

Legal Framework of the Santa Clara County Expressway System

In order to understand the changes made to the California Vehicle Code (VC) and Streets & Highways Code (S&HC) by SB 1233 of 2004, and why they should be reversed, it is helpful to understand something of the legal and legislative framework of the Santa Clara County Expressway System (SCCES)—what an expressway is, whether other counties have them, and bicycle and pedestrian regulation on them.

According to the Introduction to the *Comprehensive County Expressway Planning Study* (2003):

The origin of the expressways dates back to 1956, when the Santa Clara County Board of Supervisors initiated a study to define transportation needs for the county. The January 1959 Trafficways Plan for Santa Clara County concluded that the existing highways would not be able to handle projected vehicular traffic and recommended constructing various facilities, including the expressway system. To build the expressways, a \$70 million bond proposal was put to the voters and approved on March 28, 1961. As a result, the County of Santa Clara became the only county in the state to operate a high capacity roadway system through incorporated city areas.

The bond money allowed substantial work to proceed on the expressways, but skyrocketing property values reduced the program's purchasing power, and a Phase 2 funding proposal fell through. Ultimately, the existing system was built out by supplementing the program with federal revenues, by not obtaining full access control in some cases, and by not pursuing some expressway alignments (Hillsdale, for example).

Note the following pertinent facts:

- The expressway system was approved in 1961. To implement it, a number of provisions were added to the Streets & Highways Code at that time.
- Santa Clara County expressways that lie within the boundaries of incorporated cities are improved, operated, and maintained by the County, not the city. This arrangement is unique in California.
- Not all expressways provide full control of access.

Definitions

According to S&HC §257, “‘expressway’ shall mean an arterial highway for through traffic which may have partial control of access, but which may or may not be divided or have grade separations at intersections.” This definition is limited to the purpose of the Streets & Highways Code article on the California Freeway and Expressway System, but it agrees with the commonly accepted meaning of “expressway.” For instance, the California Manual on Uniform Traffic Control Devices defines “expressway” as “a divided highway with partial control of access.”

Before SB 1233, the Vehicle Code did not define the term “expressway,” and employed it only to authorize Santa Clara County or its cities to contract with the California Highway Patrol for enforcement (VC §2400.7).

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In S&HC §257, a freeway, for comparison, is “a divided arterial highway for through traffic with full control of access and with grade separations at intersections,” which agrees with the conventional conception. VC §332 defines freeway somewhat differently, as “a highway in respect to which the owners of abutting lands have no right or easement of access to or from their abutting lands or in respect to which such owners have only limited or restricted right or easement of access.” The same definition appears in S&HC §23.5. There is no mention of division or grade separation, only of full or partial control of access. This definition therefore corresponds more closely to the conventional notion of an expressway, rather than a freeway.

In these definitions, access refers to the right to access the road from abutting properties. The right of access to a street is enjoyed by the owner of abutting lands as an incident of ownership of property, and is separate and distinct from the right of the general public in and to the street. It has been defined as extending to a use of the road for purposes of ingress to and egress from the property. *People ex rel Department of Public Works v. Russell* (1957) 48 Cal.2d 189, 195. It is more extensive than a mere opportunity to go into the street immediately in front of the property, but extends in both directions to the next intersecting street. *Bacich v. Board of Control* (1943) 23 Cal.2d 343, 352.

Control of access means the restriction of that access by government power to specified points. The rights of access must be acquired by purchase or condemnation. In its *Functional Classification Guidelines*, the Federal Highway Administration (FHWA) defines partial access control as the exercise of police power to limit access to a highway from abutting land to specified and controlled points. Thus the government still controls the rights of access, but does not exercise its control fully.

Implementation of the SCCES

Large portions of the SCCES were constructed by improving existing city streets, which became County roads. The Streets & Highways Code provides two methods for establishing county highways through cities: §§1700-1706, enacted in 1935 and amended in 1961, and §§1720-1732, enacted in 1961 to be “applicable in those counties adopting a county highway bond issue after January 1, 1961” (that is, Santa Clara County). Both methods involve a resolution of the Board of Supervisors with consent of the city, and both permit the county to acquire rights-of-way for, construct, and maintain the county highway within the city. The principal difference between the two methods seems to be that the first deals only with the conversion of existing city streets, while the second allows for the creation of new county highways within a city (such as Foothill Expressway).

Both methods expressly provide that police power over the county highway remains with the city (§§1703, 1729), with specified exceptions. This division of power was upheld in *Pacific Ready-Mix, Inc. v. City of Palo Alto* (1968) 263 Cal.App.2d 357, where the court held that the City of Palo Alto could properly prohibit the use of Oregon Expressway, a county expressway, by vehicles exceeding a gross weight of 7 tons.

