

**Court Intervention, The Consent Decree, and
The Century Freeway**

Joseph Di Mento, Principle Investigator
Jace Baker
Robert Detlefson
Dru van Hengel
Dean Hestermann
Brenda Nordenstam

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Transportation Center**

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**University of California
Transportation Center**

108 Naval Architecture Building
Berkeley, California 94720
Tel 510/643-7378
FAX 510/643-5456

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Public Policy Research Organization
University of California
Irvine CA 92717

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University of California at Berkeley

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EXECUTIVE SUMMARY

The Glenn Anderson Freeway-Transitway (the Century Freeway or I-105) in Los Angeles County, to cost over two billion dollars, traverses nine cities and the County of Los Angeles. At completion in 1993, the Century Freeway will be seventeen miles long, six lanes wide, contain areas for high occupancy vehicles and for rail transit; it will be landscaped and noise attenuated, and it will be surrounded by thousands of units of housing which are linked to its development.

The impacts of an injunction and a consent decree on the construction of the I-105 and the implementation of the Century Freeway project [the subjects of this report] have been felt primarily in time of commencement of construction; date of completion; situs of institutional management; some significant but not dramatic design changes and environmental impact mitigations; perceived costs; and controversial changes in the housing program, and the affirmative action process. Additionally, Caltrans itself experienced modest structural changes and its relationships with other agencies and organizations have been influenced, in some cases seriously.

In 1972, a lawsuit, Keith v. Volpe, stopped implementation of the Century Freeway project and resulted in an injunction. By that time approximately 18,000 people had been displaced from the Century Freeway corridor. By the terms of the lawsuit, the then Division of Highways was required to develop a formal environmental impact statement on the entire Century Freeway project and to carry out additional public hearings. In 1979 parties to the lawsuit entered into a consent decree, amended two years later, which laid out the terms under which the project would go forward.

This injunction and consent decree were employed during a period of considerable regulatory and social change which nationwide was affecting the completion of public works projects, highways in particular. The period of the Century Freeway's early years has been called the time of the freeway revolution. Whatever it is labelled, it provided a context for interpretation of and response to the Century Freeway lawsuit and consent decree. The context involved:

- legal changes (environmental, transportation and housing law enactments, enhanced access to judicial review of administrative agency actions, codification of the gains of the civil rights movement);

- social changes (increasing environmental awareness, the public interest law movement, demands for greater participation in the workplace by women and minorities);
- economic and political changes (adoption of a federal Urban Initiatives Program, changing leadership at Caltrans, decreased gasoline tax revenues because of the Arab oil embargo and the use of fuel-efficient vehicles).

This report presents the results of a two year study of the Century Freeway undertaken under a Research Technical Agreement between UCI and Caltrans.

Investigation of the impacts of the lawsuit and consent decree required the development of a methodology to allow meaningful comparisons of the actual project to a realistic alternative. To address the summary question ["what was the impact of court involvement and the consent decree on the planning and completion of the Century Freeway?"] this study addressed a fundamental preliminary question: With what should the actual scenario be compared? We contrast the actual scenario [the planning and completion of the Century Freeway subsequent to the lawsuit and with the consent decree] with a comparison scenario which we created by means of a survey of expert opinion. This describes the Century Freeway as it might have been implemented had Keith v. Volpe plaintiffs and defendants not agreed to resolve the case through a consent decree.

Some highlights of the Comparison Project versus the actual Century Freeway:

- Groundbreaking for the freeway would have occurred four years earlier under the Comparison Project.
- The Comparison Project would not have required nor been impacted by ongoing supervision by the court, a hallmark of the actual project. Judicial scrutiny of the construction of the Comparison Project would be ad hoc, identical to that extended to a typical freeway construction project.
- The entire route of the Comparison Project would have been opened six years prior to the projected opening of the actual Century Freeway (1987 versus 1993). The duration of construction would have been nine years for the Comparison Project, as contrasted with a projected eleven years for the actual Century Freeway.

- The routing of the Comparison Project is the same as the actual project. The Comparison Project would contain one additional lane in each direction (eight versus six in total), but would be missing the light rail line provided by the actual Century Freeway.
- Five hundred housing units would have been constructed under the administration of Caltrans in the Comparison Project, while the actual Century Freeway anticipates about 3,000 units (replacement and replenishment) implemented with the State Department of Housing and Community Development (HCD) as the lead agency.
- The Comparison Project would not have involved an Office of the Corridor Advocate to represent those displaced by the freeway.
- Affirmative action programs in the Comparison Project would be similar in kind and amount to those routinely implemented by Caltrans. Goals for minority and women subcontracting and employment would have been set and enforced by the Caltrans civil rights unit in Sacramento. Goals would have been the same as those required under extant federal regulations for federal aid highway projects. Absent would be important elements of the actual project: an independent monitoring and enforcement body (The Century Freeway Affirmative Action Committee, CFAAC); a localized district Civil Rights Branch; and special provisions requiring participation by corridor businesses and residents.

GENERAL IMPACTS

Our historical summary spans the years from 1958 to the autumn of 1990 with a focus on the period from 1972 on.

- Some startling contrasts exist in the evaluations by parties and groups of almost all elements of implementation of the Consent Decree. To understand the story of the Century Freeway is to take into account the dramatically different understandings of costs and benefits, strengths and weaknesses that observers and veterans hold.
- Overall, respondents have been dissatisfied with the history of the Century Freeway. Local officials indicated that they were the most dissatisfied, while plaintiffs, CFAAC, and other groups established by the consent decree reported being most satisfied.

- Caltrans respondents were seriously split on the question of whether the benefits of freeway construction and design outweigh the costs.
- Caltrans and local officials were much more negative in their evaluations of the housing program than were HCD, Center for Law in the Public Interest and CFAAC respondents.
- Overall systemic impacts were widely appreciated. As one local official summarized:

"I think the major benefit is socializing the whole system... at the federal level, the state level, all the way down to the local level. It was the forerunner of the kind of consensus building and interaction among all the segments of the constituency...ranging from the guys who even provide material, guys who build, guys who plan, state interaction when you acquire land. How you deal with people who are displaced. The whole system got socialized in a different way so that you won't have any of this kind of work done without people thinking of these points that have been raised in this consent decree process."

SPECIFIC IMPACT FINDINGS

■ The Century Freeway project took thousands of homes and displaced thousands of corridor residents. The housing program administered as part of the settlement to address the impact on residential opportunities in the corridor cities has had a rocky and controversial history. By 1983 there had been four executive directors in the Century Freeway Housing Program. Only forty units had been constructed. In 1986, a federal audit was conducted which concluded that production costs in the program were excessive. At that time, HCD reported a total of 1690 units, obligated at \$83,204 per unit and encumbered at \$92,550 per unit. As of October, 1990, Caltrans Civil Rights Branch reports that \$13,569,569 was paid to prime contractors for major housing contracts and \$123,630,318 was paid for RFP contracts. A June, 1990 HCD report showed a total of 2,003 affordable housing units produced for \$175 million. The average cost per unit was \$87,369.

- Observers and officials recognize that any agency charged with implementing the housing program might have had a hard time, as the mandate in the consent decree is complicated:

"On the one hand their charge appears to be the creation of the maximum number of units from the funds available. On the other hand they are charged with the achievement of various social objectives, specifically the employment of inexperienced subcontractor firms to actually do the work."

- HCD respondents observed that the administration of the housing program was deficient at the start. HCD was unfamiliar with application of federal highway procedures to housing development.
- Overall, respondents felt that the actual project would have a large beneficial impact on the availability of affordable housing.

■ Overall, respondents evaluated the **affirmative action** program more favorably than the housing program. Considerable differences exist among organizations. **Caltrans** and **HCD** were evenly split in agreeing that the benefits of the affirmative action programs outweighed the costs; **Center for Law** and **CFAAC** respondents almost unanimously felt that the benefits outweighed the costs; and local officials, although split, tended to feel that the costs outweighed the benefits.

- All respondents recognized the complexity of the affirmative action program. The contract award process led the the list of concerns expressed by Caltrans people, followed by complexity of the substitution process and complexity of the minority and women business enterprise (M/WBE) certification process.

■ **Economic Impacts**

- Monetary costs of the Comparison Project are generally perceived as much less than for the Actual Project under the consent decree. The five areas which were ranked most different in the comparison with regard to monetary costs are (in decreasing order of difference):
 - Housing Replenishment
 - Legal Support
 - Affirmative Action Monitoring and Enforcement
 - Project Administration
 - Right of Way Property Management

- In addition, Caltrans respondents indicated significantly lower design costs for the Comparison Project, citing redesign necessitated in part by the consent decree.
- We present in nominal dollars direct monetary costs associated with elements of implementation which derive from adoption of the consent decree.

■ **Organizational Impacts**

The decree had a major impact on many procedural aspects of the Century Freeway project. But organizational impact in Caltrans was less than expected. Many believe that the relatively few structural changes brought about by the consent decree will not become part of Caltrans' standard operating procedures in the future; although some affirmative action procedures have evolved to a higher status and a more permanent state.

- The Consent decree forced Caltrans to "take a more serious look" a "second look" at Caltrans' relationship to minorities and women, both in in the realms of employment and promotion of businesses. But the impact is not one universally credited to the consent decree.
- Other, more specific, organizational effects include greater consideration of the whole environmental impact review process and Caltrans' viewing highway building within a larger context, that of transportation development. As with many of the impact categories in this study, there were dissenting voices: "I think it just made old engineers bitter at lawyers."

■ **Viewing the history of the Century freeway project from an interorganizational framework** is crucial to its understanding. The lawsuit and the subsequent consent decree were major external forces which radically changed the regulatory environment in which the historically autonomous, professional and prestigious Caltrans operated.

- The impacts on organizational relations are two fold: those involving effects on existing relations between Caltrans and other state and federal agencies and those involving Caltrans relationships with newly created organizations. A full third of Caltrans respondents view the sister organization HCD as an opponent in the implementation of the Century Freeway Project. Conflict with HCD, housing authorities and corridor cities is perceived to be greater in the actual project than it would have been in the

comparison project Conflict between Caltrans and CFAAC is perceived as endemic and conflict with the Office of the Advocate has been considerable.

■ Impact on Freeway Design and Service

- The magnitude of design/engineering and construction logistics challenges would have been less on the comparison project than is seen on the actual project.
- Caltrans respondents are undecided about whether the benefits of the actual Century Freeway design and construction process will outweigh the costs of the process. HCD, CFAAC, FHWA and local elected officials agree that the benefits will outweigh the costs while local administrative officials and contractors do not.
- The transportation components of the Comparison Project are perceived to be more beneficial than those of the actual project.
- Respondents indicated that the six lanes of mixed flow traffic will be inadequate for the volumes expected to be traversing the corridor. Volume and level of service analyses in this report for segments of the freeway are crude approximations in light of the absence of available information on specific configurations of ramps and weaving section lengths and other data.
- Inclusion of High Occupancy Vehicle lanes, light rail, and linkage with the Harbor Freeway/Transitway are design elements perceived to promote the general welfare. However the features of ten local interchanges and six lanes for general traffic are not generally approved.

■ Environmental and Social Impacts

Although the long delay of the injunction period cannot be attributed to the consent decree, many view the impacts of the injunction and those of the consent decree on the environmental quality of the corridor as inseparable. Termination of implementation of the Century Freeway project in the early 1970s caused "blight", "chaos", "shock" and "devastation."

- Plaintiffs' counsel conceived of and justified many of the requirements of the consent decree as an approach to mitigation of some of the adverse impacts attributed to the construction of the freeway.

- All organizations except corridor cities found the actual Century Freeway to be environmentally superior to the Comparison Project and to have positive environmental impact. Both short-term and long-term economic and employment impacts were differentially evaluated by Caltrans and non Caltrans respondents. Overall, the greatest long-term economic benefit would accrue to those residents and businesses who had participated in I-105 construction-related activities.

The Century Freeway consent decree concretized many of the social and environmental movements of the 1970s. In the minds of some, public policy was brought to where it should be: implementation of a mammoth urban freeway project would be informed by comprehensive analysis accessible to and influenced by those interested in outcomes. On the other hand, some observers conclude that the shifts reflected in the decree sacrificed efficiency for a vague notion of openness in decision making and a perversion of the role of government and the rule of law. And, they conclude, the shifts have been very costly. Understanding these differences in view and, in detail, the history of the implementation of the Century Freeway project may assist policymakers in determinations of whether and how to use the consent decree device in conflict resolution in other circumstances.

CHAPTER I

AN INTRODUCTION TO THIS REPORT

A. HISTORY OF INTEREST IN STUDY OF TRANSPORTATION POLICY CHANGE

1. The national interest in the changing regulatory environment of transportation planning

The world of highway building has seen a revolution in the last two decades. As recently as the late 1960's, with little citizen participation apart from public hearings on specific routes (Rosener, 1975), technical experts laid out plans for major transportation facilities and their agency colleagues implemented those plans through standard routines. These often included non-contested condemnation of and considerable alteration of the physical environment.

In 1970 the National Environmental Policy Act (NEPA) became law and required environmental impact assessment of every major federal action which might significantly affect the environment. Not fully understood at the time of its enactment, NEPA represented a major change in decisionmaking, most especially with regard to the amount, kind and significance of information which would be made available to government officials. One of NEPA's progeny, California's Environmental Quality Act (CEQA), took effect a little later. State and federal agencies learned that business would no longer be as usual. Transportation officials faced in quick succession the Uniform Relocation Assistance and Real Property Acquisition Act, the Federal Aid Highway Acts of 1970, 1973, 1976 and 1981, the Clean Air Act, the Endangered Species Act, the Quiet Communities Act, the National Energy Act, and UMTA's Urban Mass Transportation Major Capital Investment Policy. The regulatory environment underwent a major metamorphosis.

Private citizens and the legal community became more vocal and more important to transportation decisions. Technical specialists and professionals continued to play major roles, of course, but their involvement was altered and, in many instances, severely lessened.

In the minds of some, public policy is now where it should be: major public works expenditures which alter the urban landscape should be informed by comprehensive analysis which is accessible to those interested in outcomes, whether they be local residents, far away environmentalists, or persons concerned with civil rights.

But not everyone has understood or adjusted well to these sea-changes in regulation and public policy. Some observers conclude that shifts have sacrificed efficiency for a vague notion of openness in decision making, or worse, for a perversion of the role of government and the rule of law. Analysts, even those who theoretically approve of the changes, conclude that they are very costly.

This Report focuses on one case which has been the subject of one version of the new approach: the Glenn Anderson Freeway-Transitway (to which we will refer in this report as the Century Freeway or I-105) in Los Angeles County. The I-105, now projected to cost over two billion dollars, traverses nine cities and the County of Los Angeles. Already a component of the Metropolitan Los Angeles Master Plan of Freeways by 1958 (along with such now unlikely-named projects as the Beverly Hills Freeway and the Malibu Freeway) the project began with right of way acquisition in 1968 only to be stalled by a federal lawsuit, Keith v. Volpe, and a seven year injunction issued in 1972.

At completion in 1993, the Century Freeway will be seventeen miles long, six lanes wide, contain areas for high occupancy vehicles and for rail transit; it will be landscaped and noise attenuated, and it will be surrounded by thousands of units of housing which are linked to its development. This is a different highway product than planners in the 60's had described. In part it is the product of settlement of a lawsuit whose plaintiffs would not have had much of a say in transportation matters a decade earlier. It is the product in part of numerous other demands on transportation agencies reflected in local, state and federal laws, regulations and politics.

2. The Caltrans Interest and the Genesis of the I-105 Research Project

The California Department of Transportation and its predecessor, the Division of Highways, have enjoyed the reputation as the leading highway building agency in the United States, if not the world. A Division of Highways report from the mid-1960's stated: "California has achieved what no other state or nation has accomplished--a network of toll-free superhighways and freeways enabling the efficient functioning of a complex and growing society." (Division of Highways, 1966). As of 1989, the network of highways built and maintained by the state stretched some 15,170 miles (Caltrans, 1989).

The mythical love of the automobile by Californians has contributed to the success of California's highway agencies; this has translated to a secondary love for the products and services which are created to serve the automobile: highways are one of these. As a recruitment brochure

for Caltrans District 7 waxed, "the key to the cohesiveness of the community, the force that binds it into one workable entity, is the freeway system. Being a part of the creation and development of that system is the factor that makes so many District 7 employees feel that they are playing a vital role." (Division of Highways, 1967). According to another Division of Highways brochure from the same era, the question "Why freeways?" is "seldom asked anymore" by the public, "because California's many miles of operating freeways are their own best salesmen." (Division of Highways, 1966).

But Californians too have reflected the changes in attitude toward major public works projects which influence land uses. They were not immune from the dissatisfaction with business as usual:

"California, like the rest of the nation, is undergoing a period of social change and unrest particularly in urban areas where blight and disintegration are filling in the remains of suburban migration. The public is rising in a surge of concern over all activities of government and private enterprise, particularly those which have an ability to detrimentally disrupt and change the environment, socially, politically, or economically. Highways are the most often seen and used public work and are thus a handy target." (Division of Highways, 1969).

In addition to Keith v. Volpe, in 1972, a group of Oakland residents challenged the Grove-Shafter Freeway (Interstate 980) in West Oakland (West Oakland Planning Commission v. Coleman et al.). Other California highway controversies included La Raza Unida v. Volpe, Environmental Law Fund v. Volpe, and Sierra Club v. Volpe.

B. CALTRANS AND THE PRESENT RESEARCH

In July, 1988, I was approached by Caltrans to inquire whether I would be interested in undertaking a study of the I-105, focusing on its history and on the impacts of the court involvement in the project. The study could track directly on my interests in land use and environmental law, citizen participation, and the reactions of organizations to legal change. I was intrigued and I met with top Caltrans officials to see whether our interests matched. They did and the Technical Agreement appended to this Report resulted [see Appendix A]. I then pulled together a team of graduate students at UCI, who are co-authors of this report. Their energies, commitment and technical sophistication allowed me to complete what evolved into a quite challenging study.

1. The goals of the study.

The story of the Century Freeway is endlessly fascinating. It has been and will continue to be told in many different forms. Our focus is necessarily limited and is directed by the Technical Agreement; the concern is one of public policy.

We do not address the big hard question: should this highway have been built? Rather, our questions are: What influence did the lawsuit, Keith v. Volpe, and the consent decree and the changes that it compelled have on the I-105: its design, its implementation, and its environmental impact? Did they make the Century more or less expensive? Did they improve or jeopardize affirmative action programs and their activities? Did they result in better or worse consideration of the housing needs of affected people? Did they affect the level of transportation service of the project? How did they affect Caltrans itself?

Our audience is officials in Caltrans and in other organizations who are interested in public policy on transportation and the role of the courts.

The goal is easy to state, but it is challenging to realize. To look at the effects of the consent decree evaluatively means that at the core of the research is an assessment of the costs of the consent decree and its benefits.

2. Nature of a cost benefit analysis.

"I come from an engineering background and I was trained in how to do benefit/cost studies on highways, and I left that background some years ago. I discovered that what is done in the world is not determined by benefit/cost ratios but it's determined by politics. I read the environmental impact report and you have here an item called diseconomies due to urban congestion. Okay, let's just take that one. Caltrans in their environmental impact report said, 'We're going to have this level of traffic in the corridor and if we build a freeway we'll carry it more efficiently; therefore there will be a reduction in urban congestion and that'll be a benefit'...[a] credit in the benefit/cost study. The plaintiffs... say, 'That completely misunderstands what's actually going to happen. What's actually going to happen is if you build the facility you'll change land use patterns; ... if you change land use patterns you'll change the demand; and if you change the demand you'll add to congestion...therefore what's really happening here is a cost rather than a benefit.'" (Seminarist)¹

This report reflects use of the disciplining analytics of cost benefit analysis, but avoids its highly criticized political dimensions. Generally, we do not evaluate whether it is good or bad public policy that impacts which we identify exist. Our aim is not a cost-benefit ratio. Rather we have reported opportunity costs, perceived costs and benefits as defined by various groups which have an interest in the I-105, and actual dollar costs and dollar and objective benefits where that information is available. We leave to others the determination whether these impacts ultimately aggregate to an increase or decrease in the public welfare ².

3. The Study's focus.

Based on available data and on the present stage of implementation of the consent decree and completion of the freeway itself, this report--after an historical summary for context--addresses the following areas of impact:

- Housing: amount, location, responsiveness to needs of the displaced, and program administration;
- Affirmative action: its kind, amount and efficacy;
- Costs: of construction and of other phases of project completion;
- Organizational factors in Caltrans: morale, recruiting, structure, decisionmaking and leadership;
- Organizational relations: between and among Caltrans and the State Department of Housing and Community Development, corridor cities, the Federal Highway Administration, the Center for Law in the Public Interest and contractors and other organizations established by terms of the consent decree;
- Freeway design and innovation including rail, vehicle capacity and level of service, and local circulation; and
- Environmental impact including air quality, neighborhood quality, aesthetics.

C. SOME ORIENTING WORDS ON OUR APPROACH TO THIS STUDY

Our interviews, archival material which we have gathered, responses to our surveys and non-structured conversations with people associated with the Century Freeway make clear that the freeway, the injunction, the consent decree and its implementation are highly emotional subjects to many observers. People blame other people, agencies blame other agencies, units blame other units, organizations blame other organizations for major problems with each step in completion of the I-105, with each difficulty in a provision of the consent decree. We report those attitudes and positions [and their considerable shifts and changes as people forgive, forget, and recreate events--as much as two decades in the past] , for they are as much a part of the history of the I-105 as are the cost figures and quarterly report data which we summarize.

We take to this study, however, a perspective that is not fully captured by presentation of the views of participants. We see the story of the Century Freeway as the outcome of organizational interactions. As such, what has happened in many cases does not reflect the intentions of any of the parties. As Note (1977) said: "The complexity of large organizations is at least as important a factor in the difficulty of implementing change as are incompetence and deliberate resistance." And as Stein (1987) concluded:

"...broad based institutional change is a very complex process, the success of which may ultimately rest on the cooperation of hundreds of people, many of whom are not directly affected by the settlement order. Even if defendants are cooperative, the ability of administrators to modify the behavior of their staff is limited, as is their power to levy sanctions against recalcitrant staff."

This conclusion applies to established state agencies as well as to relatively new ad hoc organizations.

The report gives special attention to legal issues associated with the I-105 because:

- its history is heavily influenced by a consent decree which needs to be put into a context and explained legally;
- its history paralleled unprecedented changes in transportation and environmental regulations and in legal requirements regarding housing displacement and resident relocation;

- the affirmative action requirements of the decree were taking place while major changes were being made in the law regarding affirmative action on state and federally funded projects; and
- any suggestions for policy or reform which result from this case study will be implemented through changes in legal requirements.

D. METHODS: HOW DOES ONE STUDY A 100 MILLION DOLLAR A MILE PROJECT?

1. The Evolution of a Research Design

Can one think of the Century Freeway independent of the lawsuit and of the Consent Decree? To address the summary question ["what was the impact of court involvement and the consent decree on the planning and completion of the Century Freeway?"] this study needed to address a fundamental preliminary question: With what should the actual scenario be compared? This in fact is the core of the study and the core of the research challenge.

An obvious initial response was: "as compared to what would have been without court involvement". We considered several ways of creating a comparison scenario:

- Pretend that the social, political, and regulatory environment of 1970-72 remained static and that the 105 was completed "as planned."
- Use a California highway project comparable in time, place, scope, and social environment.
- Use case studies from other states.

We rejected each of these approaches. We could not utilize the first because it lacks credibility . We rejected the latter two comparison scenarios because of the absence of comparable characteristics. There are no cases of the Century's magnitude [linear miles through urban area]; affecting so many jurisdictions [nine]; involving the complexity of environmental challenges [existence, for example, of allegedly hazardous waste dumps]; depth of housing challenge [7000 affordable housing units to be displaced in one of the country's most expensive housing markets];

and covering such a long period [21 years] in which regulatory changes independent of the Century have been so dramatic.

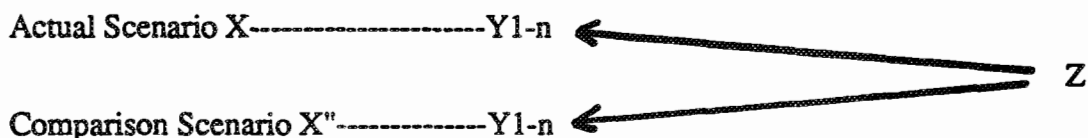
2. Methodological/Research Design Decision

The method employed in the research is case study. A particular challenge in this type of research is distinguishing the boundaries between the case itself and the political, economic and social changes in which the case is enmeshed. This challenge applies to the study of the I-105. For example, one observer of the Century Freeway might ascribe its inclusion of HOV lanes to the consent decree, while another would point to the Clean Air Act of 1977 as the impetus behind this provision. As we describe below, we have augmented the traditional case study approach to distinguish the effects of the consent decree from the effects of changes in the larger environment.

We contrast the actual scenario [the planning and completion of the Century Freeway subsequent to the lawsuit and with the consent decree] with a comparison scenario which we created by means of a survey of expert opinion [appended at B and described below]. For most, but not all of the impacts, our comparison is with that scenario. We anticipate our presentation in the later chapters using the following schema:

Within general model:

Scenarios:



Ys represent impacts ranging from financial costs of construction through effects on state agencies such as structural changes in Caltrans.

Z represents factors in the larger society which may affect the Ys and therefore advise caution in attributing the effect on Y to the nature of the scenarios. Put simply, differences between the impacts associated with the Actual Scenario and the Comparison Scenario may have resulted from factors which are independent of the lawsuit and the Consent Decree.

3. Sources of Data

Primary data sources included in-depth interviews, a variety of archival materials, and two mailed questionnaires.

In-Depth Interviews

The project team administered 126 in-depth interviews to people involved in a variety of stages in the history of the Century Freeway. These actors were identified by their prominence in the materials in the archives and by asking key figures in the Century Freeway whom we should interview in order to understand the Freeway's development. The organizational affiliations of interviewees and the number of interviewees in each organization are listed below:

- Caltrans (53)
 - department directors (3)
 - attorneys (9)
 - civil rights officials (6)
 - right-of-way officers (7)
 - project administrators and engineers (26)
 - others (2)
- Corridor Cities (12)
- Federal Highway Administration (8)
- Center for Law in the Public Interest / Hall and Phillips (9)
- HCD / Century Freeway Housing Program (12)
- Century Freeway Affirmative Action Committee (7)
- Staff of Judge Pregerson (3)
- Office of the Advocate (3)
- Pre-Apprenticeship / Women's Employment / Technical Assistance Programs (3)
- Contractors (3)
- Other State Officials (4)
- Journalists (2)
- Others (7)

We have clustered responses to interview items in several areas of impact; those which were not readily quantifiable are addressed in narrative form by interviewees.

The interviews averaged about 1.5 hours. In light of the long history of the freeway's development and the scope and complexity of the project under the consent decree, the project team administered several different structured interview formats. A copy of a representative interview guide is presented at Appendix C.

Archival Materials

Agencies involved in implementing the Century Freeway project were most cooperative in providing the research team access to correspondence, progress reports, meeting notes, newspaper articles, hearing transcripts, court orders, legal briefs, budgets, performance audits and other archival material. The team accessed archives at the following sites: Caltrans-Sacramento; Caltrans-District 7; Century Freeway Affirmative Action Committee; Century Freeway Housing Program; Center for Law in the Public Interest; Office of the Corridor Advocate; California State University-Los Angeles; the Sierra Club; and the United States District Court.

Other sources of archival material included local and regional newspapers, reports by outside consultants, and persons interviewed by the project team. We estimate conservatively that the database contains 20,000 pages of Century Freeway-related material dating to the mid-1960's .

Mailed Questionnaires

The project team administered two mailed questionnaires to complement and supplement the rich interview and archival information.

Through our interviews, we identified approximately 40 key figures in the story of the freeway's development. These people either possessed a particularly high degree of knowledge concerning the Century Freeway or had a significant impact on the course that the project has taken. The group included heads of Caltrans and the Division of Highways, District 7 Directors, I-105 Project Directors, other senior Caltrans administrators, attorneys and engineers, Federal Highway Administrators, and plaintiffs' attorneys. The first questionnaire was pilot-tested (that is, sent to a small sample of observers to test its validity) and then mailed to this elite group.

Questionnaire 1: Getting a Consensus. The goal of the first questionnaire was to enable the research team to assemble a consensus, plausible scenario for Century Freeway development in the absence of the consent decree, but accounting for the changes in law, society, and the economic

environment referred to earlier. The first questionnaire asked elite respondents to perform two major tasks. First, respondents were asked to describe the Century Freeway had the freeway never been litigated. Second, respondents were asked to describe the freeway had the original litigation not resulted in the present consent decree. Characteristics of the freeway in which we were interested were the number of lanes, provision for mass transit, routing details, opening date, provision for those displaced, and other important project features. Appendix B provides a copy of this first questionnaire.

Twenty-two of the thirty-six questionnaires were completed and returned (a response rate of 61 per cent). Only one plaintiffs' attorney included in this phase of the study responded to the questionnaire. The moderate response rate was not altogether unexpected, because of the complexity of the task faced by respondents and their busy schedules. Nonetheless, the questionnaires which were returned were sufficient to enable the research team to develop an alternative freeway development scenario (which we call in this report the "Comparison Project").³

Respondents were asked to describe two Century Freeway development scenarios (no litigation and litigation without a consent decree). We also asked respondents to indicate which of the two scenarios they felt was more plausible. Because an overwhelming majority of respondents (71 percent) felt that the second scenario was the more plausible, we used responses to the "litigation-no consent decree" scenario to develop the Comparison Project.

We generally took the modal response for each of the items in developing the Comparison Project.⁴ Because of our pragmatic need to keep the description of the Comparison Project relatively brief (we did not want to drown respondents to our second questionnaire in a sea of detail, given the already difficult nature of the task they faced), and because of relatively low response rates to some of the more "esoteric" items on the first questionnaire (e.g., whether any DBE technical assistance program costs to Caltrans would be borne by other agencies at project completion), only the most salient elements of the Comparison Project were included in the Comparison Project description. This description of the Comparison Project was a key component of our second mailed questionnaire. Chapter III of this report discusses the Comparison Project in some detail.

Questionnaire 2: Evaluating the Options. The second questionnaire presented respondents with two different freeway development scenarios: the actual scenario for freeway development based on the consent decree and a Comparison Project developed by the research team in concert with elite actors in the Century Freeway. Respondents to the second questionnaire were asked to

evaluate both the actual freeway and the Comparison Project in terms of monetary, environmental, social, administrative, and organizational impacts. This questionnaire was pilot-tested and then mailed to 356 potential respondents, including all of the 126 persons which the team had interviewed; additional representatives of corridor cities; and additional personnel in Caltrans, HCD, and CFAAC. Appendix D presents the second questionnaire.

156 persons returned the second questionnaire (response rate of 44 percent). The breakdown of respondents by organizational affiliation is presented below:

- 64 Caltrans respondents;
- 16 local elected officials;
- 29 local administrative officials;
- 8 CFAAC-affiliated respondents;
- 2 Center for Law in the Public Interest respondents;
- 5 Federal Highway Administration respondents
- 24 HCD officials;
- 2 contractors;
- 4 respondents from Women's Employment Program; CF Pre-Apprenticeship Program; Technical Assistance Program; and
- 2 others.

Respondents to the second questionnaire had been involved with the Century Freeway project an average of about 9.5 years. Roughly half of the respondents worked in the freeway corridor, and one-third of the respondents indicated that they lived in the corridor.

Chapter III of this report presents an overview of both the results from the questionnaires as well as other data sources. Chapter V through Chapter XI provide a more extensive treatment of the results of the second questionnaire. Where appropriate, these results are presented in statistical form.

¹ At the beginning of this study, I called together a small group of experts in transportation planning, public law, social science and organizational research methods, and regulation to advise me [on a one time basis in a day long seminar] on this study. "Seminarist" refers to one who participated.

² Complete cost benefit analysis becomes complex sometimes beyond the useful. On the other hand, it is incumbent on the objective evaluator to avoid a simplified analysis which determines the outcome, rather than analyzes a problem.

Consider the area of housing in the Century 105 case. Did the lawsuit and /or the consent decree create a net housing benefit?

We do not attempt to answer that question. If we did, the following would be included in the analysis in Chapter V:

• Analysis re.: houses planned to remain within corridor prior to lawsuit and/or consent decree + replacement housing planned prior to law suit and/or consent decree [Comparison Project]. Need to address:

- Quantity of unit
- Quality of unit
- Cost of unit
- Characteristics of identified ultimate user of unit

• Analysis re.: houses planned to remain within corridor based on lawsuit and/or consent decree + replacement housing + replenishment housing planned according to law suit and/or consent decree [Actual Century Freeway] Need to address:

- Quantity of units
- Quality of units
- Cost of unit
- Characteristics of identified ultimate user of unit

Comparison of expected value of each scenario based on the probability of actually providing housing under each scenario.

In cost benefit analyses trade-offs are oftentimes a matter of considerable subjectivity. As the design team brought together early in the history of the Century Freeway concluded in the Gruen Report (Gruen Associates, December, 1970), "Experience also showed that regional cost-benefits cannot reasonably be traded off against local ones, nor community-wide one against individual ones. By the same token, long-range costs and benefits are not always balanced by their short - range opposites. Those in the path of a freeway are not interested in long-range benefits purchased at their short-term expense. Nor do neighborhoods that will suffer from freeway impacts find promises of community-wide benefits compelling."

³ The first questionnaire provided the opportunity for those surveyed to indicate their degree of knowledge of the freeway's history. Three individuals reported a level of knowledge below a pre-defined threshold; we did not use their responses in constructing the Comparison Project.

⁴ There were some exceptions. Where responses to particular items were multi-modal (as was the case with the year groundbreaking was said to occur), we used the median response (1978). Another exception concerned the year the entire freeway was to have been opened. Because we took the median response to groundbreaking date, and because we suspected that respondents' answers regarding groundbreaking were associated with their answers regarding the year the freeway would open, we took the median response for the year the entire route would be open (1987).

CHAPTER II

THE I-105 PROJECT: AN HISTORICAL SUMMARY

This chapter describes the historical setting of construction of the Century Freeway. We summarize the regulatory changes which occurred in the decades of conceptualizing and implementing the Century project. We place the conflict over the Century in the context of conflicts over urban freeways nationwide. Finally, we present, in a variety of forms, the history of the Century Freeway itself.

A. TRANSPORTATION PLANNING WITHIN THE CONTEXT OF HIGHWAY PLANNING: CHANGING STATE AND FEDERAL REGULATIONS

1. A Brief History of the Impacts of the Changing Regulatory Climate Nationwide

Some of the attitudinal shifts toward urban freeway construction summarized in Chapter I can be explained by the changing regulatory climate nationwide. Jones (1989) hypothesizes that a change in public attitude toward freeway building in the 1960's and 1970's resulted in part from 1) the increasing scale of the facilities that were being designed by the Division of Highways as it took advantage of the financing available through the Interstate program; 2) the exhaustion of "easy jobs" which were built in previously established transportation corridors (the state was forced to seek new transportation corridors in residential neighborhoods); and 3) the increasing severity of air pollution in metropolitan areas.

Changes in public sentiment were reflected in numerous laws and regulations which applied to state highway agencies in the same period that the consent decree affected Caltrans. We summarize those laws that affected freeway construction here after briefly presenting earlier highway enabling law.

1956 Highway Act of 1956

The Federal Aid Highway Act of 1956 and the Highway Revenue Act authorized the largest road-building program in United States history, nearly \$31 billion in federal-state funds over a thirteen year period -- the first large scale program for the National System of Interstate Highways initiated in 1944. The law changed the matching formula for determining the federal share of construction costs on the interstate system from 60/40 to 90/10.

- 1962 Federal Aid Highway Act of 1962.
Authorized supplemental funds for fiscal year 1963 and made authorizations for federal-aid highways in fiscal years 1964 and 1965. As part of the cost of the highway project, payments to persons dislocated by highway systems were approved: the Federal Government shared up to a maximum of \$200 for an individual or family and \$3,000 for a business concern, farm or non-profit organization. Required that urban systems be planned comprehensively, i.e. balanced with the needs of the area.
- 1963 Clean Air Act
Required the Department of Health, Education and Welfare (HEW) to provide "criteria documents" on the effects of air pollutants; empowered the HEW Secretary to investigate interstate "hot spots" of pollution; established a cumbersome but pioneering process of federal enforcement to enjoin sources of pollution.
- 1965 Motor Vehicle Air Pollution Control Act
Required promulgation of first federal air pollution emissions standards to apply to manufacturers of new vehicles and engines.
- 1966 Department of Transportation Act
Declared a national policy that special effort be made to preserve the environment. Specifically provided special protection for "4f" land consisting, in part, of publicly owned parks, recreational areas, wildlife and waterfowl refuges, and all historic sites.
- 1968 Federal Aid Highway Act of 1968
Declared again a national policy of preservation of natural beauty of the country-side and public park and recreation lands, wildlife and waterfowl refuges, and historic sites. Increased the mileage of the Interstate System from 41,000 to 42,500 and extended the completion date to 1974. Established a highway relocation assistance program to aid property owners forced to move because of highway locations, by providing relocation payments. Required equal opportunity requirements to be placed in contracts let for bids. Required hearings on proposed highway route locations to consider proposed locations' impacts and effects on community environment, in addition to the then existing criterion, economic impact. Requirements must be met before the FHWA could fund any federal aid highway project which would cause displacement of persons living in a highway corridor.
- 1969 National Environmental Policy Act (42 USC 1970)
Set a national policy of protection of environmental values. Required that agencies use a systematic interdisciplinary approach to environmental planning and evaluation in decisionmaking that might have an impact on the environment. Required an Environmental Impact Statement (EIS) to be prepared for major Federal actions significantly affecting the quality of the human environment.
- 1970 Federal Aid Highway Act of 1970
Amended the 1968 Act by extending authorizations for the Interstate Highway System through fiscal year 1976. Authorized states to use urban area highway funds to build exclusive or preferential bus lanes and other traffic reducing projects. Set a deadline of July 1, 1973, after which any interstate segments for which the respective states had not established a construction schedule would be removed by the Secretary of Transportation from designation as a part of the Interstate System. Set a deadline of

July 1, 1975 for states to submit plans, estimates and specifications (PS&Es) for Interstate segments after which time the segments would be removed from the system if states did not comply. FHWA to issue procedures necessary to assure that highway projects are consistent with any approved plan for the implementation of air quality standards.

- 1970** Uniform Relocation and Real Property Acquisition Policies Act (23 USC 1970)
Required the state to assure "fair and reasonable" relocation payments, operate a relocation assistance program, and assure that adequate relocation housing is available. Specified that the requirements should be applied to all federally funded projects.
- 1970** Clean Air Act Amendment
Required evaluation of crucial projects to insure that air quality standards would not be violated by new construction of major facilities which included highways. States required to prepare State Implementation Plans for the attainment of primary air quality standards.
- 1970** Protection and Enhancement of Environmental Quality
Executive Order 11514 (CEQ Guidelines)
Required the issuance of compliance procedures by the DOT for the consideration of environmental impacts. Further elaborated the purpose and policy of NEPA. Required the Council on Environmental Quality (CEQ) to issue guidelines to federal agencies for implementing NEPA.
- 1973** Federal Aid Highway Act of 1973
Allowed for the substitution of transit projects for withdrawn interstate portions.
- 1975** NEPA Amendment
Cleared up a legal dispute resulting from a 1974 ruling by a federal appeals court questioning the legality of environmental impact statements on federal projects when the statements were prepared in part by state officials. Authorized such participation.
- 1978** CEQ Regulations
Set rules for implementing the procedural provisions of NEPA including outlining requirements for completion of an Environmental Impact Statement.
- 1980** FHWA & UMTA Environmental Regulations
Established FHWA and UMTA regulatory procedures for the implementation of NEPA and the CEQ guidelines as well as the DOT Act of 1977. Governed the preparation of EIS and related documents in addressing grant programs, highways and roads, highway location and design, public hearings, reporting, record keeping requirements, mass transportation, historic preservation, parks and public lands.

Changing regulatory climate: Thus, independent of the Keith v. Volpe litigation and the consent decree several regulatory changes were implemented which applied to state and federal transportation agencies. These included:

1. Liberalized access to allow citizens to obtain judicial review of administrative agency actions (liberalized standing doctrine).
2. Increased reach of federal environmental impact analysis [EIS] requirements.
3. Increased reach of state environmental impact analysis [EIR] requirements.
4. Increased influence of the United States Environmental Protection Agency (EPA) especially in review of state air quality plans.
5. Increased reach of the California Air Resources board (ARB).
6. Enhanced United States Department of Transportation authority and responsibility to mitigate the impacts on housing of transportation projects.
7. Regional Transportation Development Program consensus in of high occupancy vehicle lane [HOV] program implementation.
8. Increased emphasis on affirmative action programs in state and federal projects. (Please see Chapter VI)

Some case studies of the effects of regulatory change: We briefly describe some case studies outside of Southern California of the changing sentiment toward freeway and highway programs in the time frame relevant to the Century Freeway.

Memphis. The final link of Interstate 40 was to run through Overton Park in Memphis, Tennessee. In April 1968, the Secretary of Transportation concurred with the judgment of local officials that the I-40 should be built through the 342 acre city park located near the center of Memphis. The proposed six lane highway was to separate the park's zoo from the remainder of the park. Twenty-six acres of the park were to be lost (Anderson, Mendelker, and Tarlock, 1984). In September 1969, the State acquired the right of way inside the park. Two months later final route and design approval were announced.

Citizens and local and national conservation groups opposed the alignment. Plaintiffs in Citizens to Preserve Overton Park v. Volpe contended that in not supplying factual findings with respect to any feasible and prudent alternatives or why design change could not be made to reduce harm to the park, the Secretary's action was invalid. The District Court and the Court of Appeals found no basis for a determination that the Secretary had exceeded his authority (401 US 402).

The United States Supreme Court (401 U.S. 402 (1971)) reversed and remanded for further proceedings in the District Court. The reviewing court was to scrutinize the facts to determine whether the Secretary acted within his scope of authority, made a decision within the range of choices Congress has specified, and approved the use of parklands as limited to situations where there were no feasible alternative routes. And the court was to find whether the secretary could have reasonably believed that in this case there were no feasible alternatives or that alternatives involved unique problems.

Upon remand to the Department of Transportation, the Secretary said that he could not approve the route. The case supports the "hard look" doctrine which evolved in the 1970's in administrative law: court intervention is called upon not only in the case of procedural inadequacies, or bypassing of the mandate of the legislative charter, but more broadly, if the court becomes aware that the agency has not really taken a hard look at the salient problems, and has not genuinely engaged in reasoned decision making (Greater Boston Television Corp. v. FCC, 444 F. 2d. 841, 850 (D.C. Cir. 1970) cert denied, 403 U.S. 923 (1971) as cited in Anderson, Mendelker and Tarlock, 1983).

In other words, judicial review is no longer precluded for informal decisions made by agencies that are authorities of the Government of the United States.

New Orleans. In New Orleans, the freeway dispute involved the preservation of the Vieux Carre which had been designated a National Historic Landmark in 1966. Preservationists argued that a proposed six lane elevated expressway would change the character of the French Quarter. But downtown business interests welcomed the interstate as a means to revitalize the central business district (Baumbach and Borah, 1981). Analysis of the proposed project was limited to the question of whether the proposed freeway would be feasible and whether it would alleviate traffic congestion. No report questioned the concept of the riverfront freeway; rather all assumed that the French Quarter Riverfront was the best location (Baumbach and Borah, 1981). In 1966, a city council vote opposed a restudy of the freeway, to consider alternatives to the proposed route.

On February 9, 1967, preservationists filed suit in Louisiana's Civil District Court to prevent project construction. The plaintiffs in Baron H. de Pontalba v. City of New Orleans sought a declaratory judgment maintaining that construction of the elevated freeway was unconstitutional. (Civil Action No. 67-287, Louisiana Civil District Court as cited in Baumbach and Borah, 1981). Relying almost exclusively on state and local law, plaintiffs asserted that the

elevated structure violated existing statutes protecting the unique character and quality of the French Quarter. Highway opponents noted that French Quarter property owners were bound by state and local laws restricting architectural design and modernization of their properties to that which maintains the quaint and distinctive character of the Vieux Carre. Not binding the State of Louisiana and the city of New Orleans by these same statutes would constitute a violation of the equal protection and due-process clauses of the fourteenth amendment of the United States Constitution (Baumbach and Borah, 1981).

In June the plaintiffs added the arguments that 1) final approval of the Secretary of Transportation should be withheld until he could find that the project was based on a "continuing comprehensive planning process" as defined in the amended Federal Highway Act; 2) that no "feasible and prudent" alternative to the use of the land existed as stipulated in the Act; and 3) that the Advisory Council on Historic Preservation was "afforded a reasonable opportunity to comment with regard to the undertaking" and that "the effect of the undertaking on the historic site" had been taken into account as required by the National Historic Preservation Act of 1966 (Baumbach and Borah, 1981).

Despite the suit, the Highway Department continued considering design alternatives. Later in 1967, plaintiffs entered into a "stipulation" with the federal government whereby the Department of Transportation agreed not to approve the project until the Pontalba litigation was terminated. When it became apparent in 1969 that the Secretary of Transportation would approve the expressway, plaintiffs filed a motion for a protective order asking the defendants why they should not comply with the stipulation. Consequently, federal approval was withdrawn, apparently because the Advisory Council on Historic Preservation had not commented on the project (Baumbach and Borah, 1981).

The Advisory Council recommended that the Secretary of Transportation examine the feasibility of alternate routes or designs. Although these recommendations were not binding, in July, 1969, the new Secretary of Transportation, John Volpe, canceled the Vieux Carre Expressway; he found that the proposed freeway "would have seriously impaired the historic quality of New Orleans' famed French Quarter (Baumbach and Borah, 1981)." He realized that pending law suits would seriously delay action on the project (Baumbach and Borah, 1981).

Boston. Although the Master Plan for the Commonwealth of Massachusetts included an eight lane "Inner Belt" as early as 1948, detailed design for the route did not begin until 1962. The road was to join Boston, Brookline, Cambridge, and Somerville using four radiating

throughways. Opposition to the plan began in the mid 1960's. Community groups included the Cambridge Committee Against the Inner Belt, and Save Our Cities. Groups of MIT scholars joined to exert pressure on local city councils to restudy the routes. Opponents argued that highway construction served the needs of commuters more than local residents; encouraged decentralization and further urban sprawl; promoted despoliation of the environment; and consumed open space, residential neighborhoods, homes and job-producing enterprises (Boston Redevelopment Agency, 1974).

In 1969, Mayor White called for a halt on construction within Route 128, the major roadway circumventing suburban Boston. While Governor Sargent favored the completion of some routes, including Interstate-93, he called for a restudy of other routes in the Inner Belt. This study was to consider not where to build but whether to build expressways and how to integrate mass transit and other traffic system management techniques. The Governor's action preceded a full scale review of Boston's transportation planning and programs.

Governor Sargent's Transportation Policy was announced on February 11, 1970. He stated, "I have decided to reverse the transportation policy of the state as a whole, and, it is my hope, effect the entire nation." He offered a plan of appeal to Congress and a proposal for a state amendment to allow broader use of highway funds according to the Federal Highway Act of 1970. Through this act more money might be available for cities to choose between highways or mass transit. [The Federal Aid Highway Act of 1973 did include a provision for such a choice.]

A result of the Governor's plan, the Study Design for a Balanced Transportation Development Program for the Boston Metropolitan Region was issued in November. The \$3.5 million study was the first to be federally funded at 90%. In October, 1972, the Boston Redevelopment Agency announced that a new expressway serving the city was undesirable. It stated "If we increase the capacity of the expressways feeding into downtown, we will simply encourage greater use of the automobile, in spite of increased downtown congestion (Boston Redevelopment Agency, 1972)."

A "reordering of priorities to public transportation oriented programs" was being undertaken throughout Boston. Nonetheless in 1971, in Elliot v. Volpe (328 F.Supp. 831) plaintiffs citing NEPA and the Uniform Relocation Act unsuccessfully sought to enjoin I-93 from further construction (the project had received design approval in 1966). The plaintiffs, residents of Somerville, argued that the defendants must 1) utilize a systematic,

interdisciplinary approach in the planning and decision making concerning future action on the I-93; and 2) submit a detailed statement on the environmental impact of the proposed highway, alternatives to the proposed action and adverse long term environmental effects.

The presiding judge declined to grant the plaintiffs relief, stating:

"It must be presumed that Congress was aware that there were unfinished and incomplete federally aided highway projects in various stages of development when the Act was passed and made effective 1/1/70. If Congress had not intended to authorize federal officers to require changes in the design and construction plans of highway projects after construction projects had been let or construction bids invited, it could easily have chosen language to express such intention clearly."

Acknowledging recent intensification of man's concern for the environment, the record demonstrated that the Massachusetts Department of Public Works had considered social and environmental effects of the proposed highway and alternative designs for various elements in the highway project before the basic design report and the geometric plans were approved.

While the construction of the I-93 continued as ordered by the Governor, the consequence of the re-study on the I-95 was a transfer of funds to a development project in southwest Boston. These previously allocated freeway funds were allocated to a subway, parklands, a new industrial park, and 1,000 units of housing.

Presently plans for the construction of the Central Artery are progressing in southeast Boston. This project will involve an expansion and depression of the existing Central Artery as well as the construction of a third Harbor tunnel for high occupancy vehicles between downtown and Logan Airport. FHWA interviewees anticipate legal action by opponents.

New York. The Westside Highway constructed in the 1930s ran from the southern tip of Manhattan to Yonkers. Its southern four miles was elevated along the Hudson River, separating the waterfront, piers, and warehouses from the communities of Greenwich Village, Chelsea, Clinton and lower Manhattan.

In 1973 a portion of the structure collapsed. After inspection, the entire elevated portion was closed. Prior to that time the FHWA had accepted the west side highway into the national system of interstate and defense highways, making it eligible for 90% federal funding for any relocation or replacement project. Construction was scheduled to take ten years, at a cost of

\$1.2 billion. A major portion of the highway was to be tunneled in landfill to be placed in the Hudson River from Battery Park to 34th Street.

By spring, 1974, seventeen project alternatives were released for public comment. This list was soon pared to five: 1) maintenance; 2) reconstruction; 3) arterial; 4) inboard; 5) outboard. The first three alternatives would allow for the improvement of existing structures and roads. The outboard and inboard alternatives would consist of new construction, utilizing landfill in the Hudson River. The latter alternatives, built as expressways, would be eligible for 90% federal funding. The others would be eligible for up to 70% assistance under federal primary and secondary road grant programs. In 1977, a modified outboard alternative was approved and cleared for final design by United States Secretary of Transportation Coleman.

Environmentalists brought suit (Ibanez and Roberts, 1985). In Action for Rational Transit v. Westside Highway Project and Sierra Club v. U.S. Army Corps of Engineers (536 F.Supp. 1225 and 732 F. 2d. 253 [1984]), they claimed that the Draft EIS was inadequate. Requests for a preliminary injunction were denied. For years the action laid dormant while the Westway project was debated and analyzed (517 F.Supp. 1342).

In 1982, the court dismissed most claims in Action for Rational Transit but did enjoin the Secretary of Transportation, preventing Federal funding for Westway on the grounds of failure to comply with the requirements of NEPA with respect to the impact of the proposed landfill on fishery resources. Likewise, in Sierra Club all claims by the plaintiffs were dismissed except those relating to the fisheries resources. It was later found that the Corps' issuance of the landfill permit was arbitrary and capricious. A court ordered restudy of the fisheries began. Nonetheless, in 1985, "the freeway died, a victim of community opposition, litigation, and diminishing political support" (Sack, 1990). The federal funding that had been designated to build the road was allocated to other city transportation projects, primarily mass transit and a less expensive highway along the West Side.

Seattle. Between 1944 and 1960 preliminary studies were undertaken on the planned Interstate 90 between I-5 and I-405 in Seattle. Following a public hearing in March, 1963 on three alternatives, the state selected a corridor which received Bureau of Public Roads approval in May, 1963. In June, 1970, design hearings were held. Federal officials approved the proposed location of the interstate and authorized acquisitions of property for right-of-way (455 F. 2d 1111).

In 1971, residents who were concerned about noise, pollution, and the scale of the road brought an action (Lathan v. Volpe, 455 F. 2d. 1111, 9th Circuit, 1971) against the state and federal highway administrations to halt further acquisitions of property until:

- 1) defendants complied with the relocation provisions of the 1968 Federal Highway Act;
- 2) the federal agency complied with NEPA; and
- 3) new public hearings on the proposed route were held.

The District Court for the Western District of Washington denied the motion. The plaintiffs appealed. Upon appeal, a relocation plan was deemed necessary; an EIS was required; but new public hearings were denied. All acquisition of property was enjoined except for special hardship acquisition. On remand, in August, 1972, the district court found the EIS inadequate in its analysis of air pollution, noise pollution; long term effects on land use and population distribution and traffic congestion and damage to homes. The EIS also failed to give detailed comparisons of costs and benefits for each of the stated alternatives, including that of mass transit (350 F. Supp. 262).

In 1973, as summarized in the chronology above, an amendment of the Federal Aid Highway Act allowed for withdrawal of urban segments of interstates and reassignment of a percentage of the federal money allotted for construction of these segments for use in other transportation projects, including mass transit. In Seattle, debate raged over this option, although the highway department had made design changes to address some of the opponents' objections. Changes included dedicating two middle lanes for rapid transit, the inclusion of a 180 acre greenbelt, and special landscaping of the road as it crossed Mercer Island and entered Seattle (Talbot, 1983).

In November, 1976, participants in a mediation process effected an inter-jurisdictional agreement which included design and access changes (Talbot, 1983). This mediated agreement was incorporated into the final EIS. In August, 1979, the EIS was determined adequate by the court and the injunction was dissolved. Later, on appeal in Adler v. Lewis, 675 F. 2d. 1085 (1982), the court affirmed that decision.

These cases, as well as others¹, illustrate several aspects of the changes in the regulatory environment affecting transportation agencies which were summarized above. The changes

changes aggregate to concern that governmental agencies expand the processes involved in transportation planning; fully comply with new environmental legislation; expand on alternatives to originally designed transportation systems; and utilize a systematic interdisciplinary approach to planning and decision-making.

B. THE I-105 IN A NUTSHELL

In this section we present an historical summary to put the subject-specific histories presented in the following chapters into context. We assume that readers will have some familiarity with the history of the I-105. Yet our study has demonstrated the project has been immensely complicated and detailed. Furthermore, to understand the impacts of the consent decree one must first understand quite fully the story of the I-105. Following are first a short narrative history of the Century and then a more detailed chronology of "critical events."

1. A Short History of the Century Freeway: Narrative

In 1959, the California legislature created the California Freeway and Expressway System, authorizing a grid-like network of freeways overlaying the entire Los Angeles basin. One of the planned freeways was the Century Freeway, roughly paralleling Century Boulevard through southern Los Angeles County and running east-west from San Bernardino to the proposed Pacific Coast Freeway west of Los Angeles International Airport. Exact route location studies commenced in 1959, and the eastern 34 miles were soon deleted from the Century Freeway route. The route of the remaining portion of the freeway, a 17 mile stretch from the LAX area to the San Gabriel Freeway (I-605), was adopted in two stages. The western half of the route was adopted in 1965, and the eastern half in 1968.

The route adoption process was not without controversy. The City of Norwalk fought successfully for termination of the freeway at the I-605, eliminating 1.5 miles of roadway east to the Santa Ana Freeway (I-5). The western end of the route was similarly contentious. The City of Inglewood succeeded in having the western portion of the freeway routed to its south, much to the displeasure of the City of Hawthorne, which would be bisected by the proposed route. The City of Hawthorne refused to sign a freeway agreement for this route which was later re-aligned.

The abandonment of the Embarcadero Freeway in Northern California and its subsequent elimination from the federal interstate highway system freed federal highway funds

to be reallocated to other interstate links in California. Amendments to the Federal Highway Act in 1968 designated the Century Freeway as Interstate 105, and funds originally earmarked for the Embarcadero were directed toward the Century Freeway. As land acquisition for and design of the Century Freeway progressed, however, so developed an organized opposition to the freeway. A group of "Freeway Fighters" in Hawthorne sponsored a referendum on the freeway which passed by a margin of five to one. The City of Downey sought aesthetic and noise attenuation concessions from Caltrans before it would approve the freeway. Meanwhile, state and federal authorities determined that the Century Freeway project was not subject to formal environmental impact statement requirements enacted in 1970, because they felt that the multidisciplinary design team had developed the project with satisfactory consideration of social, economic, and environmental factors. The cost of acquiring land and constructing the Century was estimated to be \$501.8 million. Over 55 percent of the parcels had been acquired by 1972 and 35 percent had been cleared; the state intended to commence construction in the third quarter of 1972 with the goal of completion in 1977.

In February 1972, the Center for Law in the Public Interest filed a class action lawsuit on behalf of four couples living within the proposed freeway right-of-way, the NAACP, the Sierra Club, the Environmental Defense Fund, and the Hawthorne Freeway Fighters. The City of Hawthorne was added as plaintiff in April 1972. The suit sought to prevent the state from acquiring property until environmental impact statements were approved. The suit also alleged inadequate relocation assistance, denial of equal protection to minorities and poor residents of the corridor, inadequate public hearings, and violation of due process.

In July, 1972 Judge Harry Pregerson ordered the state to stop work on the Century Freeway. The preliminary injunction called for preparation of a formal environmental impact statement, additional hearings focusing on noise and air pollution concerns, additional studies on the availability of replacement housing for those displaced by the project, and specific assurance by the state that it could provide relocation assistance and payments to displacees. The decision was upheld on appeal. Work on the Century Freeway was halted.

As the state prepared and then circulated the environmental impact statement between 1972 and 1977, the abandoned neighborhoods in the corridor deteriorated. The melange of vacant land and deserted buildings was the scene of numerous assaults and episodes of vandalism. Pressure from corridor cities on Governor Jerry Brown to promptly complete the freeway increased. Governor Brown suggested in December 1975 that the proposed ten-lane facility be reduced to four lanes, indicating his opposition to construction of new major

freeways in the Los Angeles area on the basis of air quality, energy, and funding constraints. Corridor cities insisted that the full ten-lane facility be constructed as proposed.

The state environmental process was completed in September, 1977, and the environmental impact statement was then submitted to the federal government. The impact statement called for an eight lane freeway plus a transitway. The western portion of the freeway would be routed away from Hawthorne's central business district. In March 1978, President Carter unveiled his National Urban Policy, in which transportation programs were considered incentives to leverage urban revitalization necessary to accomplish economic, environmental, and social goals. In October of the same year, United States Secretary of Transportation Brock Adams announced his approval of the Century Freeway as proposed. On the same day, attorneys representing plaintiffs and defendants in the class action lawsuit announced they had reached a tentative settlement.

Signing of the original consent decree that removed the 1972 injunction occurred in October, 1979. The agreement [summarized in detail below] contained provisions for the design of the freeway, including eight lanes for general traffic and two for High Occupancy Vehicle (HOV) lanes. In addition, an "Office of the Advocate for Corridor Residents" was established to assist displacees; the State Department of Housing and Community Development would develop and implement a program to relocate and rehabilitate 4200 housing units; and an Employment Action Plan establishing an Affirmative Action Committee would be adopted to increase minority business and employment opportunities on the project. For the first time, federal highway funds would be used to mitigate a highway's impacts on a local housing stock and local residents.

Design, land acquisition and clearance, and construction of several non-freeway pilot projects immediately followed signing of the original consent decree. Early in 1981, however, it became clear to state officials that progress on the Century Freeway was imperiled because of federal budgetary constraints. In April 1981, the federal government announced that it would not finance replacement housing until the state determined how the entire freeway project would be financed. In May 1981, the federal government announced it was undertaking a cost-effectiveness study of the entire Century Freeway project. A series of meetings among federal, state, and local officials over a period of several months resulted in a proposal to downscope the Century Freeway project.

In September, 1981, an amended consent decree was approved by all parties and the court. Among other things, the decree provided for:

- six lanes for general traffic and two HOV lanes;
- ten transit stations and Park and Ride lots;
- ten local interchanges;
- ramp metering;
- landscaping and noise attenuation;
- relocation and rehabilitation or new construction of at least 3700 dwelling units;
- continuation of the Employment Action Plan; and
- continuation of the Office of the Advocate.

Groundbreaking for the first Century Freeway construction project occurred in May 1982. The amended consent decree left the decision regarding the kind of transit system to be built to the Los Angeles County Transportation Commission. In June 1984, the commission voted to construct a light rail transit line along the freeway.

2. A More Detailed Chronology of the Century Freeway

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|------|--|
| 1944 | 1944 Federal Aid Highway Act directed designation of 40,000 mile national system of interstate highways but provided no funding. |
| 1947 | Collier-Burns Act passes in California; it allows for long-range highway planning. Division of Highways reorganized away from single executive control. |
| 1953 | 1953 Federal Aid Highway Act provided first funding for interstate. |
| 1956 | 1956 Federal Aid Highway Act signed; it provides for \$25 billion for interstate roads on an approximate 90 to 10 federal to state ratio for the provision of funds; allows for interstate system to be located in both rural and urban areas. |
| 1958 | Initial route studies conducted on Route 42 Freeway (later to become known as the Century Freeway), proposed to be constructed from the Los Angeles International Airport east toward South Gate. |
| 1959 | Century Freeway formally included by the State Legislature in the California Freeway and Expressway System, after recommendation by a joint County and City Advisory Committee. |
| 1963 | Division of Highways holds public hearings concerning routing of western portion of Century Freeway. |

- 6-5-65 and
8-13-65 Route location hearings held by California Highway Commission with respect to the western portion of the Century Freeway. Twelve alternate locations discussed, ranging from Century Boulevard on the north to 120th Street on the south.
- 7-65 State Highway Engineer Jasper Womack recommends southerly route for western portion of Century Freeway
- 11-17-65 California Highway Commission approves a southerly (120th Street) route location for western portion of Century Freeway.
- 12-13-65 City of Hawthorne passes resolution stating the City's opposition to execution of a freeway agreement between the State and the City. A freeway agreement is required in order to close any local street to permit construction of freeway.
- 8-65 Riots in Watts
- ?-?-66 San Francisco rejects two interstate freeways; federal funding for routes withdrawn from California's interstate allocations.
- 1967 Division of Highways develops its Highways Relocation Assistance Program.
- 3-30-67 to
4-16-68 Route location hearings held for eastern portion of the Century Freeway.
- 3-20-68 The 10-lane Century Freeway is designated part of interstate system, becoming eligible for 92% federal funding. Multi-disciplinary design team approach is to be applied to the project. Design of the project is accelerated to meet a 1975 deadline of the Federal Aid Interstate Program.
- 4-16-68 State approves route location for eastern portion of Century Freeway.
- 4-22-68 Federal approval for western portion of Century Freeway.
- 10-14-68 Federal approval for eastern portion of Century Freeway.
- ?-?-68 California Replacement Housing Act of 1968 (the Ralph Act) passed; it allows the Division of Highways to provide replacement housing in areas with depressed economic conditions and inadequate housing resources.
- ?-?-68 Federal Aid Highway Act establishes requirements governing relocation assistance.
- 1969-70 Gruen Associates conducts Design Concept Team Studies identifying community impacts and opportunities that the adopted freeway alignment would create.
- 6-69 through
5-70 Seven public hearings held on the design of the proposed Century Freeway.

- 8-69 through
12-70 Federal approval granted for the design of various segments of the Century Freeway.
- 1969-72 Freeway agreements with jurisdictions affected by the freeway completed; only City of Hawthorne and City of Los Angeles agreements not executed. Division of Highways had reached tentative agreement with Los Angeles, but the formal execution of the agreement was held in abeyance because of the 1972 injunction.
- 11-69 Hawthorne passes resolution reaffirming its earlier opposition to the adopted route for the western portion of the Century Freeway.
- 1-1-70 National Environmental Policy Act (NEPA) becomes law; requires federal preparation and consideration of environmental impact statement for "major federal actions significantly affecting the quality of the human environment."
- 3-4-70 Esther Keith locks front door and refuses to let right of way agent from Division of Highways to enter her home; event thought to have triggered series of events leading to class action lawsuit.
- 6-70 Division of Highways submits Freeway Agreement to City of Hawthorne; City returns agreement to the Division and restates its opposition to the route.
- 11-23-70 CEQA enacted; CEQA requires systematic, interdisciplinary approach to planning and design of California projects.
- 2-19-71 Division of Highways resubmits Freeway Agreement to Hawthorne.
- 5-25-71 Route locations dispute put to voters in Hawthorne; residents vote over 2 to 1 that the City should continue its opposition to the proposed route.
- 8-71 Hawthorne obtains preliminary injunction against state preventing widening of San Diego freeway and some CF work.
- 9-71 Superior Court lifts prohibition on San Diego freeway widening but continues to prohibit CF work.
- 2-16-72 Four named couples living in the route of the proposed freeway ("on behalf of themselves and all others similarly situated"), the National Association for the Advancement of Colored People, the Sierra Club, the Environmental Defense Fund, and Freeway Fighters file motion for preliminary injunction against John Volpe, United States Department of Transportation Secretary; officials of the Federal Highway Administration; the California Highway Commission; the California Department of Public Works; and other state officials seeking to halt progress on construction of the Century Freeway. Pending the hearing on this motion, plaintiffs applied for a temporary restraining order. Plaintiffs contend that state and federal defendants have not complied with CEQA and NEPA, respectively; that state and federal defendants have not complied with applicable relocation payment and assistance requirements; that the displacement of minority members and the poor in the absence of adequate replacement housing denies plaintiffs their rights under the equal protection clause of the Fourteenth Amendment; that state and federal defendants have not complied with the public hearing requirements of the Federal-Aid Highway Act; and that the failure to

comply with the public hearing requirements denies plaintiffs their rights under the due process clauses of the Fifth and Fourteenth Amendments.

- 3-9-72 United States District Court Judge Harry Pregerson hears oral arguments pursuant to plaintiffs' application for temporary restraining order. Judge Pregerson orders defendants to refrain from evicting against one's will anyone living in the route of the proposed Century Freeway and from instituting any new condemnation proceedings unless good cause was shown the Court.
- 4-72 City of Hawthorne added as plaintiff by motion.
- 5-2-72 to
5-5-72 Hearings held on plaintiffs' motion for preliminary injunction.
- 7-7-72 Pregerson grants preliminary injunction enjoining defendants from all activities in furtherance of the Century Freeway, except for activities necessary to comply with the injunction's provisions. Court orders preparation and consideration of environmental impact reports required by CEQA and NEPA and additional public hearings. Court also orders state to submit specific project assurances with respect to the adequacy of replacement housing required by the URA as well as additional housing availability studies per the Court's instructions. Injunction allows state to acquire property in the freeway's route upon satisfying the Court that persons living on the property had freely and voluntarily decided to relocate; injunction also allows state to perform demolition or other work in connection with the freeway necessary to protect the public health and safety.
- 7-17-72 State defendants seek to alter preliminary injunction, asserting that additional public hearings should not be required and that the state should not be enjoined from acquiring property for the freeway while the environmental documents were being prepared.
- 8-3-72 Federal defendants join in the state defendants' 7-17- 72 motion.
- 8-28-72 Pregerson hears arguments regarding defendants' request to amend injunction; he also grants six corridor cities which favor the continuation of the project the right to intervene in lawsuit.
- 9-11-72 Pregerson issues second opinion, specifically refusing to alter or amend the terms of the preliminary injunction.
- 10-6-72 State defendants file notice to appeal preliminary injunction to the Court of Appeals for the Ninth Circuit. Appeal contests that portion of Pregerson's order requiring the holding of additional public hearings.
- 11-9-72 Federal defendants file similar notice to appeal with Ninth Circuit.
- 3-7-73 Pregerson orders State defendants to take all reasonable steps necessary to protect buildings within the freeway right-of-way from looting, vandalism and deterioration; also orders state defendants to obtain assistance from local law enforcement agencies and prepare a program to deter these problems.
- 4-30-73 Federal defendants move to dismiss their appeal.
- 5-17-73 Court of Appeals issues order dismissing federal appeal.

- 6-1-73 Pregerson denies State's request for blanket authorization to sell and remove state-owned dwelling units within corridor. State is required to exercise good faith efforts to rent and renovate each dwelling acquired in the corridor; to file reports describing such efforts; and to file reports describing all security and maintenance measures taken in the corridor.
- 7-73 Southern California Rapid Transit District (SCRTD) Board of Directors adopts required transit plan which includes incorporation of a busway in the median of the Century Freeway.
- 7-1-73 Caltrans, successor agency to the California Division of Highways, is created to administer the state highway program in coordination with new state functions in aeronautics and mass transportation.
- 10-11-73 State defendants' appeal of injunction argued before three-judge panel of the Ninth Circuit.
- 11-9-73 Corridor mayors reject Mayor Bradley's proposal to abandon freeway and use funds earmarked for freeway on rapid transit system.
- 12-3-73 Ninth Circuit Court of Appeals reverses those portions of the injunction requiring additional public hearings on air and noise impacts of freeway.
- 12-7-73 In a case involving a federal-aid highway in Seattle but involving facts similar to the Century Freeway, a different three-judge panel of the Ninth Circuit holds that additional public hearings are required.
- 1-74 Housing studies ordered by Pregerson in injunction approved by FHWA.
- 4-11-74 Opinions and judgments of both the Century Freeway appeal and the Seattle appeal withdrawn by Ninth Circuit; Ninth Circuit orders that the two cases be reheard together by the Court sitting en banc.
- 6-12-74 Court of Appeals, sitting in banc, hears the Century case and the Seattle case.
- 9-27-74 Court of Appeals affirms Pregerson's order requiring additional public hearings to consider the Century Freeway's effects on noise and air pollution. Court of Appeals also states that the environmental impact statement in preparation should be made available before, and considered at, the public hearings.
- 10-30-74 State defendants file appeal regarding the additional hearings with the Supreme Court.
- 12-19-74 State circulates for public comment a draft Century Freeway EIS. Draft EIS discussed project as a 10-lane freeway/transitway.
- 1975 Layoffs at Caltrans; memorandum from Department Director describes change in program emphasis to rehabilitation and "useable segments" projects.
- 3-75 and 4-75 Public hearings held pursuant to Draft EIS.

- 4-23-75 California Highway Commission holds separate location/design hearing on proposed "bell-shaped curve" for Century Freeway in Hawthorne.
- 8-27-75 California Highway Commission holds separate location/design hearing on a modified, curved route for the Century Freeway in Hawthorne (called the "Imperial Line").
- 12-19-75 Secretary of the California Business and Transportation Agency Donald Burns announces support for a combined four-lane freeway/transitway facility.
- 1-21-76 Representatives of corridor cities meet to consider Burns' proposal for a four-lane facility.
- 3-76 to 5-76 Corridor cities pass resolutions supporting an 8-lane freeway/transitway project.
- 7-18-77 Governor Brown meets with representative of corridor cities; local officials press for a quick decision to proceed with plans for an 8-lane freeway/transitway. Brent Rushforth, of the Center for Law in the Public Interest, indicates his clients' opposition to an 8-lane facility, and suggests that a different or smaller project might resolve the litigation.
- 7-18-77 Director Gianturco, in a letter attached to the proposed Final EIS, indicates that although staff has concluded that the project should be an eight-lane freeway/transitway, the Department is studying withdrawal of the freeway from the interstate system and substitution with other improvements "based solely on the matter of budget and transportation priorities."
- 7-21-77 State submits proposed Final EIS to Pregerson; report proposes eight-lane facility with transitway in center.
- 8-7-77 Clean Air Act Amendments of 1977 signed into law. These amendments require state and local governments to develop revisions to State Implementation Plans (SIPs) for all areas not meeting the Act's air quality standards by January 1, 1979. In non-attainment areas like Los Angeles, the revised SIPs will require transportation controls, i.e., strategies designed to reduce emissions from transportation-related sources by means of structural and operational changes in the transportation system.
- 9-15-77 California Highway Commission approves Final EIS and adopts Imperial Alignment in Hawthorne; CEQA process completed.
- 9-16-77 Final EIS sent to FHWA to begin federal (NEPA) processing.
- 1-4-78 California Air Resources Board, in a letter to U.S. Department of Transportation Secretary Brock Adams, states that the air quality impact assessment in the Century Freeway EIS is deficient.
- 3-78 President Carter's Urban and Regional Policy Group recommends National Urban Policy; transportation considered an incentive program to leverage public and private urban revitalization; transportation programs to be made tools to accomplish economic, environmental, and social goals.

