

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

TENTATIVE RECOMMENDATION

relating to

Condemnation Law and Procedure

Condemnation Authority of State Agencies

January 1974

CALIFORNIA LAW REVISION COMMISSION
School of Law
Stanford University
Stanford, California 94305

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NOTE

This pamphlet begins on page 1051. The Commission's annual reports and its recommendations and studies are published in separate pamphlets which are later bound in permanent volumes. The page numbers in each pamphlet are the same as in the volume in which the pamphlet is bound. The purpose of this numbering system is to facilitate consecutive pagination of the bound volumes. This pamphlet will appear in Volume 12 of the Commission's *Reports, Recommendations, and Studies*.

This recommendation includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were enacted since their primary purpose is to explain the law as it would exist (if enacted) to those who will have occasion to use it after it is in effect.

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Ex Officio

October 23, 1973

To: THE HONORABLE RONALD REAGAN
Governor of California and
THE LEGISLATURE OF CALIFORNIA

The California Law Revision Commission was directed by Resolution Chapter 130 of the Statutes of 1965 to make a study of condemnation law and procedure. The Commission herewith submits a report containing its tentative recommendations relating to one aspect of this study—condemnation authority of state agencies.

This report is submitted at this time so that interested persons will have an opportunity to study these recommendations in connection with the general legislation tentatively recommended by the Commission. See *Tentative Recommendation Relating to Condemnation Law and Procedure—The Eminent Domain Law* (January 1974), to be reprinted in 12 CAL. L. REVISION COMM'N REPORTS 1 (1974). Comments on this report will be considered along with the comments the Commission receives on the general legislation and will be taken into account by the Commission in formulating its final recommendation to the 1975 Legislature. Communications concerning this report should be addressed to the California Law Revision Commission, School of Law, Stanford, California 94305.

Respectfully submitted,
JOHN D. MILLER
Chairman



CONTENTS

	<i>Page</i>
BACKGROUND	1059
RECOMMENDATIONS.....	1059
PROPOSED LEGISLATION	1060
University of California	
Education Code	
§ 23151 (amended)	1061
§ 23152 (repealed)	1062
California State University and Colleges	
Education Code § 24503 (amended)	1062
Department of Fish and Game	
Fish & Game Code § 1348 (amended)	1064
District Agricultural Associations	
Food & Agricultural Code § 4054 (amended)	1065
Department of Commerce—California Industry and World Trade	
Government Code § 8324 (amended)	1066
Director of General Services	
Government Code	
§ 14661 (repealed)	1066
§ 14662 (amended)	1067
State Establishments in Napa County	
Government Code § 14715 (amended)	1067
Property Acquisition Law	
Government Code	
§ 15853 (amended)	1068
§ 15854 (amended)	1069
§ 15854.1 (repealed)	1070
§ 15855 (repealed)	1070
§ 15855 (added)	1071
§ 15856 (repealed)	1072
§ 15858 (repealed)	1072
§ 15859 (repealed)	1073
Department of Parks and Recreation	
Government Code § 54093 (amended)	1073
Adjutant General	
Military & Veterans Code	
§ 437 (amended)	1074
§ 438 (repealed)	1074

Department of Parks and Recreation

Public Resources Code

§ 5006 (amended) 1075

§ 5006.1 (repealed) 1076

State Lands Commission

Public Resources Code

§ 6210.9 (amended) 1076

§ 6808 (amended) 1077

Department of Aeronautics

Public Utilities Code

§ 21633 (amended) 1078

§ 21635 (repealed) 1079

Department of Transportation

Streets & Highways Code

§ 102 (amended) 1080

§ 103 (repealed) 1080

§ 103.5 (amended) 1081

§ 104.1 (repealed) 1081

§ 104.2 (repealed) 1081

§ 104.3 (repealed) 1082

§ 104.7 (repealed) 1082

§ 104.15 (amended) 1083

§ 135 (amended) 1083

§ 146.5 (amended) 1084

Department of Parks and Recreation

Streets & Highways Code § 887.2 (amended) 1085

Department of Transportation—Toll Bridges

Streets & Highways Code

§ 30401 (amended) 1085

§ 30402 (amended) 1086

§ 30403 (repealed) 1087

§ 30404 (repealed) 1087

§ 30405 (repealed) 1088

Department of Water Resources

Water Code

§ 250 (amended) 1089

§ 251 (repealed) 1089

§ 251.1 (repealed) 1090

§ 252 (amended) 1090

§ 254 (repealed) 1090

§ 255 (repealed) 1091

§ 256 (repealed) 1091

§ 8304 (amended) 1092

Sacramento and San Joaquin Drainage District**Water Code**

§ 8590	(amended)	1092
§ 8590.1	(repealed)	1093
§ 8593	(amended)	1093
§ 8594	(repealed)	1094
§ 8595	(repealed)	1094

Central Valley Project**Water Code**

§ 11575.1	(repealed)	1094
§ 11575.2	(repealed)	1095

Department of Water Resources**Water Code**

§ 11580	(amended)	1095
§ 11581	(repealed)	1095
§ 11582	(repealed)	1096
§ 11583	(repealed)	1096
§ 11587	(repealed)	1096



BACKGROUND

Twelve state agencies are authorized by statute to exercise the power of eminent domain.¹ Nevertheless, the acquisition of necessary property for many of these agencies is in fact accomplished by the Public Works Board through the Property Acquisition Law.²

During recent years, there has been extensive study of the state property acquisition program and, specifically, of the extent to which property acquisition should be accomplished exclusively through the Property Acquisition Law rather than by individual state agencies.³ The question whether an individual state agency should itself acquire the property it needs for its activities or should acquire such property only through the Property Acquisition Law is one that the Commission has not undertaken to resolve. The Commission has, however, in the course of its study of eminent domain law reviewed all the statutes relating to condemnation of property for state purposes.

