Study EmH-455 February 7, 2000

Second Supplement to Memorandum 2000-11

Litigation Expenses in Eminent Domain Cases: Additional Comments

This memorandum includes additional material relating to litigation expenses in eminent domain cases. Attached are the following letters:

POLICY OF THE DRAFT RECOMMENDATION

The Department of Transportation opposes the draft tentative recommendation. They believe that the proposal will have the opposite of its intended effect — it would allow litigation expenses in more cases, thereby lessening the incentive of the property owner to settle. They note that very few cases go to trial, and those that do are on widely disparate valuation questions or disputed legal issues. They believe that this measure would increase condemnor acquisition costs, without good reason. The current scheme that allows the courts to consider the reasonableness of the parties' behavior is preferable as a matter of public policy.

JURY BIAS IN FAVOR OF PROPERTY OWNER?

Sacramento County has argued against a litigation expense standard of "closer to the award". Their argument is based in part on their perception that juries are biased in favor of the property owner, which may help the property owner obtain an award closer to the property owner's demand than to the condemnor's offer.

Gideon Kanner (Exhibit pp. 1-5) challenges this assertion, arguing that there is no evidence to support it. He concludes rather that property owners are able to obtain higher awards at trial because condemnors often offer substantially less than fair market value.

> The bottom line of all this is that citizens whose land is taken for public projects are undercompensated on a vast scale. Even when they succeed in securing the full measure of "just" compensation that the law allows, they still have to suffer a variety of losses deemed by law noncompensable, and their award is then further reduced by the substantial fees they have to pay their lawyers, appraisers and other experts. That simply isn't right. People who wind up in the bulldozers' path are not some sort of enemy; they are American citizens entitled to fair treatment by their government. As of now, they are not receiving it.

LOW BALL TACTICS?

Correction

In the litigation expense debate, it has been alleged that some condemnors "game the system" by preparing different appraisals for different purposes (some generated by appraisal staff, others by outside appraisers).

In this connection, Norm Matteoni makes a point of clarification about his letter attached to the First Supplement to Memorandum 2000-11. His remarks concerning the use of a staff appraiser or an independent appraiser whose appraisal may be stripped of certain items of compensation relate only to the precondemnation offer and the deposit of probable compensation, not to the final offer. (Our summary of his remarks on this point was in error.)

A Recent Case

A recent court of appeal case is also worth noting. In *Community Redevelopment Agency of Los Angeles v. World Wide Enterprises*, 2000 Daily Journal D.A.R. 1125 (Feb. 1, 2000), the trial appraisal prepared by the condemnor's outside appraiser turned out to be 20% lower than the prejudgment deposit appraisal prepared by the same appraiser (a difference of $200,000). The issue in the case was whether the property owner would be allowed to impeach the appraiser's trial testimony with evidence of the higher prejudgment deposit appraisal. The court held that evidence of the prejudgment deposit appraisal is inadmissible — the policy of the law is to encourage an adequate prejudgment deposit by ensuring that it will not be used against the condemnor at trial. (This Second Appellate District decision conflicts with a 1994 First Appellate District decision, setting up a possible Supreme Court determination of the issue.)

It should be noted that the appraiser in this case offered a justification for the lower trial appraisal. The earlier appraisal was made subject to the assumption

that the property was in sound physical condition and free of toxic substances. By the time of trial the condemnor had taken possession of the property, investigated its condition, and discovered the assumption to be incorrect. The trial appraisal was reduced to reflect the cost of demolition and asbestos abatement.

REDEVELOPMENT CONDEMNATION

Gideon Kanner has argued in the past that condemnation for redevelopment should cover the property owner's litigation expenses. The Commission decided at its August 1999 meeting not to develop special rules for redevelopment condemnation. Mr. Kanner now renews his suggestion.

He encloses a recent article from the Los Angeles Times concerning the failure of the North Hollywood redevelopment project. He emphasizes that a project such as this takes private property for "public use" — the public use being to transfer the property to a private developer at a discount to encourage new construction.

"But it is unconscionable in light of this prevailing reality to inflict uncompensated losses on the indigenous inhabitants of redevelopment project areas in order to facilitate this sort of speculation on the part of private, government-subsidized redevelopers." Exhibit p. 9. He argues that a property owner displaced for a redevelopment project that generates private profit should recover compensation for all demonstrable economic losses. That should include the property owner's reasonable and reasonably incurred litigation expenses when the owner recovers compensation significantly in excess of the redevelopment agency's pre-litigation offer or pretrial offer.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary

MEMORANDUM

Date: February 4, 2000

TO: California Law Revision Commission

FROM: Gideon Kanner

RE: First Supplement to Commission Memorandum 2000-11
Response to Letter of 1/3/00 from Sacramento County Counsel

Sacramento County's letter is based on the avowed premise that juries are biased in favor of condemneees who, by reason of the timing of statutorily required disclosure of condemnor's valuation figures, are said to enjoy an unfair advantage, and therefore condemnation awards are said to be "the product of the defendant's well planned litigation strategy, rather than a sober inquiry into values." With all due respect, these assertions range from the unfounded -- significantlly no studies or other data are cited in support -- to the absurd, certainly to the extent that they presuppose that condemnors seek a "sober inquiry into values" whereas condemnees engage in "litigation strategy."[1]

It seems clear to me that if -- as asserted in Sacramento County's letter -- it were all that easy for condemnees to "establish a favorable midpoint" in the valuation range, one would expect many condemnation cases to go to trial and many more lawyers practicing in this field. Reality is to the contrary. A

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[1] To ascertain the accuracy of my response, one need only list the reported eminent domain cases involving misconduct of counsel. All but one involved misconduct by condemnors' counsel; see *Garden Grove School Dist. v. Hendler*, 63 Cal.2d 141 (1965) (unfounded, vituperative *ad hominem* attack on the condemnee personaly, and an appeal to the jurors' self-interest as taxpayers), *People v. Graziadio*, 231 Cal.App.2d 525 (1964) (appeal to jurors' self-interest as taxpayers), *Regents of The Univ. of California v. Morris*, 266 Cal.App.2d 616, (1968) (tampering with the integrity of condemnor's appraisal report before exchanging it with the condemnee pursuant to a court discovery order), *Nestle v. Santa Monica*, 6 Cal.3d 920 (1972) (same), *People v. Voltz*, 25 Cal.App.3d 480 (1972) (same), *City of Fresno v. Harrison*, 154 Cal.App.3d 296 (1984) (same).

