ACQUISITION OF ACCESS RIGHTS IN CALIFORNIA

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SYNOPSIS

After several years of careful study and consideration, the officials of the California Division of Highways have come to the conclusion that there is only one way to protect the huge past and anticipated future investments to the motoring public in our State Highway System.

In the future, on all important State highway arterials the acquisition of right-of-way will be for either full freeway construction where the heaviest volume of traffic exists, or for access rights from the abutting property owners on a limited basis.

This program is the main feature of the present $100,000,000 postwar construction program which will undoubtedly be enlarged by Federal Aid and by a possible increase in the State gas tax.

To date the California Highway Commission has passed resolutions declaring 420 miles of State Highway System as freeways. Of this total, 264 miles have been declared full freeways, and 156 miles limited freeways (limited access highways).

Of the 124 projects in the present postwar program, 52 are either full freeways or limited freeways. Of the total of 220.9 miles, 99.8 miles represent full freeways and 121.1 miles, limited freeways.

Approximately 25 miles of full freeway have been constructed in California—the most important being the Arroyo Seco Parkway in Los Angeles County.

The ultimate plan of the California Division of Highways is to convert into freeways the two main north and south State arterials (Federal Routes 99 and 101), two of the main east and west arterials (Federal Routes 40 and 60) for their entire length, and portions of Federal Route 50, a third important east and west cross-state arterial, thus ultimately making the main arterials where heavy traffic congestion is found, full freeways, with the balance of the alignment limited freeways.

Since January 1, 1944, we have completed well over 60 per cent of an initial $10,500,000 right-of-way acquisition program in number of parcels and over 65 per cent in expenditures. The over-all program of right-of-way acquisition for present postwar construction represents a total expenditure of over $20,000,000 and the acquisition of more than 7500 parcels of land.

The acquisition and legal control of right of way for the purpose of regulating the free and safe flow of traffic by the Governmental agencies vested with the responsibility and authority of designing, constructing and operating a proper system of highways, roads and streets, goes far beyond the problems, duties, and obligations of the State Highway Engineer, the County road officials and the City Engineer. It affects the present and future planning of City and County Regional Planning Commissions, land developers, subdividers, and individual property owners.

In a comprehensive study made over a period of years by the Division of Highways, State of California, and, without for a minute losing sight of the fact that the abutting and contiguous property owners are entitled to careful consideration in the design and lay-out of the State highway system including State highway routes through the cities, we have kept uppermost in mind that the motor vehicle operators are the citizens, who through the medium of the gasoline tax, pay the entire cost of right-of-way, construction and maintenance; and that they should receive first consideration in planning the future facilities that are required to handle vehicular traffic in this State.

We are also mindful that, in the metropolitan areas in California, the trend for a number of years has been toward decentralization and

refusal of the public generally to avail themselves of mass transportation facilities, even though such facilities in and around the cities of Los Angeles and San Francisco are as good as the average in other cities of the Nation. It follows that in the metropolitan areas in California we have the maximum vehicle miles traveled per passenger mile because of the excessive use of private transportation.

The engineers have come to the conclusion that the only answer to the problem within the metropolitan areas and the solidly built-up urban areas adjacent thereto, is to divorce through traffic from local traffic, and that the only means to accomplish this end is—*the freeway.*

In the fringe of the urban areas, where so-called ribbon development has become the major problem, and in the rural areas, the answer is the acquisition of right of way on a limited basis, with consideration being given to the construction of outer highways along those portions of the alignment where there is a large development of roadside business usually intermingled with a certain amount of low to medium-grade residential development.

In California the term "limited freeway" means acquiring the access rights from the abutting owner except for one or more designated openings having maximum widths of 30 ft. for ingress and egress, with perhaps highway grade separations at some of the more important intersecting cross streets or roads.

Just previous to the commencement of World War II, the West's first freeway—the Arroyo Seco Parkway—was completed and opened to traffic between the business centers of Los Angeles and Pasadena. Up to this date the California Highway Commission had passed resolutions declaring 420 miles of the State Highway System as freeways. Of this total, 264 miles have been declared full freeways, and 156 miles limited freeways (limited access highways).