RECOMMENDATIONS

The Commission has determined that the statutes granting condemnation authority to state agencies should be revised to eliminate the grants of condemnation authority to state agencies that do not now exercise such authority. This will restrict such grants to those agencies now actually engaged in the property acquisition function and will leave the policy decision as to which agencies should continue to engage in this function for later legislative decision. Specifically, the Commission makes the following recommendations:

(1) The Department of Transportation, Department of Water Resources, Regents of the University of California, and Reclamation Board (on behalf of the Sacramento and San

¹ The agencies authorized to condemn are the Adjutant General (MIL. & VET. CODE § 437), Department of Aeronautics (PUB. UTIL. CODE §§ 21633-21635), Trustees of the California State University and Colleges (EDUC. CODE § 24503), Department of Fish and Game (FISH & GAME CODE §§ 1348-1349), Department of General Services (GOVT. CODE §§ 14661-14662), State Lands Commission (PUB. RES. CODE § 6808), Department of Parks and Recreation (GOVT. CODE § 54093; PUB. RES. CODE §§ 5006, 5006.2; STS. & HWYS. CODE § 887.2), Department of Transportation (STS. & HWYS. CODE §§ 102, 103.5, 104-104.4, 104.6, 30400-30413; WATER CODE § 8304), Public Works Board (GOVT. CODE § 15854), Reclamation Board (WATER CODE §§ 8590, 8593-8595), Regents of the University of California (EDUC. CODE § 23151), and Department of Water Resources (WATER CODE §§ 250-256, 258-259, 345-346, 11575-11592).

² GOVT. CODE §§ 15850-15866.

³ *E.g.*, CALIFORNIA LEGISLATIVE ANALYST, A SURVEY OF LAND ACQUISITION AND DISPOSAL BY STATE AGENCIES (1969).

Joaquin Drainage District) should continue to be authorized by statute to condemn for their purposes.

(2) Condemnation of property for all other state purposes should be a responsibility of the Public Works Board under the Property Acquisition Law. This recommendation will eliminate the delegation of eminent domain authority to those agencies that do not now exercise such authority: the Adjutant General, Department of Aeronautics, Trustees of the California State University and Colleges, Department of Fish and Game, Department of General Services, State Lands Commission, and Department of Parks and Recreation.

(3) The statutes relating to the exercise of the power of eminent domain by state agencies should be revised to conform to the proposed general legislation relating to eminent domain. See *Tentative Recommendation Relating to Condemnation Law and Procedure—The Eminent Domain Law* (January 1974), to be reprinted in 12 CAL. L. REVISION COMM'N REPORTS 1 (1974). The general eminent domain provisions have been carefully drafted to cover in a comprehensive manner all aspects of condemnation law and procedure. The object of providing one comprehensive eminent domain law will be defeated, however, unless inconsistent and duplicating provisions are deleted from the statutes governing condemnation of property for state purposes.⁴ If these conforming revisions are not made, there will be continuing confusion over the extent to which the inconsistent provisions remain in effect or are impliedly repealed.

PROPOSED LEGISLATION

The Commission's recommendations would be effectuated by enactment of the following measure:

An act to amend Sections 23151 and 24503 of, and to repeal Section 23152 of, the Education Code, to amend Section 1348 of the Fish and Game Code, to amend Section 4054 of the Food and Agricultural Code, to amend Sections 8324, 14662, 14715, 15853, 15854, and 54093 of, to add Section 15855 to, and to repeal Sections 14661, 15854.1, 15855, 15856, 15858, and 15859 of, the Government Code, to amend Section 437 of, and to repeal Section 438 of, the Military and Veterans Code, to amend Sections 5006,

⁴ The provisions of the general legislation that supersede repealed sections or deleted portions of sections are indicated in the Comments that follow the sections of the proposed legislation included in this report.

6210.9, and 6808 of, and to repeal Section 5006.1 of, the Public Resources Code, to amend Section 21633 of, and to repeal Section 21635 of, the Public Utilities Code, to amend Sections 102, 103.5, 104.15, 135, 146.5, 887.2, 30401, and 30402 of, to repeal Sections 103, 104.1, 104.2, 104.3, 104.7, 30403, 30404, and 30405 of, the Streets and Highways Code, and to amend Sections 250, 252, 8304, 8590, 8593, and 11580 of, and to repeal Sections 251, 251.1, 254, 255, 256, 8590.1, 8594, 8595, 11575.1, 11575.2, 11581, 11582, 11583, and 11587 of, the Water Code, relating to eminent domain.

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

University of California

Education Code § 23151 (amended)

SECTION 1. Section 23151 of the Education Code is amended to read:

23151. The Regents of the University of California may ~~condemn~~ *acquire by eminent domain* 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 Article 2 (commencing with Section 1245.210) of Chapter 4 of Title 7 of Part 3 of the Code of Civil Procedure.~~

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 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." In some cases, a particular statute may expressly grant the Regents of the University of California the power of eminent domain for a particular purpose. *E.g.*, EDUC. CODE § 23582.1. These specific grants of condemnation authority are not to be construed to limit the broad grant of such authority under Section 23151.

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 the Eminent Domain Law. These requirements are found in Code of Civil Procedure Section 1245.210 *et seq.* See also CODE CIV. PROC. §§ 1240.040 (resolution of necessity required), 1250.310 (contents of complaint).

Education Code § 23152 (repealed)

SEC. 2. 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, specifying the effect given to the resolution of necessity of the Regents of the University of California, is superseded by Code of Civil Procedure Section 1245.250.

California State University and Colleges

Education Code § 24503 (amended)

SEC. 3. 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, ~~or 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.

(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.

Comment. Section 24503 is amended to delete the reference to the power of eminent domain since the Trustees of the California State University and Colleges have no independent condemnation authority. The Public Works Board may condemn property for state college purposes with the consent of the trustees. GOVT. CODE §§ 15853-15855. *Cf.* EDUC. CODE §§ 23752, 23752.4, 24503 (acquisition of property for specified purposes pursuant to Property Acquisition Law).