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S&HC §941.1 authorizes a county board of supervisors to lay out, acquire, construct, and maintain any section or portion of any street or highway within the county as a freeway or expressway and to make any existing street or highway a freeway or expressway. §941.2 provides that no public highway shall be converted into a freeway except with the consent of the owners of abutting lands or the purchase or condemnation of their right of access.

Nothing in these provisions specifies the nature of the county highway within the city. S&HC §941.4, enacted in 1989, provides an alternative method for establishing a county expressway system by agreement between the county and cities. This method requires that all roads in the system be expressways, defined for this purpose as “a highway having partial or complete control of access, whether or not divided or with separations of grade at intersections.” No counties are known to have implemented such a system, but the SCCES is grandfathered in by subdivision (g).

S&HC §941.4 is silent as to police power. But nothing in that section transfers police power on county expressways within cities to the county, and §1729 would seem to control:

1729. The police power of a city with reference to a county highway within the city shall not be limited except as to those matters specifically provided for in this article.

Regulation of Bicyclists and Pedestrians on Expressways

VC §21 preempts all local regulation on matters covered by the code unless expressly authorized. The only local authority to regulate bicyclists and pedestrians on roadways is provided in VC §21960, which, prior to SB 1233, permitted local agencies, by order, ordinance, or resolution, to prohibit or restrict the use by pedestrians or bicycles of freeways to which all rights of access have been acquired. Notice, however, that this is the weak Vehicle Code definition of freeway; there is no requirement for division or grade separation.

For a number of years, city ordinances prohibited bicyclists and pedestrians from five of the eight expressways. The efforts of the Silicon Valley Bicycle Coalition led to repeal of bicycle prohibitions on Foothill Expressway in 1980 and Central Expressway in 1982. As noted previously, however, Santa Clara County had not obtained full control of access over all expressways for reasons of cost. Thus, in *People v. Harrison* (1986), the court held that a Sunnyvale ordinance prohibiting bicyclists from Lawrence Expressway was invalid, because the expressway did not satisfy the condition that all rights of access be acquired. This ruling inherently called into question most bicycle and pedestrian prohibitions on County expressways.

Further advocacy efforts, spearheaded by Akos Szoboszlay of the Modern Transit Society and SVBC, eventually led to repeal of bicycle prohibitions from all expressways and pedestrian prohibitions from all but two, and adoption of bicycle and pedestrian accommodation policies by the County. I will defer the lengthy history of these efforts to Akos; much is described on the Modern Transit Society website at <http://moderntransit.org/expy/>. County Roads, however, was responsible for traffic signs on the

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expressways, and was often stubbornly resistant to removing pedestrian prohibition signs within cities that had repealed their own prohibitions.

SB 1233

The Board of Supervisors Legislative Committee *2004 Legislative Policies and Priorities* document, revised and approved by the committee on December 4, 2003, contained the following initiative:

EXPRESSWAY SIGNAGE

Proposal: Allow Santa Clara County to post “Pedestrians Prohibited” signs on right-of way along County expressways.

Background: Current law does not provide explicit authority for the County to post “Pedestrians Prohibited” signs along side of County expressways. At the same time, it is the County’s responsibility to keep this area free of pedestrians to maintain safety on the roadside.

It is believed that this minor modification could be made through as part of the Legislature’s annual omnibus Local Government or Transportation bill.

This proposal was subsequently approved by the Board; it was never referred to the County’s Bicycle and Pedestrian Advisory Committee (BPAC). County Counsel drafted language that, slightly amended, was incorporated into the omnibus transportation bill, SB 1233, on April 12, 2004, and in due course enacted into law.

The omnibus transportation bill, according to the Senate Transportation Committee analysis, “would make various technical, non-substantive changes to the Public Utilities Code, Streets and Highways Code, and the Vehicle Code,” and “is intended to deal with minor, non-controversial transportation-related issues by making technical and clarifying changes and repealing obsolete statutory provisions.” The description of the Santa Clara County amendments was “Authorizes a county to post signs prohibiting pedestrians on county expressways,” matching the one provided to the Board. Legislative Counsel also inserted a definition of “expressway” into the bill.

