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Highway Location in California: The Federal Impact

By ARTHUR R. SILLEN*

I. The Context of the Highway Location Problem

HIGHWAY location in California has been a continuing source of controversy in recent years. Much of the intensity of the disputes may be traced to the state's phenomenal growth since World War II and to the expenditure of large amounts of federal tax money to build the National System of Interstate and Defense Highways.1

In 1967, California had an estimated population of 19,153,000 people2—approximately triple that of 19403—that was increasing at an average annual rate of 2.7 percent.4 In 1967, 10,849,514 motor vehicles were registered5 and 10,688,000 operator's licenses were in force.

* B.A., 1966, San Jose State College; J.D., 1969, University of California, Davis.
3. Id. at 14.
4. Id. at 12. Note, however, that “[t]he rate of population growth in California in the last decade has declined gradually from an annual increase of 4.1 percent in 1958 over 1957, to 1.5 percent this year [1968] over last.” AUTOMOBILE SAFETY FOUNDATION, THE CALIFORNIA FREEWAY AND EXPRESSWAY SYSTEM 1968 PROGRESS AND PROBLEMS (Dec. 1968) [hereinafter cited as CALIFORNIA SYSTEM]. Based upon current trends, the report predicts a population of some 32 million people in California by 1990. Id. at 13.
5. Bureau of Public Roads, U.S. DEP’T OF TRANSPORTATION, HIGHWAY STATISTICS 1967, at 35. Although population growth has been less than predicted, the per capita motor vehicle ownership has increased at a rate in excess of that which was predicted for 1980. CALIFORNIA SYSTEM, supra note 4, at 3. Future projections of the number of motor vehicles in the state are expected to rise at an annual compound rate of 3.8 percent; and projected per capita increase in motor vehicles suggests that by 1980 there will be an estimated 28 million motor vehicles of all types (including motorcycles and trailers) registered in California. This figure represents an increase of some 130 percent over the 1968 estimate of some 12 million vehicles. Id. at 15. This estimate includes projected diversion of passenger traffic into urban rapid transit facilities. The Bay Area Rapid Transit District is expected to absorb current automobile traffic only to the extent of 30-32 percent of its total traffic by 1975, if all of its construction is completed on schedule. The Southern California Rapid Transit District is expected to serve even fewer people; because of wide population dispersal and low
in the state. Total existing highway mileage in California during 1967 amounted to some 162,000 miles, of which some 14,781 miles were included in the state highway system. Federally aided systems covered 9,290 miles, all but 124 miles of which were state highways. The interstate system comprised some 2,200 miles of the state's freeway and expressway system and accounted for 80 percent of federal-aid highway spending in the state. As might be expected, Californians make extensive use of their highways; estimates of vehicle miles traveled in 1967 total over 103,818 million miles, including 57,868 million vehicle miles traveled on federal-aid highways.

In 1959, California established its own freeway and expressway system to meet the future highway needs of the State. In December 1968, the California Department of Public Works, Division of Highways, reported that of the system's projected 12,460 miles of freeways and expressways, 3,839 had been constructed in accordance with required standards.

In the nine years since the system was adopted, some population density, only 2.5 percent of total passenger trips will be served by rapid transit. Id. at 9-10.

7. Id. at 167.
8. Id. at 153.
9. Id. at 177.
10. Id. at 187. Although the interstate mileage in California comprises less than 18 percent of the state's freeway and expressway system, it currently carries 40 percent of the system's statewide traffic, and nearly 50 percent in urban areas. If current plans for the system's development are carried to fruition, the interstate share of highway traffic would gradually be reduced over the next 20 years to some 30 percent of the total, even though the average volume of traffic is expected to more than double by 1988. CALIFORNIA SYSTEM, supra note 4, at 21.

11. DIV. OF HIGHWAYS, CAL. DEP'T OF PUBLIC WORKS, IMPACT OF THE FEDERAL INTERSTATE PROGRAM ON THE CALIFORNIA STATE HIGHWAY PROGRAM 1 (June 1967) [hereinafter cited as IMPACT].
12. BUREAU OF PUBLIC ROADS, U.S. DEP'T OF TRANSPORTATION, HIGHWAY STATISTICS 1967, at 57. Although vehicle-miles traveled by 1990 are expected to reach some 249 billion, miles per vehicle are expected to remain substantially the same as at present. CALIFORNIA SYSTEM, supra note 4, at 15.
13. CAL. STS. & H'WAYS CODE §§ 250-52, declaring the development of a freeway and expressway system to be essential to the future development of the state.

The purpose of an integrated system of freeways and expressways is to give guidance in establishing locations, coordinating local developments, deciding design standards, and determining priority of development. See CALIFORNIA SYSTEM, supra note 4, at 22. "The Freeway and Expressway System serves essential rural and urban movements of people and goods between the most important centers of commerce and government, and between regions of development, recreation, and natural resources. The System serves to tie all the people and activities of the State together in an efficient manner." Id. at 23-24.

14. DIV. OF HIGHWAYS, CAL. DEP'T OF PUBLIC WORKS, SECTION 256 REPORT 23
2,800 miles of new freeway, comprising 12,000 lane-miles, have been completed and routes have been adopted for another 7,400 miles of yet unconstructed freeways. The Division of Highways estimates that over 30 billion freeway miles are driven in California each year, and projected use would raise that figure considerably. The Division of Highways notes that while California's population has increased 28 percent since 1959, the vehicle-miles traveled here increased 47 percent during the same period.

Another major factor in California highway location disputes is the federal-aid-for-highways programs, which account for almost 25 percent of all federal grants-in-aid spent in California. In 1966, total federal payments to the state, local governments, and individuals amounted to some $1.6 billion; out of this total sum, $343,041,000 was earmarked for highway-related purposes. In 1967, this figure rose to $394,152,116. Total highway-related expenditures in California amounted to over $1.5 billion for that year.

The impact of federal funds on highway construction within the state has recently been examined by private, legislative, and other (Dec. 1968) [hereinafter cited as SECTION 256 REPORT]. Total progress to date is as follows:

<table>
<thead>
<tr>
<th>Type</th>
<th>Miles</th>
</tr>
</thead>
<tbody>
<tr>
<td>Constructed multilane highways</td>
<td>2,999</td>
</tr>
<tr>
<td>Constructed two-lane expressways</td>
<td>840</td>
</tr>
</tbody>
</table>

During the past four years, a total of 1,360 highway miles have been constructed.

By way of contrast, note that the mileage of highways for the years 1959-68 that are not in the freeway and expressway system was only 264.1 miles. Id. at 24-25.

15. Id. at 23.
16. Id. at 24.
17. Id. at 23.
18. Id. Actual figures for the growth rate vary somewhat between sources. For example, CALIFORNIA SYSTEM, supra note 4, at 2, puts the 1958-68 population increase at 35 percent.

20. BUREAU OF PUBLIC ROADS, U.S. DEP'T OF TRANSPORTATION, HIGHWAY STATISTICS 1967, at 75. The actual amount paid from the Highway Trust Fund amounted to only $378,504,728; other funds came from appropriations for beautification, highway safety, public lands, and other miscellaneous sources.

The California figure is almost double that of Texas, which ranks second among the states in amount of funds received from the federal government.

21. Id. at 74. This figure includes all costs including administration, police and safety, interest and miscellaneous costs not directly related to highway location and construction. Right-of-way acquisition costs amounted to $248,125,000, of which the state paid almost $200 million. Id.

22. E.g., A. MOWBRAY, ROAD TO RUIN (1969); Gentry, Iron Heel on the California Coast, CRY CALIFORNIA 4 (Fall 1968).
23. Assembly Interim Comm. on Natural Resources, Planning, and Public Works,
intragovernmental studies.\textsuperscript{24} Interest in the impact of these funds on highway location and right-of-way acquisition is increasing because the public is now more aware than ever of how highway location affects daily life and "community values."\textsuperscript{25} This awareness is particularly acute in California, where within a very few years vast tracts of open land have been transformed into crowded, traffic-clogged cities.

\section*{II. State Legislative Controls Governing Highway Route Location}

Under the federal-aid concept, the national highway building programs are regarded as a joint cooperative effort between the Federal Highway Administration through its Bureau of Public Roads and the several states through their respective highway departments.\textsuperscript{26} Matters of highway route location, design features, and ultimate construction, however, and primarily regulated by state law or internal administrative regulations; and, notwithstanding the federal "veto" on reimbursements\textsuperscript{27} to the states, the issue of route selection "is a legislative and strictly political question."\textsuperscript{28}

In California, the authority for the designation of state highways is vested in the legislature by the state constitution, which provides that the legislature has the power to establish a state highway system and to


28. Howard, \textit{Preemption Aspects of the Freeway Problems}, 17 Hastings L.J. 571, 572 (1966). Highway location may be considered "political" because many special interest groups seek to affect policy decisions at all levels of government. For example, see the discussion of the Crystal Springs controversy in the text accompanying notes 296-97 \textit{infra}. 

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pass all laws necessary and proper to construct or maintain such a sys-

29 tem. Legislative authority for locating highway routes is normally exer-
cised only by designating the terminal points of particular routes. Actual route selection has been delegated to the California Highway Commission, a seven member body of private citizens appointed by the governor with the advice and consent of the state senate. Each member of the commission is required to represent the state at large and is to be the representative of no particular district or section of the state. The duties and authority of the commission are: to provide for advance planning and continuity of fiscal policy in the construction and improvement of the state highway system, and to administer expenditures from the State Highway Fund; to alter or change the location of any state highway if in the opinion of the commission such alteration or change is in the best interest of the state; to abandon any portion of a state highway which has been relocated or no longer is needed; and to make whatever reservations of right or title therein as deemed desirable; to relinquish by resolution any portion of a superseded highway to local governments; to select, adopt, and determine the location of authorized state highways; to allocate monies from funds available for construction, improvement, or maintenance of such highways, and to determine the maximum sum to be available therefore; and to authorize preliminary surveys for future inclusions in the state highway system; and to use existing roads as state highways.

The authority granted to the commission is nonexclusive; the legis-
lature has reserved the right to assume authority at any time it is in session. A resolution made pursuant to a determination by the commission is immune to judicial attack, under a statutory presumption which provides that a resolution of the commission is conclusive evidence of the public need for a proposed public improvement, that designated real property is necessary for the improvement, and that the

29. CAL. CONST. art. 4, § 36.
30. E.g., CAL. STS. & H'WAYS CODE § 615.
31. Id. § 75.
32. Id. § 60.2.
33. Id.
34. Id. § 71.
35. Id. § 72.
36. Id. § 72.5.
37. Id. § 73.
38. Id. § 75.
39. Id. §§ 81-83.
40. Id. § 79.
improvement is so planned or located as to accomplish the greatest public good with the minimum of private injury.\textsuperscript{41}

Actual determination of a highway location is made by the Division of Highways of the Department of Public Works;\textsuperscript{42} this department also performs any ministerial or administrative duties that the commission chooses to delegate.\textsuperscript{43} Close coordination and cooperation is achieved between the Department of Public Works and the commission; the director of the department serves as the chief administrative officer for the commission.\textsuperscript{44}

Since state highway route authorizations are the result of legislative enactments, the legislature has directed the Department of Public Works to report every four years (beginning in 1964) on the desirability of specific additions or deletions to the state highway, freeway, and expressway systems, and on the progress being made in completing these systems.\textsuperscript{45} In general, however, the legislature has virtually granted a "carte blanche" to its delegated agencies to lay out and construct highways; it has apparently been satisfied with providing a minimum of legislative direction.

\textsuperscript{41} CAL. STS. & H'WAYS CODE § 103. CAL. CODE CIV. PROC. § 1241.7 reduces the presumption given to a commission resolution to a rebuttable one where park land is sought to be used as a state highway. If the park was dedicated prior to the initiation of highway route location studies, the public agency owning the park may sue for a declaratory judgment within four months after its receipt of written notice from the California Highway Commission that the proposed highway route includes park land owned by that agency. The statute provides that "in such declaratory relief action, the resolution of the commission shall not be conclusive evidence of the matters set forth in Section 103 of the Streets and Highways Code." Such action for declaratory relief takes precedence over all other civil actions filed in the matter. If suit is not filed within 120 days after written notice is received, all rights and presumptions under the section are deemed to be waived.

\textsuperscript{42} CAL. STS. & HWYS. CODE § 90. The pertinent portion of this section reads: "The department is authorized and directed to lay out and construct all state highways between the termini designated by law and on the locations determined by the commission."

\textsuperscript{43} Id. § 86.

\textsuperscript{44} Id. § 70. The Director is the commission's chief administrative officer. He prepares the agenda and may, as necessary, call meetings of the commission. He may comment on any recommendation submitted to the commission from the several divisions of the Department of Public Works, but he is precluded from disposing of any recommendation he does not favor. \textit{Id.}

Until 1968, the Director was an ex officio member of the commission. Cal. Stats. 1968, ch. 810, § 2, at 1566-67. This reduction in status may be indicative of a trend toward a less department-controlled highway location procedure.