Department of Fish and Game

Fish & Game Code § 1348 (amended)

SEC. 4. Section 1348 of the Fish and Game Code is amended to read:

1348. ~~The board shall authorize the acquisition of such lands, rights in land, water, or water rights as may be approved by the Wildlife Conservation Board as 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. The board may authorize such acquisition shall be made only by the State Public Works Board; which is hereby empowered to effect such acquisitions pursuant subject to the Property Acquisition Act Law, Part 11 (commencing with Section 15850) of Division 3 of Title 2 of the Government Code.~~

Comment. Section 1348 is amended to delete the acquisition authority of the Department of Fish and Game and the restrictions on the acquisition authority of the department 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.

District Agricultural Associations

Food & Agricultural Code § 4054 (amended)

SEC. 5. Section 4054 of the Food and Agricultural Code is amended to read:

4054. If the board of an association, by resolution adopted by vote of two-thirds of all its members, finds and determines that the public interest and necessity require the acquisition of any building or improvement which is situated on property that is owned by the association, in trust or otherwise, or of any outstanding rights to such property, ~~the association may~~, with the approval of the department *and the association*, ~~acquire~~ such building, improvement, or outstanding rights ~~by condemnation~~ *may be acquired by eminent domain pursuant to the Property Acquisition Law, Part 11 (commencing with Section 15850) of Division 3 of Title 2 of the Government Code.*

The use by the association of its property shall be considered a more necessary public use than the use of the property by any grantee, lessee, or licensee for the purposes which are specified in Section 4051 of this chapter.

Notwithstanding any provision of Sections 14256 and 14792 of the Government Code, the board of an association, by resolution adopted by vote of two-thirds of all its members, may purchase materials and lease equipment for not in excess of twenty thousand dollars (\$20,000) when such purchase or lease is made in conjunction with donated labor construction improvements on the grounds of the association.

Comment. Section 4054 is amended to conform to the policy expressed in Section 15855 of the Government Code that a district agricultural association has no independent condemnation authority. The Public Works Board may condemn property needed by the association. GOVT. CODE §§ 15853–15855. See also FOOD & AGRI. CODE § 4051(b) (property acquisitions subject to Property Acquisition Law).

Department of Commerce—California Industry and World Trade

Government Code § 8324 (amended)

SEC. 6. Section 8324 of the Government Code is amended to read:

8324. The Department of Commerce may do any or all things which it may deem necessary, useful, or convenient in carrying out the objects and purposes of this chapter ; ~~except that it shall not exercise the~~ *The power of eminent domain or issue may not be exercised nor may bonds of any nature be issued to carry out the objects and purposes of this chapter .*

Comment. Section 8324 is amended to make clear that the power of eminent domain may not be exercised to carry out the objects and purposes of this chapter. Absent this amendment, it could be argued that property could be taken by eminent domain for such objects and purposes under the Property Acquisition Law (Section 15850 *et seq.*).

Director of General Services

Government Code § 14661 (repealed)

SEC. 7. 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 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. Agencies of the state, other than the Public Works Board, that may condemn property are the Department of Transportation (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 Reclamation Board (Sacramento and San Joaquin Drainage District) (WATER CODE § 8593).

Government Code § 14662 (amended)

SEC. 8. Section 14662 of the Government Code is amended to read:

14662. The Director of General Services may acquire ; ~~by condemnation or other 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~~ *Transportation*.

Comment. Section 14662 is amended to delete the reference to the power of eminent domain because 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. Contracts for the acquisition of real property by state agencies require approval of the Director of General Services. See GOVT. CODE § 11005.

State Establishments in Napa County

Government Code § 14715 (amended)

SEC. 9. Section 14715 of the Government Code is amended to read:

14715. The Veterans' Home of California, for all purposes including irrigation and domestic, shall have the first and prior right to all available water stored in Rector

Dam on state property in Napa County. Said right shall be prior to any allocation of said waters for the use of any other state institutions, including the State Game Farm and the Napa State Hospital. In the event that there is more water available than necessary to meet the requirements of the Veterans' Home of California, the department may take and conduct from the dam such quantity of surplus water as may be determined by the Department of Water Resources to be necessary for the use of the Napa State Hospital and other state establishments located in the County of Napa, including the State Game Farm, and ~~may acquire~~ *rights-of-way may be acquired, pursuant to the Property Acquisition Law, Part 11 (commencing with Section 15850) of Division 3 of Title 2*, by purchase, lease, or condemnation for that purpose.

Comment. Section 14715 is amended to conform to the policy expressed in Section 15855 that condemnation of property for state purposes generally be accomplished by the Public Works Board under the Property Acquisition Law (Section 15850 *et seq.*).

Property Acquisition Law

Government Code § 15853 (amended)

SEC. 10. 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.~~

(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. Section 15853 is amended to make clear that the Public Works Board may acquire property for any public use by the state. With some significant exceptions, the Public Works Board is the agency that condemns property needed for the use of the state. See Section 15855.

Property may be acquired only with the approval of the agency for which the board undertakes the acquisition. This generalizes a comparable restriction formerly found in Section 15854.1. *CF. FISH & GAME CODE § 1348* (approval of Wildlife Conservation Board required). See also Sections 14730 (index or record of title of lands owned or acquired by the state), 15791 (purchase of improved property in lieu of construction).

The broad authority granted by Section 15853 is not limited by other specific grants of condemnation authority.

Government Code § 15854 (amended)

SEC. 11. 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~~ *1230.010*) of Part 3 of the 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.

(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 12 (commencing with Section ~~1273.01~~ 1273.010) of Title 7 of Part 3 of the Code of Civil Procedure.

Comment. Section 15854 is amended to conform the references in the introductory clause and in subdivision (e) to the numbering of the new eminent domain statute.

Government Code § 15854.1 (repealed)

SEC. 12. 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 University and Colleges unless, prior to the selection, the trustees have, by resolution, approved of the selection of the site.~~

Comment. Section 15854.1 is superseded by the general requirement that the Public Works Board may acquire property only with the consent of the agency concerned. See Section 15853.

