works Board. See Govt. Code §§ 15853-15855.

The provision of Section 6808 declaring acquisitions under authority of this section a public use is deleted as unnecessary. See Eminent Domain Code § 300.

The requirement of a resolution of necessity and the specification of its effect is superseded by the more general provisions of Chapter 2 (commencing with Section 350) of Division 4 of the Eminent Domain Code, relating to resolutions of necessity. Under those provisions, the resolution is rendered by the Public Works Board and is given conclusive effect on the matters formerly referred to in Section 6808. See Eminent Domain Code §§ 350, 352, 354.

PUBLIC UTILITIES CODE § 21633

Tentatively approved September 1971
Staff revision December 1971

STATE DEPARTMENT OF AERONAUTICS

Public Utilities Code § 21633. (amended) Acquisition of property

Sec. . Section 21633 of the Public Utilities Code is amended
to read:

21633. For the purposes of this article, the department, by
purchase, gift, devise, lease, ~~condemnation~~, or otherwise, may
acquire real or personal property, or any interest therein .
~~including-easements-in-airport-hazards-or-land-outside-the-boundaries~~
~~of-an-airport-or-airport-site,-necessary-to-permit-safe-and-efficient~~
~~operation-of-the-airports-or-to-permit-the-removal,-elimination,~~
~~obstruction-marking,-or-obstruction-lighting-of-airport-hazards,-or~~
~~to-prevent-the-establishment-of-airport-hazards.~~

Comment. Section 21633 as amended continues the authority of the
Department of Aeronautics to acquire property for airport purposes, but
makes clear that the department has no independent condemnation authority.
Acquisitions of property by eminent domain are accomplished under the Property
Acquisition Law through the Public Works Board. See Govt. Code §§ 15853-15855.
The portion of Section 21633 that formerly authorized acquisition of property
for the elimination of airport hazards is continued in Section 21652.

STREETS & HIGHWAYS CODE § 102

Staff draft December 1971

DEPARTMENT OF PUBLIC WORKS--HIGHWAYS

Streets & Highways Code § 102 (amended)

Sec. . Section 102 of the Streets and Highways Code is amended to read:

102. In the name of the people of the State of California, the department may condemn for state highway purposes, under the provisions of the Eminent Domain Code ~~of Civil Procedure relating to eminent domain~~, any real property or interest therein which it is authorized to acquire. ~~The department shall not commence any such proceeding in eminent domain unless the commission first adopts a resolution declaring that public interest and necessity require the acquisition, construction or completion by the State, acting through the department, of the improvement for which the real property or interest therein is required and that the real property or interest therein described in such resolution is necessary for the improvement.~~

Comment. The portion of Streets and Highway Code Section 102 that related to the adoption of a resolution of necessity by the Highway Commission is continued in Eminent Domain Code Sections 350-353.

STREETS & HIGHWAYS CODE § 103

Staff draft December 1971

Streets & Highways Code § 103 (repealed)

Sec. . Section 103 of the Streets and Highways Code is repealed.

~~103.--The-resolution-of-the-commission-shall-be-conclusive-evidence:~~

~~(a)--Of-the-public-necessity-of-such-proposed-public-improvement,~~

~~(b)--That-such-real-property-or-interest-therein-is-necessary-therefor,~~

~~(c)--That-such-proposed-public-improvement-is-planned-or-located-in
a-manner-which-will-be-most-compatible-with-the-greatest-public-good-and
the-least-private-injury.~~

Comment. The substance of Section 103 of the Streets and Highways Code is continued in Eminent Domain Code Sections 352 and 354.

STREETS & HIGHWAYS CODE § 30404

Staff draft December 1971

DEPARTMENT OF PUBLIC WORKS--TOLL BRIDGES

Streets & Highways Code § 30404 (repealed)

Sec. . Section 30404 of the Streets and Highways Code is repealed.

~~30404.--The department shall commence any such proceedings in eminent domain whenever the authority first passes a resolution declaring that public interest and necessity require the acquisition, construction, or completion by the State acting through the department of any such bridge or highway crossing, transportation facilities, or additional transportation facilities or the acquisition of any particular real estate, personal property, franchises, rights, privileges, or easements, and that such bridge or highway crossing, transportation facilities or additional transportation facilities of any such bridge or other highway crossing, real estate, personal property, franchises, rights, privileges, or easements are necessary therefor.--Such resolution shall be conclusive evidence:~~

~~(a)--Of the public necessity of such acquisition, construction, or completion.~~

~~(b)--That such property and franchises, rights, privileges, or easements are, and that the acquisition of the fee or other interest therein is, necessary therefor.~~

STREETS & HIGHWAYS CODE § 30404

Staff draft December 1971

~~(e)--That-such-proposed-acquisition,-construction,-or-completion-is
planned-or-located-in-a-manner-which-will-be-most-compatible-with-the
greatest-public-good-and-the-least-private-injury.~~

Comment. Section 30404 of the Streets and Highways Code is superseded by the more general provisions of the Eminent Domain Code. The requirement that the Toll Bridge Authority authorize by resolution condemnations for its purposes by the Department of Public Works is continued in Eminent Domain Code Sections 350 and 351. The contents of the resolution are specified in Eminent Domain Code Section 352. The effect given the resolution is indicated in Eminent Domain Code Section 354.