\textsuperscript{45} CAL. STS. & H'WAY CODE § 256. \textit{See also} CALIFORNIA SYSTEM, supra note 4, at 44-77, noting that the development of the California freeway and expressway system has not kept pace with the demand for transportation facilities.
In preparing its reports to the legislature, the Department of Public Works is required to cooperate with an advisory committee of local officials. Recently, the increasing local sensitivity toward highway problems has generated additional requirements for adequate notice, consultation, and hearings with local governments in areas where new freeway routes have been proposed; however, the California Streets and Highways Code specifically provides that the failure of the department to comply with such requirements will not invalidate any action taken for the adoption of a state highway route. Furthermore, proof of such a failure is not even admissible as evidence in litigation involving right-of-way acquisitions or highway fund allocations.

Intervention by the legislature in the route location process has been sporadic at best, even though strong pressure has been exerted in recent years to make specific route determinations more vulnerable to challenge. Such legislative inactivity has forced highway location opponents to appeal to federal authorities to withhold aid for certain routes, a course of action that ends at best with a pyrrhic victory, both politically and economically.

When faced with criticism from the legislature or the public at large, officials of the Department of Public Works would undoubtedly complain that any shortcomings were due to the lack of sufficient direction, particularly with reference to criteria for the selection of routes that have been or ought to be designated as state highways.

The complaint of lack of direction has been well-taken, particularly

46. CAL. STS. & H'WAYS CODE § 2156(c). This is a committee of 14 members appointed by the Speaker of the Assembly and the President Pro Tempore of the Senate, consisting of officials of cities and counties, and others who are interested in street, road, and highway problems.

47. Id. §§ 210-15.

48. Id. § 215. The authority of the legislature to delegate such power and to make it virtually unchallengable in any legal action was tested and approved in Holloway v. Purcell, 35 Cal. 2d 220, 217 P.2d 665 (1950). Even though CAL. STS. & H'WAYS CODE § 215 was not enacted until 1961, the same result was reached in Armas v. City of Oakland, 183 Cal. App. 2d 137, 6 Cal. Rptr. 750 (1960) (failure of defendant city to hold required freeway hearing did not invalidate its freeway agreement with the Department of Public Works).

49. CAL. STS. & H'WAYS CODE § 215.


51. See text accompanying note 295 infra.

with regard to the state's freeways. As early as 1939, the Department
of Public Works was authorized to "do any and all things necessary to
lay out, acquire and construct a section or portion of a State highway as
a freeway or to make any existing State highway a freeway." With
this general authorization and in the absence of specific directives, Cali-
ifornia suffered from a lack of coordinated planning and systematic de-
velopment during the first 20 year evolution of its freeway system.

Although, in the past, California's freeway planning was suffi-
ciently farsighted to avoid many of the difficulties experienced by other
states, the deficiencies that did exist were the subject of intensive legis-
lative scrutiny during the late 1950's. Part of the problem stemmed
from the practice of developing freeways on an ad hoc basis as traffic
needs of highways increased beyond their normal capacities. The ever-
increasing urbanization of California demanded a unified approach to
freeway development. This need was to a great extent met in 1959 with
the creation of the California Freeway and Expressway System. As
part and parcel of the new system, provision was made for contempo-
raneous review of existing freeways, and planning for future highway
development.

In conformity with the trend toward treating transportation prob-
lems as a whole, legislation has recently been enacted that develops a
comprehensive transportation program for California. Section 13990
of the California Government Code creates the State Transportation
Board as a part of the existing Business and Transportation Agency to
function in an advisory capacity "in formulating and evaluating state
policy and plans for transportation programs within the state." Specific
duties of the board include reviewing reports from the Office of
Transportation Planning and Research, preparing master plans for ma-
jor portions of the overall state transportation system, and investigating
the transportation problems of major statewide and regional develop-

53. CAL. STS. & H'WAYS CODE § 100.1.
54. California's problems in highway planning have not been unique, nor have
they been as severe as perhaps in other jurisdictions. For an excellent analysis of high-
way location processes and problems in Pennsylvania, see generally, Note, Pressures
55. Assembly Interim Comm. on Conservation, Planning, and Public Works,
Highway Location and Construction, at 28-32, in 1957 APPENDIX TO THE JOURNAL
OF THE CALIFORNIA ASSEMBLY.
56. See text accompanying note 45 supra.
57. See note 13 supra.
58. CAL. GOV'T CODE § 13990 et seq. were filed on Sept. 2, 1969.
59. Id. § 13990.6.
Companion legislation, Assembly Bill 975, if it had passed, would have created the Office of Transportation Planning and Research, whose function would have been to plan and coordinate future transportation planning in California on a variety of levels, and to act as the principal staff organization for the Governor and the Business and Transportation Agency in the area of transportation planning.

III. Highway Financing and Right-of-Way Acquisition

Financing highway construction in California goes far beyond the scope of fiscal appropriations. As noted above, almost 25 percent of all federal-aid funds spent in the state are administered by the Federal Highway Administration, through its Bureau of Public Roads.

Federal aid for state highway programs has existed since 1916, when small sums were made available to states for primary road construction. Nonfiscal controls (except for minimal construction standards) were not established until 1921, when the program was expanded into the “ABC” System. Under this system, 50 percent of the cost of constructing roads meeting federal standards as state primary, secondary, or urban road systems was reimbursable by the federal government.

Further federal involvement in highway construction came in 1944, when Congress chartered the National System of Interstate and Defense Highways to meet the nation’s future highway needs. For more than a decade, however, until passage of the Federal-Aid Highway Act of 1956, construction of the interstate system proceeded at a slow pace. Then, with the federal share of the construction costs raised from 50 to 90 percent, the level of construction greatly increased. The

60. Id.
61. A.B. 975 was introduced on Mar. 17, 1969. It died in the Senate Committee on Finance, Sept. 8, 1969.
62. See text accompanying note 19 supra.
64. Act of Nov. 9, 1921, ch. 119, § 6, 42 Stat. 213. Nonfiscal controls are those devices by which the federal government is able to effectuate “social-purpose” objectives, such as minimal wage regulations, equal employment, public hearing requirements, and like provisions.
66. 70 Stat. 374.
67. Federal-Aid Highway Act of 1956, ch. 462, § 108(e), 70 Stat. 379-80. With adjustments for lands owned by the United States, and other nontaxed public do-
total interstate system is limited by law to 42,500 miles, not including minor deviations or route changes.\textsuperscript{68} It is intended to link together more than 90 percent of the cities having populations of 50,000 or more. When the system is completed, it will serve well over half the urban population, and almost half the rural population, of the United States.\textsuperscript{69}

Although the interstate system receives most of the attention, the amount of construction under the older ABC system continues to keep pace. The federal-aid primary system is limited to seven percent of the total highway mileage within each state as of the year when the system was established; however, an additional one percent may be added when a state's portion reaches 90 percent.\textsuperscript{70} Some two-thirds of the states have completed their portions of the primary system; in all, some 270,000 miles have been built throughout the United States.\textsuperscript{71}

The federal-aid secondary system, now covering over 633,000 miles, has no percentage limitation and includes county roads, farm-to-market roads, and feeder roads for the state primary system.\textsuperscript{72} California has abolished the distinction between primary and secondary roads, and all such roads are regarded as state highways.\textsuperscript{73} California has applied the secondary highway designation, however, to exclusively county roads so that the state's eligibility for reimbursement thereon will be continued.\textsuperscript{74}

The biennial sums appropriated by Congress are required to be expended in the following proportions: 45 percent for the primary system, 30 percent for the secondary system, and the remaining 25 percent for extending both systems into urban areas.\textsuperscript{75} These appropriations are apportioned among the states according to formulae prescribed by law.\textsuperscript{76}

Unlike the ABC program which has no time limit for completion, the interstate system was meant to be completed as rapidly as possible. In its declaration of policy, Congress provided that the prompt and early completion of the National System of Inter-

\begin{itemize}
\item 68. 23 U.S.C. § 103 (Supp. IV, 1969).
\item 69. AMERICA'S LIFELINES, supra note 63, at 6.
\item 70. 23 U.S.C. § 103(b) (Supp. IV, 1969).
\item 71. AMERICA'S LIFELINES, supra note 63, at 13.
\item 72. 23 U.S.C. § 103(c) (Supp. IV, 1969).
\item 73. CAL. STS. & H'WAYS CODE § 300.
\item 74. \textit{Id.} § 2207.
\item 75. AMERICA'S LIFELINES, supra note 63, at 14-15.
\item 76. 23 U.S.C. § 104(b)(1)-(3) (1964).
\end{itemize}
state and Defense Highways... is essential to the national interest and is one of the most important objectives of this Act. It is the intent of Congress that the Interstate System be completed as nearly as practicable over the period of availability of the eighteen years' appropriations authorized for the purpose of expediting its construction... and that the entire System in all States be brought to simultaneous completion.\textsuperscript{77}

To cover the tremendous cost of the accelerated highway construction programs (some $56.5 billion, of which the federal share is $50.6 billion),\textsuperscript{78} Congress established the Highway Trust Fund as part of the Federal-Aid Highway Act of 1956. Prior to the 1956 act, all federal excise tax receipts on motor fuels, vehicles and their accessories, were deposited in the general fund of the United States Treasury.\textsuperscript{79} All appropriations for federal-aid highway construction were made from this fund.\textsuperscript{80} The problem was that "there was no relationship between highway-related excise tax revenues and disbursements for federal highway aid."\textsuperscript{81} The revenue provisions of the 1956 act put all federal-aid highway programs on a user-supported, "pay-as-you-build," basis.\textsuperscript{82} The trust fund collects taxes on motor fuel, rubber, new trucks, buses, and trailers, as well as the annual Heavy Vehicle Use Tax; these tax revenues may be used for no other purpose than highway construction.\textsuperscript{83} Additional revenue is obtained from interest derived from trust fund investments in Treasury bonds and other federal securities.\textsuperscript{84}

Congress makes biennial appropriations of trust fund revenues for specific fiscal years which may be intended to have either prospective or retrospective effect.\textsuperscript{85} The apportionment of each fiscal year's appropriation is made by Congress upon the recommendation of the Secretary of Transportation with reference to formulae prescribed by law. For

\textsuperscript{77} Id. § 101(b) (Supp. IV, 1969).
\textsuperscript{78} America's Lifelines, supra note 63, at 11.
\textsuperscript{81} Id.
\textsuperscript{82} Id. supra note 24, at 1.
\textsuperscript{83} Id. Taxes on such commodities as new automobiles, motorcycles, automotive parts, and lubricating oil, however, are now included in the trust fund. Id. at 2.
\textsuperscript{84} Since the creation of the trust fund, $105 million has been earned as interest on short-term obligations. SPECIAL SUBCOMM. ON THE FINANCIAL-AID HIGHWAY PROGRAM, HOUSE COMM. ON PUBLIC WORKS, FEDERAL STATE HIGHWAY MANAGEMENT PRACTICES AND PROCEDURES, H.R. Doc. No. 1506, 90th Cong. 2d Sess. 5 (1968) [hereinafter cited as HIGHWAY MANAGEMENT].
the interstate system, such apportionment is made

\[(i)n\ the\ ratio\ which\ the\ Federal\ share\ of\ the\ estimated\ cost\ of\ completing\ the\ Interstate\ System\ in\ such\ State\ .\ .\ .\ bears\ to\ the\ sum\ of\ the\ estimated\ cost\ of\ the\ Federal\ share\ of\ completing\ the\ Interstate\ System\ in\ all\ of\ the\ States.\ Each\ apportionment\ herein\ authorized\ .\ .\ .\ shall\ be\ made\ on\ a\ date\ as\ far\ in\ advance\ of\ the\ beginning\ of\ the\ fiscal\ year\ for\ which\ authorized\ as\ practicable\ .\ .\ .\ .\ . 86\]

In practice, Congressional authorization occurs some six to twelve months before the beginning of the indicated fiscal year. These funds are then available to the state during that year and for two years thereafter; but if such funds are not obligated for specific projects during that time, they are returned to the trust fund.87 Once the funds have been obligated, actual disbursement may be made even after the obligation period has elapsed.88 By permitting immediate obligation of funds upon their apportionment, Congress has recognized to some extent the time differential that exists between the obligation and actual disbursement of federal-aid funds.89 Preliminary engineering and advance acquisition of rights-of-way may precede the availability of funds by several years,90 and delays in Congressional apportionment may force states to adopt highway budgets based upon mere estimates of federal highway aid.91 Irrespective of the date at which federal funds become available for obligation, all funds for the interstate system must be obligated not later than June 30, 1974, the target date for the completion of the system.92

The obligation and disbursement of federal funds is the point at which the federal government exerts its control over the management of

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86. 23 U.S.C. § 104(b)(5) (Supp. IV, 1969). In terms of actual amounts of money apportioned to California, as compared with amounts paid into the fund by California highway-users for fiscal 1968-69, the following figures are available:

| Total payments | $4,562,000,000 |
| California Payments | $493,000,000 |
| Percent paid by California | 10.8 |
| Total Apportionments | $4,800,000,000 |
| California Apportionments | $426,000,000 |
| Percent apportioned to California | 8.88 |

FEDERAL-AID FINANCING, supra note 24, Exhibit B.