Of the 124 projects in the present postwar program, 52 are either full freeways or limited freeways. Of the total of 220.9 miles, 99.8 miles represent full freeways and 121.1 miles, limited freeways.

There have been approximately 25 miles of full freeway constructed in California—the most important being the Arroyo Seco Parkway in Los Angeles County.

The ultimate plan of the California Division of Highways is to convert the two main north and south State arterials (Federal Routes 99 and 101), two of the main east and west arterials (Federal Routes 40 and 60) and portions of Federal Route 50, a third important east and west cross-state arterial, into freeways; thus ultimately making the main arterials at locations where heavy traffic congestion is found, full freeways, and the balance of the alignment limited freeways.

When the Right-of-Way department realized that it would shortly be called upon to commence right-of-way acquisition for planned freeways on a large scale, we were authorized by the State Highway Engineer to institute a complete and comprehensive study to determine what effect full freeway construction would have upon the values of real estate abutting on and contiguous to the proposed freeway, and upon the market values of property from which we take only a small portion for widening including the taking of access rights. A complete study was also made to determine the effect upon abutting property where access was taken on a limited basis for proposed limited freeway construction.

A third and very carefully planned portion of the study has been to determine the effect upon market values of properties abutting upon streets intersecting the freeway where necessity requires that they be dead-ended at the freeway right-of-way line; in other words, the effect of the creation of cul-de-sac streets.

Although we believe we have developed from our comprehensive study the correct answer to enable us to give reliable information to our engineers and to the affected property owners, we were disappointed when we learned how little information we could secure from other state, county and city officials on the subject—the one exception being the Westchester County Park Commission.

Our experience has convinced us that the subject is worthy of much additional research and study jointly by the several State highway organizations as a group, with the assistance of engineers and planners of city and county governments.

As a result of our studies, we are satisfied that the acquisition of right-of-way on a limited access basis through the fringe of urban area and the rural area, is actually more beneficial than detrimental to the abutting

property owner, with the one exception of the fairly solidly built-up ribbon type of development that has become so common just beyond the city limits of the great majority of the larger cities. This troublesome ribbon development problem can of course be solved by a wider right of way with outer roadways to serve the small business establishments.

The study has developed some very interesting facts relative to ribbon development in general. Such development springs up from the desire of a property owner who owns perhaps 20 to 100 acres of land, to cash in on his highway frontage. To accomplish this result, he sells the frontage on the highway in lots perhaps 100 to 150 ft. deep, 60 to 100 ft. wide. He finally realizes that from his total holding of perhaps 100 acres he has sold the 5 acres fronting on the highway for $1500 per acre; and then when it is too late, he realizes that he has created a self-imposed severance damage to the extent that his remaining 95 acres without highway frontage is now worth only $400 an acre instead of its original $500 per acre. We have found this to be the fact in numerous instances and, in our opinion, this proves that ribbon development is highly detrimental to the large land owner.

The present trend in the better type of urban and rural residential subdivision property, as is evidenced in a great many of the larger recent subdivisions in California during the last several years, is for the subdivider to either back the first tier of lots up to the main arterial, with buildings fronting on the local streets, or construct his own outer highway adjacent to the main arterial with this outer highway having perhaps only one or two connections into the main arterial, with such entries being from several hundred feet to a mile or a mile and a half apart. In our opinion, this modern trend clearly indicates that the acquisition of access rights on a limited basis is not detrimental to the owner of large unimproved or agricultural properties whether they are immediately adjacent to the city or far removed therefrom.

The present trend of industrial subdivisions clearly indicates that the prospective purchaser of land for the construction of a modern industrial plant much prefers to locate his factory on a side street with railroad trackage facilities, immediately adjacent to the main arterial, and to stay away from the main arterial frontage, as he has come to realize that there are many advantages when his manufacturing plant operations are not affected by heavy traffic movement.

We have studied numerous modern industrial subdivisions which have sprung up since 1940, where a large tract containing ten or more industrial plants located on several new streets created by the subdivision, have only one means of access to the adjacent arterial.