WATER CODE § 250

Staff draft December 1971

DEPARTMENT OF WATER RESOURCES

Water Code § 250 (amended)

Sec. . Section 250 of the Water Code is amended to read:

250. In the name of the people of the State of California, the department may condemn for state water and dam purposes, under the provisions of the Eminent Domain Code of Civil Procedure relating to eminent domain, any real property or interest therein which it is authorized to acquire. The department shall not commence any such proceeding in eminent domain unless the project for which the property is being acquired has been authorized, and funds are available therefor, and the director first issues a declaration, concurred in by resolution of the California Water Commission, declaring that public interest and necessity require the acquisition, construction or completion by the State, acting through the department, of the improvement for which the real property or interest therein is required and that the real property or interest therein described in such declaration is necessary for the improvement.

Comment. The portion of Water Code Section 250 that required a declaration of necessity by the Director of Water Resources, concurred in by the California Water Commission, before the Department of Water Resources may

WATER CODE § 250

Staff draft December 1971

condemn property, is superseded by Eminent Domain Code Sections 350-353. This requirement is applicable in case of any acquisition by eminent domain of the Department of Water Resources, regardless what other prerequisites or approvals may be required by law. Cf. Water Code § 346. Under Eminent Domain Code Sections 350-353, a resolution of necessity adopted by the California Water Commission is required, but the requirement of a declaration of necessity by the director is not continued.

WATER CODE § 251

Staff draft December 1971

Water Code § 251 (repealed)

Sec. . Section 251 of the Water Code is repealed.

~~251.--The-declaration-of-the-director-shall-be-conclusive-evidence:~~

~~(a)--Of-the-public-necessity-of-such-proposed-public-improvement.~~

~~(b)--That-such-real-property-or-interest-therein-is-necessary-therefor.~~

~~(c)--That-such-proposed-public-improvement-is-planned-or-located-in-a
manner-which-will-be-most-compatible-with-the-greatest-public-good-and-the
least-private-injury.~~

Comment. Water Code Section 251 is superseded by Section 354 of the
Eminent Domain Code.

WATER CODE § 8304

Staff draft December 1971

Water Code § 8304 (amended)

Sec. . Section 8304 of the Water Code is amended to read:

8304. The department may obtain or condemn any right of way necessary for any construction under this chapter and shall proceed, if necessary, to condemn under the terms of the Eminent Domain Code . ~~of Civil Procedure-relating-to-such-proceedings.~~

WATER CODE § 8593

Staff draft December 1971

STATE RECLAMATION BOARD--SACRAMENTO AND SAN JOAQUIN
DRAINAGE DISTRICT

Water Code § 8593 (amended)

Sec. . Section 8593 of the Water Code is amended to read:

8593. The board may condemn in the name of the drainage district for any of the purposes set forth in this part, under the provisions of the Eminent Domain Code ~~of Civil Procedure relating to eminent domain~~ , any property or interest in property which it is authorized to acquire.

WATER CODE § 8594

Staff draft December 1971

Water Code § 8594 (repealed)

Sec. . Section 8594 of the Water Code is repealed.

~~8594.--The-board-shall-not-commence-any-proceeding-in-eminant-domain
unless-it-first-adopts-a-resolution-declaring-that-the-public-interest
and-necessity-require-the-aquisition,-construction,-or-completion-of-the
improvement-for-which-the-property-or-interest-in-property-is-required,
or-will--be-required,-and-that-the-property-or-interest-described-in-the
resolution-is-necessary-for-the-improvement.~~

Comment. Water Code Section 8594 is superseded by the more general provisions of Eminent Domain Code Sections 350-353.

WATER CODE § 8595

Staff draft December 1971

Water Code § 8595 (repealed)

Sec. . Section 8595 of the Water Code is repealed.

~~8595.--The-resolution-of-the-board-shall-be-conclusive-evidence
of-all-of-the-following:~~

~~(a)--The-public-necessity-for-the-proposed-public-improvement.~~

~~(b)--That-the-property-or-interest-is-necessary-for-the-proposed
public-improvement.~~

~~(c)--That-the-proposed-public-improvement-is-planned-or-located
in-a-manner-which-will-be-most-compatible-with-the-greatest-public-good
and-the-least-private-injury.~~

Comment. Water Code Section 8595 is superseded by Eminent Domain Code
Section 354.

WATER CODE § 11580

Staff draft December 1971

DEPARTMENT OF WATER RESOURCES

Water Code § 11580 (amended)

Sec. . Section 11580 of the Water Code is amended to read:

11580. When the department cannot acquire any necessary property by agreement with the owner, the department may condemn and take the property in the name of the State under the provisions of the laws of ~~this State relating to eminent domain proceedings~~ Eminent Domain Code if the project for which the property is being acquired has been authorized and funds are available therefor.

Comment. Section 11580 is amended to continue the final portion of former Section 11581.

WATER CODE § 11581

Staff draft December 1971

Water Code § 11581 (repealed)

Sec. . Section 11581 of the Water Code is repealed.

~~11581.--The department has no power to commence any proceedings in eminent domain unless and until the director first makes a declaration, concurred in by resolution of the California Water Commission, that public interest and necessity require the acquisition of the property; provided, the project for which the property is being acquired has been authorized and funds are available therefor.~~

Comment. Water Code Section 11581 is superseded by the more general provisions of Eminent Domain Code Sections 350-353, which make a resolution of necessity adopted by the governing body of the condemning entity prerequisite to condemnation. The final portion of Section 11581 is preserved in Section 11580. Under Eminent Domain Code Sections 350-353, a resolution of necessity adopted by the California Water Commission is required, but the requirement of a declaration of necessity by the director is not continued.