88. Id.

89. FEDERAL-AID FINANCING, supra note 24, at 2.

90. See generally RIGHT-OF-WAY ACQUISITION, supra note 24, at I-28 to I-31.

91. See IMPACT, supra note 11, at 25.

92. See 23 U.S.C. § 101(b) (Supp. IV, 1969). Some concern has been expressed by state highway officials because the trust fund is scheduled to expire in 1974, and because some major projects require from 8 to 12 years to complete. To be
federal-aid programs. Two federal agencies are principally involved. The first is the Bureau of Public Roads which controls the release of apportioned funds, and which is involved in the day-to-day supervision of the federal-aid programs as a whole.\textsuperscript{83} The other agency is the General Accounting Office which reviews the management of federal-aid programs as the "watchdog of Congress," to insure that programs are efficiently run and that the objectives of Congress are met.\textsuperscript{94}

The key factor in the federal-aid programs is that the federal government \textit{reimburses} the states for obligations undertaken; it does not discharge such obligations in the first instance. If a state does not meet the federal standard required on particular projects, its expenses may not be reimbursable for those projects or any portion thereof to which the deficiencies relate. Under the usual federal-state project agreements entered into by the Federal Highway Administration and state highway departments, state funds originally obligated become reimbursable by the filing of proof-of-payment vouchers with the Bureau of Public Roads.\textsuperscript{95}

In recent years, there has been growing concern in both the Federal Highway Administration and in Congress regarding lax auditing and accounting procedures employed by the states in their record-keeping processes. Such failure has had the effect of sequestering large sums of money in future years to meet obligations for projects long-completed,\textsuperscript{96} and seems to be symptomatic of a general managerial malaise that seems to be endemic to state highway departments in general.\textsuperscript{97} While California has generally been considered an exception able to plan adequately for the post-1974 era, federal legislation is necessary at the earliest possible date. \textit{See IMPACT}, supra note 11, at 28.

\textsuperscript{93} \textit{See} 23 U.S.C. § 303 (1964); \textit{America's Lifelines}, supra note 63, at 3-4.

\textsuperscript{94} \textit{See} 31 U.S.C. § 67(a) (1964).

\textsuperscript{95} 23 U.S.C. § 121(a)-(c) (1964). Vouchers must be accompanied by supporting data and be certified. 23 C.F.R. § 1.31 (1969). The states may receive advancements for the completion of federal-aid projects which are otherwise unfundable under current appropriations, if the Secretary deems it necessary. 23 U.S.C. § 124 (1964).

\textsuperscript{96} Where final vouchers are not submitted, states may not be reimbursed for their expenses. \textit{See} 23 U.S.C. § 121(b) (1964).

\textsuperscript{97} \textit{See} \textit{Highway Management}, supra note 84, at 4, 39. At the time of the related hearings, testimony by Walter R. May, Chief Counsel to the Subcommittee, indicated that California's backlog for three projects amounted to $400,000. Nationally, there were 1,521 projects which had been completed more than two years prior and which represented almost $2.4 billion of obligated funds. \textit{Hearings on Federal-State Highway Management Practices and Procedures Before the Special Subcomm. on the Federal-Aid Highway Program of the House Comm. on Public Works} 150-51, 89th Cong., 1st & 2d Sess. (1966).
to this pattern, no state has been given plaudits for its accounting and internal auditing practices.88

Prior to 1956, it was easy to overlook deficiencies in program management for both the Bureau of Public Roads and state highway departments, because the bureau did not have sufficient staff to properly examine state accounts, and thus was only able to run an arithmetic check on state vouchers. State highway departments were neither required to have, nor did they initiate on their own, internal auditing practices that would have disclosed deficiencies. Under the ABC program, when the Bureau of Public Roads disapproved projects because of inadequacies, states could, and did undertake additional projects to qualify for the apportioned funds that had not been expended. Under the interstate program, however, this is no longer possible because of the one-time-only nature of the apportionment. Money lost cannot be recouped at a later date, "since the availability of Federal Interstate funds is based upon a percentage of the properly documented costs of completing a specific facility."99

A further method of fiscal regulation is provided by the Bureau of Public Roads' control over the rate at which a state may obligate the money apportioned during any given fiscal year. Since the trust fund must show a balance at the end of the fiscal year, administrators must plan its rate of reimbursement well in advance of the anticipated need. "Reimbursement planning," is accomplished by utilizing an administrative control devise known as a federal contract control release, which regulates the release of funds to the states and thus the rate at which federal funds may be obligated for future reimbursement.100 Such crediting is normally done at three month intervals (although in the last several years, releases have been somewhat irregular).101 In 1968, Congress, responding to the President's attempt to use contract control releases as a fiscal device to control inflationary pressures by delaying, reducing, or retroactively withholding apportionments,102 made future

99. Id. at 101.
100. Id. at 5. Federal Contract Control Releases are periodic authorizations from the Federal Highway Administration to a state highway department granting permission to obligate a specified amount of money. Such releases are made until the entire apportionment has been obligated.
102. During the fiscal year 1969-70, some $70 million was deleted from California's apportionment as a part of the administration's anti-inflation program. IMPACT, supra note 11, at 27.
manipulation of the trust fund unlawful, except to preserve the solvency of the fund.103

The General Accounting Office, as an agency of Congress, makes independent audits of federal-aid-for-highways programs;104 the results of these periodic audits are reported directly to Congress.105 In preparing these reports, the General Accounting Office presents the question raised, the position of the parties involved, and its own evaluation of the situation.106 The prime value of the General Accounting Office stems from the fact that it is largely immune from either Presidential pressure or the client-patron relationship that has been known to develop in federal regulatory agencies.107

Because of the reimbursable nature of federal-aid subventions, California must stand ready to make initial payments for highway construction projects,108 whether they be interstate, ABC, or TOPICS.109 To meet such commitments, the state must have sufficient funds available to meet current and future needs.

As with the Federal Trust Fund,110 California tax revenue for highway use comes from a variety of highway-related sources. This tax revenue is deposited in specified collection funds, from which particular expenses are met; thereafter, the balance of the revenue is deposited in the Highway Users Tax Fund.111 Certain payments are then charged against the fund as prescribed by law,112 and the remaining

105. See id. § 59-60.
106. See, e.g., U.S. COMPTROLLER GENERAL, PROBLEMS ASSOCIATED WITH LOCATION AND DESIGN SEGMENTS OF THE INTER-STATE SYSTEM IN MAJOR METROPOLITAN AREAS (Aug. 1967), a General Accounting Office report concerned with the resistance which state highway officials are encountering in certain metropolitan areas due to local opposition to freeway route locations.
108. See 23 C.F.R. § 1.31 (1969), which allows states to request payment due from time to time as work progresses and when projects are completed.
110. See text accompanying note 83 supra.
112. CAL. STS. & H'WAYS CODE §§ 186.3, 2106 (right-of-way acquisition in cities and counties), §§ 2150, 2104 (county streets and roads), §§ 2107, 2107.5 (allocating a certain percentage of the motor vehicle fuel tax for expenditures in cities).
balance is transferred monthly to the State Highway Fund.\textsuperscript{113}

Generally, federal funds comprise approximately 49 percent of the State Highway Fund.\textsuperscript{114} The great bulk of this federal aid is reserved for the interstate construction program; such proceeds may only be used for capital improvement and acquisition of rights-of-way.\textsuperscript{115} Administrative and maintenance costs, which may include some of the engineering costs for federal-aid projects,\textsuperscript{116} are borne by the state.\textsuperscript{117}

Disbursement of state monies from the highway fund may be divided into three general categories: (1) Allocations to cities and counties to be expended directly for street and highway purposes;\textsuperscript{118} (2) expenditures for maintenance and administration;\textsuperscript{119} (3) capital outlays for rights-of-way, major construction, minor improvements, land and buildings, preliminary construction engineering.\textsuperscript{120}

For the purpose of allocating construction funds, California has been divided into two county groups. The first county group, which includes the northern 45 counties, receives 45 percent of the sum available, while the second county group, which includes the southern 13 counties, receives 55 percent.\textsuperscript{121} This division is commonly known as the "North-South Split." After these funds are initially divided between the county groups, 70 percent of each group's allocation is "locked-in" by a statutory percentage "minimum" amount that is guaranteed to each state highway district\textsuperscript{122} and to each county.\textsuperscript{123} This guaranteed per-

\textsuperscript{113} Id. § 2108.
\textsuperscript{114} PROGRAM DEV. AND CONTROL DEP'T, CAL. DIV. OF HIGHWAYS, CALIFORNIA HIGHWAY FINANCING 4 (Mar. 1969).
\textsuperscript{115} Id.
\textsuperscript{116} Costs of engineering services may be reimbursable only if such costs are directly attributable to specific projects. See U.S. COMPTROLLER GEN., NEED FOR SPECIFIC GUIDELINES REGARDING FEDERAL PARTICIPATION IN COSTS OF STANDARD-TYPE PLANS (Mar. 1966).
\textsuperscript{117} 23 C.F.R. § 1.11 (1969).
\textsuperscript{118} E.g., CAL. STS. & H'WAYS CODE § 190 (grade separations), § 143.3 (extension of the federal-aid system to local highways), § 2210.5 (state matching funds for the ABC program).
\textsuperscript{119} E.g., id. § 188.3 (landscaping), § 186 (general administration and maintenance), § 218 (roadside rests).
\textsuperscript{120} PROGRAM DEV. AND CONTROL DEP'T, CAL. DIV. OF HIGHWAYS, CALIFORNIA HIGHWAY FINANCING 5-7 (Mar. 1969).
\textsuperscript{121} CAL. STS. & H'WAYS CODE § 188.
\textsuperscript{122} See id. § 188.8. These percentages are reviewed at the end of a four year period. Revised estimates are based upon projected highway needs over a 10 year period. PROGRAM DEV. AND CONTROL DEP'T, CAL. DIV. OF HIGHWAYS, CALIFORNIA HIGHWAY FINANCING 7 (Mar. 1969).
\textsuperscript{123} "County minimums" are applied to the "district minimum" wherein the county is located. Each county receives a minimum of $4 million, except for Alpine and Sierra counties, which receive $3 million over each four year period. PROGRAM
percentage is based upon current and prospective needs over a four year term.

Because of the need to finish the interstate program by 1974, the federal-aid program has greatly distorted the budgetary allocation scheme envisioned by the California Legislature. To complete the interstate system on schedule, component projects must be given a priority that would not otherwise be justified. In 1967, unbudgeted costs necessary to complete the system in California amounted to some $637 million in the north and $697 million in the south—a percentage split of 48 to 52.124 Since federal-aid funds lose their identity when deposited in the State Highway Fund, differences have to be made up from the 30 percent “free” funds to meet statutory minimums.125 This in turn reduces the funds available for nonfederal-aid projects elsewhere in the state, principally in the north.

Since the original 55-45 split was predicated upon the concept of an urban south and a rural north, meeting the needs of northern cities has further reduced the funds available for those state highway districts and counties that have no interstate routes passing through them. On the other hand, certain interstate routes are being completed years in advance of actual local or statewide need to permit the national program to be completed on schedule. Thus, over the current four year period, the funds which are being allotted to each district will not necessarily meet the needs of that district. Although California officials would prefer to bring their highways up to standard on a uniform basis throughout the state, this is not possible without prior knowledge of the availability of federal funds.126


124. Impact, supra note 11, at 29.
125. Id.; Program Dev. and Control Dep't, Cal. Div. of Highways, California Highway Financing 8 (Mar. 1969). The unobligated 30 percent of the State Highway Fund is meant to be a reserve amount to be used to meet the costs of major projects which exceed the statutory apportionments of Cal. Stats. & H'WAYS Code §§ 188.8-9. The distortions attributable to the interstate system are due primarily to the nonrecognition by the legislature of the separate nature of the federal contribution. The inflated amounts that each district receives as a result of the inclusion of federal subventions in the State Highway Fund totals, without regard to where federal-aid projects are to be built, results in a distortion of the statutory scheme when nonapportioned “free” funds must be sequestered to meet the costs of Federal-aid projects in particular districts. Program Dev. and Control Dep't, Cal. Div. of Highways, California Highway Financing 8 (Mar. 1969). The result is that urban areas in northern California receive less than they should because of overallocation to rural areas in the southern part of the State.
126. Impact, supra note 11, at 33-34.
Thus the needs of the state in maintaining its highway construction program has been greatly distorted by the imposition of the interstate system. In response to the insufficient or irregular funds available for highway improvement, the Division of Highways maintains a constant inventory of more than 1200 major projects, often they are portions of the same highway under various stages of planning or construction. Consequently, because of delays in planning or construction, or because of legal complications, freeway projects are often built in small disconnected segments, which are "filled-in" when funds become available or when legal barriers have been removed.

A freeway project may take from five to eleven years to plan and complete. This segmented approach to highway construction has been the cause of severe and persistent social, economic, and political problems, because people's lives are affected by highway development plans as much as a decade or more in the future. People cannot make meaningful use of their resources if they know that their property lies within a highway corridor; to further improve the land would be to waste money and effort. Furthermore, financial institutions will not lend money to improve a business site that may be subject to condemnation within the foreseeable future. This problem is particularly acute in urban areas where advance knowledge of highway location often results in severe loss of community morale years in advance of actual acquisition of rights-of-way. Where property development occurs despite the prospect of imminent removal or demolition, the state may pay the full value of the improvement, even though such improvement was made with the knowledge of future highway development.