We usually find the urban and rural service station located at an intersecting cross street. Under our procedure in the acquisition of limited access rights, assuming that the service station owner has 100 to 150 ft. of frontage, we allow him one 30-ft. opening. His second opening to permit free flow of vehicles to his station is on the intersecting cross street back of the end of the curve of the normal curb return. If the improvement consists of several buildings such as service station, garage, restaurant, general store, auto court and residence, we practically always have to move the buildings back to make way for the widening of the right of way to accommodate the proposed improvement. Hence, in our negotiations with the property owner, we arrange to move the buildings back an additional 30 or 40 ft. In some cases where the depth of the ownership is limited, this necessitates acquiring from the owner a strip of land to the rear of the affected ownership, having a much lower acreage value; and, as consideration for the granting of the access rights to the State, we construct the outer highway for a distance of perhaps 150 to 400 ft., depending upon requirements. The outer highway is, of course, built on private property and as this type of development is usually at an intersection, we allow one 30-ft. opening for access into the highway. The other opening to permit free flow of traffic is back of the curve of the normal curb return on the side road.

The difficult problem is the one where there is several hundred feet up to a mile of solidly built-up ribbon development just outside the limits of a city. This necessitates careful study to determine whether the practical plan is to widen the existing alignment—which means paying the full cost of moving all improvements back and constructing an outer highway which of course must be maintained at public expense because of the large number of individual ownerships—or the construction

of the limited freeway on a new alignment, by-passing the ribbon development.

In the case of strictly agricultural property, for example where a farmer has 3000 ft. of frontage and we acquire access rights leaving him perhaps three 30-ft. openings, there are mutual advantages to be derived. We eliminate the possibility of future ribbon development, the farmer without sacrificing any of the value of his agricultural property secures a tremendous advantage in the increased farm-to-market traffic facilities that we supply him, and in the remote case of a possible future subdivision, the present trend of subdivision development as discussed previously clearly indicates that he is not damaged from the standpoint of market value.

We have had little or no difficulty in negotiating right-of-way acquisition, including the taking of access rights on a limited basis, in our present program for postwar construction, and every present indication points to the fact that we will continue to secure full cooperation from the owners of rural properties who fully appreciate the ultimate advantages they derive from limited freeways expanding to full freeways within the metropolitan areas.

The real problem is faced as we approach the urban areas of metropolitan cities where the switch is made to the full freeway. From the experience so far in the acquisition of right-of-way for freeway construction in the metropolitan areas of San Francisco, Los Angeles, and other larger cities in California, we are well satisfied that the problem of right-of-way acquisition through the commercial and industrial areas is not so difficult as the right-or-way acquisition for freeway construction through the apartment house and residential sections.

Of course, generally speaking, in acquiring right-of-way for freeway construction in the cities, whole parcels of land are taken and while the owners of residential properties are most reluctant and in the earlier stages of our program refused to negotiate settlement for the reason they found it impossible to purchase new residential properties, we have overcome this difficulty, that at first appeared to be an impassé, through a program under which we lease the acquired property back to the seller or the occupant for the duration of hostilities and a reasonable period thereafter. This program is also carried out in the case of business and industrial properties affected; but we do, as a result of Supreme Court decisions in California, anticipate some real problems at a later date at certain locations where we will create cul-de-sac streets—in other words, the dead-ending of less important streets at the freeway right-of-way line because the volume of traffic and importance of the local street does not justify a grade separation structure to carry it over or under the freeway.

In the case of intersecting cross streets careful study is made jointly by right-of-way, design and traffic departments of the effect freeway construction will have upon them, with full information available as to traffic flow, origin and destination, etc., to determine —first: whether a grade separation structure should be built to carry the intersecting street over or under the freeway; second, whether the intersecting street should dead-end at the freeway; third, assuming that a grade separation structure is not justifiable, whether public convenience and necessity and the estimated amount of damages to private property abutting upon a potential cul-de-sac, justifies the construction of outer highways paralleling and usually immediately adjacent to the freeway into which the intersecting street opens thus permitting the free flow of traffic, although the route may be somewhat circuitous.[1]

In the study of the cul-de-sac problem, we are satisfied that careful consideration must be given to the convenience and economy of public agencies after the construction of the freeway, in rendering to the abutting property owners on potential cul-de-sac streets, such services as garbage disposal, mail delivery, public utility service, fire protection, etc.; also, some consideration must be given to the convenience of the abutting property owners on the potential cul-de-sac streets, and to the convenience of the general public.