Government Code § 15855 (repealed)

SEC. 13. 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 the Eminent Domain Law. See CODE CIV. PROC. §§ 1240.040 and 1245.210 *et seq.*

Government Code § 15855 (added)

SEC. 14. 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 Transportation, Department of Water Resources, State Reclamation Board, or the Regents of the University of California to exercise the power of eminent domain.

Comment. Section 15855 provides that the Public Works Board is the only agency that may condemn property needed for state purposes subject to the following exceptions:

(1) The Department of Transportation. 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).

(3) The Reclamation Board. See WATER CODE § 8593 (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); CAL. CONST., Art. IX, § 9.

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), 54093 (Department of Parks and Recreation); MIL. & VETS. CODE § 437 (Adjutant General); PUB. RES. CODE §§ 5006 (Department of Parks and Recreation), 6808 (State Lands Commission).

Government Code § 15856 (repealed)

SEC. 15. 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. Section 15856 is superseded by Code of Civil Procedure Section 1240.640.

Government Code § 15858 (repealed)

SEC. 16. 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. Section 15858 is superseded by Code of Civil Procedure Section 1240.310 *et seq.* See especially CODE CIV. PROC. § 1240.320 and Comment thereto.

Government Code § 15859 (repealed)

SEC. 17. 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. Section 15859 is superseded by Code of Civil Procedure Section 1268.510 (right to abandon eminent domain proceeding). See also CODE CIV. PROC. §§ 1268.610 and 1268.620 (litigation expenses and damages upon dismissal).

Department of Parks and Recreation**Government Code § 54093 (amended)**

SEC. 18. 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 eminent 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. Section 54093 is amended to delete the reference to the power of eminent domain since the Department of Parks and Recreation has no independent condemnation authority. Any condemnation of property for the Department of Parks and Recreation 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 Code of Civil Procedure Sections 1240.510 *et seq.* and 1240.610 *et seq.* (acquisition of property appropriated to public use).

Adjutant General

Military & Veterans Code § 437 (amended)

SEC. 19. 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. Section 437 is amended to delete the authority of the Adjutant General to exercise the power of eminent domain since the Adjutant General no longer has this power. The Public Works Board is the only state agency that may condemn property needed for armory purposes. See GOVT. CODE §§ 15853-15855.

The last sentence of Section 437, declaring armories a public use, is deleted as unnecessary. See CODE CIV. PROC. § 1240.010.

Military & Veterans Code § 438 (repealed)

SEC. 20. 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 necessary 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. Section 438 is superseded by the more general provisions of the Eminent Domain Law. See CODE CIV. PROC. §§ 1240.040 and 1245.210 *et seq.*

Department of Parks and Recreation

Public Resources Code § 5006 (amended)

SEC. 21. 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 commences 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 eminent domain. The department shall not commence any such proceedings unless the director first issues a declaration declaring that public interest and necessity require acquisition by the State of the property or interest therein, described in the declaration, and that such acquisition is necessary and proper for the extension, improvement, or development of the state park system.~~

Comment. Section 5006 is amended to delete the authority of the Department of Parks and Recreation to exercise the power of eminent domain since the Department of Parks and Recreation no longer has this power. Acquisitions by eminent domain for the state parks are made by the Public Works Board. GOVT. CODE §§ 15853–15855.

The last sentence of the first paragraph has been omitted as unnecessary in view of later enacted Government Code Section 7267.1.

The provision requiring condemnation under the Code of Civil Procedure is omitted as unnecessary. See CODE CIV. PROC. § 1230.020 (law governing exercise of eminent domain power).

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 the Eminent Domain Law. See CODE CIV. PROC. §§ 1240.040 and 1245.210 *et seq.*

Public Resources Code § 5006.1 (repealed)

SEC. 22. 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, specifying the effect given a declaration of necessity of the Director of Parks and Recreation, is superseded by provisions of the Eminent Domain Law. 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 CODE CIV. PROC. §§ 1240.040 and 1245.210 *et seq.* See especially CODE CIV. PROC. § 1245.250. See also GOVT. CODE §§ 15853–15855.

State Lands Commission**Public Resources Code § 6210.9 (amended)**

SEC. 23. Section 6210.9 of the Public Resources Code is amended to read:

6210.9. If the State Lands Commission has public land for sale to which there is no access available, it may, in the name of the State, acquire by purchase, lease, gift, or exchange; ~~or, if all negotiations fail, by condemnation,~~ a right of way or easement across privately owned land or other land that it deems necessary to provide access to such public land.

Comment. Section 6210.9 is amended to delete the authority of the State Lands Commission to exercise the power of eminent domain since the State Lands Commission no longer has this power. Acquisitions of property by eminent domain for the purposes of Section 6210.9 are to be accomplished under the Property Acquisition Law by the Public Works Board. See GOVT. CODE §§ 15853–15855.

Public Resources Code § 6808 (amended)

SEC. 24. 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:~~

- ~~(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 is amended to delete the authority of the State Lands Commission to exercise the power of eminent domain since the State Lands Commission no longer has this power. Acquisitions of property by eminent domain for the purposes of Section 6808 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 CODE CIV. PROC. § 1240.010.

The provision requiring condemnation under the Code of Civil Procedure is deleted as unnecessary. See CODE CIV. PROC. § 1230.020 (law governing exercise of power of eminent domain).

The requirement of a resolution of necessity and the specification of its effect is superseded by the more general provisions of the Eminent Domain Law. Under those provisions, the resolution is adopted by the Public Works Board and is given conclusive effect on the matters formerly referred to in Section 6808. See CODE CIV. PROC. §§ 1240.040 and 1245.210 *et seq.* See especially CODE CIV. PROC. § 1245.250.

Department of Aeronautics

Public Utilities Code § 21633 (amended)

SEC. 25. 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~~ any property described in Section 21652.

Comment. Section 21633 as amended continues the authority of the Department of Aeronautics to acquire property for airport purposes but deletes the authority of the department to exercise the power of eminent domain. Acquisitions by eminent domain are accomplished under the Property Acquisition Law through the Public Works Board. See GOVT. CODE §§ 15853–15855. The reference to Section 21652, which is substituted for the deleted portion of Section 21633, continues the authority of the department to acquire property (other than by eminent domain) for the elimination of airport hazards.