Preliminary design and route adoption may not occur until four or five years after a project has officially commenced. Usually, 20 to 30 percent of project design work must be completed before rights-of-way may be purchased, and such purchases are normally accomplished over a four year period to allow for orderly acquisition. Where efficiency and economy are not controlling factors, accelerated takings for typical large projects ($100,000 cost or more) may be done over a period of 22 to 24 months. During the planning and pre-

127. Right-of-Way Acquisition, supra note 24, at I-28, I-34.
128. Id. at I-5; see Appendix Freeway Route Adoption Process Diagram, p. 829 infra.
130. Cal. Const. art. 1, § 14; see Right-of-Way Acquisition, supra note 24, at I-10.
131. See text accompanying note 128 supra.
132. Right-of-Way Acquisition, supra note 24, at I-3.
133. Id. at I-3 to I-4.
liminary design stages of a project, the potential cost of rights-of-way may rise appreciably, largely due to speculation and inflationary pressures. This may be true even where the state proposes to convert a state highway into a freeway. The problem of rising prices for urban rights-of-way has become particularly acute in California, where the statewide cost of rights-of-way averages 30 percent, and the urban area cost average is 50 percent; in one case, this latter cost was 70 percent of the project.

Problems caused by appreciating land values have been of considerable concern to officials at all levels of government, both state and federal. The Federal-Aid Highway Act of 1966 required the Secretary of Commerce to make a study and to recommend congressional action concerning advance acquisition of rights-of-way, with particular emphasis upon the disposal of improvements located thereon, the relocation of persons and businesses, methods of financing such advance acquisition, and related matters. Based upon the recommendations of the Advance Acquisition Study, amendments were made to federal law to provide for a revolving right-of-way fund of $100 million to satisfy future acquisition needs.

California's experience has been something of a model upon which an advance acquisition program may be evaluated. Since 1952, the state has been able to save an estimated $300 million by protecting future rights-of-way from unwanted development. Over a 12 year period, an average of $25 million was saved annually at a total cost of $66 million.

134. See Cal. Sts. & H'WAYS Code § 100.3, requiring that landowners' rights of access onto a state highway be acquired either through consent, purchase, or condemnation, if such highway is to be converted into a freeway.

135. RIGHT-OF-WAY ACQUISITION, supra note 24, at I-27. For example, in Highway District 07 (Los Angeles, Orange, and Ventura Counties) right-of-way costs average 41 percent of the capital outlay. Specific examples in the Los Angeles area are:

<table>
<thead>
<tr>
<th>Freeway</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Santa Monica</td>
<td>55</td>
</tr>
<tr>
<td>San Diego</td>
<td>39</td>
</tr>
<tr>
<td>Hollywood</td>
<td>47</td>
</tr>
<tr>
<td>Harbor</td>
<td>53</td>
</tr>
</tbody>
</table>


137. Id. § 10.


139. 23 U.S.C. § 108(c)(3) (Supp. IV, 1969). Under this section actual construction must begin in not less than two nor more than seven years after the advances are made, and all funds not thus obligated must be returned to the revolving fund.

140. ADVANCE ACQUISITION STUDY, supra note 138, at 3.
The key to California's success in reducing its acquisition costs has been the Highway Right-of-Way Acquisition Fund, which has a revolving fund of $30 million, of which some $27.4 million is presently obligated. Although "[t]he authority [of the Department of Public Works] to acquire real property for state highway purposes includes the authority to acquire for future needs," the money in the advance acquisition fund may only be spent if

the California Highway Commission by resolution, as a part of its finding of public necessity, declares that the property should be acquired on a designated state highway route or designated portion thereof because of the probability of development of properties which will be needed for highway purposes, and that prompt acquisition is required to prevent such development and consequent higher acquisition and construction costs when the highway or a portion thereof is to be constructed.

Department of Public Works officials consider the present sum available in the fund to be inadequate to meet future acquisition needs, and would prefer to have a fund of $50 million with the further authority to use this money in hardship as well as protective cases. At present, regular state highway funds are used in all hardship cases and in those protective cases where anticipated savings are deemed insufficient to qualify for use of the acquisition fund. The Department of Public Works may also acquire real property prior to the execution of a freeway agreement with city and county governments if, in the department's or the commission's determination, hardship or protective circumstances exist. Notice of such acquisition must be given to local authorities.

Most of the purchases made through the fund are for properties that will be needed five or more years in the future.

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142. RIGHT-OF-WAY ACQUISITION, supra note 24, at I-22.
143. CAL. STS. & H'WAYS CODE § 104.6.
145. RIGHT-OF-WAY ACQUISITION, supra note 24, at I-21 to I-22.
146. Id.
147. CAL. STS. & H'WAYS CODE § 100.21. But see text accompanying note 199 infra.
148. ADVANCE ACQUISITION STUDY, supra note 138, at 76. California annual right-of-way expenditures are allocated as follows:

<table>
<thead>
<tr>
<th>Category</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Past obligations now or presently due</td>
<td>15</td>
</tr>
<tr>
<td>Right-of-way needed in current year</td>
<td>15</td>
</tr>
<tr>
<td>Right-of-way needed in next fiscal year</td>
<td>18</td>
</tr>
<tr>
<td>Right-of-way needed 2 years hence</td>
<td>18</td>
</tr>
<tr>
<td>Right-of-way needed 3 years hence</td>
<td>10</td>
</tr>
<tr>
<td>Right-of-way needed 4 years hence</td>
<td>9</td>
</tr>
<tr>
<td>Right-of-way needed 5 years hence</td>
<td>8</td>
</tr>
</tbody>
</table>
California has a seven to ten year advance planning program, which absorbs approximately 15 percent of the annual acquisition budget. California's program has been hampered by the federal statutory limit of seven years and by the time required for programming and securing authorizations from the Bureau of Public Roads, which often nullifies whatever advantage is to be gained from prompt acquisition.

Early acquisition is integrally tied to advance planning. An efficient acquisition program must have plans sufficiently detailed to allow for an adequate assessment of future needs and to minimize the need for subsequent changes in route location. Where designs are only partially completed, or where current staff requirements absorb design capacity, future needs can only be estimated. In such a case, estimates must be somewhat more generous than they might otherwise be.

The benefits of advance acquisition generally outweigh whatever difficulties are encountered. Both communities and individuals are in a better position to plan their futures, to adjust or to relocate with a minimum of financial distress. But with its benefits, advance acquisition brings with it severe social problems. Early abandonment of right-of-way property tends to create a community "dumping ground," and the undesirability of the area breeds urban blight, vandalism, and the general decay and disrepair to which the whole neighborhood succumbs. Although the state returns to the affected communities 24 percent of whatever rental income is derived from these properties (in lieu of lost tax revenues), local officials and citizens complain about the increased financial burdens upon those remaining on unaffected property.

Because right-of-way acquisition creates a state of flux wherever it occurs, balancing the future needs of the state against foreseeable harm to the affected community is of major concern to highway planners. Of particular importance is the problem of developing an appropriate response to the needs of landowners, residents, and business during

<table>
<thead>
<tr>
<th>Right-of-way needed 6(+) years hence</th>
<th>7 percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total right-of-way expenditures</td>
<td>100 percent</td>
</tr>
</tbody>
</table>

Id.

149. See note 148 supra.
151. ADVANCE ACQUISITION STUDY, supra note 138, at 75-76.
152. Id. at 77. See also CALIFORNIA SYSTEM, supra note 4, at 84-85, noting that early route adoptions lessen uncertainty, both locally and within governmental agencies, even though actual construction will not occur for some years.
153. Id. at 75-76.
154. CAL. STS. & H'WAYS CODE § 104.6.
155. See RIGHT-OF-WAY ACQUISITION, supra note 24, at I-11.
the "interregnum." In California, this issue has been largely resolved by the Division of Highways' successful use of timely acquisitions to maintain property values for as long as possible.

California appreciates the positive benefits that accrue to both the community and to the residents of the right-of-way area from early acquisition. Timely acquisition permits orderly takings, which reduces litigation and facilitates the expeditious relocation of affected persons, thereby insuring that communities are not disrupted any more than is necessary. Furthermore, studies indicate that the state's acquisition policies soften the blow to the local tax rolls by permitting most people to relocate within their community, while at the same time upgrading the quality of their homes.

As is the case with federal priorities for route location and construction, right-of-way acquisition programs for both immediate and future use have been distorted by the requirements of the interstate system. Such distortion is primarily due to the fixed completion date, which is now five years after right-of-way acquisition. If California is to be eligible for reimbursement for all costs incurred in constructing its share of the interstate system, all right-of-way acquisition must be completed by June 1972. While some acquisition for noninterstate highways is currently underway, all such acquisition needs are measured against the prospective loss of the 91.5 percent reimbursement for interstate routes that are not completed on schedule.

IV. The "Freeway Revolt" and Its Impact on Highway Location

Through its federal-aid-for-highways programs, the federal government has become inextricably involved in some of the bitter highway

156. The Division of Highways tries to eliminate these problems by outright purchase, thereby not rendering the property valueless to the owner. RIGHT-OF-WAY ACQUISITIONS, supra note 24, at I-13. Streamlining internal procedures would help to reduce the lead time between route adoption and acquisition. Id. at I-3 to I-4.

157. See id. at I-6 to I-9.

158. Some communities have special problems because of their predominantly low-income or nonwhite minority group population. The routing of the Century Freeway through the Los Angeles community of Watts made the need for replacement housing particularly acute. For an account of the efforts which the Division of Highways has made to soften the blow to the 2600 families that were displaced by the freeway, see Hill, Century Freeway (Watts), HIGHWAY RESEARCH BOARD, JOINT DEVELOPMENT AND MULTIPLE USE OF TRANSPORTATION RIGHTS-OF-WAY 68 (Special Report 104, 1969) [hereinafter cited as Watts].

159. RIGHT-OF-WAY ACQUISITIONS, supra note 24, at I-11.

160. Id. at I-17.
location controversies that have rocked California since the late 1950’s. For the most part, these freeway location controversies have been resolved at the state level, with the federal government remaining aloof from (but not unaware of)\textsuperscript{161} the battles that raged between the Highway Commission and the Department of Public Works on the one side wanting to obtain the greatest traffic service benefits from the money available, and local citizens groups on the other seeking (often in vain) to preserve the characters of the affected communities. Initially the opposition to highway decisions was maintained by small ad hoc groups that concentrated on local issues;\textsuperscript{162} however, as more and more cities were blighted (or actually disfigured), a wave of resentment was generated against the highway builders.\textsuperscript{163}

In a state where the primary means of transportation is the automobile, the focus of popular indignation has not been directed toward the building of freeways, but toward the method of freeway route selection. The major criticism is that there are no alternatives to the routes selected by the state highway engineers. One writer characterized the popular feeling in this way:

\textquote{The statewide flood of resentment is directed against the notion—sanctified by laws—that the highway authorities are competent to mold the future of the State, making life-or-death judgments on the value of scenery, parks, redwoods, residential neighborhoods, community centers, irreplaceable farmland and historic sites.}\textsuperscript{164}

Although California ranks as the nation’s leader in highway development, many of its residents who value scenery and “unspoiled wilderness” in preference to contemporary urbanization have come to regard the highway building programs as juggernauts to be resisted at all costs.\textsuperscript{165} Others, though unwilling to call a halt to development in general, are very much concerned that new or improved highways will destroy the character of the communities through which they pass. Those who are sensitive to their surroundings are horrified by the crass commercialism that so often attends urban development. In addition

\begin{itemize}
  \item\textsuperscript{161} A. Mowbray, Road to Ruin \textit{passim} (1969).
  \item  S. Wood \& A. Heller, \textit{The Phantom Cities of California} 13 (1963) [hereinafter cited as \textit{Wood \& Heller}].
  \item  \textit{See, e.g., A. Mowbray, Road to Ruin} 111-32 (1969); Wood \& Lembke, \textit{The Federal Threats to the California Landscape}, \textit{Cry California} 4, 31-34 (Spring 1967).
\end{itemize}
to aesthetic ruin, modern highway traffic, particularly in urban areas, is a constant source of air pollution which affects people and property throughout the area, not merely those adjacent to the right-of-way.

Environmental destruction is often coupled with economic consequences that are not balanced by post-construction increases in trade or business. Where a freeway has cut through noncommercial properties, the entire community may be altered by rampant commercialization of the right-of-way area. Even where the area is already commercially developed or where commercial development is deemed desirable, the ultimate effect of a freeway may vary greatly from that originally anticipated. The hopes for offramp bonanzas may in fact be displaced by the reality of freeway blight.

Traffic congestion, the prime impetus for creating urban freeways, actually seems to be compounded by the completion of a new freeway. For as each new freeway is completed, it is almost immediately filled to capacity. The increased volume of traffic attracted by urban freeways, both on the right-of-way and in off-freeway access and parking requirements, requires substantial amounts of urban property. A multilane urban freeway may divide a community as effectively as a river. Besides absorbing a substantial portion of a city's central business district, wide swaths may be cut across parks, open areas, and residential districts. Even those properties that are not needed as right-of-way may be seriously affected by increased levels of noise, dirt, and other pollutants which are the inevitable by-products of the urban freeway.

Rural freeways, while not as large as their urban counterparts, may constitute threats to parks, recreation areas, and other objects of natural beauty or historic value which many people feel should be preserved against the encroachments of contemporary commercialization and urbanization.

