

#36(L)

6/9/65

Memorandum 65-40

Subject: Study No. 36(L) - Condemnation Law and Procedure (Discovery in Eminent Domain Proceedings)

Attached (pink pages) is a copy of Senate Bill No. 71 (1963 Session) relating to discovery in eminent domain proceedings. This bill passed the Senate but was not approved by the Assembly Judiciary Committee because of objections from attorneys representing property owners.

As a part of our study of condemnation law and procedure, the staff suggests that this bill, together with the Recommendation upon which the bill is based, be distributed for comments as soon as the current legislative session is concluded.

Also attached is a copy of the Recommendation that relates to Senate Bill No. 71 (1963 Session).

We believe that this legislation would serve a very useful purpose since it appears that Senator Cobey's bill relating to evidence in eminent domain proceedings will be enacted at the current session of the Legislature.

The letter of transmittal we would use to transmit this material to interested persons is attached as Exhibit II (green pages).

Also attached, as Exhibit III (gold page), is a copy of a press release we propose to distribute to the legal newspapers and to the State Bar Journal.

We already have a special State Bar Committee appointed on this subject. The staff would like to contact other interested groups to see if they would be willing to appoint a committee to work with the Commission on this project.

Among the groups we plan to contact are the Judicial Council, the League of California Cities, and the Association of California Counties.

Respectfully submitted,

John H. DeMouly
Executive Secretary

EXHIBIT I

AMENDED IN SENATE MAY 7, 1963
AMENDED IN SENATE MARCH 26, 1963

SENATE BILL

No. 71

Introduced by Senator Cobey
(At request of California Law Revision Commission)

January 14, 1963

REFERRED TO COMMITTEE ON JUDICIARY

An act to amend and renumber Section 1246.1 of, to amend Section 1247b of, and to add Sections 1246.1, 1246.2, 1246.3, 1246.4, 1246.5, 1246.6 and 1246.7 to, the Code of Civil Procedure, relating to eminent domain proceedings.

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

- 1 SECTION 1. Section 1246.1 of the Code of Civil Procedure
2 is amended and renumbered to read:
3 1246.9. Where there are two or more estates or divided in-
4 terests in property sought to be condemned, the plaintiff is
5 entitled to have the amount of the award for said property first
6 determined as between plaintiff and all defendants claiming
7 any interest therein; thereafter in the same proceeding the
8 respective rights of such defendants in and to the award shall
9 be determined by the court, jury, or referee and the award
10 apportioned accordingly. The costs of determining the appor-
11 tionment of the award shall be allowed to the defendants and
12 taxed against the plaintiff except that the costs of determining
13 any issue as to title between two or more defendants shall be
14 borne by the defendants in such proportion as the court may
15 direct.
- 16 SEC. 2. Section 1246.1 is added to the Code of Civil Pro-
17 cedure, to read:
18 1246.1. (a) Any party to an eminent domain proceeding
19 may, not later than 45 days prior to the day set for trial,
20 serve upon adverse party to the eminent domain proceeding
21 and file a demand to exchange valuation data.
22 (b) A party on whom a demand is served may, not later
23 than five 10 days after the service of the demand, serve upon
24 any adverse party to the eminent domain proceeding and file a

1 cross-demand to exchange valuation data relating to the parcel
2 of property described in the demand.

3 (c) The demand or cross-demand shall:

4 (1) Describe the parcel of property upon which valuation
5 data is sought to be exchanged, which description may be
6 made by reference to the complaint.

7 (2) Include a statement in substantially the following form:

8 "You are required to serve and file a statement of valuation
9 data in compliance with Sections 1246.1 and 1246.2 of the Code
10 of Civil Procedure not later than 20 days prior to the day set
11 for trial and, subject to Section 1246.5 of the Code of Civil
12 Procedure, your failure to do so will constitute a waiver of the
13 right to introduce on direct examination during your case in
14 chief any matter required to be set forth in your statement of
15 valuation data."

16 (d) Not later than 20 days prior to the day set for trial,
17 each party who served a demand or cross-demand and each
18 party upon whom a demand or cross-demand was served shall
19 serve and file a statement of valuation data. A party who
20 served a demand or cross-demand shall serve his statement
21 of valuation data upon each party on whom he served his de-
22 mand or cross-demand. Each party on whom a demand or
23 cross-demand was served shall serve his statement of valu-
24 ation data upon the party who served the demand or cross-
25 demand.

26 (e) The Judicial Council, by rule, may prescribe times for
27 serving and filing demands and cross-demands, and a time
28 for serving and filing statements of valuation data, that are
29 different from the times specified in this section, but only if
30 such rules provide assurance that the trial will be held within
31 20 days from the day on which the statements of valuation
32 data are required by such rules to be served and filed. Such
33 rules may provide for a different form of statement than that
34 specified by paragraph (2) of subdivision (c).