We must also consider the painful fact that the Supreme Court of the State of California, in the case of Bacich vs. California Toll Bridge Authority (23 A.C. 345) decided that the owner of property abutting upon a city street has a right of occupancy and easement of use which extends to the next intersecting street in each direction. It, of course, follows that

[1] The higher courts of California, in the case of People vs. Beckham (24 A.C. No. 15, min. 2.) have held that mere circuity of travel is not a compensable damage.

if access is cut off in one direction, creating a cul-de-sac, the owner is entitled to compensation for any resulting depreciation in the value of his property. This raises the question—"What is the damage if a cul-de-sac is created?" In the case of a store or other commercial establishment placed on a cul-de-sac, we must concede that the property owner is damaged. On the other hand, we have numerous recent instances in the metropolitan areas where large firms have deliberately selected a site on a cul-de-sac street for a new office building.

In one recent instance where a $450,000 branch office was built on a cul-de-sac street, our investigation disclosed that this site was selected to get away from the noise and confusion normally found on an important arterial. In the case of industrial properties, we have found that land values on already established cul-de-sac streets are no different than those on through streets.

In the case of residential properties, we find the modern trend in the construction of up-to-date recently opened subdivisions, is for the subdivider to intentionally create cul-de-sac streets with their many advantages—the principal one being the elimination of through or fast moving traffic, which tremendously increases the safety factor for the neighborhood children—although we concede there is perhaps a disadvantage to an apartment house or a hotel being located on a cul-de-sac street because of the loss of advertising value.

Obviously, the taking of access rights on a limited freeway basis cannot be measured on a lineal foot basis nor can the taking of full access rights for freeway construction be measured on this basis. We have become satisfied that the proper procedure to determine the value of access rights whether an entire taking or a limited taking, is to approach the appraisal value on the "before and after" theory. In other words, after we have determined by scientific appraisal procedure the fair market value of the parcel taken and the severance damage to the remaining parcel not taken, then by further study we determine the value of the remaining portion not taken, with access rights, then without access rights, or with limited access rights, as the case may be.

In the taking of full access rights for freeway construction—and in almost all cases full freeway is along entirely new alignment—the property continues to enjoy full access along the established street on which it has always fronted. It is therefore our contention that the only compensation to which the property owner is entitled is the value of the parcel taken plus severance damage, if any, to the remaining portion not taken, for obviously in this case the taking for a freeway would be no different than the taking for the construction of a school or any other type of public improvement, in which case the property owner would not have access across the land of the public improvement.

If the improvement on a new alignment is a limited freeway, where the property owner will have limited access, he still has the full use of his former means of access along existing streets and roads. It follows that in the construction of the new limited access freeway, if the property is cut in two, the owner suffers the usual severance damage but he cannot suffer a damage because of the taking of access on a limited basis along the new alignment because there was previously no highway there; so we will not concede payment to a property owner for something which he never had.

In the case of a full freeway, there may be a variation in this procedure because the taking of all access rights may cause the property owner to suffer some damage in addition to the normal severance damage he will suffer.

There are cases where the full freeway will sever a portion of an ownership and leave it land-locked without access. For these careful study is necessary to determine whether the most economical program is to construct an outer highway to supply this remaining portion of the ownership with access to the existing system of streets and roads, or whether we should purchase the severed portion of the property and attempt to dispose of it to the abutting owner who would have access to the severed portion as a part of his holding, because he has access to the previously existing system of streets and roads on his side of the freeway.

The real measure of damages because of the taking of access rights depends upon the highest and best use to which the property could be put. This necessitates the usual study to determine the fair market value of the parcel taken, the severance damage to the remaining

portion not taken, and the additional damage, if any, because of the taking of either full or limited access; and this determination, in our opinion, must be made on a "before and after" value theory, for we do not believe that access rights can be measured on a front foot or lineal foot basis.