WATER CODE § 11582

Staff draft December 1971

Water Code § 11582 (repealed)

Sec. . Section 11582 of the Water Code is repealed.

~~11582.--The-written-declaration-of-the-department-shall-be-con-~~
~~clusive-evidence-of-all-of-the-following:~~

~~(a)--The-public-necessity-of-the-acquisition.~~

~~(b)--That-the-property-is-necessary.~~

~~(c)--That-the-proposed-acquisition-is-planned-in-a-manner-which~~
~~will-be-most-compatible-with-the-greatest-public-good-and-the-least~~
~~private-injury.~~

Comment. Water Code Section 11582 is superseded by the more general provisions of Eminent Domain Code Sections 352 and 354.

DEPARTMENT OF GENERAL SERVICES

915 Capitol Mall, Suite 590
Sacramento, California 95814



May 29, 1970

Mr. John H. DeMouilly
Executive Secretary
California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

Re: Acquisitions by
State Agencies

Dear Mr. DeMouilly:

By letter dated May 4, 1970, you asked as to the extent to which the grant of condemnation powers to individual State agencies has been superseded by the Property Acquisition Law (Section 15850 through 15866, Government Code).

The Property Acquisition Law is administered by the State Public Works Board. The Public Works Board does not need and does not acquire real property for its own uses. Under the Property Acquisition Law, the Public Works Board is authorized to acquire real property for a State agency only when a statute appropriating monies for the acquisition expressly provides that it is to be accomplished pursuant to the Property Acquisition Law (see Section 15853). For example, the Public Works Board acquires property within the boundaries of the State Capitol Plan due to the fact that the statute providing for the State Capitol Plan and appropriating the monies therefor (Chapter 1242 of the Statutes of 1963) expressly provides that these acquisitions shall be accomplished pursuant to the Property Acquisition Law.

Monies appropriated for the acquisition of State beaches and parks out of the State Beach, Park, Recreational and Historical Facilities Fund are subject to the Property Acquisition Law inasmuch as the Beach, Park, Recreational and Historical Facilities Bond Act of 1964 (Section 5096.25, Public Resources Code) expressly provides that such acquisitions shall be accomplished pursuant to the Property Acquisition Law.

Pursuant to express statutory provisions (Section 1348, Fish and Game Code), acquisitions on behalf of the Wildlife Conservation Board, at the option of the Wildlife Board, may be accomplished pursuant to the Property Acquisition Law or by the Department of Fish and Game. (See 23 Ops. Cal. Atty. Gen. 156 regarding the more extensive grant of condemnation powers available under these circumstances if the acquisition is accomplished under the Property Acquisition Law.)

May 29, 1970

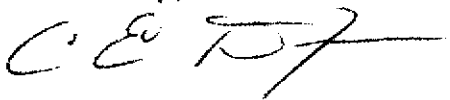
Certain State agencies, such as the Department of Parks and Recreation (non-Bond monies), the Department of Human Resources Development, the Department of the California Highway Patrol, the Department of Conservation and the Department of General Services, obtain funds for the acquisition of real property from appropriations contained in the Capital Outlay Section of the Budget Act which is enacted each year by the State Legislature. These acquisitions are accomplished pursuant to the Property Acquisition Law inasmuch as Section 7 of each Budget Act expressly provides that: "Any acquisition of land or other real property included in any appropriation made herein for capital outlay except appropriations from the California Water Fund or the State Highway Fund . . . shall be subject to the provisions of the Property Acquisition Law." Were the language of Section 7 not to be included in a yearly Budget Act, then a condemnation action by any of the aforementioned State agencies having separate condemnation grants would be accomplished pursuant to those grants. Condemnations for those aforementioned agencies not having separate condemnation grants would be accomplished by the Department of General Services pursuant to Sections 14661 and 14662 of the Government Code.

While the State Reclamation Board obtains its acquisition funds through an appropriation in the Budget Act, its acquisitions are not accomplished under the Property Acquisition Law since the Reclamation Board's appropriation is contained in the Local Assistance section of the yearly Budget Act as to which said Section 7 does not apply.

We have no specific changes to offer at this time as we feel the procedure of going through the Public Works Board satisfies the interest of the State and provides protection for the property owner. We are interested in the California Law Revision Commission and are keeping current with its activities.

Should you have any further questions in regard to the above matter, do not hesitate to call upon us.

Sincerely,



C. E. DIXON
Director

STATE PUBLIC WORKS BOARD

(Part 10.5, Division 3, Title 2 of the Government Code)

I. CREATION, MEMBERSHIP, AND MEETINGS

A. Creation

1. Created by the Legislature in 1946 with two major areas of responsibility:
 - a. Approval of plans, allocating funds and determining the timing of major construction projects of State agencies after appropriations for such projects have been made by the Legislature.
 - b. Selection and acquisition of real property for location of new State facilities or expansion of existing facilities.