35 Sec. 3. Section 1246.2 is added to the Code of Civil Pro-
36 cedure, to read:

37 1246.2. The statement of valuation data shall contain:

38 (a) The name and business or residence address of each
39 person intended to be called as an expert witness by the party.

40 (b) The name and business or residence address of each
41 person intended to be called as a witness by the party to testify
42 to his opinion of the value of the property described in the
43 demand or cross-demand or as to the amount of the damage or
44 benefit, if any, to the larger parcel from which such property
45 is taken and the name and business or residence address of
46 each person upon whose statements or opinion the opinion is
47 based in whole or in substantial part.

48 (c) The opinion of each witness listed as required in sub-
49 division (b) of this section as to the value of the property
50 described in the demand or cross-demand and as to the amount
51 of the damage or benefit, if any, which will accrue to the larger

1 parcel from which such property is taken and the following
2 data to the extent that the opinion is based thereon:

3 (1) The highest and best use of the property.

4 (2) The applicable zoning and the opinion of the witness
5 concerning probable change thereof.

6 (3) A list of the offers, contracts, sales of property, leases
7 and other transactions sales, contracts to sell and purchase,
8 and leases supporting the opinion.

9 (4) The cost of reproduction or replacement of the property
10 less depreciation and obsolescence and the rate of depreciation
11 used.

12 (5) The gross and net income from the property, its reason-
13 able net rental value, its capitalized value and the rate of
14 capitalization used.

15 (6) Where the property is a portion of a larger parcel, a
16 description of the larger parcel from which the property is
17 taken.

18 (d) With respect to each offer, contract, sale, lease or other
19 transaction sale, contract or lease listed under paragraph (3)
20 of subdivision (c) of this section:

21 (1) The names and business or residence addresses, if
22 known, of the parties to the transaction.

23 (2) The location of the property subject to the transaction.

24 (3) The date of the transaction.

25 (4) If recorded, the date of recording and the volume and
26 page where recorded.

27 (5) The consideration and other terms of the transaction.
28 The statement in lieu of stating the terms contained in any
29 contract, lease or other document may, if such document is
30 available for inspection by the adverse party, state the place
31 where and the times when it is available for inspection.

32 Sec. 4. Section 1246.3 is added to the Code of Civil Pro-
33 cedure, to read:

34 1246.3. (a) A party who has served and filed a statement
35 of valuation data shall diligently give notice to the parties
36 upon whom the statement was served if, after service of his
37 statement of valuation data, he:

38 (1) Determines to call an expert witness not listed on his
39 statement of valuation data;

40 (2) Determines to call a witness not listed on his state-
41 ment of valuation data for the purpose of having such witness
42 testify to his opinion of the value of the property described
43 in the demand or the amount of the damage or benefit, if any,
44 to the larger parcel from which such property is taken;

45 (3) Determines to have a witness called by him testify on
46 direct examination during his case in chief to any data re-
47 quired to be listed on the statement of valuation data but
48 which was not so listed; or

49 (4) Discovers any data required to be listed on his state-
50 ment of valuation data but which was not so listed.

51 (b) The notice required by subdivision (a) of this section
52 shall include the information specified in Section 1246.2 and

1 shall be in writing; but such notice is not required to be in
2 writing if it is given after the commencement of the trial.

3 Sec. 5. Section 1246.4 is added to the Code of Civil Pro-
4 cedure, to read:

5 1246.4. Except as provided in Section 1246.5, if a demand
6 to exchange valuation data and one or more statements of
7 valuation data are served and filed pursuant to Section 1246.1:

8 (a) No party required to serve and file a statement of valu-
9 ation data may call an expert witness to testify on direct
10 examination during the case in chief of the party calling him
11 unless the name and address of such witness are listed on the
12 statement of the party who calls the witness.

13 (b) No party required to serve and file a statement of valu-
14 ation data may call a witness to testify on direct examination
15 during the case in chief of the party calling him to his opinion
16 of the value of the property described in the demand or cross-
17 demand or the amount of the damage or benefit, if any, to the
18 larger parcel from which such property is taken unless the
19 name and address of such witness are listed on the statement
20 of the party who calls the witness.

21 (c) No witness called by any party required to serve and file
22 a statement of valuation data may testify on direct examina-
23 tion during the case in chief of the party who called him to
24 any data required to be listed on a statement of valuation data
25 unless such data is listed on the statement of valuation data
26 of the party who calls the witness, except that testimony that
27 is merely an explanation or elaboration of data so listed is not
28 inadmissible under this section.