169. "Many people go considerably out of their way simply to gain the safety, ease, and possible time advantage of freeway design." CALIFORNIA SYSTEM, supra note 4, at 19.
170. See Wood & Heller, supra note 162, at 10-11.
Whether freeways are the answer to all transportation problems or whether freeways ought to be built to service particular localities or facilities are legitimate policy questions which should be decided either by the people or by their elected representatives. Until very recently, however, popular participation in the freeway route location process has been minimal, and the views and philosophy of the professional highway engineers have tended to prevail. Although there have been few, if any, complaints of fraud, bad faith, or chicanery, California highway officials have not been responsive to the desires of the persons most affected by their choice of route locations. Because of this unresponsiveness to community values, highway builders have been regarded not only as harbingers of urban blight and scenic desecration, but also as callous bureaucrats insensitive to those whom they are supposed to serve. Although beauty may indeed lie in the eyes of the beholder, and even a "freeway can appear a thing of beauty to the harried motorist," blatant violation of a community's sensibilities has commonly aroused intense feelings of resentment among those affected, and has led to reactions greatly out of proportion to the actual damage done. Indignation and resentment have been particularly strong in communities that feel, for good cause or not, that their desires have been given little consideration or have been wholly ignored by an impersonal and unresponsive government agency. A recent legislative investigation into popular discontent with freeway location practices and procedures in California concluded:

Under existing administrative organization and procedures, primary emphasis in the evaluation of routing alternatives appears to be on engineering considerations and construction and so-called user costs . . . . (a) if indeed all values are considered in the evaluation of routing alternatives, the conclusions are not always presented to the affected interests in a meaningful manner; (b) the organizational structure, staffing, and administrative procedures of the Highway Transportation Agency and State Highway Commission—in which decisions at every level of the administrative hierarchy within the agency are considered and made by engineers—do not inspire confidence in the capacity of the agency, even if it so does, to consider nonengineering and noncost factors in a truly significant way; and (c) in reviewing several specific routing con-

171. See A. MowBRAY, ROAD TO RUIN 158-83 (1969).
172. See Gentry, Iron Heel on the California Coast, CRY CALIFORNIA 4-10 (Fall 1968). The tone of this article clearly indicates the enmity many conservationists feel toward the state and federal governments for desecrating the environment.
troveries, it appeared . . . that there were serious questions con-
cerning the efficacy of the agency's consideration of the total impact
of a given routing alternative.175

Traditionally, highway engineers have not been sympathetic to-
ward noncost or nonuser preferences and values.176 For many years
California highway engineers used cost, user benefit, and engineering
considerations as the primary criteria to be considered in choosing
among alternative routings for new freeways,177 irrespective of the effect
that these alternatives would have on the communities affected. How-
ever, as the San Francisco Chronicle has suggested:

If the purpose of a highway is simply to move traffic, then
the engineers are justified in doing any amount of damage to
parks, residential areas, schools, and scenery in order to get the
most traffic through as quickly as possible. A broader viewpoint
might maintain that strictly engineering considerations must be part
of the broader purposes of a community—to provide a pleasant
environment for people to live in, to provide homes and parks
and recreation areas free from noise and exhaust fumes of heavy
traffic. The Highway Engineers of course agree theoretically with
these broader purposes, but the engineering mind is understand-
ably preoccupied with measurable costs and benefits.178

It is arguable that these "measurable" costs and benefits are, in
fact, variable to a greater or lesser extent. A former member of the
Highway Commission, in noting that additional right-of-way costs
generally raised the level of actual expenditure for freeway construction
by an average of 32 percent, candidly commented:

[N]o matter how many slide rules and computers are used in devel-
oping estimates, there are likely to be as many subjective judg-
ments put into the cost equation as go into the community values
aspect of freeway route selection. And those who find it hard
to give an exact economic figure to these community values
should have sympathy for the engineers who have the same diffi-
culty in their field.179

175. Highway and Freeway Planning, supra note 23, at 5-6. California highway
engineers are not alone in being criticized for obfuscating the decisionmaking process
with a plethora of professional jargon and for fragmenting the responsibility of de-
cisionmaking. See Note, Pressures in the Process of Administrative Decision: A Study
176. E.g., Otten, Concrete Catastrophes, The Wall Street Journal, Feb. 25, 1969,
at 20, col. 3.
178. Gilliam, The Freeway Octopus, San Francisco Chronicle, Oct. 12, 1964, at 1,
col. 1.
179. Houghteling, Confessions of a Highway Commissioner, CRY CALIFORNIA 30
(Spring 1966). The author gives a revealing insight into the seemingly purposeless
and ceremonial role that the commissioners were expected to play. The commission-
ers' dependence upon the Department of Public Works for information made in-
dependent decisionmaking from alternative points of view very difficult, if not impossible
Assuming that the above statement is accurate, the question becomes, why has the Division of Highways been so impassive toward suggestions of alternative routings for proposed freeways. It has been suggested that a proposed project acquires a momentum of its own during and after the initial planning stages, which becomes increasingly harder to thwart as plans move closer to fruition. This resistance to alteration or deviation is particularly pronounced where route location studies are made solely by state highway engineers, and where the viewpoint of the local community is not well presented to the district's engineering staff, either because that community has not been significantly involved in the initial freeway design studies, or because the master plan does not appreciate the full effect of proposed alternative routings on the community as a whole.

With regard to involvement in a proposed freeway's initial design studies, the failure or delay in making its wishes known may well cost a community its opportunity to have the kind of freeway that is most compatible with its needs and values. The initiation of engineering studies is considered to be the focal point in the entire freeway route location process, because at this point no commitments have been made and no substantial sums of money have been expended in favor of any particular route alternative.

Early involvement in the route adoption process presupposes adequate planning for possible freeways prior to the initiation of engineering studies. While a city might have a general plan that is adequate for most purposes, the imposition of a freeway would require more specific planning to meet such problems as a drastic alteration of traffic patterns within the entire community, the effect of design details (whether the facility will be level with the ground, elevated, or de-

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183. DESIGN PROCEDURES, supra note 181, at 28.
184. LEAGUE OF CALIFORNIA CITIES, CITY FREEWAY GUIDE 3 (Jan. 1964).
pressed, location of entrance and exit ramps, or landscaping details) or very often, the exact location of the freeway itself.\textsuperscript{185} Moreover, since future plans must remain flexible, even the most comprehensive of plans will necessarily be general, and general plans do not arouse the degree of public concern at the time of their adoption as they do at the time of implementation.\textsuperscript{186}

Where community planning has been inadequate, or where the exact details of proposed freeway location and design have not been made known either to local officials or to the general public, community responses to proposed freeways have taken on a decidedly negative cast. Highway engineers, confronted with local opposition unsupported by well-drafted alternatives, could feel justified in imposing their own solutions to freeway location problems, even where strongly felt community values would be ignored. By meeting resistance with intransigence, California highway engineers have forced communities to accept freeways largely on the engineers' terms.\textsuperscript{187}

Where local governments or citizen groups demonstrate their desires and interests in a knowledgeable and persuasive manner, the Division of Highways is more likely to make concessions and accommodations.\textsuperscript{188} There are several reasons, however, why local representatives have been unable to present arguments that greatly influence decisions of the highway engineers. First, and probably most important, communities or their leaders have not had the information which would permit them to participate meaningfully in any freeway location discussion, whether it be for the favored route or possible alternatives.\textsuperscript{189} Lack of information prevents the effective advocacy of an alternative route, especially where noncost and nonengineering values are at issue.

Second, where alternative routes have been proposed, they are often mere window dressing, or would adversely affect the local population to the extent that none are acceptable.\textsuperscript{190}

Third, even where a freeway is considered desirable, a freeway routing is so filled with important economic consequences for the entire community that the highway engineers' decision often throws the community into a muddled struggle of conflicting interests.\textsuperscript{191} Because

\textsuperscript{185.} Id.
\textsuperscript{186.} Id.
\textsuperscript{187.} See Design Procedures, supra note 181, at 13-14.
\textsuperscript{188.} Id. at 11.
\textsuperscript{189.} Id. at 8.
\textsuperscript{190.} E.g., Gilliam, The Freeway Octopus, San Francisco Chronicle, Oct. 12, 1964, at 1, col. 1.
of the numerous local interests that may be involved in a freeway location controversy, highway officials have often been unable to ascertain the predominant sentiments of the affected communities even when they make a valid attempt to do so.\textsuperscript{192} Moreover, because of the extended length of time between the commencement of engineering studies and the actual construction of a freeway, the affected community may undergo a significant change of attitude toward the proposed project,\textsuperscript{193} especially if the community is undergoing a period of rapid growth. Thus, the advantages of extended lead time for land use planning may be outweighed by rapidly changing public attitudes regarding such things as environmental factors, conservation, recreation, and related community values. These rapidly changing attitudes may force the highway department to sell the same project to two or three generations of citizens in the same community.\textsuperscript{194}

Finally, community development may be seriously affected by an extensive lead time between the proposal of a freeway and actual acquisition of right-of-way. Lead times of a decade or more may generate an atmosphere of uncertainty, especially where the actual right-of-way is not announced or where design or route changes may mislead or confuse those persons having an interest in specific route locations.\textsuperscript{195} The existence of such uncertainty prevents the unity of action necessary to present arguments which will have a decided influence on the highway planners.

The legal impregnability of resolutions by the California Highway Commission (in the absence of a clear showing of fraud, bad faith, or an abuse of discretion),\textsuperscript{196} and the commission's political unaccountability\textsuperscript{197} has significantly contributed to the bitterness felt by the community and has sparked strenuous resistance to further freeway routings in particular areas.\textsuperscript{198} To combat the hard-line attitudes

\textsuperscript{192} Interview with a state highway official, April 1969.
\textsuperscript{193} Id.
\textsuperscript{194} DESIGN PROCEDURES, supra note 181, at 25.
\textsuperscript{195} See generally Highway and Freeway Planning, supra note 23, at 54-58.
\textsuperscript{197} Gunzburg, Transportation Problems of the Megalopolitan, 12 U.C.L.A.L. Rev. 800 (1965) [hereinafter cited as Gunzburg], where the author notes that the highway commission should be insulated from the political pressures that result primarily from "logrolling" by legislators who are more interested in particular segments of highways than in the final results. The nonpartisan, politically "free" body of experts would then be better able to serve the public interest. See Howard, Preemption Aspects of the Freeway Problems, 17 Hastings L.J. 571, 579-81 (1966).
\textsuperscript{198} Highway and Freeway Planning, supra note 23, passim. Similar disregard of local interests has not been uncommon in other areas of the United States. See
of highway planners, affected communities have resorted to invoking a 1953 amendment to the California Streets and Highways Code which provides:

No city street and no county highway shall be closed, either directly or indirectly, by the construction of a freeway except pursuant to... an agreement or while temporarily necessary during construction operations. 199

By refusing to agree to the closing of any streets until demands were met concerning specific route changes, 200 San Francisco, Beverly Hills, Santa Barbara, and other communities have been able to prevent unwanted freeway location. 201 In the now famous San Francisco “freeway revolt” of March 1959, the San Francisco County Board of Supervisors used the leverage of this provision to defeat seven freeway routes proposed by the Division of Highways. Popular dissatisfaction with the appearance of the newly completed Embarcadero Skyway, coupled with threats of massive destruction to Golden Gate Park, and similar damage to the city’s western residential districts resulted in a tremendous groundswell of protests against the proposed structures. 202 San Francisco’s action has been described as “the first concerted revolt of a city against the highwayman’s singleminded urge to drive freeways through by the most convenient engineering routes without regard to the city’s tissue and fabric of life.” 203

Although cities such as San Francisco have successfully thwarted attempts to route unwanted freeways through their territory, such “victories” have been possible only because the population, local government, and the dominant financial, business, and community interests

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Note, Pressures in the Process of Administrative Decisions: A Study of Highway Location, 108 U. Pa. L. Rev. 534, 566-73, 577-78, 581-86 (1960). The way some state highway officials have ridden roughshod over local views has caused national concern. A. Mowbray, Road to Ruin passim (1969) is an articulate statement of the entire problem. Of course, in the alternative, the dissenters have not always been the most reasonable of men either. The most reliable gauge of the intensity of popular feeling is the frequency and extent of legislative restrictions and “due process” type procedural requirements now being imposed by both state and federal governments, most of them in the past decade.

199. CAL. STS. & H’WAYS CODE § 100.2 (emphasis added).
201. Gunzburg, supra note 197, at 810.
203. Arresting the Highwayman, ARCHITECTURAL FORUM 93 (Apr. 1969); see Transportation and the City, ARCHITECTURAL FORUM 64, 69-70 (Oct. 1963). The San Francisco dispute eventually resulted in the deletion of the two transcity routes from the interstate system and their reallocation, in mileage, to southern California. Gunzburg, supra note 45, at 809.
were united on the issue.

The highwater mark of antifreeway sentiment came in 1965 with the passage into law of a number of measures aimed at reforming the practices and procedures employed by the Division of Highways in freeway location.204 These reforms, and others that failed to pass the legislature,205 or were vetoed by the governor,206 were part of a package measure introduced by Assemblyman Z'berg. The drafting of these reforms follow extensive hearings, conducted by the Committee on Natural Resources, Planning, and Public Works,207 on the popular discontent with then existing freeway location practices.208 Even though only a portion of this legislative program became law, its total effect has had a profound impact upon current Division of Highways policy. Many of the objectives of the unpassed portion of Assemblyman Z'berg’s 1965 legislative program have been incorporated into the Department of Public Works’ new procedural regulations adopted by the California Highway Commission in December of 1968.209

Since 1967, there appears to have been a gradual, but nevertheless significant, shift in freeway location policies by the California Highway Commission and the Department of Public Works,210 evidenced by an appreciation of community involvement and a sensitivity toward

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204. The following laws were enacted during the 1965 session of the legislature: CAL. STS. & H’WAYS CODE § 75.6, which requires the Department of Public Works, on request of city or county officials, to present at public hearings a “graphic portrayal” of alternative routes, § 210.4, which allows a local agency to petition the Highway Commission if it is not satisfied with the preliminary discussions with the Department of Public Works, § 210.5, requiring the commission to employ officers to preside over the public hearings, § 75.7, which imposes a duty on the commission to publish a report containing the basis for its decision to select a certain highway route. Section 90, was amended by deleting the requirement that state highways be located on the most direct and practical route.