In the case of acquisition on a limited access basis for limited freeway construction in rural and semi-rural areas, the service station or other roadside business operator is, in our opinion, better off and has a more valuable holding than he previously had on the conventional type of highway, for the reason that he is permitted to reserve one opening, with a second opening from the intersecting cross street; or if he is between streets, he is allowed to reserve two openings. It follows that he still has the means of free flow of traffic to his establishment that he previously had, and the proposed improvement actually materially enhances the value of his land and improvemengs because, through the medium of the limited access acquisition from undeveloped properties with only a minimum of openings, we are very materially minimizing his future competition.

In the case of rural residences familiarly referred to as "commercial acres," the minimum of damage suffered by the taking of access rights except for one 20-ft. driveway approach to the residence is far more than offset by the tremendous improvement in traffic facilities supplied to this owner between his property and the metropolitan area.

In the case of agricultural property, obviously just as many potatoes can be grown per acre with limited access from the highway as with full access. The minimum damage suffered is far more than offset by the tremendous improvement in the farm-to-market highway because of the limited freeway type of construction and, as we have previously pointed out, any future subdivision plans are in no way affected. Our investigation has conclusively proven that the modern type of subdivision previously mentioned brings as much if not more net return to the subdivider than the old conventional type of subdivision.

Our experience in over 1200 transactions where we have acquired limited access clearly indicates that the cost to the State for this type of improvement is very nominal, because the property owner fully realizes that his future advantages more than offset the minimum disadvantages, and both we and the property owner are willing to concede that both are greatly benefited.

While this article is prepared by a right-of-way agent with right-of-way problems in mind, we nevertheless from a right-of-way standpoint have been looking ahead with full realization of the tremendous benefit which will be derived by the traveling public as a result of these new modern traffic facilities; *but*, we visualize that the freeway will deliver an increased volume of traffic into the hearts of the metropolitan areas of the great cities in California including San Francisco, Oakland and Los Angeles. We realize that the freeway used by properly designed and operated buses will make mass transportation more inviting, but we also realize that the safety features of the freeway and its tremendous time-saving advantages will make it more attractive for individual automobile operators to go into the heart of the business district.

We are aware of the vital importance of the coordination of automobile parking facilities with any comprehensive freeway construction plan. The patient is only half cured if, while the freeway makes it possible to reach more safely and quickly the heart of the metropolitan area, there is no place to park the automobile while business is transacted.

Both Los Angeles and San Francisco now have acute shortages of parking facilities and if after the war, as our best economists and automotive engineers now predict, there will be a tremendous increase in the number and use of automobiles, and if our freeways tremendously increase the volume of traffic in the downtown metropolitan areas as our traffic engineers and zoning experts predict, and a coordinated plan of parking facilities to match our freeway plan is not carried out, the ultimate result can easily be that through the solution of one problem we have created another equally as serious.

The Los Angeles City Planning Commission has taken a very forward and progressive step and has under consideration at the present time a proposed zoning ordinance which is probably the most comprehensive zoning ordinance that has ever been considered anywhere in the United States with the exception of a similar plan in the city of Madison, Wisconsin. Under Section 12.20 of this proposed ordi-

nance, we quote Subsections A-3, A-4, A-5 and A-6:

"District Terminology

Whenever the terms "A" District, "R" District, "C" District or "M" District are used, they shall be deemed to refer to all districts containing the same letters in their names (except "RA" Suburban and "CM" Business Districts) i.e., "C" District shall include the "C-1", "C-2", and "C-3" Districts.

Automobile Parking Space

There shall be provided at the time of the construction of any main building hereafter erected or at the time of the alteration or enlargement of any main building, minimum permanently-maintained off-street parking accommodations, with adequate provision for ingress and egress as follows:

(a) *Private Garages for Dwellings*

There shall be at least one parking space, in a private garage on the same lot with the main building, for each dwelling unit therein, and such parking space shall be not less than 8 ft. wide, 18 ft. long and 7 ft. high. In all "R" Districts, including the "RA" District, a private garage shall have a capacity for not more than 2 passenger automobiles for each dwelling unit, unless the lot whereon such garage is located has an area of 2500 sq. ft. for each vehicle stored.