B. Membership (Section 15770 of the Government Code)

1. Voting members:
 - a. Director of Finance, who has historically been the Chairman.
 - b. Director of Public Works.
 - c. Director of General Services.
2. Legislative Advisory Members:
 - a. Two Senators appointed by the Senate Rules Committee.
 - b. Two Assemblymen appointed by the Speaker.
 - c. Attend meetings and participate in discussion of projects, but do not have a vote.

C. Meetings

1. Regular meetings are held on the last Monday of each month:
 - a. Usually in Sacramento.
 - b. May occasionally be held in other parts of the State for a major project such as a new State college, mental hospital, or correctional facility.

2. Special meetings may be held at the call of the Chairman to consider projects of an emergency or high priority nature that must be acted upon prior to the regular meeting.
3. Two of the three voting members constitute a quorum.
 - a. Members may appoint their exempt deputies to represent them on the Board, except that:
 - 1) Only one deputy may vote.
 - 2) Requires one regular member and one deputy to constitute a quorum.

II. DUTIES AND RESPONSIBILITIES

A. Construction Projects

1. Construction appropriations, in the budget acts, except for minor projects are subject to Section 15790 of the Government Code which provides that the Board shall determine if construction and improvements shall be undertaken and the timing of the undertaking, giving consideration to:
 - a. The immediate needs of State agencies for such construction.
 - b. Obtaining construction at the most reasonable price consistent with such needs.
 - c. The need of construction and improvements for State agencies as compared to the need for private construction.
 - d. Providing public works to relieve unemployment.

B. Augmentation Funds

1. Sections 16352, 16354 and 16409 of the Government Code make appropriations and authorize the Board to allocate additional funds in augmentation of construction and acquisition appropriations when projects cannot be undertaken because the cost exceeds the funds available for the projects.
 - a. Section 16352 is for special fund projects, such as Motor Vehicles and Highway Patrol projects funded from the Motor Vehicle Fund.

b. Section 16354 is for projects funded from the State Construction Program Fund.

1) This fund is derived from the sale of construction bonds after authorization for issuance by the Legislature and approval by the people of the State.

c. Section 16409 is for General Fund projects.

2. On October 30, 1961, the Board adopted the following resolution authorizing the Director of Finance to augment projects within the limitations set forth in said resolution:

"IT IS HEREBY RESOLVED, that in augmentation of each appropriation item or items available for construction, improvements, and equipment of specific projects for State agencies, there is hereby approved from subject legislative appropriations and/or authorizations as are, or may be made available for this purpose, a supplemental sum which is within any one of the following: (a) 10% of the total of the official estimate for that portion of the work, including related overhead and contingency expenses for such portion, or \$50,000 whichever is the lesser; or (b) the anticipated deficit previously recognized by this Board; or (c) \$1,000 or less. The Director of Finance may, and is hereby authorized to grant such augmentation within the limitations noted above, and shall report all such allotments to this Board. Nothing in this resolution shall be construed to be at variance with Sections 14275, 16352, 16354 and 16409 of the Government Code."

3. Assembly Concurrent Resolution 47 adopted at the 1966 session of the Legislature provides that:

a. Augmentations over 25% but not exceeding 50% of funds available must be approved by the Chairmen of the Senate and the Assembly budget committees before the Board can approve the allocation of the additional funds.

b. Augmentations exceeding 50% must be deferred until the Legislature itself has either appropriated the additional funds required or has determined the augmentation should be accomplished.

C. Acquisition of Real Property

1. The Board selects and acquires real property in the name of the State of California, when the appropriation by the Legislature authorizing such acquisition is made subject to the provisions of the Property Acquisition Law.

a. Most appropriations for land acquisition are contained in the annual budget act.

1) Section 7 in the budget act provides that "any acquisition of land or other real property included in any appropriation made herein for a capital outlay . . . shall be subject to the provisions of the Property Acquisition Law."

2) Exceptions:

a) California Water Fund Acquisitions; i.e., Department of Water Resources and the Reclamation Board.

b) Appropriations to the Department of Education for allocation to junior colleges.

c) University of California.

d) Division of Highways.

b. Special appropriation bills for acquisition must contain specific language making them subject to the Property Acquisition Law.

1) An example is Ch 1242/63, which appropriated funds for the Capitol Plan in Sacramento.

D. Sale of Surplus State-Owned Property

Each year the Legislature authorizes disposition of excess State-owned real property and provides in the legislation that such disposition must be approved by the State Public Works Board. Agencies excepted from this legislation are the University of California, the Department of Public Works, and the Department of Water Resources.

III. THE PROPERTY ACQUISITION LAW

A. Enacted by the Legislature in 1944, and is now set forth in the Government Code, Sections 15850 through 15866.

B. Principal Provisions

1. The Board shall select and acquire, in the name and on behalf of the State, suitable and adequate real property for such purposes as may be specified in the legislation making funds available for such acquisition. (Section 15853)

a. The Board may acquire any interest in real property it deems advisable.

b. The Board may acquire furnishings which the owner agrees to sell and which are contained within improvements acquired.