- 3-78 In letters to FHWA and the California Air Resources Board, Caltrans states its commitment to build high occupancy vehicle lanes in the 40-foot Century Freeway median, as well as provide ramp meters with preferential bypass lanes for buses and carpools.
- 3-13-78 Hawthorne City Council votes to drop out of lawsuit as plaintiff.
- 3-27-78 Pregerson refuses to approval removal of 450 vacant homes from freeway path.
- 5-19-78 EPA sends letter to DOT indicating its air quality concerns satisfied by redesign of the freeway.
- 6-78 First drafts of proposed settlement demands circulate at the Center for Law in the Public Interest.
- 8-24-78 US Secretary of Transportation Brock Adams tours corridor.
- 10-17-78 Brock Adams announces his approval of Century Freeway; attorneys announce tentative settlement of class action lawsuit; Adams announces redesignation of portion of Harbor Freeway as an interstate route, enabling use of federal funds for transitway to tie into facility on Century Freeway.
- 10-31-78 FHWA approves Final EIS for Century Freeway.
- 11-29-78 Adams agrees that federal highway funds can be used for CF housing relocation and rehabilitation program.
- 5-1-79 Completion of Caltrans' "Norwalk to El Segundo Freeway/Transitway Community Housing Needs Study". Report focuses on the impact of I-105 construction on the communities through which it would pass. According to the report, the I-105's "aggravation of the communities' already insufficient supply of affordable housing stock is significant and should be mitigated." Possible mitigation measures include: relocation and rehabilitation of housing units acquired for the project; construction of new units; and rehabilitation of units outside of the I-105 right-of-way.
- 7-2-79 Los Angeles Times reports that the Brown administration is exploring the possibility of abandoning Century Freeway and transferring the construction fund to build subway from downtown Los Angeles to the San Fernando Valley.
- 7-11-79 In report to Pregerson, Federal defendants formally describe the commitment of DOT to "accept for Federal participation whatever number of sites for housing units that may be determined by the parties to be available for (rehabilitation and replacement) housing" in the corridor.
- 7-25-79 Agreement reached by plaintiffs and Caltrans; eight-lane freeway proposed, to include a two-lane busway; agreement also reached on housing units, relocation process, and minority and women employment plan.
- 9-12-79 City of Hawthorne formally requests that the Preliminary Injunction be dissolved.
- 10-4-79 Agreement presented to Judge Pregerson.

- 10-10-79 US Secretary of Transportation Neil Goldschmidt inspects CF corridor.
- 10-11-79 Pregerson signs consent decree; injunction lifted.
- 10-19-79 Initial Housing Advisory Committee meeting.
- 11-2-79 Judge Pregerson is elevated to Ninth Circuit Court of Appeals.
- 2-7-80 Secretary Goldschmidt names Norman Emerson as special assistant to secretary re: CF; new position is unprecedented; Emerson opens office in Inglewood.
- 3-31-80 Pregerson orders State to pay Center for Law \$2.2 million in attorneys' fees and expense reimbursement for work performed from 1971 to 1979.
- 4-3-80 Consulting team begins work on housing plan.
- 8-6-80 Associated General Contractors files suit challenging use of federal highway trust funds to carry out housing plan and challenging employment action plan of CD.
- 11-18-80 Plaintiffs and State agree on amendments to Exhibit C (employment action plan) of the consent decree and to file an Amended Employment Action Plan.
- 12-24-80 EPA and FHWA refuse approval for initial CF contract (clean-up of Willco dump) because of 12-11-80 decision to freeze funding on highway projects in light of State of California's failure to adopt vehicle smog inspection program.
- 1-81 to
4-81 Caltrans reviews anticipated construction contracts for the Century Freeway with aim of splitting the project into a larger number of smaller contracts.
- 1-22-81 Pregerson denies Associated General Contractors motion; says contractors waited too long to file suit; such intervention could cause costly delays in project.
- 2-81 Publication by Business, Transportation, and Housing Agency of the I-105 Century Freeway Project Management Organization and Responsibilities. Report acknowledges rumors that, despite the settling of the lawsuit, the Century Freeway still may never be built.
- 3-31-81 Caltrans Director Gianturco announces CF plans in peril because it is low priority for Reagan administration and state can't make up financial difference.
- 4-81 HCD and Gruen begin preparation of Century Freeway Housing Plan.
- 4-9-81 State seeks money from federal Highway Trust Fund to build 1,000 replacement units along corridor.
- 4-28-81 US attorney Michael Wolfson tells Pregerson that federal government will not finance replacement housing until state determines how freeway will be financed.
- 5-1-81 Gianturco discloses that federal officials will conduct cost-effectiveness review of entire CF project.

- 5-81 FHWA freezes nearly all activity on unconstructed new Interstate routes because of cost constraints.
- 5-4?-81 Lobbying group (Assemblyman Bruce Young, representatives from corridor cities) meets with FHWA director Barnhart.
- 5-12-81 Consultant meetings with representatives of primary zone cities begin.
- 6-18-81 Lynn Schenk, Gianturco, and other CA officials meet with Drew Lewis, emphasize broad-based support for CF.
- 6-30-81 William A. Keller resigns as Executive Director of CFHP.
- 7-2-81 Barnhart tours CF corridor; announces the following possible changes: he would approve simple six-lane freeway; would eliminate rail and HOV components; would reduce number of replacement dwelling units.
- 7-16-81 Caltrans and Center for Law announce their rejection of the federal government's scaled-down plans for CF.
- 7-22-81 Representatives of corridor cities vote to insist on eight freeway lane, two mass transit lane CF; reversal of earlier support for federal proposal.
- 7-29-81 Caltrans proposes six freeway lanes; two lanes mass transit with convertibility to rail; fewer on-ramps; no connection with Harbor Freeway transit system; same number (4200) of dwelling units but reduced per unit cost (this is counter proposal to FHWA for freeway and housing construction).
- 7-31-81 Kennedy resigns as CFAAC executive director.
- 8-5-81 FHWA rejects state proposal.
- 8-11-81 Federal and state officials and Center for Law announce accord; essentially agree on state proposal, but with some reduction in number of dwelling units; Barnhart agrees to ask EPA to lift sanctions (FHWA will fund revised Freeway and Housing Plan).
- 9-4-81 Mendel Hill appointed Executive Director, CFHP.
- 9-22-81 Pregerson signs amended consent decree. The amended decree makes the following major changes from the 1979 decree:
- the number of general purpose lanes is reduced from eight to six;
 - the number of local interchanges is reduced from twenty to ten;
 - the median strip, instead of featuring either rail or HOV lanes, would allow for both rail and HOV lanes; the transitway will be funded by Federal Aid Interstate funding;
 - the transitway connector to the Harbor Freeway is eliminated as part of the Century Freeway project;
 - the amended decree establishes three different categories of housing to be provided pursuant to the Housing Plan, and reduces the expected number of units produced from 4200 to 3700.
- The amended decree is said to offer improved procedural efficiency as well as a \$200 million savings in comparison to the final decree.

- 9-28-81 Pregerson orders parties to the decree to file bimonthly reports with the court to highlight progress made in the freeway corridor and any problem areas encountered by the parties.
- 10-22-81 Composite Housing Plan completed.
- 10-26-81 EPA exempts I-105 from sanctions.
- 11-1-81 Sources Sought Announcement for housing issued.
- 11-27-81 First family moves into CF housing.
- 12-1-81 HCD initiates negotiations with corridor jurisdictions to determine housing entitlement.
- 2-1-82 Clarence Broussard becomes CFAAC executive director.
- 2-18-82 HCD concludes bi-lateral negotiations with cities.
- 3-3-82 CFHP issues interim procedures manual.
- 3-8-82 Start-up of Century Freeway Pre-Apprenticeship Training Program.
- 3-15-82 HCD issues \$34 million RFP for first major component of housing program; part of the \$110 million program.
- 4-26-82 All conceptual freeway agreements signed by corridor cities and LA County. South Gate was last to be signed.
- 4-27-82 Budget Review Committee approves detailed I-105 Construction Schedule. The schedule shows last project to be advertised 5-90, with a 38 month construction time.
- 4-30-82 Business, Transportation, and Housing Agency eliminates the position of Century Project Coordinator, which had been held by Barbara Nixon Andrew.
- 5-1-82 Groundbreaking for CF project (Willco dump project).
- 6-14-82 Caltrans obtains FHWA approval for typical section and noise attenuation plan.
- 6-30-82 Caltrans obtains FHWA approval for major design features.
- 7-15-82 Housing Plan and Environmental Assessment adopted by Housing Advisory Committee.
- 7-26-82 Pregerson grants state's motion to file quarterly status reports instead of bimonthly reports; changes reporting periods for all parties from bimonthly to quarterly.
- 8-6-82 Housing Plan signed and finalized by plaintiffs and defendants.
- 8-3-82 HCD submits housing procedures manual to FHWA and Caltrans for review and comment.

- 9-14-82 Interagency agreement with the California Housing Finance Agency submitted and revised housing procedures manual resubmitted to FHWA and Caltrans for review.
- 9-17-82 FHWA approves HCD's interim procedures and policies manual.
- 9-27-82 Willco Dump Phase II project advertised by Caltrans.
- Fall 1982 FHWA conducts investigation of Caltrans' certification process/District 7 Civil Rights Branch; documents inadequacies.
- 11-11-82 First Escrow closing for purchase of CFHP unit.
- 11-82 Caltrans Public Affairs Branch hires Thomas Knox as Century Freeway Specialist.
- 4th q. 82 Selma Gleason becomes District 7 Civil Rights Branch Chief.
- 12-28-82 Pregerson enters judgment in favor of plaintiffs, awarding plaintiffs' counsel \$210,000 in attorneys' fees and expense reimbursement for work performed from 1979 to 1982.
- 1-3-83 Richard Ginsberg appointed interim assistant director for the Century Freeway Project.
- 2-28-83 Willco Dump Phase II contract awarded to Papac and Sons
- 3-4-83 Leo Trombatore named Caltrans Director.
- 3-17-83 Mendel Hill leaves position as Executive Director, Century Freeway Housing Program. Harley Searcy appointed interim director.
- 3-23-83 John Kozak replaces Ginsberg as Chief, CF division, in CT headquarters.
- 4-18-83 Caltrans announces at first status conference pursuant to amended CD that it expects early completion for most phases of CF; Advocate charges CT failure to address housing valuation and early eviction problems; CFAAC expresses skepticism re: CT seriousness with regard to minority and women subcontracting; Phillips expresses concern with CT ability to deal with consent decree elements. Pregerson agrees with Phillips' suggestion that monthly coordination meetings be conducted; orders monthly coordination meetings in addition to quarterly status conferences.
- 2nd q.-83 Jerry Baxter appointed to the "newly established position" of assistant district 7 director for I-105.
- 5-83 Susan DeSantis becomes HCD Director.
- 7-10-83 Michael Houlemard Jr. appointed Executive Director of CF Housing Program.
- 8-1-83 Jeffalyn Johnson and Associates begin work on I-105 Employment Study.

- 9-83
to 12-83 According to HCD's 3rd quarter 1983 report, "major program reorganization accomplished."
- 10-1-83 HCD assumes all "closing" duties and responsibilities for first RFP upon termination of interagency contract with CHFA.
- 1-13-84 Caltrans suspends Papac's contract on Willco Dump II project.
- 2-9-84 Pregerson orders Advocate to implement an appraisal review pilot program to assess significant noncompliance by Caltrans with regard to property appraisals and replacement housing value determinations.
- 3-30-84 Start of weekly meetings among parties to the decree to discuss proposals for consent decree amendments.
- 4-84 Center for Law investigates District 7 Civil Rights Branch.
- 4-1-84 John Kozak, Chief of Division of Century Freeway for Caltrans, retires; Jerry Baxter, Deputy District Director for Century Freeway, assumes full responsibility for Century Freeway matters.
- 2nd q.84 Caltrans reports that all freeway agreements signed.
- 6-13-84 LACTC authorizes construction of light rail in CF median.
- 9-17-84 Pregerson orders the size of CFAAC Board increased from seven to nine members; Pregerson appoints Jerome Fisher and Jesse Martinez, whose removal by their respective appointing agency had been contested, to the two new positions.
- 11-26-84 Hawthorne city council denies approval of CFHP RFP3- 011.
- 1-14-85 Hawthorne council approves project 2-013 subject to restrictions including that no more than 35% of the households shall have incomes of less than 80% of the median and that first priority shall be given to displacees from Hawthorne.
- 1-23-85 Governor Deukmejian tours CF corridor.
- 2-7-85 Center for Law files motion with district court to enjoin actions of Hawthorne re: restrictions on project 2-013.
- 3-26-85 Status/settlement conference re: Hawthorne 2-013; no settlement reached.
- 5-85 Jeffalyn Johnson Inc. completes Final Employment Action Plan.
- 5-16-85 Pregerson authorizes Murray Brown to prepare and submit a proposal regarding his potential role as a mediator in Century Freeway disputes.
- 10-3-85 Pregerson finds in favor of Center for Law etc., enjoining Hawthorne from restricting development of CFHP projects 20013 and 3-011.
- 4th q.-85 J.F. McManus listed as I-105 project director in quarterly report.

- 4-86 DeSantis leaves HCD.
- 5-86 Broussard terminated as CFAAC Executive Director.
- 6-5-86 Robert Norris appointed by Pregerson to CFAAC Board.
- 9-86 Channing Johnson resigns as Chair CFAAC
- 4th q.-86 Dave Roper listed as I-105 project director in quarterly report.
- 8-27-86 Pregerson orders Caltrans to pay the Center for Law approximately \$183,000 in attorneys' fees and expense reimbursement to cover the period from November 1984 to February 1986. Pregerson also orders City of Hawthorne to pay the Center for Law, as prevailing plaintiff, approximately \$182,000 in attorneys' fees and court costs.
- 1-5-87 Court requests parties to submit a short summary report on Murray Brown, advising on his usefulness, continuing capacity, and areas of focus.
- 3-3-87 Homer Post appointed executive director, CFAAC.
- 3-12-87 Pregerson orders Caltrans to pay the Center for Law approximately \$112,000 in attorneys' fees and expense reimbursement to cover the period from February 1986 to August 1986.
- 5-11-87 Pregerson orders an increase in minority employment goals to 50 percent, and women's goals to 10 percent. Pregerson orders Century Freeway Employment Study Advisory Committee to update the data in the 1985 Employment Study and recommend new goals beginning March 1988 to the end of the project.
- 7-1-87 Homer Post discharged by CFAAC board.
- 8-13-87 Pregerson grants CFAAC amicus status.
- 9-87 FHWA, Caltrans, and the Center for Law begin discussions on restructuring the CFHP.
- 9-28-87 Andrew Delgado appointed executive director, CFAAC.
- 9-28-87 "On time...On target" celebration for hitting halfway mark on Century Freeway project held.
- 12-1-87 Agreement in principle to restructure housing program reached. All units thus far produced or in the process of being produced would be allocated to the 2200 units under the amended consent decree's 1025 and 1175 programs; the \$110 million program would begin anew under a new structure.
- 12-87 Publication of series of articles in The Los Angeles Times critical of CD implementation.
- 12-30-87 Supervisor Kenneth Hahn calls for federal investigation of fraud and mismanagement in CF project.

- 3-14-88 Pregerson orders appointment of a Special Task Force to address problems relating to M/WBE [minority/women business enterprise] participation, achievement of employment goals, and the housing program.
- 3-16-88 Pregerson orders CFAAC to contract with Price Waterhouse to evaluate and review various problems facing minority and women business enterprises; he also orders CFAAC to contract with Hamilton, Rabinovitz and Alschuler to study minority and women employment problems.
- 4-14-88 Pregerson orders an increase in its number of appointments to CFAAC Board from two to four. Addition of Helene Smookler and Brenda Curry to the Board thought to facilitate meeting goals for women employment.
- 4-14-88 Pregerson also amends the decree to eliminate the requirement to phase the freeway project so that a given percentage of housing units is available when a percentage of freeway construction contracts are awarded. In addition, the following amendments are ordered: transfer of all existing units in the \$110 million Program to the 1175 and 1025 Programs; FHWA and the State will fund the \$110 Million Program, to be completed upon agreement about a new administrative program structure.
- 4-14-88 Pregerson orders employment goals for minorities to be 55 percent from July 1988-December 1988; 60 percent from January 1989-June 1989; and 65 percent from July 1989 to project completion; employment goals for women will be 10 percent.
- 2nd q.-88 C.J. O'Connell listed as I-105 Project Director.
- 6-23-88 Salafai Justine Suafai appointed Women's Outreach Program Administrator.
- 9-8-88 Price Waterhouse and Hamilton Rabinovitz present findings to Pregerson; both urge stronger administration of CD.
- 11-9-88 Kenneth Leventhal & Company presents "Special Report and Recommendations for the Century Freeway Housing Program" to Judge Pregerson. Report recommends restructuring the housing program to minimize "the restrictions imposed by interpretation of Federal Regulations . . . (which) have significantly impeded the progress of housing development from the inception of the Century Freeway effort."
- 5-10-89 John Maher appointed Executive Director, Century Freeway Housing Program.
- 6-89 Pregerson authorizes restructuring of housing program to include Notice of Funding Availability and Public/Private Partnership Program.
- 9-22-89 John Maher retires.
- 9-21-90 After considering "the numerous problems and issues raised" in reports for the Second Quarter of 1990, Pregerson orders parties to the decree to outline "particular steps which should be taken to correct" problems; Pregerson suggests that the parties "may wish to address. . . the option of shutting down the entire project until the major problems involving housing construction and maintenance and job training are resolved."

C. CONSENT DECREE SUMMARY

We refer throughout this report to individual sections of the consent decree. For convenience of the reader, we lay out here the full substance of the decree.

The amended final consent decree signed on September 22, 1981 is a 24-page document. The stated purposes of the consent decree are to permit the I-105 freeway to be built according to the design standards and features described in the decree; to provide for a bus or rail transitway within the corridor; to assure that the freeway does not deplete the housing stock in affected communities; to ensure that project-generated employment opportunities accrue to affected communities; and to avoid further litigation.

Four exhibits are incorporated by reference into the decree. Exhibit A describes some of the commitments of agencies funding the transitway. Exhibit B is the housing relocation plan. Exhibit C is the affirmative action plan. Exhibit D graphically depicts the locations of certain transitway features.

The consent decree explicitly dissolves the preliminary injunction entered by the court in 1972 which halted the project. The District Court is to retain jurisdiction regarding the consent decree until a Judgement of Dismissal is entered. The decree addresses ten substantive areas.

1. I-105 Freeway - Design and Operation

The consent decree directs that the I-105 is to be constructed as proposed in the Final Environmental Impact Statement, except where specifically modified by the decree itself. The decree provides for a six-lane controlled access highway, with a not-to-exceed 64 foot median containing a separate transit/HOV facility capable of conversion to a light rail transit facility. Ramps to the freeway are to be metered to minimize congestion on the freeway. This section of the decree describes the number and location of freeway interchanges, and directs that noise attenuation and landscaping provisions analyzed in the Final EIS be incorporated.

Transit/HOV lanes in the freeway median are to be operational at the time the freeway opens. The decree allows the substitution of light rail for the transit/HOV lanes, and sets forth the conditions allowing defendants to provide substitution without additional involvement by the court. Operating costs for buses which would use the transitway are to be provided by local transportation sources.

Transit stations, loading platforms, pedestrian access-ways, and park-and-ride facilities are to be operational at the time the freeway opens. Funds for these facilities are to be included in project costs covered by Federal Aid Interstate funds.

The freeway is to provide access to Los Angeles International Airport. Priority access to LAX is to be provided for buses and carpools to the maximum extent possible.

2. Harbor Freeway Linkage

Federal defendants are to use their best efforts to authorize and provide funding for a transitway on the Harbor Freeway from its intersection with the I-105 to downtown Los Angeles. The facility is to be suitable for buses, carpools, or rail transit. The design of the transitway shall provide for direct linkage to the I-105. This component is not a condition to the construction and operation of the I-105. Passenger stations and associated facilities along this transitway are to be comparable to those provided for the I-105.²

3. Establishment of an "Office of the Advocate for Corridor Residents"

The decree creates an Office of the Advocate to be funded in the same manner as other project costs. The Advocate is selected by and serves at the pleasure of the plaintiffs, although under some circumstances the Court may remove the individual serving as Advocate. The Advocate, Caltrans, and plaintiffs are authorized to review staffing needs of the Office. Caltrans and plaintiffs are empowered to appeal funding decisions authorized by the Director of Housing and Community Development to the Secretary of Business, Transportation and Housing whose judgment is final.

The Office's duties and responsibilities include the following: a) establish and operate a local office; b) monitor State defendants' compliance with all applicable state and federal regulations pertaining to the relocation rights of displacees; c) receive and record displacee complaints; d) provide information regarding relocation benefits; e) assist displacees who have complaints regarding eligibility for benefits, amount of payment, or provision of adequate replacement housing; f) assist displacees in resolving disputes with Caltrans; and g) request Caltrans to correct any claims of significant widespread noncompliance and to submit recommendations for correction.

4. Exhibit B: Housing Plan

See discussion of Exhibit B below.

5. Exhibit C: Employment Action Plan

See discussion of Exhibit C below.

6. Amendment to and Enforcement of Final Consent Decree

Upon motion, the decree may be modified when plaintiffs' counsel and State and Federal defendants agree in writing with the approval of the court. In addition, the court may modify the decree upon motion by either plaintiffs or defendants.

Parties may apply to the court for appropriate relief if the terms of the decree are not complied with by any party. As a last resort, the court may issue an injunction to enforce the terms of the decree. A primary consideration in selecting a remedy for noncompliance shall be to avoid delay of the freeway project or implementation of the housing program.

7. Nonseverability of Decree's Provisions

The decree contains a standard nonseverability clause.

8. Termination of Court Jurisdiction

A Judgment of Dismissal will be filed upon a motion setting forth a description of how all terms of the decree have been fully complied with, and absent objection thereto.

9. Attorneys' Fees

The consent decree allows plaintiffs to file an application with the court for reasonable attorneys' fees which are to be paid by State defendants. This portion of the consent decree describes appeal procedures, payment schedules, and payment terms.

10. Federal Participation

Federal defendants are to participate in the cost of the I-105 project in the same manner as any other interstate freeway project cost. The decree recognizes that certain features of the decree are unique to the I-105 project, and describes certain provisions of the decree which Federal defendants agree are project costs entitled to federal participation. These costs include, but are not limited to: a) new construction and/or rehabilitation of housing as described in the Housing Plan; b) operation costs of housing project director, Housing Advisory Committee, Office of the Advocate, and Century Freeway Affirmative Action Committee; c) rehabilitation of housing units in excess of HUD standards; and d) relocation expenses for certain tenants provided assistance through the Housing Plan.

Exhibit A: LACTC and SCRTD Commitments

Exhibit A contains the commitments made by the Los Angeles County Transportation Commission and the Southern California Rapid Transit District for the necessary financial allocations to fund the required local share for transitway support facilities and operating costs.

Exhibit B: Housing Plan

Exhibit B describes the development and implementation of the Housing Plan. Housing is to be provided as part of the I-105 project both to relocate persons displaced by the freeway and to replenish the housing stock of communities affected by the freeway.

Introduction

The housing portion of the project is to consist of three major elements. The first element, known as the "1025 Element", requires the State, acting through the Department of Housing and Community Development (HCD), to rehabilitate or construct 1,025 housing units pursuant to approvals given by the Federal Highway Administration prior to August 25, 1981. The second element, known as the "1175 Element", requires the State to construct or rehabilitate at least 1,175 units to meet the housing needs of corridor residents eligible for benefits under the Uniform Relocation Act. These units are intended to satisfy the Relocation Act's requirements for "last resort housing" for remaining eligible residents within the I-105 right-of-way. The third element is known as the "110 Element." This element requires Federal

defendants to authorize \$110 million for the State to produce the maximum number of housing units which can be obtained with these funds. The decree contains a mechanism to increase this amount if the construction cost index of new one-family houses changes.³

Staging and Review

Construction of the freeway was allowed to proceed prior to relocation or replacement of housing pursuant to the decree. The decree establishes a Staging Plan to allow freeway construction to immediately proceed and ensure that at the end of the project all housing to be provided pursuant to the decree is actually made available. A Review Plan is also established which would allow modification of the timing and scope of the delivery of the housing program because of unforeseen problems. In making a determination of whether to modify the Staging Plan, the court may consider whether the housing program has caused undue delay in construction of the freeway, the ability of corridor communities to absorb the housing, the effectiveness of the housing program, and other factors.

In general, the freeway project is phased so that a given percentage of housing units is available for occupancy when a given percentage of the freeway construction contracts is awarded. The decree allows 25 percent of the freeway contracts to be awarded prior to making available replacement/replenishment housing. In 1988, this requirement was eliminated.

Structure for Planning and Implementation

The decree directs HCD to be the lead agency responsible for the coordination and implementation of the Housing Plan. The duties of HCD's Project Director assigned to the I-105 project are to include a) acquisition of sites for replacement housing; b) preparation of a formal Housing Plan; and c) solicitation of bids, selection of subcontractors, and letting of contracts for work to be performed by outside consultants and contractors. The Director shall attempt to place as many replacement units as possible in a primary zone within six miles on each side of the freeway right-of-way, or in secondary or tertiary zones if suitable sites in the primary zone are unavailable.

The decree also establishes a Housing Advisory Committee (HAC) to consult with and provide assistance to the Project Director. Its membership shall be limited to 60 members, no more than 33 "representatives of official agencies" invited to serve by the HCD Director and 27 jointly selected by Plaintiffs and HCD. The HAC is responsible for holding public hearings on

the Housing Plan and approving the Plan. The State's Secretary of Business, Transportation and Housing is granted ultimate authority for approving the Plan.

The Housing Plan

The decree sets out minimum standards to be followed in preparation of the Housing Plan. This portion of the decree specifies general categories of persons and households eligible for rental or purchase of units under the plan, establishes a priority system for eligibility to purchase or rent units, delineates the financial responsibilities of Federal and State defendants, and sets standards for the use of excess property acquired for use as freeway right-of-way but not used for that purpose.

In general, the Federal and State defendants are responsible for the funding, development, and implementation of the Housing Plan. Caltrans shall seek reimbursement for all project costs, and shall itself pay all ineligible costs including but not limited to housing project administration costs and overhead. Final budgets are subject to FHWA approval. HCD is empowered to interact directly with Federal defendants in any activity necessary for the implementation of the housing program.

Exhibit C: Employment Action Plan

The Employment Action Plan is comprised of three parts: first, requirements for contractors to hire female and minority employees, referred to as "employment goals"; second, requirements for contractors to utilize women and minority subcontractors, known as "minority business enterprises" (MBE's) and "women business enterprises" (WBE'S), respectively; and requirements that defendants utilize contractors and persons who reside or have businesses in the corridor area, referred to as "regional business preferences." The exact methodology for each of these programs is not specified in the decree, but the decree does list goals and describe institutions created to monitor and achieve the goals.

Equal Opportunity Employment Goals

The decree sets hiring goals for the work forces in each trade on all freeway and housing construction projects during specified time periods. Corridor-specific data is to be used to establish new hiring goals for the years following 1981. The decree also requires

Caltrans to establish apprenticeship and training programs and sets standards for enrollment in these programs.

Contractors on I-105 projects are to exercise "best efforts" to meet the goals, and to document these efforts. The decree establishes as sufficient ground for finding a bid or proposal non-responsive, failure to establish an affirmative action plan to meet the specified employment goals.

The decree also establishes the Century Freeway Affirmative Action Committee (CFAAC). CFAAC is responsible for six tasks: 1) overseeing activities and monitoring affirmative action compliance; 2) participating in goal setting; 3) participating in bid conferences; 4) participating in the contract award process; 5) monitoring contractors; and 6) recruiting MBE's and women to increase minority participation on the project. Members of CFAAC are to include representatives from Caltrans, FHWA, LA County Board of Supervisors, NAACP, NOW, the Mexican-American Opportunity Foundation, and the Governor of California. CFAAC is responsible for reporting its findings to the Court.

Minority Business Enterprise Program

The decree defines an M/WBE as a business which is at least 51 percent owned by one or more minorities or women and whose management and daily business operations are controlled by one or more such individuals. Caltrans is to set goals for M/WBE participation based on the number of businesses in the community that have been identified as capable of working on specific projects. Caltrans, with CFAAC's assistance, is to develop outreach programs to encourage, and technical assistance programs to assist M/WBE's.

Caltrans is responsible for certifying M/WBE's eligible to participate in the program. The decree describes the eligibility criteria, requires Caltrans to publish a list of certified MBE's, and explains how an M/WBE subcontractor's work counts toward contract goals.

The decree describes the process Caltrans must follow in awarding contracts, and outlines how M/WBE participation is to influence the award process. In general, bidders that fail to meet M/WBE goals and fail to demonstrate reasonable efforts are ineligible to be awarded contracts. Once a bid is awarded, the decree requires prime contractors to make good faith efforts to substitute another M/WBE if an M/WBE subcontractor is to be replaced. The decree

also describes duties of CFAAC and Caltrans regarding mandated pre-bid, pre-award, and pre-construction conferences.

Regional Business Preferences Program

The decree provides mechanisms to ensure that corridor residents and corridor businesses have maximum opportunity to participate in jobs created by the project. For example, contractors are not only expected to hire corridor businesses as subcontractors, but are also expected to patronize local eating establishments, supply houses, and caterers.

Exhibit D: Transit Station Locations

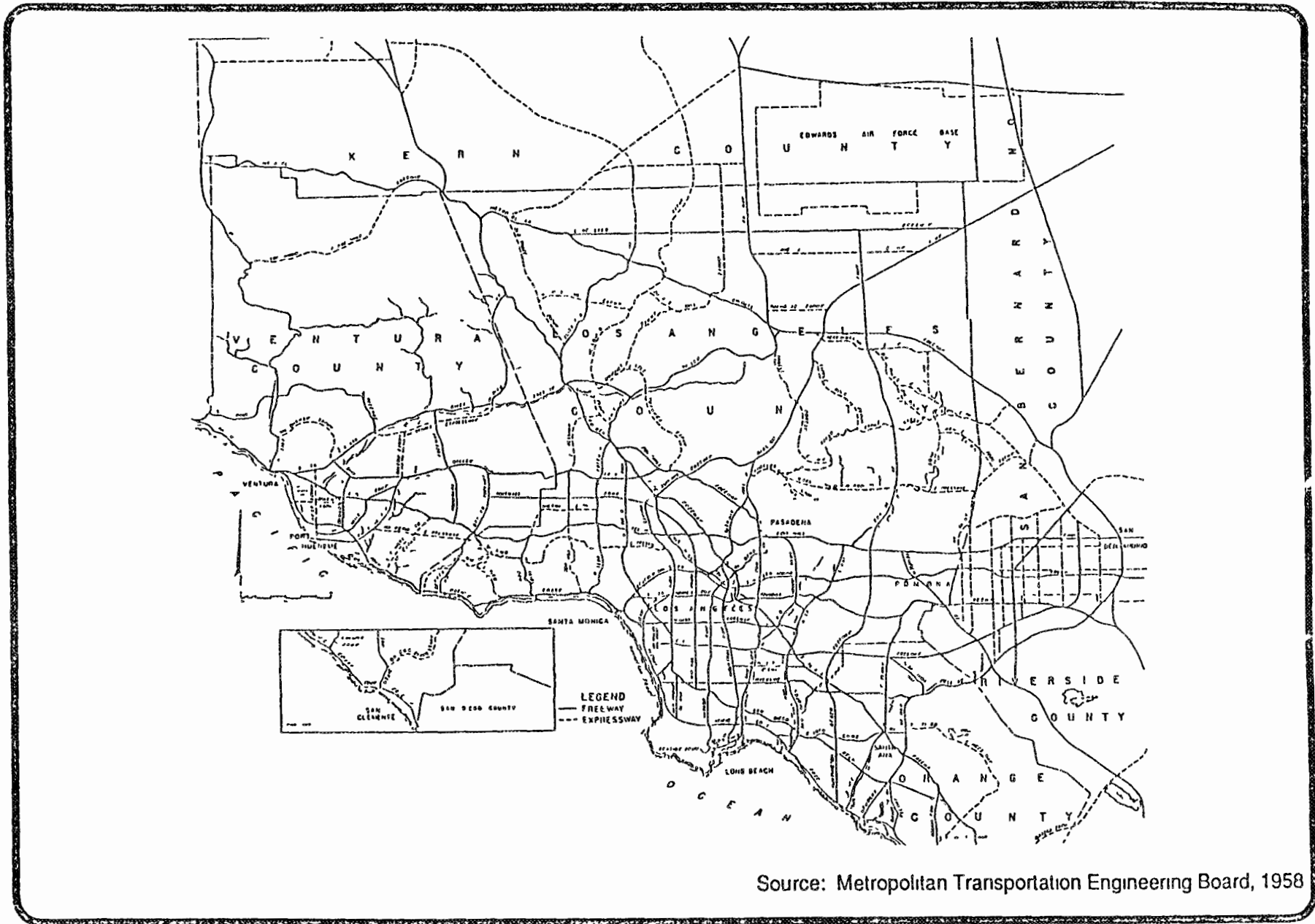
This exhibit graphically depicts the approximate locations of the ten transit stations along the corridor.

D. CRITICAL PERSPECTIVES ON THE EARLY HISTORY OF THE CENTURY FREEWAY AND THE CONSENT DECREE

1. Early Opinions on Route Adoption, Selection and Value

The early vision for regional transportation in the Los Angeles Area is illustrated in the Master Plan of freeways and expressways (See Figure II-1).

The Century Freeway route was a part of the freeway and expressway system adopted by the state legislature in 1959. The transfer of interstate funds from San Francisco's Embarcadero Freeway to the Century Freeway allowed the addition of the roadway into the interstate system. Both state and federal officials were enthusiastic about the Century Freeway, and they were attracted to the idea of replacing the Embarcadero in the system with the Century Freeway. The legality of the transfer and the addition of Interstate mileage to the already designated system posed an obstacle to substitution. The Century Freeway had many perceived advantages, but other states also had freeways they wished to propose for the system. Under then existing law, the Secretary of Transportation was obliged to consider all additional proposals competitively. In response to this dilemma, Congress approved the Howard Amendment of 1967; it implicitly confirmed the general legality of mutually agreeable interstate route substitutions: it provided the Interstate program with a 200-mile supplement for the



Source: Metropolitan Transportation Engineering Board, 1958

1958 Master Plan of Freeways and Expressways
Figure II-1

purpose of making such substitutions; and it gave the state which was relinquishing a route a limited preference when the relinquished route came up for redesignation (Schwartz, 1976).

Caltrans officials indicate that the transfer of funds to the Century Freeway resulted in part because the 105 was further developed and more closely met the Interstate criteria than others. Other potential projects were rejected:

"The Slauson Project was not as far along as the 105 as far as locating, completing, and planning studies....Plus it didn't ...connect directly into LAX. Which was a recognized need."

As well, there was a push from the Federal level to close the gaps in the grid system in Los Angeles.

Plaintiffs recognized the centrality of the Century Corridor, but argued that other planned roadways also served important transportation objectives. They cite political opposition that eliminated highways of higher transportation priority. One attorney for the plaintiffs voices a sensitive yet repeated opinion when asked why plans went forward on the Century as opposed to other proposed freeways:

"I can only guess. One of the guesses would be having to be where it was. This was generally through poorer neighborhoods where you can expect less opposition. You'll recall, prior to this time, there was a proposed...east/west freeway north of the Century, the Beverly Hills Freeway. That was defeated and eliminated from the map. Well, I don't think it's a coincidence. I mean, the difference between the political clout of Beverly Hills and Watts, Willowbrook, Lynwood, Downey and Hawthorne is considerable. So I suspect this was kind of a course of least resistance from Caltrans' perspective."

Caltrans interview respondents indicate that the original purpose of the Century freeway was to move traffic along an east/west corridor serving Los Angeles International Airport. They emphasize that this freeway is one small part of a freeway grid serving the Los Angeles basin and is not perceived to be more important than any other freeway. Numerous freeways comprise the network and the operation of any of them will affect the system more or less equally. However both Caltrans and Federal Highway Administration officials see the Century as a critical link in the system.

Non-Caltrans respondents support the notion that the purpose of the freeway was to provide an east/west connection to the airport; however, several also stress that the state may have been looking for a place to spend Interstate highway funding.

The factors influencing state freeway selection thus are differently understood by respondents:

"Beverly Hills just boom, zapped that thing in a second. The Laurel Canyon freeway is another one that commands political opposition to it not based on any transportation sense or justifications, but just raw power. Others too, up and down the state. As these freeways of higher transportation priority got deleted, the Century kept moving up. There's nobody down there in the south central Los Angeles area. Watts/Willowbrook, the communities that the freeway transgressed, have no political clout or influence or capacity to go to Sacramento to say, "We don't like this freeway or if you are going to build it you've got to take into account the effects on our communities..." (Seminarist)

Respondents also have quite different views of the factors influencing route selection. When asked what political, transportation, or economic factors affected route selection, Caltrans respondents refer to the resistance of Hawthorne to sign a freeway agreement and the local opposition in Norwalk resulting in the termination of the freeway before the 605. They indicate, and local official respondents concur, that when adopting the route for the freeway, the State tried to work with the local officials to agree with a mutually acceptable alternative.

The City of Hawthorne's refusal to sign a freeway agreement proved to be a successful means by which to change the alignment of the freeway. Many people in Hawthorne objected to the original alignment because it "would have cut the city in two." Hawthorne officials interviewed for this study indicate that local opinion about the freeway became more favorable after the route was changed. The majority of city officials interviewed indicate that the freeway will provide a benefit to transportation which will be distributed over the corridor. Their rejection of Mayor Bradley's efforts at trading highway funds for mass transit confirms their support for the project.

Delay is a major factor in city officials' assessments of the economic value of the freeway. While they cite a potential boon for commercial development around the interchanges, they blame the delay associated with the injunction for a period of negative impact, because property tax revenues decreased and planning was not able to move forward.

During the litigation Caltrans rethought the importance of continuing with the freeway. An April 11, 1974 memo to file, indicates that consensus had been achieved at the headquarters level, that the Century Freeway should proceed, even in light of the potential (under the 1973 Federal-Aid Highway Act) for deletion and substitution to mass transit. In 1977, the California Office of Planning and Research released a memo outlining a strategy to be employed if the

project continued to be stalled in court thus jeopardizing the availability of federal funds. This analysis was requested by the Business and Transportation Agency which recognized that some kind of transportation facility was needed in the corridor (memo from OPR to Business Transportation Agency, 7/12/77). The memo recommended a State declaration of intent to complete the project as presently designed; it also discussed a contingency joint effort to develop (with local agencies) a list of alternative projects. The effort would include a package of corridor traffic improvements; local street, highway and transit improvements; a regionwide transit development program; and an economic development component serving the transportation needs of the corridor and the region (memo to Mike Fischer from OPR, 7/12/77).

2. The Influence of Political Administration in the Development of the I-105

We hypothesized that the State's treatment of the Century Freeway project might be a function of political administration. We based this thinking on the general notion that the administration of Governor Edmund G. Brown, Jr. would reflect an anti-Century Freeway position as a specific example of an anti-freeway and what was characterized as a "small is beautiful" governmental philosophy. And we further hypothesized that the Deukmejian Administration might be more predisposed to rapid implementation of the freeway project. These generalities proved to be too simplistic.

It is true that Caltrans respondents overall saw the Brown administration as opposed to freeway development in general and the Century Freeway in particular. But, as told by our respondents, the treatment of the I-105 project by the Brown administration was influenced by several factors and cannot be characterized as unequivocally negative toward the project.

Many Caltrans interviewees did see an anti-Caltrans attitude in the high offices of the Brown administration and a disapproving attitude toward the Century Freeway project. Descriptions ranged from "generally not enthusiastic" to "very negative." And some cite a statistically verifiable down-turn in highway construction during Governor Brown's tenure which they relate to anti freeway attitudes. But this conclusion does not translate in the minds of interviewees to outright attempts to delay or stop the Century Freeway. And respondents differentiate the attitudes of Caltrans Director Gianturco and her ultimate boss, Governor Brown.

Both Governor Brown and Director Gianturco were described as generally opposed to freeway construction as an answer to the State's transportation problems:

"I don't think there's any secret that...both Governor Brown and our director, Adriana Gianturco, were fully tuned into basically where we are today, that you can't build your way out of the transportation mess.... You've got to use an integrated multimodal approach....It's time we started diverting some of that money to other modes of transportation so we can develop a system. Since we've focused so much attention up to this point, we need to cut it off and just maintain what we have and get out there and start developing something else. Now that might have been a little too abrupt...And I think that turned a lot of people who were highway oriented off."

Many respondents, however, distinguish Governor Brown's pragmatic and political response to that of Ms. Gianturco which can generally be summarized the way she did herself:

"There's a broader question: we saw our freeway development in Los Angeles, as elsewhere, as being a part of a broader problem which was how do you provide for the movement of people and goods in an environmentally compatible economically reasonable manner. And there was no presumption on our part that freeways were the best way to do it. If anything, the presumption was that the transportation system was too heavily dependent on highways and automobiles and that if we were to fulfill the legislative mandate to create a balanced transportation system it meant we needed to start devoting attention to other modes of transportation to bring them into some kind of balance with highways."

Ms. Gianturco attributed part of her reputation to two items: depiction by a politician that she "had been involved in stopping freeways in eastern Massachusetts" which she said she "had absolutely nothing to do with" and the unfortunate timing of her assuming office at the same time that the infamous diamond lane on the Santa Monica Freeway was begun:

"There was a second thing that was important in the creation of that as a reputation and that was the fact that the day that I became director of Caltrans was the same day that the diamond lane on the Santa Monica Freeway started in operation and so I was indelibly linked with that project. And I was its chief defender, even though I had nothing to do with instituting it...I got on the wrong side of that issue politically, I guess."

Others outside of Caltrans concur:

"Everyone would argue that she just stopped everything. But I think the truth of the matter is, it was somewhere between her desire not to do some of these things and the fact...we didn't have a lot of money. And so, we were always trying to figure out what to do with the limited sources, with the limited supply we had. And you were forced to do funny things, because you would do a federal project because you could get 85% or 90% funding even though there was a state project that was clearly more desirable to do, but we didn't have the money for it."

And others observe that even if Brown and Gianturco may have been like-minded philosophically, they reached their positions independently: "She had no access to the governor's office. She had no access to Gray Davis' office. She'd like to tell the world that she was carrying out the governor's daily direction. That's so much bullshit."

In fact that is not what she told the world in our interviews: "I did everything I could to speed up these things, not that I was in favor of the Century project, because I recommended against it. But in terms of trying to slow it down, that was never my intent or Governor Brown's as far as I know. He never talked to me about the Century Freeway until fairly late in the game."

Thus the Brown Administration position on completion of the Century Freeway reflected several different Administration objectives:

"Brown asked me specifically what I thought, and I told him that the best solution was where we were then, to get out of the mess we were in, which was years and years and years of what I felt was a really bad situation--a lot of right of way had been purchased and we were in the process of trying to maintain the right of way the best way we could and [it] really did hamper the development of the cities along the corridor as far as them proceeding with their master plans of development.

And I told him in my judgment...the best way to get out of it was to complete the freeway at that time. But, if we were starting from scratch, in knowing what the costs were at the time, that I would certainly question whether the building of the Century Freeway...was the best use of transportation dollars....And he eventually decided that was the thing to do. So I think the Brown administration wrestled with what to do."

Both Brown and Gianturco were seen as taking on a major force in trying to change attitudes toward freeway construction. Their opinions:

"were extremely unpopular...among many interests in the state....Not in the least, of course, were the highway builders whose trust fund, the highway trust fund was...really the source of bread and butter for their businesses...and they had very much come to look upon it exactly like that. That's their money. In spite of the fact, of course, it's taxpayers dollars. So for Jerry to want to hold back freeways in lieu of other types of transportation development was heresy enough. The fact that he was also talking about using some of this money to build replacement housing...that had been destroyed by transportation money...was even a more controversial measure. And then you had one third element...a lot of affirmative action...and clearly this was...ground-breaking stuff. This was a totally different way of doing business than Caltrans had been use to."

3. The Brown Administration's position in the negotiations of the Consent Decree

The specific role played by the administration in formulating and implementing the Consent Decree is a different matter. There exists a general opinion that people very close to Governor Brown were highly influential in directing the nature of the settlement:

"And my guess that Rypinsky was getting his orders from the governor's office—sit down and strike the best deal you can get with the Center for Law on the consent decree, and negotiate with them but don't come back to us and tell us you can't do it or you won't do it. And I just assumed that the consent decree was entered into as a direct order from the governor's office."

Other views of the negotiations also indicate that people in Caltrans at the highest levels were not making decisions on the nature of the settlement itself.

"We met up in the commission room on the second floor....And every demand that HCD and the plaintiff made—and HCD and the plaintiff were one, were arm in arm. That's what I remember. And it got so bad...we'd have to agree to whatever Phillips and Don Turner asked for. And then once we agree to that, they'd come back to the next meeting with more demands, and to the point where Adriana said...'Let's get out of here. We'll just let Dick Rypinsky take the orders.' And that's what happened. So it was not a negotiated thing. It was totally dictated, the terms of that consent decree....Everything that the plaintiff and HCD wanted they got. I remember thinking, 'gee, you'd think HCD was the plaintiff.' ...That's my big contribution to your report because I remember it well."

Specifically, with regard to negotiations on the housing elements: "Oh, we knew that we'd have to do a lot of replacement housing. Well under S1 at the time, there was housing as a last resort. And we had worked with FHWA and local communities, and were about ready to come up with a written agreement between these parties. Then we started meeting with Phillips and Turner and Silberman, and we were just told this is not going to be a Caltrans right of way program. HCD would get the whole thing. Adriana supported Caltrans. I have to give the lady some credit there."

¹ One interesting challenge in San Francisco led to the eventual allocation of funds to the Century Freeway. Although no legal challenge was made, citizen opposition to several freeways in the area during the 1950s was "vociferous" (Steiner, 1978). Neighborhood groups organized to contest proposed freeways on the grounds that they required too much property, degraded neighborhoods, required unattractive structures, and destroyed neighborhood business centers. On January 23, 1959, the San Francisco Board of Supervisors registered the

public sentiment in Resolution Number 45-59. The resolution voiced the board's opposition to the construction of all freeways proposed in the San Francisco Master Plan and resulted in the termination of several proposed links to the interstate system (Steiner, 1978).

² This provision is not included in the Amended Consent Decree.

³ The \$110 million dollar program was later adjusted to \$126 million. Also, in 1988, the consent decree was amended so that units constructed under the 110 program were transferred to the 1025 and 1175 programs. This action completed those programs.

CHAPTER III

IMPACTS: AN INTRODUCTION

This chapter describes the consensus, alternative scenario for freeway development had Keith v. Volpe not been resolved by the consent decrees of 1979 and 1981. It also provides some of the more global evaluations of the impacts of the Century Freeway project under the consent decree and of the Century Freeway as it might have evolved in the absence of the decree. In addition, this chapter presents highlights of the detailed analysis of the Century Freeway elaborated in the following chapters.

A. CIRCUMSCRIBING IMPACT ANALYSIS: DESCRIPTION OF THE COMPARISON PROJECT

We realized early in our study that the planners of the Century Freeway and the drafters of the consent decrees worked in the context of major changes:

- legal changes (e.g., environmental, transportation and housing law enactments, enhanced access to judicial review of administrative agency actions, codification of the gains of the civil rights movement);
- social changes (increasing environmental awareness, the so-called "freeway revolt", the public interest law movement);
- economic and political changes (adoption of President Carter's Urban Initiatives Program, changing leadership at Caltrans, decreased gasoline tax revenues because of the Arab oil embargo and the use of fuel-efficient vehicles).

In order to distinguish between the impacts of the consent decree and the impacts of the Century Freeway, we first had to separate out the impacts on the project of changes in society, politics, and the law. That is, we had to describe the Century Freeway as it might have been implemented had Keith v. Volpe plaintiffs and defendants not agreed to resolve the case through a consent decree.

We presented to our "elite respondents" in our first questionnaire the task of describing an alternative freeway development scenario (see Chapter I of this report for a description of the methodology used in the first questionnaire). The chart on the following page summarizes the Comparison Project and the actual Century Freeway.

Some highlights of the Comparison Project versus the actual Century Freeway:

- Groundbreaking for the freeway would have occurred four years earlier under the Comparison Project. It is unclear how the Reagan administration's economic reassessment of all federal aid highways would have impacted the Comparison Project. The Comparison Project would, however, have been under construction for over two years before President Reagan's inauguration.
- The Comparison Project would not have required nor been impacted by ongoing supervision by the court. Judicial scrutiny of the construction of the Comparison Project would be ad hoc, identical to that extended to a typical freeway construction project.
- The entire route of the Comparison Project would have been opened some six years prior to the projected opening of the actual Century Freeway (1987 versus 1993). The duration of construction would have been nine years for the Comparison Project, as contrasted with a projected eleven years for the actual Century Freeway. The difference of two years is the delay attributed to the consent decree.
- The routing of the Comparison Project is the same as the actual project, but the Comparison Project features some significant design differences. The Comparison Project would contain one additional lane in each direction, but would be missing the light rail line provided by the actual Century Freeway.
- The scope of the housing construction program in the Comparison Project is significantly smaller than that of the actual Century Freeway. Five hundred units would have been constructed under the administration of Caltrans in the Comparison Project, while the actual Century Freeway anticipates about 3,000 units implemented with HCD as the lead agency.

SUMMARY OF SIMILARITIES AND DIFFERENCES BETWEEN THE COMPARISON PROJECT AND THE ACTUAL CENTURY FREEWAY

	ACTUAL CENTURY FREEWAY	COMPARISON PROJECT
FREEWAY CONSTRUCTION PROCESS		
a Additional public hearings would have been held after issuance of the 1972 Injunction	yes	yes
b Formal Environmental Impact Statement (EIS) would be prepared	yes	yes
c Groundbreaking would have occurred in	1982	1979
d. Ongoing oversight of project by the court	yes	no
e Number of separate construction projects	more than 80	about 20
f Freeway opened to traffic	only after entire route completed	as segments are completed
g Entire route opens in	1993	1987
FREEWAY DESIGN		
a Route features bell-shaped curve around Hawthorne	yes	yes
b. Number of lanes for mixed flow traffic	6 lanes	8 lanes
c. Number of high occupancy vehicle (HOV) lanes	2 HOV lanes	2 HOV lanes
cl. Mass transit	rail built concurrent with freeway	median permits future rail/busway
e Number of local interchanges	10	16
HOUSING		
a Number of replacement units constructed	about 1,000	about 500
b Number of additional units constructed to replenish housing stock in affected communities	about 2,000	none
c. Lead agency for implementation of housing program	Dept. of Housing & Comm Dev	Caltrans
d. Federal highway trust funds used for replacement housing	yes	yes
e Federal highway trust funds used for replenishment housing	yes	not applicable
f Establishment of a separate agency to represent the interests of Century Freeway displacees	yes	no
TRAINING/EMPLOYMENT/AFFIRMATIVE ACTION ISSUES		
a Establishment of pre-apprenticeship training programs for potential construction workers	yes	yes
b Project requires contractors to utilize corridor businesses and residents	yes	no
c Establishment of a center for Century Freeway employment	yes	no
d. Establishment of technical assistance programs for minority and women-owned businesses	yes	yes
e. Establishment of a separate agency to provide an outreach program for potential female construction workers	yes	no
f Establishment of a separate agency to monitor and enforce compliance with affirmative action procedures for Century Freeway construction and employment	yes	no
g Goals for women and minority subcontracting and employment would exceed existing federal goals	yes	no
h. Establishment of a local Caltrans Civil Rights office to monitor affirmative action compliance	yes	no

- The Comparison Project would not have involved an Office of the Corridor Advocate to represent those displaced by the freeway.
- Affirmative action programs in the Comparison Project would be similar in kind and amount to those routinely implemented by Caltrans. Goals for minority and women subcontracting and employment would have been set and enforced by the Caltrans civil rights unit in Sacramento. Goals would have been the same as those required under extant federal regulations for federal aid highway projects. An independent monitoring and enforcement body like CFAAC would not have been involved in the Comparison Project, nor would Caltrans have included in its local organization the District 7 Civil Rights Branch. No special provisions requiring participation by corridor businesses and residents would have been operative under the Comparison Project.

The summary chart provides more details on the differences between the Comparison Project and the actual Century Freeway.

B. SOME SUMMARY INDICATORS

Both the second questionnaire and our in-depth interviews probed general costs and benefits, general advantages and disadvantages of the consent decree. In this section, we present data on some of these summary indicators.

1. Satisfaction with the Project's History

Overall, respondents indicated that they were dissatisfied with the history of the Century Freeway. Local officials indicated that they were the most dissatisfied, while respondents from Caltrans' "opponents" in decree implementation (plaintiffs, CFAAC, the Advocate, etc.; see Chapter IX on interorganizational issues) reported being most satisfied.

"I am satisfied with the history of the Century Freeway"

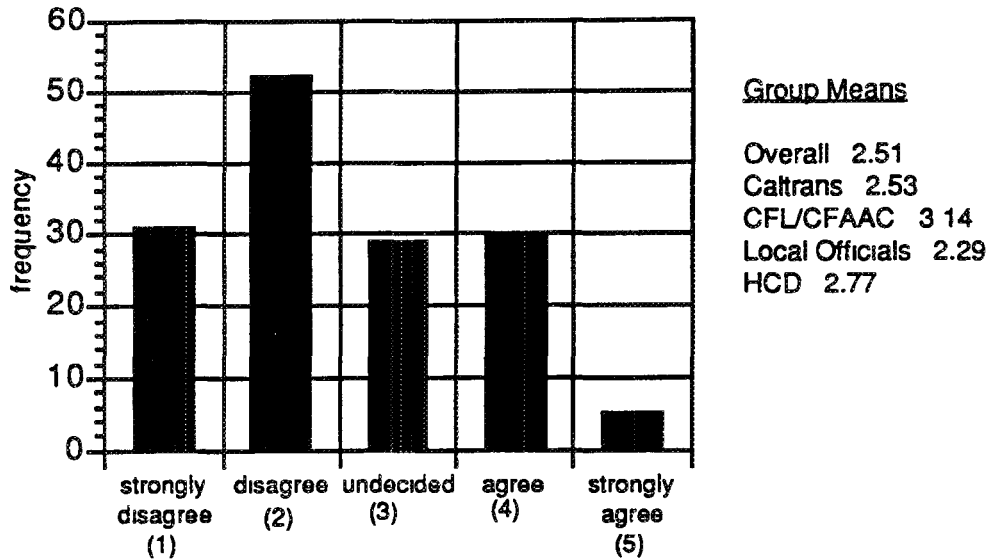


Figure III-1

We found a significant negative association between satisfaction with the freeway's history and level of emotional involvement in the decree's implementation ($r = -0.31$). In other words, the more a respondent was emotionally involved in the project, the less satisfied the respondent was with the freeway's history. We also detected a trend in the same direction between satisfaction and degree of professional involvement (-0.12). That is, the more professionally involved one is in the decree's implementation, the less satisfied one is with the history of the project. We found no relationship between knowledge of the freeway's history and satisfaction with the project's history.

2. Assessment of the Freeway, Housing, and Affirmative Action Components

We posed a series of questions asking respondents to weigh the benefits of the three most fundamental components of the project under the consent decree against their respective costs: the design and construction of the freeway itself, the housing program, and the affirmative action program.¹

Assessment of the Freeway Itself

A majority of respondents felt that the benefits of the Century Freeway's construction outweighed its costs. We found significant differences in how organizations balanced these costs and benefits.

"The benefits of the Century Freeway's design and construction outweigh the costs"

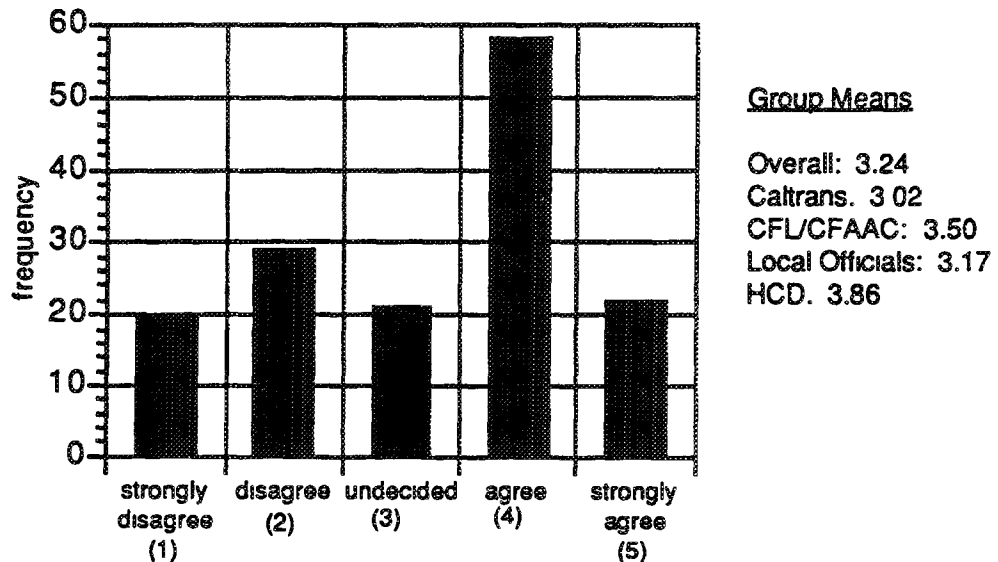


Figure III-2

Simply reporting the mean Caltrans response belies sharp intra-organizational differences on this item. As the figure below shows, Caltrans respondents were seriously split on the question of whether the benefits of freeway construction and design outweigh the costs.

"The benefits of the Century Freeway's design and construction outweigh the costs"--Caltrans only

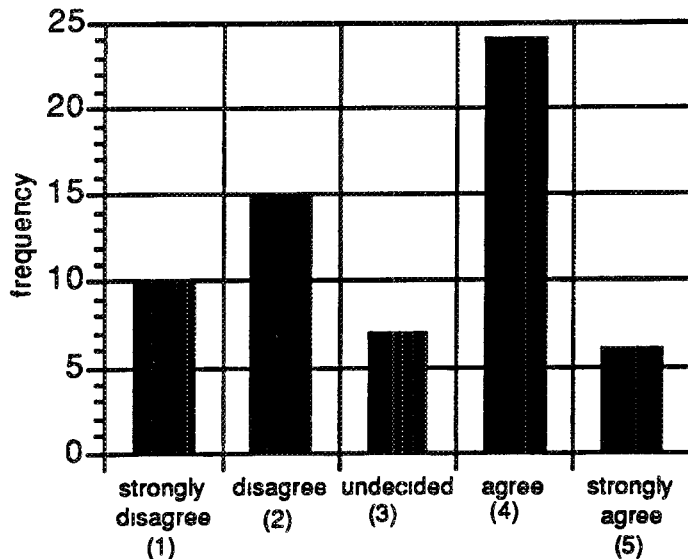


Figure III-3

We found no significant relationship between knowledge of the costs of construction and agreement that the benefits of freeway construction outweigh the costs. We also found no relationship between knowledge of the transportation components of the decree and agreement that the benefits of freeway construction outweigh the costs.

Assessment of the Housing Program

In comparison to the evaluation of highway costs and benefits, respondents were less likely to say that the benefits of the housing program outweighed the costs. Here again, we found that organizations differed markedly on their weighing of costs and benefits, with **Caltrans** and **local officials** being much more negative in their evaluations of the housing program than either **HCD** or **Center for Law/CFAAC** respondents.

"The benefits of the Century Freeway's housing program outweigh the costs"

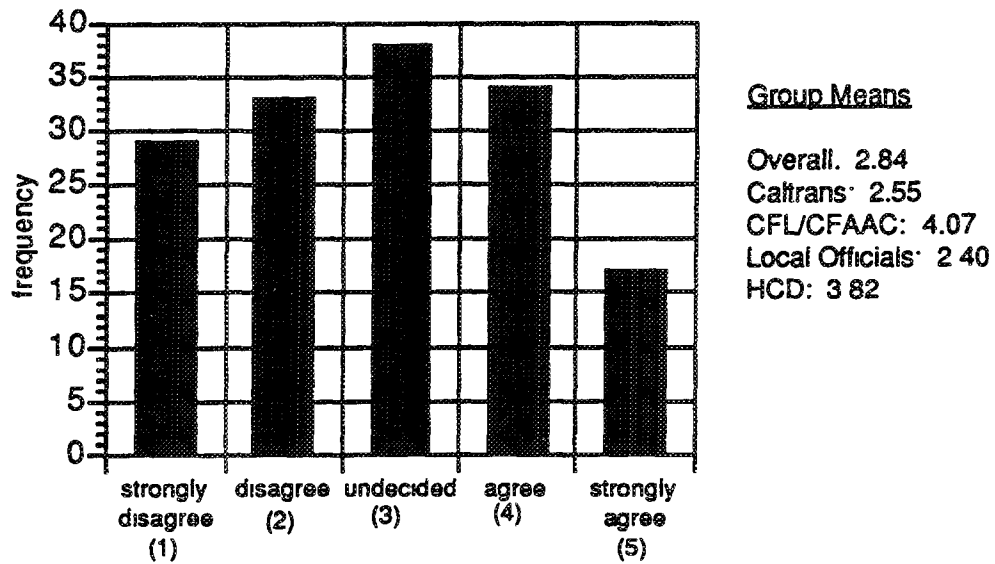


Figure III-4

We found no significant association between agreement that the benefits of the housing program outweighed the costs and either knowledge of the housing components of the decree or knowledge of the monetary costs of housing.

Assessment of the Affirmative Action Program

Overall, respondents evaluated the affirmative action program more favorably than the housing program. We found considerable differences among organizations. Caltrans and HCD were evenly split in agreeing that the benefits of the affirmative action programs outweighed the costs; Center for Law/CFAAC respondents almost unanimously felt that the benefits outweighed the costs; and local officials, although split, tended to feel that the costs outweighed the benefits.

"The benefits of the Century Freeway's affirmative action program outweigh the costs"

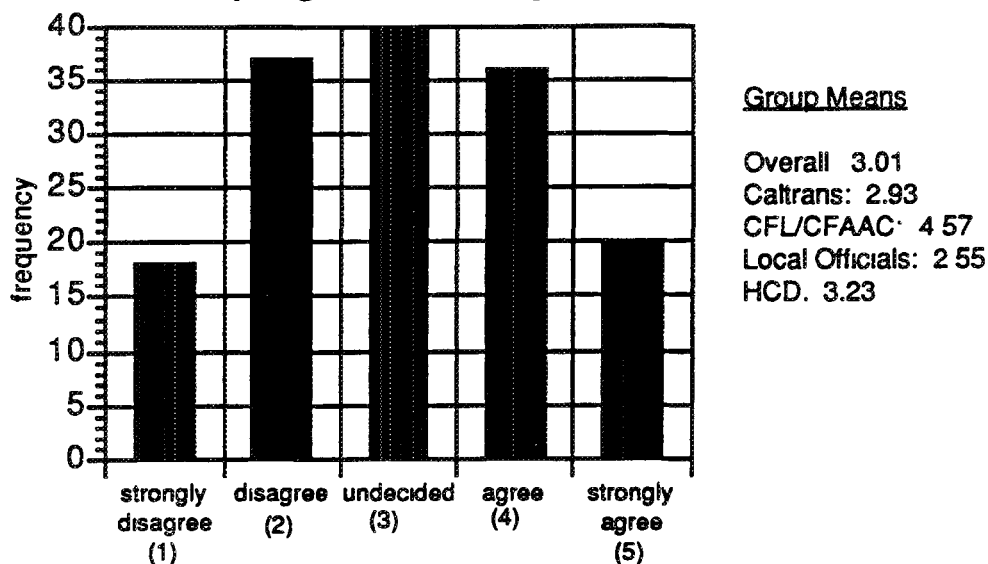


Figure III-5

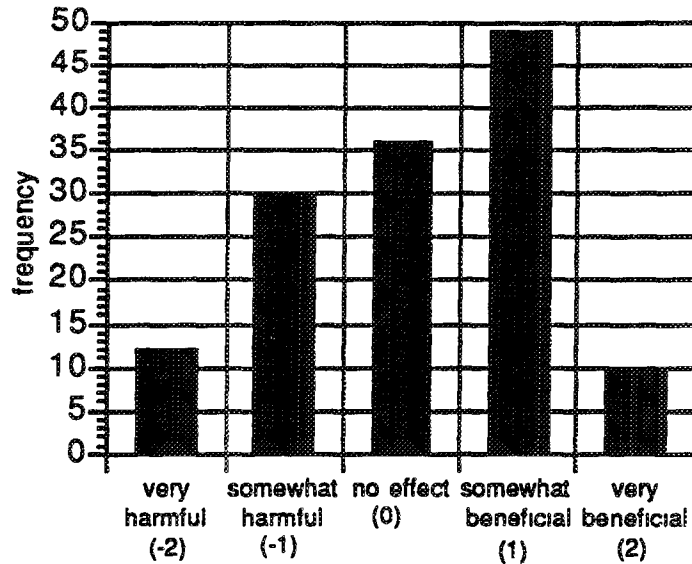
There was no relationship between either knowledge of the decree's affirmative action components or knowledge of the costs of affirmative action and level of agreement that the benefits of the affirmative action components outweighed the costs.

3. Long-Term Impacts: Actual Century Freeway vs. Comparison Project

Environmental Impacts

We also asked respondents to assess the overall environmental impacts of both the actual Century Freeway and the Comparison Project. Overall, respondents perceive the actual Century Freeway to be not only less environmentally destructive than the Comparison Project, but they also felt that the actual freeway has a net positive environmental impact. Respondents from all organizations except corridor cities found the actual Century Freeway to be environmentally superior to the Comparison Project.

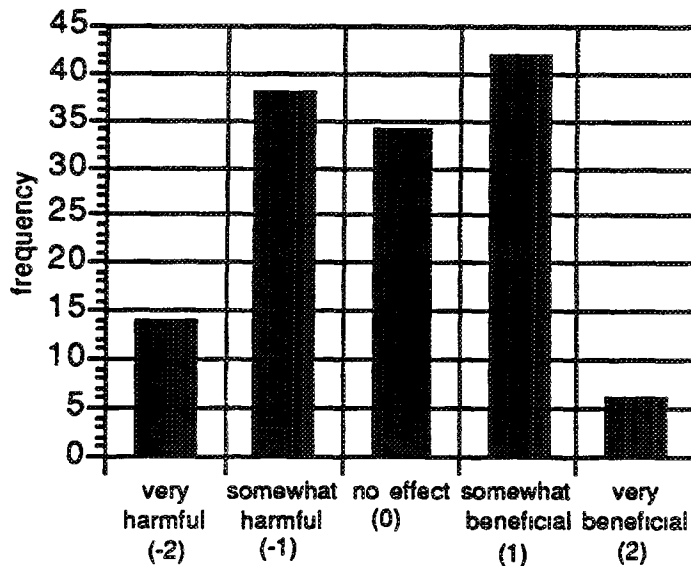
Overall Environmental Impacts-- Actual Century Freeway



Group Means
 Overall: 0.11
 Caltrans: 0.45
 CFL/CFAAC: 0.42
 Local Officials: -0.70
 HCD: 0.75

Figure III-6

Overall Environmental Impacts-- Comparison Project



Group Means
 Overall: -0.09
 Caltrans: 0.17
 CFL/CFAAC: -0.50
 Local Officials: -0.43
 HCD: 0.10

Figure III-7

Caltrans and HCD respondents perceived that both the actual and the Comparison Project would have a net positive environmental impact; local officials perceived both projects to have a net negative environmental impact; Center for Law/CFAAC respondents felt that the actual Century Freeway would have a net positive environmental

impact, and that the Comparison Project would have a net negative environmental impact. The absolute magnitude of the difference in environmental impacts between the actual and the Comparison Project is largest for Center for Law/CFAAC respondents.

Social Impacts

As was the case with environmental impacts, respondents overall associated the Comparison Project with a net negative impact, and the actual Century Freeway with a net positive social impact. And again, only local officials perceive the Comparison Project as the socially superior project.

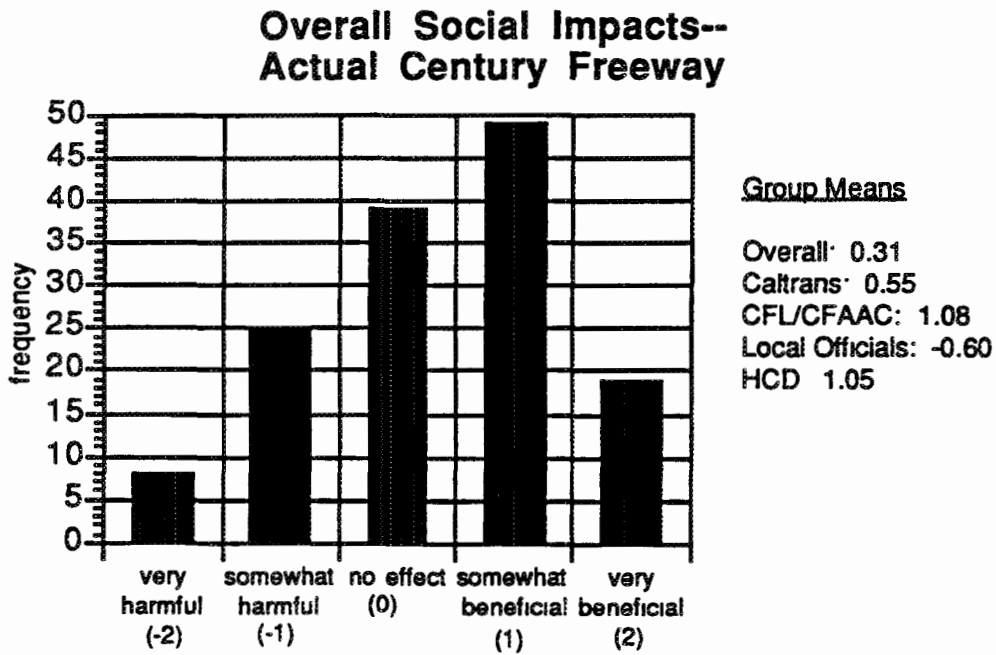


Figure III-8

Overall Social Impacts-- Comparison Project

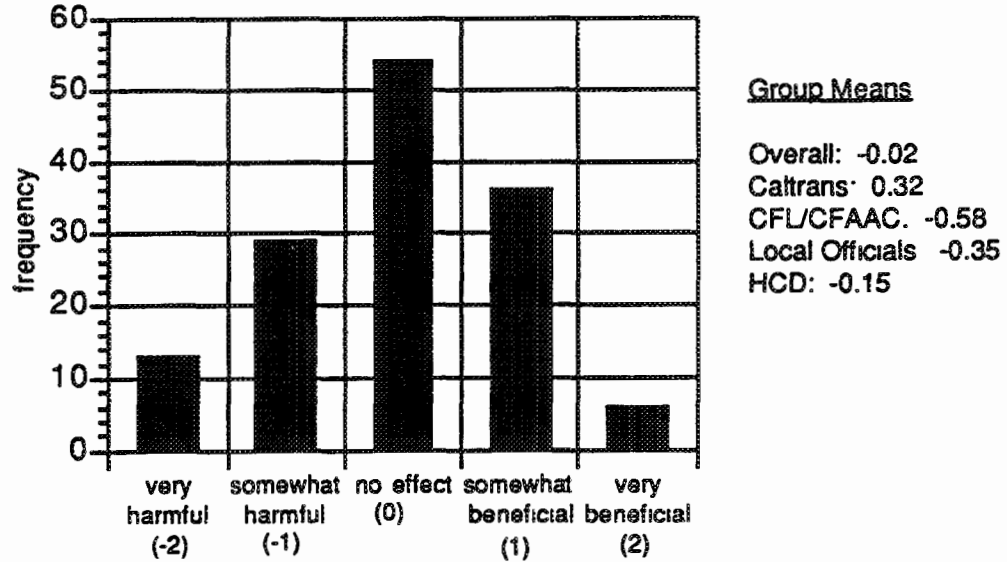


Figure III-9

Caltrans respondents were the only group to evaluate positively both the social impacts of the Comparison Project and those of the actual Century Freeway. Center for Law/CFAAC and HCD respondents perceived net positive social impacts for the actual Century Freeway and net negative impacts for the Comparison Project. Local officials negatively evaluated both the actual Century Freeway and the Comparison Project. Again, the greatest absolute difference in comparisons of the social impacts of the two projects was perceived by Center for Law/CFAAC respondents.

We direct the reader to subsequent chapters for additional results and analysis of responses to our second questionnaire. Rather than present these results in a chapter separate from the qualitative results of the in-depth interviews, we incorporate these questionnaire results in chapters devoted to corresponding substantive impact areas. For example, questionnaire items concerning procedural and administrative impacts of the freeway development scenarios are addressed in the chapters on organizational and interorganizational impacts (Chapters VIII and IX, respectively).

C. ELEMENTS OF THE DECREE IN THEORY AND IN PRACTICE

We next present some general findings about attitudes toward individual elements of the Century Freeway Consent Decree drawn from our interviews. We pay particular

attention to those elements which interviewees initially favored being included in the freeway project, but which in practice have fallen short of expectation. We also contrast the opinions of Caltrans interviewees with those of individuals from other organizations.

1. Transportation Elements

The Route

The great majority of interviewees approved of the freeway's route. But even at Caltrans, the location of the freeway was not universally approved. While the majority of agency respondents favored the route, others felt it a poor choice:

"I think the damn thing should never have been built, and I think it would have been better to have abandoned the project."

and

"If I could go way back and start all over again, I wouldn't have built it. But given where it was, the fact that the community had been disrupted for so long, I'd have to say that...it would promote the general welfare...But if we could go back and undo all of the disruption, I'm convinced, in my own mind, public policy and the general welfare would be better served by having nothing whatsoever and the money spent in another fashion."

Non-Caltrans respondents who had reservations about the route itself mentioned its impact on the minority community and the perceived illogic of ending the I-105 west of the I-5.