This business of subverting the discovery process by stripping from exchanged valuation information various appraisal data and then springing them as a surprise at trial was described in the 1960s as commonplace among condemnors by no less an authority than Roger Arnebergh, then Los Angeles City Attorney who disclosed that state of affairs in an article in the Proceedings of The Southwestern Legal Foundation's Eminent Domain Institute. I see from Norm Matteoni's letter that this practice still goes on, the law notwithstanding.

In contrast, I am aware of only one reported case in which a condemnee's appraiser withheld material from his report, and then testified to it in trial. *Mehl v. People*, 13 Cal.3d 710 (1975) (interestingly, the lawyer who represented the owners in *Mehl* had an extensive background of representing condemning agencies).

vast majority of government land acquisitions take place without litigation. Of the cases filed a vast majority are settled without going to trial, and fewer still go to verdict, much less appeal. Most condemnation lawyers representing owners have little or no repeat business (it is a truly unusual and unlucky property owner who experiences more than one condemnation in a lifetime), and derive much if not most of their business from other lawyers who are aware of the burdens and pitfalls of representing condemnees, and often wouldn't touch one of these cases with the proverbial ten-foot pole.

The other factor that contradicts the County's assertion is that many condemnors as well as condemnees have historically preferred juries to judges. Since I don't usually represent condemnors, I can't set myself up as an expert on the condemning agencies' motivation, but over the years I have heard two reasons. One is what an old friend who has represented condemnors for over 30 years calls "political reasons;" i.e., the right to a trial by jury is guaranteed by the state Constitution, and it seems fair that people whose property is being forcibly taken for the benefit of the community should have their compensation assessed by a judicially-supervised cross-section of that community. Sophisticated condemnors are not unmindful of the institutional benefits that flow from the public perception of the appearance of justice. The second reason is pragmatic: the perception among a number of condemnors' lawyers is that judges tend to "split the difference," whereas juries respond to particularly meritorious (or unmeritorious, as the case may be) cases presented by the parties and regularly bring in verdicts that "hit the bull's eye" for one side or the other.

Before sending this letter I made inquiries among a number of professional acquaintances who tend to represent condemnors, those who represent condemnees, and those who represent both. Though the results were not uniform, this appears to be the consensus.

I also want to address the county's assertion concerning the causes of verdicts being consistently higher than condemnors' offers and evidence. The author of the county's letter appers to take it as self-evident that this is the result of "the inherent jury sympathy for the defendant." No doubt, there is such sympathy when homes or small commercial properties are taken. Whether that sympathy goes so far as to translate into a juroral willingness to inflate verdicts and thus their own perceived tax burdens is another story. That at least some condemnors' counsel work on the jurors' self-interest as taxpayers, as evidenced by some of the cited cases, suggests that juries are not unaware of who pays.

Moreover, the "sympathy" rationalization breaks down in cases of large commercial properties which are inherently owned by very wealthy entities and individuals. And yet, these are the cases where condemnees have been consistently scoring huge victories. I find it difficult to accept as serious the

contention that juries wax emotionally sympathetic to the point of awarding unwarranted eight-figure damages to the likes of Walt Disney, Southern California Edison, or Southern Pacific.

These cases of unsympathetic, extremely wealthy condemnees are highly instructive. Though these condemnees may enjoy skilled representation and valuation testimony, I fail to see how anyone can seriously assert that Juror Joe Sixpack is so biased in favor of these wealthy entities and so reckless of his own tax burdens that he cannot be brought to his senses by a judge's instructions to the extent of rendering a fair verdict.[2]

The county ignores altogether the competing hypothesis, namely, that there is a general tendency on the part of condemning agencies to undercompensate and undervalue, both by making inadequate pre-litigation offers (most of which are accepted -- a phenomenon that encourages this practice), and in those cases where litigation ensues, to present opinion evidence of appraisers who are quite conservative in their approach to valuation. Some of this is legitimate; i.e., some people are more cautious than others. (For my own quarter-century old views on that point, see 48 Notre Dame Lawyer at 779, n. 71). Some of it is not; i.e., it's like those doctors in tort cases who habitually testify for insurance companies and are consistently hard put to diagnose any disability or even to discern symptoms.

This is particularly evident from a review of the economics of the largest condemnation cases in which there has been a consistent pattern of huge overages secured by condemnees *both from judges and juries.*[3] In at least two

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2 For whatever this may be worth, I have served on two juries and each time I was impressed by the earnestness of the jurors and their desire to follow the judge's instructions.

3 Thus in *Regents of the University of California v. Morris, supra,* the jury verdict was $3,700,000 on the condemnor's evidence of $3,250,000. The judgment was reversed on appeal because of condemnor's appraiser's and counsel's misconduct and on retrial the verdict was $4,800,000 (in 1965 dollars). In the eventually aborted attempt to condemn Union Station in Los Angeles, Caltrans presented evidence of value around $20,000,000; the verdict was over $80,000,000. In *City of Los Angeles v. Retlaw Enterprises,* 16 Cal.3d 473 (1976) the Supreme Court upheld a $14,350,000 verdict in favor of Disney on the city's evidence of $4,000,000. In *County of San Diego v. Rancho Vista del Mar,* 16 Cal.App. 4th 1046 (1993) the county's evidence was around $5,000,000, the jury's verdict was $55,000,000 which the trial court remitted to some $23,000,000; the court of appeal rode to the county's rescue and reversed on a point of law that the county had expressly waived, and following remand the case was eventually settled for some $38,000,000 (over $21,000,000 plus interest). In *Metropolitan Water Dist. v. Domenigoni,* tried in Riverside County, the jury returned a verdict of $43,200,000 on the District's evidence of $7,000,000; the trial court remitted the award to $34,000,000, and the case was eventually settled for substantially more. Finally, in *People v. So. Calif. Edison,* the verdict was $49,500,000 on Caltrans' valuation evidence of approximately $4,000,000; that award was affirmed by the Court of Appeal, the Supreme Court declined to review Caltrans' valuation arguments, and the case is now pending on the issue of interest only before the California Supreme Court. *An acute insight into the mindset of Caltrans was provided in the Edison case*

of them the condemnors' valuation theories were so absurd that the juries literally laughed at their appraisers. The consistency of this phenomenon speaks for itself. I find it hard to believe that the juries in these cases were so sympathetic to the likes of Disney, Edison, and Southern Pacific that they became emotional when awarding damages. Besides in those of these large cases where judges entered remittitur orders, the remitted amounts were multiples of the respective condemnors' valuation opinions (about five times in *Rancho Vista Del Mar,* and six times in *Domenigoni.*)

This is not to say that there isn't any overreaching on the condemnees' side; of course there is -- people have human failings (see *P.G.& E. v. Zuckerman,* 189 Cal.App.3d 1113 (1987)). But both sound perceptions and conventional wisdom of the condemnees' bar is that few things can be as damaging to a party's case in the eyes of the jury as the appearance of greed and overreaching, and highly skilled condemnation lawyers often turn that idea to their clients' advantage by demonstrating to juries that it is the condemnors' valuation that is overreaching.