205. E.g., AB 1434 (1965), which authorized a petition by registered voters in the area affected for a public hearing on a proposed freeway location by the Highway Commission, if the local governing body had not requested such a hearing. AB 1441 (1965) would have precluded the Department of Public Works from acquiring by eminent domain any land dedicated for park uses. For a complete list of those 1965 bills which did not pass the legislature, see Assembly Comm. on Natural Resources, Planning, and Public Works, Highway Beautification 16-17, in 1967 SUPP. TO THE APPENDIX TO THE JOURNAL OF THE CALIFORNIA ASSEMBLY, No. 3.

206. AB 1439 (1965). This bill required that one member of the State Highway Commission be a former member of a county board of supervisors.

207. Highway and Freeway Planning, supra note 23.

208. Id.


210. Id.
community values. This heightened sensitivity has been reflected in the institution of the design team or multidisciplinary approach to freeway location and design problems. Since many of the so-called "community values" are represented by a wide variety of technical and socio-economic disciplines, highway planners are now taking advantage of the expertise of professional consultants who have heretofore played a peripheral role in freeway route location and design.

The Division of Highways' increasing responsiveness to local desires and values may indeed signal the closing of the era of great freeway location battles. It is submitted that the recognition of the tremendous social cost of such hostile encounters and the realization that freeways, particularly in urban areas, have not solved the state's transportation problems has made highway builders more willing now than in the past to make accommodations to nonhighway interests.

V. Federal Requirements, Due Process, and the Right of Appeal

Although federal participation in the highway construction programs is primarily fiscal, federal-aid statutes usually contain "eligibility" requirements which penalize those states that fail to implement provisions of federal law related to highway construction, such as junkyard control programs and federal labor standards. Federal controls and requirements are felt at all levels of federal-aid programs,

211. Local resistance, either actual or potential, seems to have instilled an attitude of solicitude in highway planners for those affected, especially where a proposed highway is to be routed through an urban area where local feeling is volatile. After suffering a defeat over the San Francisco Panhandle Freeway in 1966, the California Division of Highways made every effort to secure local cooperation in the routing of the Century Freeway and its two interchanges through the riot-torn community of Watts; the state's anxiety not to add fuel to the fires of racial unrest seems to have been a primary incentive to seek the broadest possible support for its proposals, and its solicitous attitude toward those who were to be displaced. See Watts, supra note 158, at 68-71, 73-74.

212. See, e.g., id. at 73. For many examples of the "design team" approach to freeway planning throughout the country, see HIGHWAY RESEARCH BOARD, JOINT DEVELOPMENT AND MULTIPLE USE OF TRANSPORTATION RIGHTS-OF-WAY (Special Report 104, 1969).

213. E.g., Transportation and the City, ARCHITECTURAL FORUM 64, 71 (Oct. 1963).

214. Interview with a member of the Executive Committee of the California Roadside Council, Sept. 22, 1969.

215. IMPACT, supra note 11, at 21.


from the initial planning and project discussions\textsuperscript{218} to post-completion maintenance.\textsuperscript{219} The Federal Highway Administration does not engage in any construction projects of its own, but merely approves and supervises construction programs submitted to it by state highway departments.\textsuperscript{220} Approval is also required for the detailed plans, specifications, and cost estimates of each project.\textsuperscript{221} Until approval has been given for changes in projects,\textsuperscript{222} or for the projects themselves, no work may proceed,\textsuperscript{223} and no reimbursement may be made for funds obligated prior to project approval.\textsuperscript{224} When given, approval is deemed “a contractual obligation of the federal government for the payment of its proportionate contribution thereto.”\textsuperscript{225} Federal-aid highways programs are meant to be a cooperative venture between the federal government and the states. State highway departments are designated as the responsible delegate agencies for the purpose of construction and maintenance of federal-aid highways,\textsuperscript{226} and as such are required to have final authority to make decisions and to undertake contractual obligations on behalf of their states. Project agreements\textsuperscript{227} indicate acceptance by state highway departments of the conditions that federal laws and regulations place on the payment of federal funds as well as acceptance of the amount of funds obligated.\textsuperscript{228} Coordination between the responsible state and federal officials is maintained through the Bureau of Public Roads and through Federal Highway Administration regional and field offices throughout the United States. To insure its coordination with the federal government,

\textsuperscript{218} See, e.g., 23 C.F.R. § 1.8 (1969), requiring submission of detailed programs of proposed projects for approval. 23 U.S.C. § 128(a) (Supp. IV, 1969) requires that public hearings take into account the proposed highway’s “consistency with the goals and objectives of such urban planning as has been promulgated by the community.”

\textsuperscript{219} See, e.g., 23 C.F.R. § 1.27 (1969).


\textsuperscript{221} Id. § 106(a).

\textsuperscript{222} See 23 C.F.R. § 1.13 (1969).

\textsuperscript{223} Id. §§ 1.10, 1.12 (1969).

\textsuperscript{224} 23 C.F.R. § 1.09 (1969). But see 23 U.S.C. § 115(a) (Supp. IV, 1969), where an exception is made for state expenditures in commencing construction of interstate projects, subject to the Federal Highway Administrator’s approval.


\textsuperscript{227} See id. § 110 (1964). The Secretary “may rely upon representations made by the State highway department with respect to the arrangements or agreements made” with local officials where their cooperation is necessary.

\textsuperscript{228} 23 C.F.R. § 1.14 (1969).
the California Division of Highways maintains a permanent staff of 71 persons to administer federal-aid programs in California.229 As is the case with many nonreimbursable duties which are imposed by federal law or by regulation, the costs of maintaining such a sizable administrative staff are not shared by the federal government.230 Similarly, California has the burden of enforcing federal labor and equal opportunity employment contract provisions, contracting and subcontracting standards, uniform reporting and accounting requirements, and the submission of the required documentation and vouchers, all without the aid of federal funds. Furthermore, certain other expenses are nonreimbursable because of differences between the requirements of California and federal law.231 Yet, the working relationship between the Federal Highway Administration and the California Department of Public Works appears to be most cordial.232

To facilitate a close working relationship with federal authorities, California has specifically assented to federal highway legislation, and has provided that federal-aid construction programs are to be performed as required. To insure that California law does not interfere with the completion of federal programs, the California Streets and Highway Code provides that the “laws, rules or regulations of this state inconsistent with such laws, or rules and regulations of the United States, shall not apply to such work, to the extent of the inconsistency.”233

Many of the requirements of federal law are intended to mitigate the social harm which earlier highway construction programs have caused; other requirements serve to codify practices initiated by more advanced state highway departments.234 For some state highway de-

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229. Id. § 1.11 (1969).
230. See text accompanying note 117 supra.
231. IMPACT, supra note 11, at 18-19. The Division of Highways exerts a constant “sales pressure” on the Bureau of Public Roads to induce it to absorb more of the administrative expenses connected with exclusively federal-aid requirements. Id. at 20 n.23.
232. Interview with Federal Highway Administration official, Apr. 1969. This official had high praise for the way California runs its highway construction programs with little need for bureau interference, except for the necessary project approvals.
233. CAL. STS. & H'WAYS CODE § 820. See generally id. §§ 820-28, which provide for state compliance with federal requirements, and appropriations of state funds to finance federal-aid highways, including those not within the state highway system, agreements with cities regarding federal-aid projects, and general cooperation with the responsible federal authorities in meeting federal-aid requirements.
234. Interview with official of the California Division of Highways, Nov. 3, 1969. State practices may simultaneously meet or exceed the required federal standard in certain areas, while in others federal requirements may act to create uniform minimal standards which have been found to be necessary on a nationwide basis.
partments, the increasing burden of federal regulation, however benef-
cicial it may be, has not been easy to bear. Part of the difficulty lies
in the nature of highway construction programs themselves. Much
of the state highway construction has been concerned primarily with
long distance intercity travel through predominantly rural areas. In
such cases, the scope of highway planning and land use development
has been quite narrow. Cost and user-benefits could be taken as the
primary criteria for highway route location without undue damage to
local towns and cities.

As freeways have intruded into urban areas in ever-increasing size
and number, local opponents have sought to influence the course of
highway construction at all levels of government through whatever
legal or political means available. As suggested above, highway
programs are essentially political in nature; and in too many cases, loca-
tion decisions have been thinly veiled exercises of raw power. Inter-
governmental conflicts have increased with respect to highway location
and design policies as cities have become more powerful political en-
tities, especially where the aid of the federal government has been
obtained through urban renewal and similar federal-aid programs. Ef-
forts to alleviate urban poverty and rehabilitate nonwhite ghettos
through a variety of federal-aid programs have inevitably brought to the
fore the feeling that nonuser community values must be accommo-
dated, or at the very least, that such interests be given priority in the

235. See A. Mowbray, Road to Ruin 235 (1969) where the author states that
several state highway officials have threatened to “go it alone,” rather than submit to
further federally imposed restrictions.
236. See Mandelker, The Legal Framework for Planning and Decision Making,
137 Highway Research Record 9, 10 (1966).
237. See text accompanying note 28 supra.
238. “Community values,” as the term has been used either in law or other-
wise, has been given no special definition. Generally, the term has been taken to mean
values concurrently held with, and in addition to, the values associated with highway
transportation and user benefits. In a very real sense, however, highway transportation
values are real community values, and the problem is to assign a meaningful status to
such values, at the same time relating these to the overall needs of the community.
Much of what has been rather loosely termed “community values” is an aggregate of
expressions of sentiment or opinion from diverse sectors of the community at large.
Some of these values may in fact conflict with each other, such as the desire to protect
both industrial and residential properties from possible freeway development, yet at
the same time wanting a freeway for the benefits it brings to the community. Simi-
larly, such desire to have easy access to freeways may be counterbalanced by a dislike
of any close proximity to freeway development. See generally Boulding, The Forma-
tion of Values as a Process of Human Learning, in Highway Research Board, Trans-
portation and Community Values 31 (Special Report 105, 1969).

On a broader scope, conflicts in community values occur where the merits of
decisionmaking process. Because state highway location and design practices (not to mention the influence of vested interests securely entrenched in state capitals) have been immune to judicial attack, cities and local underrepresented groups of people (often ethnic or racial minorities) have been appealing to the federal government for relief.

The inevitable result has been that past abuses of authority and gross disregard of local sensibilities have resulted in the promulgation, both by states and the Federal Highway Administration, of longer and more detailed laws, rules and regulations which now govern the “due process” of highway route location.

community progress are at issue; and the freeway is perhaps the most obvious symbol of community progress. Quaere: If the public expects current and future transportation facilities to be planned with due deference and consideration to local community values, might these other values be planned and protected by law as well? See Frankland, Coexistence in the Highway Corridor: A Test of Intergovernmental Cooperation, 166 HIGHWAY RESEARCH RECORD 22 (1967). For a general discussion of community values and their impact on highway transportation planning, see Legarra & Lammers, The Highway Administrator Looks at Values, in HIGHWAY RESEARCH BOARD, TRANSPORTATION AND COMMUNITY VALUES 109 (Special Report 105, 1969).

239. For example, both the federal and California law provide for relocation assistance to low-income families. 23 U.S.C. §§ 501-11 (Supp. IV, 1969); CAL. STS. & H'WAYS CODE §§ 156-59.6. The Department of Transportation has announced that “future highway projects which involve dislocating people will not be approved until adequate replacement housing has already been provided for and built.” Palo Alto Times, Sept. 13, 1969, at 32, col. 4.


241. E.g., 23 U.S.C. § 128(a) (Supp. IV, 1969). “Due process,” in this context, would seem to focus on the right to be heard, the right to be informed, and the right to have due consideration given to counterproposals and objections. It may also involve a requirement that the lead time between route adoption and right-of-way acquisition be not unreasonably long. But see Helpern v. McMorran, 50 Misc. 2d 134, 270 N.Y.S. 2d 656 (Sup. Ct. 1965), which held that the route adoption hearing, though occurring more than five years prior to the suit to void the route location decision was nevertheless valid, that there was no judicial remedy because the hearing was valid on its face, and that the applicable statute of limitations barred any legal remedy. Thus, the court held, “[i]f an inordinate time has passed between the hearing and the commencement of construction, the delay is a matter of concern for the appropriate federal and state authorities, but raises no legal impediment upon which this court may act.” Id. at 137-38, 270 N.Y.S.2d at 659-60. The approach of the court, though good doctrine insofar as administrative law is concerned, is to be criticized today because it is not in accord with the spirit and trends of recent legislation. Both change of circumstances and laches have a certain appeal, particularly in situations where unreasonable delay, lack of due diligence, or other inequitable conduct would unjustly prejudice the party against whom the decision is to be enforced. It would seem the better view, especially in a California context, to keep in mind the ever-changing nature of urban communities whenever a highway location decision is challenged because of an unreasonable delay in implementing it; the burden should pass to those who seek to enforce that decision to justify such enforcement with a showing of due diligence or other good cause to ignore the delay.
The current emphasis of federal policy is aimed primarily at improving communications between highway planning agencies and the public at large, and at increased consideration of the overall impact that route location and design has upon community values. The impetus of the federal requirements is the recognition that many of the narrow-approach, user-oriented location practices characteristic of highway planning in the past have been counterproductive, and that local opposition to freeways, especially in urban areas, is becoming increasingly intense. To avoid such undesirable results, federal law requires public hearings for all federal-aid projects. State highway departments must certify that such hearings have been held. The intention of the federal government is to insure that states afford full opportunity for effective public participation in the consideration of highway location and design proposals before the proposals are submitted to the Federal Highway Administration for approval. It also hopes to encourage early and amicable resolution of controversial issues that arise.