Freeway Design

A majority of respondents disapproved of the down-scoped project, but still felt that the freeway would promote the general welfare when operational; in the words of one Caltrans respondent, "six lanes are better than nothing." Caltrans interviewees who opposed the six lane result cited inadequacy of service which they associate with the scaled-down size.

Non-Caltrans respondents were somewhat mixed in their evaluations of down-sizing but generally much more supportive than Caltrans respondents.

Light Rail

Caltrans saw the addition of a transit component as a compromise that was required to move forward with the project. People expressed their views of the transportation value of the provisions as "lukewarm", but were almost uniformly in approval with the inclusion of light rail.

Among the non-Caltrans responses which are most important is that of FHWA, where the reaction was mixed. One high level official stated:

"I was not going to be a party to have them claim rail out of highway funds. I did agree to allow them to have a choice if they were funding rail from other than highway. I agreed to design, to accommodate, to not cut them off if that was what they chose to go with."

Number of Interchanges

Responses here were similar to responses to the reduction in lanes. Interviewees generally felt that levels and patterns of traffic warranted more interchanges, but that ten interchanges were better than none. At Caltrans and in corridor cities there is general disapproval of the reduction in local interchanges. Opponents cited both negative impact on local arterial congestion and on economic development within the corridor. Interestingly, the other highway expert agency, the FHWA, was not of like mind:

"I agree with the concept [of ten local interchanges].....the only reason I pause...is because we were encouraging the spacing between the interchanges in urban areas of generally about two miles. This freeway facility's interchange spacing is about a mile and a quarter and so it is going to create some traffic operation problems and it runs up the cost..."

2. Housing Elements

The Housing Program in General

Most viewed the inclusion of the housing program in the Century Freeway project favorably. The housing program elements in the consent decree caused the greatest

distress among Caltrans people, even among those who were responsible for articulating the idea that provision of housing could be seen as a mitigation measure for the impact of freeway construction. A variety of concerns was expressed from philosophical opposition to the use of governmental authority to shift what were seen as legislatively provided for objectives of highway funding to equity concerns: "It's a positive thing to generate units...but the conferring of huge economic benefits on arbitrarily selected individuals is a very unhappy situation."

Even those who have been involved in the housing program itself express reservations in part because of the lack of clarity as to whether the goals of the housing provisions are to serve displacees or the communities in which replenishment housing will be provided. There is near uniformity of opinion that the methodology selected in Exhibit B to execute the housing program was inappropriate.

HCD's Role in the Housing Program

A slight majority of respondents initially favored the assignment of HCD as lead agency in the housing program, but a strong majority said that in retrospect, HCD's selection has run counter to the general welfare. The Caltrans reaction was quite strongly negative: HCD was described as incompetent and as having no track record in providing housing and little experience. Concluded one respondent: "I always said, if they could ever build a house, I'd eat it."

Center for Law interviewees acknowledged personnel problems which hampered HCD's ability to effectively implement the program, but cite exogenous factors responsible for the "bureaucratic nightmare" of the program:

"HCD has never had primary responsibility for the housing program....The reality is that they have had to deal with Federal Highways as well as Caltrans, and in Sacramento, an administration that has second-guessed them every time they went out to buy a pencil....That's not in the best interest of the program."

Some respondents felt that the program could have been effected more competently by other organizations, such as local cities, Caltrans, or HUD. Others, including a minority of Caltrans respondents, said that given the nature of the task and how the decree structured the program, no agency could have performed particularly well.

Use of Highway Trust Fund for Housing Program

The evaluation of the provision establishing payment for the housing program with federal funding generated a complex and qualified response from Caltrans people, with more respondents approving than disapproving. Some objected to any precedent-setting status which might be attributed to housing provisions on the I-105, but they recognized that the demographics of the corridor justified some special housing provisions. Some also recognized that the political environment at the time of the consent decree's drafting precluded the freeway project going forward in the absence of a housing program.

Interestingly, our sample of FHWA interviewees also approved of this provision: "I don't have any problems with that. The expenditure of highway trust funds is not all that pure--they are spending highway trust funds for all sorts of things, not just hard construction."

HCD respondents, while approving philosophically of the use of highway trust funds to support this portion of the Century Freeway project, argued that this particular funding strategy created problems:

"I think the program would have been more effective had it drawn from other sources of funds as well....But the problem was, because ninety two percent of the money came from the federal highway trust fund, there were the constraints that were imposed upon us (by) FHWA.... We could have effectively created the housing units, created the replenishment housing, done the rehabilitation through the use of non-profit housing development corporations and in conjunction with private developers without creating a project office and a bureaucracy..., but it would never happen as long as ninety two percent of the money came out of the federal highway trust fund."

The Advocate

Overall, a majority of those interviewed both approved of the advocate in concept and in practice. But the disapproval of this entity within Caltrans was strong and deep with few exceptions. Respondents were concerned that the office duplicates agency efforts, and that there was never a need for an Advocate in the first place:

"All over the state we have displacees. When they are abused, they have no problem with seeking redress for those abuses. They can

find pro bono law firms. They can find community interest law firms to turn to. They can find profit-making attorneys to turn to who will work on contingency fees. And we can't get away with abusing anybody if we wanted to. Never have and never will be able to get away with it. They have legislators to turn to. They've got a wide variety. So they don't need this oversight."

There was a minority position within Caltrans which approved of the Advocate:

"The Office of Right of Way, which would be involved in doing these kinds of things, had tended to be an advocate for the Office and an advocate for minimizing the costs of the Office in acquiring real estate and real estate transactions. The Advocate wouldn't care about that. The Advocate would care about making sure the people would get what was coming to them. So I think it's a good deal."

In large part because of personalities within the Office of the Advocate, there is also a concern that the Advocate has created an adversarial atmosphere in implementation of the decree and completion of the I-105. If the following statement of one of our interviewees is correct, the agency has itself to blame: "[Plaintiffs] wanted something more far-reaching, and I think the concept came from the guy that was chief counsel here at Caltrans at the time. And he espoused this and sold it to the plaintiffs in lieu of something else they wanted."

3. Affirmative Action Elements

Employment Provisions

The inclusion of the employment program for women and minority members enjoyed widespread popularity. Praise for actual accomplishments of the employment programs was more measured. Some pointed to the fact that while those actually employed benefitted, the project as a whole suffered because it resulted in increased costs (particularly for the housing program) and resulted in delays. Others cited disappointment that the programs promised more than they were able to deliver.

The employment action program for women and minority members raised some of the greatest concerns in Caltrans. But while respondents identified legal and policy difficulties with the program, Caltrans interviewees generally supported the concepts upon which it was based.

Subcontracting Provisions

Like the employment provisions, the subcontracting provisions were generally viewed by respondents in a positive light. The condition making ineligible contractors who fail to demonstrate reasonable efforts to reach minority and women subcontracting goals was a particularly troublesome part of the consent decree for Caltrans respondents. Although they supported the program in concept, a minority of interviewees was concerned about its costs and complexity of the program, especially with regard to substitution. Others felt that subcontracting goals were too high, and led to overextension of some M/WBEs and use of subcontractors of marginal quality. Perhaps the reason for their ambivalence was the recognition that the law--independent of the Century Freeway case--was evolving in the direction of the concept included in the consent decree provisions.

CFAAC

The evaluation of this organization within Caltrans is very negative and the feelings are widespread and deep. There is nonetheless a strong minority view that sees the concept of the CFAAC as worthwhile and necessary. One reason for approval was articulated as follows: "At the present time the arrangement is working pretty well, though, you know, it continues to be a pain in the neck for the bureaucrats. That's not necessarily a bad thing." CFAAC respondents acknowledged the sometimes adversarial nature of their relationship with Caltrans.

A major concern evolves from the perceived delay caused by the CFAAC review process. At one point in the I-105 history as remembered by a Caltrans employee: "we were running at an average of 90-120 days between advertising and award which was just absolutely unacceptable and insane." The goal was to change that period to 45 days and this respondent said that has been generally accomplished. (We do not independently confirm this observation.) Another major complaint from Caltrans is that the services CFAAC provides are duplicative; but both Caltrans and others recognized deficiencies in Caltrans own monitoring and enforcement of affirmative action regulations, both when CFAAC was originally formed and continuing to the present.

Perhaps surprisingly, CFAAC interviewees themselves are opposed to the creation of the organization in its existing form. "I felt it was too little...the

processes...the various steps for appeal. I felt we needed to have more clout; otherwise, we're just a paper tiger." Some Center for Law interviewees made a similar assessment of CFAAC's relative impotence: "It (CFAAC) acts and Caltrans says, 'Too bad.' CFAAC appeals. Caltrans overrides the appeal." FHWA observers are mixed in their evaluations; those who oppose focus on the impact of the alleged duplicative monitoring of construction contracts.

4. Attorney's Fees

Other than Caltrans respondents, interviewees tended to approve of payment of attorney's fees to the Center for Law in the Public Interest. Caltrans respondents often had a very strong negative evaluation of this provision. While Caltrans respondents recognize the value of the concept of awarding fees to a prevailing public interest party, they are "outraged" at the ongoing nature of the payment schedule:

"I think John Phillips and company have really captured a golden goose here. There's no question that they deserve a lot of credit for the identification of the community need and for the opportunity to address that need and have served their constituency well by delivering genuine economic benefits. They've also gotten rich out of it. For example, in the past year we paid \$395,000, notwithstanding the fact that all the legal work has been done."

This same respondent also was among a small minority who appreciated the value of Caltrans' funding for displacee and EEO requirements: "Caltrans management remains rather resistive and resentful in this area viewing these expenditures as an unjustified diversion of money that could otherwise be spent on concrete...The fact is that by ourselves we would not have addressed these problems. Well, I'm speaking too critically. I've forgotten that we were the ones who took the original initiative and started a replacement housing program."

Others in Caltrans approved paying fees to the Center during the decree's implementation, but cited "frustration" and "acrimony" arising out of fee disputes as adversely affecting the Caltrans-Center for Law relationship and, ultimately, implementation of the decree.

D. BENEFITS OF THE CONSENT DECREE

The generally identified major benefits of the consent decree varied with organizational affiliation but there was general agreement that the consent decrees had a positive impact on affirmative action policy and on the overall project review process by which presumably was meant the consideration of the various impacts at a freeway construction project.

1. Caltrans Perspective on Benefits

Several Caltrans respondents stated simply that there were no benefits to the consent decree. Those who identified benefits mentioned:

- The Housing Program

One respondent equated the housing provision with a mitigation measure common to advanced environmental law: "I came to believe that if we're going to replace habitat...for waterfowl or ducks or turtles, that we should really think about replacing habitat, affordable habitat, for people because our typical replacement housing payments don't result in replacing affordable housing in a community. "

- The Decree Allowed Completion of the Century Freeway
- The Decree Provided for Mass Transit
- The Decree Applied a Comprehensive Review of a Public Works Project (with increased sensitivity to the social and environmental costs of freeway construction)
- The Decree Provided Employment and Training Programs
- The Decree Provided General, Non-Quantifiable Benefits for Minority and Female Employees and Businesses

This perception expressed below is reflected elsewhere in this report:

"It has no effect except in a negative context on Caltrans. Insofar as the positive effects on Century, and it's had a few, especially on the affirmative action....The contractors do have higher minority business participation, higher women business participation, and probably higher minority and female employment. Regrettably, nobody can give you honest statistics to show any of that."

The respondent also argued that the consent decree "probably helped Caltrans from the context that the very high attainment levels of minority business have helped Caltrans counteract the general less than effectiveness of civil rights. So if they didn't have the Century Freeway to rest on, they wouldn't look quite as good in minority business use."

2. Non-Caltrans Perspective on Benefits

General benefits of the consent decree cited by non-Caltrans interviewees included:

- The Decree Represents Compliance with Environmental Law
- The Housing Program
- Creation of a Model Program which Provides Needed Training, Employment, and Subcontracting Opportunities
- Actual Increases in Women and Minority Subcontracting and Employment
- Application of a Comprehensive Review of a Public Works Project:

This was a widely appreciated impact. As one local official summarized:

"I think the major benefit is socializing the whole system... at the federal level, the state level, all the way down to local level. It was the forerunner of the kind of consensus building and interaction among all the segments of the constituency...ranging from the guys who even provide material, guys who build, guys who plan, state interaction when you acquire land. How you deal with people who are displaced. The whole system got socialized in a different way so that you won't have any of this kind of work done without people thinking of these points that have been raised in this consent decree process."

- Delay

Some saw delay as a benefit:

"I think there's a benefit here in delaying this....had we not intervened this thing would have been built, what, ten years ago? I don't know how long we delayed it. And had we...not...they would have been off doing another freeway...I don't know of any other freeways that are being built in the L.A. basin. So in a sense, while we didn't stop this one, we stopped every other one...These are dinosaurs. They shouldn't be built."

3. The Distribution of Benefits

The identities of the beneficiaries of the consent decree raised modest concerns for most of the respondents.

Caltrans respondents generally felt that the beneficiaries of the consent decree were minority and women employees and subcontractors [and the agency itself]. However, respondents feared that beneficiaries were not and will not be those people who were harmed by the I-105 project. Nonetheless, interviewees concluded that the analysis of beneficiaries was complex and merited further study. Interviewees classified benefits into several categories. One high level official summarized: "Perhaps some of the displacees [were benefitted]--I think there were probably a lot of people helped by the advocate in dealing with Caltrans. I don't think the affirmative action committee had much help for the community as such, but did for minority and female interests in total."

Another who concluded that those who were harmed by the freeway/transitway were not the same groups as those who would benefit put his conclusion in strong terms:

"...there is a missing link as far as I am concerned. I think about the guy who is next door to the freeway who lived through ten years...of hell, that jungle over there on the other side of the street, whose property value went down and who probably hasn't gotten a thing out of it. who is living through the noise and the dust of construction, all that disruption to his family and his home. And what was he paid? He has got another three years of toughing it out before he gets fenced and planted and settled down. So I think there is a big delta there, a loop that doesn't get closed."

Some of the non-Caltrans respondents put the question into a social context which makes the analysis of benefits and beneficiaries more complicated: A CFAAC respondent described a reaction of corridor residents who have not benefitted from construction employment opportunities: "People resent that. It's bad enough you came here and tore down my community and now I can't even get a job on your crew."

On the other hand another CFAAC response was:

"I would have to say the groups they were intended to [benefit], the minorities and women as employees and as businesses [were actually benefitted].. Here again, if for nor more reason than it gave them a flag to carry and it helped them not be shy about pursuing what they're entitled to get. They're entitled to a fair chance to get

contracts and not be excluded or kept out of the process simply because of somebody's perceptions of them based on their gender and ethnicity. So it shored people up, gave them that confidence, that, what I'm trying to do, is worth trying to do. And there are other people who are there trying to help me do it. Even if they didn't get the dollars, or the work they thought they should get, or would get."

An FHWA interviewee argued that the analysis of benefits demands careful scrutiny. The interviewee used the housing example:

"You know, you work your life to get out of a community and move to a better community and they they come along and tear down. Like people up in the West end, Inglewood and Carson: they're not going to move back to South Central L.A. You don't know what it means if you live out by the section near the 405, and the only thing comparable they offer you is back over in South Central L.A., and you have two sons, twelve and thirteen years old, they may not live to see fourteen. There was no sociological thought put into the housing plan, and the people who were displaced were not the people that benefitted."

A colleague added a pragmatic effect which addresses the relationship between harm and benefit: "[w]e deal in real estate values which don't include intrinsic or sentimental values--this leads to dissatisfaction. But almost all people negotiate. We seldom have to condemn an owner occupied building."

A further complication of this relationship comes from the alleged fraudulent behavior of some beneficiaries: "Generally yes [those harmed are those benefitted]. But, see, some of these people coming in here are big crooks. You know, they're told in black and white and great big letters 'thou shalt not go out and get a second mortgage on this thing.' We must have at least fifty of the people that have gone and done that. You've got to--you know, without being a snob, you've got to recognize the class of people that you're dealing with in this mess."

E. COSTS OF THE CONSENT DECREE

The major costs of the consent decree cluster on housing costs; costs related to delays; and costs related to the creation of new organizations. However, the perceptions of costs, like those of benefits, range widely and there is little consensus on actual costs.

1. Caltrans Perspective on Costs

Caltrans respondents employed numerous ways of accounting the costs of the consent decree. The areas of concerns were:

- Extra costs associated with the housing program;
- Extra costs associated with payment of attorney's fees;
- Extra costs associated with delay and its effect on the costs of freeway construction;
- Extra costs associated with dividing construction into numerous construction projects—these take two forms: [1] higher actual costs associated with the larger number of engineering requirements, plans and administration of contracts and [2] costs associated with requiring contractors to work with subcontractors with whom they had not worked before; and
- Costs associated with support of organizations which would not exist absent the consent decree, including bodies internal to Caltrans, such as the District 7 Civil Rights Branch.

These costs need to be "devalued" according to one respondent because "to some extent the amount above what it would have cost theoretically is worth it because of the possibilities of benefit coming."

A local elected official also described this need for discounting costs:

"Had the state in its administrative procedures been fair and equitable, it would not have been grounds for court intervention in the first place. Probably the consent decree made a mark...as a symbol to transportation planners that environmental and societal impact in capital projects has to be part of that early scoping and configuration of expectations of what a project is going to do and how you are going to go about working with the California public...if there were additional costs...they were costs for public benefit and they should really be viewed as that."

2. Non-Caltrans Perspectives on Costs

CFAAC

- Costs of impact on physical land use planning in the affected communities.

- Estimated cost of \$15 million to fund CFAAC.
- Costs of attorney fees.
- Costs associated with the court's use of "ineffective" consultants.

Plaintiffs

- Plaintiffs recognized costs to the community linked to delays in the completion of the project: "Maybe increased shopping in their malls...and use of their off-ramps. And to the extent the delay cost them ten years, it cost them ten years of taxes, business license taxes and new property taxes."

FHWA

- \$50 million for administrative overhead expenses.
- Costs associated with the housing program.
- Increased right of way and construction costs due to inflation.

Corridor Cities

- Delay: According to one City Manager: "Extreme delay. I mean, god, '93 when it gets done? Is that a delay or is that a delay?"
- Costs associated with attorney fees.

HCD

- Costs associated with delay.

3. Questionnaire Respondents' Perspective on Costs

Furthermore, if we can attribute recognized costs of the actual Century Freeway project [in a comparison with the Comparison Project] to the consent decree, our second questionnaire identified several areas of cost concern.

First, for all groups the perception is that the monetary costs of the Comparison Project are generally much less than for the Actual Project under the Consent Decree. The five areas which were ranked most different in the comparison with regard to monetary costs are (in decreasing order of difference):

- Housing Replenishment
- Legal Support
- Affirmative Action Monitoring and Enforcement
- Project Administration
- Right of Way Property Management

Caltrans respondents indicated the following five areas where costs of the Actual Century Freeway were most different than costs of the Comparison Project:

- Housing Replenishment
- Affirmative Action Monitoring and Enforcement
- Right of Way Property Management
- Legal Support
- Corridor Maintenance

Excluding Caltrans and FHWA respondents, these five areas were listed by the remainder of respondents as most different in terms of monetary costs:

- Affirmative Action Monitoring and Enforcement
- Legal Support
- Housing Replenishment
- Housing Replacement
- Project Administration

More detailed results on the economic impacts of the decree are addressed in Chapter VII.

¹We recognize that dividing the project into these three discrete components is simplistic and neglects the connections, for instance, between constructing the highway and the affirmative action program. These connections are explored in considerable depth in subsequent chapters of the report.

CHAPTER IV

THE CONSENT DECREE: PRIVATIZED LAW-MAKING OR RESPONSIVE POLICYMAKING?

A. INTRODUCTION

The vehicle used to change the history of the Century Freeway was a consent decree. Some readers will be very familiar with the Century Freeway consent decree, a member of a group of legal entities about which relatively little may be known. Consent decrees are very common. The exact incidence is not known but Resnik (1987 @ 46) reports that in 1985 of the 269,848 dispositions in federal court “15,661 were ‘consent judgments’ while 127,919 were ‘dismissals’ that include but are not limited to dismissals predicated upon consent.” The Department of Justice monthly lodges a half dozen to a dozen consent decrees just in environmental law cases (Environmental Law Reporter Update). Indeed under some law, the government must use the consent decree mechanism.¹ To understand the specific case of the Century Freeway decree, some background on the general case is helpful. This chapter is about the Century Freeway consent decree; but it puts that decree into a legal context for policymakers.

1. Our Approach in This Chapter

In this chapter, we first define consent decree and describe its advantages and disadvantages in dispute resolution as they are understood in public policy analysis. We then present the major milestones in the evolution of the Century Freeway decree. Following this, we evaluate the decree in several ways before turning our attention to the important functions that the role of the judge and judicial orientation toward a decree play in its ultimate efficacy.

2. Why is the Consent Decree of Interest to Policymakers?

First, understanding of the decree may assist policymakers in determinations of whether to use the device in conflict resolution in other circumstances. Of interest is: the extent to which it can vary with the parties involved and the circumstances of the case; the extent to which it can be made predictable; the extent to which it can be designed to protect identified interests; and the extent to which it can be controlled by the original parties.

Second, and specifically, to Caltrans, future projects, such as extension of the 710 Freeway, may be sufficiently controversial that a decision about conflict resolution and/or litigation will need to be made. Whether desirable or not to a particular administration, the consent decree will likely be suggested as a means of resolving controversies. Information about the potential of the decree should prove useful in the analysis of how to approach settlement if the decision is to enter a consent decree.

Third, from some perspectives on the Century Freeway consent decree it has been difficult to know what happened in its implementation. By understanding the general case, understanding of the specific case may result.

Fourth, through understanding of the decree, policymakers may be able to identify areas requiring change and reform in the public interest. To what extent is the consent decree a variable, rather than a legal device that can only appear in one form, at one time, sought by one type of litigant?

B. PUTTING THE CONSENT DECREE INTO CONTEXT

1. History 1: The Consent Decree as legally defined: and as a Public Policy Tool

The story of the Century Freeway, while idiosyncratic in many ways, is the story of the use of a public policy mechanism which has been much discussed, but little understood empirically. The questions raised in the literature, in the state houses and in the courts about the value of consent decrees in conflict resolution generally suggest why the Century Freeway consent decree has been controversial.

The consent decree involves conflict resolution by means of a process that is unique within judicial intervention.

A large public policy and legal literature exists on the consent decree. Consent decrees have been employed to address what some plaintiffs and activists see as the intransigence of numerous serious public policy problems: in attempts to reform Indian schools, prisons, educational financing systems and facilities for the de-institutionalized mentally ill and for the institutionalized retarded.

Most simply, a consent decree is an agreement formalized by the judiciary to settle a lawsuit according to principles agreed to by the parties. "Such decrees represent executive acquiescence in a form of litigation that departs from a model of judicial activity based solely on bipolar disputes over traditional private rights" (Shane, 1987 @ 292). A consent decree has been defined as a hybrid in the law, as it contains elements of both contract and injunction. Insofar as it represents an agreement of the parties in the settlement of litigation, it is a contract and its source of authority "comes from the statute that it implements" (Percival, 1987 @ 334). and its "force comes from the parties' agreement, not from the law that was the basis of the suit" (Easterbrook, 1987 @ 20).

However, the consent decree also embodies an injunction because the judge has approved the settlement and has ordered defendants to comply with it. [There is considerable uncertainty as to the extent to which a consent decree is an elaboration of equity powers or something distinctively different from the injunction which can be dissolved very rapidly.]

Resnik has written (1987 @ 43) "...those litigants who have terminated their lawsuit by a consent decree have a contract that is something more (how much more is not clear) than a 'private contract.' A judge has signed the contract, and that contract can be enforced as a continuation of the original lawsuit and, in other jurisdictions, as a judgment."

The exact meaning of a consent decree is the subject of some differences of view in the courts and in the legal literature. One Federal Circuit has distinguished between a "true consent judgment" ("all the relief to be provided by the judgment and all of the wording to effectuate that relief is agreed to by the parties" and a settlement judgment ("the parties have agreed on the components of the judgment...but have not agreed on all the details or the wording of the judgement [and]...the judge is obliged to determine the detailed terms of the relief and the wording" (as summarized in Resnik, 1987 @ 45).

Consent decrees can contain formal devices to monitor compliance which vary in the terms of their intrusiveness into the defendant's (often an administrative agency's) actions and in their effectiveness. The devices for monitoring can include elements as innocuous as retention of jurisdiction to full time appointment of a special master to oversee implementation of the decree (Jost, 1987).

These decrees often are, first, extensive as well as affirmative in what they require; second, they are administrative in character, setting up the courts as a new source of authority

and accountability or as the managers of public institutions. Third, they are legislative in the double sense of entailing fundamental alterations of policy direction and of frequently requiring augmentation of financial resources. Fourth, they necessitate continuing judicial involvement in their implementation and modification. Finally, often they have proved resistant to appellate review.

2. Advantages and Disadvantages

Whose advantage and disadvantage?

As with several elements in an analysis of the Century Freeway, defining what is an advantage and what is a disadvantage of the use of the consent decree depends on perspective; it requires taking the position of a plaintiff or defendant.

Because the agreement between the parties requires final approval by the court, it is entered as a judgment in many cases and the legal doctrine of res judicata precludes further litigation of claims covered in the settlement. The consent decree enjoys a presumption of validity and is rarely overturned. To an agency official who inherits the requirements of a decree (and who may disagree with the vigor with which a predecessor negotiated the decree) this rigidity certainly is a disadvantage. To a plaintiff who worries about the changing commitment to consent decree goals within a changing administrative agency, this characteristic might be labeled certainty.

In general, advantages described have been articulated based on a comparison with protracted litigation. To some extent that comparison begs the question in the Century Freeway case, for some observers have concluded that protracted litigation was not necessary. As one attorney for Caltrans put it with regard to the option of vigorously defending the original lawsuit: "I told my client on more than one occasion that we should duke it out."

Generally Recognized Advantages

Nonetheless, in this comparison advantages include:

- Use of the consent decree avoids the time, expense, and risk of a trial;
- It results in a detailed, far-ranging injunction;
- Because it is composed by the involved parties its implementation should be more feasible and its provisions should be more finely-tuned than one formulated by a judge;
- Defendants are more likely to comply with a consent decree they helped formulate;
- Consent decrees increase the probability of compliance because they create "useful vehicles for court control over parties" allowing the litigants "a right-of-return and preferred access not only to the federal courts but perhaps to the very judge who participated in the negotiation of, approves and, in any event, entered the decree";
- "Consent is a preferable basis for action because the parties are exercising their own powers, because the parties have better information than courts can ever have, because the parties may do voluntarily what they may not do under compulsion" (Resnik, 1987 @ 71);
- Use of the decree can provide one of two important advantages to defendant agencies: a) it can avoid judicial interference with the agency's preferred remedial plan; and b) "an agency may...avoid a judgment on the merits on a broad question of law that could be decided in a manner that would have an adverse impact on other agency programs" (Percival, 1987 @ 331); and
- Avoidance of the "Prisoner's Dilemma": "Consent decrees enhance the prospect of settlement by providing an efficient mechanism for enforcement of settlement agreements" (Percival, 1987 @ 334).

Generally Recognized Disadvantages

"Negotiation is conventionally perceived as a relatively norm-free process centered on the transmutation of underlying bargaining strength into agreement by the exercise of power, horse-trading, threat and bluff." (Shane, 1987 @ 274-5, quoting Professor Melvin Eisenberg)

Similarly, in the abstract, difficulties or problem areas with the use of the consent decree are several; some are legal and some are socio-legal.

- The consent decree circumvents the rule of law. By avoiding what some legal theorists consider the normal traditions of process established to adjudicate constitutional rights, the consent decree appropriates public power for private purposes. "Trial and judgment exist not just for the benefit of the parties, but are intended to serve public purposes, and thus cannot be waived or otherwise disposed of by the parties, and, if they have a basis in Article III or precepts of natural law as to what it means to act as a court, may even be beyond the reach of the legislature" (Fiss, 1987 @ 15). Resnik has noted that "(w)hen interpreting a decree, judges are to enforce the bargain made by the parties rather than the purposes of the legislation that gave rise to the underlying action."² Resnik characterizes the law on consent decrees as "ultimately muddy" after describing recent case law changes which she concludes raise several legal issues which now constrain judges in the entering and modification of consent decrees.
- A corollary of the above is the criticism that consent decrees bootstrap courts to powers that they would not have under existing law. However, the United States Supreme Court has held that "...to the extent the consent decree is not otherwise shown to be unlawful, the court is not barred from entering a consent decree merely because it might lack authority...to do so after a trial."³
- Consent decrees do not reflect the benefits of the true adversariness of adjudication: "...an agency's settlement may be shaped more by the agency's internal political agenda or by its responsiveness to an ongoing relationship with the suing party or parties than by a faithful, disinterested assessment of the most appropriate implementation of its statutory responsibilities" (Shane, 1987, @ 272).

- It is not legally clear whether public participation requirements are triggered by settlement by means of a consent decree. Should settling be considered a discretionary action, therefore subject to participation requirements of the Administrative Procedures Act?
- Consent decrees affect people who are not parties to the case who deserve an opportunity to be heard (Schwarzchild, 1984; Shane, 1987; Anderson, 1986). "It is not only that bargaining goes on behind closed doors, and thus is inaccessible to public scrutiny, but also that the bargaining is dominated by, and is conducted for the purpose of furthering, the interests of the parties who are in control of that process" (Fiss, 1987 @ 11).
- Similarly, consent decrees "bind successors in office, even though they have not consented to the settlement of the decree, and are not fully or adequately represented in the bargaining process..." (Fiss, 1987, @7).
- Consent decrees often require agencies to take action without appropriated funds.⁴ While "[f]ederal judicial authority to direct the expenditure of funds is strictly constrained," in practice a judge can state the option of implementing reforms, closing a facility or otherwise altering services in ways which practically require fund expenditure (Note, 1977).
- Consent decrees raise important issues of separation of powers. That doctrine in its simplest form reflects the constitutional assignment of differing responsibilities and authorities to the branches of government and protects the encroachment on a branch by another branch. The "categorical" model of the doctrine holds that "a fundamental aim of public administration is to confine Congress, the executive, and the courts, respectively, to three categories of tasks—making, implementing, and interpreting law" (Shane, 1987, @278). The consent decree, argues its detractors, violates the separation of powers doctrine by allowing the judiciary to act in an executive and even in a legislative capacity through its far-ranging orders, sometimes not constrained by standards.⁵ The concern over this doctrine extends into three areas: enforcement of the decree; interpretation of the decrees; and entertaining requests for modification of decrees (Shane, 1987 @ 268).
- Courts, which speak the language of legal rights, are placed in consent decree oversight in positions of having to treat detailed remedies, costs and benefits (Note, 1977). Judicial identification of the administrative issues which relate to crafting a meaningful remedy is not easy.

- Consent decrees raise the question whether "a judge who helps shape a proposed consent decree can fairly adjudicate either the adequacy of the representation or the adequacy of the compromise itself...How can we expect a judge who helps fashion a settlement to be open to the possibility that the bargain made is not a good one—or is simply not one a litigant wants?" (Resnik, 1987 @ 97).
- More practical problems of formulation and implementation derive from the difficulty courts may have in determining who are the proper parties to negotiate consent decrees. Judges may indulge in several erroneous assumptions:
 1. Plaintiffs have discernible, homogeneous interests;
 2. Defendants are officials of organizations with an identifiable and coherent structure;
 3. The relevant organizations are before the court;
 4. The defendant organizations have relatively consistent interests; and
 5. Plaintiffs and defendants are on opposite sides of the case.

A corollary is a concern with "the flow of information from all interested parties..." which is jeopardized by incomplete representation of parties (Lawson, 1983).

In making the above assumptions, courts often ignore patterns of administrative agency behavior that have been widely studied by students of organization theory and of bureaucratic politics.⁶

3. History 2: The I-105 Consent Decree

We have summarized the history of the decree in Chapter II. Provisions of the decree itself are also described in Chapter II. Here we present a few important milestones in the history as perceived by interviewees as a means of helping to understand varying perspectives on the consent decree.

Plaintiffs' Goals in the Litigation

Some perceive that a key event in the history of the freeway was a change in plaintiffs' goals regarding the litigation from unequivocal opposition to any freeway to a pragmatic

willingness to accept some form of freeway in the corridor. This perception is most common among the defendant organizations. According to a senior Caltrans engineer:

"They stated it right up front at the beginning....We want to stop this project. We want money to go to transit....I think maybe the hand-writing was on the wall as far as they were concerned despite their efforts to kill the project. Even with the support of the Brown administration they were not going to do it."

Other Caltrans respondents perceived distinctions among the named plaintiffs:

"They intended to kill this freeway. They announced that this freeway would never be built, period. That is the attorneys. Now, the goal of the individuals who were named plaintiffs...was to enhance the compensation they would get for their homes....NAACP, I don't know what their role was. The national folks I don't think wanted to be involved in this at all...But the attorneys for the Center, they were the moving factor...And they tended to act as the party's litigant rather than the counsel...Did (the goal) change? Yes. They realized that they would never achieve that end....As years went by, I think they realized that the society in that area would not allow the freeway to die."

Our interviews with Center for Law attorneys handling the case prior to the consent decree indicated differences among them with regard to the goals of the lawsuit. According to one attorney:

"...Hawthorne had one goal, although when they joined our suit they never expressed it...I believe the city was primarily interested in the route change. So they were a very provincial interest. Clearly, most of the other plaintiffs had a variety of goals. The Keiths and the individuals wanted that freeway stopped....(T)he Sierra Club, I think, clearly believed the same thing. They wanted it stopped. But in addition to that, they wanted the law complied with....Do you want to know what my goal was?...I mean, I'm an environmentalist, right? I wanted to stop the freeway."

According to another attorney for the Center for Law, the goal was:

"(to) stop until thorough environmental analysis was done, and that could lead to scrapping or at least (delaying the project) until redesigned...Not many of us believed we could stop the project for evermore, even at the beginning."

Some attorneys for plaintiffs acknowledged housing concerns which functioned as de facto opposition to the freeway itself:

"...(O)ur feeling was not that it was a bad idea to build a freeway. We didn't have any opinion on that, at least I didn't and I'm not aware that any of the clients did. But the housing needs had to be met and that was what we cared about.... There were some people...whose position was that given the vacancy rate in housing in the Los Angeles area that was within the means of these displacees, that it would be impossible for the highway department to meet those needs without building housing which was simply beyond anything that they would then consider. So that really, this lawsuit was going to have the effect, whether or not it was intended, of stopping the freeway."

The Decision to Settle

Plaintiffs' attorneys arrived at the decision to settle the lawsuit in the spring and summer of 1978. Interviews with plaintiffs and analysis of archival materials from that period indicate a number of factors which influenced the settlement decision:

- Questionable prospects of having the courts rule the EIS inadequate. A legal analysis of Ninth Circuit EIS-adequacy cases prepared at the Center for Law in July 1978 indicated "very little in these fact situations which is helpful to us. The only case in which (the Ninth Circuit) upheld the lower court decision that an EIS is inadequate was presented in an opinion only two paragraphs long" (Internal Center for Law memorandum from Jorge to Century Freeway Team, July 28, 1978).
- Questionable prospects of having a court reject the project on the basis of Clean Air Act-related consistency requirements.
- Desire to avoid of a lengthy and costly trial.
- A perception that litigation was "a blunt instrument with limitations", unfit to tailor an acceptable outcome (Notes on "History of Litigation," Center for Law, not dated).
- Reliance on Caltrans to fashion an appropriate resolution to the lawsuit was unacceptable because "Caltrans was ill-equipped on their own to come up with an analysis that would support the building of this freeway and that would meet the requirements of the last resort housing laws."
- Deterioration of the freeway corridor. No one disputes the fact that the injunction imposed significant hardships on corridor residents and communities. In an undated

"Talking Paper" plaintiffs state that because of "emotional and community distress of corridor residents during the suit, we are willing to settle."

- Settlement would result in defendants' unambiguous commitment to plaintiffs' desired transportation outcome: "Settlement is a rare opportunity to obtain enforceable, well-coordinated commitments from all governments having to do with the Century to a project with transit as well as freeway features" (undated "Talking Paper").
- A comprehensive settlement could "reconcile different client interests" in a package "acceptable to all" (Notes on "History of Litigation," Center for Law, not dated).

The earliest dated drafts of "Settlement Demands" that we obtained from Center for Law archives place primary emphasis on achieving transportation objectives. An internal Center for Law memorandum dated June 26, 1978 describes in detail various median treatments for the Century Freeway, possible pedestrian bridges over the road, and noise mitigations. There is no outright demand for a housing program on a scale as that currently being implemented. Listed as an "area of concern" regarding future review of court-ordered housing studies is "the finding of adequate replacement housing for low and moderate income persons. If possible, we should require construction of new housing." Similarly, an affirmative action program similar to that described in Exhibit C is not yet contemplated. Under the heading "Minority Hiring," the entry reads "To the extent that minority hiring on freeway construction is not already required by law, we could increase this requirement."

Settlement of the lawsuit was contingent upon the state's receptiveness to the terms of the lawsuit. Rank and file Caltrans engineers and administrators, most of whom thought that plaintiffs' original allegations in the lawsuit were groundless, opposed the negotiations which led to the signing of the consent decree. One Caltrans engineer summarized: "In a lot of ways we found ourselves at odds with our own director on the way it should be settled. In a lot of cases we felt that [Director Gianturco] was in their camp and not ours." Plaintiffs' transportation demands were certainly in step with the direction in transportation policy being pursued by Governor Brown and Caltrans Director Gianturco, as we summarized in Chapter II.

Many senior Caltrans officials equated the Brown policy with a no-build policy:

"I was really ambivalent about Brown and Adriana, because...I felt that there had to be alternatives to the automobile. But to use that as an excuse for shutting everything down was the principle indictment

of the Brown administration. There were times when I was ready to resign because of the conditions that were imposed by the director on those that were in the field. The lack of comprehension of what went into where we were at the time and that you cannot change overnight an organization or a traffic or transportation plan,...that you can nibble at the edges, but you can't shut it down and change direction."

These and other officials cite political expediency as being the state's primary reason for accepting the proposed terms of the Century Freeway settlement:

"The Carter staff...looked for things that they could capitalize on to help boost Carter's image [in his Presidential bid]....They put a lot of emphasis on his urban policy. But in order to take that urban policy program out on the campaign trail you had to have some success stories to tout, and there weren't many....One of the things [which could be turned into a quick success story]...was this Century Freeway litigation. That is totally urban policy based....Everything that the plaintiffs were asking for was consistent with what Carter was saying in his urban policy message....The Carter people said 'you want to get back in good with us,' give us Century Freeway, and Jerry Brown told Adriana, 'sign it,' in order to reconcile the relationship between Jerry Brown and the Democratic Party in Washington....That's really how that consent decree...got signed."

The deteriorated state of the corridor contributed to some senior Caltrans administrators' receptivity to a settlement proposal:

"I think everybody, including us, recognized that there was a detrimental impact on housing supply,...on the economy of the community,...on the availability of jobs. And this evolved over a period of time as the situation kept worsening....I think it got to the point where, before the consent decree was signed, everybody had a pretty common goal of trying to make the situation right. I think this included the people who were opposed to the project, to begin with, and us. Now, we may not have agreed to the extent we should have...but I think the programs that evolved were an effort to address the issues that were of major common concern by the time it got to the point where we were actually negotiating a closure to the court issues."

The decision to settle was neither uniformly applauded within Caltrans or outside of the Department. A Sierra Club official close to the case thought that litigation should have been continued:

"...I can tell you, I did not want to settle, personally, and was only convinced to do so...when I realized that the Center really was not willing to continue to make the kind of commitment that would be necessary to litigate this case. (Center for Law attorneys Rushforth and Sutherland) had gone and left (it) to John (Phillips) and (if) he didn't want to continue

to litigate it, it wasn't going to be litigated well and vigorously....And so I don't know what got him to that position except that John has always been more interested in negotiating deals than he has in outright hammering litigation."

Settlement Negotiations

Most Caltrans interviewees felt that the terms of the decree were never negotiated, but rather were dictated to them by the Center for Law through sympathetic Brown administration officials. Indeed, the consent decree signed in 1979 contains virtually all of plaintiffs' original settlement demands, and exceeds those demands in the area of affirmative action. Caltrans officials doubt that several of the decree's components would have existed had litigation been continued. Said one Caltrans attorney:

"Caltrans had virtually nothing to do with the creation of the terms of the agreement which it signed. This was the governor's office initiative. I think if it had been left to Caltrans probably there would not have been a consent decree but we would have gone to court. The point being that this consent decree...is rather unique in that the benefits achieved and the things agreed to be done by Caltrans greatly exceeded anything that the court might have ordered...at the conclusion of litigation. I doubt very seriously, for example, whether the court would have had either the power or the desire to mandate the construction of 4,000 units of housing. I don't think the court would have had the jurisdiction to require the creation of CFAAC, for example, or the Corridor Advocate. So these things were created only because Caltrans or—because the Brown administration was willing to agree to them....This was a rather strange decree in that it really, I think, gave more to the plaintiffs than even the plaintiffs had demanded."

The principal negotiators of the decree's provisions were, on plaintiffs' side, John Phillips; and on state defendants' side, Caltrans attorneys Joe Montoya and Richard Rypinsky. Mr. Montoya handled the first two round of negotiations for Caltrans, with Mr. Rypinsky handling the remainder.

The basic components of the decree were in place after the first few negotiating sessions:

"The Center made a series of demands, things that they wanted in the consent decree, and they were in the categories that you presently see in there: the construction, the housing program, the civil rights program, transit....We'd all sit down and try to come to some resolution to opposing positions in each of those categories."

"I can only describe it as funny negotiation. It wasn't negotiation in the sense on most issues that I thought of negotiation because the director agreed on the housing goals, for example, that the Center was proposing.

And so on that issue it was a matter of just how much and how broad....The (Caltrans) director agreed with the goals of the set-asides, the work going to minority groups. It was simply a matter of how much."

Early in the negotiations, however, there were issues around which heated debate took place. These included the size of the housing program, the duties of the ombudsman to become known as the Corridor Advocate, and the assignment of lead agency for the housing program. The author of an internal Caltrans memorandum (February 15, 1979) describing the ongoing legal proceedings wrote that there were six issues "upon which I would stand or die." Opposition to HCD taking responsibility for the housing program was one of those issues. The memo concludes:

"I am at a complete loss for recommendations for further conduct other than to suggest that we should continue to pressure them for further discussion to resolve these issues. I like your suggestion of deferring the Sacramento meeting until all issues other than HCD control are resolved. In reviewing the notes I made of our telephone conversation in which you gave me several stand or die positions, I find that we reached three of those six positions and I most strongly took that position at those times. Two things sorely trouble me. At the present time I feel firmly convinced that if those positions change I will no longer be able to participate in these negotiations.

"The second problem area resolves our possible remedies. There was a time when I firmly believed that we could coerce meaningful settlement discussions by filing a motion for the lifting of the injunction. I feel that in the present posture of this litigation such a motion would be futile if contested. I believe that our communications with the Center for Law have totally destroyed the ability to defend the EIS in the event of subsequent litigation. As a result, I am at a total loss in ascertaining appropriate ways to make the settlement discussions meaningful."

Some Caltrans officials privy to the negotiation sessions found the HCD/Center for Law relationship particularly troubling: "HCD and the plaintiff were one, arm in arm...It got so bad as we went along...through the agency's [Business, Transportation and Housing] influence, we'd have to agree to whatever Phillips and [HCD Director] Termer asked for. And then once we agreed to that, they'd come back to the next meeting with more demands."

Drafts of the consent decree and the Exhibits were circulated to senior Caltrans administrators in Civil Rights and Right of Way. These administrators were not authorized to "veto" major elements of the decree. They describe their roles:

"(W)e were asked to comment upon draft consent decrees. And our comments were ignored in many instances....Minor things were done to the drafts before it became finalized...My recollection was that it was pretty well a done deal as to having an advocate, having a housing element. It was just, you know, these are some wording changes that we could suggest that might make the settlement palatable."

"We were in...the role of reviewing some of these consent decrees, or drafts of the consent decree as things developed, and I think our attorney's direction was, 'What can't you live with?'"

"I got...the Exhibit C information. And I was supposed to rewrite it and change it any way that I thought it would be better, which I did for a while. And then as negotiations proceeded, we started getting these instructions...The only comment Rypinsky wanted from us was (if a portion of the decree) was so bad that it would be worth not having a freeway for...(I) would look at Exhibit C... and say, 'well, this doesn't make sense, but it isn't important enough to stop the whole project.'...I don't think it was a good practice simply because you need to have people say, 'these are my concerns' and that stifles that kind of comment."

Officials of corridor cities were also afforded the opportunity to review and comment on drafts of the consent decree, but played no significant role in its negotiation. By this time, most of the concerns of corridor cities had already been addressed. According to one official from Downey:

"I'm not so sure we wanted to play...a greater role. At that time our main interest was to get the thing going because we were suffering from the injunction. We wanted to get those houses out of there. We even went in and tried to get the court to allow us to just move some out to sell and work with Caltrans....There was really nothing in the lawsuit at that time that was in our interest...we'd gotten everything we wanted."

Other city officials doubt that corridor cities would have had the wherewithal to play a larger role even had they wanted to:

"Well, in the first place, there wasn't a sophisticated enough staff here at the time,...when that was going. It was mostly in the hands of the city council which at the time was comprised of elderly gentlemen who were not into and never were in the mainstream of environmental thinking....I don't think they'd ever had a good urban planner in the city. So (the city's involvement in negotiations) would not have made any difference. It would all have been gut reaction and just shooting from the hip."

Interviewees suggested that the biggest hurdle in the negotiations was getting agreement on the size and scope of the replenishment housing program. Plaintiffs originally wanted one for

one replacement of affordable units, which would have meant a 7000-plus unit housing program. A Caltrans attorney described the controversy and the role he played in it:

"...(T)hat became the biggest stumbling block in the negotiations, and I realized that if negotiations were to succeed, it would probably require some concession in that area. And I have to strike my breast and say that I was the culprit that came up with the device that allowed that to go forward. We were back in Washington. The plaintiffs were demanding that it be in there under what is referred to as the last resort housing program under the federal laws. And I kept telling them that there was no way they could convince the federals that this was last resort housing because all of the studies showed there was no need for last resort housing, with the exception of maybe one or two units in a given segment....I came up with the idea—not new to me—that had been used before but never in this structure of determining that low income housing replacement was mitigation of an environmental impact. And ultimately, that was grabbed up and ultimately accepted by the federals. And that's why we're stuck with the program. I have felt guilty about that for years."

Like the housing program, negotiations concerning the affirmative action program were a matter of "how much," not "if". Here, Caltrans participants believed that the Center for Law got more than they asked for:

"(T)hey tacked on the civil rights type things. I don't think the Center for Law had any interest at all, even though NAACP was allegedly their client. I don't think the Center had interest at all in civil rights until at the very end, kind of as a second thought."

"It blew the Center's mind to find out we were as liberal as we were. In fact, initially we were showing them that they were demanding what we already had in place....Once they found that out, then they raised their demands, and they got anything they wanted."

Settlement Negotiations Revisited

Early implementation of the consent decree, according to the first quarterly progress report on the project's status, was "painfully slow." The project under the consent decree was acknowledged to be the most complex undertaking of its kind because of the magnitude of the housing challenge and the number of organizations which had to interact in novel ways. Even before these new relationships could be cemented (for better or for worse), budgetary constraints at both the state and federal levels and political changes at the federal level threatened completion of the project.

Some observers at Caltrans of the project perceived that the project had less than full support at FHWA even before the change in federal administrations early in 1981:

"The Federal Highway Administration people, before the Reagan administration, were somewhat supportive of the original project. So they seemed to be. By the time the Reagan administration came in, the project had become sort of a joke with the Federal Highway people in terms of, 'Oh, god, how did we ever get into this?'...So they were beginning to take more of an active role in reducing the bag of money as I recall....(T)he Federal Highway Administration people sort of felt negative all the way along, I think, and until the Reagan administration came in, they really didn't feel they had the clout to sort of come down."

A senior HCD official involved in consent decree negotiations suggests that a major reason for FHWA's original support of the consent decree was that settlement avoided a trial which could have resulted in a court order demanding construction of housing units. FHWA officials wanted no precedent-setting decision.

FHWA officials under President Reagan inherited an agreement that they wanted no part of. Their opposition to the project under Administrator Ray Barnhart was unambiguous. Reasons for the opposition, according to senior FHWA officials, included economics and philosophy:

"Well, part of it stems from the administration and Barnhart as a good, faithful Republican's conservative philosophy. And I think we have to appreciate that the consent decree was executed, signed, agreed upon during a different...administration and I think part of that administration's agenda was urban redevelopment and revitalization and that type of thing. I don't think they saw any problem using highway trust funds (for those purposes) whereas I think the different (new) administration didn't see it the same way.

"(The decree) was an abomination and an abuse of power of the judiciary....We had provision for the purchase of homes in the Uniform Relocation Act and that's valid public policy but to go beyond that for more mitigation was unfair to other taxpayers in the country....If we applied (the decree's standards for replacing housing) across the board, we would have destroyed the highway program."

Administrator Barnhart proposed a sharply-scaled back highway and housing program that was unacceptable to the State. Senior official in the Brown administration, including Caltrans Director Gianturco, HCD Director Turner, and Business, Transportation, and Housing Agency Secretary Lynn Schenk, along with plaintiffs' attorneys, met with Barnhart in

Washington to try to negotiate a compromise. Director Gianturco headed the State's negotiating team. Recalls one Brown administration official:

"Everything was worked out...face to face. All the major provisions were worked out. This was a day-long meeting, or maybe a day and a half between (Gianturco) and Barnhart....(It) may have been broken up into two or three sessions, but that's what it was....the final legal language which was...minor, didn't slow things down working out the revised wording....We got the impression...that they were obviously ready to make pretty major concessions, because we went in there with a real hard line attitude that we would not accept anything less than whatever it was we were asking for."

Others involved recall the negotiations as difficult:

"it seemed like everything was a problem,...like there wasn't anything that went smoothly, easily...that you could come to rapid agreement on....[The source of the difficulty was] all of us. Everybody wanting to push their own agenda as far as you could."

Chapter II of this report presents a summary of the amended consent decree.

4. History 3: Critical Events in Decree Formation and Implementation

"The consent decree might have actually been more helpful to Caltrans if it had come much earlier in the process because it might have brought in all these other conflicting jurisdictions as parties. Rather than have council blocking a street there might have been more councils speaking through their lawyers. It might have developed a much more rational plan with different 'goodies' for the cities." [Seminarist]

As might be expected with implementation of a consent decree, the outcome and the evaluation of outcome may turn on critical events or decisions. Observers of the history of the Century Freeway consent decree cited several [listed below by organizational affiliation]:

Caltrans

- the decision to compromise early in the litigation, rather than to litigate fully; failure to pursue avenues of appeal;
- an overall change in societal values ["regarding mass transit, minority businesses, civil rights..."] which set a context for reactions to specific provisions;

- changes in the political administration at the state and federal levels which countered continuity in implementation even of non-controversial provisions;
- the Willco Dump affirmative action dispute and the expense encountered in disposing of hazardous materials found at the site;
- early disagreements with CFAAC, including over the advisability of utilizing the pre-bid conference;
- the realization of some minority participation objectives;
- the absence of a Caltrans constituency in the minority community which would have allowed for challenges to interpretations which were less politically sensitive; and
- initial negative rulings by the Court which made the agency reticent to legally challenge aspects of decree implementation.

CFAAC

- gaining early agreement to break up the project construction into a larger number of relatively smaller construction projects;
- the Court's acceptance of CFAAC's approach to M/WBE goal setting;
- staff changes, including the loss of Mr. Broussard and the failure to appoint a director during a long interim; and
- the restructuring of the housing program.

Center for Law

- changes in personnel in major roles in CFAAC and Caltrans.

FHWA

- the restructuring of the housing program;

- the incorporation of extant DOT regulations into Exhibit C; and
- the convergence of the substance of aspects of the consent decree with the political relationship of President Carter and Governor Brown.

HCD

- decision that two-step procurement rules would apply to housing program and that contracts could not be let on a sole source basis; and
- early lack of progress in housing construction (“a critical non-event because it caused the legislature, it caused federal government, it caused all of the others sitting on the outside watching it who had some control over the destiny to be real skeptical, and as a result to get more and more involved in the process.”).

Others

- the impact of double digit inflation on the buying power of money in the trust fund; and
- changes in the Federal administration.

C. EVALUATING THE CENTURY FREEWAY CONSENT DECREE

An evaluation of whether the Century Freeway consent decree is a "good" decree depends upon one's perspective. This section examines the strengths and weaknesses of this decree from the perspectives of parties involved in its implementation along criteria of the parties' own choosing.

1. The Century Freeway Decree Compared to What?

Few of the principal players in the Century Freeway decree had experiences with the consent decree approach prior to their involvement in the I-105 project. Comparisons with other consent decree involvement proved difficult for respondents since there was a surprising lack of experience with employment of decrees by any group of respondents.

Among Caltrans respondents only a small minority had worked with other decrees; those who did had positive associations. Perhaps the absence of difficulty in these situations (which were much simpler than the Century Freeway) ill-prepared Caltrans people from realistically responding to the proposed Century Freeway decree. Summarized one Caltrans attorney:

"We had entered into a consent decree under almost identical circumstances in West Oakland...Grove Shafter...it was extraordinarily quick and clean...contrasted with Century. In that case we agreed on a replacement housing program which was carried out rather expeditiously.... There had been demands by plaintiffs for an arrangement similar to...CFAAC which we declined.... The community has gotten more in the way of housing, clearly gotten more in the way of housing, than they would otherwise have."

Plaintiffs did have experience with the consent decree vehicle but these involved employment rights [Title7], school desegregation, and anti-trust lawsuits.

2. Weaknesses of the Century Freeway Consent Decree

We asked interviewees to describe weaknesses in the consent decree. Definition of the major weaknesses of the consent decree varied by organizational affiliation but there was agreement about the absence of a dispute resolution mechanism.

Caltrans

- Creation of new organizations which act in an adversarial manner;
- Disruption of satisfactory decisionmaking processes;
- Looseness in language ("It's almost as if lawyers didn't draft it as much as social scientists might draft—I don't mean that in a disparaging sort of way.");
- Failure to specify how compliance was to be measured;
- Inappropriate scope ("tried to do too much");
- Imbalance in bargaining power among the parties; and

- Absence of an independent mediation body or other mechanism for dispute resolution.

Even within Caltrans, respondents did not converge on all of these items, including what one might consider the predictable first item. One interviewee offered an uncommon view of a former CFAAC executive director:

"He was made into an issue in and of himself. He was frequently characterized as having personal reasons, his personal vendettas in this or that.....Once you do that organizationally, you can pretty much ignore everything he says, and a lot of what he said was right. [And another federal administrator], who was just an incredible shock to us, the way she acted and what she did, a lot of what she said was right. It's the way she said it that allowed the organization to ignore her."

CFAAC

- Lack of definition of CFAAC authority and vagueness of its role;
- Absence of an enforcement mechanism;
- Placement of final authority on disputes with Caltrans;
- Failure to provide guidelines on interpretation/implementation;
- The housing program; and
- The absence of an independent mediation body or other mechanism for dispute resolution.

Center for Law

- Absence of a special master for enforcement;
- Granting too much power to Caltrans vis a vis disputes with CFAAC; and
- The housing program.

HCD

- Conflict between the need to produce housing and maximization of participation by women and minorities.

Advocate

- Ambiguity in defining the role of the Advocate.

FHWA

- The absence of an independent mediation body or other mechanism for dispute resolution; and
- Ambiguity regarding the role of CFAAC.

An FHWA respondent explained another failure of the consent decree, that mandating employment of corridor residents:

"...they said 75% of a contractor's work force has to come from the area in which the project is situated. But they...didn't deal with reality. In the real world, 90% of all major construction prime contractors are signatory to collective bargaining agreements which say they can't hire off the street."

We also asked interviewees which aspects of the decree were unsuccessful or unrealized. The most cited unsuccessful or unrealized provisions of the consent decree were those addressing affirmative action employment and subcontracting goals.

- The employment plan;
- Inadequate use of minority financial institutions;
- The regional business preference program;
- The failure to effect a commitment to affirmative action goals by Caltrans personnel; and

- Inadequate enforcement of affirmative action goals.

This failure was contrasted with success in other areas of the affirmative action program. One CFAAC interviewee summarized:

"I think we have a good...relationship of working with [Caltrans] and establishing goals; creating those opportunities; having a bank of businesses who can take advantage of those opportunities; and hopefully making the certification process not such a difficult one or a lengthy one; letting employees know what they have to do; working with the unions. I think that the one element that has not really come about has just been enforcement. There's nothing there that can either motivate folks to eliminate some of the obstacles because businesses get the work or employees get the job. Subtle forms of discrimination."

3. Strengths of the Century Freeway Consent Decree

The major strengths of the consent decree as cited by interviewees were the existence of the housing program; the innovative required approach to review of a public works projects; and the treatment of minority employment concerns. But responses varied by organizational affiliation and Caltrans interviewees were hard pressed to articulate any major strength. The most-often cited strengths were as follows:

- The decree allowed completion of the Century Freeway;
- Exhibit C, and resulting creation of CFAAC and increased participation of women and minorities in the project;
- The inclusion of the housing program in the overall project;
- The application of a systematic, comprehensive evaluation approach to a major transportation project. Said a senior Caltrans administrator:

"The major strength is that it was the first time that ...the impacts of public transportation, the broad impacts...were considered fully. So that when you build a project, you take into consideration what is the effect on the housing market,...what you've done to decrease the demand for alternative forms of transportation. Every time you build a freeway, the likelihood of a mass transit system goes down...All of the social and environmental issues were purportedly addressed in the decree. So in

principle, it was an outstanding example of what decisionmakers ought to consider in any public transportation project."

- Provided a model of innovation in creating a transportation network;
- Increased assistance for displaced through Advocate; According to an attorney for the Center for Law:

"I can attest to true success there, perhaps not in terms of every time there was a complaint received a corresponding productive result, or resolving the issue occurred. But there are enough instances where people were really saved and put into good housing and put on their feet and the decree did that."

- Increased minority awareness of impacts of public works projects.

D. PROCESS, STRUCTURE, AND CONTENT: THEORY-BASED EXPLANATION OF THE CENTURY FREEWAY CONSENT DECREE

The academic literature (summarized in Section B. 2. above) on the general advantages and disadvantages of the consent decree approach suggests a number of critical "ingredients" in any successful consent decree⁷. These ingredients take the form of critical processes during and after decree formulation, as well as structures and elements within a particular consent decree.

We presented interviewees with a set of sixteen sentences, derived from this literature, describing an hypothetical, idealized consent decree. We asked (i) whether the sentences described the Century Freeway decree and (ii) if the accuracy or inaccuracy of these sentences were important in understanding how the Century Freeway decree has been implemented.

All of the descriptors were perceived by a majority of respondents as important in explaining implementation of the Century Freeway decree. Analysis of the responses to individual sentences is presented below starting with those sentences perceived by the most respondents as important, proceeding to those sentences which respondents were less likely to deem important.

1. "The decree recognizes and overcomes potential bureaucratic rivalries and inertia which could be obstacles to implementation."

Respondents were unanimous in their assessment that the accuracy (or inaccuracy) of this element is important in understanding the I-105 decree's implementation. By a margin of 3 to 1, respondents felt that the sentence was inaccurate.

According to most respondents, the decree at best does not overcome bureaucratic rivalries, and at worst, the decree creates new rivalries where none had existed in the past. A Caltrans respondent cited the structure of the dispute resolution process for the Advocate's budget:

"It's a perfect example [that] people don't have a clue about organizational realities....If we don't like the Advocate, we can have HCD approve the budget of the Advocate and then us pay for it. But if we don't like it, we can go to Business and Transportation Agency's secretary. All that has to assume is that our director fights with the director of HCD and goes to the agency which is over both of us and have them decide in favor of one or the other over something as insignificant as the Advocate. It just doesn't happen. All it does is cause HCD to be upset about having to develop the budget and drag their feet while they're doing it and us to sit over here and complain constantly about them wasting our money."

Other Caltrans respondents evaluated the decree and its organizational arrangements more generally. For example, a senior engineer in headquarters:

"Bullshit. It does exactly the contrary. It just creates more bureaucracies, and bureaucracies in and by themselves, regardless of the Century Freeway and everything else, are rivals and become contestants, combatants damn near, you know, adversaries. It took a two-cornered fight between the state and the feds and introduced a second state agency, a consent decree, a whole lot of others."

CFAAC respondents also perceive bureaucratic rivalries as obstacles to implementation. According to one CFAAC board member:

"It did nothing to address that....The decree would have been a hell of a lot better if it had made clear certain things. I'll give you an example. On the budget it says Caltrans shall fund CFAAC. Well, how Caltrans took that was, you must come on bended knee and beg us for the money. My interpretation...is, 'huh-uh, gang, it says you shall fund us. Here's our budget, give us the money. If you have a problem with that, then we go to court. But in the meantime, you give us the money.' ...The decree,

the judge, in my opinion, should have realized that and set forth a mechanism for determining and dealing with that."

An oft-cited bureaucratic "obstacle" was the imposition of FHWA regulations, tailored to road construction, on HCD, which was charged with housing construction. One HCD official said that this arrangement was partly responsible for "more overlapping checks and balances and assignments of responsibilities than any other program that I have been associated with...in state government for 25 years." FHWA interviewees sought to justify FHWA's intense scrutiny:

"There was a lot of pressure on the housing program to do things quick and perhaps dirty...There's a lot of funds involved and we're not the front line on administering. The fact that we required people to proceed very cautiously and have specific procedures and go through a fairly lengthy process has probably slowed things down in some respects, but I think has also protected public funds better than they might have been protected otherwise."

An Executive Director of CFHP indicated that the stigma surrounding the Century Freeway project exacerbated rivalries and inertia:

"In some ways the decree created new bureaucratic rivalries which...became obstacles to the implementation because often times those in bureaucratic positions with the authority to approve, would just sit on it. [They were] scared that compliance was in conflict with their achievement of their position, or career. There weren't real clear messages that if you made this happen at Century Freeway that this was good for your career."

2. "The decree establishes ways for parties to gain reliable information on compliance."

By a ratio of 24 to 1, respondents indicated that this statement was important in understanding how the decree was implemented. But respondents were about evenly split in their assessment of whether the sentence was accurate.

Some in Caltrans thought that CFAAC had failed to establish reliable databases. And those in Caltrans who thought the decree did establish ways to gain reliable information on compliance didn't necessarily believe that useful or reliable information was always produced:

"Well, it established some methods. And to the extent—I mean, reliability is going to be debated by both sides. The problem was with the Century that the Center continually politicized any data they had. They were always looking to ratchet the leverage they had up a notch."

Others in Caltrans perceive that assessing the reliability of information is difficult when "compliance" with the decree is so hard to define:

"That may have been the intention originally, but I don't know that anyone could safely rely after the fact that there's been compliance just because a contract was awarded or it was designed or goals were approved or what have you for a given project. I think all that meant was that it managed to get through the hurdles."

As another Caltrans administrator stated: "There are so many, many gray areas in compliance."

Center for Law respondents also question whether the decree adequately spells out what constitutes compliance. They share concerns that, especially early in decree implementation, information on compliance was not compiled.

CFAAC respondents point out that the decree does contain a provision for free information exchange, but that that provision is no guarantee that information on compliance is even available, much less reliable. They point to Caltrans as the agency which should be tabulating necessary data:

"One of my big criticisms is that from the very beginning Caltrans has not had proper systems in place to collect, tabulate, and maintain accurate data files, data bases. This not only goes for certification. There has not been any tracking of MBEs in the system...I mean, no tracking at all and just no collection of the data. And I guess an unwillingness to do it. They always cite budget issues and the inability to work with headquarters in this manner."

One of the drafters of Exhibit C never anticipated the magnitude of eventual problems with unreliable data:

"The key word there is reliable. Certainly this decree did provide an opportunity for folks to get information, but, you know, the reliability of information is never any better than the folks who were gathering it and disseminating it...I have seen even in some of the things that we thought we were setting up as independent operations who would not be subject to, let's say, undermining by one political interest or anotherspecifically, ...CFAAC...for years gathered data to the extent it could and there were problems eventually on that too. But gathered data on minority and women-owned firms contracting on the projects:...the complaint [was] expressed as late as 1987 that they didn't know, neither the staff nor the board of (CFAAC) knew whether in fact those firms actually got the dollars through project execution that were indicated that project did at contract award. That's kind of a fundamental end result to know."

3. "The court was willing to assume a central role in implementing the decree and demonstrated a commitment to effective enforcement."

Respondents almost unanimously agreed that the role played by the judge is important in understanding the direction taken in the I-105 decree's implementation. By a margin of over 4 to 1, respondents feel that this sentence is accurate.

"He's like . . . an old-line . . . liberal democrat who likes to solve problems through a long negotiating process, likes to achieve consensus and really wants to see this work to the full extent of helping people in the region. For example, Caltrans officials talk about him in positive ways, although they're frustrated."

An example of a Caltrans attorney speaking "about him in positive ways":

"I think the judge has the welfare of the corridor at heart. It's a personal thing with him. The minority businesses, the apprentices, the displaced people, he wants to do the right thing. He wants to do good social engineering....It's probably a commendable desire on his part. However, I think in doing so he's overstepping his boundary. He's not enforcing law. I think he's making law. And I think that to the extent that Caltrans poses a bureaucratic obstacle to that, he was inclined to just brush it away by decree. And I would say he's probably a little biased against Caltrans, maybe a lot biased, probably from a very commendable perspective."

In analyzing the impact of the consent decree, the role of the Judge is significant. "The inescapable fact is that—although a consent decree is an agreement between the parties—a consent decree is consummated only by judicial approval. This order is accompanied by the judge's responsibility to be involved in the implementation of the agreement. The crucial problem is to determine what should be the proper level of such involvement" (Anderson, 1986).

We recognize that there may be difficulties in getting accurate assessments of the role and the contribution of the court, because of the ongoing involvement of the judiciary in the present case. Nonetheless, the interviews are quite consistent and create a composite of the judge, whom virtually all see as central to the history of the I-105 and to understanding the implementation of the consent decree.

Judge Pregerson is viewed with deep respect and even admiration by all the respondents who come before him. Respondents are virtually unanimous in their appreciation of his deep personal commitment to the consent decree. Yet there is also a strong sense of frustration with

what is perceived as his micro-management of the case and his approach to dispute resolution. A Caltrans attorney summarized:

"...there was a lot of jokes about how Pregerson liked to have everybody with a glass of wine and a little bit of quiche and sitting in a hot tub in Marin and trying to solve a problem. And he could never understand why reasonable people couldn't sit down and do that. And the problem with his assumption is that he did not have reasonable people sitting in the tub....He wanted the parties to solve the problems themselves.... I thought his approach in theory was correct."

The judge's decisionmaking style was seen as problematic especially in the context of the potentially open-ended nature of a consent decree. Concluded one senior Caltrans administrator:

"I guess I get back to the point where a consent decree enforced by an impartial judge is one thing. I don't think we ever had that. I think the Century Freeway consent decree was a living document from the day it was created until today. It means tomorrow what the judge is going to say tomorrow or next week."

Frustration with the judicial style extends to the feeling of the plaintiffs as well who express concern for implementation in the face of the judge's approach:

"I would say that my major criticism of him...is that he is too patient and tolerant. He doesn't crack the whip enough...some of my frustration with the judge is his unwillingness to take a firm hand and put Caltrans under pressure to produce results or force us to somehow resolve these outstanding issues, not simply go back and tell us to try and reach an agreement again and again and again."

This evaluation is similar to that made of judges in other consent decree situations. Note (1977) summarizes:

"As with dispute resolution, the judge can effectively perform the enforcement function if he becomes sufficiently involved, but few have chosen to devote the large amount of time necessary for a thorough job. Instead, judges often attempt to extend their efficacy by relying on committees, panels, or special masters to aid them...These efforts...have had minimal effect because the court's delegates have had inadequate resources and power. Moreover, their power has depended largely on reinforcement by the judge, which entails long delays before orders are implemented by Defendants."

The judge in this case is faulted for being too involved and for his ineffective enforcement. But Judge Pregerson's approach has its defenders:

"I think his approach was the only practical way to move along the consent decree....If circumstances were changed whereby the judge made more frequent rulings, I think it would be an open invitation to come before him and to ignore the people they've got to work with....I'm saying keep it out of the lawyer aspect, keep it from trying to prevent other managerial relationships. You've got to work with parties, and therefore, sooner or later, you come to a compromise...."

4. "Success in resolving by agreement whatever disputes arise depends essentially upon keeping alive the original spirit of consent."

Respondents agreed to this statement by a margin of 3 to 1. Again, virtually all of the respondents indicated that the statement is important in understanding the decree's implementation.

Some respondents, particularly those in Caltrans, agreed that the statement might be true, but that in this case there never was a spirit of consent. According to an attorney for the Center for Law, implementation has "been done over the dead bodies of the state and federal government because they did not understand, sign on, project or agree to the costs involved with these programs." A Caltrans attorney explained the impact of this perception on the decree's implementation:

"Caltrans consented to this like the Germans consented to the Treaty of Versailles. I mean, some big guys handed it to them and said, 'Sign here.' And the resentment flowing from that imposed agreement has hampered implementation ever since. Had it been truly an agreement achieved by consent, it might have worked out much better because Caltrans, Federal Highways, etc., would have been limited in their complaints to saying, 'Why did we ever agree to this?' As it is, they're able to say, 'We never did agree to this, and by god we'll drag our feet forever to get even with those who imposed it on us.'"

Non-Caltrans respondents were less likely to indicate that a spirit of consent never existed: they trace changes in the spirit of consent to changes in political administration. However, no one administration had a monopoly on the spirit of consent. Some described infighting among Brown administration officials as a roadblock to necessary inter-agency cooperation, while others, particularly plaintiffs' attorneys, trace loss of the spirit of consent to the transition from the Brown to the Deukmejian administrations.

Other respondents pointed to spirit of consent as an individual-level phenomenon essential to smooth decree implementation:

"If people had in mind, in their hearts and in their souls, the spirit of the consent decree and less about the words, the project would have gone very much smoother. There was a lot more people arguing about what this meant and that meant,...fine-tuning this and fine-tuning that. There were a lot of folks that were counting numbers and saying, 'Well, if all we have to do is 35 percent then that's all we're going to do.' In the spirit of the consent decree, sometimes it might have been appropriate to do 55 percent employment goals, or 100 percent. It would be less time consuming and less fuss."

The continuing involvement of attorneys as central figures in the I-105, as opposed to "implementors" is also cited as responsible for the demise of the spirit of consent.

5. The court served as a guardian of the rights of absent class members in approving the decree.

By a 15 to 1 margin, respondents indicated that this statement was important in understanding the decree's implementation. Those agreeing that the statement is accurate outnumbered those disagreeing by about 3 to 1.

A typical response from a Caltrans attorney who agreed with the statement:

"Absolutely. It continues to serve in that function even when the parties—even when neither party is concerned with the absent class members. As for example, the current effort of the attorneys for plaintiffs to eliminate the payment of prevailing wages to workers on housing because if you pay them less, you can get more housing."

Response from one of the plaintiffs' attorneys was ambivalent:

"Only part of it was class action, most of it was not, so not really. Not a typical kind of class action where you have got class members who are themselves individuals."

Those who disagreed with the statement described a dynamic of consent decree implementation. Stated a Caltrans engineer:

"I don't think the court would view itself that way. I think the court would view, and probably most people would view, the Center for Law as a guardian for the rights of the absent class members. They were not a plaintiff, they're just the legal firm representing plaintiffs."

Others from the Center for Law saw the Center as advocate for absent class members, and perceived the judge's role as that of a mediator. A respondent from HCD had a similar reading:

"I think that in fact the plaintiff, in establishing the Office of the Advocate and in continuing their role, continues to basically be the guardians of the rights of absent class members. If the plaintiffs had fallen away or we had not had any institutional representation before the court I would have thought that perhaps the court should have. But in this case, I don't think the court does. Instead, what the court ends up doing is being sort of a free for all. It essentially tries to be an ear or a voice and just listen to the contests."

6. The decree provides for a monitor whose sole authority is to gather information, assess the degree to which defendants are complying with the decree, report to the court, and offer assistance in resolving minor disputes.

Again, an overwhelming majority of respondents felt that the accuracy or inaccuracy of this statement was important in understanding how the Century Freeway consent decree has been implemented. By a 2 to 1 margin, respondents felt that this statement was inaccurate.

Respondents mentioned a rather inclusive array of Century Freeway organizations and individuals that might fit under the statement's umbrella. In the words of one HCD interviewee, "There are an enormous amount of people who are looking and assisting." None of these is thought to have been particularly effective. These organizations and individuals are listed below, along with some representative comments.

Murray Brown

"Murray Brown is supposed to do that now, sort of....That was something that was created later by, I think by the judge. Use my buddy to help keep things moving....Would probably be important if it's effective. If you've got someone who knows what to look for and deal with and is offering assistance in resolving minor disputes. Murray Brown apparently doesn't have time to do that much."

"I think when Murray Brown got in the picture, I think for the first time you had somebody who was in a position to (assess compliance) in an objective fashion. Up until then, there was nobody there to provide it to the judge in any form of an objective fashion. He was necessarily getting it in an adversarial situation."

"We hired Murray Brown way back when, but he hasn't really worked out....Certainly that was an intent—monitor, facilitator—well, as it says here, to gather information, make an assessment, report to the court."