(b) *For Buildings Other Than Dwellings*

There shall be at least one parking space of 250 sq. ft. on the same lot with the main building, or not more than 300 ft. therefrom, as follows:

(1) For churches, high school, college and university auditoriums and other similar places of assembly, at least 1 parking space for every 10 seats provided in said buildings.

(2) For hospitals and welfare institutions, at least 1 parking space for every 300 sq. ft. of floor area in said buildings.

(3) For hotels and clubs, at least 1 parking space for every 5 guest rooms provided in said buildings.

(4) For theatres, general auditoriums, stadiums and other similar places of assembly, at least one parking space for every 10 seats provided in said buildings.

Loading Space

Every hospital, institution, hotel, commercial or industrial building hereafter erected shall have one loading space of not less than 10 ft. in width, 20 ft. in length, and 14 ft. in height for each 2000 sq. ft. of lot area upon which said building is located; provided, however, that not more than two such spaces shall be required, unless the building on such lot has a gross floor area of more than 80,000 sq. ft., in which case there shall be one additional loading space for each additional 40,000 sq. ft. (in excess of 80,000 sq. ft.) or fraction thereof above 10,000 sq. ft.

Provided, further, that where a lot held under separate ownership at the time this Article became effective does not abut upon an alley and is not surrounded on all sides by streets, the loading space requirement shall not apply.

Public Parking Areas—Automobile and Trailer Sales Areas

Every parcel of land hereafter used as a Public Parking Area or Automobile and Trailer Sales Area shall be developed as follows, subject to the approval of the Department of Building and Safety:

(a) Such area shall be paved, shall have appropriate bumper guards where needed, and shall be properly enclosed with a fence, wall, or compact evergreen hedge, having a height of not less than 2 ft. Such fence, wall or hedge shall be maintained in good condition and observe the required front yard and the required side yard along the street side of a corner lot, of the district in which it is located.

(b) Where such area adjoins the side of a lot in an "A", "RA", or "R" District, no parking shall be permitted within 6 ft. thereof, and within the 6-ft. strip thus provided, a compact evergreen hedge shall be planted, and maintained at a height of 6 ft.

(c) Any lights used to illuminate said parking areas shall be so arranged as to reflect the light away from adjoining premises, in an "A", "RA", or "R" District."

It is obvious that the zoning officials in Los Angeles are taking a step in the right direction but this is only a partial answer to the problem of off-street parking in the downtown business district.

The only real and lasting answer to the problem is that ample parking facilities must be provided to accommodate the occupants and patrons of every new business establishment that is constructed. This program must be carried out either with private capital under private operation, or public agencies will be forced through an improvement district program or some other procedure, to take care of the vehicle parking problem. Of course this does not take care of the already acute parking problem and, in this writer's opinion, the park-

ing lot in the heart of the business district is not the proper economic answer. We must have sky-scrapers in which to park automobiles, as well as sky-scrapers in which to transact business.

The city of San Francisco took a distinct step forward in solving the off-street parking problem when it entered into a long term lease with private operators and permitted them to construct a huge underground garage beneath the world-famous Union Square and then replace the park at street level over the roof of the garage; but this huge facility barely scratches the surface of San Francisco's off-street parking problem—the same problem that most large cities will face after the war if the tremendous increase in automobile production takes place and if the huge program of freeway construction in the metropolitan areas is carried through to completion.

In conclusion, it is our humble opinion that the greatest danger to future freeway construction is the over-emphasis on the part of the highway department of the value of access rights, limited access rights, and damage to properties abutting upon necessarily created cul-de-sac streets.

A careful and comprehensive study of these three problems by our several highway designing and construction organizations on a cooperative basis, is of vital importance. In fairness to the public agency and the affected property owner, this program must be carried out.

The city planner also has his problem that must be solved if the freeway program is to ultimately serve its purpose. We are satisfied that in California where there is no problem in operating an automobile twelve months of the year, we cannot force the public to use mass transportation, especially in the metropolitan areas. It follows that if the freeway is going to increase the already acute problem of vehicular parking in the metropolitan areas, the city planner must take the bull by the horns and force the construction of huge off-street parking and garage facilities; and if private capital will not solve the problem at a satisfactory return on the investment, parking facilities must be provided at public expense under public operation, with the profits accruing to the public.