Moreover, unlike general tort litigation where evidence of damages is often a subjective "anything goes" process in which at times unverifiable, subjective symptoms and complaints of the plaintiffs are routinely presented to juries without hindrance from judges, in eminent domain cases every bit of valuation evidence must conform to the Evidence Code,[4] and is scrutinized and sifted by judges by motions in limine and in rulings on objections to specific comparable sales and other valuation factors presented by the appraisers.

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when Caltrans made its "good faith" deposit of only $234,000, even though its evidence was eventually close to 20 times as much. Finally, in *L.A. Unified School Dist. v. Trump Wilshire,* 42 Cal.App.4th 1682 (1996), another aborted major condemnation (of the Ambassador Hotel in Los Angeles) the condemnor's deposit was $47,919,000, and Trump's claim was $200,000,000. The District prudently abandoned the condemnation.

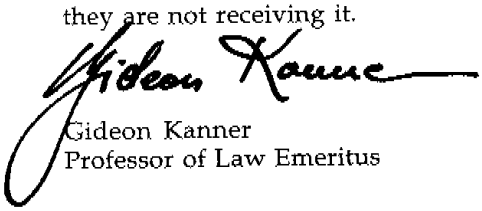
It was in *Domenigoni* and *Rancho Vista del Mar* that juries openly scoffed at the condemnors' appraisers' testimony. In the former, MWD's appraiser testified that there were no severance damages to a partially taken ranch, such that the family ranch house wound up at the foot of an earthen dam two miles long and 285 feet high, holding back nearly one million acre-feet of water. In *Rancho Vista del Mar,* the jury burst out into laughter (and had to be admonished by the trial judge to calm down) when it heard testimony of the county's appraiser that the highest and best use of land abutting directly against the Donovan State Prison and flooded all night long with the prison's security lights, was holding for development into large estates.

[4] Valuation is the only subject of expert testimony in which the *substantive* content of expert witnesses' testimony is circumscribed by law. See Evidence Code §§ 813-824; § 810(a) expressly provides that "except where another rule is provided by statute, *this article provides special rules of evidence applicable to any action in which value of property is to be ascertained.*" Emphasis added.

Finally, there is the matter of data underlying these conclusions. Beginning with the Congressional hearings in the 1960s (that arose from mass condemnations around Port Chicago, but expanded to examine other California condemnors' practices), through the famous New York study by Reskin and Rohan eventually published in the Columbia Law Review, through more recent General Accounting Office studies, through Prof. Clark Kelso's study, all the way to the most recent study by the *Salt Lake Tribune,* that I sent to the Commission a while ago, the story is always the same: condemnees who feel that they are not being fairly compensated by condemnors' offers and insist on trying their cases consistently secure increases averaging around 30%.

Unless the folks in the Sacramento County Counsel's office mean to impute supernatural powers the condemnees' bar, the conclusion would seem to be clear that the reason condemnees are by and large as consistently successful as they are before juries is not because their plight reduces jurors' minds to putty, nor because their counsel are magicians who, like Lamont Cranston of fiction, are able "to cloud men's minds," but rather because there is a natural tendency on the part of condemning agencies to protect their budgets by undercompensating condemnees when they can; it's a part of the condemnors' long-standing culture,[5] and so it shouldn't come as a surprise that skillful condemnees' counsel are thus provided with opportunities to exploit the weaknesses of that culture reflected in condemnors' overreaching valuation practices and evidence.

The bottom line of all this is that citizens whose land is taken for public projects are undercompensated on a vast scale. Even when they succeed in securing the full measure of "just" compensation that the law allows, they still have to suffer a variety of lossess deemed by law noncompensable, and their award is then further reduced by the substantial fees they have to pay their, lawyers, appraisers and other experts. That simply isn't right. People who wind up in the bulldozers' path are not some sort of enemy; they are American citizens entitled to fair treatment by their government. As of now, they are not receiving it.



Gideon Kanner
Professor of Law Emeritus

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5 As long ago as 1966, Joseph C. Houghteling. then a California Highway Commissioner, wrote that actual higway construction costs were consistently 32% higher than estimated, "most of the increment coming from additional right of way costs." *Confessions of a Highway Commissioner*, Cry California, June 1966, p.29, 30.

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February 2, 2000

Nathanial Sterling
Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Rm. D-1
Palo Alto, CA 94303-4739

Re: Eminent Domain Study; Litigation Expenses (First Supplement to Memorandum 2000-11)

Dear Nat:

Thank you for including my comments in the above mentioned Memorandum. But, I need to make a point of clarification.

The remarks made in my letter of December 7 concerning the use of a staff appraiser or an independent appraiser whose appraisal maybe stripped of certain items of compensation relate only to the precondemnation offer and the deposit of probable compensation. It was not my intention to say that agencies which undertake these tactics also rely on a staff appraiser for the final offer; I do not have evidence that supports that conclusion.

The Memorandum is correct that the main focus of my letter was not on the award of litigation expenses, but an effort to insure that the amount of prejudgment deposit is adequate. To that end, I appreciate the later Memorandum entitled "First Supplement to Memorandum 2000-12, January 28, 2000" suggesting revisions to CCP §§1255.010 and 1255.030.

Finally, regarding Michael Nave's suggestion of increasing the time for exchange of valuation data from 60 to 120 days, I urge the Commission take its time in evaluating the matter. There is a heavy burden on the property owner in a complicated valuation issue of engaging other foundational experts such as planners and civil engineers to provide background investigations and studies for

the appraisal process. With Fast Track Judicial Processing of cases to trial, the property owner can be caught in an unrealistic time crunch by advancing the change of valuation data too far in before of the trial.