29 Sec. 6. Section 1246.5 is added to the Code of Civil Pro-
30 cedure, to read:

31 1246.5. (a) The court may, upon such terms as may be just,
32 permit a party to call a witness or to introduce evidence on
33 direct examination during his case in chief where such witness
34 or evidence is required to be but is not listed in such party's
35 statement of valuation data, if the court finds that such party
36 has made a good faith effort to comply with Sections 1246.1
37 and 1246.2, that he has complied with Section 1246.3, and that,
38 by the date of the service of his statement of valuation data, he:

39 (a)
40 (1) Would not in the exercise of reasonable diligence have
41 determined to call such witness or discovered or listed such
42 evidence; or

43 (b)
44 (2) Failed to determine to call such witness or to discover
45 or list such evidence through mistake, inadvertence, surprise or
46 excusable neglect.

47 (b) In making a determination under this section, the court
48 shall take into account the fact that the opposing party may
49 have relied upon the statement of valuation data and may
50 be surprised or prejudiced if the witness is called or the
51 evidence introduced.

1 Sec. 7. Section 1246.6 is added to the Code of Civil Pro-
2 cedure, to read:

3 1246.6. The procedure provided in Sections 1246.1 to
4 1246.5, inclusive, does not prevent the use of other discovery
5 procedures in eminent domain proceedings.

6 Sec. 8. Section 1246.7 is added to the Code of Civil Pro-
7 cedure, to read:

8 1246.7. Nothing in Sections 1246.1 to 1246.6, inclusive,
9 makes admissible any matter that is not otherwise admissible
10 as evidence in eminent domain proceedings.

11 Sec. 9. Section 1247b of the Code of Civil Procedure is
12 amended to read:

13 1247b. Whenever in an eminent domain proceeding only a
14 portion of a parcel of property is sought to be taken, the
15 plaintiff, within 15 days after a request of a defendant to
16 the plaintiff *upon request of a defendant made not later than*
17 *45 days prior to the day set for trial*, shall prepare a map
18 showing the boundaries of the entire parcel, indicating thereon
19 the part to be taken, the part remaining, and shall serve an
20 exact copy of such map on the defendant or his attorney *not*
21 *later than 15 days prior to the day set for the pretrial con-*
22 *ference, or, if no pretrial conference is held, not later than 30*
23 *days prior to the day set for trial.*

CALIFORNIA LAW REVISION COMMISSION

July 15, 1965



ROOM 30, CROTHERS HALL
STANFORD UNIVERSITY
STANFORD, CALIFORNIA 94305

JOHN R. McDONOUGH, Jr.
Chairman
RICHARD H. KEATINGE
Vice Chairman
SENATOR JAMES A. COBEY
ASSEMBLYMAN ALFRED H. SONG
JOSEPH A. BALL
JAMES R. EDWARDS
SHO SATO
HERMAN F. SELVIN
THOMAS E. STANTON, Jr.
GEORGE H. MURPHY
Ex Officio

To: Persons Commenting on Tentative Recommendations of the
California Law Revision Commission Relating to Condemnation
Law and Procedure

The California Law Revision Commission is planning to recommend a comprehensive eminent domain statute for enactment at the 1969 session of the Legislature. During the next three years, the Commission will be preparing and distributing tentative recommendations on various aspects of this subject to interested persons for comment. These comments will be taken into account when the statute to be recommended to the 1969 Legislature is prepared.

The enclosed materials relate to discovery in eminent domain proceedings. The materials consist of:

- (1) Senate Bill No. 71 which was introduced at the 1963 legislative session.
- (2) A pamphlet containing the Commission's Recommendation and Study relating to Discovery in Eminent Domain Proceedings.

Senate Bill No. 71 passed the Senate in 1963 but died in the Assembly Judiciary Committee. The bill is explained in some detail in the Recommendation contained in the enclosed pamphlet. The amendments which were made after the bill was introduced are primarily of a technical nature.

The Commission seeks comments on whether such legislation is needed and desirable and whether any changes should be made in the legislation as it passed the Senate in 1963. In order to maintain our schedule on this project, we would like to receive any comments you may care to make not later than December 31, 1965.

Yours truly,

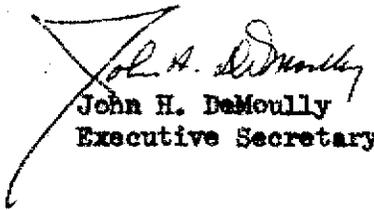

John H. DeMouilly
Executive Secretary

EXHIBIT III

PRESS RELEASE--FOR IMMEDIATE RELEASE

Law Revision Commission to Revise Condemnation Laws

The California Law Revision Commission is planning to recommend a new comprehensive eminent domain statute for enactment at the 1969 session of the Legislature.

During the next three years, the Commission will prepare a series of tentative recommendations covering various aspects of this subject. These will be distributed to all interested persons for comment. The comments will be taken into account when the statute to be recommended to the 1969 Legislature is prepared.

John R. McDonough, Jr., Chairman of the Commission, has requested that any person who is interested in this subject inform the Commission so that he can be sent copies of the tentative recommendations. The Commission's office address is: California Law Revision Commission, 30 Crothers Hall, Stanford University, Stanford, California 94305.