Yeah, this describes what he's supposed to be doing. Nice guy. Maybe a little too passive."

Dick Johnson

"Dick Johnson, a special assistant to the court, tries to in fact serve part of that role. However, clearly as clerk of the court he is not in an area that he can in fact fully engage that role."

"I think (the sentence refers to) a separate entity entirely. Like a special master. Someone like, for example, Dick Johnson functions like this."

Center for Law

"I think that probably this was the role that the Center was supposed to be in."

"The monitor, and supposedly the eyes and ears of the court, is the plaintiff."

"That's certainly how Hall and Phillips would like to see themselves."

George Crawford

"He's a special counsel who's been working with the judge. Kind of like serving this function in the housing role...actually he is not really assessing compliance. He's basically gathering information, reporting to the court."

"We had the same hopes (as we had for Murray Brown) for George Crawford, and he too seems to be willing to make recommendations in a rather timid fashion, but not willing to bite any bullets on hard issues."

"The appointment of Mr. Crawford...was a bit of shuffling papers through to get him a title. In a sense he's like a special master, just for the housing portion of the program, but he doesn't carry that designation. He's a special court counsel. But the legal authority for his appointment to that position does fall under the provisions of the federal rules of civil procedure for appointment of a special master. He's really a special master but he's not."

CFAAC

"That's us....I think everybody understands that."

"I think that probably this was the role...that CFAAC was supposed to be in."

The Advocate

"It could be accurate from the context of the limited role of the advocate."

The variety of organizations and individuals mentioned reflects confusion about the intended and actual roles of these organizations and individuals. It also reflects the judge's allocation of at least some monitoring/reporting authority to all those mentioned, rather than granting sole Master status to a single individual or organization—as proposed by the Center for Law and opposed by state and federal defendants and the court.

7. There was a fact-finding stage in decree formulation which involved gathering information about the institutions which the consent decree would modify.

For every twelve respondents who felt that the accuracy or inaccuracy of this statement was important, only one felt it unimportant. Slightly more than half of those interviewed concluded that the statement accurately described the formulation of the Century Freeway consent decree.

Those who felt the statement was accurate were somewhat equivocal, and not at all specific regarding the scope and depth of any fact-finding effort. According to one Brown administration official:

"Clearly there was some fact-finding. I don't know that I could say that it was at one point. I think fact-finding continued throughout...the bulk of the fact-finding had to do with the transportation element, but there was also some substantial fact-finding with regard to the housing and employment action elements too. People didn't just dream this up in a room somewhere after a series of marathon negotiations. This was a long process with a lot of input and a lot of give and take."

Others believe the "dream this up in a room" model of research was indeed how the decree was crafted. One Caltrans interviewee called it "backroom consultation." Another said that "the decree was crafted by a small group of arrogant lawyers who believed that they needed no fact-finding. They knew everything."

One of the main Caltrans attorneys who participated in the decree negotiations is unaware of any fact-finding stage; another questions its adequacy:

"There was no fact-finding stage in the decree formulation that I'm aware of....The parties pretty well knew what they were getting

into. So whether you have to have a fact-finding area for that, no, I don't think it's important."

"Sure there was. The issue is how intensively the fact-finding stage, how formal was it? How valid were the studies and all the sort of things that were made?...I think that people could be critical as to the depth of some of the investigations that were made."

How might the decree have been improved had there been a (better) fact-finding stage?
Interviewees offered these opinions:

"The advocate role would have been probably severely diminished because the state and federal laws are so strict regarding relocation benefits that the advocate (as being conceived for monitoring the way the state handled the relocation benefits) was completely a waste of public resources."

"Finding out how funds would flow and under what regulations they would be viewed and things of that sort."

"Fact-finding would have divulged HCD's lack of project orientation. It would have divulged FHWA's expectations in the way of policies and procedures."

8. The judge tended to choose an approach in dispute resolution on a case by case basis to best achieve progress in each particular case.

Interviewees agreed by a margin of 12 to 1 that the accuracy or inaccuracy of this statement is important in understanding the history of the decree's implementation. Three respondents agreed that the statement is accurate for every one who felt it was inaccurate.

Nonetheless, few assessed the judge's approach to dispute resolution in a positive light. The response of this Caltrans attorney is typical:

"The judge did tend to choose an approach in dispute resolution on a case by case basis. And I know his goal was to best achieve progress in each particular case. I don't agree that he did that, but that's what he tried to do."

Critics within Caltrans contended that the judge's "consistent approach" to dispute resolution was to "call all of us in his chambers and ask why can't we do something." This Caltrans attorney concluded that the approach "took too long...and fostered the animosity over something that could have quickly been buried and everybody could have moved ahead. [It] made the parties focus on what was otherwise a petty dispute, and they'd then do it over a long period of time, so they'd hate each other at the end of the period."

Interviewees from other organizations concurred that this approach led to delays in the decree's implementation. Here, a CFAAC board member's response:

"Well, I think that's what he thought he was doing. But I think sometimes his failure to act on a timely basis made many of the disputes moot by the time he got to them. So he was a bit slow on the trigger."

Besides delay, the informal approach was said to encourage ex parte communication and make "the record a little more difficult to even find."

Other Caltrans respondents perceived less a tireless, talk things out strategy than a strategy prejudiced against Caltrans:

"No, he just simply threatened us. We could either wait until he handed down an order, or we'd do it voluntarily. And that was his plan of action, you know, from the very beginning. Do it my way voluntarily or I'll order you to do it. Then I'll hold you in contempt of court if you don't do it."

"This suggests to me that he sat down on every issue and analyzed it and figured out what was the best way to achieve what the decree said, and that wasn't the situation at all. It was, 'Judge, Caltrans is resisting certain aspects of the set-aside or certain aspects of the housing. We think that you should order them to...' (The) Judge (would say) 'Fine, so ordered.'"

9. The consent decree describes in detail actions defendants have agreed to undertake as well as deadlines for achieving the required changes.

Respondents agreed about 10 to 1 that the accuracy or inaccuracy of this statement was important in understanding the history of the decree. Two out of three respondents said that the statement was accurate.

Most Caltrans interviewees perceived that the decree contained an adequate level of detail concerning demands placed on them. [Some felt that the direction of more specific actions by the decree would amount to inappropriate administration of state agencies by the court.] The only deadline they identify concerns the requirement, since excised from the decree, that construction of the highway program be phased with construction of the housing program. Caltrans officials acknowledge that the decree does not contain a level of detail to satisfy plaintiffs' attorneys. According to one attorney, plaintiffs "would like further refinement and restrictions written into it." The missing details mentioned by Caltrans respondents were a

description of the procurement process for housing units and a better overall description of how responsibilities were to have been distributed among the parties.

FHWA respondents differed in the amount of detail they thought ideal in a consent decree. Some found this decree too detailed, and would have favored a decree with "broad general goals and broad general targets and (which) leaves the methodology on the attaining of those targets to the...implementing agencies." Others fault the Century Freeway decree as leaving substantive areas open to too much interpretation.

The decree failed to provide adequate levels of detail and specific enough deadlines, according to CFAAC interviewees. CFAAC officials described the need for a deadline for establishment and implementation of the employment plan. The decree says that such a plan "shall be established," without specifying exactly when: "So (Caltrans) waited for CFAAC to put the pressure on them to try to establish it."

HCD officials felt that the decree established sufficient deadlines, but described how working toward satisfying deadlines can have a detrimental effect on the overall implementation effort:

"What happens is when you describe (deadlines), they become ends in themselves and once those are done then nobody cares whether there's a house built as long as you turn that report in or you show that number on a particular time. The phasing schedule, I think, clearly attempted to establish some deadlines for accomplishing housing and so forth, but then it became very strange with regard to whether there was any real housing program. And you couldn't really sit down and develop a real housing program because you had to get off and start building houses, start hammering nails, so you could set things up necessarily correctly."

Plaintiffs' attorneys stated that the decree does not describe in detail the actions defendants agreed to undertake; rather, the decree "outlines (them) in a general sense." They acknowledge that no decree can anticipate all unforeseen circumstances that might come up years later during implementation. But some plaintiffs' attorneys thought it appropriate to try "to spell out in sickening detail what they have to do. Human imagination cannot imagine every contingency, but you have to try. I have enormous healthy skepticism of the bureaucracy." Some plaintiffs' attorneys disagreed, saying that what is needed is not necessarily detail responsive to any and all such contingencies, but rather a statement of procedures that would describe how unforeseen problems would be resolved should they arise.

10. The decree provides for the creation of new bodies outside the formal judicial system which resolve disputes and lessen the need for court intervention.

About three out of five respondents disagreed with this statement as applied to the Century Freeway consent decree. By a margin of about 8 to 1, respondents felt that the accuracy or inaccuracy of the statement was important in understanding how the Century Freeway decree has been implemented.

Caltrans respondents again distinguished here between the intent of the decree and the decree in practice. Most who agreed that the decree attempted to create bodies which resolved disputes had severe reservations about their efficacy. Others flatly disagreed that the decree created such bodies. One Caltrans attorney's response was particularly pointed:

"That's a laudable goal for a decree, but this one generated disputes where disputes would never have existed. And I'm sure the other side would say, 'Yes, but then you would have aggrieved parties or aggrieved needs that would have gone unmet.' And I would challenge that....No matter whether you're talking about big disputes or acquisition of property or relocation..., there were formal procedures available to appeal those ultimately to a court. And the consent decree just provided a different vehicle in what I felt was an adversarial setting, which I don't think a consent decree should do. There was no resolution of anything here other than the judge occasionally coming out and ordering."

In hindsight, some FHWA and Caltrans officials acknowledged the utility of an independent mediator. According to another Caltrans attorney:

"I would have created an independent mediation body where all disputes went in the first instance, and it would be free of the Center's advocative body, free of the Center's control, free of Caltrans' control. And they would have the power to make a recommendation after we fought our battles out....So that a) we weren't using the courtroom device all the time and this would become a specialist kind of group, and b) we'd get sort of independent of both Caltrans and the Center and have a deciding body that presumably would see all sides."

Some CFAAC respondents see CFAAC itself as a dispute resolution body, but it is unclear exactly what disputes CFAAC has played a role in resolving. Other CFAAC respondents argue that the lack of such a body has been the biggest criticism of the decree:

"Like the meeting yesterday, HCD, Caltrans, the plaintiffs, CFAAC, and the court, and a special counsel....I always thought that [special counsel] could step in and resolve. But we've been talking about this issue on Davis/Bacon. We've been talking about whether or not rehab projects

could be part of this new 110 Program....And John Phillips said, 'Well, I thought that's what you were supposed to do, George.'...George says, 'Well, evidently I've been doing a good job' or words to that effect. But his role...I guess he always thought he was just trying to get the parties to agree. So he's just like an extension of the judge."

Plaintiffs attorneys agree that such a body is needed. One attorney for plaintiffs attributes the judge's reluctance to appoint a special master to the judge's desire not "to cede what he thought was his essential role."

11. The critical factor in achieving the changes desired by the decree is people with the vision, commitment, and courage to make the consent decree work.

Respondents felt by a 6 to 1 margin that this statement's accuracy or inaccuracy was important in understanding the history of the Century Freeway decree. Almost five out of six interviewees described this sentence as accurate.

The degree of consensus on this item was surprising, in light of the large number of respondents who found bureaucratic rivalries and inertia such powerful factors in explaining the decree's implementation. Respondents acknowledged severe structural flaws and organizational constraints that impeded implementation. These might have been overcome "if only we had had the right people." Some Caltrans respondents indicated that "the vision thing" was a necessary but not sufficient ingredient to successful implementation. Said a Caltrans attorney:

"If you were going to have a consent decree and if you're going to make it work, it would require people with vision, commitment, and courage....This one might work under those conditions, but I don't guess we'll ever find out. You know, I don't mean to throw rocks at just the plaintiffs, because for a long time the people administering the program here had as great or greater antipathy for the plaintiffs as the plaintiffs had for us. We're not pure and holy, you know."

Caltrans respondents traced the lack of vision to the perception that the decree's terms were dictated to them, rather than wholeheartedly embraced by the rank and file of the department. According to one administrator:

"The real vision of most people I'm acquainted with, and I certainly include myself, is to allow us to get ahead and build the project in spite of the consent decree, which is certainly not making it work."

People in Caltrans who were somewhat sympathetic to the decree pointed to obstacles to decree implementation within the department:

"I think it takes courage within your organization to say, 'Wait a minute. Sure, we don't like it, but, by golly, we agreed to it.' And that came up a lot of time. 'What are you doing? We agreed to it to get this thing going; we didn't agree to implement it.' That 'courage' word is the key one."

Center for Law and CFAAC respondents faulted Caltrans for a failure to internalize the values furthered by the decree:

"I think that Caltrans was not interested in making the consent decree work; they wanted to build their freeway....Anything that wasn't what they usually do in building freeways, was just a pain that they couldn't see why they had to deal with."

12. The defendant organizations have more or less consistent interests.

Five respondents felt that the accuracy or inaccuracy of this statement was important for every one who felt it was unimportant. Three out of four respondents indicated that it was an accurate description of defendant organizations under the I-105 consent decree.

Caltrans and FHWA respondents agreed that their interests are more or less consistent. The most frequently cited instances where those interests diverged was the dispute over the provision of funding for the services of Special Counsel Crawford and disputes over reimbursable costs on the housing program..

Respondents offered various reasons why consistent interests are important:

"It's important to understand that because a lot of times the Center for Law thought that they were going to get federal highway support on something and they didn't get it because [FHWA] interests were the same as Caltrans: Build a freeway and damn everything else."

"Essentially, the view has been 'I want to minimize, I want to step away from anything that gives me a problem.' Anything outside of 'business as usual' is really viewed antithetically and is viewed somewhat hostilely by the organizations. Occasionally, there is an individual here and there who overcomes the institutional biases, but not many."

13. Nonparties to the decree who are involved in its implementation participated in its formulation.

An approximately equal number of respondents thought this statement accurate as thought the statement inaccurate. About four out of five respondents thought that the amount of

non-party involvement was important in explaining the Century Freeway decree's implementation.

Within Caltrans, respondents take opposing views on whether non-parties should be included in decree negotiations, and whether they were included. According to one Caltrans attorney involved in the negotiations:

"Non-parties did not participate in its formulation. I think it's important that they do not. If you're going to start with the consent decree, then you certainly don't want people that are not involved in the litigation hammering the terms of the decree."

Other Caltrans officials disagreed for different reasons. An engineer and two attorneys offered these perspectives:

"I think there were an awful lot of people...that were affected by the decree that had no voice in it whatsoever, and that's a crime. I really do believe that."

"I think it was critical that they be involved because they didn't understand what was trying to be achieved...CFAAC, the Advocate, the individuals in CFAAC, Clarence Broussard in particular...if you had decided with the parties present who you were going to use to run the show, even Judge Pregerson would have had a hard time (approving the settlement)."

"It probably would have been helpful for the cities that are in the corridor (to) have representatives and know that the housing was something that was going to be put in their areas, or that we would want to be able to put into their areas."

Caltrans respondents who felt that non-parties had participated cited the participation of HCD's Donald Ternier and community leader Ted Watkins in formulating the housing program.

HCD officials charged with implementing the decree's housing program would have preferred to participate more meaningfully:

"No, HCD didn't have any input in drafting the decree. They were involved in the implementation program and putting that together, but not in the actual formulation of the decree....It seems to me logical that when you're talking about construction of housing you would have someone there at the table who knows something about construction of housing and that the wisdom of whether or not you're under the Federal Highway Administration structure would have been brought out, but it didn't happen."

"I think it's extremely important that all of the people who are...charged with any responsibility in terms of implementing and carrying out the terms of the decree have some ability to interface within the decree. And I think that to the extent we didn't (we can attribute) some of the organizational problems...with regard to...how the funds would flow, as well as some just plain technical aspects of how construction of housing is financed, and so forth."

One Center for Law attorney had little sympathy for HCD's desire in hindsight to have been more involved: "Sure, people say, for example, that HCD was not a participant in the drafting, and got stuck with doing some of the stuff. But my view is that they're the State of California, and if they can't get their act together..."

14. The decree provides for the free exchange of information upon request.

Slightly more than half of the respondents indicated that this statement was accurate. Respondents who indicated that information exchange was important in understanding the decree outnumbered those who said the statement was unimportant by about 2.5 to 1.

Here again, Caltrans respondents perceived a distinction in what the decree tried to do, and what the decree was able to accomplish. They almost unanimously agreed that the decree does indeed specify this, but that information exchange has not been free. Here, a Caltrans administrator:

"Yes, it does. But what it doesn't provide for, and what's a shame, is an openness....Our people—because of a lack of trust with some of them...there was never a whole lot of trust ...because we felt ...information [would be used] against us—Our people tend to not be open and sit down and say, 'Hey...this is what we're doing, this is why we're doing it.'...We just don't think we can trust any of them. In fact, we don't trust many of our own employees for the exact same reason, which maybe is bureaucratic paranoia. But it's a shame because the main purpose of CFAAC especially was to get information about what we were doing out. Yet we turned into adversaries. So that's the sad part of that."

A small minority of Caltrans interviewees alleged that some Caltrans employees purposefully obstructed the flow of information to CFAAC, and described a practice of providing only information that is explicitly asked for.

CFAAC respondents were split in their assessment of whether information exchange with Caltrans was a problem and offered these perspectives:

"We should have had it. There were few times they would give you information on anything. It was a short, 20 minute honeymoon. It was even trouble getting parking if you were from CFAAC."

"Yes, that's correct. And I think for the most part it's worked okay. Like I said, sometimes there are delays in getting that information. 'Oh, I don't have it' or 'I don't know where it is' or 'It will take a long time' or 'We'll get right on it.' But it does provide for the free exchange, yes."

Other respondents were also split. Some indicated that Caltrans has claimed confidentiality as a reason for withholding certain information. Others cited the quarterly reports and status conferences as decree-mandated means of promoting the free exchange of information. One HCD respondent put a peculiar spin on the statement concerning the free exchange of information:

"One of the galling things was that it became apparent that we were sending our quarterly and monthly progress reports to plaintiffs who were then charging the...project time to read the information we had provided. They would then attribute billable hours to reading the information we provided. It's true. (Laughter) It's true...I know that's what you didn't mean by 'free,' but..."

This interviewee also suggested that frustration over exchange of information might have been resulted less from intentional obstruction of information flow than from simple unwieldiness of the data:

"I know that there's a perception that somehow we have a whole bunch of information that we probably don't have. It's probably a lot of facts floating around but I doubt that it's collected any way that makes sense to anyone."

15. Defendants are officials of organizations with an identifiable and coherent structure.

About four out of five respondents agreed that defendant organizations had an identifiable and coherent structure. About two out of three respondents felt that the statement was important in understanding the history of the decree.

Caltrans and FHWA respondents generally agreed that the statement was true, but there were some notable exceptions. One official described Caltrans under Director Gianturco as having a structure and goals that were not internally coherent; her agenda was much broader than that of the rank and file Caltrans engineer. Another Caltrans official explained that people outside the department cannot figure out who does what. The fact that under the consent decree

there were persons in roles that were difficult even for Caltrans insiders to define (for example, Jim Turk on the civil rights side and Gene Mattocks on the housing side)—making the structure that much less coherent to the outsider.

Other respondents were also in general agreement concerning defendant organizations' structures. One CFAAC executive director objected to the sentence's use of the word "official":

"I mean, looking at it, yes they are officials, but the degree of officialdom is often times very low. And I think it has probably been a nature of the beast itself. You know, we've had so many meetings....I think the only time we'll see officials...(is) when they know they have to be before the judge. But in working meetings often times we'll get people who...don't...have the proper capacity or role to contribute or carry back information properly to the appropriate official."

16. Plaintiffs in the litigation have discernible, homogeneous interests.

Approximately three out of four interviewees disagreed with the statement in regard to the Century Freeway litigation. Slightly more than half however, thought that degree of plaintiff cohesiveness helps explain the consent decree's implementation.

To Caltrans respondents, plaintiffs' interests were discernible but not homogeneous. The difficulty identifying plaintiffs' interests was a cause of concern among some Caltrans officials:

"(T)here is no process other than the corridor advocate for communicating with...plaintiff individuals, and ascertaining what it is if anything that they wish to be done in pursuance of their interests. The organizational plaintiffs, Sierra Club, NAACP, presumably supported the objectives of the decree initially, lent their names to the suit....I'm not aware of any communication to or from any of those organizations in the last 20 years. It's a flaw that we've sought to address from time to time....I sought to make to Judge Pregerson the point that a certain right...was under debate was a right belonging to the plaintiffs. And his response was, "Don't distract yourself with that line of discussion. There are no plaintiffs. The people at large are the plaintiffs."

Caltrans officials did not point out specific instances where the lack of homogeneity or definition of plaintiffs' interests caused problems in decree implementation. Center for Law interviewees described plaintiffs' interests as heterogeneous, and cite the reconciliation of those interests as one of the successes of the consent decree. A Center for Law attorney provided a

perspective on disparity between the interests of the original plaintiffs and the interests as they evolved during litigation:

"At the beginning what you had is a public interest law firm—it's an active thing. You know, like somebody will go to the ACLU with a school issue, their kid is not going to the school he should be. When it becomes a school desegregation issue...the issue becomes more global and perfectly appropriate. And in this instance, plaintiff's counsel have acted in somewhat 'the public interest' and not necessarily the original plaintiff's homogeneous interest. Which may not have existed at the time. But I don't have any problems with that."

Respondents affiliated with other organizations also express disappointment at the lack of involvement in the project by the lawsuit's named plaintiffs. A CFAAC perspective:

"I guess the court has...acknowledged that that law firm would represent the plaintiffs....I'm not aware of any mechanism he has in place for how the plaintiffs can assure the court that they're getting proper input and making communication with the residents and the community groups."

An HCD official described how the project may have failed to fully reconcile divergent interests of plaintiffs:

"There's a built-in conflict. The area of providing housing is not 100 percent homogeneous with providing business opportunities and training and developing opportunities. To the extent that the two diverge, there is definitely a problem in terms of plaintiffs looking to solve both, feeling that somehow you can have both high-level production of housing and at the same time achieve...social goals in terms of...high wages [for] low experienced, newly-started out people, and somehow you're not supposed to have failures with these folks?...Those two are jammed together as if there was not going to be any problem."

E. LEGAL ISSUES RAISED BY THE CONSENT DECREE

Among the legal issues mentioned by respondents in their review of the consent decree were:

- Separation of powers;
- Equal protection;
- The use of highway trust funds for unauthorized purposes;
- The proper bounds for judicial interpretation of the decree; and
- Appropriateness of monitors or other dispute resolution bodies.

However, while these issues were mentioned in response to a specific interview question, challenges to the legality of the decree or to its implementation were not on the minds of most interviewees. They seem not to have thought seriously about the criticisms in the legal literature cited earlier in this chapter (Section 2.c). Even leading legal experts who were involved in the case viewed the consent decree with a very pragmatic attitude, evidently considering legal challenges overly costly, irrelevant or unnecessary:

“If you want to look at it from a strictly academic point of view, I suppose it does kind of fudge the line that is supposed to separate the executive and the judicial branches of government. But in terms of getting things done, from a very pragmatic point of view, it converts a conflict from an adversarial one into a much more mediative process. And I think that’s much better.”

¹ According to Percival (1987 @ 335), "Consent decrees have proven to be such a useful tool in enforcement actions that the 1986 Amendments to the Comprehensive Environmental Response, Compensation and Liability Act ('CERCLA') expressly require that the government use them in all but de minimus settlements of 'imminent and substantial endangerment' actions under Section 106 of that Act."

² Citing U.S. v. ITT Continental Baking Co., 420 U.S. 223, 327-38 (1975). Resnik does point out that while "there is a strand in the case law strongly committed to....party control", "parties cannot, by giving each other consideration, purchase from a court of equity a continuing injunction. [At least insofar as consent decrees based upon statutory rights are concerned,]...the court is free to reject agreed-upon terms as not in furtherance of statutory objectives, [and]...to modify the terms of a consent decree when a change in law brings those terms in conflict with statutory objectives" (quoting System Federation v. Wright, 364 U.S. 642, 651 (1961)).

³ Local Number 93 v. City of Cleveland, 106 S. Ct. 3063 (1986).

⁴ The perceived impact on agencies of "freewheeling" consent decrees may be the reason for Attorney General Meese's 1986 policy (Jost, 1987) directing staff not to tender consent decrees or settlement agreements that significantly constrain discretion of agencies and departments of the executive branch. His policy covered and specifically forbade decrees that mandated revision or promulgation of regulations, required expenditures of funds that had not been appropriated; or committed a department for funding request or authorization; or divested discretion granted by the Congress of the Constitution where power granted to respond to changing circumstances, made policy choices or protected third party rights.

⁵ Justice Department guidelines during the Reagan Administration stated: "It is constitutionally impermissible for the courts to enter consent decrees containing...provisions where the courts would not have had the power to order such relief had the matter been litigated" (Memorandum from the Attorney General, Department Policy Concerning Consent Decrees and Settlement Agreements, (March 13, 1986). Percival (1987) concludes that that premise was rejected by the Supreme Court in Local Number 93 v. City of Cleveland, 106 S. Ct. 3063 (1986).

⁶ Once the consent decree is articulated, courts often act as if the goals of the decree are within reach. But much of organization theory and experience counter this assumption. A host of forces and interests, some not necessarily represented in litigation, come into play. And sometimes the decree may be complied with, but its goals still unfulfilled. Mode of compliance is dependent on the interplay of actions and groups--organizations whose behavior is often beyond the reach of the court issuing the decree.

⁷ The literature generally defines a successful decree as one whose formulation is fair and whose implementation is efficient.

CHAPTER V

HOUSING: HISTORY, ANALYSIS, IMPACTS

This chapter summarizes the provisions of the consent decree which address housing and assesses the impacts of these provisions on Caltrans and on other organizations involved in implementation. First we lay out some historical background on housing in the corridor. Results sections begin with Section D.

A. HISTORY OF THE PROVISION OF HOUSING IN THE CENTURY FREEWAY CORRIDOR

1. Plaintiffs in Keith v. Volpe charged that the California Division of Highways had not complied with statutes designed to aid persons displaced by federal aid highway projects

As we elaborated in Chapter II, plaintiffs in the Century Freeway lawsuit contended that defendant agencies had failed 1) to provide adequate relocation payments and assistance programs; 2) to submit to the FHWA specific relocation assurances for the Century Freeway project; and 3) to insure that prior to right-of-way acquisition, sufficient suitable replacement housing would be available.

At the time of the lawsuit, it was Federal Highway Administration policy to require that relocation assistance include "personal contact" with all persons to be displaced and delivery of a brochure which explains the general terms, available relocation services and payments, and the means by which they may be obtained (23 CFR App. A). The California Division of Highways required the division to send a 30 day written notice and a list of three comparable and available replacement homes (Kaiser et al., 1981). The State was not required to undertake extensive or individualized services for those with special needs. In Keith v. Volpe, the court concluded that the Division of Highways had been adhering to the regulations and that any failures were isolated and deminimis (352 F. Supp. 1346). The court did not address the sufficiency of the existing regulations. However, it has been argued that even full compliance with existing statutes and regulations may not have resulted in a relocation program which offered effective assistance to those who were unable to help themselves (Armstrong, 1972).

Addressing the allegation that the state failed to provide project specific assurances, the court ordered that right-of-way acquisition cease until the state provided project assurances on the availability of replacement housing and the adequacy of the state's relocation program as required by the 1971 amendments to the Uniform Relocation Act. The 1968 regulation required these project-specific assurances from the state on five points. The California Division of Highways contended in a letter to the FHWA in October, 1968, that it had satisfied these assurances. The court, however, found that the guarantees made by the Division had been "general statewide assurances" instead of assurances specifically referring to the Century Freeway. These five assurances are:

- 1) that relocation payments and services would be provided;
- 2) that the public would be adequately informed about them;
- 3) that the state would provide a full analysis of the extent of replacement housing if such housing might not be available within a reasonable period of time prior to displacement;
- 4) that a 90-day written notice would be provided all persons to be displaced; and
- 5) that the state's relocation program was realistic and adequate to provide "orderly, timely, and efficient" relocation with minimum hardship on displacees (Armstrong, 1972 and IM 80-1-68).

The defendants insisted that adequate replacement housing was available and had been documented in the availability studies. These studies were extensive; they included detailed information on the needs of those facing displacement and on replacement housing which was available in the vicinity of the freeway corridor. The Division of Highways had also attempted to include in the studies analyses of special problems: the effect of racial discrimination on the availability of replacement housing for displaced blacks; the proximity to public transportation facilities; replacement housing for elderly people; and the impact of other public works projects on the relevant housing market.

Although the details of the housing market and the needs of the displacees must both be considered by the state in its analysis of the relocation problem, FHWA regulations required only that the data on the displacees' needs actually be recorded (Armstrong, 1972).

The court questioned the validity of the Division's conclusions with respect to the availability of housing in the corridor. Availability had been calculated on the basis of turnover. HUD had rejected turnover as an indicator favoring instead the use of vacancy rates (Armstrong, 1972). Furthermore, the accuracy of the data throughout the studies was questioned. Nevertheless, the

court was unwilling to find that adequate replacement housing would not be available within a reasonable period of time prior to displacement. However, it was also unwilling to find that there would be adequate replacement housing (352 F. Supp. 1349). Judge Pregerson wrote:

"The significance of these shortcomings is...not clear....What these [relocation and construction] programs suggest is that regardless of the shortcomings of the housing availability studies, adequate replacement housing may well be available 'within a reasonable period of time prior to displacement.'"

"Having observed the employees of the Division of Highways who testified at the hearing on plaintiffs' motion for a preliminary injunction, the Court believes that these individuals are working very hard to ensure that no one will be displaced by the Century Freeway unless suitable replacement housing is available to him. The Court also believes that the relocation payments and the construction or renovation of replacement housing authorized by the Relocation Act do much to ensure that adequate housing will be available to persons displaced by the Century Freeway."

He stated that in a normal case the plaintiffs would not have been granted relief. However, citing the findings of a Seattle court in Lathan v. Volpe (455 F. 2d. 1111), he continued:

"No one can be completely sure, on the basis of the studies heretofore conducted, that the available replacement housing is adequate....The time to determine whether the shortcomings in the housing availability studies are significant is now....The shortcomings and uncertainties left by the existing housing availability studies should be resolved (352 F. Supp. 1324 (1972))."

Those shortcomings were:

- 1) failure to consider that people other than those displaced by the Century Freeway will seek homes and apartments in the relevant housing markets;
- 2) failure to consider that the construction of the freeway will necessitate the demolition of housing; and
- 3) failure to gather data on the number of rooms in many of the available rental units and the percentage of these units that are decent, safe and sanitary.

The availability studies had been completed before the amended Uniform Relocation Act a) increased the maximum relocation payments available to displaced persons and b) authorized the construction of new housing and the renovation of existing housing to maintain a sufficient supply (Armstrong, 1972).

Later HUD regulations required that, if needed relocation housing was not available and could not be made available by other means, the only permissible alternatives were 1) to stop,

reject or abandon the project; 2) to revise the project to reduce displacement; or 3) to use project funds under section 206 to provide the alternative housing (37 Fed. Reg. 363, 1972).

The additional studies ordered by the court were to consider the ameliorative effect of the increased relocation payments and the impact of the homes that would be added to the housing supply through the construction and renovation of replacement housing (352 F. Supp. 1324 (1972)).

2. Caltrans respondents contend that prior to the lawsuit, changing housing regulations had allowed the Division of Highways to address some needs of the community

In retrospect, Caltrans interviewees argued that the specific needs of the majority of the displacees were being met prior to the lawsuit. However, many indicated that the increase in funds available for home purchase may not have been accompanied by a simultaneous increase in housing supply were it not for the provisions of the consent decree. According to a senior Caltrans right-of-way official:

"...although we could put our displacees into replacement housing, we were taking out of the stock a lot of affordable housing that was needed by the community at large....We were taking out seven to eight thousand affordable housing units and not ... proposing to put one housing unit back in....[We were] putting [people] in a higher level of housing and wiping out seven thousand affordable housing units which were needed by the community at large....With birds and other species, we replace their habitat under environmental laws, but there was not a requirement under law to replace the habitat of low and moderate income households. And it seems to me maybe we need that type of law. But we didn't have it."

An increase in relocation payments without an increase in housing supply arguably serves to inflate the prices of available housing. Financially compensating those whose homes are taken does not adequately assure them of replacement housing. When more people with more money seek housing in a market in which the supply is static or decreases, short-run inflation of rents and prices may result (Armstrong, 1972).

In response to this problem, the California Replacement Housing Act of 1968 provided for the Department of Public Works to acquire property and in cooperation with other entities to provide replacement housing for economically depressed areas (Division of Highways, 1969). Apparently this act was passed to address the displacement on route 105 in the Watts-Willowbrook area. It was estimated that the construction of routes 105, 47, and 90 would displace 10,000 dwelling units in the south-central area (Division of Highways, 1969).

"A substantial majority of those displaced are in the low income category frequently referred to as disadvantaged. The Replacement Housing Act was developed so that the development of these highways in Watts would not increase the social problems of that community by the elimination of the extremely large volume of houses from the existing housing supply (Division of Highways, 1969)."

In 1969 the State legislature passed the Ralph Act to promote maximum community participation in the development of housing projects in Watts. For the Century Freeway project, this meant that the Director of Public Works was allowed to forgo conventional contracting procedures to assure employment of contractors who utilized community resources in development of replacement housing (Division of Highways, 1969). (The director of right-of-way from the Division of Highways had earlier written that the success of the right of way acquisition resulted from its sensitivity to community interests and the inclusion of local organizations in the replacement effort (Hill, S.L., June 1967)).

The Division had in fact constructed some replacement housing for displacements caused by the Century Freeway. According to evidence presented to the court, the most severe shortage existed along the Watts-Willowbrook segment. In June, 1970 the state had moved homes previously acquired by eminent domain in the area of the Los Angeles Airport to vacant lots in Watts-Willowbrook and completely renovated them. By 1972, only 29 homes had been made available but the state intended to provide more if demand existed. In May, 1972, nine of the 29 homes were still vacant. Testimony conflicted as to whether or not the cause of the vacancies was small size of the houses; undesirability of lots; or success by displaced persons in finding suitable replacement housing by other means (352 F.Supp. at 1349, 4 ERC at 1366, and Armstrong, 1972).

3. Environmental studies conducted during the injunction concluded that the loss of housing resulting from the project could be mitigated through the provisions of the California Replacement Housing Act and other California Legislation

In 1972, Caltrans and FHWA began to re-study the effects of the I-105 on housing availability. (See Chapter II) The environmental analysis found that there would be a 0.25 percent reduction of living units in the Los Angeles region as a result of the initial displacement of people and businesses. Availability studies conducted by the state at that time nonetheless indicated that "for the most part sufficient replacement housing was available in the replacement areas for families who are to be displaced." Caltrans and FHWA determined that mitigation of adverse impacts on housing would be provided under the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (HCD, August 1982).

Caltrans and FHWA interviewees believed that the needs of the actual displacees were well met under the Uniform Relocation Act and the Ralph Act. The generation of the 4200 unit figure in the 1979 consent decree was generally perceived as an arbitrary goal established to replenish some of the housing stock in the corridor. The purpose of agreeing on this goal was to allow the freeway to proceed.

"I think it's acknowledged that there's no real pretense that those units were needed to house displacees or to accommodate corridor residents. It was a replenishment of the housing stock in the community rationalized as a mitigation of an adverse environmental impact. It didn't really key to the specific group of persons having defined housing needs."

However, some respondents recognized the relationship between community stock and displacee need:

"I think the question was not so much whether the displacees were being treated well as ...the loss of the housing stock itself. Because when those displacees got their bonuses ...housing would have been available to others who weren't being displaced. ...There was nothing there for them....So looking at it from a regional standpoint ...your resources are diminishing rapidly."

As discussed in the previous section, the larger issue was not the specific needs of the displacees but the needs of the corridor. A 1973 Housing Availability Study conducted by the State showed that of the 3600 families displaced *before the injunction*, 62.5% moved away from any city affected by the project and 21% of the renters became homeowners.

In 1979, Caltrans released a Community Housing Needs Study which focused on the impact of the loss of affordable housing on the community. This study was unique in that it took "the view that, because of the frequency with which households normally move and the long life and generally fixed location of housing, affordable housing is a community resource (Caltrans, 1979)." The study confirmed the need for affordable housing in the area, and the belief that the impact of the I-105 on the supply was significant and should be mitigated. It cited a need in 1970 for 3,600 affordable housing units increasing to 49,500 by 1977. This increase resulted from a number of factors:

"general inflation, very little new construction in study area, influx of population in the region, smaller households, acquisitions and displacements for public projects, etc. However, it is not possible to separate the portion of the increase attributable to each individual factor (Caltrans, 1979)."

By this time approximately 6,000 affordable housing units had been acquired for the I-105 project. The study considered this a significant aggravation of an already insufficient supply of housing. Those cities most affected were Lynwood, which lost 7 percent of their affordable housing stock, and Paramount, which lost 3 percent.

The study recommended three mitigation measures to "replenish the study area's supply of low and moderate income housing and thereby lessen the transportation project's impact on the community housing stock:

- 1) Salvage the maximum number of housing units presently located within the LA-105 project right of way for relocation and rehabilitation (to HUD standards) within the affected corridor communities;
- 2) Rehabilitate-in-place (to HUD standards) existing housing units which lie outside of the LA-105 project right of way and are presently uninhabitable or not decent, safe, and sanitary;
- 3) Construct new housing units in the affected communities (Caltrans, 1979)."

The study cited California Health and Safety Code Section 33334.5 and Federal Law (42 U.S.C. 1455) which provided for mitigation of the impacts of removal of low and moderate income housing for public projects. Before the consent decree, State highway departments had made limited use of the construction option. Presumably they were reluctant to enter what they considered the province of urban renewal and redevelopment agencies. Furthermore, FHWA regulations did not contain any standards to aid state highway departments in deciding when to construct replacement housing. HUD, but not FHWA, had adopted a 5% vacancy rate as a minimum trigger for replacement on a 1-to-1 basis (Armstrong, 1972).

B. DELAY CREATED BY THE INJUNCTION CAUSED HARDSHIP IN THE COMMUNITY THAT CANNOT BE ATTRIBUTED TO THE CONSENT DECREE

1. Buildings remained boarded up for seven years, inviting vandalism and crime

In 1979, the number and disposition of dwelling units required for the project was approximately:

- ~2,300 acquired and demolished
- ~1,000 acquired and relocated
- ~1,500 acquired and boarded-up
- ~1,000 acquired and presently rented

~2,000 yet-to-be acquired (Caltrans, 1979)

When the injunction was issued, several cities, including Downey and Lynwood, requested that state-bought properties not be re-rented in the period prior to freeway construction.

Furthermore, right-of-way acquisition could only proceed under court order. The court would grant this order in two sets of circumstances: appraisal and acquisition might proceed if it could be shown that a businessperson or resident "freely and voluntarily decided to leave the freeway corridor," or demolition or other work might be engaged if the by-products of right of way acquisition became threats to the public health and safety during the injunction (352 F. Supp. 1324 (1972)).

Historically, the period between route adoption and land acquisition has resulted in difficulties in finding buyers as well as neglect of residences and neighborhoods because of the future acquisition by the Division of Highways (Division of Highways, 1969). We presume that the delay linked to the injunction exacerbated this problem. Wrote Norman Emerson:

"The vacant houses came increasingly to symbolize the freeway. The day the injunction was put into effect ...a total of 18,200 people had been displaced. Judge Pregerson authorized an inspector to make monthly checks to see which of the remaining structures posed a community hazard. The plaintiffs...wanted to see as few of the remaining structures torn down as possible, holding that if land clearance were allowed to continue, the freeway could become 'fait accompli.' They argued in favor of renovation of substandard structures and rental of the units by the State. Consequently, the abandoned neighborhoods became scenes of vandalism and occasional assaults and rapes, bringing about decline in neighboring property values. Increasingly, local residents came to see the only solution to the problem to be construction of the freeway." (Emerson, 1980)

C. EXHIBIT B

1. Plaintiffs request housing as a term of a settlement

Despite the conclusions of the Availability Studies that Caltrans had sufficient means to replace housing, negotiations continued. A November, 1978 Los Angeles Times article reported that the plaintiffs demanded a housing program which was a "tightly kept secret among top state officials and a few outsiders." A Caltrans internal memorandum dated February 15, 1979, described the plaintiffs' consideration of housing as most "crucial." The two main areas of concern were HCD control and number of units. Plaintiffs' position was that they would not "allow Caltrans to be in control because [Caltrans] would subvert the problem to [Caltrans] pecuniary interests; that they had been advised HCD is the only agency which is independent, autonomous and expert in the field." The number of units to be relocated and rehabilitated at this time was undecided. Negotiations regarding the use of best effort or a bottom line number

of replacement units were ongoing. [See Chapter II for additional analysis of the negotiations surrounding the housing provisions of the Consent Decree.]

In October, 1979, under the terms of the consent decree, the California Department of Housing and Community Development (HCD) was given the responsibility to construct 4,200 housing units. Housing was to meet the housing replacement needs of households yet to be displaced and to serve as replenishment housing. The consent decree established a series of zones based on six-mile intervals from the route alignment as the successive priority area for locating the 4,200 units of housing. The consent decree also identified restrictions on the eligibility and affordability of the units provided (HCD, 1982).

Budgetary restrictions initiated by the secretary of the United States Department of Transportation led to an amended consent decree signed in September, 1981; the housing production goal was cut to 3,700 units and allowed recycling of a \$110 million fund. Although a substantial contribution by the Federal Highway Administration, resulting in the construction of housing on a community level rather than a case-by-case basis, the resulting cost commitment was about half that of the 1979 decree.

2. HCD and the Housing Advisory Committee begin work on the Century Freeway Housing Replenishment Plan

The consent decree ordered that a housing plan be prepared by HCD and approved by the Housing Advisory Committee, a group representing each of the corridor cities and housing replacement zones. The decree specified the requirements of the plan. It set out the general categories of persons and households who may purchase or rent housing units developed under the Housing Plan. It delineated the financial responsibilities of Federal and State defendants, and suggested some methods by which these responsibilities could be implemented. It also set standards for the use of excess property acquired for freeway right-of-way but not used for that purpose (Final Consent Decree, 1979). The following section describes the emergent plan.

In April, 1981, HCD, the designated lead agency responsible for replacement and replenishment housing, retained Gruen Associates/The Planning Group to prepare the Century Freeway Housing Plan and associated environmental documentation. Aaron Clemens, David Crompton, Barrio Planners and Economic Research Associates also participated. The Housing Plan was to provide reasonably detailed guiding principles (HCD, August 1982). HCD

characterized it as a policy plan, not site-specific, meant as a statement of intentions to guide day-to-day decision making.

The 1981 consent decree amendments forced HCD to re-evaluate the housing plan. Before this point, the team had developed four alternative sketch plans based on consideration of HCD pilot projects and other commitments, and on assumptions about the level of displacee participation; income distribution of potential program participants; home ownership criteria; interest rates; number of Caltrans units feasible for rehabilitation; and land, construction and administrative cost estimates (HCD, August 1982).

The sketch plan proposed four possible strategies:

- 1) One for one replacement. This alternative aimed to mitigate impacts in the jurisdictions directly impacted by the Century Freeway. Replenishment housing would be located in corridor communities in the same proportion as it was removed.
- 2) Displacee preference and need. Households to be displaced by the Century Freeway had a priority status in the consent decree so replenishment housing would be provided in locations that Caltrans' surveys indicated displacees preferred.
- 3) Land Acquisition Strategy Extended. This approach sought to maximize use of the sites HCD identified as suitable for replenishment housing. The considerable public resources spent to date were not to be wasted.
- 4) Reinvestment. This alternative saw replenishment housing as a stimulant to reinvestment in many communities within the primary zone (HCD, August 1982).

These strategies were re-evaluated when the consent decree was amended, and the downscaled 3,700 unit program allocated units into three program elements:

- 1) New construction or rehabilitation of 1,025 units of housing pursuant to approvals given by FHWA prior to August 25, 1981.
- 2) The construction or rehabilitation of no fewer than 1,175 units to meet the "last resort" housing needs of remaining RAP-eligible displacees.
- 3) The provision of as many units as possible through a \$110 Million Fund. A 1,500 unit estimate was made but the opportunity existed to produce additional units through recycling of the fund. One year inflation protection was authorized (HCD, 1982).

Each of the three consent decree program elements contained relationships defined by the housing plan. First, those units previously approved would be provided primarily through

relocation and rehabilitation of existing units as would have the Land Acquisition Strategy Extended Alternative. These units would be produced on sites approved for purchase by FHWA as part of HCD's land banking and Pilot Project Program (HCD, 1982).

Second, the last resort housing would be provided primarily through new construction to meet the last resort housing needs of the remaining RAP-eligible displacees. These types of units would have been provided through the Displacee Preference and Needs Alternative. The housing would meet comparability requirements of the Uniform Relocation Act. Displacees would include those persons eligible for benefits under the Uniform Relocation Act, who were displaced by the Century Freeway after the date of the Final Consent Decree (HCD, 1982).

Third, the \$110 million fund would provide newly constructed units produced through the private sector, units similar to the One-for-One Replacement Option and units targeted to reinforce reinvestment objectives of Primary Zone communities. It was hypothesized that as recently occupied housing units became available to the housing program, the reconstruction bids would show a cost advantage of rehabilitation over new construction (HCD, 1982). This later proved to be incorrect.

The consent decree allowed the Century Freeway Housing Program (CFHP) Executive Director to place housing in broader areas, secondary and tertiary zones, if necessary. Because it was expected that sufficient land for the replacement units would not be found within the densely populated limits of the immediate corridor, the units would be located on six-mile north-south strips starting at the freeway. However, HCD's land inventory activities and solicitation of initial developer interest had indicated that sufficient sites would be available in the Primary Zone. Later, an expansion out of this zone was necessary, because community rejection and prohibitive costs limited the availability of Primary Zone sites.

The proposed 3,700 units were equally divided between the corridor jurisdictions and other jurisdictions within the primary zone. The number of units allocated to any corridor jurisdiction was directly related to the number of units removed or to be removed from the jurisdiction (as a percentage of the total units removed by the freeway); 1,130 for the west, 1,640 for central and 930 for east. The housing units would represent a pool available to all jurisdictions (HCD, 1982).

The composite plan was flexible; it linked planning objectives with housing that could actually be produced given site availability, developer interests, local input and project level environmental clearance.

The documents which were to govern contracting procedures were 23 CFR, FHP Manual, State Contracts Act, State Administrative Manual, and the provisions of Exhibit C of the consent decree. Two basic approaches were available under the 1982 structure of the plan. HCD might utilize the Invitation for Bid Process (IFB), as was the case in the early pilot projects. Here, the Department prepared a detailed specification package to which contractors responded with competitive bids. This approach was required for sites and units already controlled by the state. The other approach followed the Request for Proposal (RFP) process whereby HCD solicited development projects on sites controlled by the private sector. HCD reserved the right to negotiate with successful respondents to determine final costs (HCD, August 1982).

Under IFB the state acts as the developer of the housing and coordinates the relocation and rehabilitation process. Through the RFP, the developer handles all construction and subcontracting details. The preferred approach in 1982 was as follows: HCD would develop all units in the Prior Approval program element through the IFB process. These units would include relocated and rehabilitated structures and new construction on sites controlled by HCD. The Last Resort and \$110 Million Fund categories would be developed primarily through the RFP process. In 1982, a waiver of the normal contracting procedures, the IFB, had only been granted for the \$110 Million Fund and a waiver would be required for future RFP projects (HCD, August 1982).

Both last resort and prior approval housing units were to be created in a cost-effective manner, with no specific budget limit, and reimbursed by FHWA. FHWA and Caltrans would share any proceeds from the sale of these units on a 92%-8% basis. The \$110 Million Fund was allocated to HCD which was free to recycle sales proceeds into additional housing production and assistance activities (HCD, August 1982).

Participants in the Century Freeway Housing Program are displacees who are eligible for benefits under the provisions of the Uniform Relocation Act; displacees ineligible for RAP benefits who rent Caltrans-owned properties; persons on housing authority waiting lists; and persons in the general population with incomes below 120% of the Los Angeles-Long Beach SMSA median income.

3. Evaluation: Respondents criticize the lack of ongoing community involvement in the housing program

Respondents evaluated the participation of the community-based Housing Advisory Committee (HAC) in the approval of the Housing Plan positively. Representatives from both HCD and local officials unanimously cite the importance of continuing community input in the implementation of the housing program. They note that the plan, as implemented, might have reflected the needs of the communities better if the HAC had participated in its implementation. The disbanding of the HAC, seen as a forum for bringing conflicting interests together, was a loss:

"I don't think you would have ever had a lawsuit on Hawthorne Terrace go to the U.S. Supreme Court had we had the Housing Advisory Committee. That would have been resolved and settled."

The lack of community representation at the point of consideration of construction in Tier II was a disappointment. Furthermore, local officials felt that their communities were not well informed. Changes in implementation of the plan by the program were not overseen:

"Change in program design, upscaling or downscaling of a specific project, availability or lack of availability of money for a plan....Someone should have a list of...all the inner players, the people, the court, and others in it. Somebody should have been there in the situation saying, 'change your expectations communities'. If you are told that this is going to be done on time you might have gotten ready...to coordinate other programs to our agenda. When our agenda changed, we should have said something to you all to bring you along...these state agencies don't do that."

To date, the Housing Plan is perceived to have had limited utility. While satisfying the terms of the consent decree, in that the process for providing housing was outlined, HCD did not use the plan in day-to-day implementation of the program. One interviewee said:

"I thought it...was very good, but I thought it only had a useful life of about two years... because after it was finalized...market conditions, environmental conditions, political conditions, changed to a point where you almost need another one."

4. A brief history of Century Freeway Housing Program production

The progress of the Century Freeway Housing Program is documented in that organization's Quarterly Reports. Here we summarize some of the milestones:

- By 1983 conditional commitment of \$34 million for the construction of 412 units had been given. Construction began on the first project of fifty units in January, 1983.

- In the first quarter of 1983 HCD advanced its construction schedule in coordination with Caltrans' schedule. HCD cited problems in awarding a contract for 433 units given conditional commitment in September, 1982 because of lack of staff in the Civil Rights Branch and confusion and delay while Caltrans had been working out acceptable policies and procedures.
- During fiscal year 1982-1983 CFHP had awarded approximately \$14 million for 176 units and anticipated awarding \$57 million for 752 units in 1983-1984.
- By early 1986 RFP-1 was encumbered. Ten out of 15 projects were completed (300 out of 411 units).
- A federal audit completed in 1986 concluded that the housing production schedule set forth in the consent decree would not be met and the number of units planned would be more than needed. In February 1986, only 536 units were completed and 339 were under construction. Of the 536 completed units, only 215 were occupied. The 59.9% vacancy was attributed to low displacee interest, inadequate marketing strategies, and the lack of rental disposition instructions. The audit cited increased costs attributable to lack of controls over land and dwelling costs, unnecessary restriction on housing locations, and production schedules which had proven to be unnecessarily restrictive.
- By early 1987 thirteen of 15 RFP-1 projects were completed. Under RFP-4, two projects were complete for \$13.5 million, and ten were under construction (\$30.2 million).
- In late 1987, the status of the 1025 program was 225 units complete, 96 encumbered, 16 obligated. Two more RFP-4 projects were complete and nine were under construction.
- In late 1988, HCD reported that an RFP had not been issued since February, 1985, and that there were 360 units to be completed from the inventory of existing RFPs and PS&Es from that period. The lack of solicitations by the CFHP was said to be directly related to ongoing discussions at the Federal District Court regarding proposals to restructure the program. CFHP argued that, had it been allowed to proceed with the normal procurement procedures, it would have had the balance of required housing units either under construction or completed. CFHP proposed Notice of Funding Availability (NOFA) method of awarding projects.
- In 1989, subsequent to the recommendations of Kenneth Leventhal & Company, the housing program was re-structured. Under this program both the NOFA approach suggested by HCD and a public/private partnership with the Local Initiatives Support Corporation were to produce the housing.

D. EVALUATING THE IMPACTS OF THE CONSENT DECREE PROVISIONS FOR HOUSING.

For convenience we first summarize here the results presented in Chapter III. The Comparison Project features the following housing components:

- construction of about 500 replacement units;

- no construction of additional units would to replenish housing stock in affected communities;
- Caltrans as lead agency in the implementation of the housing program;
- use of Federal Highway funds for replacement housing; and
- no separate agency to represent the interests of Century Freeway displacees.

The actual freeway being constructed today includes:

- the construction of about 1000 replacement units;
- the anticipated construction of about 2000 additional units to replenish the housing stock in affected communities;
- Housing and Community Development as lead agency in the implementation of the housing program.
- use of Federal Highway funds for both replacement and replenishment housing; and
- establishment of the Office of the Advocate as a separate agency to represent the interests of Century Freeway displacees.

In the following sections we undertake several evaluations of the housing program. We first review the public policy assessment of the housing provisions. We then provide information on direct and associated costs of housing. This is followed by an assessment of the decision to assign housing implementation to HCD and of the overall HCD performance.

1. Respondents in general evaluate provisions for housing resulting from the consent decree as good public policy.¹

See Figures V-1 to V-6 for a graphic representation of the percentage of respondents who approved of Consent Decree Exhibit B elements and thought their implementation promoted the general welfare. This analysis is conducted by organization: Caltrans, FHWA, and all others. We include the responses of only those individuals who knew of the element.

While only 56% of Caltrans respondents approved of the inclusion of the 3700 units of replacement and replenishment housing, 72% said it promoted the general welfare. (See Figure V-1) Comments made by this group reflect a perception that this package was forced on the agency in order to allow construction to proceed. This group and respondents in FHWA saw the housing program as part of a mitigation package. Other respondents also recognized that replacement housing was needed in the community. Interviewees confirmed that

while there may be a corridor-wide benefit from the housing program, the specific benefit to the displacees was questionable. They also cite insufficient direction from the court in the implementation of the provision.

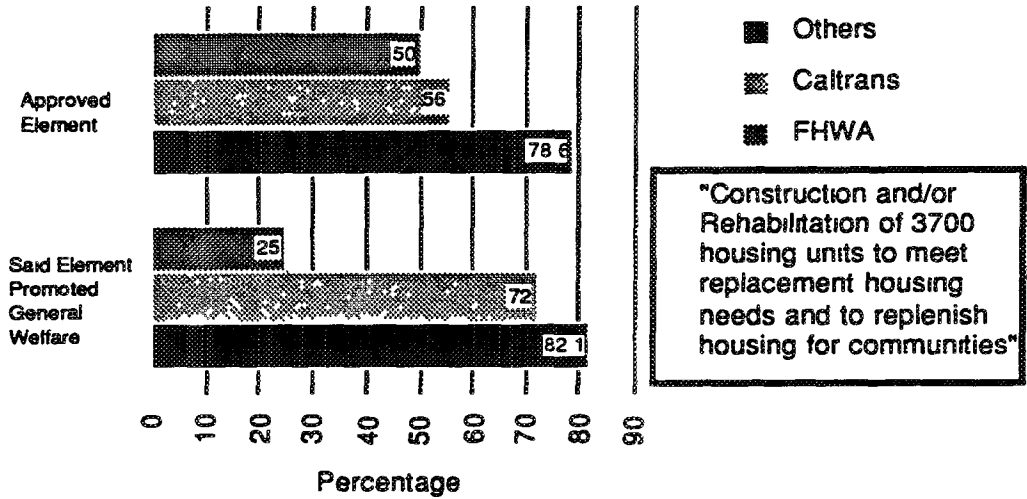


Figure V-1

Interviewees generally perceived the three elements of the housing program to be beneficial. (See Figures V-2 to V-4) Some noted that people who were actually displaced early in the project did not benefit from these provisions. Housing officials ranked the \$110 million element as the most productive because it allows for more flexibility in project delivery.

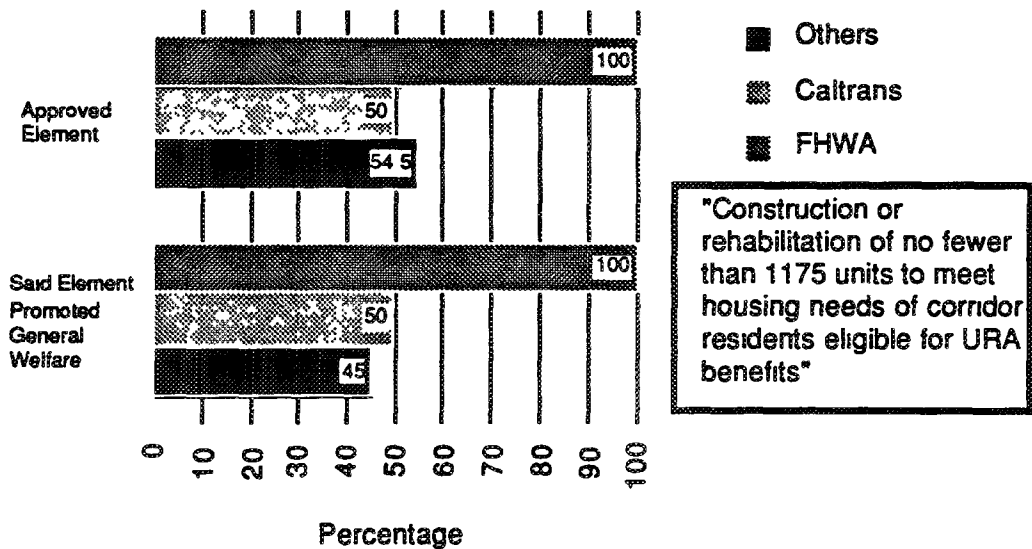


Figure V-2

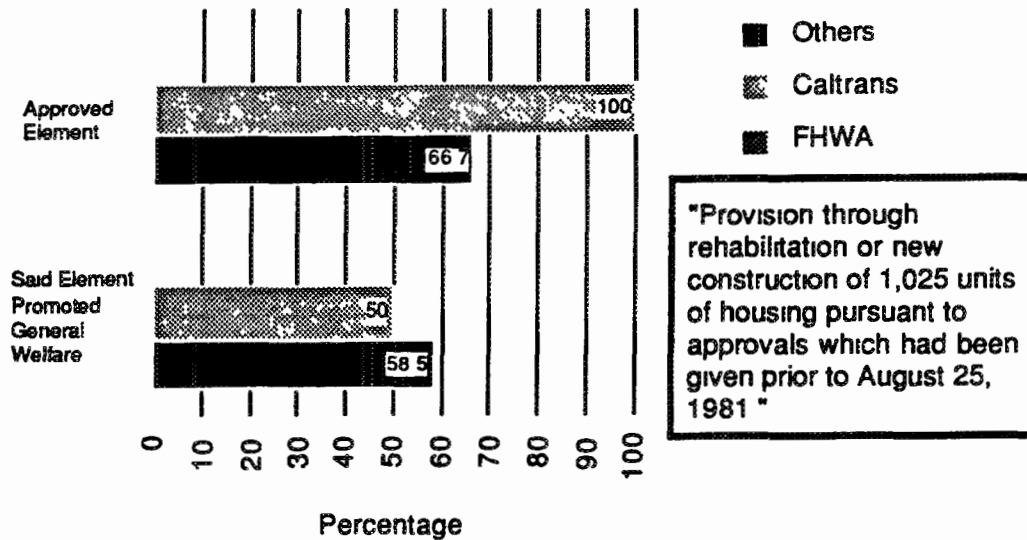


Figure V-3

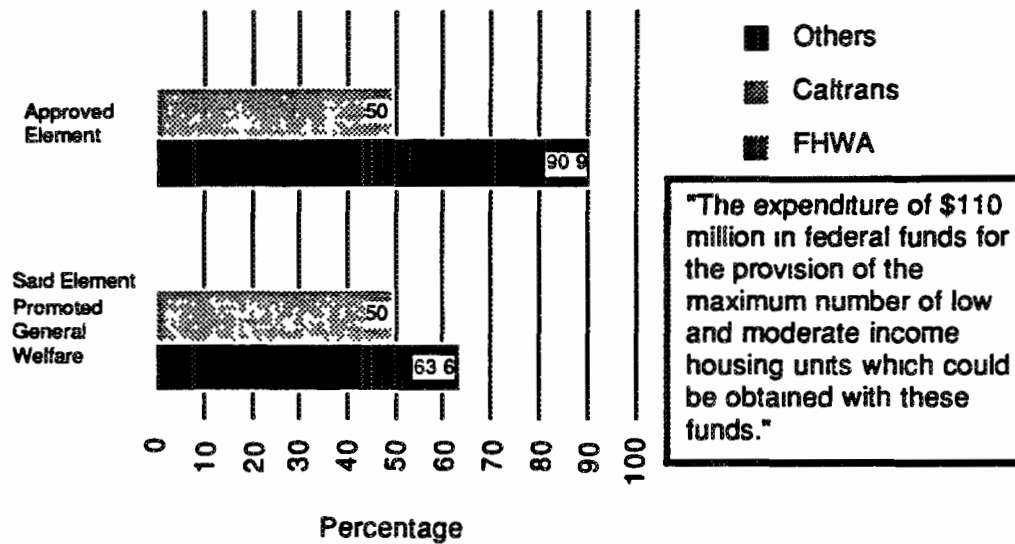


Figure V-4

The majority of Caltrans officials did not approve of the phasing requirement in the decree; however, they concluded that its inclusion promoted the general welfare. (See Figure V-5) This discrepancy is explained as follows: plaintiffs allegedly did not trust Caltrans to provide the housing. The phasing provisions assured that it would not be circumvented. One Caltrans official commented on the origin of the element:

"I would guess, it's because the only way in the plaintiffs' mind they could get the housing built is to force Caltrans—that Caltrans couldn't build the freeway unless the housing got built. And I think they were right."

Phasing was eliminated as a requirement of the consent decree in 1989. One Caltrans officials explained:

"Requiring housing to keep pace with highway construction—that was an ...incentive in the early days to keep the housing phase somewhat on track. It might have floundered completely without that requirement. That requirement of course has now been eliminated with the restructuring deal. In fact, I think the specific reason ...[why]...the plaintiffs were willing to relinquish that bit of leverage was that ...they hoped in exchange to get rid of HCD."

Caltrans officials concluded that this constraint did not hinder the progress of the freeway. Other respondents evaluated both the implementation and the idea of the phasing as positive.

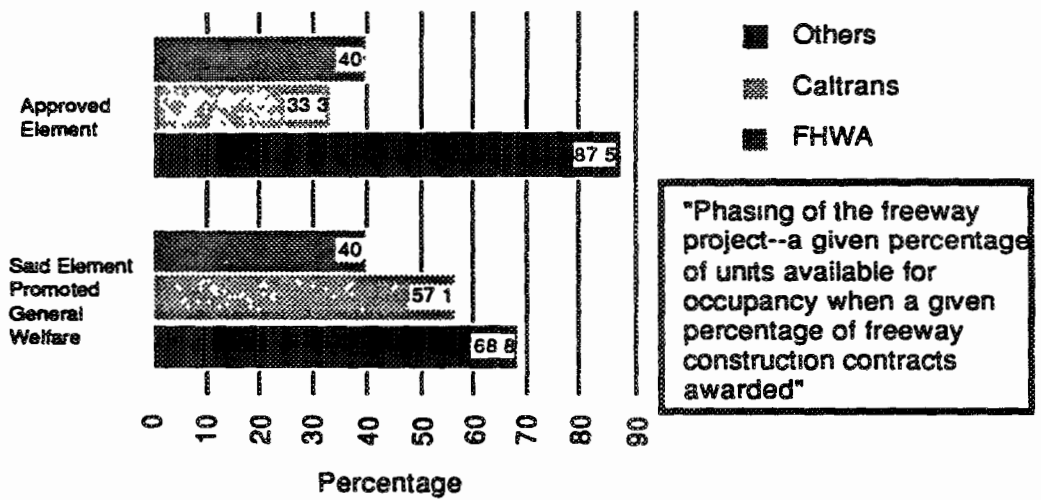


Figure V-5

The majority of all respondents favored federal responsibility for 92% of the housing. See (Figure V-6) The housing cost was perceived as a cost of building a highway; transportation agencies which take homes must be responsible for their replacement. Some respondents expressed a concern with using federal highway dollars for the construction of housing because it constrained the manner in which the housing could be built.

"We could have effectively created the housing units, created the replenishment housing, done the rehabilitation through the use of non-profit housing development corporations and in conjunction with private developers without creating a project office and a bureaucracy to do it, but it would never happen as long as 92% of the money came out of the federal highway trust fund."

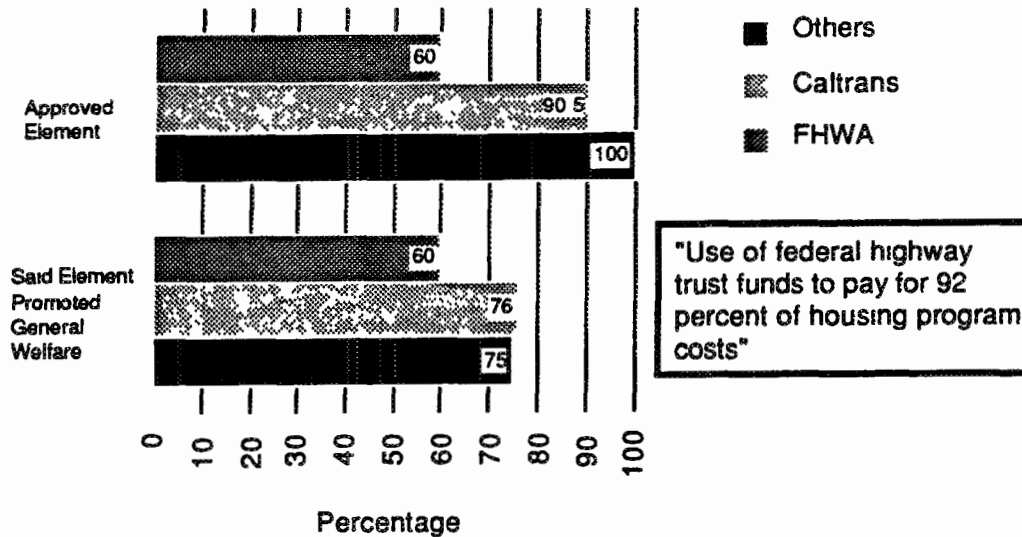


Figure V-6

2. Costs for Activities Associated with Housing

Overall, respondents perceived the Comparison Project to be less expensive for Caltrans than the actual scenario.² The categories which we compared are right of way acquisition, right of way property management, corridor maintenance, replenishment housing, replacement housing, and relocation assistance. With the exception of the costs for replacement housing and relocation assistance, Caltrans respondents reported a significantly larger cost difference than the other respondents. (See Figure V-7)

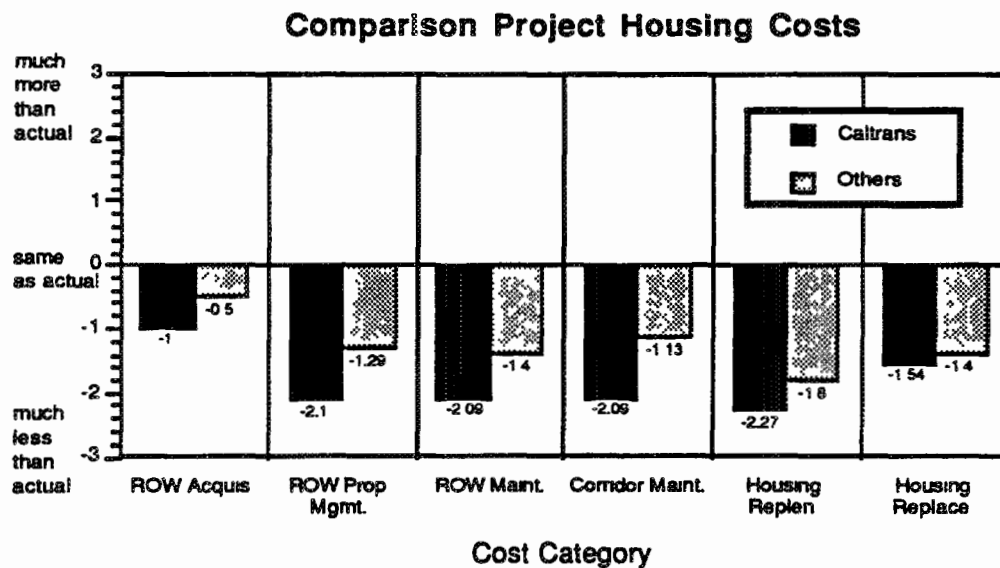


Figure V-7

We present here some additional secondary data on costs, but we have been unable to independently validate the following numbers. Housing costs were estimated in a journalistic series as 30-40% more than comparable housing costs elsewhere. High administrative costs were said to result from inexperience, bureaucratic bungling, and an agency top-heavy with management. Vague project specifications, inconsistent inspections and slow payments reportedly led to several company failures (Los Angeles Times, December 28, 1987).³ Although HCD officials admitted to higher costs, they attributed them to higher than average quality construction.

The journalistic series linked high vacancy rates to 1) construction of an excessive number of condominiums and not enough rentals; 2) long escrows; 3) displacees accepting Caltrans lump sum payments instead of waiting for replacement housing; and 4) buyers and renters avoiding low-income, high-crime areas. Surveys found that 16% of the displaced desired to live in the central zone, but by 1987, 33% of the housing built was built there (Los Angeles Times, December 28, 1987).

All groups perceived the long term impact of the actual project on the housing supply to be somewhat beneficial. The Comparison Project would have had a slightly negative impact. The impact on both the general housing supply and affordable housing supply is illustrated below in Figures V-8 and V-9:

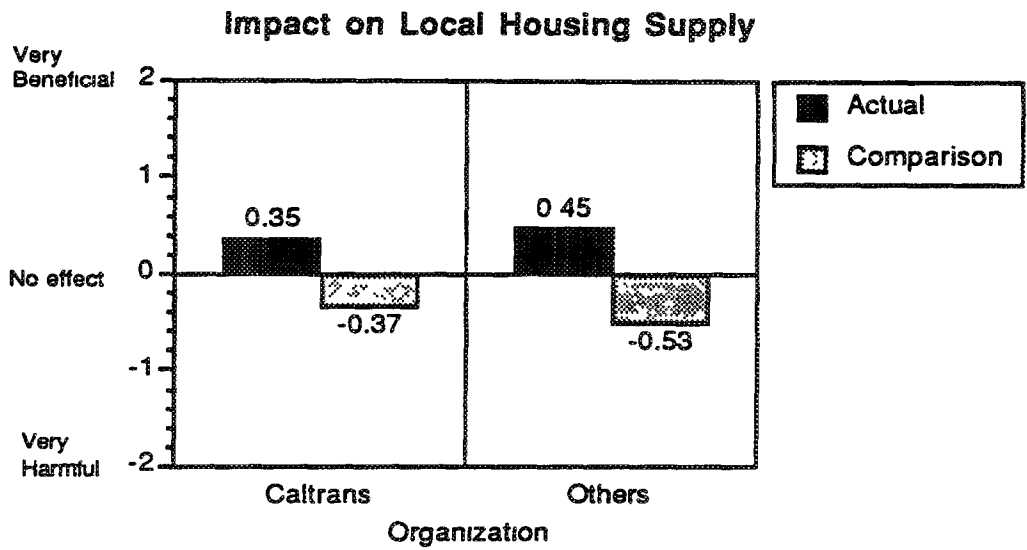


Figure V-8

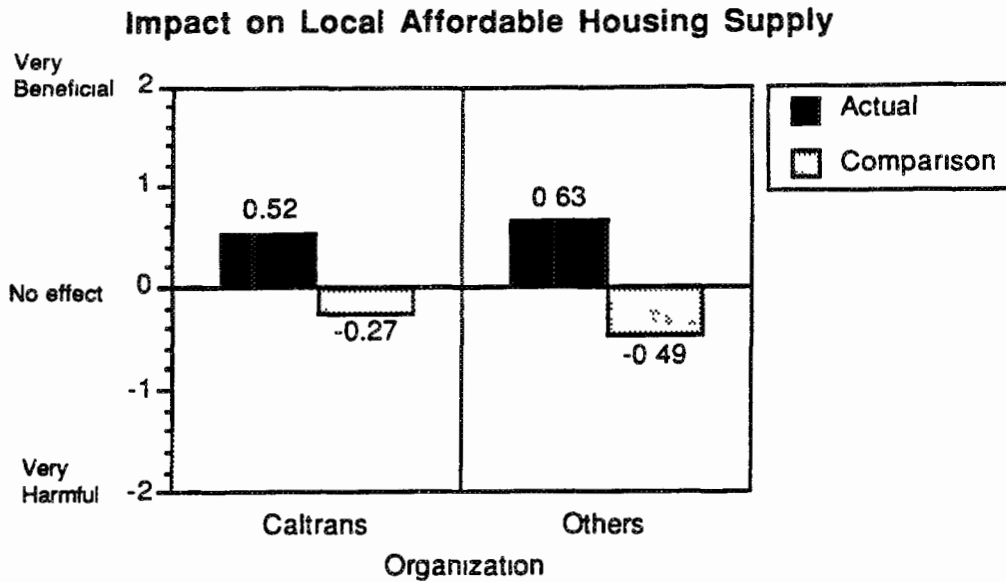


Figure V-9

3. Costs for HCD and the Office of the Advocate: Administration

Data provided from the accounting office in Caltrans District 7 allow an estimate of the operating costs for HCD exclusive of construction contracts. Between fiscal years 79/80 and 89/90 Caltrans paid HCD, in eight separate contracts, \$40,751,918.41. Contract budgets for the Office of the Advocate between fiscal year 80/81 and 90/91 sum to \$2,822,295.