Very truly yours,

NORMAN E. MATTEONI

NEM:sd

Gideon Kanner
Professor of Law Emeritus
Post Office Box 1741
Burbank, California 91507

January 31, 2000

Nathaniel Sterling, Esq.
California Law Revision Commission
4000 Midlefield Road, Room D-2
Palo Alto, California 94306

Dear Nat:

I enclose for your consideration an article on redevelopment that appeared as a front-page story in yesterday's *Los Angeles Times*. I have highlighted certain passages which I believe to be of special significance. While overall it's a case of *res ipsa loquitur*, in the context of the Commission's recent deliberations on recovery of litigation expenses and my input on that subject, I believe some aspects of this article warrant special emphasis.

First and foremost is the matter of the sheer waste of public money on a massive scale. It now turns out that the rosy projections of the redevelopment agency turned out to be fiction. The North Hollywood area in question, after soaking up $115,000,000 in public funds remains blighted. Today's *Los Angeles Times* (p.B-1) carries a follow-up story entitled *N. Hollywood's Hopes Riding on the Subway*. It reports the admission that the redevelopment project has been a failure and voices the hope that perhaps the North Hollywood terminus of the Red Line will turn things around, though it also reports that CRA's efforts to attract developers for the barren wasteland that surrounds the Red Line station have so far been a failure. More importantly, yesterdy's *Times* reports that other, similar areas that were not within redevelopment projects have achieved the same level of improvement without using public funds, as the North Hollywood redevelopment project where the number of buildings requiring repair and of vacant homes has doubled. For this, 28 existing businesses and God knows how many jobs were destroyed. The agency brags about new jobs created by its project but it fails to mention whether the increase it speaks of is a net increase (if any) after the destroyed jobs are taken into account. Moreover, the higher paying (typically show business management) jobs were not "created" by anything the CRA did, but rather moved from other entertainment firm venues.

What the article does not mention, but it deserves emphasis just the same, is that the CRA became so detested in the area that it had to move its North

Hollywood area office from a facility owned by it to a more expensive rented one because of security concerns, thus wasting more money.

It is not my intention to dwell unduly on this civic, moral, and fiscal disaster which is hardly the only one (what happened in Hawthorne was far worse); the facts revealed in the article speak for themselves. I do mean to reemphasize what I told the Commission earlier, and to renew my plea that the Commission reconsider the proposal to apply different standards to formulation of criteria for allowing condemnees to recover litigation expenses in redevelopment cases that create private, profit making projects. If the legislature means to allow such private raids on the public treasury and if the courts mean to go along with it, so be it. But it is unconscionable in light of this prevailing reality to inflict uncompensated losses on the indigenous inhabitants of redevelopment project areas in order to facilitate this sort of speculation on the part of private, government-subsidized redevelopers. There is simply nothing "public " about this process. Moreover, in this case it goes beyond the unconscionable to subsidize Ralphs markets and forcibly displace people's homes and businesses to accommodate a new North Hollywood Ralphs store, even as Ralphs' management candidly admits -- as they are quoted in the enclosed article to be doing -- that they would have rebuilt their old store or built a new one anyway, without subsidies and *with their own money.*

Please don't just take my word for such concerns. Do take the time to read Justice Macklin Fleming's conclusion contained in the last two pages of *Regus v. City of Baldwin Park,* 70 Cal.App.3d 968 (1977), where he hit a bull's eye -- the North Hollywood fiasco being the proverbial "Exhibit A" for his concerns.

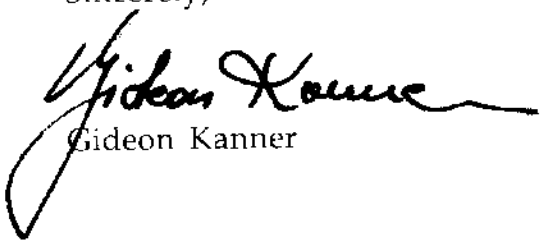
Bottom line: if California cities mean to be in the redevelopment business -- and I do mean business, not governance -- and if they insist on taking the associated business risks of the kind cautioned against by Justice Fleming, let them do it as all other private businesses do; let them pay for what they get and not abuse the inhabitants of redevelopment projects.

I again urge the Commission to provide in its recommendation for reform that condemnees displaced for redevelopment projects that create private profit-making facilities, should recover compensation for all their demonstrable economic losses, as well as reasonable and reasonably incurred litigation expenses when they recover compensation that is significantly in excess of the redevelopment agency's pre-litigation offer or at least the pretrial offer. Oregon uses the latter procedure in all condemnations but does not seem to be suffering from a dearth of public projects. The Kansas legislature has recently provided that in condemnations that ultimately serve private uses, the measure of compensation should be increased to market value + 25%. See *State v. Unified Government of Wyandotte County,* 962 P.2d 543, 559 (1998). I do not suggest that California follow suit to that extent, but I mention

these developments in the law to demonstrate that the unconscionability of treating condemnees who are displaced for the ultimate benefit of private profit-making enterprises has been rightly legislatively recognized. In that context it sems only proper that such condemnees should receive the promised "full and fair" compensation, not as empty words in court opinions, but as a matter of right. It's time that private redevelopers and the cities that insist on acting as their financiers started paying for their own "free lunch" and not foist the price on their victims and the public.

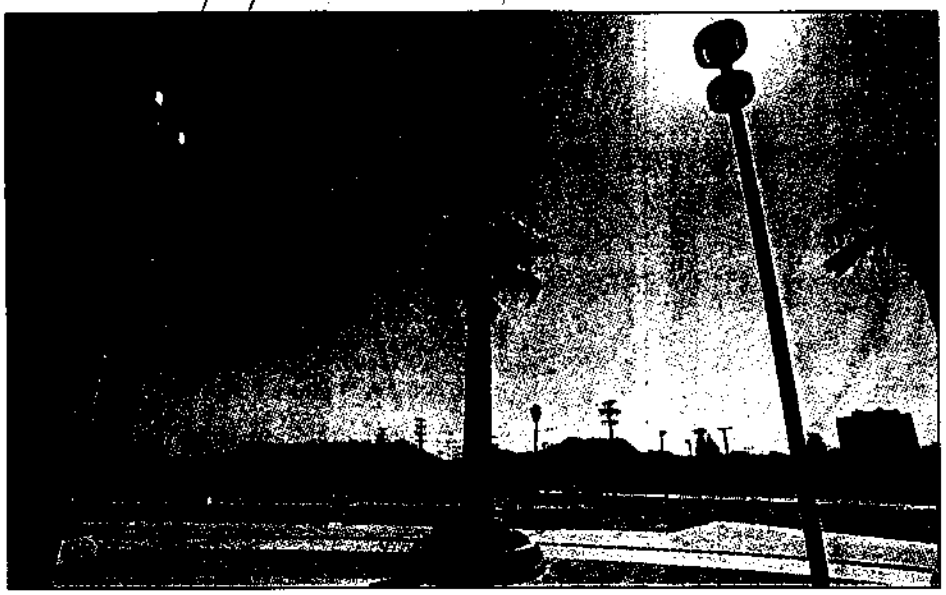
Please make sure that this letter and the enclosure are distributed to the Commissioners before the next Commission meeting, or that they at least be available to the Commissioners at that meeting. Thank you.