Public Utilities Code § 21635 (repealed)

SEC. 26. Section 21635 of the Public Utilities Code is repealed.

21635. In the condemnation of property, the department shall proceed in the name of the state in the manner provided by the Code of Civil Procedure. For the purpose of making surveys and examinations relative to any condemnation proceedings, it is lawful to enter upon any land. The power of the department, by condemnation, to acquire or require the relocation of any railway, highway, main, pipe, conduit, wires, cables, poles, and all other facilities and equipment or other property held for or devoted to a public use shall be exercised only after the court in which the condemnation proceedings are pending finds that the taking or relocation for the public use of the department is of greater public necessity than the public use for which the property is presently held or used. The court may fix the terms and conditions for the enjoyment of a right of common use, in lieu of taking or relocation, as it determines will best suit the public interest and necessity.

Comment. Section 21635 is not continued. The Department of Aeronautics may not condemn property in the name of the state. See Comment to Section 21633. The rules governing the conduct of eminent domain proceedings generally are prescribed in the Eminent Domain Law. See CODE CIV. PROC. § 1230.020 (law governing exercise of eminent domain power). Particular aspects of Section 21635 are dealt with in the sections of the Code of Civil Procedure indicated below.

*Section 21635**New Provisions*

Entry for survey and examination	§ 1245.010 <i>et seq.</i>
More necessary use requirement ..	§ 1240.610 <i>et seq.</i>
Right of common use	§ 1240.510 <i>et seq.</i>

Department of Transportation

Streets & Highways Code § 102 (amended)

SEC. 27. 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~~ *acquire by eminent domain any property necessary* for State highway purposes; ~~under the provisions of the 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 deleted portions of Section 102 are superseded by provisions of the Eminent Domain Law. See CODE CIV. PROC. §§ 1230.020 (law governing exercise of eminent domain power), 1235.170 and 1240.110 (right to acquire any necessary right or interest in any type of property), 1240.040 and 1245.210 *et seq.* (resolution of necessity).

Streets & Highways Code § 103 (repealed)

SEC. 28. 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 is continued in Code of Civil Procedure Section 1245.250.

Streets & Highways Code § 103.5 (amended)

SEC. 29. Section 103.5 of the Streets and Highways Code is amended to read:

103.5. ~~The Subject to Sections 1240.670, 1240.680, and 1240.690 of the Code of Civil Procedure, the~~ real property which the department may acquire by eminent domain, or otherwise, includes any property dedicated to park purposes, however it may have been dedicated, when the commission has determined by ~~such~~ resolution that such property is necessary for State highway purposes.

Comment. Section 103.5 is amended to make reference to provisions that limit the right to acquire park property under Section 103.5.

Streets & Highways Code § 104.1 (repealed)

SEC. 30. Section 104.1 of the Streets and Highways Code is repealed.

~~104.1. Wherever a part of a parcel of land is to be taken for State highway purposes and the remainder is to be left in such shape or condition as to be of little value to its owner, or to give rise to claims or litigation concerning severance or other damage, the department may acquire the whole parcel and may sell the remainder or may exchange the same for other property needed for State highway purposes.~~

Comment. Section 104.1 is superseded by Code of Civil Procedure Section 1240.410 *et seq.*

Streets & Highways Code § 104.2 (repealed)

SEC. 31. Section 104.2 of the Streets and Highways Code is repealed.

~~104.2. Whenever property which is devoted to or held for some other public use for which the power of eminent domain might be exercised is to be taken for State highway purposes, the department may, with the consent of the person or agency in charge of such other public use, condemn, in the name of the people of the State of California, real property to be exchanged with such person or agency for the real property so to be taken for State highway purposes. This section does not limit the~~

~~authorization to the department to acquire, other than by condemnation, property for such purposes.~~

Comment. Section 104.2 is superseded by Code of Civil Procedure Section 1240.310 *et seq.* (condemnation for exchange purposes). See also CODE CIV. PROC. §§ 1230.030 (exercise of eminent domain power discretionary), 1240.160 (interpretation of grants of condemnation authority).

Streets & Highways Code § 104.3 (repealed)

SEC. 32. Section 104.3 of the Streets and Highways Code is repealed.

~~104.3. The department may condemn real property or any interest therein for reservations in and about and along and leading to any State highway or other public work or improvement constructed or to be constructed by the department and may, after the establishment, laying out and completion of such improvement, convey out any such real property or interest therein thus acquired and not necessary for such improvement with reservations concerning the future use and occupation of such real property or interest therein, so as to protect such public work and improvement and its environs and to preserve the view, appearance, light, air and usefulness of such public work; provided, that land so condemned under authority of this section shall be limited to parcels lying wholly or in part within a distance of not to exceed one hundred fifty feet from the closest boundary of such public work or improvement; provided that when parcels which lie only partially within such limit of one hundred fifty feet are taken, only such portions may be condemned which do not exceed two hundred feet from said closest boundary.~~

Comment. Section 104.3 is superseded by Code of Civil Procedure Section 1240.120.

Streets & Highways Code § 104.7 (repealed)

SEC. 33. Section 104.7 of the Streets and Highways Code is repealed.

~~104.7. None of the provisions of sections 104, 104.1, 104.2, 104.3, or 104.6 is intended to limit, or shall limit, the provisions of any other of said sections, each of which is a distinct and separate authorization.~~

Comment. The substance of Section 104.7 is continued in Code of Civil Procedure Section 1240.160.

Streets & Highways Code § 104.15 (amended)

SEC. 34. Section 104.15 of the Streets and Highways Code is amended to read:

104.15. Whenever land has been acquired pursuant to *former* Section 104.1 or pursuant to Article 5 (commencing with Section 1240.410) of Chapter 3 of Title 7 of Part 3 of the Code of Civil Procedure, the department may, in its discretion, lease to a local agency for park purposes ~~such all or any~~ portion of the remainder ~~not to exceed 200 feet from the closest boundary of the state highway or public work or improvement~~, when such use will protect such highway, public work or improvement and its environs, and will preserve its view, appearance, light, air and usefulness. Such lease shall be made in accordance with procedures, terms and conditions to be prescribed by the ~~California Highway Commission~~ *commission*. Such terms and conditions shall include all of the following:

(a) Provisions requiring the local agency to develop and maintain such portion of the remainder as a park.