4. Housing Construction Costs

Many at Caltrans saw housing construction costs as the major cost of the consent decree. The following quote is typical of the opinions of many administrators who object to the manner in which the housing program has progressed but acknowledge the value of replacing housing in the corridor:

"...certainly the housing was a cost that was more expensive than it would have been short term, but it may have had social benefits long term that perhaps Caltrans shouldn't have paid for, but the public benefited from. It's hard to assess those variables."

Caltrans Civil Rights Branch reported that as of October, 1990, \$13,569,569 had been paid to prime contractors for major housing contracts and \$123,630,318 had been paid for RFP contracts. An HCD report issued in June, 1990 showed a total of 2,003 affordable housing units produced for \$175 million. The average cost per unit is \$87,369. The 1986 federal audit concluded that the production costs in the program were excessive.

Figures V-10 and V-11 show that the actual production schedule in 1989 did not match the production schedule anticipated in 1984. In its quarterly reports, HCD compares costs of obligated units constructed under the four RFPs, but does not report the percentage of units actually encumbered. In 1986, when a federal audit was conducted, HCD reported a total of 1690 units, reportedly obligated at \$83,204 per unit and encumbered at \$92,550 per unit. However, according to the Federal audit, only 536 units were actually completed, merely 32% of those obligated. HCD's reports consistently overestimate the progress of the housing program.

See Figures V-12 and V-13, which chart annual production and construction expenditures per year as reported by the Century Freeway Housing Program.

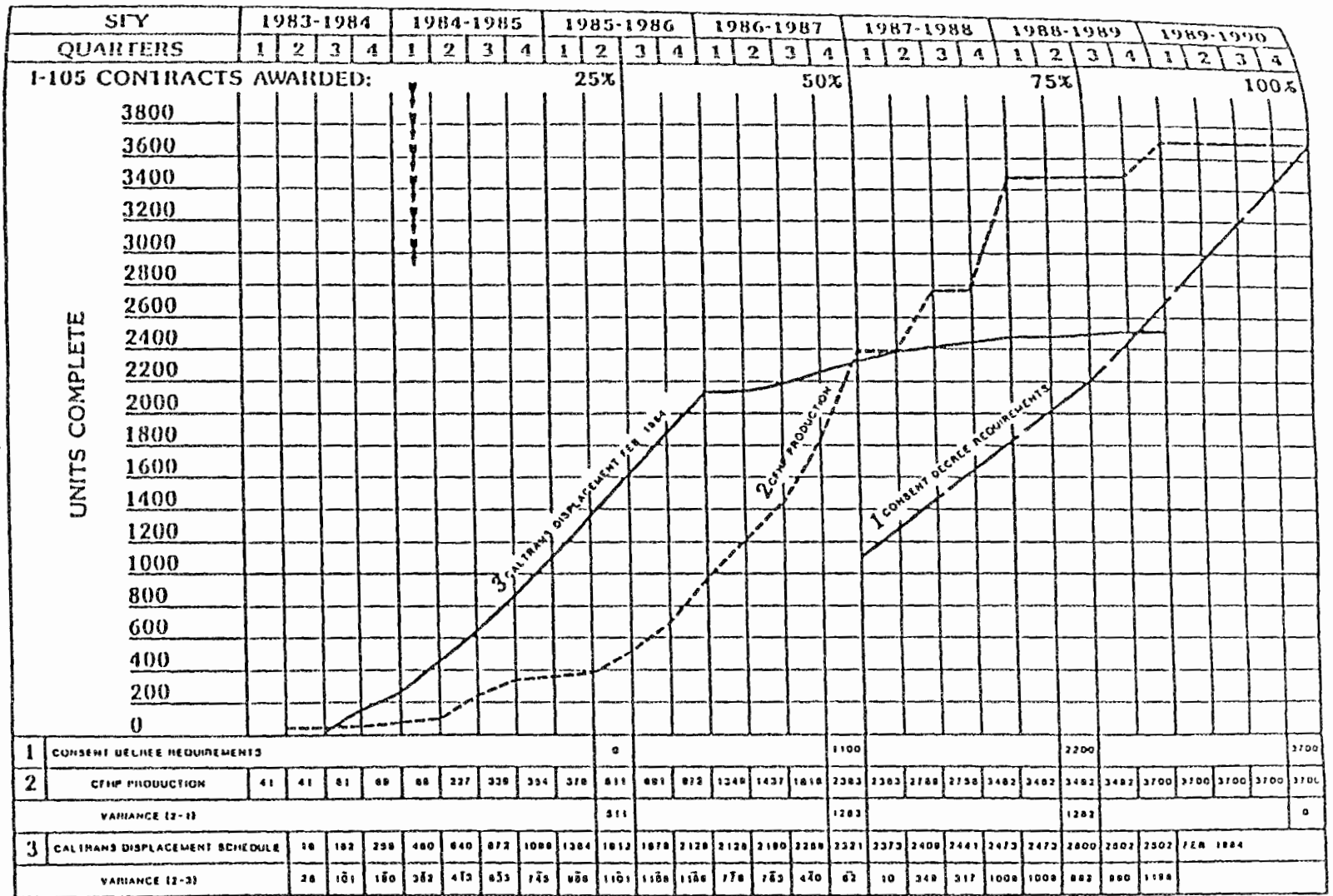
E. EXCESSIVE ADMINISTRATIVE ACTIVITIES IN THE CENTURY FREEWAY HOUSING PROGRAM ARE CRITICIZED

1. Few respondents anticipated the difficulty of constructing housing under the rules of highway construction

One HCD official acknowledged a seemingly endless process of writing policies and procedures. The finalization of Chapter XX which held up sale of rental units is a good example of this:

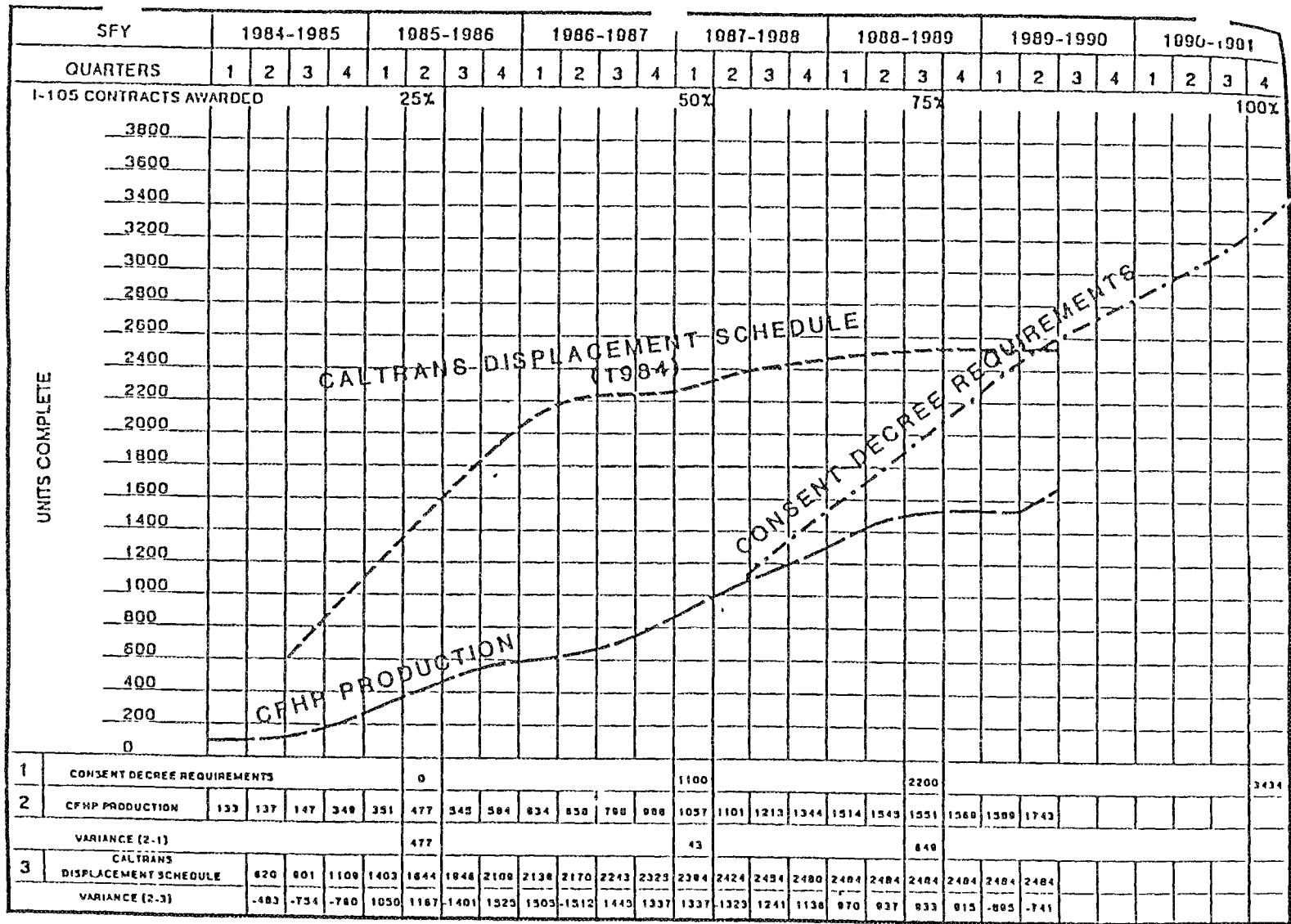
"The Federal Highway Administration insisted on a full set of policies and procedures which took us about two and one-half or three years worth of drafting and redrafting and redoing and arguing. Some of the arguments, on our part; some, on theirs, but between the two of us...you couldn't get them occupied."

We summarize these rules in Appendix E to illustrate the complexity of the process.



Source HCD, 1984

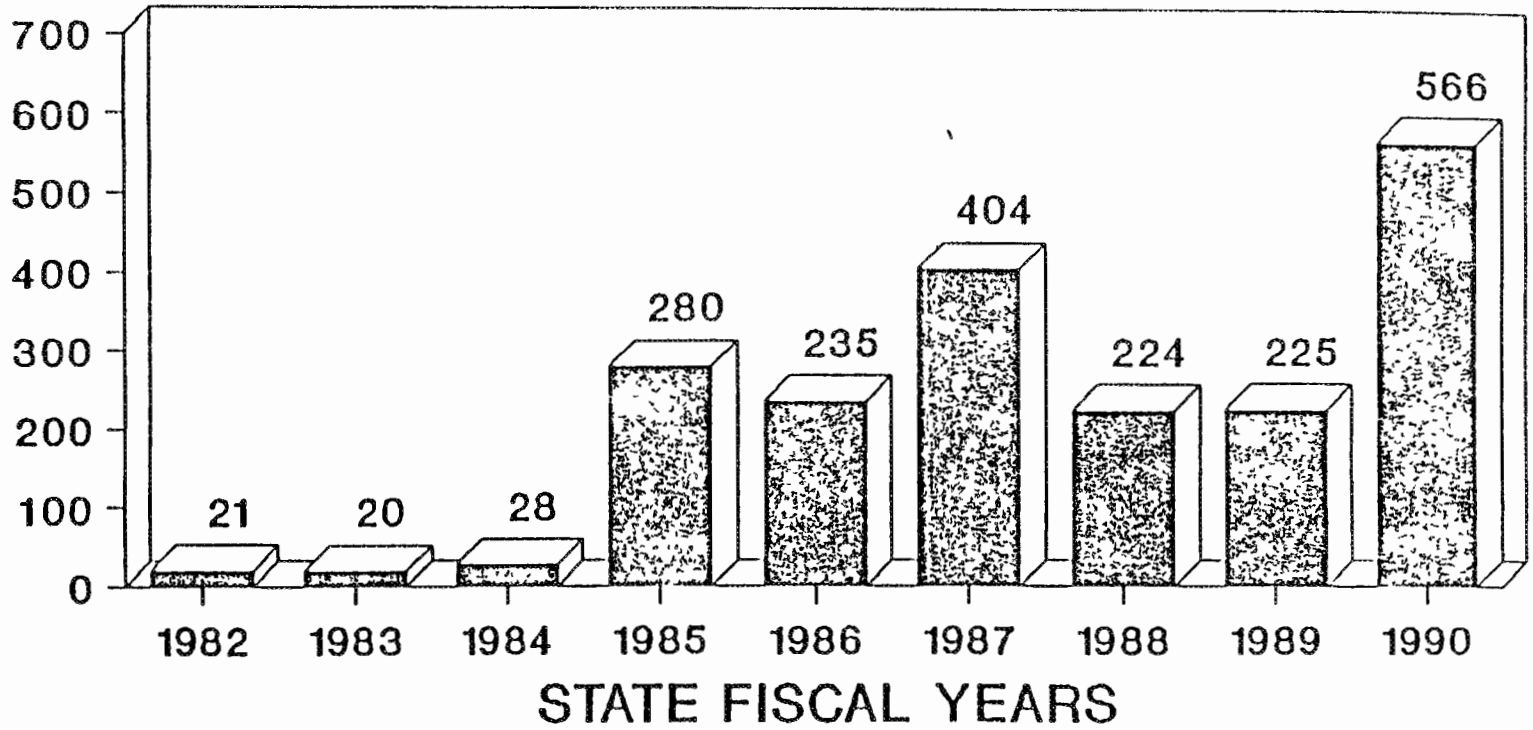
Displacement Schedule vs CD Requirements vs Housing Production, 1984
Figure V-10



Source HCD, 1989

Displacement Schedule vs CD Requirements vs Housing Production, 1989
Figure V-11

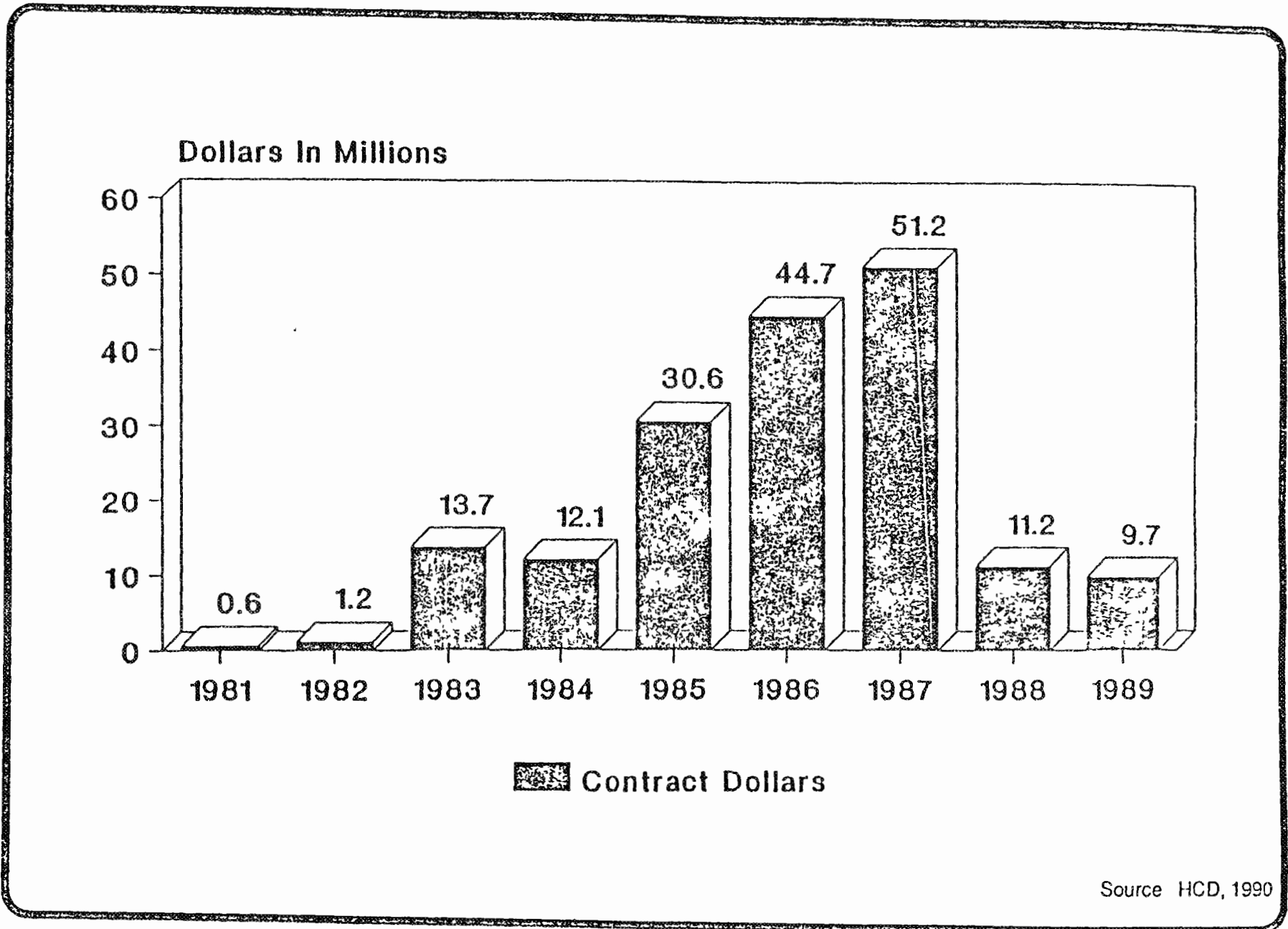
No. OF AFFORDABLE HOUSING UNITS



COMPLETED UNITS

Source HCD, 1990

Century Freeway Housing Program Annual Production
Figure V-12



Century Freeway Housing Program Construction Expenditures
Figure V-13

2. Other agencies are not confident in HCD's ability to implement the housing program and criticize the decision to award the program to HCD.

By 1983 there had been four executive directors of the Century Freeway Housing Program. Only forty units had been constructed. The housing plan had been recently completed; however, the program was only staffed at 50% of its personnel allocation.

The majority of Caltrans respondents neither approved of HCD's assignment as lead agency in the housing program, nor thought that the assignment promoted the general welfare (See Figure V-14). Caltrans officials generally concluded that they could have done a better job themselves. They cited involvement by their own right-of-way branch in the process of creating housing around the state. At the time of their designation as lead agency, HCD was perceived as an agency that was not project-oriented and not equipped for the task. Caltrans was familiar with the right-of-way situation and the corridor in general; HCD had to begin anew:

"You know Caltrans had the great fortune of starting out building farm roads, farm and market roads, and the first state highways, and worked their way up to freeways and whatnot and they grew into it. And HCD, you know, there it was one day. And I don't think they knew what hit them."

Caltrans officials did recognize that any agency required to implement the housing program might have had a hard time, as the charge in the consent decree is a complicated one:

"On the one hand their charge appears to be the creation of the maximum number of units from the funds available. On the other hand they are charged with the achievement of various social objectives, specifically the employment of inexperienced subcontractor firms to actually do the work."

FHWA officials stressed that HCD was a planning and policy oriented agency. They suggested that, in hindsight, it would have been appropriate to explore other alternatives for constructing the housing, such as county and city housing authorities. Although the majority of other respondents believed that the assignment to HCD was in the public's interest, they also stated that HCD was not prepared to take on a project of the magnitude required by the decree.

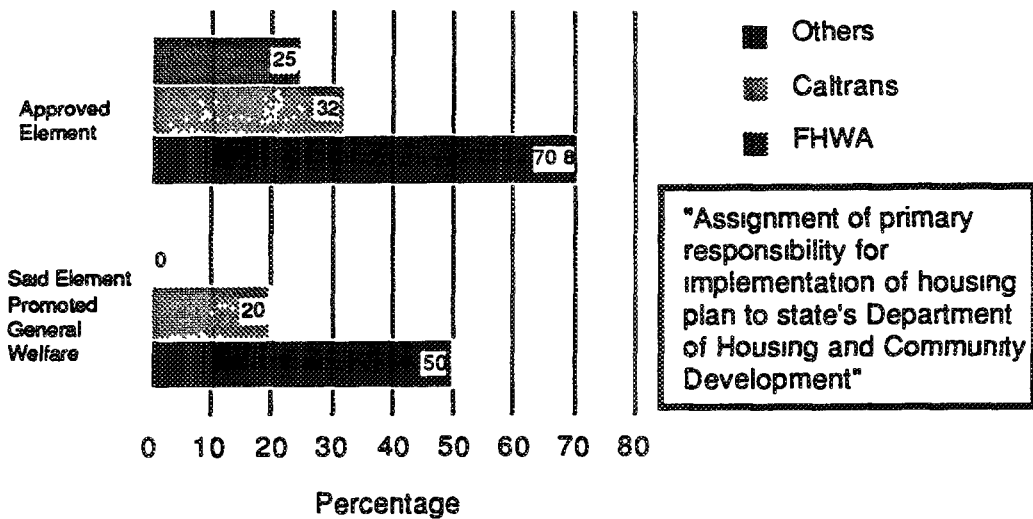


Figure V-14

However, some observers attributed poor housing performance to interference with HCD activity. In early 1983, a high level Caltrans official indicated that the "single most significant reason the housing program is behind schedule is director Gianturco's instruction of Division of Right-of-Way personnel to 'stay out' of the housing program to the 'greatest extent possible.'" On the other hand, in March of 1983, the CFHP Executive Director wrote that the "most serious threat to Consent Decree implementation is the blatant and undisguised attempt by Caltrans to assume control of the housing program."

Executive level officials cited friction between the Housing Program and Caltrans and FHWA. Some felt that personnel in the transportation agencies actually hoped to see the housing program fail in order to avoid the precedent of including housing as a component in future federal projects.

Although two-thirds of Caltrans respondents indicated that they view HCD as a partner in the implementation of the Century Freeway Project, a full third viewed them as opponents. Furthermore, conflict with HCD, housing authorities and corridor cities is perceived to be greater in the actual project than it would have been in the Comparison Project (See Figure V-15). Even respondents who saw HCD as a partner condition their opinions:

"Well, HCD is a sister state agency, and we are all under the Business and Transportation Agency. We all go to the same secretary. But I would say our relationships...have...been very difficult—quite frankly, HCD's management has not been all that it should have been over the years, certainly not in the early years."

Structurally the two agencies were seen as partners not only because they are sister agencies but because HCD utilizes Caltrans' funds. However, interviewees within Caltrans felt that Caltrans should have been made the lead agency initially; they were disappointed in HCD's performance in the Century Freeway Housing Program.

Several respondents mentioned that the relationship has changed over time. Caltrans officials recognized that the structure of the housing program was difficult for HCD to manage:

"I think HCD has suffered because a new administration comes in and you get a whole new front office and you're starting over. And there's a lot of lost time and people sitting here [in Caltrans] saying 'yeah, look how crazy that is.' It's partners and yet there's still this little undercurrent of feeling the other agency is incompetent."

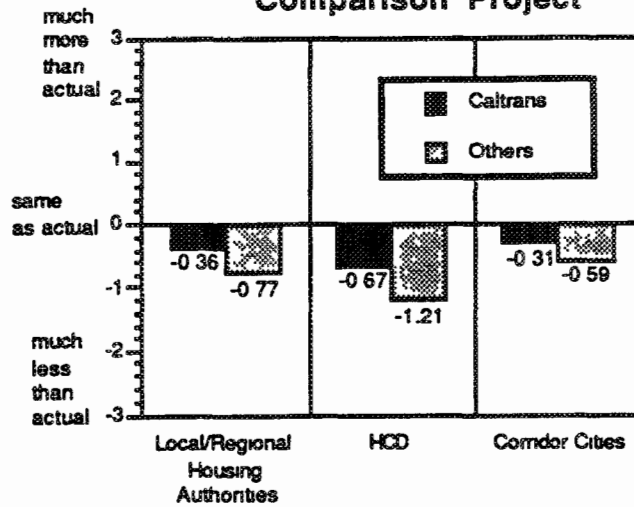
CFAAC officials indicated they generally view HCD as a partner in the implementation of the project, especially at the executive level.

In contrast to the nature of the relationship in the consent decree negotiation period (see Chapter II), an adversarial relationship between plaintiffs and HCD was evidenced both in our interview responses and the call by the plaintiffs for a restructuring of the housing program:

"As a practical matter, very often HCD is most hostile because we are always challenging their conduct and questioning their performance. We think they have been the least effective. They have spent too much money and produced too little."

Other agencies involved in consent decree implementation could not characterize their relationship with HCD as either partner or opponent.

Conflict With District 7— Comparison Project



Organization Conflicting With District 7

Figure V-15

Respondents also specifically concluded that HCD lacks skills in administering contracts in the manner required of FHWA. Furthermore things "just not working" at HCD was a recurring theme. Some outside the CFHP organization attributed difficulty to the application of federal highway procedures to housing development; others cited a more fundamental organizational problem: failure by HCD to adhere to its own procedures once in place. Generally, a lack of familiarity with requirements was cited as the primary reason for the difficulties. Finally, many criticized the number of Governor's appointees at the Executive level. Four exempt positions in the program turn over with each administration; this was cited as disrupting continuity.

HCD respondents also observed that the administration of the program was deficient from the start. HCD was unfamiliar with application of federal highway procedures to housing development. "We were faced with having to deal with the bureaucracies at Caltrans and Federal Highways, who have certain policies and procedures for building freeways that are not adaptable to housing development." HCD officials regret the program's performance and recognized that greater effort might have been expended initially to set up appropriate and professional standards for operation.

3. Community benefits from the housing program are recognized despite criticism of administration of the programs.

Most Caltrans officials did not originally approve of the 60 member housing advisory committee; yet they felt that it did promote the general welfare. (See Figure V-16) Other respondents, (except FHWA) overwhelmingly approved of the committee. Both groups suggested that input of community members was essential to the success of the housing program; however, the size of the committee may have precluded it from making long-standing substantive contributions.

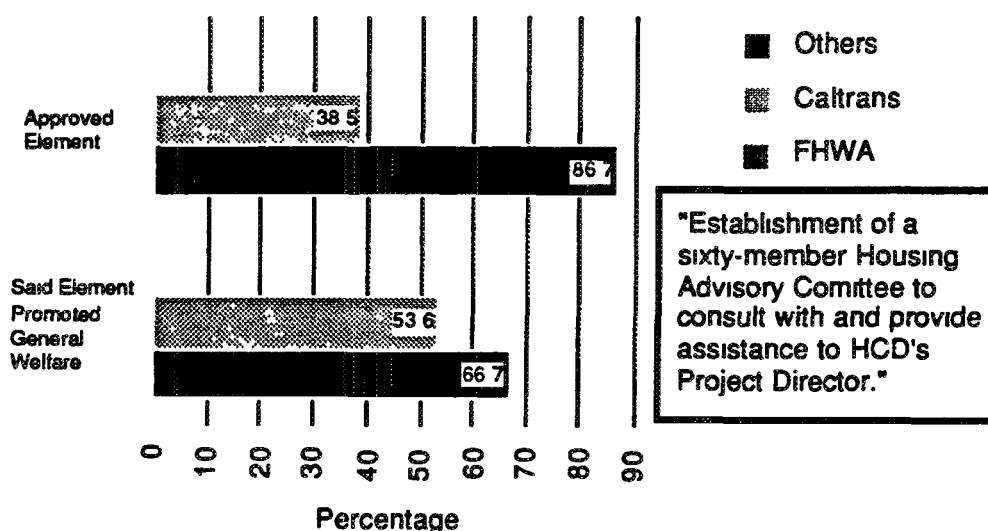


Figure V-16

Some Caltrans and FHWA officials admitted that there may have been a need for a displacee advocate; however, a majority felt that the implementation of the element was counter to the general welfare. (See Figure V-17) These officials had more of a problem with the personalities of the people in the Advocate role than the existence of the position itself. They felt that the Advocate's efforts duplicated their own. Furthermore they saw this office as another adversarial layer of bureaucracy in the project.

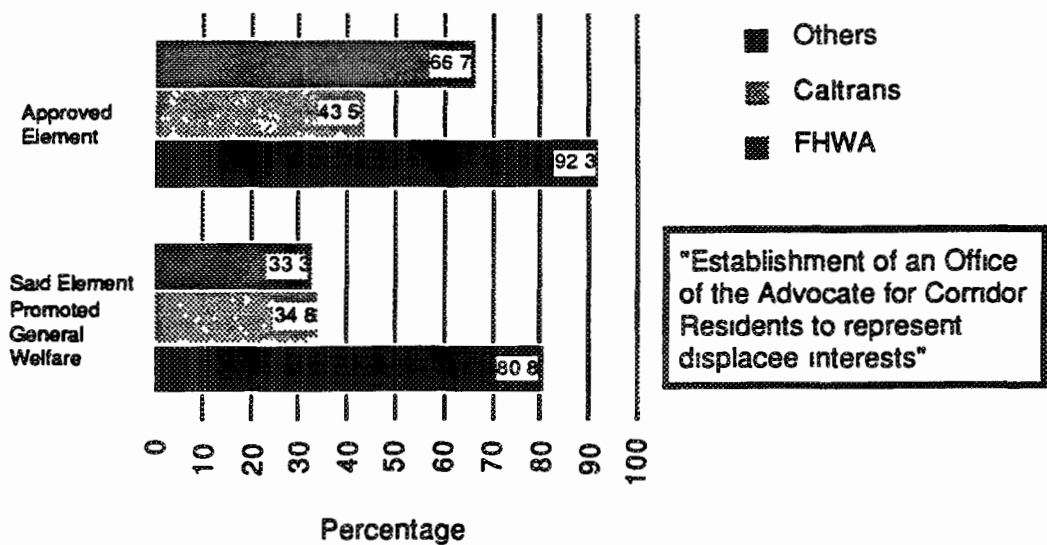


Figure V-17

Other respondents overwhelmingly approved of the Office of the Advocate and felt it promoted the general welfare. They perceived the office as more accessible than other resources in the community.

Despite the criticism regarding the adequacy of the housing program and the people who implement it, on balance, respondents from CFAAC, the Center for Law, and HCD who have a high level of knowledge of the history of the decree and monetary costs of the housing program concluded that the benefits of the housing program outweigh the costs. Caltrans, local elected officials and local administrative officials tended to slightly disagree. [Caltrans officials average 2.58 and all others average 3.07, indicating that the group as a whole is undecided].

F. THE HOUSING PROGRAM IS RESTRUCTURED

1. The restructuring of the housing program follows from the recommendations of several consultants

In 1988, Kenneth Leventhal and Co. reviewed two proposals to restructure the housing program. The Center for Law proposed the creation of the Century Community Housing Corporation to work in coordination with the Local Initiatives Support Corporation. HCD proposed a Notice of Funding Availability process. Citing each program's advantages and disadvantages, the consultants recommended a dual track program in which \$30 million from

the \$126 million program would be allocated to each program. Each party would operate in a cooperative framework where the remaining \$66 million would be available for allocation on an as needed basis (Kenneth Leventhal & Company, 1988).

In June, 1989, Judge Pregerson authorized two new programs, reflecting a desire to maximize the impact of Exhibits C and B. These two programs are the NOFA and the Public/Private Partnership Program. In addition, the appointment of George Crawford as special counsel was confirmed. His role was to recommend a second housing restructuring.

Forty million dollars was made available to HCD from the carryover of unexpended funds in the \$110 million program. This sum was split between two NOFA processes, \$30 million for the owner builder and \$10 million for the developer builder. The Public Private Partnership program was to use \$60 million to leverage funds to expand the number of dwelling units that can be provided for \$126 million. The program is in its early stages.

A September 1990 minute order indicated that Judge Pregerson was dissatisfied with the progress on the project. He addressed several problems including uncorrected construction defects and repair problems in occupied Century Freeway units as well as a lack of security. Frustration was evident in his suggestion that the implementors consider shutting down the entire project until the major problems involving housing construction and maintenance and job training were resolved.

1 Crosstabs analysis: To assess the relationship between approval of a consent decree element and belief in its promoting the general welfare, crosstab analysis was conducted. The small size of our sample precludes us from doing sophisticated tests of statistical significance. However, the process does allow us to see emerging trends in the responses.

The sample for this procedure consisted of those respondents indicating that they had known of the element being tested. The population was broken into three samples: Caltrans, FHWA and all others.

In a preliminary analysis, we report the percentage of people reporting that they approved of the element being tested. This is compared with the percentage of people who report that they felt the element promoted the general welfare.

Because of the binary nature of the variables we used tests of Chi Square for dependence rather than correlation or regression analyses. In the majority of tests, more than 40% of the cells had frequencies of less than five. It is inappropriate to run tests of significance in these cases.

If the variables are dependent, knowledge of one helps predict the other. In a second analysis, we look for items where knowledge of one does not help predict the other. In these instances,

respondents have changed their minds with respect to their assessment of the item as it was implemented.

Items which people:

- 1) Did not approve but felt promoted the general welfare:
 - a) 6 lanes (21%)
 - b) 3,700 housing units (16%)
 - c) Housing Advisory Committee (15%)
 - d) Phasing (19%)

- 2) Did approve but felt countered the general welfare:
 - a) Office of the Advocate (13%)
 - b) HCD lead agency (8%)

2 In these analyses, results reflect views of those indicating that they have a high level of knowledge with respect to the history of the freeway as well as the costs of the housing program.

3 Throughout the course of this study we have repeatedly found that the coverage by the Los Angeles Times, and other publications has been sensational in nature. Although the general allegations are based on real complaints, officials from both HCD and Caltrans indicate that the stories misrepresented the project.

CHAPTER VI

AFFIRMATIVE ACTION: ORIGINS, CONTEXT, AND IMPACTS

This chapter briefly describes the origins of the affirmative action provisions of the consent decree, locates them within a context of federal civil rights and affirmative action law, and evaluates Exhibit C, the affirmative action program, and CFAAC. For the reader's convenience, we again summarize Exhibit C.

A. INTRODUCTION

Dozens of affirmative action consent decrees have been entered since the early 1970s for the purpose of settling lawsuits alleging illegal race or sex discrimination. Most of the lawsuits settled in this fashion have been based on Title VII claims. Title VII is the element of the Civil Rights Act of 1964 that addresses discrimination in employment; thus the "Title VII consent decree" is intended to provide remedies for a firm's allegedly discriminatory employment practices, usually relating to hiring, promotions, or lay-offs.

In addition to the Title VII affirmative action consent decree, some affirmative action consent decrees have been entered for the purpose of settling equal protection lawsuits. Although they are based on the equal protection clause of the Fourteenth Amendment to the United States Constitution, these also tend to involve allegations of employment discrimination. They differ from Title VII consent decrees chiefly in that they are intended to settle discrimination suits against governmental entities. Defendant parties to equal protection affirmative action consent decrees are typically police and fire departments and public school districts.

The affirmative action component of the Century Freeway consent decree, however, was not a response to a claim of illegal or unconstitutional employment discrimination against Caltrans; nor was the element of the Century Freeway affirmative action plan that establishes goals for MBE's and WBE's a response to a claim alleging race and sex discrimination by Caltrans in the letting of contracts. As Judge Pregerson wrote in his order (1-22-81) denying the Associated General Contractors' motion to intervene in the lawsuit after the consent decree was issued, "No allegations of employment discrimination were made in the original complaint" ("Memorandum and Order Denying Motion to Intervene", Civil No. 72-355-HP, @ 12). Likewise, the original complaint did

not charge defendants with race or sex discrimination regarding contract-letting. Of the allegations which were made, none would ordinarily induce a court to authorize an affirmative action program as an appropriate remedy. In this respect the Century Freeway decree is quite unique. A CFAAC staff member offered the following response when asked to name a "major accomplishment" of the decree's affirmative action program:

"I also think this is important—it has set a precedent. Its very existence. Even if it wasn't effective at all [...] Oh, the contract people will hate this, but it does lend itself to being applied someplace else. I mean, maybe they're going to do some public works project, and one of the ways they'll look to mitigate it in their public hearing stage before they get sued, is to be proactive and say 'we'll do this and we'll set up this kind of plan and we'll ask the contractors to do these kinds of things.'"

B. THE ORIGINS OF THE AFFIRMATIVE ACTION COMPONENT WERE POLICY BASED, NOT LEGALLY REQUIRED

If it was far from inevitable that an affirmative action program would have been imposed if the case had gone to trial and Caltrans had lost on the merits, what was the genesis of the idea to include the program in the consent decree? And why did Caltrans accede to it? Inclusion of an affirmative action plan resulted from the Center's strategy to craft a comprehensive consent decree which would pull together and be responsive to all the plaintiff groups and reconcile their interests (Center for Law, Notes on "History of Litigation", not dated).

Some have confidently asserted that the Center's original objective in pursuing the litigation was to force cancellation of the freeway. But as noted earlier, others, especially Center attorneys, adamantly denied that this was their goal. [See Chapter IV.] Whatever motives one associates with the Center, it is clear that at some point the plaintiffs and others saw the freeway as a potential source of employment—especially if an affirmative action program was put in place.

The Center for Law's original interest in the freeway "was primarily environmental. Again when I say environmental, I don't mean the human environment. These people were talking about the birds and the trees and air quality and energy consumption." After the Court responded to the Center's original complaint by halting construction on the freeway, the local groups developed a perspective of their own. As one Brown Administration official explained:

"And they were saying, 'Well, look, Center for Law, you know, we appreciate the fact that you stopped this thing, but, you know...the so-called cure was almost as bad as the original disease.' I think something like 70 percent...of the corridor had been cleared and of course the area was blighted by that....So the community put pressure on the Center for Law to get something out of this. To

negotiate some sort of a deal and again, I think, certainly from the standpoint of the black community, they saw a freeway investment as potential jobs for their constituents and contracts for some local entrepreneurs. So they had a much different view of it than the Center for Law did.”

Thus, by the time the parties to the original lawsuit began the negotiations that led eventually to the drafting of Exhibit C of the consent decree, affirmative action was on the plaintiff's agenda. Defendant lawyers agreed to include it in the decree, reportedly for reasons that were not legally driven:

“I think the governor [Edmond G. Brown, Jr.] and Gianturco, based on my experience and knowing how they managed, were far more receptive to the plaintiff's perspective than a Republican administration would have been. And as a result it became awkward for the lawyers to defend the lawsuit when the client was that sympathetic to the plaintiffs' perspective.”

A senior Caltrans administrator described the organization's modus operandi during the negotiating sessions:

“It was fascinating as an exercise in negotiations....Dick Rypinski had his marching orders, and what he would do would be to go down and negotiate with John Phillips on certain issues and a range of issues: the housing, the highway, the light rail portion I guess, as well as Exhibit C. He would then come back and send the applicable portions to the various players....[T]he only comments Rypinski wanted from us [on civil rights and Exhibit C] were ones that would make it ...so bad it was not worth having a freeway for. So you would look at Exhibit C ... I'm sure they looked at others--and say, well, this doesn't make sense, but it isn't important enough to stop the whole project. And so it was his style of putting pressure on us or getting an answer from us one way or another.”

An attorney for the Center for Law provided a different perspective:

“We wanted an affirmative action program that was going to guarantee, assure that a substantial percentage of the dollars spent would go to the people most affected by the project itself. We went up to Sacramento and presented these...and said, ‘Here is the outline of what we want.’”

This perspective is echoed in the decree itself, which states that one of the decree's purposes is to “ensure that employment opportunities generated by the project will benefit the communities which have been economically impacted by the size and location of the project” (Final Consent Decree, 10-4-79, @ 3).

Another Caltrans official offered the following observation:

“The Brown administration I don't think really wanted the freeway at all. I think they saw the consent decree as something that was purportedly going to

accomplish a lot of social gain: The area of helping the poor buy houses, minorities find jobs, those kinds of things.”

Caltrans' decision not to contest the inclusion of an affirmative action plan is adumbrated in its legal argument challenging the amount of attorneys' fees awarded by the court to plaintiffs' lawyers. Caltrans sought a reduction in the fee award on the grounds that "the consent decree was a political settlement stimulated in part by the political milieu in Sacramento and Washington ..."1

Not surprisingly, plaintiffs and defendants differed somewhat in their assessments of Caltrans' record on civil rights. With some exceptions, defendants tended to regard the agency's support for civil rights as adequate, while generally acknowledging that affirmative action was never a high priority. The following statement, made by a Caltrans official, is illustrative:

"...As I recollect, we weren't out there promoting this until there was legislation that said 'thou shalt do that.' My feeling is that the average people—that those of us who were responsible for implementing the...construction contracts, saw that as not really our job. It was a social thing imposed upon the department. Here, we were sort of policemen and met the administrative thing. That...was the attitude, at least as it started out....I may be selling the department short because I wasn't that involved, but I just don't think we were out actively promoting it. I don't think we took a leadership role. I think we tried probably honestly to administer federal and state laws. And that's probably about it."

Another Caltrans official felt that the department had increased its internal affirmative action efforts since the passage of the federal Civil Rights Act in 1964.

"It's increased. At the time that I started with the department, it was a very low number of blacks, Hispanics, and other minorities in the maintenance area especially. And from that time up until now we have gotten minorities in every classification within the maintenance function, and they're doing the same in other areas, engineering and other classifications, personnel, administration, management, and all that. So I can see that Caltrans is almost totally committed to achieving parity, as you call it, for each of the classifications. They even look at the level of achievement to spread it throughout all classifications within the area."

Others in Caltrans were less charitable toward the department concerning its civil rights record over the years. One senior Caltrans official admitted that the affirmative action provisions for M/WBE's in the 1982 Surface Transportation Act caught the department "flat-footed": "There was no system to make that come about. No program in place." This interviewee acknowledged that during the years immediately following its establishment, the Civil Rights Office in Sacramento was a "dumping ground...for incompetents or for people they didn't want anywhere else." And a small minority of Caltrans interviewees cited a lack of commitment in Caltrans upper

echelon to civil rights programs. This factor was thought to be partially responsible for operational problems in District 7 Civil Rights Branch during consent decree implementation, such that organizational and personnel deficiencies could be traced to managers who were not held accountable for work that the unit processes.

While the nexus between plaintiffs' original complaint in the I-105 lawsuit and the affirmative action provisions in the consent decree is difficult to precisely identify, at the time the consent decrees of 1979 and 1981 were being negotiated, Caltrans was involved in a minority contracting dispute regarding the Grove-Shafter Freeway in Oakland. In April, 1979, Secretary of Business and Transportation Alan Stein suspended construction of the freeway because of complaints concerning the minimal participation of minority subcontractors ("Minority Complaints Halt Work on Oakland Freeway," San Francisco Chronicle, April 24, 1979)². This controversy, while it does not establish any agency-wide pattern of slow response to affirmative action mandates, does indicate that the time of consent decree negotiation was one of increasing sensitivity to the costs of new freeways on minority communities and a time when these communities demanded (and won) economic benefits.

Interviewees not associated with Caltrans frequently took a much dimmer view of the department's record on civil rights. For example, a CFAAC Board member said this in reference to Caltrans' affirmative action efforts:

"Let's face it. This is something I probably don't want quoted by me, but the substance is that civil engineers tend to be white males who want to get roads built. So, if it weren't for the consent decree, there wouldn't be any."

An HCD official was far less charitable: "Well, Caltrans is a very racist organization."

C SOME FEATURES OF THE CENTURY FREEWAY AFFIRMATIVE ACTION PLAN EXCEEDED THE THEN EXISTING FEDERAL AND STATE AFFIRMATIVE ACTION MANDATES

Exhibit C Summarized

The affirmative action plan mandated by Exhibit C of the consent decree is comprised of three parts: first, requirements for contractors to hire female and minority employees, referred to as "employment goals"; second, requirements for contractors to utilize women and minority

subcontractors, known as "minority and women-owned business enterprises (MBE's and WBE's)"; and requirements that defendants utilize contractors and persons who reside or have businesses in the corridor area, referred to as "regional business preferences." The exact methodology for each of these programs is not specified in the decree, but the decree does list goals and describe institutions created to monitor and achieve goals.

To put the Century Freeway affirmative action goals into perspective, we first summarize federal requirements for affirmative action of the kinds mandated in the decree. Regarding *employment goals*: roughly seventy five percent (75%) of Caltrans projects receive federal funding and are therefore subject to the Department of Labor guidelines that serve to implement Executive Order 11246. These guidelines, however, do not establish fixed numerical employment goals for the nation as a whole. Rather, they require that the specific goals for each federally funded project be equivalent to the minority percentage of the experienced civilian labor force in the Standard Metropolitan Statistical Area (SMSA) within which the project is to be located. Thus, as the report prepared by Hamilton, Rabinovitz and Alschuler, points out::

"...what distinguishes the Century Freeway employment goals that were agreed to in the Consent Decree was not their prohibition of discrimination, nor their requirement of affirmative action, nor their setting of numerical goals. Rather, the distinguishing features were:

- (1) The establishment of specific levels of employment attainment that were geared to the demography of the Century Freeway Corridor and were apparently intended to be met from residents of the Corridor;
- (2) The special efforts specifically required of Caltrans to inform contractors of these goals; and
- (3) The creation of CFAAC to monitor the attainment of these goals" (Hamilton, Rabinovitz, and Alschuler, September 1988, @ 11)

With regard to *minority business enterprise requirements*: prior to 1987, states were required to spend ten percent (10%) of FHWA funds on DBEs and two percent (2%) of FHWA funds on WBEs. Starting in 1987, states were required to spend at least ten per cent (10%) of their fiscal year FHWA funds on all DBEs including women-owned business.³ We were unable to ascertain any general federal standards with regard to *regional business preference*.

1. Equal Opportunity Employment Goals

The decree sets hiring goals for the work forces in each trade on all freeway and housing construction projects during specified time periods. Corridor-specific data is to be used to establish new hiring goals for the years following 1981. The decree also requires Caltrans to

establish apprenticeship and training programs and sets standards for enrollment in these programs.

Contractors on I-105 projects are to exercise "best efforts" to meet the goals, and to document these efforts. The decree establishes as sufficient ground for finding a bid or proposal non-responsive the failure to establish an affirmative action plan to meet the specified employment goals.

The decree also establishes the Century Freeway Affirmative Action Committee (CFAAC). CFAAC is responsible for six tasks: 1) overseeing activities and monitoring affirmative action compliance; 2) participating in goal setting; 3) participating in bid conferences; 4) participating in the contract award process; 5) monitoring contractors; and 6) recruiting MBE's and women to increase minority participation on the project. Members of CFAAC are to include representatives from Caltrans, FHWA, the Los Angeles County Board of Supervisors, NAACP, NOW, the Mexican-American Opportunity Foundation, and the Governor of California. CFAAC is responsible for reporting its findings to the Court.

2. Minority Business Enterprise Program

The decree defines an M/WBE as a business which is at least 51 percent owned by one or more minorities or women and whose management and daily business operations are controlled by one or more such individuals. Caltrans is to set goals for M/WBE participation based on the number of businesses in the community that have been identified as capable of working on specific projects. Caltrans, with CFAAC's assistance, is to develop outreach programs to encourage, and technical programs to assist, M/WBE's.

Caltrans is responsible for certifying M/WBE's eligible to participate in the program. The decree describes the eligibility criteria, requires Caltrans to publish a list of certified M/WBE's and explains how an M/WBE subcontractor's work counts toward contract goals.

The decree describes the process Caltrans must follow in awarding contracts, and outlines how M/WBE participation is to influence the award process. In general, bidders that fail to meet M/WBE goals and fail to demonstrate reasonable efforts are ineligible to be awarded contracts. Once a bid is awarded, the decree requires prime contractors to make good faith efforts to substitute another M/WBE if an M/WBE subcontractor is to be replaced. The decree also describes

duties of CFAAC and Caltrans regarding mandated pre-bid, pre-award, and pre-construction conferences.

A Caltrans official explained the subcontracting requirements under the decree:

“The beauty of the consent decree Exhibit C and the use of the Carter regulations [for implementing Executive Order 11246] ... was that we were able to lock in conclusive presumption provisions that were currently in place. Those provisions changed when Reagan came in ...--if the low bidder didn't meet the goal, he then proved that he performed a good faith effort to meet the goal. And that's the way all the rest of the state's projects were handled. However, on the Century, we are in the old one of conclusive presumption. If the low bidder didn't meet the goal, fine. You look at the second low bidder, and the third and the fourth till you find one that's met the goal. If he meets the goal, you conclusively presume he has made the maximum good faith effort, thereby, of course, conclusively presuming that the lower bidders didn't. It doesn't make any difference how many letters they write [seeking participation from MBE/WBE subcontractors]. So you award it to the low bidder--the fourth bidder as an example.

If none of the bidders on a Century Freeway project met the goals, the conclusive presumption clause would operate as follows:

“If you set a goal on a project and you have just a few bidders and none of the bidders meets the goal, you still don't require ‘good faith’ effort. What you do is award the contract to the person with the highest minority business participation because you conclusively presume that he must have made the maximum effort. Therefore the lower bidders aren't eligible for the award.”

3. Regional Business Preference Program

The decree provides mechanisms to ensure that corridor residents and corridor businesses have maximum opportunity to participate in jobs created by the project. For example, contractors are not only expected to hire corridor businesses as subcontractors, but are also expected to patronize local eating establishments, supply houses, and caterers.

Goal Setting

As several of our interviewees pointed out, parts of Exhibit C were modeled after federal legislation and regulations. The contract set-aside provision for MBE's and WBE's was modeled after Section 103(f)(2) of the Public Works Employment Act of 1977; it provided that "no grant shall be made under this Act for any local public works project unless the applicant gives satisfactory assurance to the Secretary that at least 10 percentum of the amount of each grant shall be expended for minority business enterprises." The minority and female employment provision was

patterned after regulations developed during the 1970s by the federal Office of Contract Compliance Programs (OFCCP) of the Department of Labor, pursuant to Executive Order 11246.

Exhibit C calls for Caltrans to conduct a study to determine the exact numbers that should apply with respect to both the contract set-asides and the employment goals. Exhibit C also indicates that certain variables should be considered which result in the establishment of goals that would be considerably higher than those that prevailed under both the MBE provision of the 1977 Public Works Act and the employment goals established under the Department of Labor regulations. Initially, however, it appears that numbers were established in the absence of this study. Caltrans later commissioned a study, which was performed by a consulting firm that was recommended to the court by the Century Freeway Affirmative Action Committee (CFAAC), and which recommended the adoption of minority and female employment goals that were more ambitious than those already in place. These goals for employment changed over time, always increasing, as the chronology in Chapter II illustrates (Subcontracting goals were set on a project by project basis.).

D. WITH FEW EXCEPTIONS RESPONDENTS IN ALL GROUPS APPROVED OF THE PROVISIONS OF THE AFFIRMATIVE ACTION PROGRAM AND FOUND THEM TO BE IN THE PUBLIC INTEREST.

As the figures below illustrate, with few exceptions there was strong support for all of the affirmative action elements across all groups. Approval rates of 80 to 100% existed for the employment action plan, outreach and technical assistance programs, training and apprenticeship programs and the "reasonable" and "best efforts" provisions.

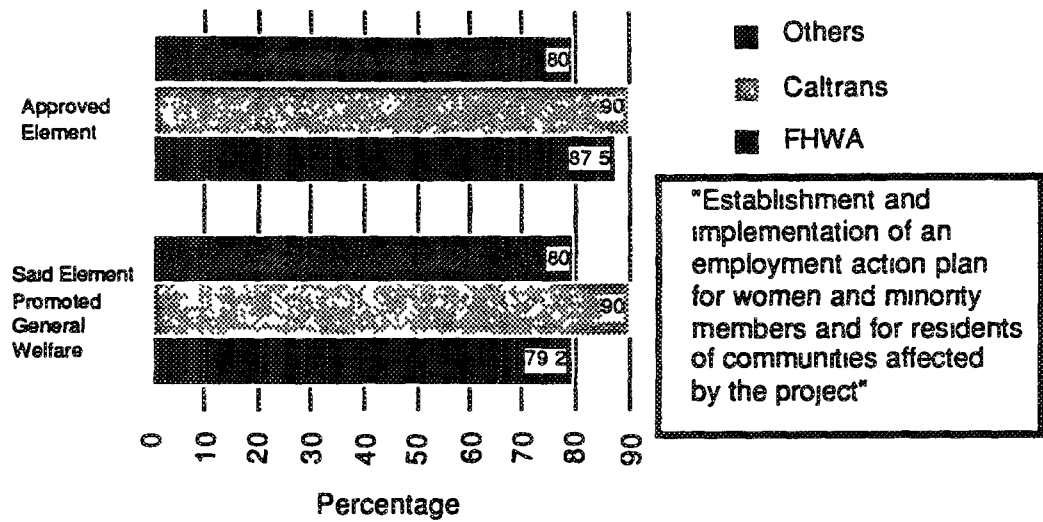


Figure VI-1

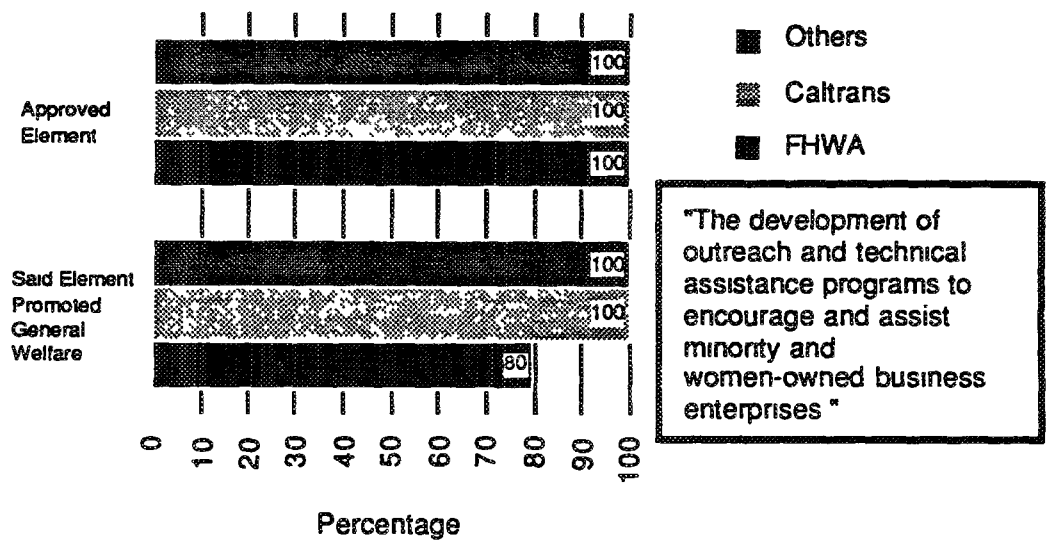


Figure VI-2

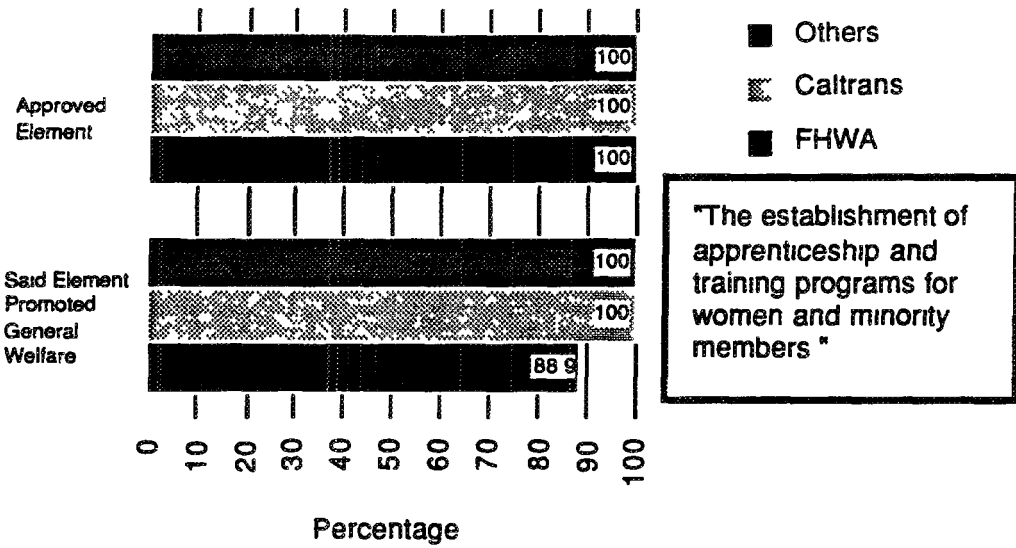


Figure VI-3

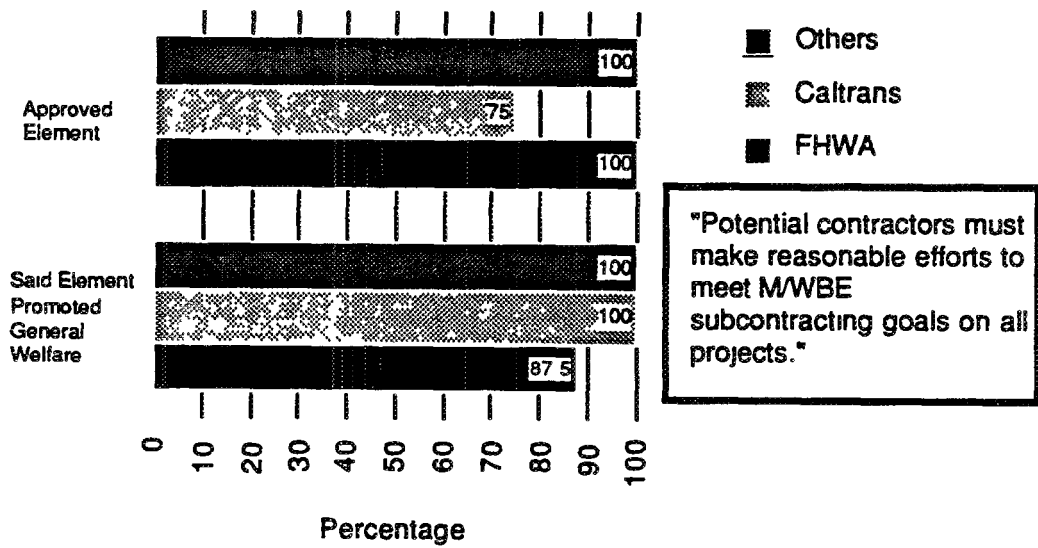
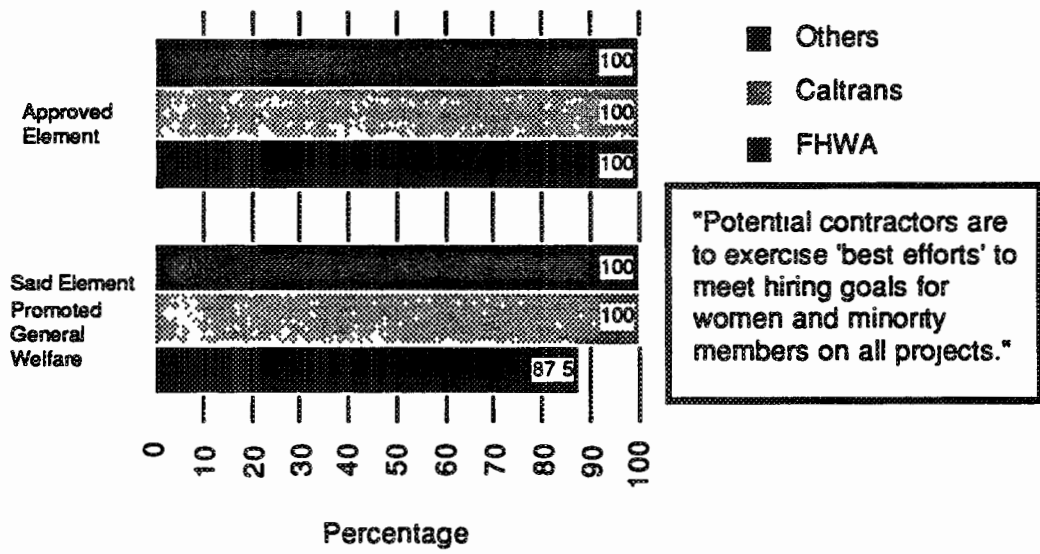
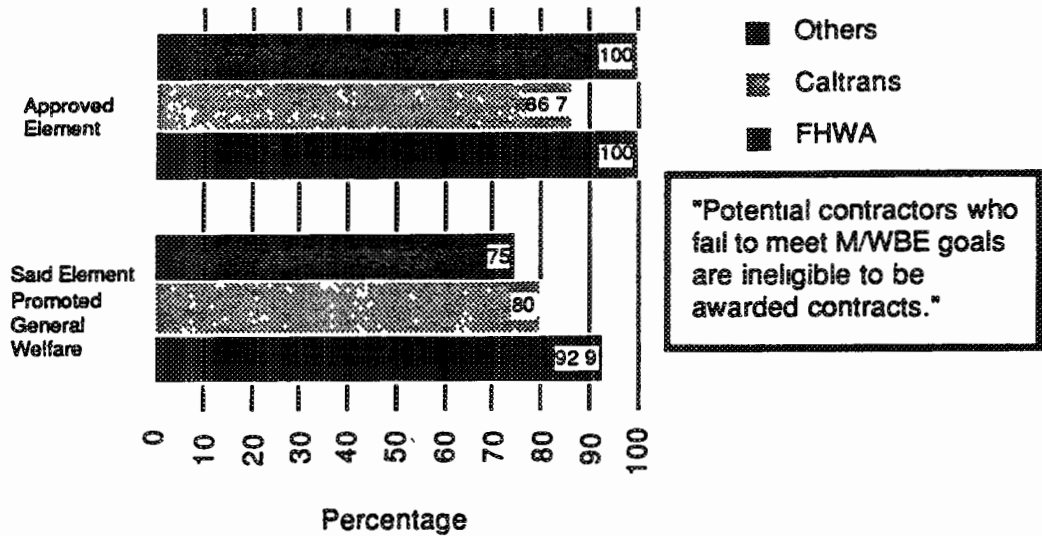
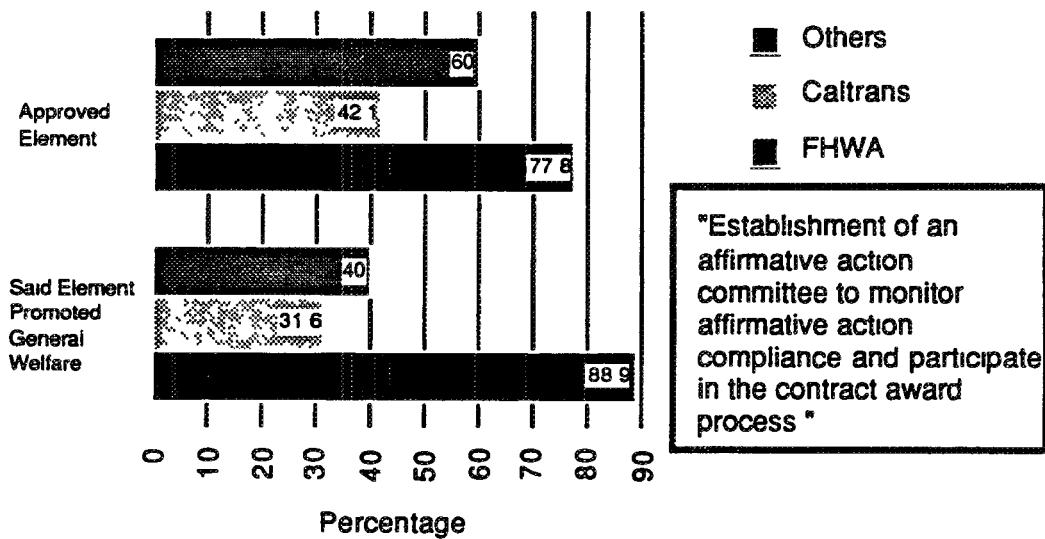
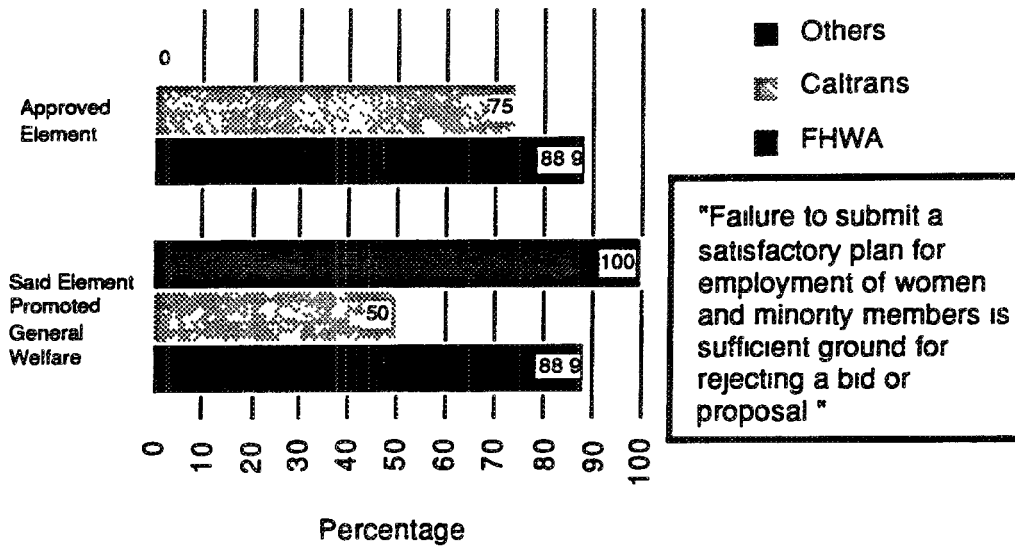


Figure VI-4





Evaluations of CFAAC

The significant exception to the general support of the affirmative action provisions is in the Caltrans assessment of CFAAC. Before presenting detailed results we lay out some background information on CFAAC. We consider this summary essential because some of the results would suggest a static CFAAC whereas the organization's history has

been dynamic. This report generally focuses on organizations as units of analysis; however, the degree of consensus that the effectiveness of CFAAC was a function of the effectiveness of its Executive Director requires some perspective on the Executive Director role.

According to the December 1, 1981 status report prepared by CFAAC for Judge Pregerson:

“The relationship between CFAAC and Caltrans continues to be one of full and complete cooperation on the part of both organizations. Problem areas are worked through in a timely manner and a good working relationship persists.”

As any student of the history of the Century Freeway knows, this honeymoon period was short-lived. A number of interviewees traced increasing hostility between CFAAC and Caltrans to the aggressive style of CFAAC Executive Director Clarence Broussard, who became Executive Director on February 1, 1982.

A former Civil Rights Branch Chief at Caltrans District 7 recalled Mr. Broussard:

“I would say he was a real advocate for the affirmative action program and for the MBE and WBE business enterprises—a very strong person who seemed to be thwarting Caltrans’ efforts to get projects through, appeared to be at least as far as Caltrans was concerned. He was really a pain.”

This recollection of Mr. Broussard is typical. It was very difficult for interviewees to separate the style of Mr. Broussard and CFAAC under his leadership from the substance of the mission he and CFAAC pursued⁴. Certainly those who either perceived CFAAC’s role as that of merely providing Caltrans with advice and assistance with the affirmative action programs, or those who would have wanted CFAAC to only provide advice, would have objected to any advocate as “forceful”, “confrontational”, or “combative” as Mr. Broussard.

CFAAC/Caltrans conflict became more heated in late 1982 and early 1983 (Not that there were no earlier problems. CFAAC’s August 1, 1982 status report indicated that “Due to the continued delay in arriving at budget approval, the board of directors at the July 7, 1982 board meeting voted to withhold board concurrence on all Century Freeway activities.”). In early 1983, Caltrans accelerated its Century Freeway construction schedule, and CFAAC fulfilled its monitoring/oversight role starting with the first major highway construction project, known as Willco II. Indeed, both Caltrans and CFAAC interviewees used similar words in identifying

Willco II as a turning point in decree implementation, the project in which “CFAAC first flexed its muscles.”

CFAAC’s advocacy in the early to middle 1980’s addressed most strongly MBE and WBE issues: a push for higher goals on projects, demands for more rigorous certification procedures, demands for regional business goals, and efforts to increase participation of minority financial institutions.

According to the report prepared by Hamilton, Rabinovitz, and Alschuler, CFAAC did not perceive its role as that of operating any of the decree’s affirmative action programs, “in order that it might better focus on its monitoring role.” CFAAC concentrated its monitoring efforts on the MBE/WBE components of the affirmative action program, apparently on the theory that “if MBE/WBE subcontractors were hired, they in turn would hire sufficient minority and female employees to meet the employment goals. CFAAC thus set up an elaborate process to monitor MBE/WBE attainment, but hoped to monitor prime and subcontractor employment compliance mainly through statistical information from a Management Information System (MIS) that was to be developed by Caltrans” (Hamilton, Rabinovitz and Alschuler, @ p. 14-15). Concerted (and largely successful) efforts on MBE/WBE attainment, accompanied by minimal attention to employment goal attainment, characterized CFAAC’s monitoring strategy until 1988 (Id., @ 14, n.3). The Hamilton, Rabinovitz, Alschuler report was highly critical of this strategy:

“While not implausible on its face, th[e] assumed linkage [between MBE/WBE] goal attainment and minority/female employment goal attainment] has clearly not been effective with respect to achievement of the female and Corridor resident employment goals, and it may not produce sustained future achievement of the minority employment goals even if the factor of residential location is ignored. A solid prospect of achieving these goals in the future will very probably depend, in our judgment, upon recognition of the employment goals as independent targets of equal significance and perhaps an even greater order of difficulty than the M/WBE goals.” [@ 62]

Between the dismissal of Mr. Broussard in April, 1986 and the hiring of Andrew Delgado in September, 1987, CFAAC lacked the leadership of a strong Executive Director. CFAAC was without any director from April, 1986 until March, 1987. Center for Law and CFAAC interviewees described this period as one in which CFAAC “languished.” In “Plaintiffs’ Report on the Status of CFAAC and CFTAP” (June 9, 1987), the Center states that “in November 1986, the CFAAC Acting Executive Director informed the CFAAC Board of staff inability to perform compliance functions.” A November 21, 1986 “Plaintiffs Response to the Court’s Minute Order of November 20, 1986” alleged that “the lack of strong leadership at CFAAC has allowed Caltrans

to bypass CFAAC and circumvent agreed-upon procedures.” The Center attributed Caltrans delay in advertising that the position was open for delay in hiring a successor to Mr. Broussard.

Homer Post became Executive Director of CFAAC on March 1, 1987. “Soon after he began his tenure, there was further deterioration of CFAAC’s capacity to fulfill its mandate” (Plaintiffs Report on the Status of CFAAC and CFTAP, June 9, 1987). After a number of key staff members resigned, and amid allegations that CFAAC under Mr. Post was not performing its monitoring function, the Board removed Mr. Post as Executive Director on July 1, 1987.

On September 28, 1987, Andrew Delgado became Executive Director of CFAAC. Interviewees praised Mr. Delgado both for his effective leadership of CFAAC and, although disputes remain between CFAAC and Caltrans (some of which have seemingly existed from the day the amended consent decree was entered, e.g., dissatisfaction with Caltrans M/WBE certification procedures), respondents are unanimous that those disputes which do occur take place in a climate free of much of the rancor and personal hostility that was evident earlier in decree implementation. This Caltrans response was typical: “He is aggressive, yet very reasonable.” And under Mr. Delgado, CFAAC and District 7 Civil Rights Branch have begun cooperation on “the 257 Form Process” which has finally enabled a reasonably reliable assessment of equal employment and corridor residency participation in I-105-related projects.

We present these descriptions of CFAAC Directors because in some ways they are a metaphor of the whole history of the implementation of the Consent Decree. To understand the CFAAC organization, as to understand the story of the Century Freeway is to take into account the dramatically opposed understandings of roles, strengths, and weaknesses that observers and Century 105 veterans have held and displayed.

Results. Only 42% of Caltrans respondents approved of the provision establishing CFAAC and even fewer felt that the element promoted the general welfare (fewer than one in three). This is striking since the percentage of all other respondents who thought CFAAC promoted the public welfare was even higher than the three fourths of the respondents who approved of the committee. On this item FHWA approval was 60% with only 40% of the federal agency interviewees concluding that the committee promoted the public interest.

Interviewees displayed markedly different understandings of CFAAC's proper role. Members of the CFAAC board and staff disagreed fundamentally with Caltrans officials on the question of what CFAAC ought to be doing.

CFAAC would distinguish itself by behaving as an advocate. Said one CFAAC staff member:

“Oh, to me it's very clear, which is not in the decree. To me, our job, it is our mission to advocate for and ensure the maximum participation of women and minorities from the corridor in business--I mean, we have it on the back of a T-shirt--in the business and employment opportunities that were generated by the freeway. That is our mission. That's not really stated clearly in the decree.”

Later this individual offered the following analysis of CFAAC's objectives:

“I think we've had a positive impact if for no more reason than we've kept people honest. And that is what advocates and watchdogs are supposed to do. We're not necessarily supposed to be liked. So I don't have any problem with that, intellectually. ... we are here to kind of work with people, we're here to cajole, push, pull, intimidate, we're here to try to get the fullest application of affirmative action on this project the best way we can. In taking on whatever kind of role we need to.”