Sincerely,



Gideon Kanner

L.A. Times 1/30/00 **SUNDAY REPORT** p. A1



MYUNG J. CHUN / Los Angeles Times

Opening of Lankershim subway station in June may help bring new life to North Hollywood.

Heady Plans, Hard Reality

■ $117-million redevelopment effort left North Hollywood no better after 20 years than some similar areas that got no such aid, data show. Officials defend agency.

By PATRICK McGREEVY
and T. CHRISTIAN MILLER
TIMES STAFF WRITERS

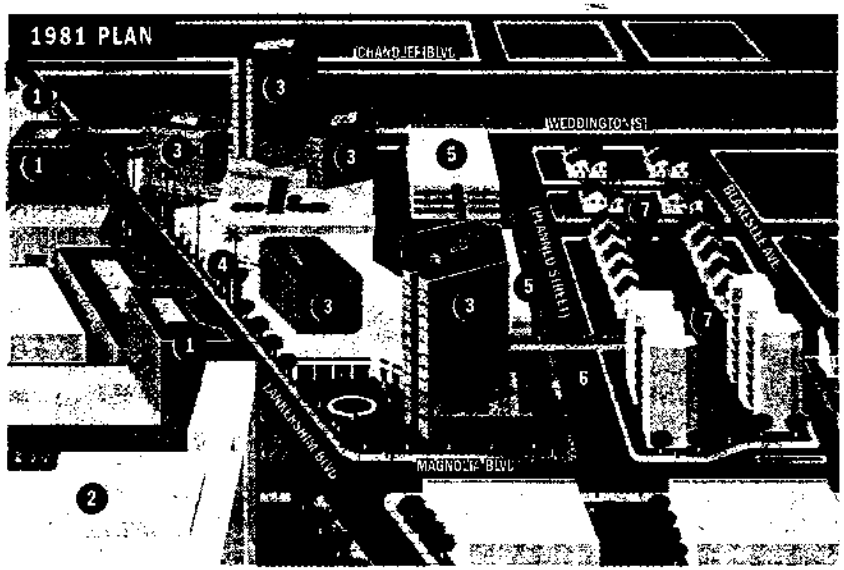
Two decades and $117 million in public money later, efforts by the city of Los Angeles to rescue suburban North Hollywood from creeping blight have largely struck out, a Times computer analysis has found.

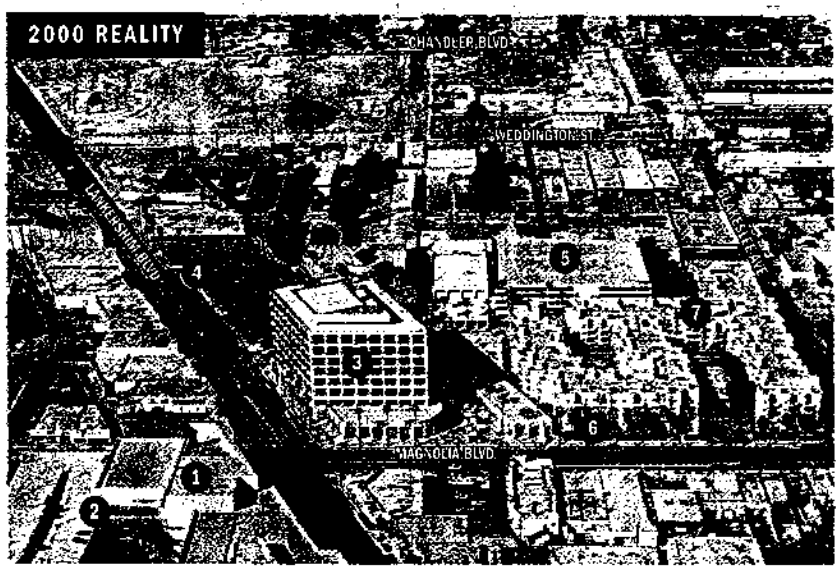
North Hollywood had seemed a promising candidate in 1979 for one of the city's most ambitious redevelopment projects ever. It sits adjacent to enclaves of entertainment industry jobs in the San Fernando Valley and is freeway-close to downtown. Plans called for a Metro Rail subway station, now set to open this June, with the potential to attract thousands of daily commuters and new business to the area.

But the meager results logged so far in North Hollywood offer a cautionary tale to hundreds of other California communities that are investing more than $1.5 billion annually in hopes of reviving fading areas.

The number of vacant and deteriorating homes—a key indicator of blight—has doubled in the 20 years that the city's Community Redevel-

Please see RENEWAL, A26





MYUNG J. CHUN / Los Angeles Times

The Dream vs. Reality

When the project to revitalize the core of North Hollywood began 20 years ago, politicians and planners developed several different blueprints for a "city within a city" at the corner of Lankershim and Magnolia boulevards. The area would be a busy center of office towers surrounded by homes and businesses. That vision fell far short. Here is a comparison of one of those 1981 proposals with how the area looks today.

	1	2	3	4	5	6	7
PLAN	Three office buildings with 330,000 square feet.	400-room hotel.	Five office buildings, each 6 to 8 stories, with 800,000 total square feet.	Street-level mall with 230,000 square feet of boutiques, restaurants and stores, surrounded by elevated walkways.	Two 3- to 4-level parking decks with 3,015 spaces.	Closure of several streets and construction of new street to help create a pedestrian walking and shopping area.	More than 700 residential units, including twin towers with 320 units for seniors.
REALITY	One office building with 178,000 square feet.	No hotel ever built.	One 10-story office tower with 150,000 square feet.	No mall or elevated walkway.	One new parking deck with 1,300 spaces.	No new street.	448 units, including 200 for seniors and people with disabilities.