(b) Provision that whenever such portion of the remainder is needed for state highway purposes, the lease shall terminate.

(c) Provision that whenever such portion of the remainder ceases to be used for park purposes, the lease shall terminate.

Comment. Section 104.15 is amended to substitute a reference to the statutory provisions that superseded Section 104.1 and to delete the 200-foot restriction. See CODE CIV. PROC. § 1240.430 (disposal of acquired remnants). *Cf.* CODE CIV. PROC. § 1240.120 (right to acquire property to make effective the principal use).

Streets & Highways Code § 135 (amended)

SEC. 35. Section 135 of the Streets and Highways Code is amended to read:

135. The department may enter into contracts for the removal or relocation of structures or improvements

situated upon real property over which a right of way for state highway purposes has been or is to be acquired. *Nothing in this section limits or restricts the authority of the department to make agreements authorized by Section 1263.610 of the Code of Civil Procedure.*

Comment. The second sentence has been added to Section 135 to make clear that the authority granted the department by that section does not limit or restrict the authority granted by Code of Civil Procedure Section 1263.610 (performance of work on property not taken to reduce compensation).

Streets & Highways Code § 146.5 (amended)

SEC. 36. Section 146.5 of the Streets and Highways Code is amended to read:

146.5. The department may construct fringe and transportation corridor parking facilities along the state highway system when such construction is financed, in whole or in part, with federal funds and the entire balance of the cost of such construction is financed with funds contributed by the local agency or transit district that will operate the buses which will serve such facility. For the purposes of this code, such facilities shall be considered as part of the state highway and the department shall acquire the right-of-way necessary for such facilities in accordance with all of the laws and procedures applicable to other state highway projects ~~including, but not limited to, the provisions of Sections 104 to 104.3, inclusive.~~

The rights and obligations of the department and the local agency or transit district with respect to such fringe and transportation corridor parking facilities shall be determined by agreement between the department and the local agency or transit district.

Comment. Section 146.5 is amended to delete the reference to Sections 104–104.3. Sections 104.1–104.3 have been repealed, and the reference is unnecessary. See CODE CIV. PROC. §§ 1240.120 (condemnation for protective purposes), 1240.310 *et seq.* (condemnation for exchange purposes), and 1240.410 *et seq.* (excess condemnation).

Department of Parks and Recreation

Streets & Highways Code § 887.2 (amended)

SEC. 37. Section 887.2 of the Streets and Highways Code is amended to read:

887.2. The Department of Parks and Recreation may, when funds are specifically appropriated therefor by the Legislature, acquire by purchase, gift, grant, bequests, demise, lease, ~~condemnation~~ or otherwise, the fee or any lesser interest or right in real property, including but not limited to access rights and scenic easements, for the purpose of establishing such parkway.

Comment. Section 887.2 is amended to delete the authority of the Department of Parks and Recreation to exercise the power of eminent domain since the Department of Parks and Recreation no longer has this power. Acquisitions of property by eminent domain for the purposes of Section 887.2 are to be accomplished under the Property Acquisition Law by the Public Works Board. See GOVT. CODE §§ 15853–15855.

Department of Transportation—Toll Bridges

Streets & Highways Code § 30401 (amended)

SEC. 38. Section 30401 of the Streets and Highways Code is amended to read:

30401. In eminent domain proceedings to acquire property for any of the purposes of this chapter, any toll bridge or other toll highway crossing, real property, personal property, franchises, rights, easements, or other property or privileges appurtenant thereto appropriated or dedicated to a public use or purpose by any person, private, public, or municipal corporation, county, city, district, or any political subdivision of the State, may be condemned and taken, and the acquisition and use thereof as provided in this chapter for the same public use or purpose to which such property has been appropriated or dedicated or for any other public use or purpose, shall be deemed a superior and permanent right and necessity, and a more necessary use and purpose than the public use or purpose to which such property has already been appropriated or dedicated.

It shall not be necessary in any eminent domain proceedings pursuant to this section to plead or prove any acts or proceedings preliminary or prior to the adoption of the resolution ~~provided for in this article describing the property sought to be taken and directing such proceedings required by Section 1245.220 of the Code of Civil Procedure.~~

Comment. Sections 30401 and 30402 are amended to reflect the repeal of Section 30404. See the Comment to that section.

Streets & Highways Code § 30402 (amended)

SEC. 39. Section 30402 of the Streets and Highways Code is amended to read:

30402. In eminent domain proceedings to acquire property for any of the purposes of this chapter, any transportation facilities, additional transportation facilities, real property, personal property, franchises, rights, easements, or other property or privileges appurtenant thereto appropriated or dedicated to a public use or purpose by any person, private, public, or municipal corporation, county, city, district, or any political subdivision of the State may be condemned and taken and the acquisition and use thereof as provided in this chapter for the same public use or purpose to which such property has been appropriated or dedicated or for any other public use or purpose shall be deemed a superior and permanent right and necessity, and a more necessary use and purpose than the public use or purpose to which such property has already been appropriated or dedicated, except as to real estate, personal property, franchises, rights, privileges, or easements actively used by or necessary for the operation of a common carrier by railroad other than those used primarily by such railroad for the transportation of persons or property by interurban operation to and from an area within 50 miles from either end of any toll bridge or other toll highway crossing acquired or constructed pursuant to this chapter.

Except for such prior railroad use, it shall not be necessary in any eminent domain proceedings pursuant to this section to plead or prove any acts or proceedings preliminary or prior to the adoption of the resolution

provided for in this article describing the property sought to be taken and directing such proceedings required by Section 1245.220 of the Code of Civil Procedure.

Comment. See the Comment to Section 30401.