To this end, federal policy requires that state highway departments consider fully a wide range of factors in determining highway locations and highway designs. It provides for extensive coordination of proposals with public and private interests. It provides for a two-hearing procedure to give all interested persons an opportunity to become fully acquainted with highway proposals of concern to them and to express their views at those stages of any proposal's development when the flexibility to respond to these views still exists.

Despite the fact that California highway officials are in complete...
agreement with the spirit of the federal two-hearing requirement (at least with respect to the desirability of public involvement in the route location and design process), it has been suggested that if the federally required hearings actually serve their intended purpose, the result could be disastrous to a highway construction program of any size or complexity.\(^{250}\) Federal-aid hearings are implicitly an all-or-nothing proposition; completed route locations or design features are presented for acceptance or rejection, even though the ostensible purpose is to permit the public to initiate certain changes in route location or design features. While it is possible that such hearings will enable the public to initiate route changes, the likelihood of such changes occurring is slight.\(^{251}\) The reason for the limited usefulness of public involvement at this stage of the design process is rather obvious. The need for a particular facility and the level of expenditure already made, in terms of time, effort, and money, will usually outweigh any benefit to be derived from additional changes or in the resulting delay. Moreover, even when changes are proposed, or project decisions are postponed for further study, the final decision is not likely to be any easier or more palatable.\(^{252}\)

Although the federally required "corridor"\(^{253}\) and "design-feature"\(^{254}\) hearings are intended to give the public the opportunity to comment on the type of facility to be built as well as its location, it is likely that the separation of highway location from highway design distorts the highway location and design process, at least in the public's mind. Such distortion results because the terrain over which a highway is to be built will often dictate the kind of facility needed.\(^{255}\) A separate hearing is useful, however, where the issue is the type of facility (among those feasible, such as a depressed freeway as compared to an elevated freeway) most compatible with local community values. Such hearings also provide another opportunity to examine a proposed design, to test the underlying presuppositions, and to allow for corrections.

\(^{250}\) Interview with state highway official, Nov. 1969.

\(^{251}\) Id.

\(^{252}\) Legarra & Lammers, The Highway Administrator Looks at Values, in HIGHWAY RESEARCH BOARD, TRANSPORTATION AND COMMUNITY VALUES 109, 110 (Special Report 105, 1969) [hereinafter cited as Legarra & Lammers].

\(^{253}\) PPM 20-8, \(\S\) 6, 34 Fed. Reg. 728 (1969). This is a hearing to be held before a route location is approved, and before the state highway department is committed to a specific proposal. Its purpose is to discuss the need for and alternatives to a proposed federal-aid highway. Id. \(\S\) 4(a).

\(^{254}\) This requirement has reference to the major design features of the proposed project. Id. \(\S\) 4(b).

\(^{255}\) Interview with state highway official, Nov. 1969.
in design or route location where such corrections are found to be necessary.

The intent of both California and federal practice is to permit the maximum feasible amount of discussion of the issues presented. Although extended discussion lengthens the highway location process, California highway officials consider this a small price to pay for guaranteeing the public's right of participation in the highway location process. Recent studies suggest methods of improving the hearing process; however, the recommendations concerned improvements in communications techniques rather than policy changes. Notwithstanding any difficulties in its application, California officials feel that their procedures more than meet the requirements of federal policy.

The current trend of California's highway procedure is to maximize community involvement in the location and design process. This is a difficult and often an unrewarding task, but it is necessary if later community opposition is to be avoided. Quite frequently, highway officials agree to recommend a particular route alternative, only to encounter an outraged public reaction once the proposal becomes publicized. Local governmental bodies may respond to pressure from a particular interest group within the city, or a particular city within a county at the expense of the remainder of the city or county. The result may well be irreconcilable controversies over plans for future development. Cities within a highway corridor may either support or oppose the recommendation of the State Highway Engineer, depending upon the purported benefit or loss to the community served.

To reduce the possibility of a "disproportionate representation of certain sectors of the public" within the local community, public hearings by the planning commission or legislative body of a city or county are now required before that body may recommend the adoption of a state highway route. In an effort to achieve the earliest possible

256. See Legarra & Lammers, supra note 252, at 110. Similar comments were made by a highway official during an interview, Nov. 1969.
257. See Legarra & Lammers, supra note 252.
258. DESIGN PROCEDURES, supra note 181, at 28-29.
259. See Legarra & Lammers, supra note 252, at 115.
260. See id. at 118-21 (giving four California examples).
263. CAL. STS. & H'WAYS CODE § 74.5.
resolution of potential sources of conflict, the Division of Highways has sought to contact, or to create where none exist, local groups within the community to acquire and disseminate information concerning freeway proposals and community values. A recent study applauds such steps and recommends further broadening of the roles that local governments and private interest groups play in the initial design studies process; however, the study notes that the Division of Highways’ efforts to insure local participation and to preserve community values will be to little avail if local communities fail to act positively in their own behalf and accept the responsibilities inherent in the undertaking. Local government must have the ability and desire to motivate other groups within the community to assume their fair share of the burden.

Beginning with the initial route adoption discussions, California’s legislative policy favors a complete exchange of pertinent information between local governing bodies and the Department of Public Works. Recommendations from local agencies should be considered by the department and by the Highway Commission in reaching a final decision. Freeway route plans recommended to the commission are required to be publicized, and an opportunity must be afforded for local governing bodies to request a hearing on the matter before the commission takes final action. In addition to consultations with affected local agencies and governing bodies, public meetings are required to be held “when sufficient information has been accumulated to permit intelligent discussion . . . .” To insure fairness and orderly procedure at department-sponsored public meetings, the Highway Commission is required to employ independent hearing officers to preside over such public hearings or meetings.

If, in the course of preliminary freeway location discussions, local governmental agencies (which would seem also to include the legislative or governing bodies for cities and counties) are dissatisfied with the

264. See Legarra & Lammers, supra note 252, at 116.
265. See id.; DESIGN PROCEDURES, supra note 181, at 7-9.
266. DESIGN PROCEDURES, supra note 181, at 12-14, 19-20.
267. See id. at 21-23.
268. See id. at 8, 12-15.
269. See id. at 12-15.
270. CAL. STS. & H'WAY CODE § 210.
271. Id.
272. Id.
273. Id. § 210.5. In addition, hearings are to be conducted in an informal but orderly manner; formal rules of evidence do not control; time permitting, all interested persons should be heard. Id.
Division of Highways' choice of "the most logical segment to be studied for route selection," they may appeal to the Highway Commission and be granted a hearing. Upon the request of an aggrieved city or county governing body (specifically detailing the kind of information desired), the Department of Public Works is required to produce comparative estimates of costs and benefits accruing to alternative route proposals. Judging by current practice, however, it would seem that the burden of coming forward with new facts justifying a reversal of the State Highway Engineer's recommendation would rest with the complaining entity.

A public hearing before the Highway Commission is required after the Director of Public Works proposes a freeway route to the commission. After such a recommendation is made, a resolution of intention to consider the location of that proposed freeway is passed by the commission; thereafter, the State Highway Engineer is required to notify the appropriate local governing body of the resolution. Such notification must be in writing, and it must include a statement that the Highway Commission will hold a hearing on the proposal, if requested to do so within 30 days after the first regular meeting of the local legislative body following the receipt of notification.

If a public hearing before the commission is requested in the manner prescribed above, such hearing must be provided and all interested parties must be given the opportunity to be heard. Where the commission believes that a hearing is necessary or desirable and no request has been made, it may call or hold such hearings on its own motion. Although the public hearing allows all interested parties to be heard, there is little assurance that the sentiments and recommendations expressed will be acted upon. The general tendency has been that the recommendation of the Director of Public Works will be followed, unless the local entity brings forward new facts that would justify reconsideration. Similarly, requests for hearings for the purpose of recon-

274. Id. § 210.4.
275. Id. §§ 74, 210.4.
276. Id. § 75.5. However, the commission's failure to comply with the requirements of the Act will not reverse the decision, and proof of such failure to comply is inadmissible as evidence in court. Id.
278. Id.
279. Id. ¶ 5.
280. Id.
sidering previously adopted freeway routes are not granted unless the petitioning party establishes new facts that justify further study.

After the expiration of the prescribed 30 day period, or after public hearings have been held, the Highway Commission may adopt the proposed freeway route within the project limits under consideration. In reaching its final decision, the commission is required to consider recommendations and other information submitted by local agencies, including any officially approved master plans or other highway and transportation plans. The standard of judgment is to be "the standpoint of the overall public interest." Upon final adoption of a freeway route, the commission is required to prepare a report to interested persons and public agencies stating the basis for its decision.

Even if public hearings are held as prescribed, it is questionable whether they accomplish their intended results. Until recently, it was widely felt, in California and elsewhere, that public meetings and hearings were merely pro forma rituals which served to ratify decisions effectively made much earlier. Today's hearings and public meetings are probably more effective as vehicles for expressing community sentiment; however, the problems inherent in public hearings—apathy, indifference, and lack of knowledge—remain.

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283. Id. ¶ 8; see CAL. STS. & H’WAYS CODE § 210.
285. Id. § 211.
286. Id. § 75.7. Consideration must be given, but not limited to, the following factors:
   "(a) Driver benefits.
   (b) Community values.
   (c) Recreational and park areas.
   (d) Historical and aesthetic values.
   (e) Property values, including impact on local tax rolls.
   (f) State and local public facilities.
   (g) City street and county road traffic.
   (h) Total projected regional transportation requirements." Id.
287. See LEAGUE OF CALIFORNIA CITIES, CITY FREEWAY GUIDE 3 (Jan. 1964): "It has been the experience throughout the State that changes in freeway locations have occurred most often as a result of meetings held by the Division of Highways rather than resulting from Highway Commission hearings." The only really effective way of influencing a particular highway location or design feature is to make a private presentation to the resident district engineer in whose jurisdiction the facility is to be built. From an interview with a state highway official, April 1969.
288. See DESIGN PROCEDURES, supra note 181, at 8.
As a general rule, public hearings have not been well-attended unless an issue of significant community interest or controversy is involved. Moreover, even when community interest is high, attendance lags because the hearings are held during working hours. All too often they have been less a vehicle for a meaningful exchange of information and expressions of popular preferences, and more a self-congratulatory ritual to be used by local special interests, business groups, and chambers of commerce to weight the record in their favor.

Whether public participation through public hearings is a “success” or a “failure” is largely dependent upon how it is used by the parties concerned. Although the public is invited to participate in the route selection process and safeguards have been established to aid the hearing participants in appreciating the import of the information being presented, the only meaningful protection for the public is the willingness and capacity of those who contribute to the process to act in the spirit of mutual cooperation so as to compromise existing or potential sources of conflict in as equitable a manner as possible. Notwithstanding the procedural safeguards that the law imposes on the

289. E.g., Div. of Highways, Dep’t of Public Works, Annual Report of the Cal. Highway Comm’n Relating to Freeway Route Adoptions 12, 14 (Dec. 1968), wherein it was reported that one meeting had 1,100 in attendance, while two meetings in which alternate routes were considered had 350 and 125 in attendance. Remarks confirming the inefficacy of public hearings were made by various highway officials in personal interviews with the author.

290. Interviews with state highway officials, Apr. 1969.

291. In the public hearing at Maxwell, California, to consider design features for a segment of Interstate Route 5, held on May 15, 1969, one participant commented that had the hearing been held in the evening hours, twice the number of people present would have attended.

292. At the Maxwell Design Hearing, all officials made what seemed to be full disclosure of all material details of interest to that community; they seemed to make every reasonable effort to inform the audience and to solicit the views and opinions of those present; questions concerning the proposed facility, and related traffic safety devices which were of community interest, were answered as fully as possible. Where requests could not be immediately granted, as with a particular traffic control signal, full explanation was given. At the conclusion of the hearing, a member of the Advisory Committee to the California Highway Commission rose to ask the audience if there was anything that they could suggest to improve the hearing process. Several suggestions were offered, principally concerning at what hour the hearing should have been held, and regarding future efforts to keep people abreast of new developments.

293. See, e.g., Cal. Sts. & H’ways Code § 75.6, which provides: “At public hearings before the [highway] commission or department [of public works] on the selection of alternative state highway or freeway routes, on request of any city or county affected, the department shall present a graphic portrayal of selected significant portions of the route alternatives by means of sketches or preliminary models, where appropriate, to show the general appearance and basic design features of the highway or freeway upon which the estimated cost is based.”
highway location process, so much decisionmaking authority is discretionary that mere demands for strict compliance with procedural niceties render that remedy somewhat nugatory. The California Highway Commission is the ultimate authority in the state highway location decisionmaking process, and even though its procedure meets the requirements necessary for adoption and promulation\(^\text{294}\) of route locations, there is no way in law to assure the wisdom of its decisions. Such wisdom, and the ability to know and to act in the public interest, must come from constructive public involvement in the route location process.