Source: CRA. Researched by T. CHRISTIAN MILLER and PATRICK McGREEVY / Los Angeles Times

ROGER KUO / Los Angeles Times

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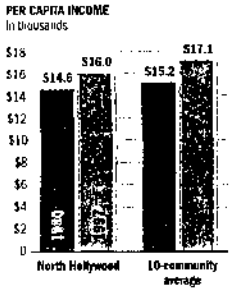
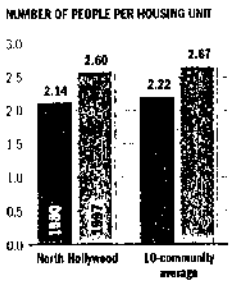
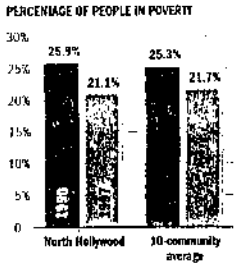
RENEWAL: 20-Year Effort Fails to Live Up to Original Vision

Still Struggling

Despite benefiting from tens of millions of dollars in aid, North Hollywood failed to improve significantly compared with similar areas in key measures of income, overcrowding and poverty.

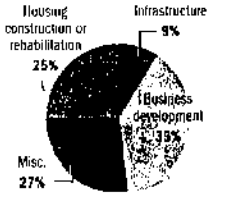






North Hollywood Spending

Between 1979 and 1999, a total of $117 million was spent on revitalizing North Hollywood. Here is where the money went:



Sources: U.S. Census Bureau; city of Los Angeles Planning Department; CRA. Researched by J. CHRISTIAN MILLER/Los Angeles Times

ROGER KUO / Los Angeles Times

Continued from A1

opment Agency has been on the job in North Hollywood. Only a fraction of the new homes and businesses the CRA pledged to build have been erected, and plywood boards still protect shutdown storefronts.

Of perhaps greater significance, North Hollywood's recovery has lagged behind other depressed areas in Los Angeles that improved without any money from the city's CRA, according to the Times analysis of census, property and employment data.

"The area has become worse," said Patrick Berberian, who has run a movie prop rental business in North Hollywood for three decades. "It's a shambles."

Agency officials dispute that, pointing to reinvigorated parts of the community. A glitzy building that houses the headquarters for the Academy of Television Arts and Sciences, home of the Emmys, opened on the northeast corner of Lankershim and Magnolia boulevards. The El Portal, a movie palace built in 1926, reopened this year as a performing arts complex that anchors several blocks of cafes and galleries that optimistic city officials have designated the NoHo Arts District.

Progress was slowed by the early 1990s recession and the 1994 Northridge earthquake, officials said, adding that conditions would likely have slipped even further without the $117-million public investment in North Hollywood.

"What it bought you here is sanitary, safe housing," said Lillian Burkenheim, the CRA executive in charge of the North Hollywood project. "It bought you a shopping center that people can walk to. It bought you a neighborhood you can walk around in. North Hollywood is better today than when we started the project.

"We would all like to move forward faster," Burkenheim acknowledged. "I keep wishing for that magic wand, but the magic wand isn't there."

To test the claim that blight would have spread without the CRA's intervention, The Times analyzed 10 neighborhoods that were statistically comparable to North Hollywood 20 years ago.

Although they received no redevelopment money, most of the comparison areas registered improvements in income and poverty rates equal to or better than the heavily funded North Hollywood project area, the analysis found.

"Whatever good has happened in North Hollywood is more grassroots," said Joel Kotkin, a senior fellow at the Pepperdine Institute for Public Policy and research fellow in urban policy at the Reason Public Policy Institute, a libertarian-oriented think tank. "I don't think the redevelopment agency had anything to do with it."

Although some of the comparison neighborhoods were in communities with desirable locations or reputations, all shared fundamental similarities with North Hollywood. Comparable neighborhoods in Mar Vista and Silver Lake, for instance, contained similar stocks of older homes and small shops. Sections of Van Nuys and Mid-City had the same obsolete warehouses and factories found in North Hollywood.

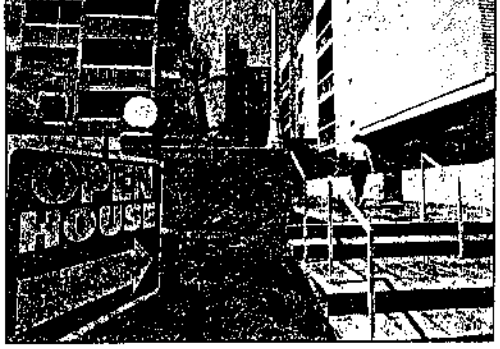
The CRA, created more than 50 years ago to revive decaying areas of the city, starting with downtown, has the power to buy land or force its sale through condemnation in the case of an unwilling owner. The land is sold at a low price to developers who promise to erect desirable new buildings such as offices or housing.

The construction aims in part to increase property tax revenues. But instead of going to police, firefighting, schools and other services, the agency uses the extra money to finance more redevelopment projects.

Such tactics are often controversial. In its 50-year history, the CRA has uprooted thousands of families and razed entire neighborhoods. Its most visible legacy is towers above downtown, where officials spent more than $1 billion to erect a skyline of high-rise offices in place of deteriorated neighborhoods and business blocks. The agency also fostered a cultural nexus on Bunker Hill that includes the Music Center and the Museum of Contemporary Art. Throughout the city, thousands of affordable apartments developed by the CRA house low-income families.

Photos by MYUNG J. CHUN / Los Angeles Times

Redevelopment has done nothing to improve above strip of boarded-up storefronts on Lankershim Boulevard. Bakman Towers, below, is among apartment complexes that redevelopment produced.



Mar Vista Goes It Alone

From the harbor to the Valley, 31 redevelopment areas now cover 22,000 acres in the city, up from 5,000 acres 20 years ago. The City Council will decide later this year whether to launch the largest yet, centered on the Valley communities of Pacoima and Arleta.

The North Hollywood analysis, however, shows that redevelopment is not a panacea. In 1979, part of Mar Vista, on the Westside, looked remarkably similar to North Hollywood.

About 27% of the population lived in poverty, compared with 26% in North Hollywood. In both areas, about 5% of the homes were vacant. Per capita income hovered at $15,200 in Mar Vista, compared with $14,600 in North Hollywood.

Twenty years later, the two areas still look alike.