Streets & Highways Code § 30403 (repealed)

SEC. 40. Section 30403 of the Streets and Highways Code is repealed.

~~30403. Pursuant to the Constitution and laws relating to eminent domain proceedings, the department may condemn and take, in fee or otherwise, as the authority determines, in the name of the State any bridge or highway crossing acquired or constructed or to be acquired or constructed pursuant to this chapter, any transportation facilities or additional transportation facilities authorized to be constructed or acquired pursuant to this chapter, and any real estate, personal property, franchises, rights, privileges, or easements, whether publicly or privately owned and whether or not already devoted to a public use or purpose, deemed necessary for any such bridge or highway crossing or for the transportation facilities or additional facilities of any such bridge or other highway crossing.~~

Comment. Section 30403 is unnecessary. See CODE CIV. PROC. §§ 1230.020 (law governing exercise of eminent domain power), 1240.110 (right to acquire any necessary right or interest in any type of property). See also Sections 30401 and 30402.

Streets & Highways Code § 30404 (repealed)

SEC. 41. 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.

(c) 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 is superseded by Code of Civil Procedure Sections 1240.040 and 1245.210 *et seq.*

Streets & Highways Code § 30405 (repealed)

SEC. 42. Section 30405 of the Streets and Highways Code is repealed.

~~30405. The department may condemn and take, in fee or otherwise as the authority determines, in the name of the State, pursuant to or in conjunction with any other proceedings at any time brought pursuant to this article, any real property considered necessary for the purpose of exchanging it for other real property to be used for any of the purposes of this chapter.~~

~~Real property may be acquired for such purposes only when the owner of the property needed for a purpose provided in this chapter has agreed in writing to such exchange, and when, in the opinion of the authority, an economy in the acquisition of the necessary property can be effected thereby. The determination of the authority is conclusive evidence of all matters set forth in this section.~~

Comment. Section 30405 is superseded by Code of Civil Procedure Section 1240.310 *et seq.*

Department of Water Resources

Water Code § 250 (amended)

SEC. 43. 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~~ *acquire by eminent domain any property necessary* for state water and dam purposes ; . ~~under the provisions of the 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 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 could condemn property, is superseded by Code of Civil Procedure Sections 1240.040 and 1245.210 *et seq.* Under Code of Civil Procedure Section 1245.210 *et seq.*, 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.

Other portions of Section 250 have been omitted as unnecessary. See CODE CIV. PROC. §§ 1230.020 (law governing exercise of eminent domain power), 1235.170 and 1240.110 (right to acquire any necessary right or interest in any type of property).

Water Code § 251 (repealed)

SEC. 44. 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. Section 251 is superseded by Code of Civil Procedure Section 1245.250.

Water Code § 251.1 (repealed)

SEC. 45. Section 251.1 of the Water Code is repealed.

~~251.1. Property already appropriated to public use shall not be taken unless for a more necessary public use than that to which it has already been appropriated.~~

Comment. Section 251.1 is superseded by Code of Civil Procedure Sections 1240.510 *et seq.* (compatible use), 1240.610 *et seq.* (more necessary public use).

Water Code § 252 (amended)

SEC. 46. Section 252 of the Water Code is amended to read:

252. *The Subject to Sections 1240.670 and 1240.680 of the Code of Civil Procedure, the* real property which the department may acquire by eminent domain, or otherwise, includes any property dedicated to park purposes, however it may have been dedicated ; ~~when the director has determined by such declaration that such property is necessary for state water and dam purposes .~~

Comment. Section 252 is amended to make reference to provisions that limit the right to acquire park property under Section 252. The deleted portion of Section 252 is unnecessary. See the Comment to Section 250.

Water Code § 254 (repealed)

SEC. 47. Section 254 of the Water Code is repealed.

~~254. Whenever a part of a parcel of land is to be taken for state dam or water purposes and the remainder is to be left in such shape or condition as to be of little value to its owner, or to give rise to claims or litigation concerning~~

severance or other damage, the department may acquire the whole parcel and may sell the remainder or may exchange the same for other property needed for state dam or water purposes.

Comment. Section 254 is superseded by Code of Civil Procedure Section 1240.410 *et seq.*

Water Code § 255 (repealed)

SEC. 48. Section 255 of the Water Code is repealed.

255. Whenever property which is devoted to or held for some other public use for which the power of eminent domain might be exercised is to be taken for state dam or water purposes, the department may, with the consent of the person or agency in charge of such other public use, condemn, in the name of the people of the State of California, real property to be exchanged with such person or agency for the real property so to be taken for state dam or water purposes. This section does not limit the authorization to the department to acquire, other than by condemnation, property for such purposes.

Comment. Section 255 is superseded by Code of Civil Procedure Section 1240.310 *et seq.*

Water Code § 256 (repealed)

SEC. 49. Section 256 of the Water Code is repealed.

256. The department may condemn real property or any interest therein for reservations in and about and along and leading to any state dam or water facility or other public work or improvement constructed or to be constructed by the department and may, after the establishment, laying out and completion of such improvement, convey out any such real property or interest therein thus acquired and not necessary for such improvement with reservations concerning the future use and occupation of such real property or interest therein, so as to protect such public work and improvement and its environs and to preserve the view, appearance, light, air and usefulness of such public work; provided, that land so condemned under authority of this section shall be limited to parcels lying wholly or in part within a distance of not

~~to exceed 500 feet from the closest boundary of such public work or improvement; provided, that when parcels which lie only partially within such limit of 500 feet are taken, only such portions may be condemned which do not exceed 600 feet from said closest boundary.~~

Comment. Section 256 is superseded by Code of Civil Procedure Section 1240.120.

Water Code § 8304 (amended)

SEC. 50. 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 Code of Civil Procedure relating to such proceedings.~~

Comment. The deleted portion of Section 8304 is unnecessary. See CODE CIV. PROC. § 1230.020 (law governing exercise of eminent domain power).