2. Property must be acquired by condemnation and all funds expended in accord with a judgment, jury award, or determination by a trial court except: (Section 15854)
 - a. Acquisitions from the Federal government.
 - b. Acquisitions from other State agencies or the University of California.
 - c. Acquisitions for less than \$5,000, unless a part of an area made up of more than one parcel which in total would cost more than \$5,000.
 - d. Any acquisition as to which the owner and the State have reached agreement on price, and which the Board by unanimous vote determines the price is fair and reasonable and condemnation is not necessary.
3. The Board cannot select or acquire property for the use of the California State Colleges unless the Trustees have adopted a resolution approving the selection (Section 15854.1).
4. Before commencing condemnation proceedings, the Board must first adopt a resolution authorizing the condemnation (Section 15855). The P.A.L. provides that the resolution is conclusive evidence of:
 - a. The public necessity of the proposed public improvement.
 - b. That the property is necessary for the improvement.
 - c. That the improvement is planned or located in a manner which will be compatible with the greatest public good and the least private injury.
5. The Board may agree with the owner of part or all of the property being condemned as to the price to be paid, and may incorporate the agreement in a stipulation to be filed in the condemnation proceeding (Section 15857).
6. The Board may abandon a condemnation proceeding (Section 15859).
7. Any appropriation subject to the P.A.L. may be expended for payment of acquisition costs (Section 15860). These costs include:
 - a. Investigations
 - b. Surveys
 - c. Title Costs
 - d. Appraisal Fees
 - e. Staff Time

8. Until property acquired under the P.A.L. is needed for the purpose for which acquired, the jurisdiction is in the Department of General Services (Section 15862).
 - a. The Director may transfer jurisdiction to the agency for which acquired in advance of the time it is needed for the purpose for which acquired if in his opinion the transfer is in the best interest of the State.
 - 1) Example - For the agency to have interim use of the improvements or the land for interim parking.
 - b. The department may lease all or any part of the property.
 - c. The department may remove or demolish structures.
 - d. May sell or dispose of the improvements.
 - e. Rentals received are deposited in the General Fund and are appropriated to the department to maintain, improve or care for the property until needed for the purpose for which acquired (Section 15863).
 - 1) Proceeds of sale of improvements are not available for maintenance, only proceeds from the rentals.

IV. STAFF SERVICES TO BOARD BY FACILITIES PLANNING DIVISION

A. Secretariat

1. The secretariat of the Board is an assigned responsibility of the Facilities Planning Division.
 - a. Traditionally, the Board has appointed an Administrative Secretary and an Assistant Administrative Secretary as the nucleus of its staff.
 - 1) The Assistant Secretary is authorized to execute and approve any documents which the Board, by resolution, has authorized the Administrative Secretary to execute or approve.
2. Secretarial functions include preparing and distributing the following:
 - a. Notices of meetings
 - 1) Sent in advance of meetings to Board members, press and interested State agencies.
 - 2) After meeting notices advising of actions taken also are distributed.

b. Agendas

- 1) Construction items are submitted by the Budget Division, Department of Finance.
- 2) Acquisition items are submitted by the Real Property Unit, Facilities Planning Division.
- 3) Agendas are sent to press, Board members and interested State agencies.
- 4) Agendas are also sent to Legislators identifying projects within their districts.
 - a) This is in accord with Resolutions Chapter 147 adopted by the Legislature in 1959.

c. Minutes of each meeting.

d. All resolutions adopted by the Board.

e. Correspondence.

3. All acquisition projects are presented and described to the Board by the Administrative Secretary or the Assistant Secretary.

B. Screening Committee

1. This is an informal advisory committee to the Board.

a. Membership consists of representatives from the following:

- 1) Legislative Analyst's Office representing the budget arm of the Legislature.
- 2) Budget Division, Department of Finance, representing the budget arm of the Administration.
- 3) Office of Architecture and Construction on projects designed and constructed by that office.
- 4) Facilities Planning Division as the Board's secretariat and for property acquisition projects.

b. Meetings are held a week in advance of the Board's regular meeting.

c. Purpose is to analyze and discuss the scope and funding of projects to be on the agenda to assure the Board that:

- 1) The project complies with the intent of the Legislature when the appropriation was made.
- 2) The project has the recommendation of the agencies represented at the screening committee.

C. Facilities Planning Division as Staff to the Board on Acquisition Matters

1. As the staff to the Board on acquisition matters, it is the responsibility of F.P.D. to obtain the facts and information needed to assure the Board that:
 - a. The location of the proposed site meets the requirements of the agency for which it is being acquired.
 - b. The site is suitable for the purpose.
 - c. It can be acquired within the funds available and is in accord with the intent of the Legislature.
 - d. The price paid for the property is fully supported.
2. These staff functions involve the following:
 - a. Close liaison with client agencies.
 - b. Project control, including funding status.
 - c. Site investigation and title information.
 - d. Utilization of State-owned property as alternative to purchase.
 - e. Obtaining of appraisals and their review through Property Acquisition Division and having knowledge of them for presentation of the projects and purchases to the Board.
 - f. Close liaison with Property Acquisition Division during negotiations and for condemnation proceedings.

V. PUBLIC WORKS BOARD RESOLUTIONS

- A. Most actions taken by the Board on acquisition projects are in the form of resolutions
 1. Exceptions are:
 - a. Acceptance of jury or court awards are approved by motion only.

b. Approval of allocation of additional funds in augmentation of acquisition appropriations is by motion.

1) The transfer of the funds into the appropriation is by executive order of the Director of Finance.