A CFAAC board member summed up the agency's role as follows:

“Our interpretation is that our role is to maximize business and employment opportunities for our constituents. And the constituents are M/WBE's, who are certified or want to be certified. They are residents of the Century Freeway corridor, and then women and minorities. And we maximize that through two roles. The first one is the monitoring of contract compliance, monitoring of Caltrans--primarily Caltrans because...FHWA...even though they're a defendant, they let Caltrans handle it all. But monitoring of Caltrans and monitoring of the contractors. And then our advocacy or promotion of opportunities, business and employment, to our constituents. So maximizing those opportunities, business and employment...through monitoring and advocacy. I guess that's the shorthand.”

The “Executive Director's Message” feature of a recent CFAAC newsletter justified why CFAAC felt it needed to behave in a manner that might be perceived as aggressive. In response to the question, “What is the importance of CFAAC's role as monitor?”, the Director responds:

“In addition to its functions in fostering opportunities, CFAAC is a monitor, a monitor that closely reviews the AA and EEO activities and procedures performed by Caltrans. To fulfill its obligation, a monitor must often augment or perform tasks that have been, or should have been, performed by the monitored party...”

“CFAAC would not be able to fulfill its obligation nor make regular, accurate reports to the court of its progress if we did not attempt to fully research and substantiate the status of affirmative action on I-105 projects.”
(The Bridge, May, 1990)

The conception of CFAAC's role that is sketched above is in marked contrast to a Caltrans assessment:

“Establishing the affirmative action committee? I knew about it. I was opposed to it. I still think it was a terrible blunder. The whole idea stinks. It came from the plaintiffs. ... It creates a level of bureaucracy that has led to all kinds of bitterness and dissension. It has generated turf wars. It has been abused. It has been used as a device to slow down or impede construction. And it takes away discretion. California has demonstrated on a statewide basis that we not only are able to enforce minority participation, but we do in fact enforce that. And to create this bureaucracy to impose an unreasonably high level of goals just was begging for trouble and trouble we got. It has been terribly expensive, a duplication of effort, an impediment to success. It has just been a disaster. I could probably wax on more.”

But negative assessments of CFAAC were not confined to Caltrans officials. An HCD official told the following story:

“I went to one of the first CFAAC board meetings down at 107 South Broadway, before they got their Lynwood office. Caltrans made a presentation. I was just sitting there, we weren't on the agenda. Caltrans was making a presentation about their efforts to divide the freeway into 52 separate small contracts as an effort towards encouraging minorities and smaller women operators and I heard the director or executive director of CFAAC at the time say, that's all well and good, but I don't think that's good enough. I don't care, unless you meet my particular agreement, my particular, you know, dance to my tune, you're not going to build this freeway. I will stop you. And that has been the continuing effort--the part of the Century freeway Affirmative Action Committee, has been to basically look at ways to prevent or hold up contract awards and stop construction, which I felt was antithetical to the idea of trying to funnel dollars ... And consequently, I just think they have done a disservice to minority and business enterprise activity. Because of the kind of, you know, we're not going to approve anything unless it's in our form and format. It wasn't, you know, Gee, nice spirit, Could we try doing a little better here? No positive direction; very negative.”

CFAAC's own representatives and some archival sources present a different picture, however. In a “List of Achievements” prepared for the court in 1988, CFAAC presented the following:

- A high degree of participation in the establishment of minority and women business goals on each I-105 contract;
- Consistent monitoring of all contractors to ensure compliance with affirmative action goals;
- Provision of technical assistance to M/WBE's on an ongoing basis;
- Provision of assistance with Caltrans I-105 M/WBE certification program;

- Service as an advocate and spokesperson for M/WBEs and all minority and women employees;
- Coordination and conduct of pre-bid, pre-aware, and pre-construction conferences; and
- Aggressive participation in outreach activities to promote opportunities available on the I-105.

E. ALL RESPONDENTS RECOGNIZED THE COMPLEXITY OF THE AFFIRMATIVE ACTION PROGRAM AS WELL AS ITS BENEFITS. HOWEVER, CALTRANS RATED THE BENEFITS OF THE COMPARISON PROJECT HIGHER THAN OTHERS DID. AND THEY ATTRIBUTED HIGHER ADMINISTRATIVE AND PROCEDURAL COSTS TO THE ACTUAL PROJECT THAN DID THE NON-CALTRANS SAMPLE.

Beyond philosophical approval or disapproval of the affirmative action provisions, we also tapped assessments of the procedural and administrative impacts of implementation of Exhibit C elements. For this section we report results for Caltrans and “all other” respondents (excluding FHWA)⁵. As the table on the following page graphically portrays, as a general matter Caltrans assessments of impacts differed in degree but not direction from our other respondents. All respondents concluded that the Comparison Project would be less complex than the actual project with Caltrans people citing less complexity of the Comparison Project than their counterparts outside of the agency. The complexity of the contract award process led the the list of concerns expressed by Caltrans people, followed by complexity of the substitution process and complexity of the M/WBE certification process. Caltrans respondents attributed to the comparison project higher quality of subcontractors and of construction employees.

The greatest differences between the two groups were the following in order of increasing degree of agreement:

- Quality of Caltrans contract compliance enforcement. All others saw the impact as considerably more negative under the comparison project.
- Quality of the M/WBE certification process.
- Intensity of Caltrans efforts to monitor affirmative action requirements.
- Number of certified M/WBEs.
- Number of M/WBE failures.

Procedural and Administrative Impacts Related to Affirmative Action

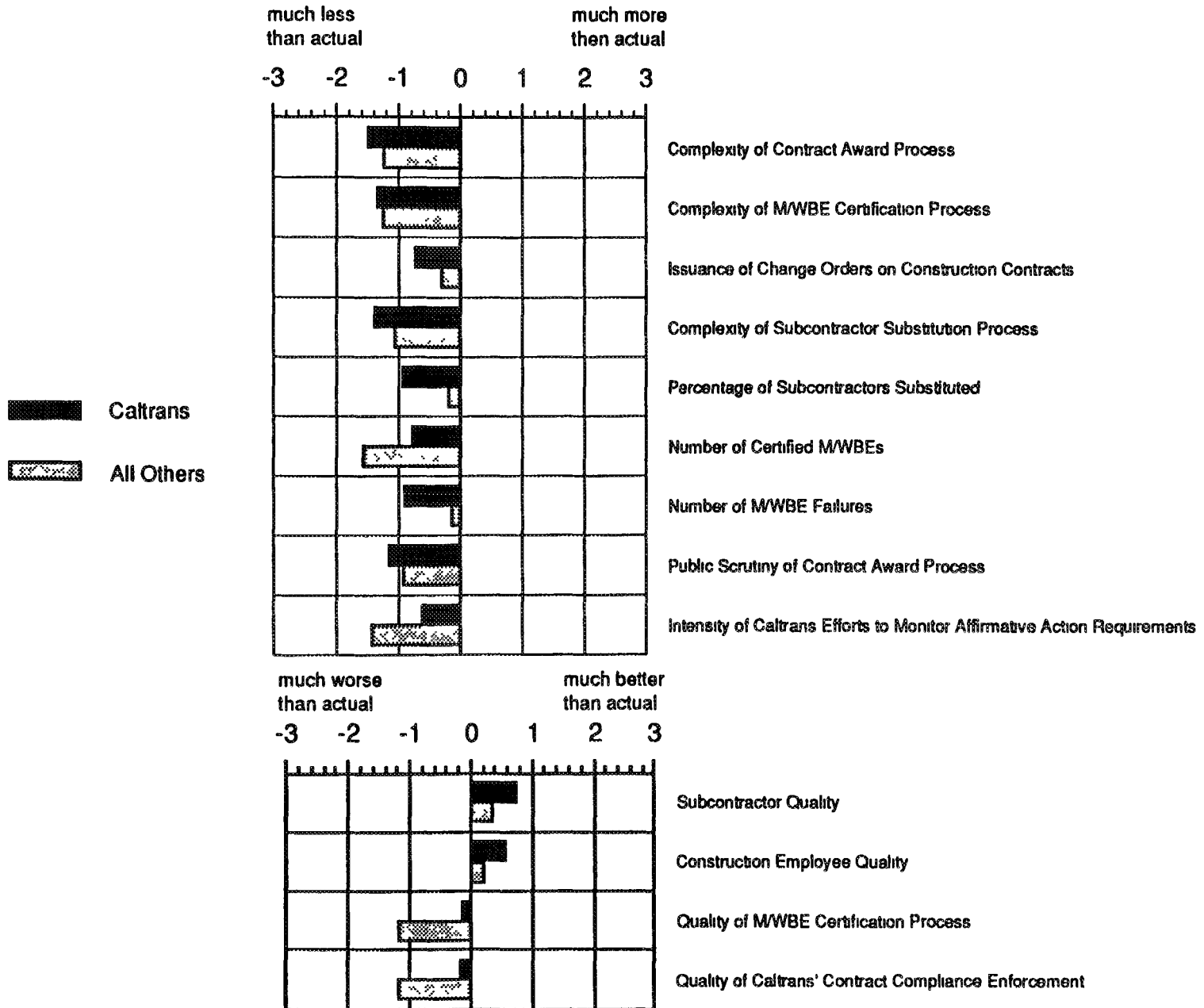


Figure VI-9

F. THE EFFECTS OF THE AFFIRMATIVE ACTION PROGRAMS ON THEIR INTENDED BENEFICIARIES ARE GENERALLY VIEWED AS BENEFICIAL. NON-CALTRANS INTERVIEWEES EVALUATE THE SHORT TERM EMPLOYMENT IMPACTS OF THE COMPARISON PROJECT MORE NEGATIVELY THAN DOES CALTRANS.

Perhaps more important than assessing procedural and administrative effects is how well the intended recipients of the affirmative action provisions have fared. We designed a series of questions to tap perceptions in regard to the employment and economic prosperity of minorities and women in the corridor area. For this section we report results for Caltrans and “all other” respondents. ⁶

In general Caltrans and All Others tend toward agreement in both direction and magnitude when rating the Actual Century Freeway impacts. However, Caltrans is more positive in its assessment of the beneficial effects of freeways for every impact. Indeed, the highest scores on these survey items were Caltrans assessments of the short term utilization of MBEs and the short term employment of minority members for the actual project.

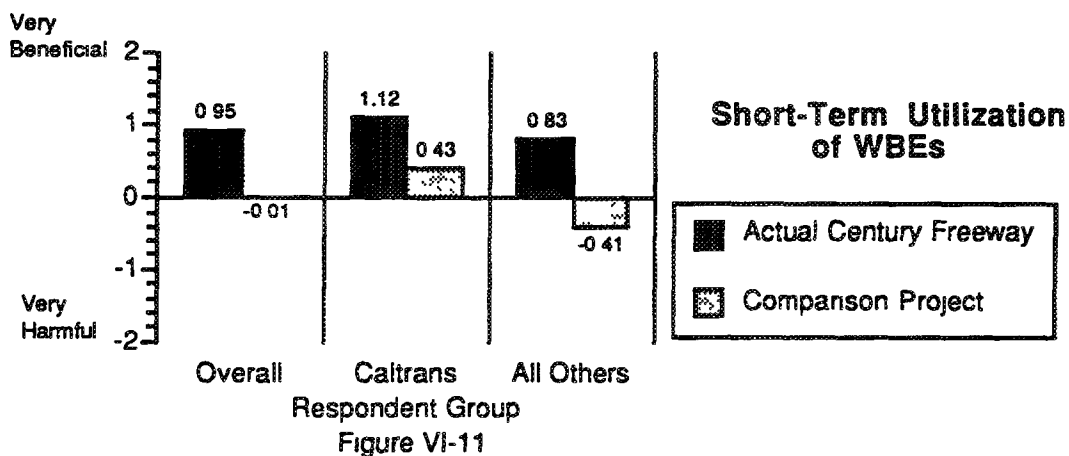
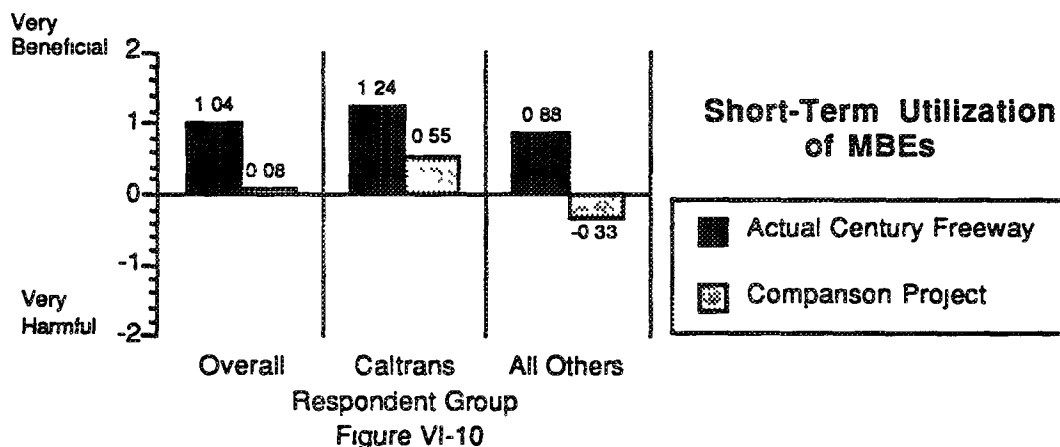
In the CFAAC “List of Achievements” referred to earlier in this chapter, CFAAC acknowledged that “in fulfilling our monitoring role, we cannot technically take credit for such accomplishments” as the amount of dollars paid to M/WBEs and the dollars earned by minority and women construction employees. Similarly, in the analysis of the relative impacts of the Comparison Project and the actual Century Freeway it is difficult to isolate the factors which may be responsible for different affirmative action-related costs and benefits cited by questionnaire respondents. We can only note here some of the features of the actual freeway which are absent in the Comparison Project:

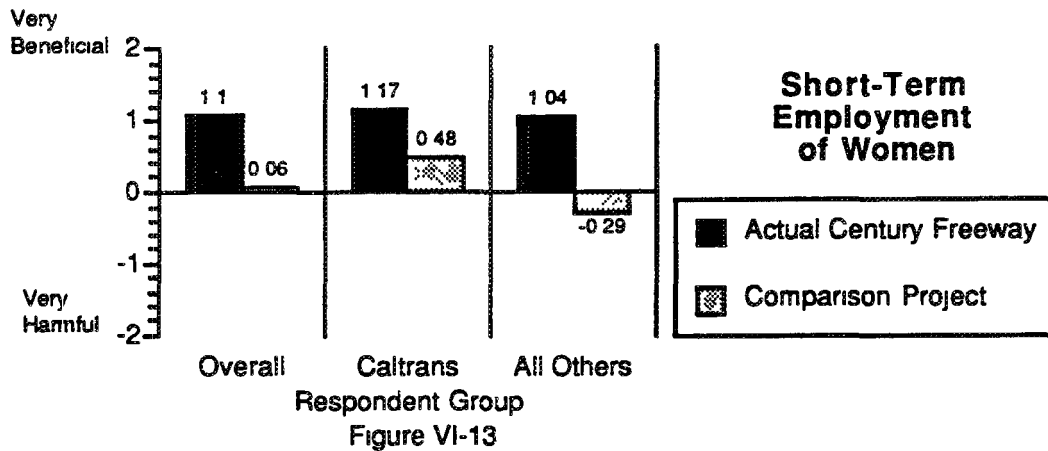
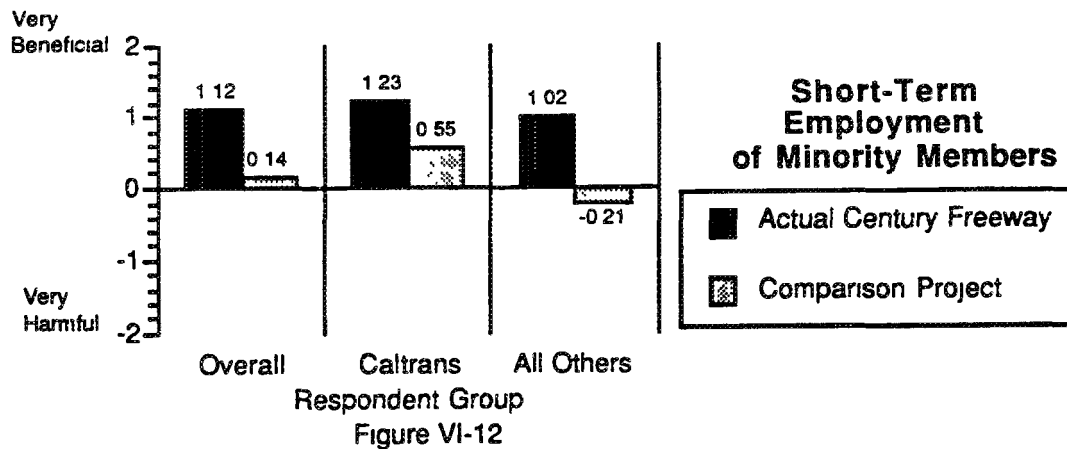
- Higher than typical goals for M/WBE subcontractors and minority and women employees;
- Involvement of CFAAC;
- Involvement of Caltrans District 7 Civil Rights Branch;
- Breaking the project down into smaller than usual construction projects;
- Involvement of a Century Freeway Employment Center;
- A separate outreach program for female construction workers; and

- Ongoing oversight of the project by the court.

1. Short-term Impacts

When rating the utilization and prosperity of females and minorities under the Comparison Project, perceptions of their economic well-being differed most dramatically for short term impacts. Caltrans and All Others differed not only in degree but in direction.

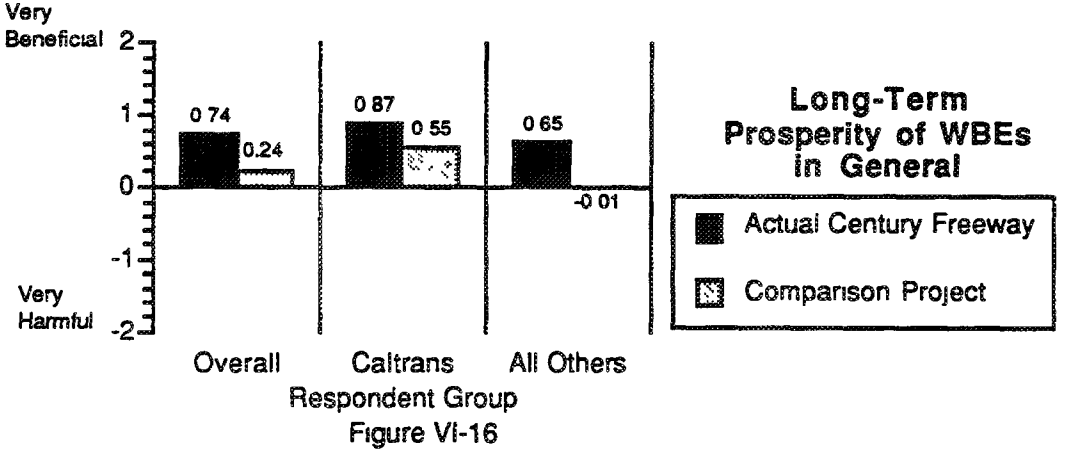
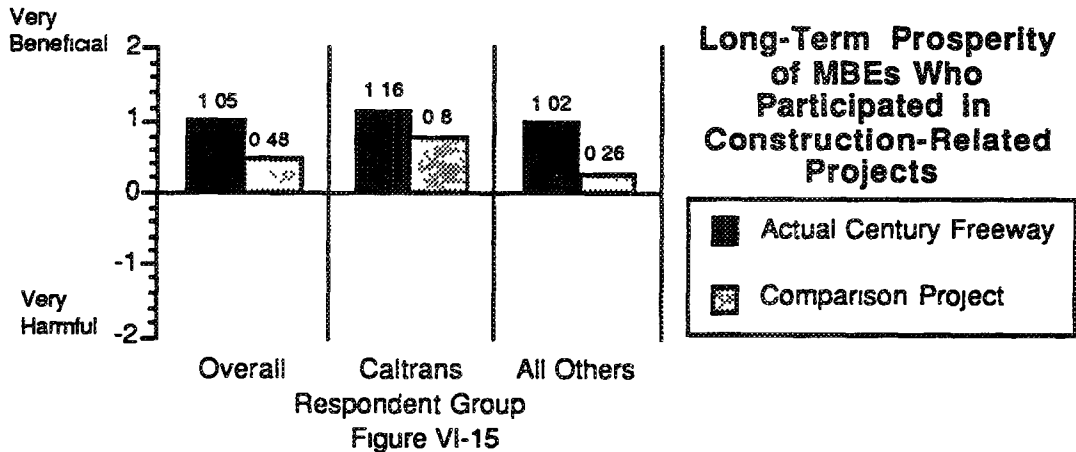
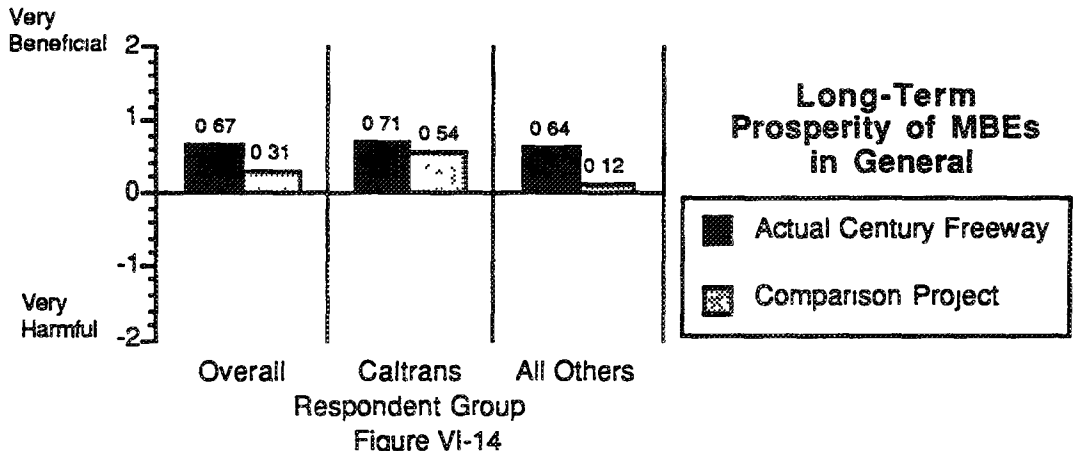


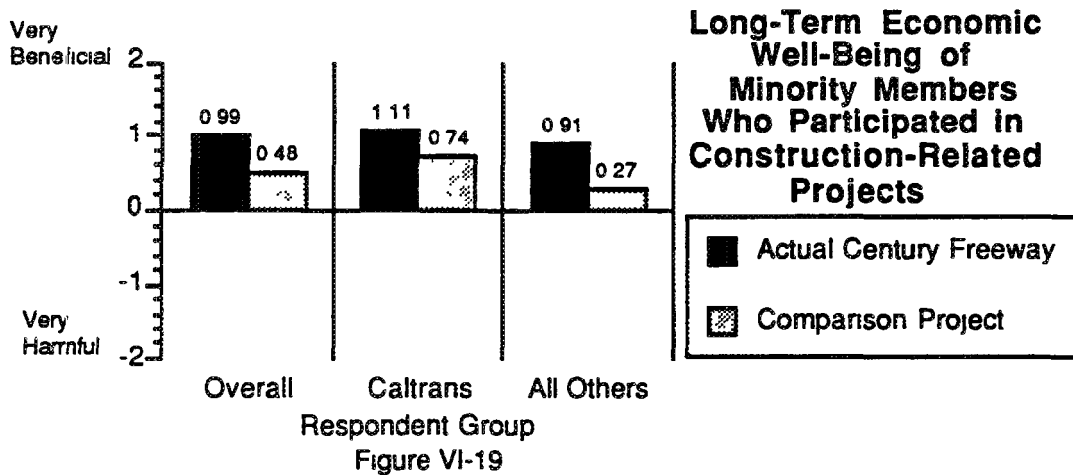
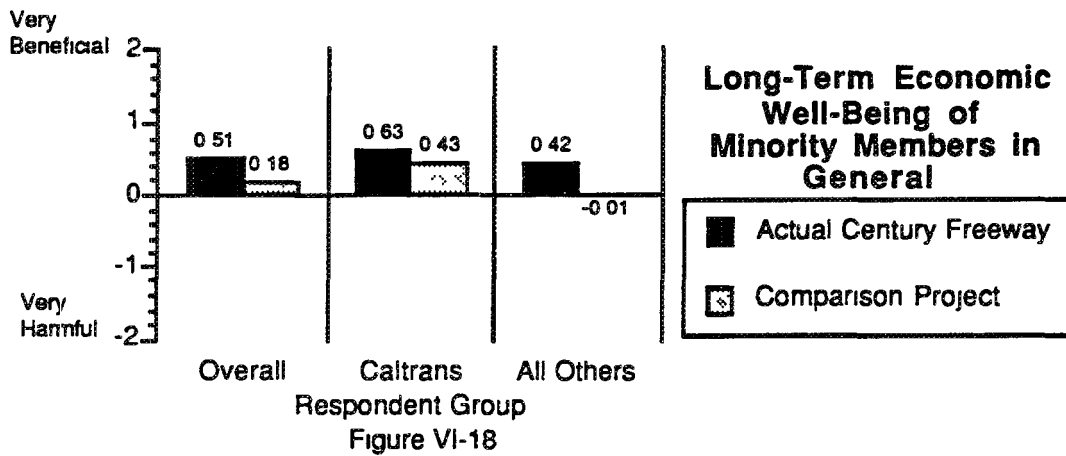
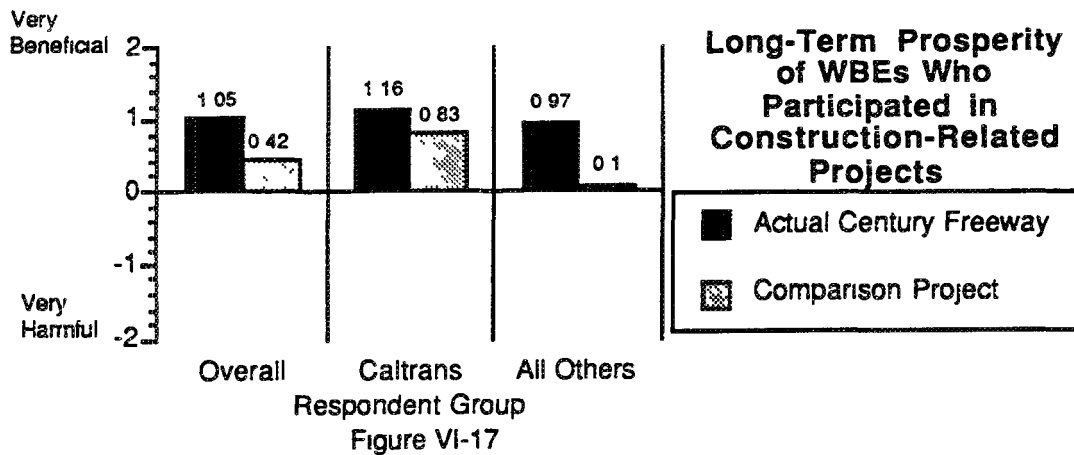


All other respondents indicated that the largest disparity between the Actual Century Freeway and the Comparison Project would occur during the short term employment of women. This finding is congruent with the need to establish a special employment and outreach program. Support for this finding is illustrated by the dramatic increase in the employment of women on construction-related projects following the establishment of the Women's Employment Program.

2. Long-term Impacts

Between the two groups there was more agreement on the long term impact primarily in regard to the actual Century Freeway scenario. Once again, Caltrans perceived that less variation would occur between the two scenarios than all other respondents.





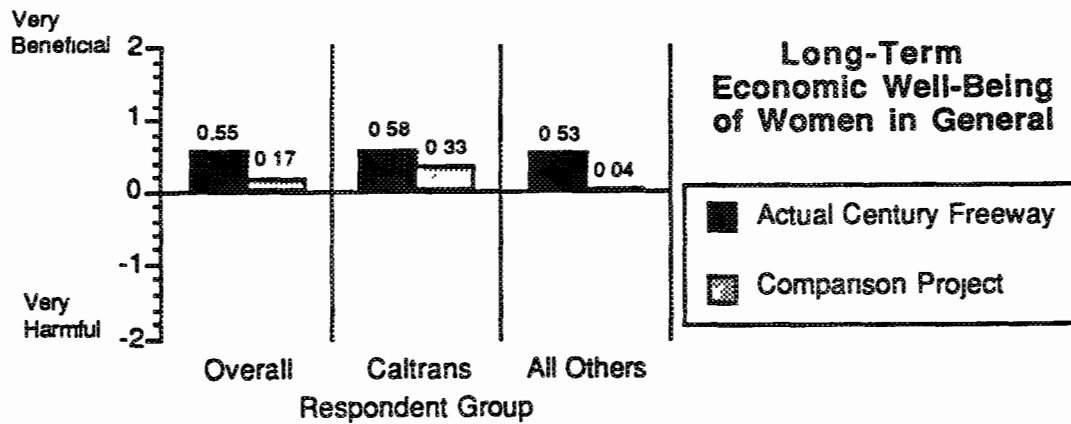


Figure VI-20

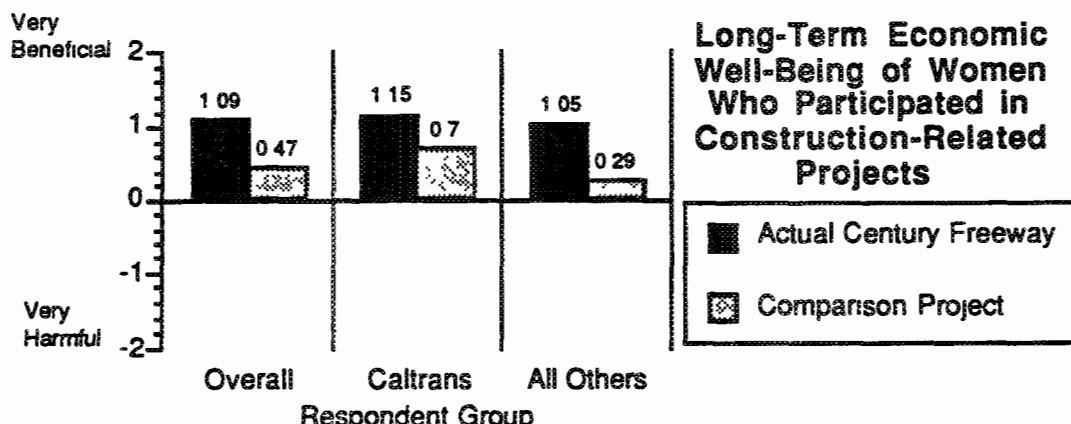


Figure VI-21

Caltrans and All Others disagree most in regard to the impact of the Comparison Project on minority and women employment and prosperity. While in general, all other respondents rate the impact as positive, this dominant perception is perceived as far less beneficial than the view expressed by Caltrans. The disparity is portrayed most graphically by the long term economic prospects of WBEs which participated in construction-related projects.

¹ *Keith v. Volpe*, 501 F.Supp 403, 412 (1980)

² Construction of Grove-Shafter was also stopped in 1972, when Caltrans was sued for failure to provide adequate replacement housing for predominantly black displacees. The interested reader is directed to "The West Oakland Community and How it was Affected by the Grove-Shafter Freeway Project" prepared for Caltrans, Office of Civil Rights, by Lee Associates (1990) for additional information on this freeway dispute.

³ Under the 1987 Surface Transportation and Uniform Relocation Act, a DBE is a business owned and controlled by one or more socially and economically disadvantaged individuals and meeting the

Small Business Administration's definition of a small business. Individuals presumed to be socially and economically disadvantages include black americans, hispanic americans, native americans, asian-pacific americans, asian-indian americans and women.

⁴A letter from Caltrans attorney Orrin Finch to Judge Pregerson, dated November 9, 1984, indicates how intertwined role and personality were: "During negotiations for the consent decree the concept of CFAAC, as a committee, was to provide assistance to Caltrans as well as a monitoring entity. Over the past years CFAAC has developed only its oversight role. The attitude exhibited and expressed by CFAAC staff and most of the board members is to ridicule Caltrans as always wrong and never able to do anything correctly rather than exhibit a spirit designed to develop the facts and attempt to work out a solution with Caltrans staff."

⁵ Respondents who reported that they had no knowledge of administrative impacts were removed from this analysis.

⁶Results include data only from respondents to our second questionnaire who indicated they had knowledge of the freeway's impacts.

CHAPTER VII

ECONOMIC IMPACTS

In this chapter, we first summarize the differences between allocation of funds for the Century Freeway and the allocation for a "generic project" in the Federal System. Next we describe unique procedures and other characteristics of the project which have economic implications. We address economic impacts on the corridor which may be related to the consent decree. Then we analyze actual and perceived costs and benefits of the project associated with the lawsuit and the consent decree. As elsewhere in this report, we caution that characterizing an effect as a cost or a benefit varies with the observer; especially in the material covered in this chapter, one observer may focus on the money costs in extra dollars required to implement an element of the actual project, while another respondent will cite the benefits, both direct and indirect, associated with that expenditure.

A. THE ECONOMICS OF HIGHWAY CONSTRUCTION

1. A brief summary sets the context for construction of the Century Freeway within the Interstate system

The four major steps in financial procedures legislated by the Federal-Aid Highway Act are 1) authorization by Congress to apportion funds to the federal highway program; 2) apportionment among the states of the amount authorized whereby states are given new authority to incur additional obligations; 3) obligation by the federal government to reimburse the states for the federal shares of the specific projects which the states submit for approval; and 4) Congressional appropriation which allows the states to be reimbursed for the projects from the Highway Trust Fund. Because the Federal Highway Act operates under the concept of contract authority as opposed to budget authority, funds can be obligated before appropriation (Joyner, 1985).

When apportionments are made by the FHWA, states are informed of their allocations. They then submit proposed projects for the approval of the Secretary of Transportation. All parties contracting to construct a project that is financed by federal funds must be selected by competitive bidding (23 USC 112 (b) 1982).

Before the projects are advertised for bid, an engineer's estimate is made by the state highway department. The engineer's analysis approximates the cost to the average contractor and adds a reasonable profit (Joyner, 1985). At this point the project can be advertised and a solicitation for bids is made. Bids must be "publicly opened and announced, either item by item or by total amount" (Joyner, 1985). The state must formally request that the FHWA sanction the state's award of the contract as a necessary prerequisite to participation in the project by the government.

After the contract is awarded by the state, the highway department prepares an agreement estimate for submission to FHWA based on the quantities and unit prices agreed to by the state and the contractor. Unit prices may not exceed those presently obtained by competitive bidding on similar highway construction in the same general locality. They constitute a firm commitment as the basis for Federal participation in the cost of the project.

The Surface Transportation Act of 1982 created a Disadvantaged Business Enterprise (DBE) Program with the goal that 10% of the Federal Highway funds states spend each year be awarded to DBEs.¹ For the Century Freeway project a program was established to help DBEs develop so that they can compete effectively with other highway contractors. States must comply with the DBE requirement in order to receive federal highway aid. Under the DBE program, state responsibilities include determining the eligibility of the new program applicants and issuing certificates to those who meet the eligibility criteria, reassessing annually the eligibility of certified businesses, and publishing annually lists of certified businesses. Additional responsibilities include establishing and obtaining FHWA approval of overall annual program goals for the state, establishing DBE participation goals for individual projects, monitoring contractors' compliance with program requirements, and sanctioning those contractors that do not comply (General Accounting Office, 1988).

2. Funding Considerations of the Century Freeway before the lawsuit

Although the Century Freeway was planned as early as 1958, it was not originally a part of the California state application for federal highway assistance. It was substituted for an unused allocation (previously assigned for the Embarcadero Freeway project in northern California) in which money was withdrawn and returned to a national pool for reassignment on a basis of competition with other projects throughout the country. The State's application to restore the funds was successful. The 1968 Howard-Cramer Amendment of the Federal

Highway Act allowed for the allocation of funds to the Century Freeway which was in the final stages of route selection at the time.

Generally, with the exception of relaxed contracting provisions for development of replacement housing allowed under the Ralph Act, contract awards were to proceed in the same manner for the Century Freeway as other Federal Interstate projects.

Caltrans officials indicate that the status of the Century Freeway as an Interstate highway allowed its construction to go forward at a time when many links of the 1958 grid were incomplete. Plaintiffs contend that the political pressures of higher income neighborhoods prevented the progress of other roadways which resulted in the Century Freeway ultimately having a high priority in the system. [Please see Chapter II for a discussion of the influence of community affluence on route selection.]

3. An economic history of the Century Freeway during the injunction

Interviewees from Caltrans generally agree that, as an Interstate Highway, the Century Freeway was not subject to the constraints of the State of California's budgetary crisis in the 1970s and 1980s. From 1972 to 1979, however, the injunction prevented any work on the project from going forward. During this time, the State looked to build other Interstate links that have been described as "weird little interstate projects."

"So the constraint was not that we didn't have enough money for the Century; the problem was that we had this huge hunk of money that we were going to lose if we didn't spend it, and we couldn't spend it on the Century, we had to find other places to put it."

More importantly though, once allowed to progress with the design and construction of the freeway, as with other Interstate highways, the State was committed to match the Federal funds: "(O)ur number one use of money after maintenance and administration was to match federal funds for federal programs." Furthermore, the Interstate deadline for completion elevated the Century to statewide priority so that the Century was generally spared the personnel cuts of the late 1970s.

Some Caltrans respondents however indicated that the State was constrained in the 1970s, such that in that decade Caltrans "went broke." An organizational study of Caltrans in this era described funding problems:

“Between July of 1975 and 1976, Caltrans laid-off and attrited some 2,700 of its 17,000 employees. The intent was to achieve economies in personnel and administration that would free funds for capital outlay and stabilize manpower at a level proportionate to the reduced program of capital development.” (Jones and Kinaga, 1977)

These layoffs were attributed to a 50 percent increase in the construction cost index; an absolute decline in revenues due to the impact of the petroleum embargo on fuel availability; and the cost impacts of increasingly rigorous design standards, environmental mitigations, and inflation (Jones and Kinaga, 1977).

The reduced program of capital development was proposed in the “McKinsey Study” (McKinsey and Company, 1974), whose evaluation of the state’s highway program recommended, among other things, downscoping a number of large projects and elimination of others.

The result of all these constraints was a slowdown in planning and direction for the state’s freeway system.

Interviewees believe that delays related to the litigation and to redesign were the primary factors that slowed down the freeway. Nevertheless, extensive evidence exists that the Federal Highway Administration was considering reducing funding to new highway construction at the time and this change at the federal level may also have had an impact on Caltrans consideration of its state priorities.

A 1982 Congressional Budget Office Report described the increasing financial pressures on the federal Interstate system (CBO, 1982). After 1970, construction progress, measured in miles opened per year, slowed nationwide because of:

- highway design changes to improve safety and increase traffic capacity;
- statutory social and environmental regulations;
- rising costs unmatched by increasing funding; and
- more complex projects and public opposition as the system moved into metropolitan areas.

The Interstate program was originally to be complete in 1972. A 1975 report suggests that the scope and cost of the work required to complete the system should be evaluated in light of the Nation's energy conservation requirements and a national need to reduce fuel consumption, improve mass transit facilities, and encourage car-pooling (Comptroller General

of the United States, 1975). Federal highway officials described a push to put the Interstate behind them and, at most, have only 1% uncompleted by 1980.

The Century Freeway, still in litigation at the time, was reportedly the fourth most expensive project left to complete. More expensive per mile were freeway segments traversing Washington, D.C., Chicago, and Seattle. Federal Highway Administrators acknowledge funding cutbacks. FHWA closed its on-site Century office, in part because of a reduction in funding. One high level FHWA official's perception was that the agency was being asked to "do more with less under the Reagan administration." Another FHWA interview offered a different perspective on the closing of the office:

"Federal Highways decided to shut down their Inglewood office and pull those positions back to Sacramento. They did it for one reason and one reason only: to get rid of the people they had working in that office. (They) had become too aligned with the minority community."

4. An economic history of the Century Freeway after the consent decree.

In the 1980s when funds became available, very few projects were in the California pipeline and delays in project delivery existed:

"...during the mid 1980s the department was subjected to some severe criticisms because they couldn't deliver... [the agency] was constrained staffing-wise and it also did not have an overall plan...we had to gear up in a hurry and when you do that it takes a while to get through a process to be able to deliver projects, whether freeways or whatever they are...The net result was that the department was subjected to severe criticism."

The changing political climate had little influence on the availability of funding for the project. Generally, the Deukmejian administration is perceived as being eager to see the project completed but "there is not a great love for all the highway money being diverted and effort being diverted into the social programs." A Caltrans official described how the Department under Deukmejian sought to push the project forward:

"The word I had gotten in general, not necessarily just for the Century but in all projects, was that the governor wanted to go full speed ahead and get some projects going which had been stalled."

The Brown administration is generally perceived to have supported the consent decree and the related programs it accomplished but to have been philosophically opposed to construction of freeways [for additional detail on the Brown/Gianturco views, please see Chapter II.]. Although some interviewees indicated that under Gianturco the I-105 was not efficiently

incorporated in the Caltrans organization, neither administration is perceived to have financially constrained the progress of the Century Freeway and its related programs.

Caltrans interviewees were skeptical about the purported Federal budgetary constraints in the early 1980s which allegedly caused the downscoping of the freeway:

"There were no budgetary constraints....Budgetary constraints were just, in my opinion, a normal Federal government line to keep from doing whatever it is you want them to do."

Most Caltrans officials deny that the federal budget affected the Century Freeway. They state that the downscoping may have resulted without the direction from the Federal Highway Administration. Furthermore, they indicate that because the Century Freeway was in the Interstate system it was of Statewide priority. Federal contributions only controlled the rate at which the State's eight percent [8%] contribution could be spent on the project.

B. ECONOMIC AND PROCEDURAL UNIQUENESS OF THE CENTURY

1. The failure to prepare environmental documents delayed the project and increased its cost.

Segments of the Century Freeway project were in the design approval stage at the time NEPA was enacted. [Please see Chapter XI for a detailed treatment of the chronology involving impact assessment requirements]. A significant delay on the project is attributed to the fact that environmental review process was not yet integrated into the project development process. It is generally acknowledged that inflation can increase the cost of delayed projects. As the Auditor General summarized:

"Compliance with environmental laws and regulations caused delays on other highway projects but did not cause construction fund losses because funds for delayed projects were reallocated to other projects. The requirement to conduct the environmental impact study for the Century Freeway delayed this project over five years and cost an additional \$4.75 million. The original project cost was estimated at \$375 million; however, due to inflation and other factors, the current estimate is over \$800 million....Changes in regulations [air and noise standards] have contributed to the delay (Office of the Auditor General, 1978)".

In addressing overall economic impacts of delay, one view holds that an earlier investment in the project might have returned benefits earlier. However, those federal dollars that were not spent on the Century during the injunction were "shifted to other approved

projects (Office of the Auditor General, 1978)." In this view, there is no net cost but a re-distribution of a benefit.²

2. Once freeway construction began, it encompassed several project costs that would not have been a part of the Comparison Project.

One Caltrans official summarized the elements of the actual project which were associated with additional costs:

"The entire Civil Rights Branch in District 7 and all costs attended thereto. The entire affirmative action committee and all costs. And all the other specialized programs on the Century....There would have been the same...number of engineering personnel and the same construction personnel. A project that size probably might have resulted in one or two people more at headquarters, if there hadn't been a consent decree..."

In this section we address individual cost categories.

Project Specific Civil Rights procedures

One cited cost is the alleged duplication of effort in carrying out civil rights procedures, including contract award and procedural hearings. Both the involvement of CFAAC and demanding requirements for minority and women business involvement in the project are cited as sources of increased cost on the Century Freeway. "CFAAC and its labor compliance employment activities is an absolute duplicate of what Caltrans does. So the public is paying two people to do one person's job." No specific explanation of how the demanding requirements translates to increased costs was offered in the interviews. [FHWA's DBE program calls for the certification and monitoring of DBEs].

We explain CFAAC's position on the "duplication of efforts" question in Chapter VI. Briefly, CFAAC believes that its close review of the affirmative action and equal employment activities performed by Caltrans is part of its obligation to the court, and that CFAAC has to augment tasks or perform tasks that were improperly performed by Caltrans.

A second perceived consequence of CFAAC involvement in the contract award process is delay.

"The standard spec says contracts are awarded 30 days after bids are opened. Century Freeway says 60 days. Frequently we run into problems from CFAAC

who questions contractors or subs....We've had projects that went six months before award. By that time the prices are out of date, [and] subs are working on other jobs. A large portion of contracts are delayed longer than on a normal project."

An analysis of closed projects undertaken in District 7 during the last ten years support the view that contracts take longer to award on the Century: 30 days for non-Century projects and 83 days for Century projects. Between 1979 and 1988, 82 projects were completed, 46 Century and 36 non-Century. No non-Century project closed by 1990 was awarded after 1985; no Century project, before 1982. Viewing the data longitudinally, we see the time to contract award from bid opening increasing slightly for non-Century projects and decreasing slightly for Century projects. However, it is not until 1988 that any yearly average for Century projects falls below 60 days.³

Throughout the interviews the costs and problems of delay are noted. We need to point out, in assessing the importance of this alleged factor, that the earliest I-105 construction schedule provided in the Caltrans quarterly status reports (dated 10-18-82) anticipated the final Century Freeway construction project being completed in mid-1993. If there is a delay associated with the consent decree, to some extent it is an anticipated delay.

Construction costs

Caltrans officials indicate that engineering costs on the Century Freeway are higher than on other projects because more design changes have been made on it over the years. Also interviewees attribute a construction cost increase that is to the affirmative action program:

"There are costs of the consent decree in terms of construction projects. We had split up the projects into a lot of smaller projects as best we could without affecting the overall progress. Now in doing that it becomes more inefficient. [This process] creates higher construction costs, engineering costs, because it...[requires]...separate sets of plans,...[and]...administration of...separate sets of contracts. You set up the possibility of conflicts between adjacent contracts."

In CFAAC's newsletter, the CFAAC Director recently answered the question, "Doesn't affirmative action increase contractors' costs?"

"Contractors, like the public agencies involved, are well aware of the requirements involved in any I-105 project. As part of the process in bidding, in fact, all are informed of the specific requirements and goals. Indeed, contractors are required to submit an affirmative action plan that clearly explains how the goals and requirements will be met. Therefore,

knowing the project's requirements—including affirmative action—before a bid is submitted, should prepare contractors for any unexpected project costs.”

“At the same time, contractors are aware of the business and profit opportunities on the I-105. Their participation is high on the I-105 and it appears that future levels of interest and participation will remain high.”
(The Bridge, May 1990)

While the majority of Caltrans officials cite administrative and procedural differences between the Century and other freeways, many mention increases in cost attributed to three other factors: inflation, the existence of housing, and the affirmative action provisions of the decree.

Individuals **outside of Caltrans** also cite an increase in cost to Caltrans and the Federal Highway Administration resulting from the consent decree. [See Chapter III Section E.]

Analyzing the same closed projects noted above, the average Century project cost is \$3,294,874 and the average non-Century Freeway project cost is \$2,667,880. Again: two caveats: 1) if the Century Freeway projects are smaller, a larger cost differential would be suggested; and 2) but by their very nature the projects are quite different making this type of comparison highly speculative.

Housing

The total cost of the housing program is predicted to be \$300 million. The non-traditional nature of funding the housing program [Please see Chapter V] is blamed for the increased cost of the project. In addition to the inflationary effects of delay while housing construction policies were determined, some interviewees cite effects of incompatibility between goals of the housing program and the affirmative action program. This incompatibility is cited by housing officials much more often than by highway officials, many of whom thought it either impossible to determine whether the special affirmative action provisions increased costs or that there were no cost increases that could be attributed to affirmative action. An HCD Director described the perceived conflict:

“I think in this instance giving equal weight to the employment action plan was detrimental to achieving the housing goals, and quite frankly it didn't work....That whole aspect of it was in conflict with trying to achieve the maximum number of housing units built as replacement and replenishment housing.”

A CFHP Executive Director described how the conflict translated into higher costs:

“The difference between what it would cost to do the housing in the Century Freeway corridor...if I had to do it on my own, probably would have been 25 or 30 percent less than what it cost us because of all the extra stuff we had to do.

“We often had folks that were for the first time (buying supplies)—by the program’s very own interest we would be using folks that hadn’t done this before....They were very often paying closer to the retail price than someone else....A contractor with long-standing experience and has done a hundred of these projects, knows how to write up the subcontractors in order to pull them through the process, how to do this, and how to do that. And can take it through and have the construction finished with a fewer number of people, they know just how many to employ....Many of our subcontractors and contractors weren’t sure the right number of people, often had more folks than they needed, paid higher wages....That’s a direct cost that gets related to the project for what the consent decree wanted to do. And I think those are all legitimate (costs), we were trying to do something to encourage people to do....We wanted them to do that, we wanted those relationships to start being established.”

Project Monitors

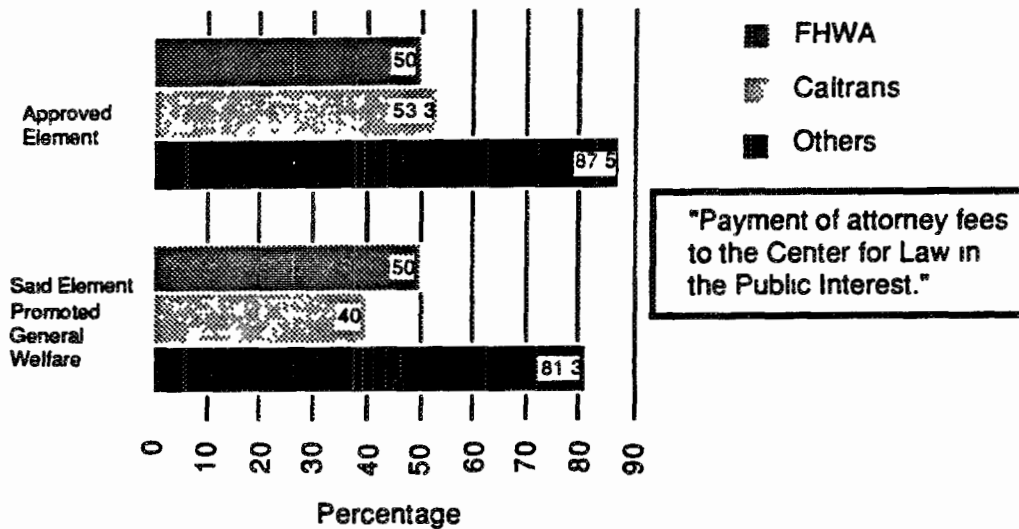
For most of the project’s history, payments to the Center for law were determined by court order; only recently has the Center negotiated a contract with Caltrans. Costs for CFAAC, the Office of the Advocate, and HCD are line item budget costs.

Many Caltrans interviewees (53%) indicate that they knew and approved of the initial payment to the Center for Law.

“There’s no question but that they deserve a lot of credit for the identification of the community need and for the opportunity to address that need and have served their constituency well by delivering genuine economic benefits. They’ve also gotten rich out of it. For example, in the past year we paid \$395,000, notwithstanding the fact that all the legal work has really been done. The level of controversy and confrontation has markedly declined....Clearly they were entitled to compensation for all the years of litigation starting in 1972. But for their actions there wouldn’t have been a CFAAC; there wouldn’t have been a housing program;...I have the greatest problem with the fact that it has become a meal ticket extending out into perpetuity.”

As depicted in Figure VII-1, a smaller proportion of Caltrans respondents (40%) indicated that the payment of attorney fees to the Center for Law promoted the general welfare. Several interviewees stated that the continued involvement of the Center for Law (after the

signing of the amended consent decree) was undesirable. Caltrans officials felt that they had no control over the amount of time the Center would spend on the project. Furthermore, Caltrans officials were sensitive to the concept that was applied in this case: "We were paying them to spend time on the project to find problems that they could lay on us, that we then had to spend time to resolve." The Center is perceived as an organization not judged for its actions, and to have had a "blank check" until agreement was reached on an annual retainer fee.



Those Caltrans officials who did not approve of any payment to the Center for Law indicate the Center has not served the general welfare: "They have been a major contributor toward the animosity and the difficult communications that have continued to plague this project."

Although the **Federal Highway Administration** bears none of the Center for Law expenses its respondents too are critical of the role the Center for Law continues to play during the implementation of the consent decree. They are sympathetic to the State's complaints and indicate that attorney costs should be contained.

"I think the State is getting ripped-off....[At] least I have often had the perception that the Center is contradicting itself about the complaints and criticisms it is making and I guess I have to suspect that part of that is 'make work' activity."

Interviewees from other organizations indicate that they approved of the payment to the Center for Law, primarily because of the nature of the lawsuit. As a public interest law firm, adequate compensation was due

Center for Law interviewees feel that their fees have been and are justified. Two typical perspectives:

“(Payment of fees to the Center) encourages lawyers and victims to seek redress of these problems. It’s really a good thing. (It) encourages us to help when we otherwise could not do it.”

“They operated for like twelve years without a cent, with no income coming in, sometimes having as many as two attorneys taking almost full time working at something with no income. And you couldn’t talk about the big awards if you divide it out by 18 years.”

Fifty percent [50%] of Caltrans interviewees both approved of the funding of the Office of the Advocate and CFAAC by Caltrans and thought it promoted the general welfare. A large majority of FHWA officials also approved of this funding mechanism and thought it promoted the general welfare. Other respondents were more positive in their initial approval of the situation than they were in assessing the contribution to the general welfare. Representatives from the agencies being funded concluded that negotiating a budget with the agency one is charged with monitoring is difficult. One suggestion that several executives make:

“They could have made the defendant deposit a certain amount of money in an escrow account in the court, and let the court pay it. Rather than...having us negotiate directly with Caltrans.”

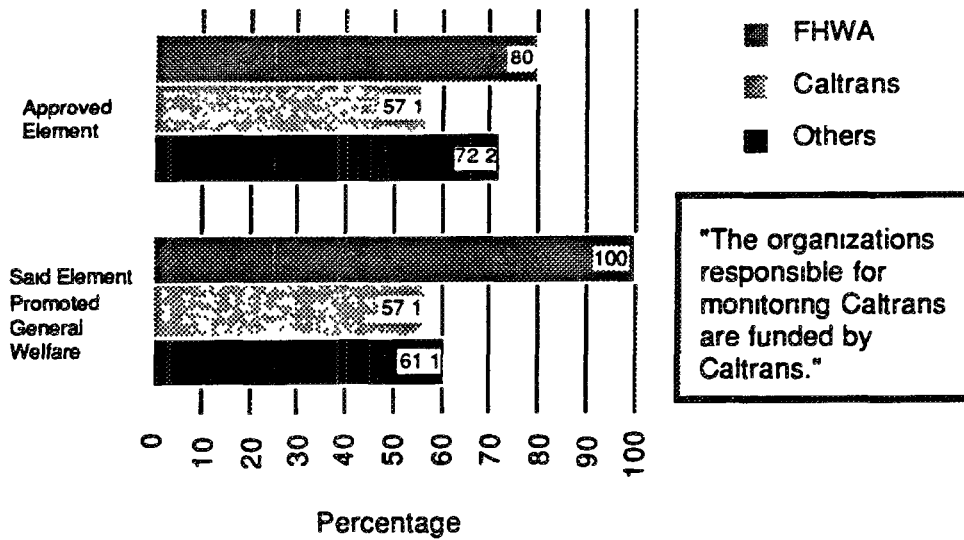


Figure VII-2

C. THE ACTUAL PROJECT COSTS MORE THAN THE COMPARISON PROJECT

1. Construction-related activities

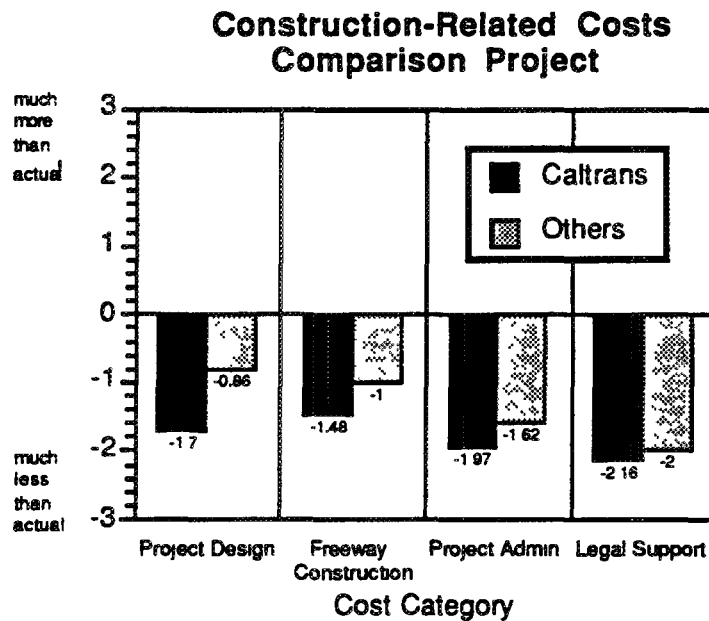


Figure VII-3

Of those who indicate a high level of knowledge of construction costs for the freeway, both Caltrans and other respondents concluded that the comparison project would have been less expensive than the actual project. The categories analyzed are project design cost, freeway construction cost, project administration and legal support. (See Figure VII-3). The only

category in which there is a significant difference between Caltrans and other respondents is in the costs for project design. Caltrans respondents indicate a significantly lower cost for the Comparison Project. Our interviews indicate that the project had to undergo redesign several times, not only because of the amendments to the consent decree but because of changes in design implemented during the injunction.

2. Affirmative Action related activities

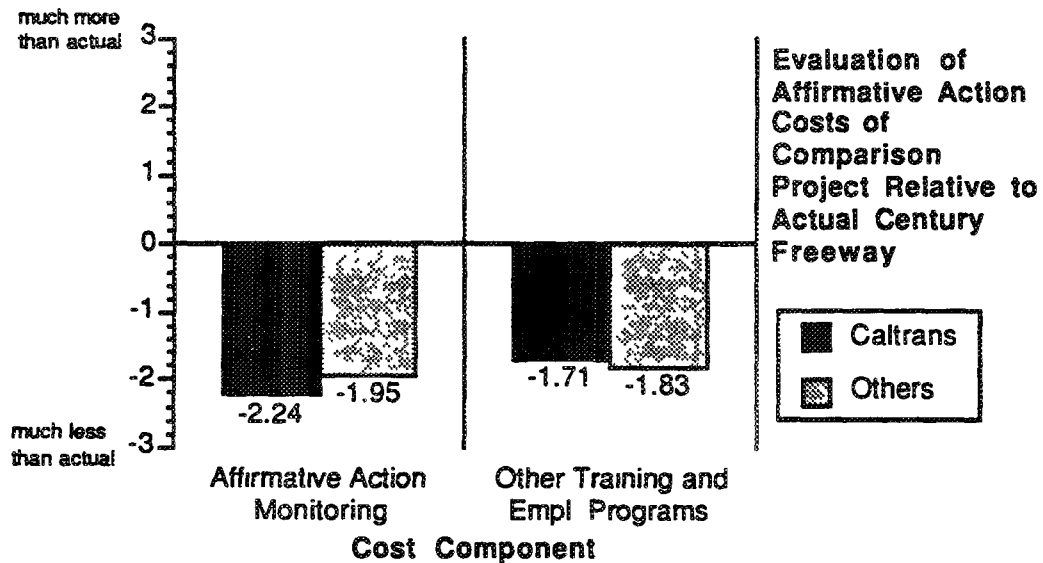


Figure VII-4

Respondents from all groups with a self-reported high level of knowledge of affirmative action costs indicate that the Comparison Project would have cost less without the consent decree mandated affirmative action program.

3. Housing related activities

As elaborated in Chapter V, respondents to the survey believe that the Comparison Project would have cost less for right of way acquisition, maintenance and management, corridor maintenance, replenishment and replacement housing, and relocation assistance. (See Figure V-7). Because only responses from individuals with a self-reported high level of knowledge of housing costs are analyzed, the significant difference between Caltrans and all other groups could be related to knowledge of the consent decree itself or to the degree of involvement in the project. We tested for this possibility and found that these factors were not responsible for the difference between Caltrans and non-Caltrans perceptions.

D. THE ECONOMIC EFFECTS ON THE CORRIDOR OF THE CENTURY FREEWAY UNDER THE CONSENT DECREE

The impact of the consent decree on the economic health of the corridor is also discussed in Chapter XI. Here we review available (but limited) Century Freeway data and literature on changes in employment in the corridor; property value effects; and influences on business opportunities.

1. Introduction

Analyses of the economic impacts of the Century Freeway on corridor municipalities would compare the effects of the actual freeway to those of the Comparison Project or to another base project.⁴ One would control for numerous other factors which affected economic development. One would measure over twenty years across a dozen very different jurisdictions.

We recognize the complexity of quantifying impacts associated with the differences in scenarios. We present here statistical information which is available and a set of considerations which can be quantified. Perhaps more important than quantification is recognition that the scenarios have characteristics that differentially relate to major economic indicators in the corridor.

We list below how the Comparison Project differs from the actual project along characteristics of the two scenarios which are most relevant to an analysis of economic impacts. The Comparison Project would:

- Open for freeway traffic in 1987, as opposed to 1993 for the actual freeway;
- Feature 8 lanes for mixed traffic, versus 6 lanes for the actual freeway;
- Feature 16 local interchanges versus 10 in the actual project;
- Involve creation of 500 replacement housing units, compared with 1000 in the actual project;
- Involve creation of no replenishment housing units, compared with about 2,000 in the actual project;
- Not require contractors to utilize corridor residents and businesses; and

- Feature minority and women subcontracting and employment goals that are higher than standard federal goals.

2. Employment/Net job creation

Figures for corridor cities approximately mid way in the project show higher unemployment in the corridor cities than in the county as a whole with overall increases from 1980 to 1983 and then some decline to 1986:

Corridor Cities Unemployment⁵

	<u>1980</u>	<u>1983</u>	<u>1986</u>
Compton	12.4	19.1	13.7
Downey	4.9	8.0	5.5
El Segundo	2.2	3.6	2.5
Hawthorne	5.0	8.1	5.3
Inglewood	6.7	10.8	7.5
Lynwood	8.5	13.5	9.5
Norwalk	6.1	9.9	6.8
Paramount	8.2	12.9	9.1
South Gate	6.8	10.9	7.5
Average	6.7	10.7	7.5
Countywide	6.0	9.7	6.7

It is important to note that these data are still photographs of a dynamic phenomenon [job creation and loss] which may have looked very different in other reporting years. Furthermore, even considerable positive effects linked to the freeway may not be reflected in dramatic changes in the figures because of the immense size of the overall work force.

3. Change in property value

Chapter 11 presents data on perceptions of the impact of the Consent Decree on property tax base. Several factors are involved in an analysis of actual impact of a freeway on property values. Among these are:

- Determination of the range or study area in which the analysis is undertaken. Hedonic price models may find that the enhanced property value around one interchange, for

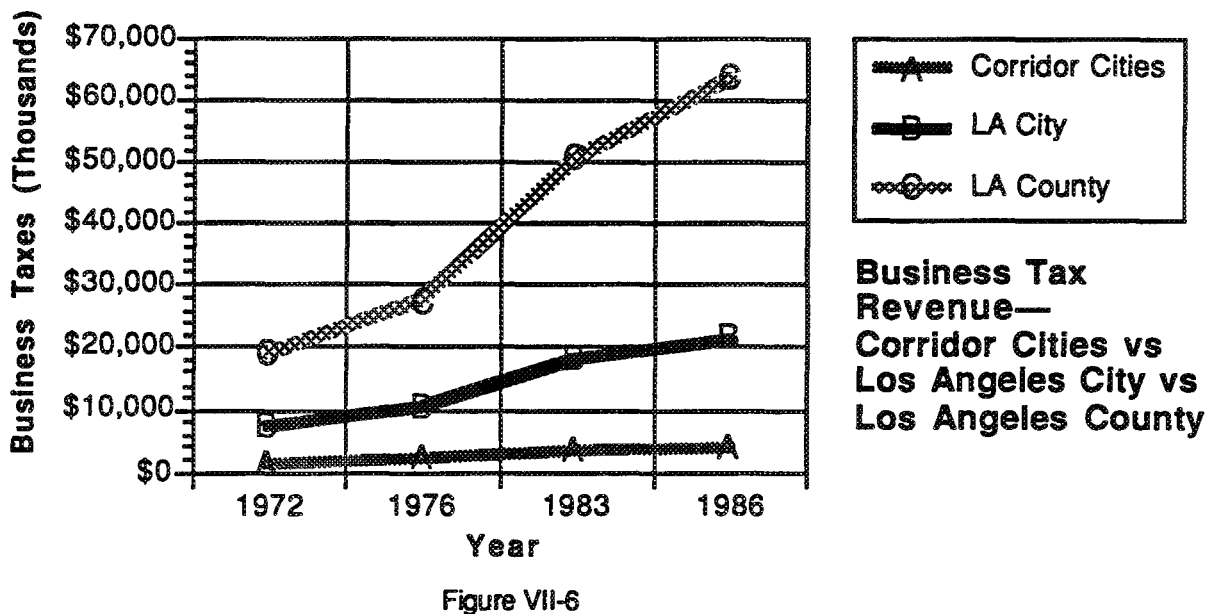
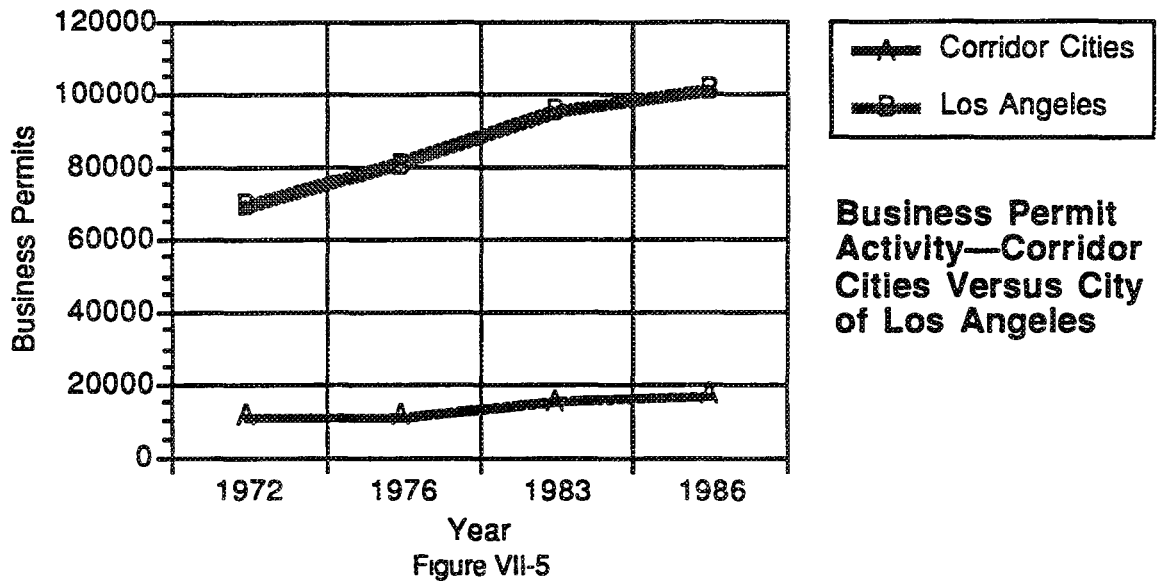
example, reflects a decrease in value somewhere else. On an individual unit basis property values may be higher for some residents without freeway proximity and lower for others because, for example, of the concomitant absence of proximate rail transit. [As with the case of impact on economic development, the overall corridor-wide effect may be positive even where localized effects are quite negative.]

- Displacement of public facilities which require local public expenditures for replacement.
- Increases in property tax base associated with additions of housing to the tax base.
- Decreases on overall property tax base associated with temporary and long term removal of parcels from the tax rolls.
- Changes over time in tax revenues associated with properties being added to or removed from the base.
- Changes in value associated with proximity to a freeway due to negative spillover effects or improved accessibility.
- Changes in net public expenditures reflecting the cost of providing additional public facilities and services to accommodate growth generated by the freeway (United States Department of Transportation, 1975).

4. Expansion of business opportunities

There is some anecdotal information on impacts of the injunction--as opposed to the Consent Decree--on the economic health of the corridor cities.⁶ And there has been considerable study of the *concept* of economic development in the corridor ["Century Freeway Corridor Economic Development Strategy" (1984); minutes of the White House Interagency Coordinating Council (1979); records of the Congressional Task Force on the Century Freeway; Corridor studies conducted by the Los Angeles County Community Development Commission and by the Los Angeles County Planning Commission; and reports by four corridor cities for HCD and the Housing Advisory Council" (listed in Brown, 1989). Yet as late as July, 1989, a recommendation was made to review earlier studies and "to formulate a strategy for attacking" the issue of "economic regeneration of the region" (Brown, 1989).

We present some data on changes in a surrogate comparison jurisdiction (in one instance the City of Los Angeles, and in the other both Los Angeles City and County), and a composite of corridor cities, again with the caveat that the information is at most suggestive in the absence of a methodology which controls for other influences on these economic indicators.



Figures VII-5 and VII-6 show that business activity in corridor cities as reflected in growth in business tax revenues and business permit activity lagged behind business activity in the comparison jurisdictions. This lag is particularly marked between 1972 and 1976, when the I-105 injunction was in effect.

An ideal comparison of the Comparison and actual projects would allow us to disaggregate the factors which influence the above indicators.

E. COST ANALYSIS: WHAT ARE THE COSTS OF THE ACTUAL PROJECT?

What are the costs of administering Consent Decree related programs?

Our best judgment of direct monetary costs associated with elements of implementation which derive from adoption of the consent decree is reflected in the following list.⁷

- a. Amount paid to HCD for administration of office from October, 1979 to June, 1990 = \$40,752,418.14
- b. Amount paid to Murray Brown from November, 1985 until June, 1989 = \$82,406.10 (FY). Amount authorized FY 1985/1986 to 1990/1991 = \$191,000
- c. Amount paid to CFAAC and Women's Employment Center for administration = \$10,712,581.33
- d. Amount paid to Joint Apprenticeship and Training Committee for training and construction costs = \$18,023,577
- e. Amount paid to the Office of the Advocate for administration = \$2,822,295
- f. Amount paid to Pacifica for Century Freeway Technical Assistance Program (CFTAP) = \$3,091,529 (FY 1983/1984 to 1988/1989)
- g. Amount paid to Triaxial Management Services for CFTAP FY 1989/1990 and 1990/1991 = \$660,293.41
- h. Amount paid to Century Freeway Advisory Committee = \$53,000
- i. Amount paid to George Crawford, special counsel = \$522,710.13
- j. Amount paid to the Center for Law = \$3,876,810.81 (this figure is an approximation).

There may be some disagreement on whether the total amounts reflected should be linked to consent decree administration. Some costs may have been incurred in some of these categories of expense in an alternative [Comparison] scenario. [Please see comparison Table in Chapter III.] Also, there are additional cost categories which could reasonably be associated with implementation of the consent decree such as construction costs for housing above the "last resort housing" of the alternative scenario and compensation costs for Caltrans personnel beyond the period associated with the Comparison scenario. Furthermore, although there is no contractual arrangement between Caltrans and its Civil Rights Branch, some interviewees believed that the entire cost of administering the branch results from implementation of the consent decree.

F. COST ANALYSIS: HOW MUCH WOULD THE FREEWAY HAVE COST WITHOUT THE CONSENT DECREE?

Table X-1 (in the chapter on freeway design and service) which describes how the freeway project evolved over time includes changing estimates of the cost for construction.

Several steps need to be undertaken in any complete analysis of a comparison of actual and Comparison Project costs:

- All comparative analyses should be done in *real dollars* requiring a need to discount and use present value. Because of very different annual inflation rates during the long period covered by our study, this requires an analysis with changing discount rates.
- The *escalator rate* to be employed needs to be decided and applied in the appropriate "extra years" associated with the Actual Scenario. This might be the Producer Price index or another index used by Caltrans for pricing of road building materials. Furthermore, appropriate inflation rates *by trade* need to be utilized.
- The costs of *administration of contracts* need to be included. There may be diseconomies of scale associated with separating the project into more than eighty contracts.
- Both the *number of lanes and the cost per lane* need to be part of a comparison: for the Century project the two additional lanes [eight minus six] would likely cost less than the first lane.

- Costs associated with *acquiring right of way* need to be included and these will depend on the original take by Caltrans and the nature of land sales during the overall length of the project.

These data were not available. Furthermore, economic analysis of this kind is outside of the expertise of the present authors. However, an August, 1975 Caltrans memorandum provides some markers for a cost comparison with *some* comparison projects *at the time* (not the "Comparison Project" used throughout this report) [O'Connell, April 11, 1974]. That report laid out a series of seven alternative concepts for cost analysis. "Concept No. 1" was the only alternative which fell within the Howard-Cramer⁸ limitation and allowed the full length of the project. But that configuration would have been: four lanes, severely downscoped or would have omitted interchanges. Projected costs of alternative concepts at the time are as follows:

<u>Concept # and Brief Description</u>	<u>Construction Costs (Millions)</u>	<u>ROW Costs (Millions)</u>	<u>Total Costs (Millions)</u>
1) 4 lanes; downscoped interchanges	\$140	\$61	\$201
2) 4 lanes; narrow median	\$158	\$65	\$223
3) Outer 2 lanes of 8-lane wide median	\$165	\$80	\$245
4) 4 lanes; complete interchanges and connections	\$308	\$106	\$414
5) 6 lanes; complete interchanges and connections	\$322	\$106	\$428
6) 8 lanes; complete interchanges and connections	\$337	\$106	\$443
7) 8 lanes with exclusive bus-lane as in FEIS	\$367	\$106	\$473

The report states that, at that time in Caltrans, analysts would have used "a 5 percent annual escalation factor for right of way and 8 percent for construction" [@ p. 2]; all figures would be expressed in 1975 dollars [At the time "the present value of the \$250 million to be obligated between 1976 and 1981...[was]...\$200."