But the ability of County Roads to post signs was never in doubt. VC §21351 authorizes local agencies to place “such appropriate signs, signals or other traffic control devices as may be authorized hereunder or as may be necessary properly to indicate and to carry out the provisions of this code or local traffic ordinances or to warn or guide traffic.” The authority that County Roads sought was *to prohibit pedestrians on County expressways*, which it lacked because the rights of access had not been acquired, and because whatever authority existed lay with the cities, not the County. This was far from a technical, non-substantive, minor, non-controversial, or clarifying change. It should not have been represented as such, and it did not belong in the omnibus transportation bill. Furthermore, the existence of this initiative was never disclosed to the County BPAC or interested parties, even when the subject of pedestrian access to expressways was discussed in Board meetings.

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The relevant portions of SB 1233 made three changes to existing law:

- Added a definition of “expressway” as VC §314:

An “expressway” is a portion of highway that is part of either of the following:

- (a) An expressway system established by a county under Section 941.4 of the Streets and Highways Code.
- (b) An expressway system established by a county before January 1, 1989, as described in subdivision (g) of Section 941.4 of the Streets and Highways Code.

Note that this is a procedural definition, rather than an operational one. No counties are known to have established a system under subdivision (a), and if any had, the roads would need to have partial or complete control of access. Subdivision (b) refers to the SCCES.

- Expanded the prohibitory authority under VC §21960 by including expressways (as defined above) as well as freeways, and weakening the condition that all rights of access be acquired to “vehicle access is completely or partially controlled.” These changes governed bicyclists as well as pedestrians. In fact, the inclusion of expressways in the bill was probably superfluous, because the freeway authority by itself would extend to any road in the state to which vehicle access is completely or partially controlled, whether or not part of an expressway system.

Note, however, the FHWA definition of partial access control as the exercise of police power to limit access to a highway from abutting land to specified and controlled points. This implies that the right to control access must be publicly acquired, even if not exercised, which could render the partial control language largely meaningless.

- Added S&HC §1730(b):

(b) An ordinance adopted on or after January 1, 2005, by a county under Section 21960 of the Vehicle Code to prohibit or restrict pedestrian use of a portion of a county freeway or expressway contained within the limits of a city shall not become operative until approved by the city.

This provision, whose intent appears to have been to transfer control over bicycle and pedestrian prohibitions on county expressways within city limits from the city to the county (albeit with the city’s consent), was badly drafted in three respects. First, approval by the city for bicycle regulation, authority for which is implied, was omitted. Second, police power remains with the city, not the county, and this addition does not change that. Third, it is unclear whether the supposed authority applies to all county expressways within a city, or only those established under the provisions of the article that §1730(b) belongs to.

Response to SB 1233

Bicycle and pedestrian advocates were justifiably outraged by both the content of SB 1233 and the process by which it was adopted. On January 10, 2006, the Board of Supervisors voted to repeal SB

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1233's changes. SB 681 of 2005-2006 (Simitian), as amended January 5, 2006, would have done just that (except for the expressway definition), and the Senate Transportation Committee analysis lists Santa Clara County as the sponsor of the bill. The analysis states:

Because the County's intent was never to ban bicycles from expressways, the County has agreed with bicycle advocates that this authority should be repealed. While the County is still interested in barring pedestrian access to local expressways, there is local opposition to that proposal as well. As a result, the County is seeking repeal of the authority to bar pedestrian access until such time as there is a local consensus on the issue. . . .

As a result, it is not likely that repealing this authority will have any negative impact in other areas of the state.

SB 681 passed the Senate Transportation Committee, but died on the Senate floor, most likely because it encountered unanticipated Republican opposition. This opposition was probably unwarranted, given that no other County has an expressway system.

Proposed Action

Legislation should be reintroduced to repeal the SB 1233 amendments. The most tactful way to portray this is that the effect of these amendments inadvertently turned out to be broader than intended, and interested parties within the County, including the Board and BPAC, have agreed that the best course is to return the law to its previous state, pending further discussion. The language of VC §21960 to be restored is firmly established, dating in substantially the same form to 1949.

Since the bicycle and pedestrian provisions of SB 1233 were deemed technical and non-substantive, their reversal might be considered equally so, and perhaps suitable for an omnibus transportation bill. No other county in the state is known to have an expressway system. Nonetheless, any opposition would result in automatic removal from the bill, so this may not be the best course of action.

Restoring the previous language is the simplest and clearest course. However, if any further changes were to be made to VC §21960, the most logical would be to confine its scope to freeways as defined in S&HC §257: "a divided arterial highway for through traffic with full control of access and with grade separations at intersections." Caltrans, which has jurisdiction over the State Freeway and Expressway System, prohibits bicycles only from freeways (and not all freeways—1,000 miles of California freeways are open to bicycles), never from expressways or conventional highways, even where the authority of VC §21960 would permit.

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