B. Resolutions Most Frequently Adopted

1. Selecting site and authorizing acquisition by negotiation and/or condemnation (See Exhibit "A" attached)

- a. Heading - shows location of property and agency for which being acquired.
- b. Parenthetical project identification for office use.
- c. Citation of Property Acquisition Law.
- d. Citation of appropriation and use.
- e. Selects site and authorizes acquisition by negotiation and the institution of negotiations.
- f. Declaration of public necessity.
- g. Authorizes acquisition by condemnation of parcels not acquired by negotiation.
- h. Requests Attorney General to prepare and prosecute condemnation proceedings.
- i. Description of property to be acquired.

2. Approving property settlements (See Exhibit "B" attached)

- a. Heading - refers to Section 15864, which exempts from condemnation acquisitions where agreement has been reached with owner.
- b. Parenthetical project identification.
- c. Citation that owners have agreed to sell their parcels to the State.
- d. Determination that price set out in agreement is fair and reasonable, identifies property by reference to original resolution authorizing acquisition, and declares that condemnation is not necessary.
- e. Identifies parcel number, date of agreement, date of conveyance document, and the grantors.
- f. Accepts the conveyance and authorizes Chairman or Administrative Secretary to execute the agreement and any other documents needed to complete acquisition.

3. Selecting site, authorizing acquisition and approving property settlement - Pre-negotiated transaction
(See Exhibit "C" attached)

(Note: Negotiations in advance of submitting project to PWB must first be authorized by the Chief, Facilities Planning Division.)

- a. Heading - location of property and agency for which being acquired.
- b. Parenthetical project identification.
- c. Citation of Property Acquisition Law.
- d. Citation of appropriation and use.
- e. Citation that owners have agreed to sell for a specific price and identifies owner and the agreement.
- f. Authorizes acquisition.
- g. Determination that price is fair and reasonable and condemnation is not necessary.
- h. Accepts conveyance.
- i. Authorizes Chairman or Administrative Secretary to execute agreement and approve any other documents necessary to complete the acquisition.
- j. Description of property.

4. Amending Legal Description (See Exhibit "D" attached)

- a. Heading.
- b. Parenthetical project identification.
- c. Citation of previous resolution selecting site and authorizing acquisition.
- d. Reason for amending description.
- e. Amends the legal description.
 - 1) May delete previous description entirely and insert complete new description.

~~Exhibit "A"~~
~~of minutes~~
~~State Public Works Board~~
~~April 25, 1966~~

RESOLUTION OF STATE PUBLIC WORKS BOARD SELECTING
SITE AND AUTHORIZING ACQUISITION OF REAL PROPERTY
UNDER THE PROPERTY ACQUISITION LAW IN THE COUNTY
OF HUMBOLDT, STATE OF CALIFORNIA FOR THE TRUSTEES
OF THE CALIFORNIA STATE COLLEGES

(Expansion of Campus, Priority A, Dormitories -
Humboldt State College)

WHEREAS, the Property Acquisition Law (Part 11, Division 3, Title 2 of the Government Code of the State of California) empowers the State Public Works Board to select and acquire in the name of the State of California suitable and adequate real property for such purposes as may be specified in legislation making funds available for such acquisition; and

WHEREAS, Item 353q of the Budget Act of 1964 makes an appropriation for expenditure under the provisions of the Property Acquisition Law for the acquisition of real property for use of Humboldt State College, Trustees of the California State Colleges.

NOW, THEREFORE, BE IT RESOLVED that the hereinafter described real property be, and the same is, hereby selected for acquisition by negotiation under said Property Acquisition Law, and as specified and for the use set forth in Item 353q of the Budget Act of 1964, and the institution of said negotiations for purchase in accord with established procedure is hereby authorized.

BE IT FURTHER RESOLVED by the State Public Works Board that, after due consideration, it finds and determines and hereby declares:

That public interest and necessity require the acquisition, construction, or completion by the State of the improvements for which the real property described herein is required;

That the real property herein described is necessary for such public improvement; that it is necessary that all of said real property be taken therefor; and that it is necessary that all of said real property be taken in fee simple therefor;

That said proposed improvement is planned and located in a manner which will be most compatible with the greatest public good and the least private injury;

That the use of all of the said real property herein described for such improvement is a public use authorized by law; and

BE IT FURTHER RESOLVED that, after thirty days from the date of adoption of this resolution, or such earlier date as may be designated in writing by the Chairman, this Board acquire pursuant to authority contained in the Property Acquisition Law and Item 353q, of the Budget Act of 1964, in fee simple, in the name of the State of California, all the hereinafter described real property, except those parcels as to which agreement has been reached by negotiation as hereinabove authorized, by a proceeding or proceedings in Eminent Domain in accordance with the provisions of the Code of Civil Procedure relating to Eminent Domain.

BE IT FURTHER RESOLVED by the State Public Works Board, that after the hereinabove referred to thirty days from the date of adoption of this resolution, or such earlier designated date, the Attorney General is hereby requested to prepare and prosecute such proceedings, actions, or suits in the proper court or courts having jurisdiction thereof as are necessary to acquire said real property.

The real property hereinabove referred to which is authorized to be acquired by this resolution is situate in the County of Humboldt, State of California, described as follows:

PARCEL 1

Parcel 1A: Lots 1, 3, 5, 7, 9 and 11 in Block 20 of Preston Place Addition as per Map recorded in Book 10, Page 5, of Maps, in the office of the County Recorder of said County.