Poverty has decreased at the same rate, to about 21% of the populace in North Hollywood, 22% in Mar Vista, according to 1997 estimates from the U.S. Census Bureau. The number of vacant homes has nearly doubled in both places to 9%. Per capita income grew to $16,000 in North Hollywood. In Mar Vista, it climbed to $21,200.

And Mar Vista did it without the help of the redevelopment agency.

That achievement is hardly unique.

Of the 10 Los Angeles neighborhoods most statistically similar to North Hollywood two decades ago, most enjoy the same or better quality-of-life standards today as North Hollywood.

Parts of Mid-City, Venice and Silver Lake all have enjoyed residential and economic rebirths courtesy of the private sector, without help from redevelopment money. Although smaller geographically, the matching areas were nearly identical demographically to North Hollywood.

"It's hard to see what they got for their money," said Michael Dardia, a researcher with the Public Policy Institute of California, who developed the methodology used by The Times and reviewed the results. "In terms of changes in the quality of life, it's hard to see any impact."

Civic leaders and local residents credit private developers, location and reputation, rather than government, for reviving the other areas.

Venice has the beach. Silver Lake has long been a bohemian refuge. And Mar Vista boomed after young professionals discovered it in the 1980s and '90s as an affordable Westside oasis.

Redevelopment officials blame North Hollywood's location as a key reason for its problems.

"I don't have anybody that's trying to live in the East Valley," Burkenheim said.

To be sure, North Hollywood is better off in some ways today than it was 20 years ago. Per capita income is higher. Poverty is down. And not all of the 10 areas did better than North Hollywood. Westlake and sections of Van Nuys, for instance, saw poverty rise and per capita income fall.

But those advances don't satisfy critics, who say the CRA squandered public funds, undermining its effort in North Hollywood.

The agency "is an ineffective, wasteful bureaucracy that is not producing what it is supposed to produce," said Glenn Hoiby, an attorney who chairs the residents' panel advising the CRA on North Hollywood redevelopment.

One thing redevelopment is clearly supposed to produce is more jobs. Job creation is a key measure of the success of redevelopment, according to Jerry Scharlin, the agency's new acting head. But since 1992, the ZIP Code that includes the North Hollywood project has registered a decline in number of jobs, according to state Employment Development Department data.

During the same period and by the same measure, more people went to work in eight of the 10 comparable areas of Los Angeles, the Times analysis found.

Burkenheim attributed the loss of jobs to subway construction, which ripped two major car dealers from the redevelopment area. She said the departure of aerospace firms as part of the region's loss of defense contracts also cost jobs.

Some of the lost jobs should be regained in June when the subway opens, Burkenheim said.

But some experts said redevelopment itself is partly to blame since the agency can take extreme measures that wind up depriving a community of existing businesses and housing.

"Redevelopment means the bulldozers are coming," said Jack Kyser, chief economist of the Los Angeles County Economic Development Corp. "A lot of time you displace businesses. Once you do that, it's tough to replace them."

Property values also lagged in the analysis of comparable communities. Although homes and businesses in North Hollywood increased in value at a slightly faster rate than the county and city overall in the last 20 years, they didn't come close to the growth in the most comparable areas of L.A.: Mar Vista and Van Nuys, both of which grew at more than double North Hollywood's rate.

Academy Project Scaled Back

North Hollywood was one of the original towns in the Valley, founded as the community of Toluca late in the 19th century. It remained a vibrant shopping district during the suburban boom after World War II, but began to decline rapidly in the 1960s.

Ground zero for the redevelopment project was the intersection of Lankershim and Magnolia, where officials and developers envisioned creation of a new "city within a city." Plans called for 2.2 million square feet of offices, stores and upscale restaurants, including more than 700 housing units, a 400-room four-star hotel, a club and a movie theater.

The agency razed 28 businesses and handed $5.5 million in subsidies to the developers. The project's centerpiece was an office building that includes the new home of the television academy.

Twenty years later there is no hotel, no commercial movie theater and just 13% of the promised office space.

Ken Adkins, an original partner in the $45-million academy project, oversaw construction of the first two phases of the development: 248 apartments and 220,000 square feet of office and commercial space.

Adkins said he needed the agency's eminent domain power to assemble land for the succeeding phases, but that agency officials failed to take the necessary legal

Please see RENEWAL, A27

RENEWAL: Controversy Over Eminent Domain

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steps. The result was a more than five year delay in the agency's ability to condemn property, which Adkins said was fatal. The economy began to falter. Tenants backed out. Financing collapsed.

Two years ago, a group of original owners sold out for $23 million, nearly half of the cost to build the complex.

The current owner, Prentiss Properties, decided last year to forgo the hoped-for restaurants and retail shops on the ground floor and instead convert the space to offices.

Burkenheim, the CRA executive in charge in North Hollywood, conceded that the academy complex did not turn out to be the massive, community-changing development once planned. But she said it created 480 jobs, many for highly paid professionals.

Tenants in the buildings today include entertainment giants Disney and Sony, and the new local office of the CRA.

Burkenheim still holds out hope that much of the adjacent land will be developed with a movie studio and office complex. Developer J. Allen Radford is negotiating with the CRA to build the project.

Controversy also plagued the agency's other two large commercial developments.

Hewlett-Packard poured $26.8 million into a new training center on Lankershim before selling the building in 1996 for $9.6 million, records show. After languishing nearly empty for years, most of the space was recently rented by Walt Disney Pictures and Television.

The CRA also spent at least $3 million to subsidize the purchase of a site for a shopping center anchored by a Ralphs market. But Ralphs spokesman Terry O'Neil said the grocery chain probably would have built a new store in the area without agency help.

"We were looking in North Hollywood anyway because the old site wasn't sufficient. We would have done something in North Hollywood," O'Neil said.

Although many residents like the new shopping center, they said there isn't enough of that kind of development.

"When I need something, I go to Burbank," said Mary Arrieta, 72, a 32-year resident of the area.

The agency's use of hardball tactics also has contributed to the problems with new business, some critics said.

By using eminent domain to obtain one-third of all the properties taken in North Hollywood—the highest percentage of any major redevelopment project in the city—the agency created a vocal, energized bloc of local residents who opposed the CRA and eventually took over the citizens advisory panel. They were largely responsible for filing the challenges that delayed the academy project.

To improve housing, the CRA had promised to build nearly 2,700 homes, weed out blight and cut vacancy.

It fell short on all three counts.

Plans called for 2,671 new dwelling units by 1994. The reality today: 1,014 new residences, a little less than 40% of what was planned.