Sacramento and San Joaquin Drainage District

Water Code § 8590 (amended)

SEC. 51. Section 8590 of the Water Code is amended to read:

8590. The board may do any of the following:

(a) Acquire either within or without the boundaries of the drainage district, by purchase, condemnation or by other lawful means in the name of the drainage district, all lands, rights of way, easements, property or material necessary or requisite for the purpose of bypasses, weirs, cuts, canals, sumps, levees, overflow channels and basins, reservoirs and other flood control works, and other necessary purposes, including drainage purposes.

(b) Construct, clear, and maintain bypasses, levees, canals, sumps, overflow channels and basins, reservoirs and other flood control works.

(c) Construct, maintain, and operate ditches, canals, pumping plants, and other drainage works.

(d) Make contracts in the name of the drainage district to indemnify or compensate any owner of land or other property for any injury or damage caused by the exercise of the powers conferred by this division, or arising out of the use, taking, or damage of any property for any of the purposes of this division.

~~(e) Whenever real property which is devoted to or held for some other public or quasi/public use is required by the drainage district for any of the purposes set forth in this part, the board may acquire in fee or in any lesser estate in interest in the name of the drainage district real property adjacent thereto or in the immediate vicinity thereof to be exchanged for the real property required by the drainage district as aforesaid for the purposes set forth in this part.~~

Comment. The deleted portion of Section 8590 is superseded by Code of Civil Procedure Section 1240.310 *et seq.* (condemnation for exchange purposes).

Water Code § 8590.1 (repealed)

SEC. 52. Section 8590.1 of the Water Code is repealed.

~~8590.1. Wherever a part of a parcel of land is to be taken for purposes as set forth in Section 8590 of this code and the remainder is to be left in such shape or condition as to be of little value to its owner, or to give rise to claims or litigation concerning severance or other damage, the board may acquire the whole parcel and may sell the remainder or may exchange the same for other property needed for purposes as set forth in Section 8590 of this code.~~

Comment. Section 8590.1 is superseded by Code of Civil Procedure Section 1240.410 *et seq.*

Water Code § 8593 (amended)

SEC. 53. Section 8593 of the Water Code is amended to read:

8593. The board may ~~condemn~~ *acquire by eminent domain* in the name of the drainage district *any property necessary* for any of the purposes set forth in this part; .
~~under the provisions of the Code of Civil Procedure~~

relating to eminent domain; any property or interest in property which it is authorized to acquire.

Comment. The deleted portions of Section 8593 are unnecessary. See CODE CIV. PROC. §§ 1230.020 (law governing exercise of eminent domain power), 1235.170 (defining "property").

Water Code § 8594 (repealed)

SEC. 54. Section 8594 of the Water Code is repealed.

~~8594. The board shall not commence any proceeding in eminent domain unless it first adopts a resolution declaring that the public interest and necessity require the acquisition, 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. Section 8594 is superseded by Code of Civil Procedure Sections 1240.040 and 1245.210 *et seq.*

Water Code § 8595 (repealed)

SEC. 55. 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. Section 8595 is superseded by Code of Civil Procedure Section 1245.250.

Central Valley Project

Water Code § 11575.1 (repealed)

SEC. 56. Section 11575.1 of the Water Code is repealed.

~~11575.1. The authority conferred by Section 11575 to acquire property for water purposes, includes authority to acquire property necessary for future needs.~~

Comment. Section 11575.1 is superseded by Code of Civil Procedure Section 1240.210 *et seq.*

Water Code § 11575.2 (repealed)

SEC. 57. Section 11575.2 of the Water Code is repealed.

~~11575.2. Whenever a part of a parcel of land is to be taken for state water development purposes and the remainder is to be left in such shape or condition as to be of little value to its owner, or to give rise to claims or litigation concerning severance or other damage, the department may acquire the whole parcel and shall sell the remainder or shall exchange the same for other property needed for state water development purposes.~~

Comment. Section 11575.2 is superseded by Code of Civil Procedure Section 1240.410 *et seq.*

Department of Water Resources

Water Code § 11580 (amended)

SEC. 58. 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~~ *exercise the power of eminent domain to acquire* the property in the name of the State ~~under the provisions of the laws of this State relating to eminent domain proceedings. 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 and to delete unnecessary language. See CODE CIV. PROC. § 1230.020 (law governing exercise of eminent domain power).

Water Code § 11581 (repealed)

SEC. 59. 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. Section 11581 is superseded by the more general provisions of Code of Civil Procedure Section 1245.210 *et seq.* which makes a resolution of necessity adopted by the governing body of the condemning entity a prerequisite to condemnation. Under Code of Civil Procedure Section 1245.210 *et seq.*, 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. See Comment to Section 250.

The final portion of Section 11581 is preserved in Section 11580.

Water Code § 11582 (repealed)

SEC. 60. Section 11582 of the Water Code is repealed.

~~11582. The written declaration of the department shall be conclusive 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. Section 11582 is superseded by Code of Civil Procedure Section 1245.250.

Water Code § 11583 (repealed)

SEC. 61. Section 11583 of the Water Code is repealed.

~~11583. Property already appropriated to public use shall not be taken unless for a more necessary public use than that to which it has already been appropriated.~~

Comment. Section 11583 is superseded by Code of Civil Procedure Sections 1240.510 *et seq.* (compatible use), 1240.610 *et seq.* (more necessary public use).

Water Code § 11587 (repealed)

SEC. 62. Section 11587 of the Water Code is repealed.

~~11587. The department in the name of and for the State may take immediate possession and use of any property required for the construction, operation, or~~

maintenance of the project upon first commencing eminent domain proceedings according to law in a court of competent jurisdiction, and thereupon giving such security in the way of money deposited as the court in which the proceedings are pending directs, and in such amounts as the court determines to be reasonably adequate to secure to the owner of the property sought to be taken immediate compensation for the taking and any damage incident thereto, including damages sustained by reason of an adjudication that there is no necessity for taking the property.

Comment. Section 11587 is superseded by Chapter 6 (commencing with Section 1255.010) of Title 7 of Part 3 of the Code of Civil Procedure.

(1098-1100 blank)