Parcel 1B: Lots 32, 34 and 36 in Block 24 of Preston Place Addition as per Map recorded in Book 10, Page 5, of Maps, in the office of the County Recorder of said County.

PARCEL 2

Lots 2, 4 and 6 in Block 20 of Preston Place Addition as per Map recorded in Book 10, Page 5, of Maps, in the office of the County Recorder of said County.

PARCEL 3

Lots 8, 10, 12 and 14 in Block 20 of Preston Place Addition as per Map recorded in Book 10, Page 5, of Maps, in the office of the County Recorder of said County.

PARCEL 4

Lots 16, 18, 20, 22, 24, 26, 28 and 30 in Block 20 of Preston Place Addition to the City of Arcata as per Map recorded in Book 10, Page 5, of Maps, in the office of the County Recorder of said County.

END RESOLUTION

~~Exhibit "A"~~
~~of minutes~~
~~State Public Works Board~~
~~May 31, 1966~~

**RESOLUTION OF STATE PUBLIC WORKS BOARD APPROVING ACQUISITION
OF REAL PROPERTY UNDER SECTION 15854 OF THE GOVERNMENT CODE
FOR THE TRUSTEES OF THE CALIFORNIA STATE COLLEGES**

(Expansion of Campus, Priority A, Dormitories -
Humboldt State College)

WHEREAS, the owners of the hereinafter identified parcels of real property have agreed to sell said parcels to the State for the consideration set forth in the hereinafter identified agreements, subject to the terms and conditions contained therein;

NOW, THEREFORE, BE IT RESOLVED, the STATE PUBLIC WORKS BOARD, by unanimous vote, hereby determines the consideration set forth in the hereinafter identified agreements is fair and reasonable for the purchase of certain property in the County of Humboldt, State of California, as more particularly described in that certain resolution adopted by this Board on April 25, 1966, and designated as Exhibit "A" of the minutes of that date, and acquisition by condemnation is not necessary.

<u>Parcel Number</u>	<u>Date of Agreement</u>	<u>Date of Conveyance</u>	<u>Grantors</u>
1a, 1b	5/4/66	5/4/66	Estelle and Robert McDowell
3	5/4/66	5/4/66	Charles and Teresa Dal Porto

BE IT FURTHER RESOLVED, that the conveyances identified above are hereby accepted on behalf of the State of California, and either the Chairman or Administrative Secretary of this Board is authorized to execute said agreements and such other instruments as may be necessary to complete the acquisition of said real property.

END RESOLUTION

I HEREBY CERTIFY the foregoing to be a full, true and correct copy of a resolution adopted by unanimous vote of the State Public Works Board on May 31, 1966.

WITNESS my hand this 31st day of May, 1966.

Assistant Administrative Secretary
State Public Works Board

The real property hereinabove referred to, which is authorized to be acquired by this resolution, is situate in the City of Sacramento, County of Sacramento, State of California, and described as follows:

PARCELS 1, 2, AND 3

All that portion of Block M as shown on the Plat of "Highland Park Addition to Sacramento," recorded in the office of the County Recorder of Sacramento County, October 11, 1887 in Book 2 of Maps, Map No. 6, described as follows:

Commencing at a point on the North line of said Block M, from which point of intersection of the centerline of Y Street (now known as Broadway) with the centerline of 26th Street, as said Y Street and said 26th Street are shown on the "Record of Survey of Lots 1 to 8 incl., of Block M, Highland Park," recorded in the office of the County Recorder of Sacramento County, May 18, 1946, in Book 5 of Surveys, Map No. 9, bears South $71^{\circ} 32'$ East (measured along the North line of said Block M and its extension Easterly) 283.23 feet to the centerline of said 26th Street and North $18^{\circ} 29' 30''$ East (measured along the centerline of said 26th Street) 40.00 feet distant, and from which said point of commencement the intersection of the centerline of said Y Street, with the centerline of 25th Street, as shown on said Record of Survey, bears North $71^{\circ} 32'$ West (measured along the North line of said Block M and its extension Westerly) 119.92 feet to a point on the centerline of said 25th Street and North $18^{\circ} 30''$ East (measured along the centerline of said 25th Street) 40.00 feet distant; thence from said point of commencement, South $18^{\circ} 51' 30''$ West 119.94 feet to a point on the North line of "Alley" as shown on said Record of Surveys; thence along the North line of said alley, North $71^{\circ} 32'$ West 78.88 feet to the point of intersection of the North line of said alley with the East line of said 25th Street; thence along the East line of said 25th Street; North $18^{\circ} 30''$ East 119.94 feet to the Northwest corner of said Block M, said Northwest corner being the point of intersection of the East line of said 25th Street with the South line of Y Street; thence South $71^{\circ} 32'$ East 79.92 feet to the point of commencement; being those parcels designated "King-Spring," "Young & Chong," "McNeil," and "Fontes" on said record of survey.