A January 21, 1980 report also provides other markers of cost estimates:

“Indecision and delay escalated the project's direct costs from an estimated \$447 million (1972) to \$885 million. Indecision also wasted million of dollars in trips that were taken in roundabout ways, in jobs that were not provided, in housing that was destroyed or not built and in economic development opportunities that were not seized.” (Emerson, 1980)

Another approach to cost comparison is relatively straightforward. Assume that Concept 7 in the table above is the comparison project and that the figures represented in the memorandum are accurate in 1975 dollars. Adjust this figure yearly to 1990 dollars. Compare that figure with the 1990 cost estimate for construction of the actual freeway. An internal check would include comparing the 1975 adjusted concept value plus additional costs associated in this chapter with administration of the consent decree to the 1990 figure.

1 In 1987 the legislation was changed so that women were included in the group of DBEs, eliminating the separate goal of 2% for Women owned Business Enterprises (WBEs). Also see the discussion in Chapter VI on affirmative action.

2 Among economic effects of delayed opening of the project: opportunity costs of holding the land; costs related to congestion which continues beyond a date by which it could be relieved; and increased administrative costs. Quantifying these impacts was not possible for the present study: doing so also involves considerable speculation.

3 It was the goal of the research team to compare the final utilization reports for District 7's Century and non-Century projects completed over the last ten years. In this analysis we would compare the dollar values of the contracts with the amounts actually spent, as opposed to committed, on the contract. Unfortunately, these data were not available for the non-Century projects for the time period.

It has been extremely difficult to obtain data on the costs of the Century project. As an example, the following is a summary of the path we took to ascertain actual DBE/WBE sub contractor compensation, compared to non-Century projects:

- CFAAC was contacted. CFAAC files all of the Final Utilization Reports (HC-43) for the Century Freeway. From these, CFAAC reports the percent of contract awards which minority sub-contractors receive.

- We determined that the contractors first file a Second Friday Report and later file a Final Report. Caltrans Headquarter's staff indicated that they do not always receive copies of both reports, the values on which can change. It is unclear to us whether CFAAC consistently uses either the Second Friday Report or the Final Report. We found that District 7 DBE/WBE data on contract commitments were not often the same as CFAAC's.

- We then contacted the Sacramento Civil Rights office, in order to obtain HC-43s for non-Century projects. We were told that the HC-43s filed as Final Reports can be assumed to provide correct information on total funds committed to the sub contractors because this form is signed by the resident engineer. However, all funds committed are not necessarily paid if the item is found to be incomplete. We were not directed to a place where we could ascertain whether the amount committed to a DBE/WBE subcontractor was equal to the amount paid.

• To complicate matters, the estimated total payments to the contractors can change after the Final Report is filed. We were directed to the Project Status Report which is supposedly the most accurate information source. Unfortunately, it does not contain any DBE/WBE information.

Without complete, verifiable information the analyses we wished to conduct would be misleading.

⁴ Freeway impact studies typically contain economic data assessed before and after the freeway opens for traffic. Because the Century Freeway's opening is still forthcoming, a traditional "before and after" study is not yet practical.

⁵ Source: State of California, Economic Development Department, quoted in correspondence, Smookler to McManus, August 7, 1986. The memorandum lists Compton as a corridor city. The freeway itself does not run through Compton.

⁶ An undated anonymous Caltrans memorandum entitled "Route 105 and Preliminary Injunction" (probably fourth quarter, 1972) listed several predicted effects under the heading of "Community Impact"; among those quantified: annual loss to the City of Lynwood of \$100,000 "should a proposed shopping center that is dependent upon the freeway fail to materialize"; additional cost "to construct" because of a 2-year delay based on inflation: \$20 million" (@ p. 7).

⁷ The sources of these figures were individuals in various branches of Caltrans District 7 and Headquarters in Sacramento. Because there is no central accounting office for all contracts, obtaining these data proved difficult. Reflected are cumulative, nominal dollars which do not represent comparable present values.

⁸ At the time, "funding allowable under the Howard-Cramer limitation ...[was]...\$456 million. This includes the Federal and State contributions and all preliminary engineering, right of way, and construction costs. Federal contribution is \$417 of the total." At the time \$180 million had been spent. For survey responses regarding the short and long term effects of the Actual and Comparison projects on the utilization of corridor business and the employment of corridor residents, see Chapter XI.

CHAPTER VIII

THE IMPACT OF THE CONSENT DECREE ON A COMPLEX ORGANIZATION: CALTRANS

A. INTRODUCTION

This chapter assesses the impact of the lawsuit and consent decree on Caltrans. Our analysis addresses effects on organizational culture and structure, agency prestige and morale and intra-agency conflict. We base our review on an understanding of organizations which we briefly summarize in the following section.

1. Caltrans as a Bureaucracy

Aspects of the evaluation of the impact of the consent decree on Caltrans are unique; we acknowledge that uniqueness throughout this report. But the Century Freeway is also one of a class of stories. Caltrans is a large bureaucracy with a statutorily defined mission. The plaintiffs and the Center for Law are outsiders trying to influence the behavior of this complex organization. Historically, also, Caltrans has completed its work absent close working relationships with other state agencies. Several insights about the Caltrans response to this consent decree—and, more generally to the litigation—derive from research on intervention into bureaucracy.

The term “bureaucracy” often has a negative connotation in common usage, but in organization studies the bureaucratic organization form is one which derives its legitimacy on rational, as opposed to traditional (such as a monarchy) or charismatic grounds (as with a religious organization). The most widely recognized characteristics of this approach are the rules and hierarchy which outline the relationships between (1) members of the organization, and (2) the organization and its constituents. In the case of Caltrans a precise definition of roles and procedures has allowed members of different districts and divisions to communicate easily with one another and to design or develop small elements of larger tasks with the assurance that the elements can be brought together to complete expeditiously a complex project. For constituents or “stakeholders” of Caltrans, for example, rules have routinized and memorialized the processes by which contractors enter into consistent bidding procedures. Internally, rules governing personnel decisions dictate hiring and promotion practices, help guide employees' career expectations and facilitate the smooth transition of employees between positions.

The foundation of rationality rests on the proposition that decision makers have knowledge of three elements of a decision: (1) all possible alternatives; (2) the consequences of each alternative; and (3) the desirability or utility of the outcomes of each alternative-consequence set. Thus, to the extent that calculations of alternatives, consequences, outcomes and utilities were correct, an organization could be expected to have found the best way to accomplish a given task, such as designing and constructing highways. The bureaucratic form is manifested not only in the operation of departments within a single organization, but in the structure of government: Caltrans was tasked with building highways, Housing and Community Development established housing policies and facilitated construction, the Air Resources Board set standards for California's air quality, with the legislative and higher executive branches of state government overseeing the operationalization of these broad mandates.

In California's pluralistic society during the last two decades, the limitations of 'rational' approaches have become manifest: not only are alternatives virtually infinite, but both internal and external constituents of the organization often disagree on problems and the value of possible outcomes. However, Caltrans is not an independent actor, but rather a member of the larger bureaucratic network of state government, so its legitimacy as an organization has been dependent on its ability to perform the tasks assigned to it. To strike off on a tangent outside its perceived mandate could call legitimacy into question. In general terms, historically the "perceived mandate" of Caltrans was to design, build, maintain, and operate California's highways. The system which called upon Caltrans to develop efficient procedures for procuring land and building highways removed the organization from primary consideration of the social and environmental impacts of those processes; in fact, until the introduction of the interdisciplinary team described in Chapters II and XI, in-depth review of those impacts was beyond the array of legitimate activities of the organization.

We hypothesized that the the consent decree may represent a challenge to the rational, bureaucratic approach. It can be seen as utilizing a problem-driven approach to linking organizations to accomplish a complex task, an approach referred to as an "open system" in some organizational literature. The consent decree in this view assigned a problem (building the Century Freeway under numerous rigorous conditions) to a subunit and required that appropriate subunits create suitable linkages with other subunits; it thereby developed visible, negotiable procedures and more fluid decision making structures than have been found in a more bureaucratic form of organization and in periods when the influence of outside stakeholders was less. Problems can

arise when the priorities of an organization undergo a dramatic shift, as occurred at Caltrans under the consent decree.

"Many states' bureaucracies lack the capacity to deal with the dynamics of community adjustment to any kind of major systems impact on those communities. It can be freeway, rail, any kind of systems. Bureaucracies are geared to build, develop, redevelop and tend to put an emphasis on professionals and a leadership structure that can do that efficiently . . . [The bureaucracies' managers] are not consensus builders . . . They are people who can deliver budgets on time and who can deal with the apparatus of state laws . . . but they are devoid of the skills necessary to make a corridor vibrant . . . If they are going to be part of a process of establishing community consensus . . . those in the public must have skills to deal with the community."

2. The Caltrans Organizational Culture

Much as nations and regions develop distinct patterns of thought and methods of understanding their environments, so to do organizations develop cultures. Schein (1987) offers a definition of organizational culture: "the pattern of basic assumptions that a given group has invented, discovered, or developed in learning to cope with its problems of external adaptation and internal integration, and that have worked well enough to be considered valid, and therefore, to be taught to new members as the correct way to perceive, think, and feel in relation to those problems." Artifacts of a culture include bureaucratic structure, functional departments, architecture, office layout, and the nature of its products.

In keeping with its mandate as a results-oriented and product-driven organization, Caltrans had developed hiring and promotion systems that usually saw engineers rise to the highest levels of the organization. [The exception has been on occasion the position of Director, a Governor's appointee.] To maintain congruence with the logical, scientific nature of production of its products, the organization evolved into a rational, methodical form. The rise of technical professionals to executive status is congruent with the mission of Caltrans and is similar to the tendency in private business for the chief executive officer to be selected based on expertise in disciplines emphasized as a result of the firm's position in the product life cycle.

"[Caltrans had] an engineering culture, which did not have to deal with the social issues in the building of the ground transportation system. So it's not that they're bad people, it's not that they're rednecks, it's just training and cultural environmentIn fact many of the people in Caltrans do care about the environment. [In their] personal convictions, they are sensitive to social needs [but Caltrans] was very rigid, very hierarchical."

Using the notion of organizational culture as a framework for understanding the behavior of Caltrans and its employees one may assume (as the interviewee above does) that Caltrans decision makers had reasonably benign motivations in reacting to the changes in the operating environment brought on by the consent decree. Caltrans members shared basic assumptions about the contribution of freeways and had difficulty understanding the point of view of parties who viewed freeways as problem—and not progress—and Caltrans as an enemy rather than an agency, professional and effective, which applied technology to achieve the overall public good.

In this understanding, the clash of values, basic assumptions, and views that occurred as a result of the lawsuit and subsequent decree (and took place within the context of the changing regulatory environment we have described earlier), led some outsiders to view the agency in the less favorable light illustrated by one of our interviewees:

"Caltrans is dominated by older white males from the engineering discipline which by nature is structured....They don't have respect for outsiders because of that and hiding behind Federalism they are offended by anyone taking a second look at what they're doing."

Closely linked to the issue of organizational culture are questions of organizational prestige and organizational image. Keith v. Volpe was filed in a transition period for Caltrans (1972). The new regulations and major social movements described in Chapter II and elsewhere in this report would begin to make themselves felt in many ways over the next two decades. But at the turn of the decade (1960-1970), Caltrans still rode on the wave of a reputation that was generally positive and world-wide. Its self image was a reflection of (if not also a contribution to) this reputation. Promotional material of the period reflected a "leave it to Caltrans" attitude which gave little indication of the brewing dissatisfaction with standard highway development procedures. Listen to Caltrans' view of its employees:

"Division of Highways: the workhorse of the freeway planning team. Its highly trained planners, engineers, traffic and right of way experts, landscape architects, etc. are all career employees whose only objective is the greatest public benefit. They make careful engineering, traffic and economic studies for every freeway proposal. They work closely with city or county officials, and hold public hearings at which local residents are urged to give opinions or data" (California Division of Highways, undated, received in University of California, Irvine Government Publications Office, Dec. 16, 1966).

While suggesting that the expanded responsibility of Caltrans for the Century Freeway project, could create serious inter-organizational tensions, the systems view also suggests that the consent decree and the new regulation could create an opportunity for Caltrans to take on an

expanded role in addressing the impact of the I-105 project on the environment (air quality, housing, vitality of cities, etc.). Pushes from groups outside the organization thus may be viewed as threats by one observer and opportunities by others—in this case requiring coordination of activities with relevant organizations, such as AQMD, HCD, and governments of corridor cities.

This brief background suggests that the organizational effect of Keith v. Volpe and the consent decree could have been dramatic. However, the following results sections indicate that that has not been the case. While there have been identifiable impacts on morale and other outcomes, in general organizational reaction has been modest.

B. STRUCTURAL RESPONSES TO THE CONSENT DECREE

1. Civil Rights

Most respondents, particularly those from Caltrans, observed changes in the organizational structure of Caltrans in response to the consent decree. Most of the changes cited involved the Civil Rights branch and its emergent relationship with CFAAC:

"We're centralized in civil rights, except for the Century Freeway... You know, you're negotiating with CFAAC on a day-to-day basis, and it's pretty difficult to deal with them [from Sacramento]....I think the fact that CFAAC had to participate in the development of the goals, accept the certifications, or at least be provided an opportunity to challenge certifications, in just logistics and communications [dictated that an office be maintained at District 7]."

While one Caltrans interviewee described changes as "very, very minor" and went on to say that "[t]he role and responsibility of the headquarters organization for the district are unchanged basically for the Century Freeway," another suggested that, although the consent decree did not require it, District 7 was given its own civil rights branch because "there had to be some people down there to make things happen" and "people then running it in headquarters weren't doing a very good job of it."

"There would probably have been an office of civil rights, but its role would have been serving strictly the duties imposed on it by Caltrans rather than its heavy involvement with CFAAC in transmitting information."

The statement above illustrates an underlying theme in several of our interviews. Many of the improvements which ostensibly emerged from the consent decree would have evolved naturally as the Caltrans bureaucracy response to federal and civil rights policies. This view conflicted with

those of groups which felt that they were responsible for moving Caltrans toward what they perceived to be more progressive civil rights policies. Some interviewees, both Caltrans and others, spoke of long-standing hostilities that emerged as a result of these difference in perception.

On the other hand, positive influences also existed. One key to facilitating change in a large bureaucratic organization is the existence of "boundary spanners", individuals who can scan the views and positions of several organizations, help diffuse personality issues, synthesize disparate points of view, and in some cases harness the pressures of organizational differences. An example was described in our interviews:

"The best thing [Caltrans] did was to involve Jim Turk. Jim Turk was the most progressive influence. The negative, I think they did everything they could to avoid changing. They never espoused objections to the intent. I think their biggest problem was they they resented [CFAAC's] intrusion into the process."

"(Turk) was the most sensitive person in Caltrans...because he immediately saw the dynamic between what CFAAC was about to do and how Caltrans had historically done business."

2. Other Structural Innovations

The scope of the Century project gave Caltrans the opportunity to create a separate design department for the first time and to align many functions in a matrix structure. The relative looseness of this organizational form facilitated shifts of personnel to problem areas and created a management development opportunity in that Caltrans engineers became exposed to more elements of the project than would have been the case under the more traditional function based structure.

In addition to the changes in the Civil Rights branch to (1) accommodate the relationship with CFAAC and/or (2) respond to the size and complexity of the Century project, Caltrans established a separate replenishment housing branch in Inglewood to facilitate interaction with HCD's Inglewood office. Caltrans interviewees also cited the existence of an I-105 Project Director position in District 7 (a position at the Deputy District Director level) as a direct consequence of the project's size and complexity; the District 7 Special Programs group headed by Maurice Kane to oversee the pre-apprenticeship and technical management programs; and the Century Freeway Division in Sacramento which was set up in 1983 to review staffing and managerial needs (the Division's review is credited with establishing the I-105 Project Director position and with expanding the District 7 Civil Rights Branch).

3. Structural Impediments

"The civil rights unit is, both at the local level and at Caltrans, just a little department over here. The people who have the final say on everything are non-aa types. They're engineering types, highway builder types."

Though the creation of a separate Civil Rights branch was seen by many people external to Caltrans as a positive step, the interviewee above identified a problem typical of structural innovations: the innovations may be well intended and well thought out, but the pervasiveness of the existing culture into which they are introduced may lessen their effectiveness. Similarly:

"The personnel function, in particular the affirmative action, [is] not usually a high priority operational function...whether it's IBM or whether it's Caltrans....It's very rare that, for example, the head of General Motors would decide that this isn't so important that we put out a better car to beat the Japanese, it's more important that we have a really strong civil rights division, and we'll put a lot of money in that unit and hire the best managers to achieve that. That doesn't happen."

Interviewees both within and outside Caltrans are critical of overlapping functional lines and lines of accountability vis a vis the District 7 Civil Rights Branch and the Civil Rights Office in Sacramento. Stated a Caltrans attorney:

"The reporting relationship of District 7 and headquarters has not been really clearly defined, and headquarters has the functional responsibility for the program but doesn't necessarily have line supervision or line responsibility over managers in District 7....(F)irms that are unhappy with some decision made by the district will appeal to and approach Sacramento, and functionally headquarters has that appeal authority, at the same time District 7 feels that headquarters' intervention is unwarranted and undercuts their authority. It's not set up very well....It's resulted in screw-ups."

Interviewees offered various reasons why the problems related to the District 7 Civil Rights Branch/Headquarters Civil Rights Office have persisted throughout the I-105's history. Explanations proffered include the novelty of the consent decree/CFAAC approach to affirmative action, bureaucratic turf battles among Caltrans administrators, and lack of commitment to civil rights issues by some senior Caltrans administrators.

However, there were attempts to staff District 7 with people who were more understanding of the changes required by the consent decree:

"When they created the deputy director in District 7, that was a change to speed the compliance along, but there were commensurate changes made

at headquarters. We had a whole hiring with 105 concentration...We've had individuals [who] believed [the consent decree] should be fought every step of the way and they were impediments. We had people in those positions that thought we better make the best of a bad thing...Right now there's a good balance."

Similarly, Caltrans' policy of periodic job rotation is useful for developing breadth of understanding in managerial and professional workers, but the policy may be considered a tradeoff with continuity:

"One of the problems that we have in Caltrans is that they rotate people....So you have some people that are just doing their job, and they're doing what they think they're supposed to do. And they are not as progressive or aggressive; they're engineers and they're in Civil Rights....It seems like every two years they rotate them. It takes about a year, a year and a half sometimes to really know your job real well. And then they ship them out someplace else when they get good and then you start over."

4. Emergence of Informal Groups

One interviewee observed that an ad hoc group composed of the attorneys, the project manager, an internal civil rights liaison and the director of District 7 met often in the early days of project construction, but that meetings became less frequent as "a coherent strategy for dealing with the issues" developed. Another described a Steering Committee which met bi-weekly to address consent decree issues. But Caltrans interviewees were largely unable to identify specific strategies which the Department used to make implementation more smooth. Said one Caltrans respondent:

"There's a learning process that went on across the board, with that in itself smoothing things out. I don't know whether we have done anything exceptional to smooth things out."

C. EVIDENCE OF CONFLICT

Several sources of conflict were identified: some threats to Caltrans' authority and reputation and diminution of its prestige; confusion about role expectations in a changing organizational environment; and minor erosion of morale in some parts of the organization.

"The consent decree [is] viewed as a threat. It's allowing others to take charge of our business, to be a part of decisions that should really be made by Caltrans...I'm not sure we've taken any steps in an organized fashion. Different people have moved to protect their flank in one way or another."

Both Caltrans and non Caltrans interviewees held the view that many Caltrans employees perceived the consent decree and its implementation as a direct attack on the organization and indirectly on

themselves. The official act of entering into the decree did not lessen that view for some Caltrans employees: "We perceived the judge's order as taking away some of our power and we appealed it...Maybe it wasn't a good idea to appeal [but] at the time that was our mindset. I think things at this stage have calmed down enough that we aren't concerned about that any more. But that was the early method of dealing with [the consent decree]."

1. Organizational Reputation

Caltrans employees feared that the interorganizational changes required by the consent decree would jeopardize the agency's reputation. Because the disposition of the consent decree created the need for a number of new or altered administrative roles within Caltrans, several interviewees described feelings of uneasiness. These were based on concerns that the checks and balances of the "old" system were no longer in place and that the organization was facing the risk of creating new inequities in the system, such as graft (though no instances were cited) or inefficiency, which would violate Caltrans' fiduciary responsibility to its funding sources. Others felt that the "new" activities were simply wasteful replications of procedures already implemented by Caltrans.

2. Role Expectations

The decline in reputation was not uniformly attributed to the consent decree's effects:

"In the early 1950's they were an organization in the ascendancy. They were recruiting engineers from the best schools in the country and they were building a freeway system. It was adventuresome. By the time that the consent decree came along they were already in decline. They were not building very many miles of freeway and they were recruiting their new engineers from state colleges in California and not nationally and internationally and they were not getting the best students and so forth. You can't say the consent decree suddenly was a watershed and changed everything." [Seminarist]

The impact of the consent decree on Caltrans' employees perceptions of their proper roles in providing housing and promoting affirmative action was measurable but small. We hypothesized that changes effected by the consent decree would make members of Caltrans uncertain of what was expected of the organization and, consequently, their proper role within Caltrans. One possible source of conflict centered on whether Caltrans employees were confident as to what public policy makers expected of the organization.

As Figure VIII-1 demonstrates, Caltrans respondents felt that understanding of expectations would have been slightly less than occurred in the actual Century Freeway project.

Caltrans' Understanding of What Policy Makers Expect of the Organization—Comparison Project

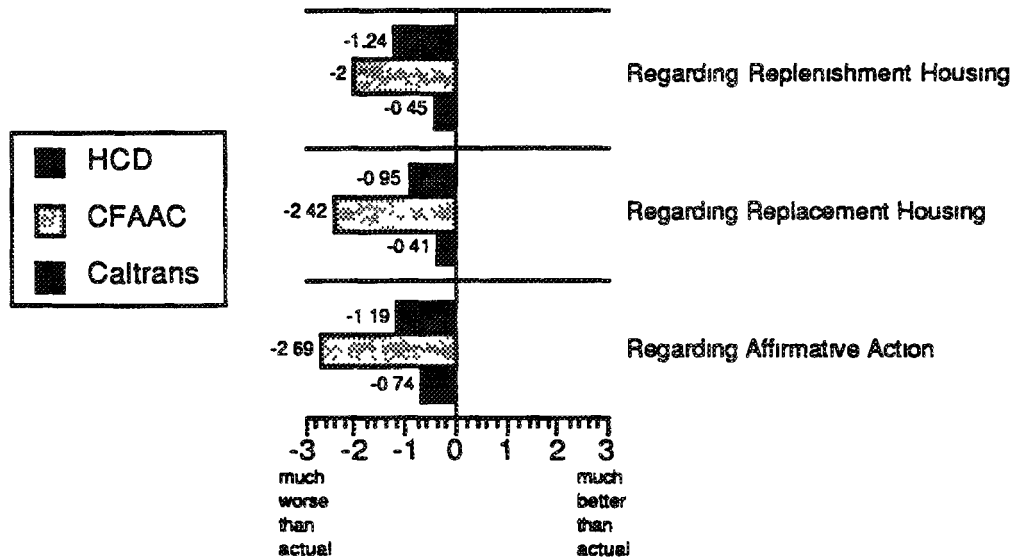
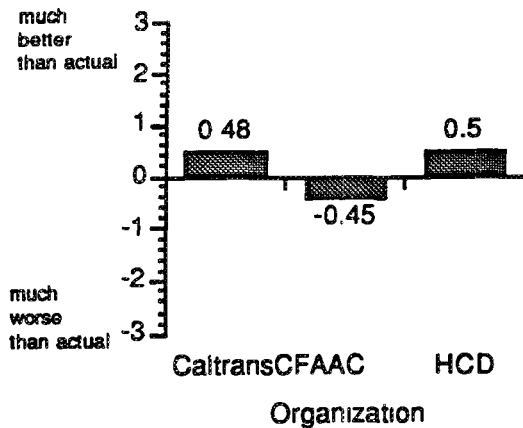


Figure VIII-1

It is interesting to note that HCD and, most notably CFAAC respondents, felt that the impact of the provisions of the consent decree was much greater on Caltrans. This pattern repeats in several subsequent groups of questions.

Shifting our focus from external constituents to internal relationships, respondents were asked their perceptions of how well Caltrans employees understood what the organization expected of them. Somewhat surprisingly, respondents from all three organizations felt that understanding was not dramatically different under the actual consent decree than under the Comparison Project. Again, the disparity between CFAAC and non-CFAAC respondents is notable.



In the Comparison Project, the understanding by Caltrans employees of what Caltrans expected from them would be...

Figure VIII-2

3. Organizational Prestige

As Figure VIII-3 illustrates, the outcome of the decree was perceived by Caltrans, HCD, and CFAAC to have had little impact on Caltrans' image with other highway departments. Regarding the impact of the consent decree on Caltrans' prestige with other groups, almost all respondent categories agreed that the organization's image in the eyes of the legislature, corridor cities, other district 7 cities, and civil rights and environmental groups would have suffered under the Comparison Project. Caltrans is an exception in its consideration of corridor cities, other cities in District 7, state highway departments in other states, and state legislators, but the differences for the most part are trivial. Prestige in the eyes of affirmative action/civil rights groups, however, is an issue with some notable difference between Caltrans and CFAAC; the result is consonant with views (discussed earlier) within both organizations about the independent additional effect on civil rights activity which the consent decree fostered.

Comparison Project: Caltrans' Prestige in the Eyes of..

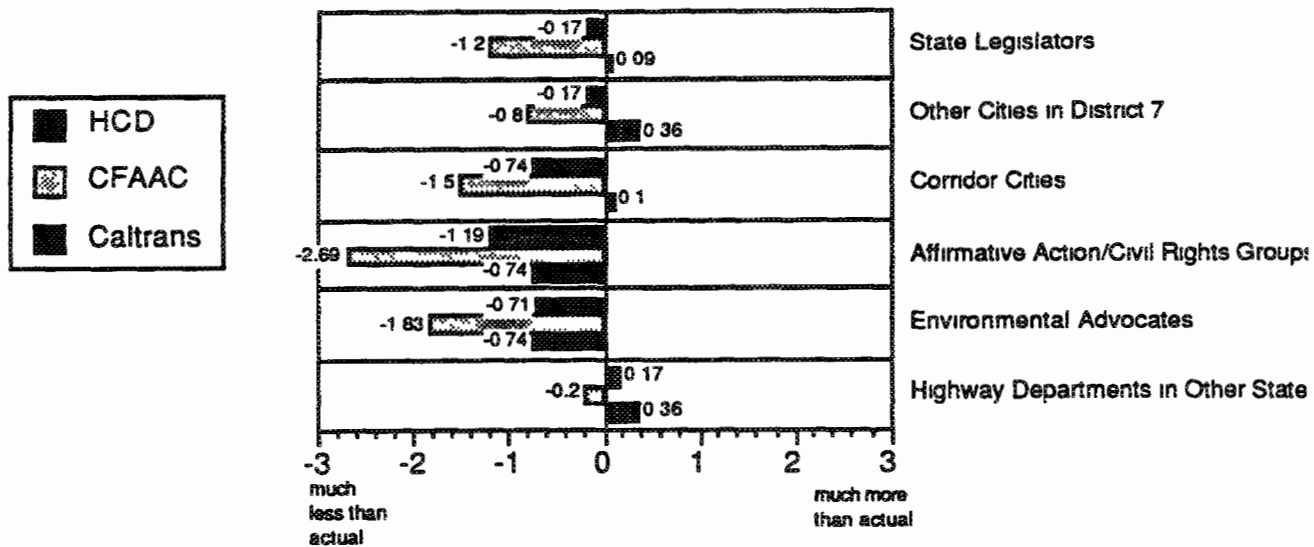


Figure VIII-3

4. Morale

"I think they were demoralized. I've talked to people there who feel that their self image was at stake. They believe that society needs highways. They foresaw all kinds of congestion problems if highways weren't built. If you talk to them about the environmental consequences of highway building they say 'Oh no, if they had let us finish the system, if they let us build all those freeways on the 1958 map there would be no congestion. Traffic would flow smoothly and air quality would be improved.'" [Seminarist]

The preceding comment led us to believe there could be significant morale problems at Caltrans, particularly on the Century Freeway project. Figure VIII-4 summarizes results of survey items tapping changes in morale, and, more importantly, the degree to which some hypothesized effects of poor morale might affect commitment and performance.

Comparison Project: Effects on Morale, Commitment, and Performance

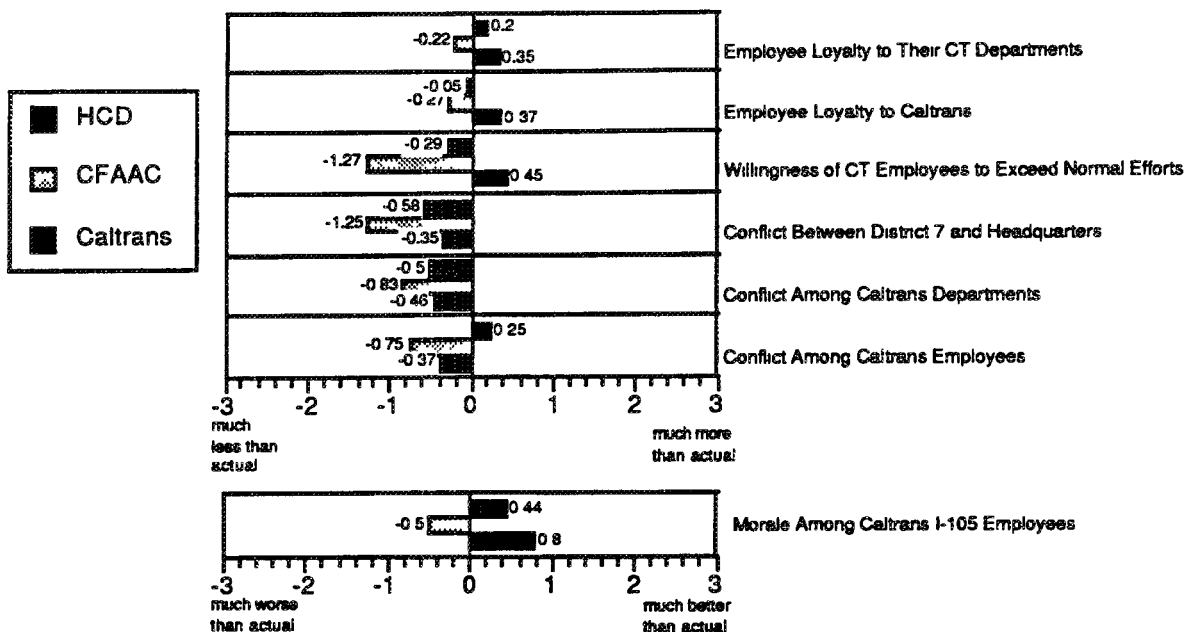


Figure VIII-4

Again, while there are measurable benefits associated with the Comparison Project, they are very small. Caltrans respondents in general did not report significant morale problems and none of the respondent groups reported a meaningful decline in loyalty to Caltrans. Nonetheless, some Caltrans interviewees did address the morale question:

"In the civil rights office, particularly in District 7, there were a lot of morale problems and turnover because it was sort of viewed as a dead end, a black hole...lots of grief and no rewards."

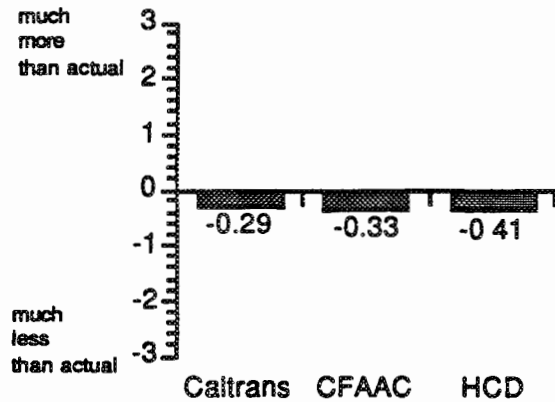
Most who commented on morale, however, traced morale problems to the injunction rather than the consent decree:

"We were embarrassed to tell people that we work for [Caltrans] because they thought we were bad people. And here all these years we thought doing these great things, and now we're told that we're polluting the air and tearing down cities and so on."

"There was a group of engineers who felt demoralized that they'd spent years and years of their lives designing this project and then it didn't go anyplace. There were other engineers who questioned whether or not the project made sense, that it was a kind of a dinosaur, something from an earlier era that maybe had been good when it had first been conceived but it outlived its usefulness."

One final group of questions took a slightly different approach to the morale issues. Students of organization suggest that if employees are not comfortable with a work situation, they

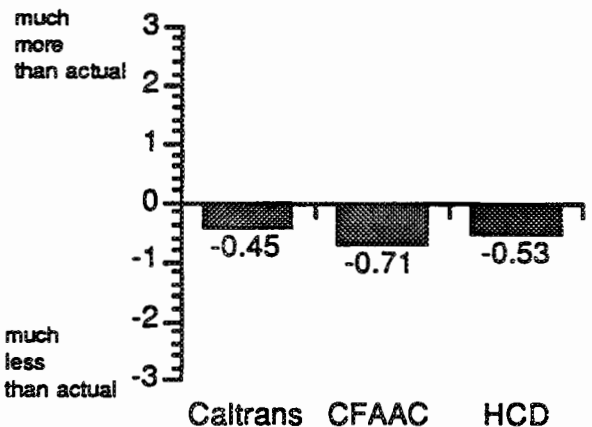
will withdraw, physically or psychologically from that situation. One alternative for an employee is to simply leave the organization. In the present study we hypothesized that this would not be a viable response, because Caltrans is thought to represent one of the few employment alternatives for highway engineers unwilling to leave southern California. The results below suggest this view was correct.



In the Comparison Project, efforts by Caltrans employees to secure employment with organizations other than Caltrans would be...

Organization
Figure VIII-5

A more viable alternative for an unhappy Caltrans employee would be to transfer to a project that was not affiliated with the Century Freeway, though the data below suggest this alternative was not pursued either.



In the Comparison Project, efforts by Caltrans employees to secure transfers to non-Century Freeway projects would be...

Organization
Figure VIII-6

Finally, it was proposed that employees who neither left Caltrans nor the project might simply reduce the amount of time spent on discretionary activities, such as taking classes or

attending conferences. The data below suggest that this form of withdrawal in the face of the consent decree did not occur.

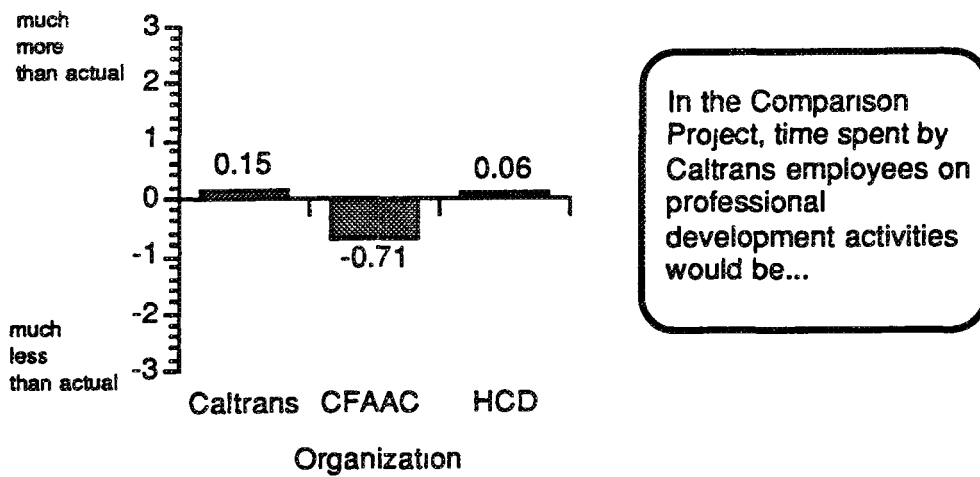


Figure VIII-7

D. SUMMARY AND CONCLUSIONS

"It was a consensus throughout the organization that the consent decree was a disaster. That it was unnecessary. It was costly. It was a disaster."

The above is the view on the far negative end of the spectrum of analysis of organizational impacts of the consent decree. It does not represent what we discovered as a consensus. Our data present conflicting evidence on systemic change and perhaps change can only be judged in the future, following conclusion of the project or the agency turning its attention to another major urban corridor. Some conclusions can be reached now, nonetheless. Clearly the decree had a major impact on many procedural aspects of the Century Freeway project and created conditions that led to the development of new interorganizational relationships, which will be discussed in the following chapter. Survey results suggest that organizational impact was less than expected. Further, analysis of interview data suggests that the relatively few structural changes brought about by the consent decree will not become part of Caltrans' standard operating procedures in the future. The interview data do suggest, however that perhaps some affirmative action procedures have evolved to a higher status and a more permanent state as a result of increased understanding and awareness brought about by the legal difficulties surrounding the project. [Once again, however, we must point to the changing legal requirements that applied to all state agencies over the last two decades.]

"The affirmative action aspects taught them, gave them the experience, knowledge and skills base that can take them into the next decade where demographics and population statistics show us [affirmative action] is going

to continue....Some of the recalcitrants have probably discovered okay, so this can work."

The consent decree forced Caltrans to "take a more serious look", a "second look" at the organization's relationship to minorities and women, both in in the realms of employment and promotion of businesses. But the impact is not one universally credited to the consent decree: "Overall they would rather do business with us than having to go through CFAAC," one Caltrans official explained. "We use CFAAC and the Century Freeway process as something not to do in most cases....The people involved in the consent decree, on all sides of it, have resulted in a negative effect on the department's program." And:

"I don't feel in my own mind that there were that many more DBE or minority business or minorities employed on the Century Freeway just because of the consent decree. I feel that most of that would have happened anyway."

There are also indications of more specific impacts. One interviewee summarized that "Caltrans began to take very, very seriously the whole EIR process....The engineers know that it wasn't a pro forma document that would be turned out by engineers." Others saw an impact upon the organization's views of how highway building fits within a larger context, that of multi-modal transportation development. But as with many of the impact categories in this study, there were dissenting voices:

"I think it just made old engineers bitter at lawyers."

CHAPTER IX

THE IMPACT ON INTERORGANIZATIONAL RELATIONS

This chapter addresses the nature of the interorganizational environment created through implementation of the elements of the Consent Decree. We view Caltrans as the "hub" of an organizational network, and we examine perceptions of roles and changes in roles within several key dyads which compose the "spokes" of the network. [We define dyads as two individuals or entities maintaining a sociologically significant relationship. We expand the concept of dyads to include relationships between organizations.]

The Consent Decree necessitated the creation of a complex interorganizational network that initially involved a larger number of organizations but evolved to include six key participants¹: Caltrans, Century Freeway Affirmative Action Committee (CFAAC), the Office of the Advocate, the Center for Law, Federal Highway Administration (FHWA), and Housing and Community Development (HCD). Of the relationships Caltrans had to develop with these five key organizations, only one would build upon previous approaches in highway construction: Caltrans and FHWA. With HCD, Caltrans was tasked with establishing relationships with an existing organization that was simultaneously creating new roles for its members, as it sought to fulfill its Consent Decree mandate. The Office of the Advocate and CFAAC emerged in response to the perceived social impacts created by the Century 105 project. The Center for Law in the Public Interest was a fledgling group with little interorganizational record with public agencies. Because these organizations and Caltrans had no experience with one another, reporting, coordination, and oversight procedures had to be developed "from scratch."

We hypothesized considerable difficulties in the realm of interorganizational behavior in part because of the awkward situation wherein production was split (housing to HCD and the freeway/transitway to Caltrans); some oversight was delegated to three other new groups (CFAAC, the Center for Law and the Office of the Advocate) and to a court; and yet another organization (FHWA) provided most of the capital for the whole project.

Overall Caltrans views of relationships. Before individual treatments of the dyads, we present an overall summary of the interorganizational environment as perceived by Caltrans respondents.

- Our interviewees suggest that among the groups analyzed in this chapter most Caltrans interviewees saw FHWA as a partner.
- There is no consensus about relationships with the sister agency HCD.
- The Advocate, the Center for Law and CFAAC were all seen as “opponents.”

A. DYAD 1: CALTRANS AND FHWA

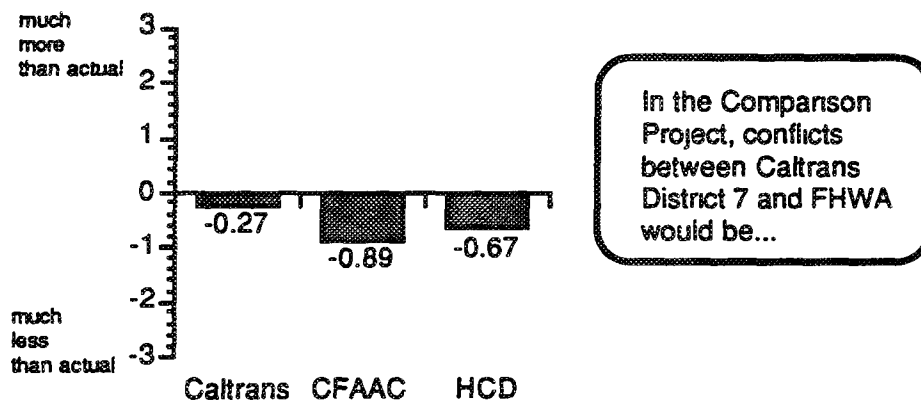
“Except for FHWA’s participation on the board of directors of CFAAC, there’s been no real change in the role and/or responsibility of the Federal Highway Administration on this project.”

“Primarily our differences exist at the policy procedural and developmental stage and once in a while on the implementation stage. You know, the awarding of a key contract or the execution of a major change order or something like that”

We expected results reflecting the sentiments of the FHWA officials quoted above; relatively little conflict between Caltrans and the Federal Highway Administration because:

- The two agencies had had a long relationship prior to the consent decree.
- Caltrans would have developed procedures congruent with federal guidelines, given the linkage between state and federal funding programs.
- While the consent decree had changed Caltrans’ specific charge, the federal government had not altered the mission of FHWA.

Survey respondents predicted little difference in conflict levels between Caltrans and FHWA under the comparison scenario.



Organization
Figure IX-1

The figure above illustrates that each organization perceived that FHWA conflict with District 7 as less under the Comparison Project. [FHWA's own assessment cannot be presented here because of the low response in our survey to this particular item.]

Those who did recognize strains between the organizations cited different but compatible reasons. One observer, not affiliated with either Caltrans or FHWA, suggested that FHWA felt that the consent decree was forced on it and therefore "they [FHWA officials] don't want to see it happen again;...therefore they have an institutional interest in seeing it fail." The tension manifested itself in a distancing from the project:

"Federal Highway Administration has succeeded in remaining quite aloof from most of the day-to-day nitty-gritty issues that may arise and has a terrible tendency to issue edicts from Sacramento which tend to be arbitrary, ill-informed, and calculated to serve some political agenda not known to the rest of us....Worse than that, power ultimately rests in their Washington office which is inclined to intervene in decision making without understanding the issues"

A significant difference in FHWA's participation in the I-105 project involved its more active role in housing, the details of which are presented in Chapter V.

"I think there's been lots more oversight on the housing portion of the freeway than we normally have. And I think the quality of the oversight has been excellent."

Discussing the reasons for this heightened oversight another person speculated: "You know it's a humongous project, it's been mentioned as the biggest project in the country....The whole transportation industry, the whole country is aware of it."

The relationship needs to be viewed historically and a few different periods are notable. [As summarized elsewhere, a number of phases of the quality of intergovernmental relations are collapsed in the overall data we present here and perhaps masked in the general presentation.]

- Creation of a FHWA field office in Inglewood as a major accommodation to the project. [discussed in Chapter VII].
- Critical evaluations of District 7 Civil Rights Branch during the existence of the office. As one FHWA interviewee summarized:

"Caltrans has no commitment to civil rights issues...never felt that Caltrans had a deep commitment. Caltrans had...[a] paper program. The people that

really run Caltrans are those civil servants. They are all engineers, white males. Caltrans probably has the poorest affirmative action record in terms of their management positions of any state agency. What we were really doing [in District 7] was setting up a dual program. It was a program separate and apart from the rest of Caltrans. It was never integrated into Caltrans Sacramento operation or the rest of the state. Whatever we did was strictly for Century Freeway...other than some stuff they were doing up in Alameda County because they had some real strong community opposition to the John P. Knox. [It needed to be pointed out] to Federal Highway when...trying to put together a program for the Century Freeway or for the District 7 that built on the state program that in fact the state program was nonexistent.”

- Differences related to the two agencies’ understandings of how to respond to specific provisions of the consent decree, especially the housing program and the relationship with the Advocate.
- Very positive associations with Regional Director Cannon.
- A short period of different views [in FHWA and Caltrans] as to the defendants’ ability to influence the court:

“He [FHWA official] came down to straighten Judge Pregerson out. That was sheer disaster. And he found out the hard way that no one tells the judge how to run his show.”

The nature of the relationship between these two transportation agencies of course was felt by other parties to the implementation of the Century Freeway project. One of the plaintiffs’ attorneys concluded:

“Our relationship with the federal government has been strained....The feds are reticent to fund various programs....FHWA is really very careful with its dollars and the consent decree could have been far more productive and could have involved a greater variety and depth of social programs had the federal government been willing to fund. A prime example, of course, is the bonding program. Due directly to federal and state reluctance to fund that program, the bond fund has never been higher than \$3 million. That is completely insufficient [for] a billion dollar construction project.”

B. DYAD 2: CALTRANS AND HCD

Despite formal and legal links between the two organizations, the relationship between Caltrans and HCD suffered from mutual disrespect and legally imposed linkages. Figure IX-2 presents the survey data.

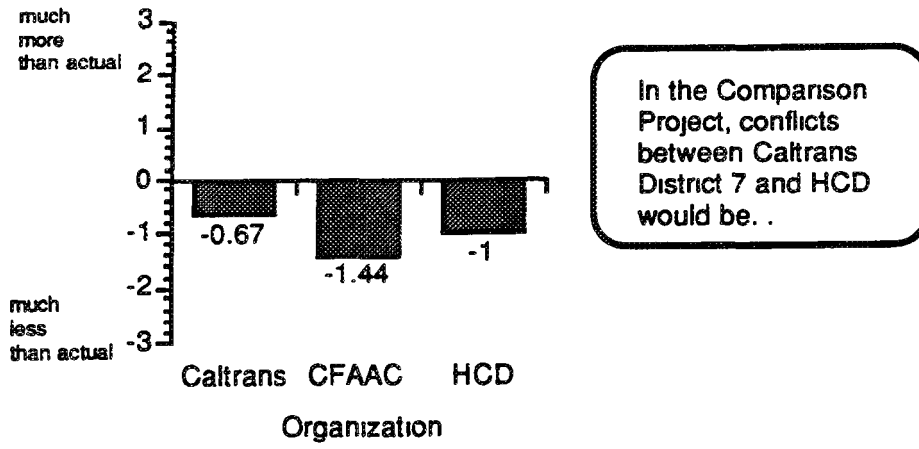


Figure IX-2

Nonetheless, the tensions need to be addressed historically and they too varied with personnel and administration. Identifiable phases include:

- the early conflict over lead agency status of the housing program;
- the strong differences between directors Gianturco and Turner;
- a period of "benign neglect" by Caltrans toward the implementation of the housing program when it perceived the housing program floundering;
- changes in the working relationship between the two agencies under the Deukmejian administration ["In the Deukmejian administration...personality issues were neutralized."]

To be sure, some themes are more general: HCD was seen as a forced partner by Caltrans, one given a special place in the implementation of the Consent Decree because of perceived special personal relations between HCD personnel and people in the Brown administration. Because of this coerced coming together, HCD personnel felt suspicious of Caltrans and Caltrans personnel often felt pressured to cooperate with less competent partners because of a fiscal relationship that was not founded on respect. Several interviewees spoke to these points:

"I always had the impression that HCD was given the role that it was given to keep an eye on Caltrans and because the Center for Law knew they had some contacts in HCD that they could go to for either information or to apply screws when they needed to be applied. And I don't think Caltrans at that time especially viewed HCD as having any special knowledge, talents, what have you, to deal with any of the consent decree or Century Freeway issues."

"HCD is reluctantly accepted—reluctantly and grudgingly accepted....It's not an opponent but it certainly is a millstone."

"Obviously we have to be partners because HCD is spending Caltrans' money, as well as federal participation [dollars]."

Some interviewees were more pointed in their assessments: "Certainly HCD was the enemy. They had their own agenda, by the way, because they were building the size of their office as it was supporting their operations. This was their big project." Or:

"HCD is essentially unconscious. The burden of moving forward is handed to a succession of project managers in Inglewood. The current one is the best they've had, but he is severely hampered by a lack of support from within his own organization."

And numerous Caltrans respondents spoke of a lack of experience with large scale projects in HCD, personnel weaknesses, vague notions [not substantiated in the interviews or in other sources] of corruption and poorly understood and poorly followed policies and procedures.

"The Housing and Community Development Department has never operated in a very strong policy or procedural framework. In general, its programs have been operated by publishing what are called "regulations." It's much more Federal - publish regulations, and then accept things under the regulations, as opposed to adopting policies and procedures [which are] departmental."

The absence of fit between regulations oriented toward building highways and those more geared to the construction of housing is a theme which occurs again and again in the interviews. It was a view used both defensively and offensively. HCD, praised for having "a lot of talented people", was criticized for not following as above but some HCD officials turned the procedural argument against the highway agencies.

"Caltrans wants all of these policies and procedures but we don't have any writers....[Caltrans'] audit isn't whether you did a good job, it's did you follow the rules....The department was not very strong in the first place....Most of our programs were implemented by regulations that were crafted by our attorneys."

C. DYAD 3: CALTRANS AND THE ADVOCATE

Some of the history of Caltrans' poor relationships with the Advocate can be attributed to lack of clarity regarding role and interpersonal tensions. Other concerns evolved from the function which the Advocate seemed to share with other non governmental agencies:

"We had a corridor advocate that was there to ensure that the rights of the property owners were being taken care of by Caltrans. We had CFAAC, which was an advocate, to make sure we were treating minority contractors fairly....(N)ot explicit in the consent decree but the judge allowed it, was the Center for Law in the Public Interest : there to oversee whatever they wanted to; that was fairly loose— and bill us for it. You know, it was a blank check, and if you create a group—their existence depends on them finding problems, right?...They self perpetuate."

A more fundamental issue is also involved. The very existence of an Advocate suggests that Caltrans' procedures are deficient, its sensitivities to citizens whom its projects affect, inadequate. The Caltrans evaluation of the Advocate is generally quite negative: the Advocate was seen as oriented to finding problems where none existed. But some respondents saw the office serving as a useful buffer for Caltrans, or as justified [See Chapter II]. Still others concluded that the office was at most a nuisance and that it lost whatever influence it had as its prestige diminished with time.

D. DYAD 4: CALTRANS AND CENTER FOR LAW

We begin with overall assessments of how the Center itself views its relationship to Caltrans and vice versa. Again, there are some differences by period, although not as moderating as in other dyads. Summarized an attorney for the Center in a formal communication responding to Caltrans' assertion that the Center had assumed responsibilities outside of the boundaries of the consent decree:

"I was dismayed to receive your correspondence...primarily because it revealed a fundamental misunderstanding on your part of our respective roles in the implementation of the Consent Decree and our obligations to each other."

His colleague made the assessment explicit: "Caltrans—we're always fighting them over one thing or another. It's a lumbering, slow moving bureaucracy."

On the other hand, a third Center for Law attorney, while recognizing difficulties of working with Caltrans, also found that the "working relationship with Caltrans has almost from day one been very good....With very few exceptions, people are responsive, willing, very open, give me what I need...are good people to work with. I find a majority of them are strongly interested in the goals of the decree."

And a summary Caltrans perspective:

"Just...a lot of shouting sessions, and we had to work things out with them. I think they saw themselves and maybe still do as being the big interpreter of the consent decree. But they also saw a legitimate role they played. And it was set up for that...representing the public. But I think once we settled certain ground rules about how we would meet and what we would discuss and so on, things started to improve."

Views of the effectiveness of the Center in negotiating the consent decree vary within Caltrans. A number of interviewees felt that in acquiescing to the settlement, the agency had agreed to too many costly and unnecessary provisions. Others think that the Center did not press hard enough.

"Had, the Center had more backbone I think [the consent decree] could have had a major impact on [Caltrans]. The reaction of the conservative engineering staff in Caltrans to this settlement was, "They've given up, and we're gonna build our project. An so we have to throw in a few housing units and a transitway, big deal. We get to build our project. They were ecstatic when the thing was approved."

The potential for these bipolar attitudes to impact implementation of the decree exists: proponents of the former view might be expected to adhere to the "letter" of the decree in an attempt to practice damage control, while it might be expected that adherents to the latter view would press for a more liberal operationalization of the decree's mandate.

But evaluations of the early motivations of the public interest law firm do not by themselves explain the acrimonious relationships between these two organizations. A number of interviewees expressed the view that the Center pressed unduly hard in fulfilling its role:

"CFAAC, the Advocate, and certainly the Center for Law almost created an adversarial role in their relationships and there were times that we were striving very heavily towards trying to develop the partnership to actually share things with them."

And:

"I think essentially the Center's attitude is adversarial....I don't think they're genuinely trying to be fair, depicting where we're at and what we're trying to do at times."

One explanation of the nature of the relationship transcends the organizations discussed here. It goes to major differences in problem-solving styles of lawyers and engineers:

"By definition, [the relationship between Caltrans and the Center is] adversarial. You can't have it any other way. Attorneys can call each other SOBs and then pat the other on the back. Others like engineers can't take on that role. Just dealing with any adversarial attorney is difficult. I will never like the attorney on the other side. The Center was not different than any other bunch."

The Center's status as a privately funded organization was another characteristic that led to suspicion of its motivations.

"Structurally their dependence on gifts or donations or bequest or however they're funded puts strain on their economics. And they, to supplement that, need to make the private attorney general theory work in litigation so that they are reimbursed for the time they spend. Additionally, they tend to submit hours which are absolutely, positively every hour they work. In private practice that's not typically something you can do. It would be great if they were totally privately funded because they would be forced to allocate their litigation resources differently and more rationally....They are incredibly self-righteous....And it's aggravated by the fact they are very impressed with how bright they are. They equate the civil rights movement with intelligence and where you went to school with intelligence, which creates arrogance. And state employees are the perfect whipping board for people like that, and I see them with a great deal of contempt."

Other Caltrans respondents also attributed motivations of revenue generation to the Center and the strength of these negative assessments is notable within the agency.

There are some sympathetic officials in Caltrans:

"If administering the decree means controlling and regulating the decree and being able to make policy decisions weighing one goal against another, then [CFAAC, the Center for Law and the Advocate] made Caltrans' administration of the decree much more difficult because they took power from it. But if I were [Center for Law], I'd say that's because Caltrans didn't have in mind the goals of the decree .."

And a centrist point of view, which, though less common than the polar positions, appears to exist in numbers sufficient to merit reporting:

"There was a fair amount of conflict...although less than I would have expected. [Caltrans seemed] to accept the Center's entitlement to receive fees and it was more nitpicking about amounts and about time spent....It was hostile and cantankerous but, in fact on a theoretical level there was less disagreement than I would have expected."

E. DYAD 5: CALTRANS AND CFAAC

Conflict between Caltrans and CFAAC is perceived by many to be endemic. The interviews repeatedly lay out Caltrans concerns with CFAAC functions, personalities, links with groups perceived as opposed to Caltrans goals, and philosophical objectives.

"CFAAC, we're generally at opposite ends of the philosophical spectrum. They would view us as being partners with prime contractors to take advantage of minority subcontractors. They don't feel that we protect, assist, or serve the interests of the minority subcontractors as well as we should....And I would think that our view of CFAAC is that they're doing a bit of overkill most of the time. They only have one perspective."

The result has been an interorganizational tension that is strong and persistent, ["if they'd just get out of our way, we could do a decent job"] although, as we have described in Chapter VI, there has been variation in outlook which tracks on the tenure of each of the four executive directors of CFAAC: "(W)hether it be a bid of goals or contract compliance, it was a question of who was involved. If the right people were involved, there were no problems. If it was the wrong people involved, you know—it was very, very subjective."

Among other themes of conflict were those involving variation in organizational goals, strong personality differences, and tensions related to race. As well, the question of style arose again and again:

"[CFAAC] came in with a chip on their shoulder. And that's not a negotiating technique I grew up with. And it was on both sides, but no one likes to be attacked. Caltrans had been a professional organization. They didn't have watchdogs over their activities. So that was a very difficult thing for them to accept."

While acknowledging that the relationship with Caltrans was often adversarial, some CFAAC interviewees alluded to an evolving consensus as to what roles were and how they were to be carried out.

"In an emotional day to day sense, I think they're our partners. I think the opposition comes from higher up....I don't think it was that way in the early days, and there were different people in those positions who had a different perspective on the decree."

And:

"Caltrans and CFAAC were at odds during CFAAC's more confrontational period. The relationship is now cordially adversarial."

Two specific interorganizational concerns expressed by Caltrans interviewees were (1) that Caltrans did not need to be overseen, and (2) that more complex interorganizational relationships might create technical problems in construction of the I-105 freeway.

"I felt that the way the consent decree was written created that adversarial relationship because they were just like watchdogs over every step, regardless of whether they were qualified or not."

"The more people you have involved, the more mistakes can be made, the more people will be involved who aren't really as qualified as if you get big organizations to do things who have been doing them."

Nevertheless, in this interorganizational realm we did identify some working relationships between CFAAC and Caltrans in resolving disputes in the affirmative action program.

"We have differences of opinion on substitution of minority contractors, on resolving disputes involving contractors not paying minority subcontractors. Generally the way they get resolved is, sometimes the contractors will abide by what we're saying and sometimes Caltrans will just approve it despite our objections.... We argue about it, and then it comes to a point where Caltrans can make a final decision and they make it. Areas not covered by the Consent Decree, like a contractor comes to us complaining that the prime's not paying them, we deal with that with the minority contractor based on Exhibit B, we feel that it is our role to facilitate the success of minority contractors."

But here again, we should not overstate the success of dispute resolution attempts:

"Caltrans will do just about everything up until honoring our request to sanction a contractor. They'll ask the contractor to come meet with us. They'll call the contractor up and [ask] why they haven't paid. But...a month goes by, and that prime contractor who hasn't paid that minority contractor is dragging their feet and doesn't have any reason to and then we'll try to get all those ducks in a row and identify the Consent Decree or law that would support the contractor's right to be paid."

CFAAC relied on Caltrans for funding; it does not exclusively possess a cache of information; and its legal status was not provided for outside of the terms of the consent decree. In part because of these conditions and in part (we speculate) because CFAAC was a new member of Caltrans' interorganizational network and because of the frequently adversarial nature of their relationship, CFAAC utilized informal interorganizational relationships and procedural techniques to influence its decision processes with Caltrans.

"[FHWA] is a defendant but, in the past we've looked at them as partners, and we've looked at them as the place we can go to get a dispute resolved."

F. RELATIONS WITH CONTRACTORS

Conflict between Caltrans employees and contractors was seen by all groups as higher under the actual Century Freeway project.

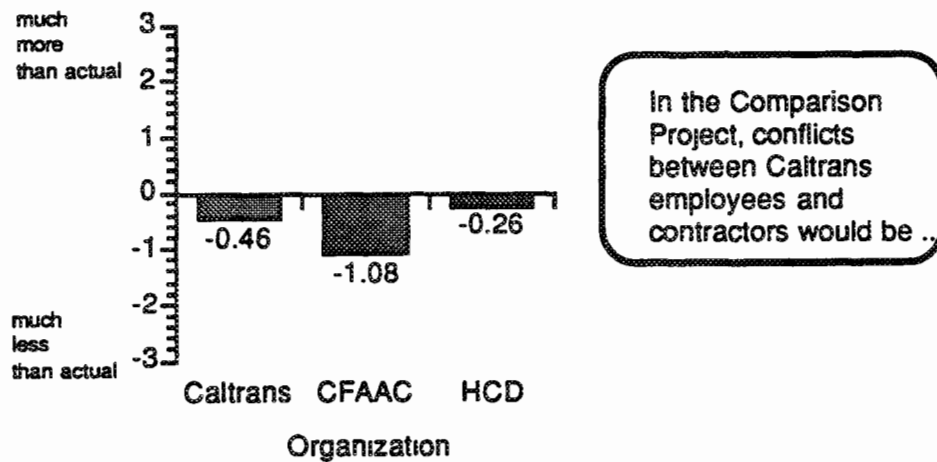


Figure IX-3

In addition to a stated concern involving costs, discussed in Chapter VII, the two interorganizational themes just noted involving unnecessary oversight and unnecessary complication of construction work were expressed in Caltrans interviews focusing on the relationship with contractors. Furthermore, some conflict with contractors is related to perceived payment problems in the Century project. The most basic contractor related complaint was that payment was too slow and that procedures overly complicated payment activity; HCD is implicated:

"I'm not sure [HCD] has any procedures or policies for some things and some of the time they don't follow what procedures and policies they do have and it causes hardship to a lot of the minority and female subcontractors, and the HCD does not have a policy for dealing with those subcontractors....One of the major issues that has been going on for many years is that HCD paid some of the developers money over several months without getting unconditional releases. And the prime or developer did not pass the funds on to the subcontractor. They've had a procedure and policy [and] they didn't follow it."

While some subcontractors experience payment difficulties, some prime contractors, reportedly as a result of the need to meet affirmative action goals said they had to assume financial responsibility for subcontractors who could not be bonded.

Nonetheless as pointed out elsewhere in this report, CFAAC and HCD, unlike Caltrans, felt that quality of subcontractors would have been somewhat better in the Comparison Project scenario.

Many interviewees expressed displeasure at the requirements that contractors be certified to work on the Century Freeway project in addition to obtaining Caltrans certification. Some complained that the procedures, which included background checks, verification of financial status, and submission of a business plan, were costly and time consuming. Despite these seemingly intricate procedures, we encountered accusations that monitoring and enforcement were uneven and failed to take advantage of knowledge which competitors had of one another.

G. EMERGENCE OF INFORMAL RELATIONSHIPS

"An organization [was created] with representatives from all the major ethnic organizations that were in the southern California area, as well as representatives from different Federal agencies, like the Department of Labor, from FHWA and even brought in representatives of CFAAC and the other parties to the consent decree....We had representatives of labor that were here, AGC, contractors organizations, actual labor unions, women in construction as an organization, women in construction management, NOW."

Because many of the interorganizational relationships involving the Century Freeway were either completely new or dramatically reconfigured, we expected to learn of many more groups like the one described above: diverse, interdisciplinary, created to reflect the sundry needs of Century Freeway participants. Informal groups described to us have been problem-focused and not necessarily specific to the Century project.

"We work with a group called EOCOA, which is a collection of equal employment officers and affirmative action officers in southern California. We have created a roundtable of CFAAC and other groups where we get together on a quarterly basis with [other] affirmative people.... We talk about what their programs are doing and what we're doing, similar problems we're having with the same prime contractors, the same subcontractors.... We work with the National Association of Minority Subcontractors.... They're probably the leading association that lobbies for affirmative action."

A Century Freeway Contractors Association did emerge because of the perception among some of the contractors that they were experiencing similar problems and "no one was listening."

"That was the reason it was formed. We went to the different agencies...to the politicians as well. Everybody kept telling all the contractors that we all had the same problem, so it was necessary for us to combine our efforts and say: 'look, now we've got 50 to 100 people here that are saying it's the same thing, so it's not unique to anybody.'"

And for a period of time the Century Freeway Task Force was active and other interagency groups met. These groups, two of which included a significant proportion of non-Century members, were not the type of transorganizational, "let's meet for coffee in the morning," types of groups we expected; those are sometimes formed to expedite communication and implementation in situations of considerable superimposed complexity such as that fostered by the lawsuit and consent decree. Perhaps the formal relationships in the dyads (except for Caltrans with FHWA) were so new and ill-defined that no foundation existed on which to build informal relationships and the intraorganizational bureaucracies and personnel of the members of the network were not well known to other members.

¹ Other relationships include that between Caltrans and CFTAP and Caltrans and the Pre-apprenticeship Training Program. Our data set did not allow meaningful analysis of these relationships nor are the links central to understanding the subject of this report. For an academic analysis of the interorganizational networks involved in the consent decree see Mandell, 1984.

CHAPTER X

THE IMPACTS ON FREEWAY DESIGN AND SERVICE

This chapter summarizes the changes in design and construction of the Century Freeway associated with the lawsuit and the consent decree, assesses impacts on a variety of indicators of design and highway service and presents evaluations of the public policy value of elements of the change.

A. SPECIFICATION OF THE DESIGN AND CONSTRUCTION OF THE FREEWAY CHANGED SEVERAL TIMES IN THE HISTORY OF THE FREEWAY.

1. Provisions of the design and construction elements of the consent decree summarized.

In 1978, FHWA approved the state's final EIS for the Century Freeway. At the same time, plaintiffs announced their willingness to negotiate a settlement which included many elements from the 1977 EIS; the transportation related terms of the settlement included:

- eight lanes for general traffic and two High Occupancy Vehicle lanes.
- six or more transit stations with park and ride lots.
- ramp metering and HOV bypass lanes.
- bus or rail transit on the Harbor Freeway, connected with the 105.
- landscaping and noise attenuation.
- before opening to traffic, consideration to provide two of the eight lanes for additional HOV use.
- priority access into Los Angeles International Airport for buses and HOVs.

In early 1981, federal budgetary developments raised questions about the adequacy of funds to complete the freeway. A 1982 Congressional Budget Office report (CBO, 1982) described the financial pressures on the Interstate program related to mounting repair needs, escalating completion costs, and declining financial resources. It noted that the dual national and local emphasis of the highway program allowed many locally important but nationally non-essential gaps to remain in the system. 15.7 miles of the I-105 was designated neither an essential gap by the Department of Transportation nor a Gap of Defense Importance by the

Department of Defense. As such, the Century Freeway's high cost was considered a diversion of funds that might otherwise be devoted to essential repairs. A potential solution was to "shift program emphasis to trim spending on new construction and increase funding for needed repair" (FHWA, 1982).

A proposal to reduce the scale of the freeway was agreed upon. In September, 1981, a downscoped project was incorporated into the amended consent decree. The main transportation related features of the agreement include:

- six lanes for general traffic and two High Occupancy Vehicle lanes.
- ten transit stations and park and ride lots.
- ten interchanges from the east to west ends of the project.
- ramp metering and HOV bypass lanes.
- landscaping and noise attenuation (Caltrans, History of the I-105 Glenn M. Anderson (Century) Freeway-Transitway, 1990).

Perceptions of the origin of the direction to downscope are not uniform. Although formal direction came from the Federal level, some interviewees blame the Caltrans director while others blame the Center for Law. One city official said:

"That part of the Center's work in my estimation was totally against the public interest. I've never seen anything more against the public interest and such a limited view of things than the reduction of that thing in size. That was a terrible mistake in my estimation."

2. The actual Century Freeway project differs from the projects assessed in the environmental reviews and the Comparison Project in several areas of design and construction.

Some Caltrans officials mention that even before construction began there was a sense of fiscal as well as environmental sensitivity surrounding the project against a backdrop of the "freeway revolt" throughout the United States (See Chapter II). A static Century Freeway design outcome based on the original freeway plans was unlikely independent of the outcome of the legal action. We illustrate the evolution of the project over time in Table X-1. These changes reflect Caltrans' responses to changing community and environmental values.

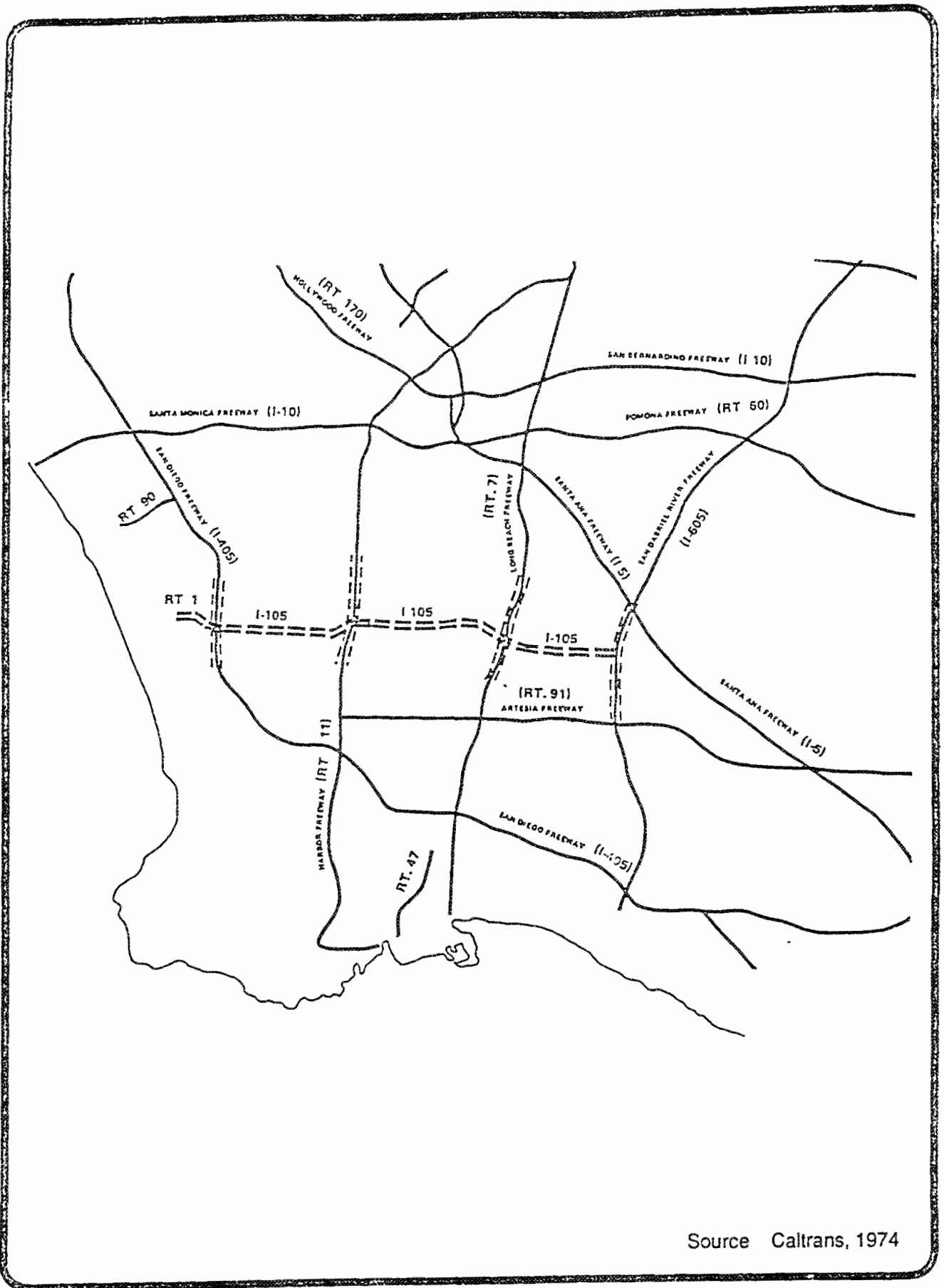
Table X-1
Evolution of Century Freeway Project Over Time

	1974 EIR	Comparison	1977 EIR	Actual
Year of Groundbreaking	1975	1979	1978	1982
Number of Construction Projects	*	~20	*	>80
Year Route Open	1980	1987	1985	1993
Bell Shape in Hawthorne	No	Yes	Yes	Yes
Number of Mixed Flow Lanes	10	8	8	6
Number of HOV Lanes	0	2	2	2
Mass Transit	Yes (future busway)	Yes (future rail/busway)	Yes (future rail/busway)	Yes (concurrent rail)
Number of Interchanges	>20	16	*	10
Median Width	64'	84'	40'	64'
Cost	~\$579 million	*	\$611 million	\$2.04 billion

* Indicates this issue was not addressed.