Where state level attempts to change a location or design decision regarding a federally aided highway have failed, direct appeal may be made to the Federal Highway Administration to disapprove a particular routing, to withdraw an earlier approval, or to refuse to approve all alternatives except one. This was the case in September of 1968, when the Federal Highway Administrator in an unprecedented action announced that, with regard to disputes over the location of Interstate 280 as it passed near the Crystal Springs Reservoir in San Mateo County, he would only approve the San Francisco ridge routing.\(^\text{295}\) Never before had a high federal official publicly repudiated a state highway department; and the incident received wide publicity.\(^\text{296}\) Although there is some probability that San Francisco's case may have been overstated in some respects,\(^\text{297}\) the impact of the incident has been farreaching. Whatever the merits of either position, the dispute demonstrates the leading role that the Federal Highway Administration can play in a freeway location controversy.

Appeal to the Federal Highway Administration, however, is a two-

\(^{294}\) CAL. STS. & H'WAYS CODE § 213. The highway commission procedure—largely a restatement of statutory criteria—is set out in CAL. ADMIN. CODE tit. 21, § 1451.

\(^{295}\) Memorandum from Cal. Dep't of Public Works, Div. of Highways, to Mr. James A. Moe, Director of Public Works, Freeway Route Recommendation 2 (File 04-SM-280, Feb. 4, 1969).

\(^{296}\) 23 U.S.C. § 138 (Supp. II, 1967), as amended, (Supp. IV, 1969) was successfully invoked by the opponents of the Crystal Springs route. The section states: "[T]he Secretary shall not approve any program or project which requires the use of any publicly owned land from a public park, recreational area, or wildlife or waterfowl refuge of national, State, or local significance, as determined by the Federal, State, or local officials having jurisdiction thereof, . . . unless there is no reasonable alternative to such a taking, and all reasonable precautions have been taken to minimize damage from such use."

\(^{297}\) This principally concerned the city's allegation that the proposed freeway would pollute the reservoir. See Memorandum from Cal. Dep't of Public Works, Div. of Highways, supra note 295, at 13-15.
edged sword; there is no guarantee of protection to local interests, even if the Administrator does at times appear to possess a greater aura of objectivity than local highway planners. The Federal Highway Administration may refuse to approve any route other than the one it desires, despite local opposition and the support of alternative routings by the state highway department.

VI. Federal-Aid Prospects for the Future

To regard the federal impact on highway construction in California as "profound" would be a gross understatement. It has been nothing short of phenomenal! Federally aided systems now cover 9,290 miles, all but 124 miles of which are state highways. Without


One might voice some disagreement with the way in which the author approaches the route location process. Although his approach is sound from the point of view of traditional condemnation law, it is perhaps unrealistic, at least in the California context which the author seeks to summarize. Id. at 148-49. In most cases, the highway location process is not resolved in the rarified atmosphere of a courtroom; where the courts have been invoked, they have not been effective regulators of the highway departments. If, as it has been suggested in this study, highway location law and accompanying procedures are really evidence of basic and continuing policy, or policy undergoing a process of transformation, as the evidence tends to show very strongly, then concentrating on the traditional rules of eminent domain merely leads into a legal cul-de-sac.

Highway location, as has already been suggested, is primarily a political activity, at least in California, and seems to be regulated almost wholly by statute. Common law approaches do not lend themselves to 10-12 year advance planning programs, nor do they lend themselves to the question of which factors among many should prevail in a given situation. Where the discretion of an administrative agency is at issue, courts look to see if there was some ground upon which a decision may be supported. This is not to say that the opposition might not have a better case, or to say that the highway agency was not guilty of wilfulness or arbitrariness. A court may only allow or deny. It cannot supervise the kind of activity which opponents of highway locations demand of the route location process—responsible decisionmaking and due regard for the interests of those who are affected by highway development.

Thus the Federal Government has stepped into the breach left open by the judiciary's inability and unwillingness to govern the route location process. The close and continuous supervision which the Bureau of Public Roads brings to bear on the activities of state highway departments is a far cry from the deus ex machina sallies into highway location disputes which courts are asked to make. Fiscal controls are the only real weapons the Federal Government has to control the route location process; and it is these controls that lie at the heart of the federal-aid highways program and that govern the relationship between the Federal Highway Administration and the states. Although this relationship is intended to be a "cooperative" one, the real issue is to ascertain who cooperates with whom!

federal funds, however, it is doubtful that California, of its own volition, would have diverted as much of its resources into highway construction as it has under the federal-aid programs. As national development and coordination of transportation expands, 301 federal influence upon, if not outright direction of, state transportation policies is bound to increase.

As political pressure is made for improved mass transportation

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301. Coordinated transportation systems are heavily emphasized in current policy and planning programs. See Reuss, The Federal Government and Coordinated Transportation, 183 HIGHWAY RESEARCH RECORD 1 (1967); Ronan, Shifting Emphasis in Transportation, 183 HIGHWAY RESEARCH RECORD 7 (1967). Highway planning has been extensively coordinated with urban planning in general. See Bridwell, Freeways in the Urban Environment, in HIGHWAY RESEARCH BOARD, JOINT DEVELOPMENT AND MULTIPLE USE OF TRANSPORTATION RIGHTS-OF-WAY 88 (Special Report 104, 1968); Turner, Current Governmental Policies, in HIGHWAY RESEARCH BOARD, JOINT DEVELOPMENT AND MULTIPLE USE OF TRANSPORTATION RIGHTS-OF-WAY 144 (Special Report 104, 1968). Current federal policy seems to deemphasize the role of the freeway in urban transportation development. See Shafer, Unclogging the Jam: Administration Stresses Mass Transit as Cure for Urban Traffic Ills, The Wall Street Journal, May 21, 1969, at 1, col. 6, noting that the Secretary of Transportation's avowed "number one priority" is public transportation.

"The Transportation Department naturally isn't going to stop highway building; but officials say it will push to give localities a realistic alternative to federal highway aid for alleviating urban transportation problems." Id.

If the trend toward nonhighway urban transportation development continues, California may find itself in difficulty in meeting its future transportation needs. Studies that have been undertaken have concluded that even if nonhighway mass transit were to be developed to its fullest extent, highway transportation would still be the predominant mode of transportation in California. Patterns of urban development suggest that while more than 90 percent of the state's population will live in urban areas by 1990, the primary areas of growth will be in smaller cities and suburban areas. The Los Angeles and San Francisco metropolitan areas will continue to absorb the largest number of people but at a slower rate than the state as a whole; urban density is expected to rise only moderately, while urban limits will continue to expand. See generally CALIFORNIA SYSTEM, supra note 4, at 16-17. The result will be more travel between dispersed urban areas, with the major emphasis being on motor vehicles. Rising living standards will generate additional transportation pressures for recreation and social purposes. Nonhighway transportation pressures, principally rail traffic for freight and air traffic for passenger service, will create additional pressures on highway transportation in the form of heavier demands for access to service terminals. Population growth and corresponding transportation needs will generate pressures for better mass transit, especially during peak hours of work movement, and better use of available facilities in congested areas. See generally id. at 7-10. However, urban public transportation will continue to depend primarily upon bus service. See id. at 34.

If federal-aid programs are significantly altered, California will not be able to make up the difference to meet the required level of expenditure for capital improvement of existing facilities and to complete its freeway and expressway system (assuming current rates of return of highway revenues). See Price, Waterhouse & Co., A Review of the Present Financing of the California Freeway and Expressway System, 1969-1988, in CALIFORNIA SYSTEM, supra note 4.
facilities, the federal government will most likely participate to an increasing degree. Costs will be shared; perhaps initially they will not be as great as with the interstate highway program. The major funding battles are likely to occur after 1973-74, however, when the Highway Trust Fund is due to expire. If the supporters of federally aided urban mass transportation are politically successful, one may expect significant concessions to be demanded from the interests that now dominate the use of the trust fund revenues.

Over the next several decades, as a mass urban transportation constituency develops, alternative uses would seem to be probable for at least a substantial portion of what are now trust fund revenues. As for new construction, an increasing proportion of such funds will likely be devoted to alternatives to the present freeway system. Undoubtedly, a bitter struggle will occur between those who favor, and those who oppose, the preservation of the monopoly that federal-aid highways now enjoy over the use of the four billion dollars that have annually been distributed from the trust fund.

Notwithstanding any shift in emphasis as to the kind of transportation facility that may eventually be funded on a federal-aid basis, the pattern will undoubtedly be similar to the present freeway location and adoption process. The process will remain a legislative one, hence it will be political. Assumptions of social needs and values will be made, and certain of these will dominate the legislative process whenever any new form of transportation is introduced.

Unless the federal government wishes to undertake a more active role in the actual creation and management of future transportation enterprises, which at the moment appears to be unlikely, there will probably be a duplication of the kind of cooperative relationship now being conducted between the Federal Highway Administration and the participating state highway departments, with similar fiscal controls, management practices, and policy and procedure guidance. In terms of future social objectives to be achieved concomitant to federal transportation subventions, where the incentive to participate is great enough, states will seek to enact uniform legislation to provide a basis for reimbursement for particulars expenses incurred.

The requirements for public participation in the decisionmaking process is likely to be similar to those found under the present programs, notwithstanding the particular kind of facility involved. If the trend toward a more meaningful, effective popular voice in the choice of alternatives to proposed programs continues, “due process” is likely to
require something more than the location and design hearings now held. California (as well as other states) may be required to drastically alter its present method of project review if conformity to the federal standard is to be maintained. The type of review that will be required under future programs is open to great speculation; perhaps administrative review, judicial review, or a combination of both may be invoked as situational needs change. Where, as in California, route and facility design and location are effectively precluded from judicial review, review at the federal level may be deemed necessary and the Crystal Springs result may become customary.\textsuperscript{302}

In conclusion, cooperative ventures in national transportation programs between the federal government and the several states will undoubtedly continue, and such programs will most likely be on the model of the Federal-Aid Highways Program. Local priorities will still tend to be subordinated to the requirements of national policy. Although California is a rich and populous state, its needs and corresponding dependence upon federal-aid has been steadily increasing over the past several decades. There is no suggestion that this dependence will lessen in the foreseeable future.

\footnotesize{302. See Volpe "Spares" French Quarter, S.F. Chronicle, July 10, 1969, at 11, col. 1. See also Editorial, Vieux Carre Saved, S.F. Chronicle, July 11, 1969, at 42, col. 1 (favorably noting federal disapproval of a probable interstate freeway route through the Vieux Carre section of New Orleans on grounds of probable damage to the area's historical monuments).}
Appendix

Freeway Route Adoption Process Diagram*

### INCLUSION OF PROJECT IN STATE-WIDE PLANNING PROGRAM

Position based on safety, need from traffic service standpoint, other deficiencies, revenue predictions, statutory controls relative to minimum expenditures in districts and counties, etc.

### PRELIMINARY DISCUSSIONS WITH LOCAL OFFICIALS

as to logical limits of route studies.

### WRITTEN NOTICE TO LOCAL GOVERNMENT, LEGISLATORS, AND OTHER AGENCIES

that studies are beginning. Publicized preliminary meeting held to announce commencement of studies and to receive information.

### ENGINEERING DATA ASSEMBLED

by Division of Highways and discussed in meetings and conferences with local agencies and technical staffs to correlate with their planning, resolve conflicts, and to determine if all logical alternatives have been included for study. Plans correlated with those of other State and federal agencies.

### STUDIES ASSEMBLED AND DATA REVIEWED

by Headquarters Office of Division of Highways. Report approved for purposes of proceeding with public hearing.

### PUBLIC HEARING ANNOUNCED

in the press and by correspondence to local legislators, governing bodies, and other affected agencies. Results of studies are presented to governing bodies and map displays are held for the interested public.

### PUBLIC HEARING HELD

Comments and/or presentations by State, Bureau of Public Roads, local government, civic organizations, local groups and citizens. Alternate locations are presented without stated preference.

### RECORD OF PUBLIC HEARING

(including transcript and all pertinent data received within 30 days) to Headquarters Office of Division of Highways and members of the California Highway Commission.

### REPORT AND RECOMMENDATION

by State Highway Engineer to Director of Public Works. Director solicits comments from State Office of Planning and State resources agencies regarding socioeconomic factors involved and from affected local jurisdictions.

### RECOMMENDATION

to California Highway Commission by Director of Public Works.

### RESOLUTION OF INTENTION

by California Highway Commission to consider the freeway location. Local governments notified by State Highway Engineer and 30-day period established during which a public hearing by the Commission may be requested.

### Local Resolutions to waive California Highway Commission hearing

### Local Resolutions asking for California Highway Commission hearing

### Hearing at initiative of California Highway Commission

### HEARING BY CALIFORNIA HIGHWAY COMMISSION

### ADOPTION OF FREEWAY ROUTE

A route adoption report by California Highway Commission is prepared outlining the basis for its decision.

### ROUTE LOCATION APPROVED BY BUREAU OF PUBLIC ROADS

Appropriate notice published at time of request and following approval by Bureau of Public Roads.