END RESOLUTION

Exhibit "B"
of Minutes
State Public Works Board
May 31, 1966

RESOLUTION OF STATE PUBLIC WORKS BOARD SELECTING
SITE AND AUTHORIZING ACQUISITION OF REAL PROPERTY
UNDER THE PROPERTY ACQUISITION LAW IN THE CITY OF
SACRAMENTO, COUNTY OF SACRAMENTO, STATE OF CALI-
FORNIA, FOR THE DEPARTMENT OF MOTOR VEHICLES

(Hamburger Hub - Parcels 1, 2, and 3 in Block Bounded
By 25th, 26th, Broadway, and Burnett)

WHEREAS, the Property Acquisition Law (Part 11, Division 3, Title 2 of the Government Code of the State of California) empowers the State Public Works Board to select and acquire in the name of the State of California suitable and adequate real property for such purposes as may be specified in legislation making funds available for such acquisition; and

WHEREAS, Item 333g of the Budget Act of 1965 makes an appropriation for expenditure under the provisions of the Property Acquisition Law for the acquisition of real property for use of the Sacramento headquarters of the Department of Motor Vehicles; and

WHEREAS, it appears that the owners of the following described real property have agreed to sell said property to the State for the total purchase price of \$98,500, subject to the terms and conditions of an agreement dated May 18, 1966, in which Ernest M. Nelson and Natalie D. Nelson are the Grantors and the State of California is the Grantee.

NOW, THEREFORE, BE IT RESOLVED, that the hereinafter described real property be, and the same is, hereby selected for acquisition by negotiation under said Property Acquisition Law, as specified and for the use set forth in Item 333g of the Budget Act of 1965; and

BE IT FURTHER RESOLVED that the State Public Works Board, by unanimous vote, hereby determines that such purchase price of \$98,500 is fair and reasonable and acquisition by condemnation is not necessary; and

BE IT FURTHER RESOLVED, that the State Public Works Board hereby accepts, on behalf of the State of California, the conveyance dated May 17, 1966, from Ernest M. Nelson and Natalie D. Nelson to the State of California, of the hereinafter described real property in the City of Sacramento, County of Sacramento, State of California, and consents to the recordation thereof; and

BE IT FURTHER RESOLVED, that either the Chairman or the Administrative Secretary of this Board be, and he hereby is, authorized and directed to execute said agreement and approve such instruments as may be necessary to complete the acquisition of said real property.

~~Exhibit "H"~~
~~of minutes~~
~~State Public Works Board~~
March 28, 1966

RESOLUTION OF STATE PUBLIC WORKS BOARD AMENDING
LEGAL DESCRIPTION OF PROPERTY IN THE COUNTY OF
CONTRA COSTA, STATE OF CALIFORNIA, BEING ACQUIRED
UNDER THE PROPERTY ACQUISITION LAW FOR THE
DEPARTMENT OF PARKS AND RECREATION

(Parcel 32 - Mount Diablo State Park)

WHEREAS, this Board adopted a resolution on June 29, 1964 (see page 5 and Exhibit "F", minutes of that date), selecting site and authorizing acquisition of certain real property in the County of Contra Costa, State of California, for use of Mount Diablo State Park, Division of Beaches and Parks, Department of Parks and Recreation; and

WHEREAS, it is the desire of this Board to allow the owners of Parcel 32, as described in said resolution, to retain water rights in said parcel;

NOW, THEREFORE, BE IT RESOLVED, that said resolution of June 29, 1964 is hereby amended by adding to the description of Parcel 32 contained therein the following:

Excepting therefrom all water and water rights therein and existing improvements pertaining to said water rights, together with the right to enter above the described property for purposes of maintenance and repairs of the aforementioned improvements.

In all other respects, the original resolution shall remain in full force and effect, and all of its provisions and recitals shall be applicable hereto.

END RESOLUTION

I HEREBY CERTIFY the foregoing to be a full, true, and correct copy of a resolution adopted by unanimous vote of the State Public Works Board on March 28, 1966.

WITNESS my hand this 28th day of March 1966.

Assistant Administrative Secretary
State Public Works Board

exercised by the judge not to use the jury voir dire script in a mechanical fashion, and the following specific limitations should be observed:

1. There should be no questioning of a single juror followed by an inquiry as to all others if their answers would be the same.

2. There should be reserved to counsel the right to interrupt during voir dire with specific follow-up questions as needed."

The motion as amended was adopted by a majority of the Committee. A copy of the recommended jury voir dire script for eminent domain cases is attached to these minutes.

The Committee next considered the Comprehensive Eminent Domain Statute relative to the subject matter "right to take." Section 310 was first considered which relates to the adoption by the governing body of a resolution of necessity prior to commencement of an eminent domain proceeding. A question was raised as to whether this section as presently worded would prevent a public agency from bringing an action to determine if there has been a taking or damage of property in the face of a potential inverse condemnation case in order to avoid costs and other sanctions imposed by Assembly Bill No. 533. It was suggested that Section 310 be amended by adding the following:

"This section shall not be construed

1. to prevent a public agency from bringing an action to determine if a taking or damage of property has occurred;
2. to prevent a public agency from amending the resolution of necessity after the action has been commenced, which amendment shall relate back to the date of adoption of the original resolution."

Clause 1 above is added in view of the adoption into law of Assembly Bill 533 which will encourage public agencies to file actions to avoid the sanctions of inverse condemnation actions.

Clause 2 above is suggested because of the frequency of encountering engineering problems after an action has been filed which reasonably requires a change in the configuration of the area of the property proposed to be acquired.

The basic reason for the proposed additions to Section 310 is that it is implicit in the present wording of the Statute that the public agency may not be able to amend its resolution after filing of the action in eminent domain.

Pursuant to motion and second, Section 310 as amended, was unanimously adopted.