The percentage of buildings that require repairs nearly doubled between 1979 and 1995, to 85.9%, according to the agency's own figures. The number of empty homes and apartments also almost doubled, to 8.5%, according to census data.

The agency bought and tore down single-family homes and small businesses, replacing them with apartment complexes with units reserved for the poor.

But in doing that, planners broke a promise they made when they began in 1979: to avoid concentrating low-income housing.

On one block of Harmony Avenue, the agency spent $21.8 million to erect hundreds of new apartments for low- and moderate-income tenants.

"The neighborhood has lost its family feel," said Lucia Affentranger, 59, whose front window faces the back of an apartment complex. "We used to take care of each other's homes when we went on vacation. Now I hardly know the people who live around here."

Maria Patrosyan said her family loves the spacious apartment they rent in an agency-financed building on Harmony Avenue. The street the agency helped build up is very family oriented, Patrosyan said, adding that the apartment building she lives in even has a playground for children.

"Our building is very good," she said. "The rooms are big, and the neighborhood is a nice place to live."

Burkenheim said she is proud that the agency has been able to provide quality affordable housing, although she acknowledged that ideally it should not have been clustered on Harmony.

Even when they succeeded in bringing in new homes, agency officials sometimes paid far more than the market rate.

For instance, the nonprofit group L.A. Family Housing built 14 low-income apartments on Harmony. The redevelopment agency provided $713,000 in land toward the project. L.A. Family Housing then spent $2.1 million to build the apartments.

In the end, the project cost $205,786 per unit—in a market where condos frequently sell for $130,000 or less.

The agency has also had trouble collecting on loans made to developers to build low-income housing. In North Hollywood the CRA has made seven such loans totaling more than $6.5 million on which borrowers have paid back no principal, records show.

Some local critics of the CRA also say they are infuriated by agency red tape.

Casey Hallenbeck bought Phil's Diner on Chandler Boulevard two years ago.

The young entrepreneur hoped to revitalize the fading diner, a 1928 landmark, figuring it could be a symbol of the success of redevelopment, a reminder of the energy and style of old North Hollywood.

So he applied for a CRA loan.

"They put me though a rigmarole for more than a year, and in the end, there was so much red tape and strings attached, it wasn't worth it," Hallenbeck said. "We decided to close it up."

Agency officials have revived talks to help Hallenbeck, but the diner remains closed.

MYUNG J. CHUN / Los Angeles Times

"The area has become worse," says Patrick Berberian, above, who runs a movie prop rental firm there. But CRA's Lillian Burkenheim says: "North Hollywood is better today than when we started the project."

Researcher Donna Mungen contributed to this story.

Monday in Part B: Officials turn hopes for revitalization to subway and studio projects.

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February 7, 2000

Nathaniel Sterling
Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

In re: Study EmH-455; Memorandum 2000-11;
Litigation Expenses in Eminent Domain

Dear Mr. Sterling:

The California Department of Transportation opposes the proposed amendment to Code of Civil Procedure section 1250.410 as stated in the December 1999 Draft Tentative Recommendation. The Department concurs with the comments submitted by the County of Sacramento, in particular, the conclusion that the proposed amendment would only benefit the condemnee in a litigation environment where the condemnee already has a distinct advantage. Additionally, the proposed amendment admittedly would allow for the award of litigation expenses in more cases which lessens the incentive for condemnees to settle the case.

The underlying rationale for awarding a condemnee litigation expenses under the current law, is to recompense a condemnee who has been unnecessarily required to litigate. (*Coachella Valley County Water District v. Dreyfus* (1979) 91 Cal. App. 3d 949, see also *City of El Monte v. Ramirez* (1982) 128 Cal. App. 3d 1005.) In determining whether litigation was unnecessary, the court must be allowed to subjectively assess the actions of the condemnor. As noted by the County, the courts have established a standard of reasonableness to be applied, which requires the trial court to look not only at the mathematical statistics of the case, but also to take into account "the good faith, care and accuracy in how the amount of the offer and the amount of the demand respectively, were determined." By eliminating the court's ability to consider the legal merits of the case, the proposed amendment shifts the rationale for awarding litigation expenses to one of gambling - who can most accurately predict the verdict. A reasoned, justifiable legal assessment of the case is no longer the focal point of either the offer or the demand.

The Department does not agree with many of the underlying assumptions justifying the need to change the existing law. The statement that "extensive litigation" occurs over the award of litigation expenses is not factually supported. Following a jury verdict, if the condemnee seeks litigation expenses, a motion is filed. The matter is then set on the law and motion calendar, and then usually entails a ten to fifteen minute hearing.

As noted above, settlement of cases would not be encouraged by the proposed amendment. The Commission's Memorandum 2000-12 states that in the three year period from July 1, 1996, to June 30, 1999, more than 92 percent of the eminent domain cases filed statewide were resolved without having to go to trial. During this same time period, the Department acquired 5,467 parcels of which only 846 required a Resolution of Necessity. Assuming that all of these 846 parcels proceeded to litigation and applying the same 92 percent non-trial resolution rate, only 1.2 percent of the parcels the Department acquired in the last three years went to trial. It has been the Department's experience that the cases which do go to trial are those in which there is a wide disparity in opinions of value and/or disputed legal issues. It is not uncommon to have valuation opinions of $100,000 on the part of the condemnor, and several million dollars on the part of the condemnee. Changing to an objective standard in awarding litigation fees would not encourage settlement in these cases. Rather, in all likelihood, it would increase the number of cases that actually go to trial.

The Department also disagrees that the proposed amendment would be cost saving to the taxpayer. First, the amendment would compel a condemnor to increase its offer, hoping to avoid litigation expenses even though it is pursuing the litigation in good faith, and with care and accuracy on behalf of the taxpayers. Second, it is hard to imagine a cost saving to the taxpayers when litigation expenses will be mandatory where an unreasonable condemnee who forces the case to trial, throws out an unreasonably high valuation figure and then makes a demand at less that half the trial testimony knowing that juries inherently split in favor of the condemnee. The increase in the award of litigation expenses under the proposed amendment will far exceed any costs savings which may be experienced by avoiding a fifteen minute law and motion hearing on entitlement to litigation expenses.

In conclusion, section 1250.410 should not be amended as proposed. The Commission and the Legislature should be encouraged that trial judges often find that condemning agencies have acted reasonably. The statute as presently worded promotes the condemnor's reasonable approach to litigation.

Sincerely,

RICHARD B. WILLIAMS
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Attorneys

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