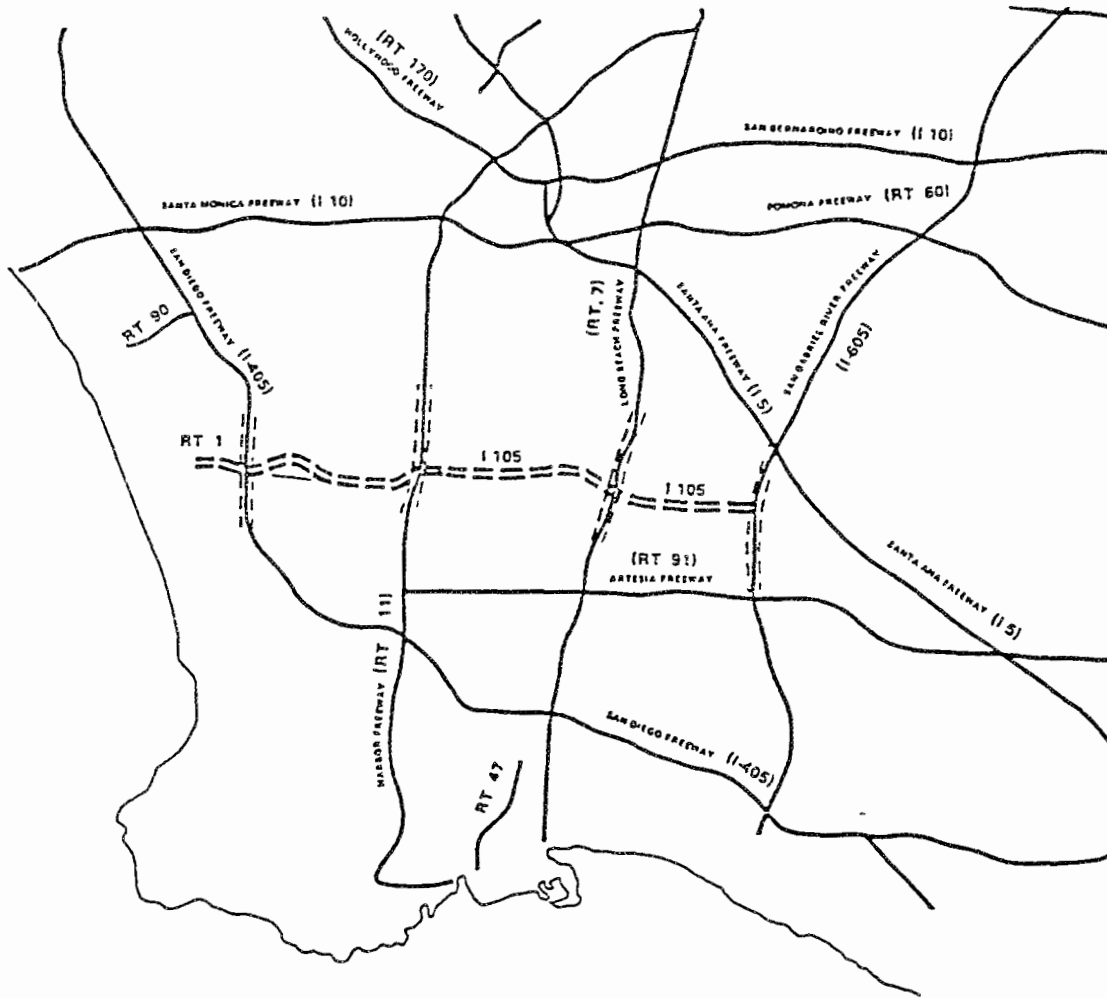
Figures X-1 and X-2 illustrate how the alignment changed between 1974 and 1979. Figures X-3 and X-4 illustrate the cross-sectional characteristics of the 1974 version of the freeway while Figures X-5 and X-6 show the 1977 version. Figure X-7 is an example of the cross-section of the project as it is actually being constructed.

Design and construction differences in the project are related to several factors independent of the consent decree. The Interstate Withdrawal and Substitution Provision of the 1973 Federal Aid Highway Act allowed for the transfer of federal funds to non-highway projects such as mass transit. This option was rejected by local communities, but, as noted elsewhere in this report, Mayor Bradley attempted to utilize it.



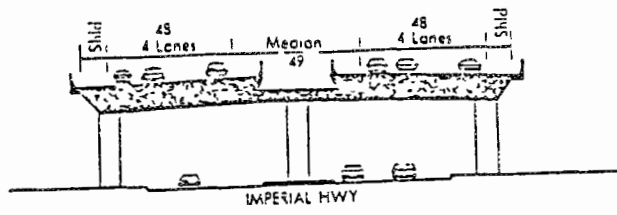
Source Caltrans, 1974

1974 Century Freeway Alignment
Figure X-1

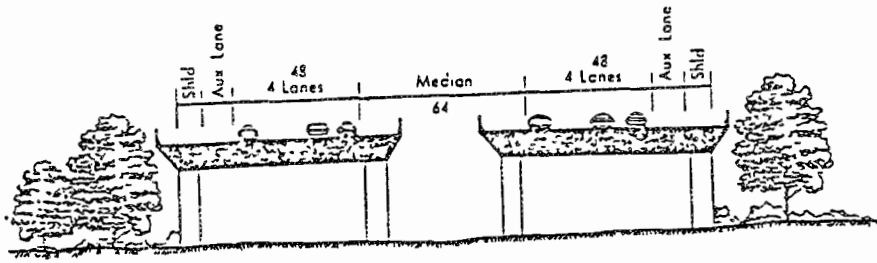


Source: Caltrans, 1979

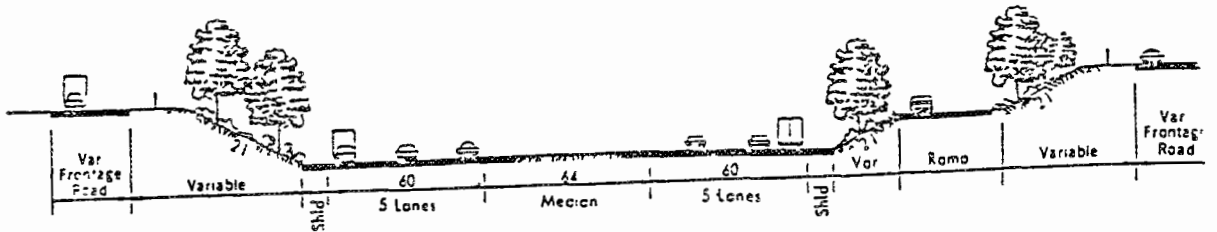
1979 Century Freeway Alignment
Figure X-2



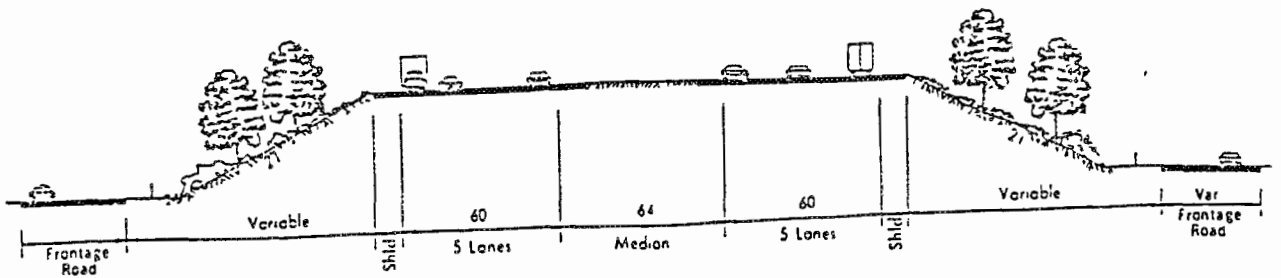
VIADUCT OVER EXISTING HIGHWAY



VIADUCT



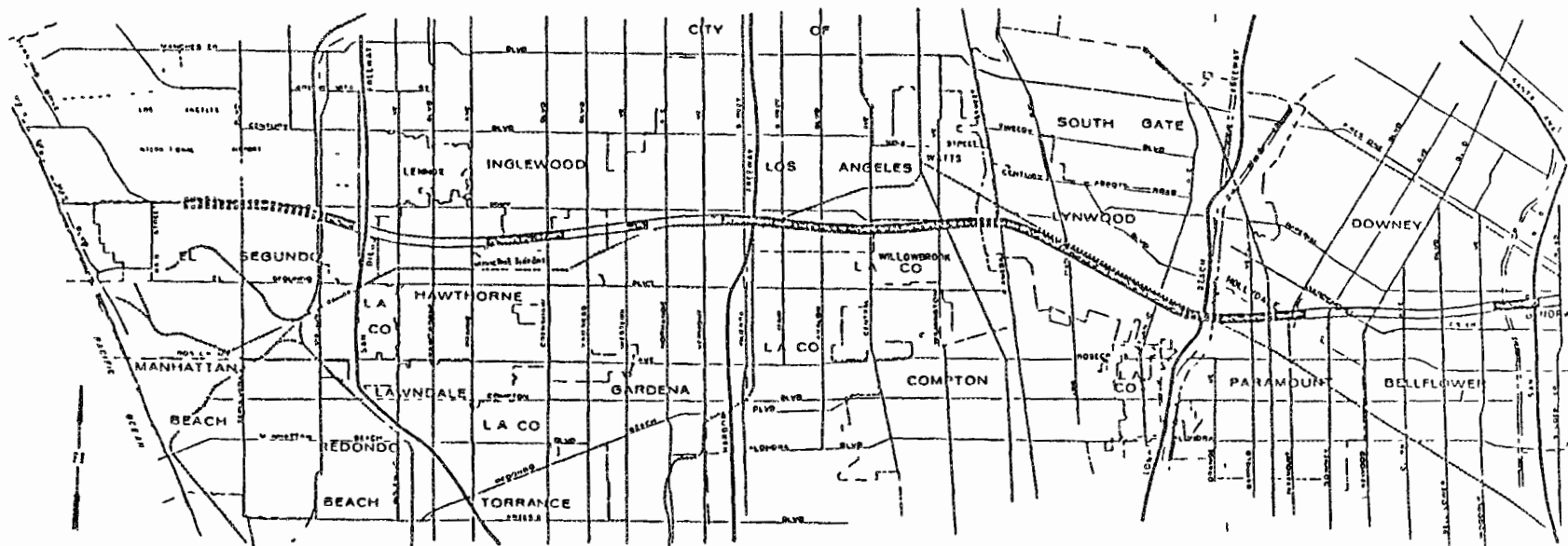
DEPRESSED






ELEVATED

Source: Caltrans, 1974

1974 Century Freeway Section Views
Figure X-3

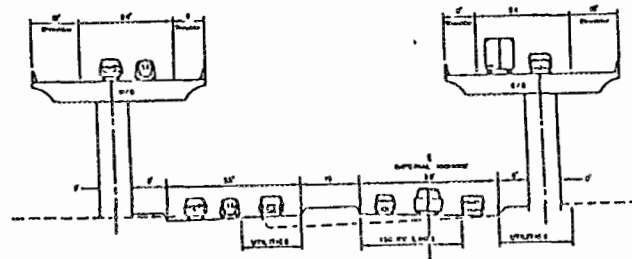


LEGEND

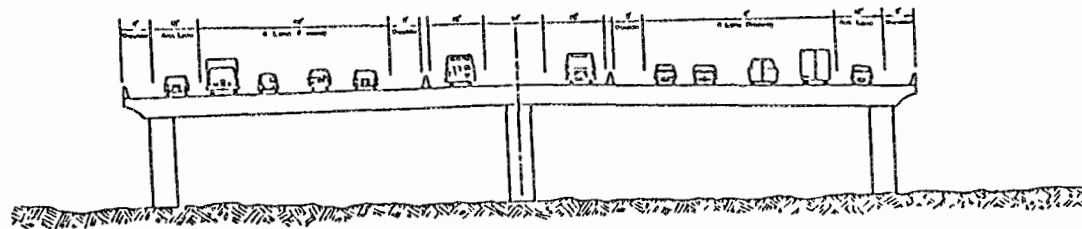
-  Elevated on Viaduct
-  Elevated on Embankment
-  Depressed

Source Caltrans, 1974

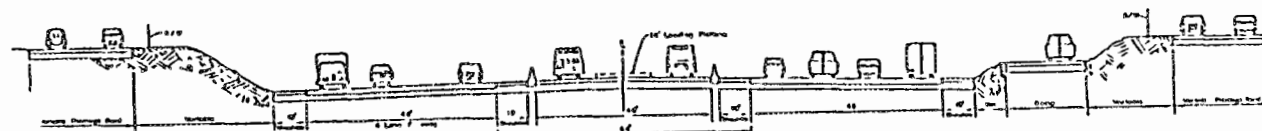
1974 Century Freeway Section Configurations
Figure X-4



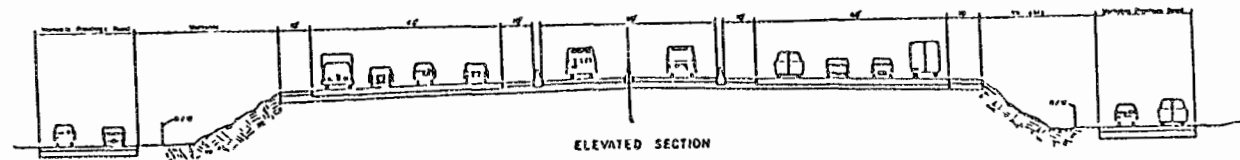
VIADUCT ALONG EXISTING HIGHWAY



VIADUCT
MEDIAN TRANSITWAY



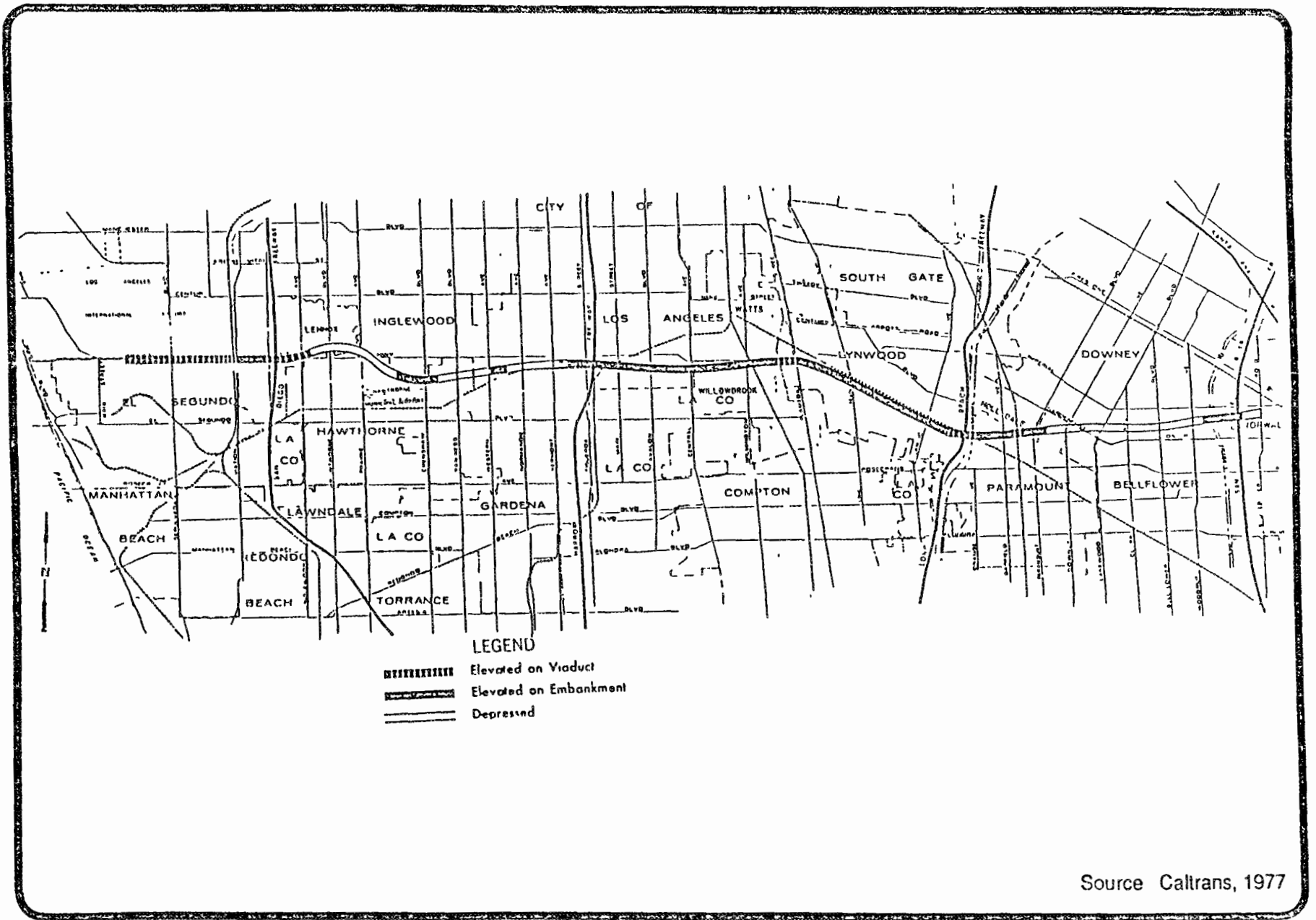
DEPRESSED SECTION



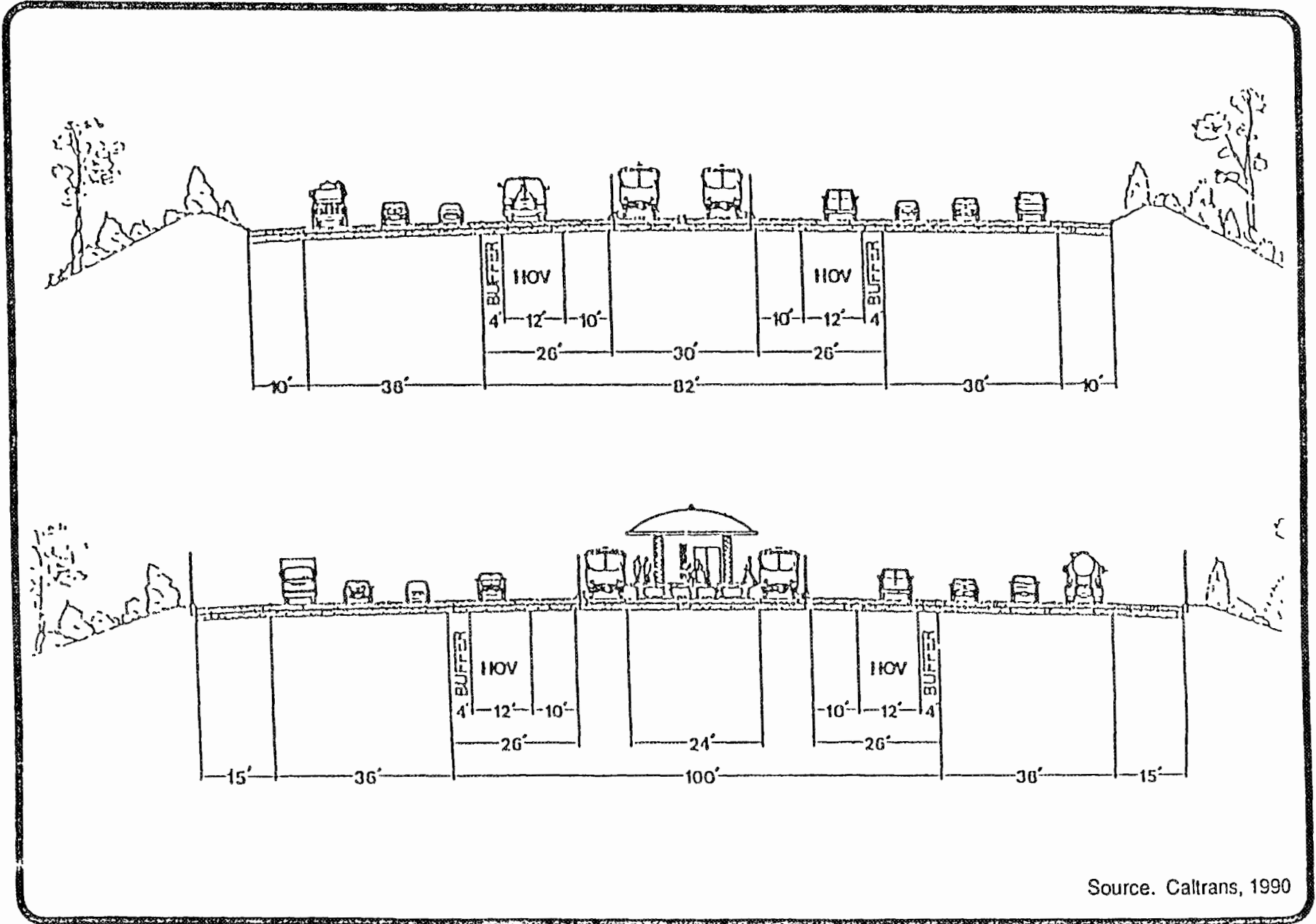
ELEVATED SECTION

Source: Caltrans, 1977

1977 Century Freeway Section Views
Figure X-5



1977 Century Freeway Section Configurations
Figure X-6



Source. Caltrans, 1990

1990 Century Freeway Section Views
Figure X-7

The decision to build rail in the transitway was local, made after the amended consent decree was signed. However, since 1973 the Federal Highway Trust Fund allowed participation in practically all of the Freeway/Transitway construction costs, including the basic busway and park and ride lots. Buses, passenger stations and maintenance facilities associated with the busway were to be funded locally with some federal participation from the Urban Mass Transit Administration funds.

Although a small number of rail advocates existed, the accepted projection regarding rail was dismal. A 1974 ballot measure for transit development in Los Angeles had failed. The DEIS concluded that a busway in the corridor (more financially feasible because it was the less capital intensive program) would have low patronage. Buses were thought to be more compatible with the existing system and more flexible than rail. In 1977, the State discussed the inclusion of rail in the project, indicating that mode selection would be determined based upon consideration of patronage, system flexibility and compatibility, and convertibility. The EIS concluded that if the voters decide to develop a region-wide fixed rail system, it may be more realistic to implement rail even in a low patronage corridor such as the I-105.

Indeed, Los Angeles voters in 1980 approved as part of a rail system what was once a median which would permit the future operation of a busway or railway. The passage of proposition A provided a one-half cent sales tax to be used partly for rail construction (Stanger, R.M., and Darche, 1984). Passage prompted a decision about whether the railway would be built at a later time or concurrent with the Century Freeway. LACTC decided that the conversion cost from Bus to Rail would be too great to delay the minimum commitment necessary to construct a light rail line; it would be completed at the same time the freeway begins operation. Although the provision for rail was included in the consent decree, the consent decree cannot be considered responsible for its construction.

Two views of the appropriateness of rail in this corridor were offered by the seminarists:

"It [fixed rail] gives definition to your community like nothing else will. People will know where it is; it will give structure to the way people think about it. It's like a river running through, and what it does is give definition. If you want to build image and build structure that's something very important." [Seminarist]

But:

As I look at Metro-rail and the other...rail lines to Long Beach...we've had in each of those cases years and years of careful analysis of patronage forecasts and cost estimation and discussion about where the stations should go....They're rail lines that stand up on their own, there's been...competition for funds. There's been a series of public hearings and meetings and reports and revisions. With the Century Freeway, it's primarily a highway project and suddenly at one point, in order to build a consensus and move on with the project, there was a rail line added to it without that whole process of study and argument and debate. It was part of a political process. It was added in a month....That to me is really significantAll of these questions about where will all the passengers come from, what's the demand and so on—those weren't addressed in the same depth that they normally are in transit projects. That's because the transit decision was an adjunct to a highway decision and it's because it was to get on with the project years after the thing had been stopped by delay and everybody wanted a consensus." [Seminarist]

The freeway design itself changed several times during the drafting of the EIR. Early visions of the freeway included **ten lanes** dotted by over **twenty interchanges**. In a 1975 Department of Transportation memo, the downscoping from ten to eight lanes is discussed "in response to the Regional Transportation Plan which seeks a 20% reduction in VMT (vehicle miles travelled), to public comments, and recognizing lowered growth projections." This eight lane version was incorporated into the Final Environmental Impact Statement.

After the consent decree was signed in 1981, we continue to see changes in other design elements:

- **Median width.** In third quarter 1984, Caltrans recommended a minimum median width change from 64 to 82 feet, to accommodate light rail and a HOV lane in each direction for safety and operational purposes. However, in the fourth quarter of 1984, while FHWA approved the median, funding for the median and the light rail was still not approved.
- **HOV lanes.** In the third quarter, 1985, FHWA responded to the justification report submitted by Caltrans and LACTC; it would only pay for the HOV lanes. Caltrans formally asked for a reconsideration of the position. In the second quarter, 1986 Caltrans submitted a conceptual proposal to FHWA for establishing participation limits. Later in 1986 Caltrans accepted FHWA approval of the eligibility concept regarding the median. FHWA agreed to participate with interstate funds in the highway related items: two HOV lanes, justified park and ride lots and construction of the median area to accommodate future use by others for a light rail facility (Caltrans Quarterly Reports).

- Changing priorities of successive city council members and natural shifts in the demographics of an area dictate acceptance or rejection of design elements of a freeway. The perception among some Caltrans stakeholders is that the freeway/transitway is subject to continuous design and redesign. For example, some neighborhood groups in Norwalk, where the freeway will terminate, were adamant about design changes because of the perception of the changing nature of gang activity in nearby communities. Residents feared that, if the original design were implemented, it would allow for easy movement of gang members into their communities. Reportedly, Caltrans actually considered removing portions of the freeway that had been constructed in order to address these concerns.
3. While administrative and procedural differences are acknowledged, design and construction differences in the comparison and actual freeway scenarios were not considered significant.

Surprisingly, in Caltrans' analyses of the I-105, we found virtually no analyses on the transportation outcomes related to the consent decree. Obviously the litigation and environmental assessment, in conjunction with changing political priorities, caused the design changes mentioned above. However the impacts on actual freeway service specifically attributable to the consent decree are minimal.

The inclusion of light rail concurrent with construction is one of the few transportation elements that Caltrans officials perceive to be unique to the Century. It is generally recognized that Los Angeles needs to develop a multi-modal system: the inclusion of light rail and the HOV lane expands the limited capacity of the freeway. Some highway officials indicate that the inclusion of light rail is "revolutionary" and "the most positive part of the project." Local officials cite the benefits to the community that the light rail will confer. However, we emphasize that concurrent rail construction was not a condition for the construction of the I-105 under the terms of the consent decree.

Interviewees commented that differences in the Century Freeway are procedural and administrative, seen by some respondents as a duplication of Caltrans' efforts, resulting in an increased cost for the project. Respondents indicated nothing extraordinary in construction: the Century Freeway is a project of standard design, geometric and aesthetic standards.

FHWA officials perceive their role in implementation of a Federal project as different for the Century Freeway because of "unusual mitigation efforts" including housing and affirmative action provisions. They had to remain involved after completion of the environmental document because standard oversight policies and procedures were not in place. They see themselves as having been more involved than usual.

Other non-Caltrans respondents saw Caltrans subjected to a higher administrative overhead, with more external agencies involved, but they mention no construction or design differences.

B. PROJECT DESIGN AND FREEWAY CONSTRUCTION COSTS ASSOCIATED WITH THE CONSENT DECREE ARE PERCEIVED TO BE HIGHER.

Respondents with a high level of knowledge of construction costs and the history of the freeway generally perceive the costs of the actual project to be higher than the costs of the comparison project (See Figure X-8). Caltrans officials rank the project design cost difference to be greater than that for construction, while non-Caltrans respondents perceive the construction costs to have increased more. Several Caltrans interviewees indicate that the early design work became obsolete as a result of the consent decree.¹ A June 1983 memo between two Caltrans executives discusses the impact of the Amended Consent Decree:

"The original Consent Decree and lifting of the court injunction enabled us to start design of the 8 lane freeway in October, 1979. Our first construction contract was scheduled for late 1981. The 1982-83 FY was to start the concentrated construction schedule. Funding would be the constraint on the scheduling of construction. After 2 years, the design had progressed to the stage of proceeding with the R/W acquisition and clearance process and implementation of construction. Downscoping to 6 lanes has resulted in roughly a 2 year redesign period. We are still renegotiating Freeway Agreements. Rather than funding controlling the construction schedule, redesign, R/W definition and clearance now control."

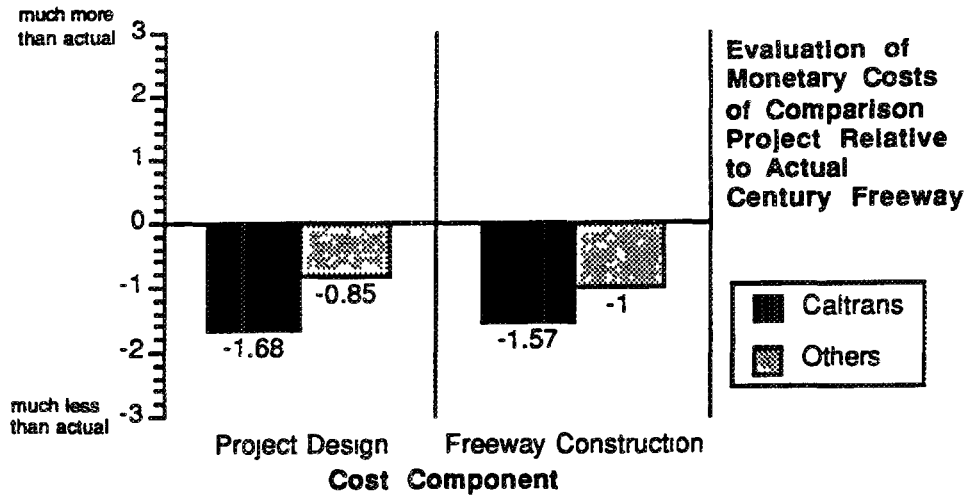


Figure X-8

Caltrans and non-Caltrans respondents indicate that the magnitude of design/engineering and construction logistics challenges would have been less on the comparison project than is seen on the actual project. Caltrans officials believe that there would have been a greater difference than others. The primary reason they cite is the increased number of individual contracts on the project which make logistics and coordination more challenging.

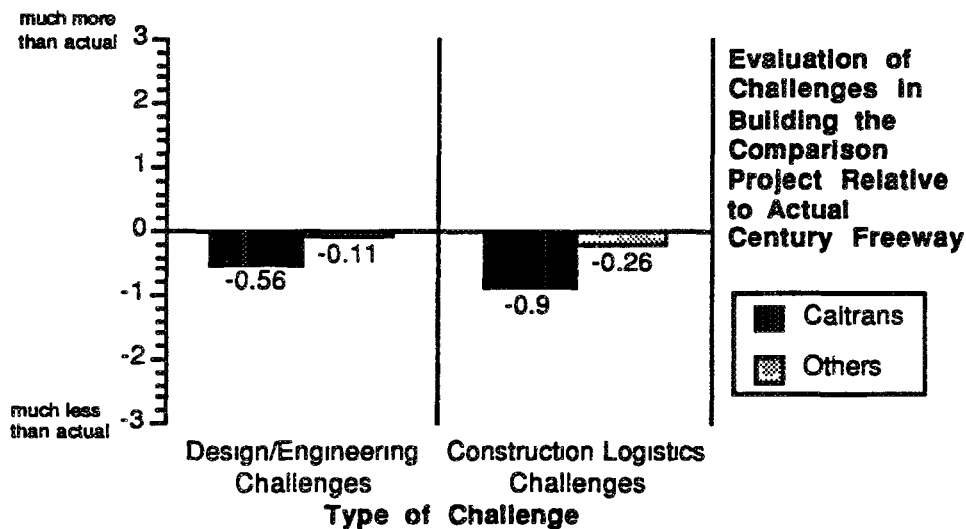


Figure X-9

Caltrans respondents are undecided about whether the benefits of the actual Century Freeway design and construction process will outweigh the costs of the process. HCD, CFAAC, FHWA and Local Elected Officials agree that the benefits will outweigh the

costs while **Local Administrative Officials** and **Contractors** do not. See Figure X-10² for a graphic representation of this information. Respondents include only those individuals who perceive themselves to have a high level of knowledge of the monetary costs of construction and the history of the Century Freeway.

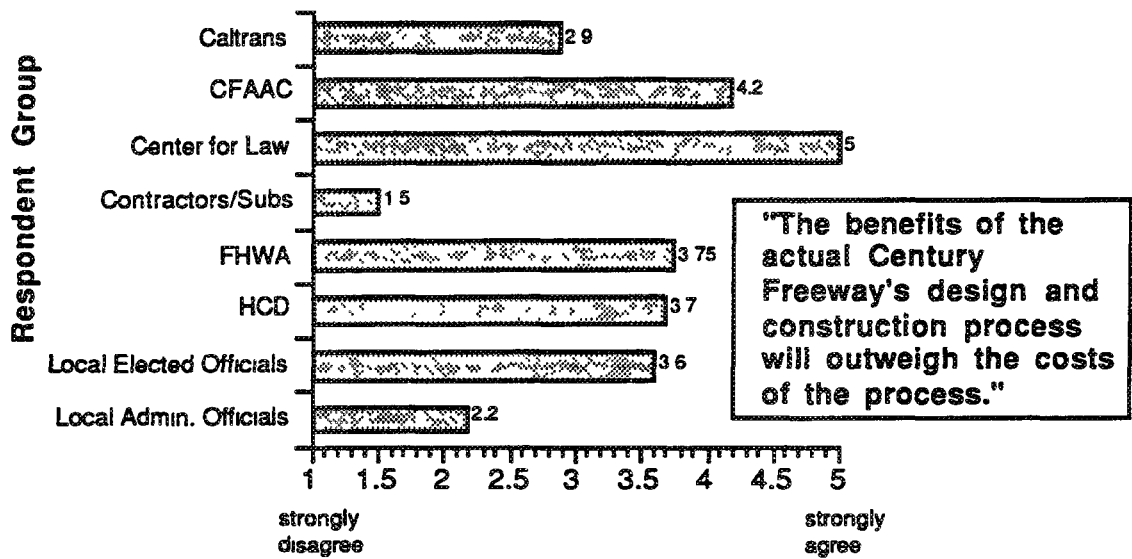


Figure X-10

C. THE TRANSPORTATION COMPONENTS OF THE COMPARISON PROJECT ARE PERCEIVED TO BE MORE BENEFICIAL THAN THOSE OF THE ACTUAL PROJECT.

- The decision to proceed with the freeway and the 1981 downscope in number of interchanges and lanes was controversial.

Most respondents indicate that even though they did not approve of the interchange and lane changes they still perceive the actual construction of the freeway to be in the public interest; as such, these concessions were also in the public interest because they allowed the state to proceed with construction. And defendants recount that they were not concerned about whether the Century Freeway under the consent decree would meet its transportation objectives. They acknowledge that at the time when the consent decree was being negotiated, the freeway had already been scaled to a smaller size than transportation studies recommended:

"I think it became clear as growth continued in Southern California and as people did not enlighten themselves or even foster the opportunity for

alternatives in terms of transit and so on that no amount of capacity on the Century Freeway was going to be adequate."

Caltrans officials indicate that both the Comparison Project and the actual project will be beneficial. (See Figure X-11 to X-16) However, the Comparison Project would have been more beneficial in decreasing congestion on parallel arterials and other surface streets; movement of people and goods through the corridor; and regional freeway congestion. Mass transit availability and freeway aesthetics are perceived to be slightly greater in the actual project.

Non-Caltrans officials' responses suggest that the actual project will increase congestion on parallel arterials and surface streets as compared to the Comparison Project which they believe would improve service on the local roads. They agree that mass transit and freeway aesthetics are more beneficial on the actual project. Regional freeway congestion and movement through the corridor would benefit slightly more under the Comparison Project.

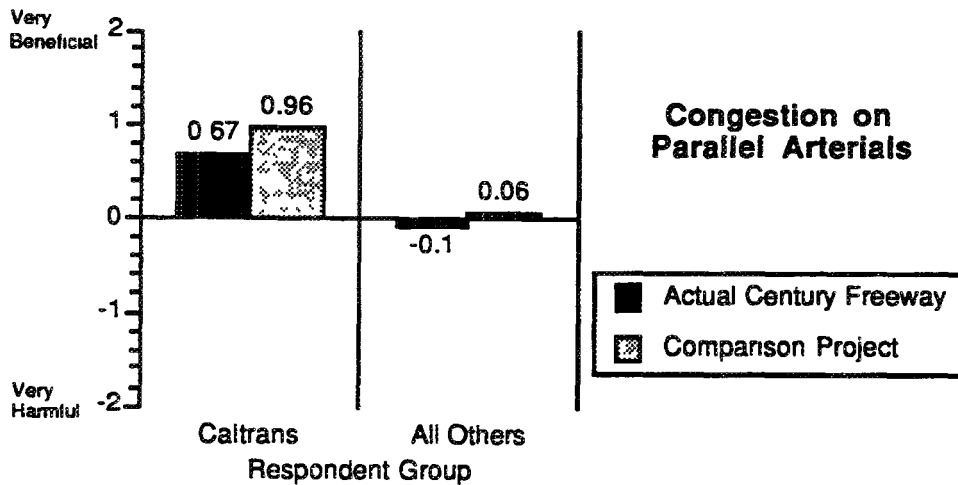


Figure X-11

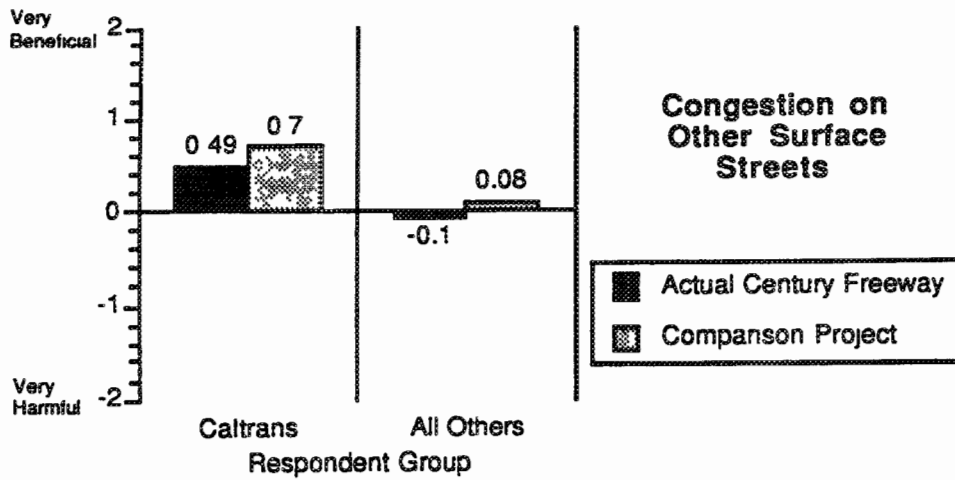


Figure X-12

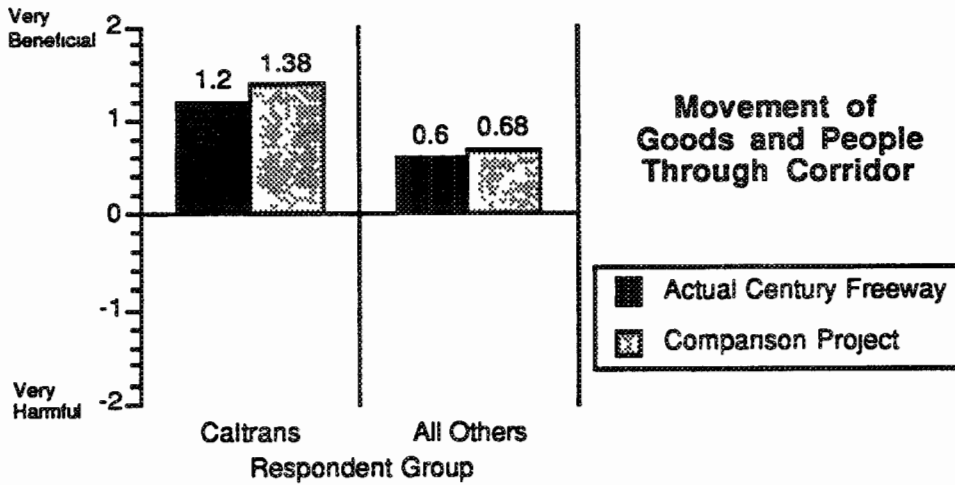


Figure X-13

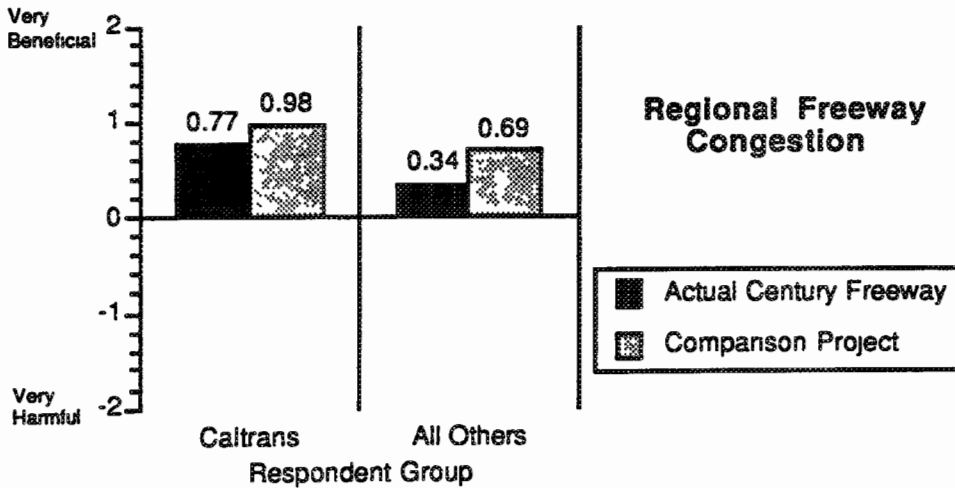


Figure X-14

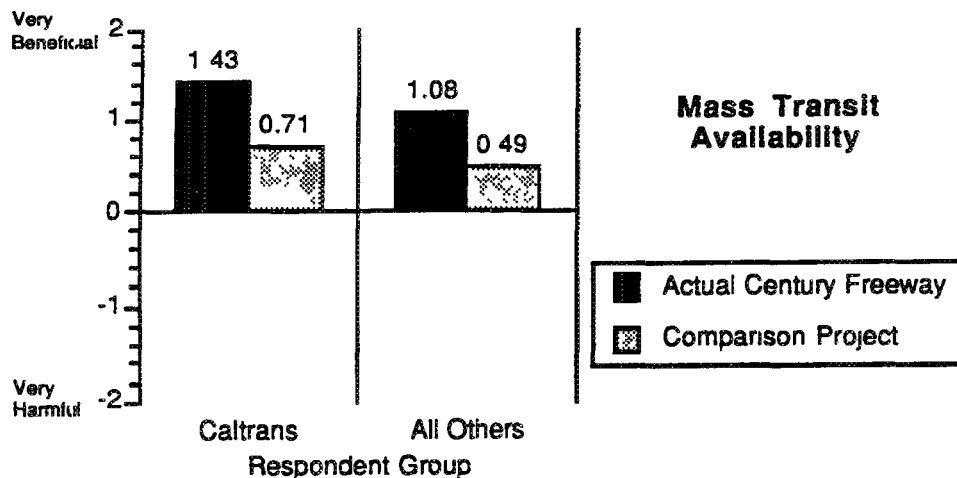


Figure X-15

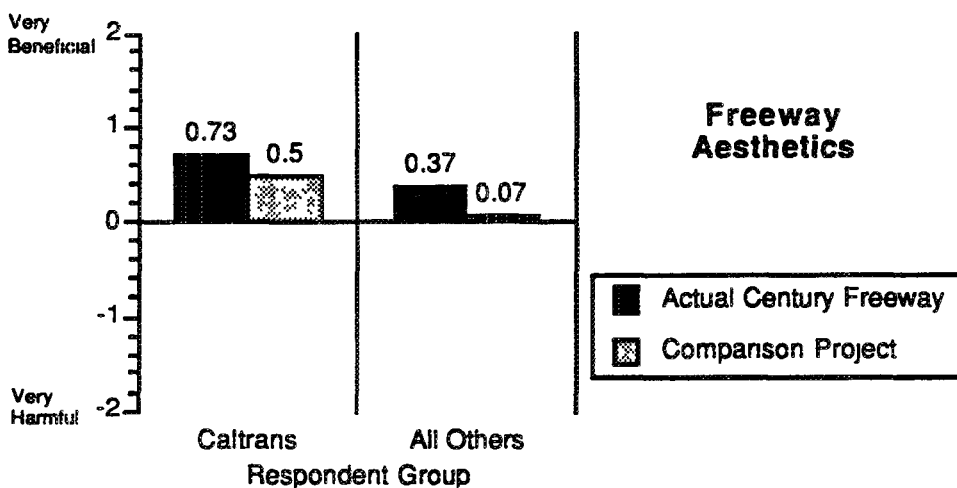


Figure X-16

In order to analyze the effect of a decrease in the number of lanes on the project it is necessary to make some assumptions about travel in the corridor. We conducted basic FHWA Highway Capacity Manual analyses. Unfortunately, sufficient data were not available. We planned to conduct capacity analyses for the 1972, 1979, and actual freeway. We requested from the District 7 Project Development unit the necessary data regarding basic freeway segments, weaving areas, and on/off ramps. Although basic volume projections were available, specific configurations of the ramps and weaving section lengths were not. Furthermore, several professionals in the branch indicated that such an analysis might not be meaningful because when they were directed to downscope the number of lanes, LARTS, the Los Angeles Regional Transportation Study, was asked to modify its traffic projections so that the smaller freeway could be justified.

We proceeded with one planning analysis utilizing the estimated projections of Average Daily Traffic Volumes on the I-105. This information was provided by LARTS. No information regarding the likely truck percentage was available. For this, and other adjustments such as lane width, and distance from the pavement's edge to the first lane, Highway Capacity Manual (HCM) defaults were used (Transportation Research Board, 1985).

LARTS estimates that HOV traffic will account for from 18 to 24% of the traffic on the roadway. In this analysis, the HOV lane is ignored. We assess the relative levels of service over several segments of the freeway, in the mixed flow lanes only. Average Daily Traffic Volumes are converted to Directional Design Hour Volumes using HCM approximations for the percentage of traffic occurring in the peak hour on an urban freeway of $K=.08$, and the percent of peak hour traffic in the heaviest direction, $D=.55$.

We find that projected volume of the freeway is in excess of the capacity of the freeway over many segments. The Actual project is expected to carry over 6,000 vehicles per hour during the peak hour on the segment from the San Diego Freeway to the San Gabriel Freeway. At this volume, a three-lane freeway will operate at Level of Service F. Speed and flow characteristics will be unpredictable. A four-lane freeway will operate at Level of Service C here with average speeds during the peak hour of 54 mph. At 8,000 vehicles per hour, a four-lane freeway would operate at Level of Service F. Such volumes are predicted for segments of the freeway between the Long Beach Freeway and the San Gabriel Freeway.

Some weaving area design changes and traffic system management techniques can alleviate congestion. However, generally, a roadway with fewer interchanges and more lanes will operate with the same level of service at a higher volume because there will be fewer areas of turbulence due to concentrations of merging and diverging vehicles (Transportation Research Board, 1985). We also note that the bell-shaped curve through Hawthorne will probably be responsible for some curve resistance which will impede the forward motion of vehicles travelling on the roadway (Garber and Hoel, 1988).

In our analysis we did not incorporate the following features of the roadway which will improve flow and Level of Service:

- High Occupancy Vehicle Lanes in the median for buses and carpools;
- Buffer strips to separate the HOV lanes from the remaining traffic;

- Ramp-metering with preferential bypass lanes for buses and carpools; and
- Auxiliary lanes in the weaving sections.

The three-lane facility being constructed might meet the projected demand if these features which we were unable to analyze, were included. Nonetheless, respondents indicated that the six lanes of mixed flow traffic will be inadequate for the volumes expected to be traversing the corridor. Arbitrary reduction without regard to projected demand is criticized. Some indicated that they would not have advocated building the freeway if it meant the reduction in size that has occurred. One official concluded:

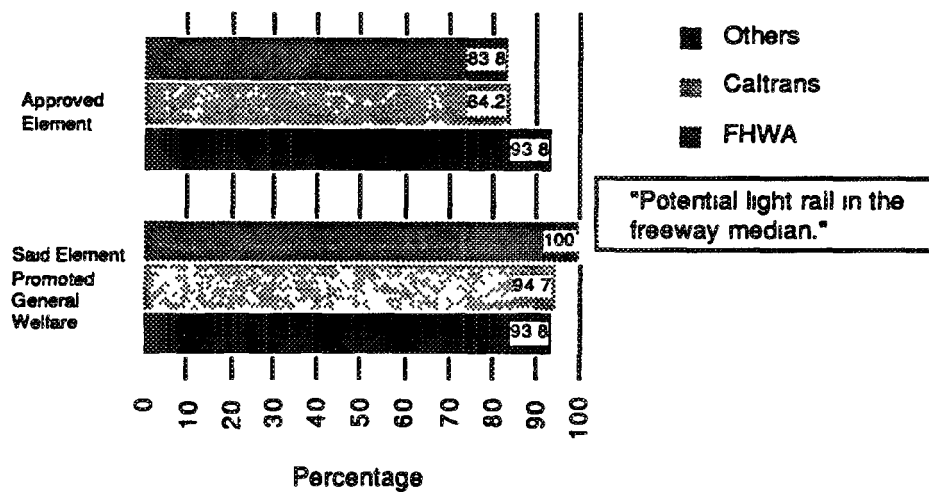
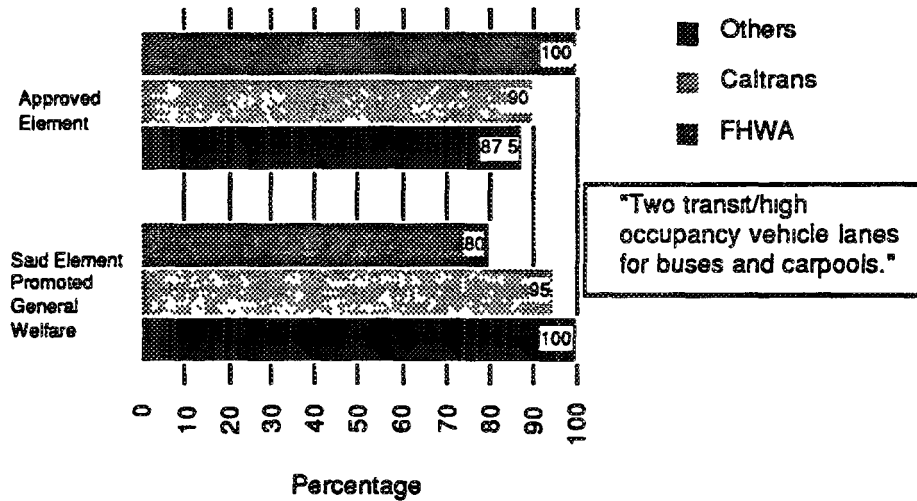
"The day we open this project we are going to induce damn near gridlock in Los Angeles....It will not provide any traffic relief. And I think ...not spending the money would have been better use of public funds than spending it for something that doesn't do nearly what the public has a right to expect."

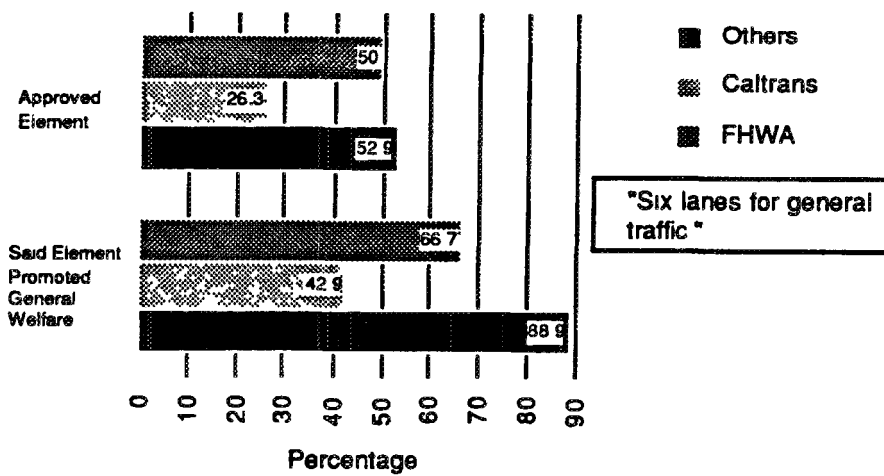
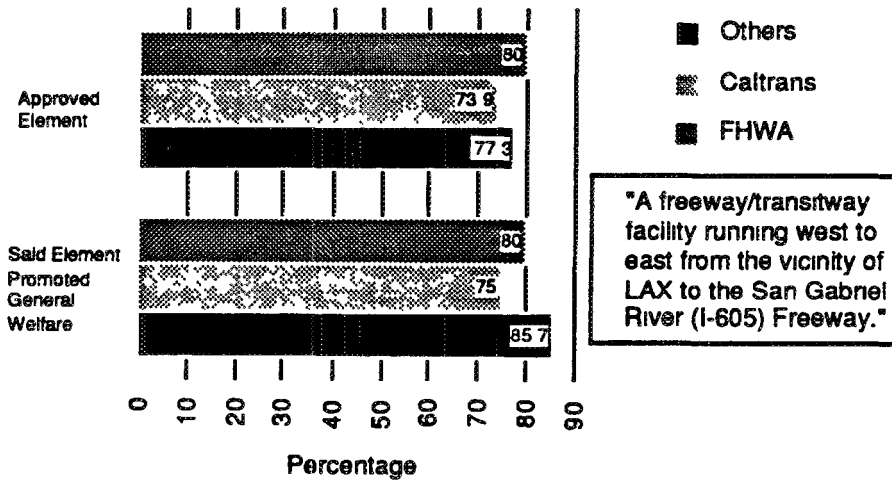
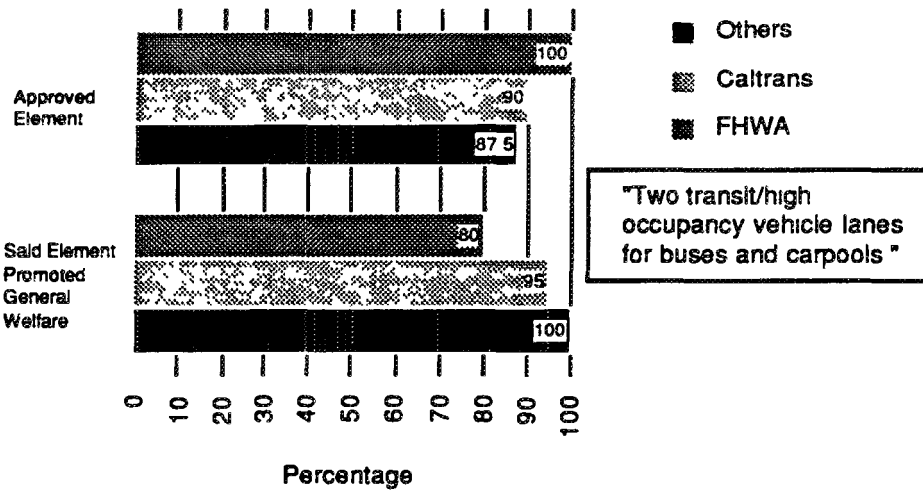
On the other hand, many Caltrans officials stated that six lanes is better than nothing. As before, it is generally believed that changing political and environmental climates were responsible for the downscoping. As such, the consent decree is but one factor affecting performance of the roadway.

The reduction of local interchanges is a contested issue. Some Caltrans interviewees concluded that ten interchanges is a positive element simply because the existence of the element allowed the freeway to proceed. However, most others describe ten interchanges as unable to provide the desired economic or transportation service benefits to the community. Opinion here is divided about how the operational characteristics of the freeway will be affected. However, several respondents mention that the surface streets around these interchanges will become more congested—there will be an increase in demand on them because of the limited number of ramps. [Schwartz (1976) suggests that even in urban areas, the purpose of the interstate system has been to accommodate intercity traffic and that the Interstate can be rendered unattractive to local traffic by limiting the number or frequency of entrance/exit exchanges as was done here.] In the Century Freeway case, the negative effect on the local system could be related to a positive impact on service on the freeway itself.

2. Public Policy values of each of the transportation elements are presented.³

See Figures X-17 to X-22 for a graphic representation of the following information. Here we present subjective evaluations of the public policy values of each of the design and construction changes that were discussed earlier.





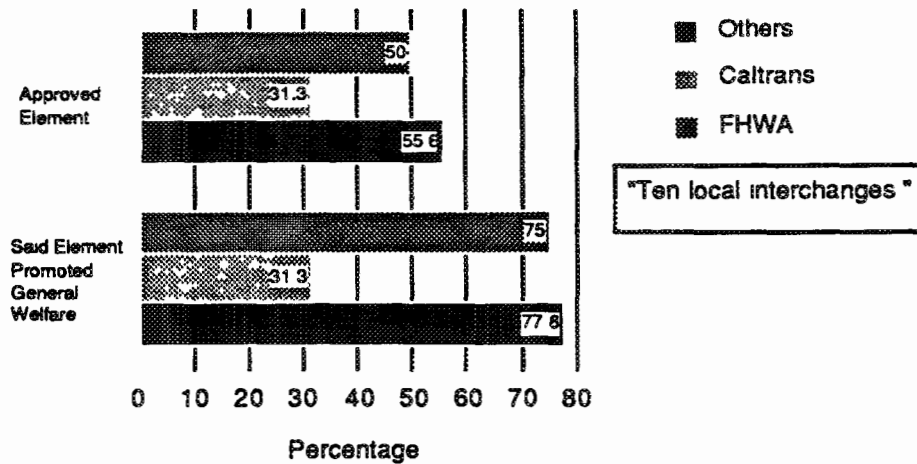


Figure X-22

Most design elements of the freeway are perceived by all groups to promote the general welfare. Among those are the inclusion of High Occupancy Vehicle lanes, light rail, linkage with the Harbor Freeway/Transitway. Although as a group, all respondents believed the freeway as a whole would promote the general welfare, fewer believed that ten local interchanges and six lanes for general traffic would. The paradox here is that although many do not approve of the structure of the freeway, they do approve of its existence. Interview responses elaborate on the statistical analyses.

Within Caltrans there is no unified perception as to how the project design should have proceeded. On the very decision to have any Century Freeway, unqualified "yes" answers were balanced by responses that the freeway should not have been built at all. Some see both the roadway itself and the transitway as having questionable transportation utility. Many respondents, however, perceive the freeway's construction as stabilizing corridor communities.

Federal Highway Administrators' responses do not necessarily mirror those of Caltrans. These officials see the freeway as serving important transportation and community needs in the corridor by promoting economic development in general. They also state that the small size of the freeway can be countered by technological advances in ramp metering. They are generally confident of the ability of both the freeway and the arterial system to perform with ten local interchanges.

Other views of the desirability of the freeway itself are mixed. CFAAC officials recognize a need to serve the Los Angeles International Airport area in particular but comment extensively on the negative impact of routing the freeway through minority communities. A

pointed opinion reflects the tenor of many others: "it was created to get white people through black communities to the airport." On the other hand, although the transportation benefits are questioned by this group ("it may be obsolete by the time it is opened") it is recognized as having provided job opportunities and the potential for long term economic development. Local officials express the opinion that the small number of exchanges limits opportunities for economic growth associated with the business "nucleation" found around interchanges. However, they are eager to see the freeway/transitway completed.

¹ In fact, upon our request to see early design plans, a Caltrans professional told us that all of the early design work had been thrown away. He indicated that when the consent decree was signed project development had to begin anew.

² The small size of the samples of the contractors, plaintiffs, Local Elected Officials, FHWA, and CFAAC must be noted. With a larger sample, the results may change significantly.

³ See footnote 1, Chapter V for explanation of these statistical analyses.

CHAPTER XI

THE ENVIRONMENTAL IMPACT AND THE IMPACT ON ENVIRONMENTAL IMPACT ANALYSIS

A. HISTORICAL OVERVIEW OF THE ENVIRONMENTAL IMPACT ANALYSIS

This chapter presents comparisons of the early environmental review process in Caltrans with that mandated by Keith v Volpe and environmental laws. We then describe both short term and long term environmental and social impacts predicted for the actual project and for the Comparison Project. We discuss differences that may be attributable to the lawsuit and the consent decree.

1. The Significance of Environmental Impact Analysis for the Century Freeway

With the passage of the National Environmental Policy Act in 1969, the federal government required environmental impact assessments of major federal actions which might significantly affect the environment. Although not clearly understood in 1970, NEPA represented a major change in the manner in which public works would be carried out. Of relevance here, a comprehensive analysis of the environmental and social impacts which might result from transportation projects was now mandated. Citizens were to have increased access to the information gathered in making a transportation decision and more input into transportation decisions which would impact their cities and neighborhoods.

In California, the Division of Highways had already incorporated a multi-disciplinary approach into the analysis of transportation public works projects. The changes necessary to meet the requirements of NEPA could be expected to be less difficult to implement than in some other states. Nonetheless, in Keith v Volpe, the court required further environmental assessment before right-of-way acquisition and construction could proceed on the Century Freeway.

2. Environmental Impact Analysis Requirements of NEPA

Section 102 of the National Environmental Policy Act set forth the procedure to be followed in the preparation of the environmental impact statement. The statement must discuss: the environmental impact of the proposed action; any unavoidable adverse effects; alternatives to

the proposed action; the relationship of short term uses and long term productivity; and any irreversible and irretrievable commitments of resources.

Statements must be prepared early enough in the agency review process to permit meaningful consideration of the environmental issues involved. A draft statement is first prepared by the sponsoring agency. The draft is then circulated for comment by other agencies which have expertise related to the project. The sponsoring agency uses these comments to modify the EIS and prepare a final statement (Ditton and Goodale, 1972).

In the case of federal highways, FHWA is required to hold public hearings to inform the public about transportation options and to obtain feedback and suggestions. The draft statement must also be made available to the public. Any individual or organization may then comment on the draft. Support, opposition, or alternatives may be suggested.

3. Application of NEPA Requirements to the Century Freeway

As Chapter II summarizes in the case studies, very soon after passage of environmental impact assessment requirements, attempts were made to apply them to freeway development throughout the country. NEPA and CEQA were not enacted until a great deal of the design and planning of the Century Freeway had been completed and approval had been granted by the Secretary of Transportation. NEPA became effective on January 1, 1970; CEQA, November 23, 1970. Plaintiffs argued that only three out of eight Century Freeway segments had received design approval prior to January 1, 1970. This factor is discussed in more detail below. Therefore, the court needed to address the issue of the "retroactive" application of specific administrative and statutory requirements to all or part of the extended planning process involved in the I-105 project (Armstrong, 1972).

"As plaintiffs will demonstrate, the language of the Act, the CEQ Guidelines and the best reasoned cases all compel the conclusion that the requirements of NEPA apply to the proposed Century Freeway project and that federal defendants must comply with them even though the project was initiated prior to the enactment of NEPA on January 1, 1970. . . . In the instant case, many of the rights-of-way must still be acquired, and, although clearance has begun in certain areas, the majority of the proposed route remains to be cleared. Plaintiffs submit that the Morningside - Lenox Park case is dispositive of the issue as to whether NEPA applies in the instant case. The Court should enjoin any actions in furtherance of the Century Freeway until federal defendants comply with the requirements of NEPA."(Keith v Volpe, Memorandum of Points and Authorities in Support of Plaintiffs' Motion for Preliminary Injunction, Civil No. 72-355-HP, p. 37 and 43).

Division of Highway and FHWA officials conceded that the I-105 was a major federal action significantly affecting the quality of the human environment. But they felt that they were not required to prepare an EIS under section 102(2)(C) of NEPA; defendants argued that the Act was not applicable to the Century Freeway because of the advanced state of completion of the I-105 on the date that NEPA took effect.

The defendants argued that based on the guidelines issued by FHWA in November, 1970, they were not subject to the requirements of NEPA. The interim guidelines on section 102(2)(C) designated the date on which a freeway had received design approval from the Secretary of Transportation as the determinative milestone for applicability of NEPA. That is, a freeway which had received design approval after February 1, 1971 (thirteen months after the effective date of NEPA) would be subject to NEPA. If design approval was received prior to this date, compliance was not necessarily required. When a project in the latter category still involved the acquisition of substantial amounts of land, state highway authorities, in consultation with the FHWA division engineer, must reassess the project to determine whether it had been "developed in such a manner as to minimize adverse environmental consequences" (Armstrong, 1972).

The Division of Highways had divided the Century Freeway into eight segments for the purpose of holding public hearings and preparing design proposals. Three of these segments received design approval from the Secretary prior to January 1, 1970, the date NEPA became effective. The remaining segments were approved between January 1, 1970 and February 1, 1971. Therefore, the Division of Highways argued that FHWA guidelines only required reassessment of the project. The reassessment, completed March 15, 1971, concluded that for the Century Freeway, detailed consideration had been given to the potential impact upon the quality of the human environment. The FHWA division engineer concurred with this decision; he did not request an EIS. The Court, however, upon reviewing the lack of air pollution evaluation performed by the defendants, disagreed with this claim. It observed: "the failure to closely examine the effect of the proposed freeway on air pollution was an egregious omission. It flew in the face of the Council's guidelines: the omission also undermines the state defendants' conclusion...that the Century Freeway was planned in such a manner as to give detailed consideration to the potential impact upon the quality of the human environment" (Keith v. Volpe, @ 1334).

The Division of Highways interpreted NEPA as containing a built-in grace period during which time agencies were to develop procedures which would make environmental considerations part of the agency decision-making process, in consultation with the Council on

Environmental Quality. [Recall that FHWA issued its guidelines in November, 1970.] The Division of Highways felt it had complied "to the maximum extent possible." CEQ guidelines issued in May 1970, and finalized April 1971, stated that projects initiated prior to January 1, 1970, were subject to the section 102(2)(c) procedure "to the maximum extent practicable." And The Center for Law argued that the legislative history of NEPA and its subsequent case law rendered compliance "to the fullest extent possible" mandatory. An opportunity remained for environmental factors to be taken into account because only 55.8% of the parcels had been acquired for the I-105, and construction had not yet begun. The Center for Law also contended that FHWA regulations could not legally postpone application of NEPA for thirteen months nor give to the FHWA division engineer the complete discretion on whether to require an impact statement (Armstrong, 1972). The Court stated that "FHWA's Interim Guidelines in actuality postponed the effective date of NEPA for thirteen months....NEPA does not authorize such flexibility, and the provision emasculates both NEPA and the Council's guidelines."

The court ruled in favor of the plaintiffs: since five of the eight segments of the Century Freeway had not been granted design approval when NEPA took effect, final planning for the project was unfinished; it was still practicable to file an EIS:

"The defendants have failed to satisfy NEPA's commandments....The Court believes that the application of NEPA to a federal-aid highway should not be considered impracticable until, as the Court of Appeals for the Fourth Circuit recently held, the highway has reached the state of completion where the costs of abandoning or altering the proposed route would clearly outweigh the benefits therefrom...the Century Freeway has not yet reached that state....Although the planning stage of the Century Freeway had commenced before January 1, 1970, it had not been completed by that date—i.e., no design approval had yet been received for five of the eight segments of the highway. The agency decision making process; in other words was still open when NEPA went into effect. The freeway, as a result, was still at that stage of its development in which 'a careful consideration of the environmental aspects' would have been most 'appropriate.'....Since five of the freeway's eight segments were still in their planning stage, moreover, the general judicial policy against the retroactive application of statutes...was inapplicable." (Keith v. Volpe 352 F. Supp. 1332-1333)

B. THE CONSENT DECREE AND ENVIRONMENTAL IMPACT ANALYSIS REQUIREMENTS FOR THE I-105

1. Type of Environmental Analysis Performed by Caltrans Prior to Defined Phases of the Litigation

Environmental Analysis Prior to the Lawsuit (pre-NEPA)—The Design Team Approach

Prior to the passage of NEPA, the Division of Highways carried out the “design team” approach which it believed to be the most advanced environmental analysis technique in the nation. The Division of Highways employed a multidisciplinary design team to identify, analyze, and make recommendations on opportunities to increase benefits and minimize disruptive effects on communities, neighborhoods, and specific facilities adjacent to the proposed Century Freeway. A final report, known as the “Gruen report”, was compiled by several consulting firms—in planning, architecture and engineering; socioeconomics; environmental acoustics; systems analysis; and urban redevelopment law.

Caltrans respondents offered a variety of viewpoints on the purpose and usefulness of the Gruen report. Generally positive, the comments identified the value of the activity as one of public relations, as one forcing consideration of factors which design engineers would not normally have addressed, of increasing sensitivity to local concerns and as bringing about certain substantive results, including strategies for addressing the problems of noise. A minority opinion in the agency summarized: “They presented three volumes of bafflegab and bullshit that added process time and expense without changing the result one iota.”

By their use of the multi-disciplinary team approach, Division of Highway officials believed that they had met or exceeded all state and federal review requirements. During the second major phase of the freeway development process (route study), the Division was required to consider environmental and social factors, including community values, aesthetics, property values, state and local public facilities, road traffic, noise impact, and local and regional plans (Ca. Street and Highway Code, Section 75.7). Additionally, the Division met all public information and design hearing requirements under Federal Regulations, Title 23, (two hearings, a corridor or location hearing and a design hearing). Division of Highways also established a field office at the center of the route in the Watts area which provided public information services

and right-of-way and relocation assistance. Caltrans officials whom we interviewed indicated that the Gruen report was an adequate substitute for an EIS. One interviewee stated:

"It's sort of boasting, but we had anticipated NEPA unknowingly. It's not that we were clever, but we did those things just as an experiment to show that a freeway could be sociologically and environmentally done well. And we had done all of the things that NEPA had mandated, but not under their terminologies and not under their guise. But we couldn't convince the judge to buy that argument either."

Another interviewee stated:

"Form over substance, and I say that because we had used exactly the process defined by NEPA. The multi-disciplinary team approach, with the effect of providing the same kinds of information and analyses required by NEPA."

Nevertheless, the Division of Highways was required to develop a formal environmental impact statement and to carry out additional public hearings. The Court disagreed with the defendants' argument that no additional corridor public hearings were necessary. Although the Court acknowledged that the regulations prepared by FHWA to comply with the amended public hearing requirements of the Federal-Aid Highway Act (PPM20-8) did not exist when the corridor hearings on the Century Freeway were held, the Court reasoned that, in order to prepare the environmental impact statement in good faith, defendants must reconsider the entire Century Freeway project. Congress had passed NEPA with the principle in mind that "experts, regardless of their training, experience, and good faith, do not enjoy a monopoly on wisdom....PPM20-8 establishes a mechanism for securing public participation in the decision making process, and defendants should use that mechanism in evaluating the advisability of continuing with the Century Freeway" (@ 1338-1339).

"Both NEPA and CEQA require the defendants to prepare environmental statements. In doing so, the defendants must actually reevaluate the Century Freeway. They must consider... 'the environmental impact of the proposed action,' especially its effect on air and noise pollution; 'alternatives to the proposed action' including other modes of mass transportation; and abandonment of the project versus continuation...NEPA itself contains no requirement of a public hearing. Under Section 128 (a) and PPM 20-8, however, state highway authorities may not make decisions on basic issues such as 'the need for' a highway until members of the public have had the opportunity to express their views at corridor public hearings...NEPA and Section 128 (a) are not independent of each other; they are both part of a structure of federal law designed to protect the environment...members of the public have the right to be consulted—to obtain pertinent information and to express their views—on the important decisions that affect the construction of federal-aid highways. This is why additional corridor hearings are required." (@ 1354)

The Court had a far easier time justifying the need for new design hearings: "Since the applicable statutory and administrative provisions were not complied with insofar as they required consideration of the effects of the highway on air and noise pollution, new design hearings clearly are necessary" (@ 1340).

Environmental Analysis During the Injunction: The Draft EIS

The draft environmental impact report identified both beneficial and adverse impacts of the Century Freeway project:

Beneficial Impacts:

1. Improves the efficiency and service of the Interstate System of freeways.
2. Improves the regional freeway system.
3. Provides additional access to Los Angeles International airport.
4. Provides a facility for the movement of goods and people.
5. Provides an additional traffic arterial.
6. Provides improved access to areas of employment.
7. Provides right-of-way for future public transit facilities.
8. Provides a basis for improved long-range land use planning.
9. Provides an opportunity for increased local tax base.
10. Provides opportunity for railroad relocations.
11. Provides opportunity for school relocation and improvement.
12. Improves air quality in the corridor.
13. Reduces noise levels in the corridor.
14. Provides opportunities for joint use of project right-of-way.
15. Provides opportunities for development of additional parks.

Adverse Impacts:

1. Acquisition of property results in inconvenience to displaced people and businesses.
2. Slight reduction in housing inventory in the Los Angeles area.
3. Initial loss of local tax base.
4. Concentration of CO immediately adjacent to the facility.
5. Increased noise levels
6. Temporary inconvenience to public traffic.
7. Acquisition of park land.

8. Increase in regional fuel consumption.
9. Possibility of damage from seismic activity.
10. Loss of community cohesion at some locations.
11. Temporary disruption of some public and community facilities.
12. Permanent commitment of the land to a transportation use.

The Gruen report included a similar analysis of beneficial and adverse impacts although in a different format. The report contained, however, no real air quality impact assessment. In the Environmental Impact Statement Caltrans/Division of Highways was required to undertake extensive analyses of the possible air pollution impacts. The Court had taken the unusual step of describing the type of air quality analysis which Caltrans should perform. The Court rejected the argument that, when NEPA took effect, little data was available comparing the impacts of freeways and city streets on air pollution: "As long as some information on air pollution was available, NEPA and the Council's guidelines obligated the federal defendants to prepare a section 1002(2)(C) statement examining, with as much precisions as was possible at the time, the impact of the proposed freeway on air quality in the Los Angeles basin. Having failed to do so in 1970, the federal defendants must do so now " (@1335). The Court then directed the defendants to review the EPA standard on primary and secondary ambient air quality, to consider the effect of wind and weather conditions, and to review a possible increase in automobiles in the southern Los Angeles basin.

A second major difference between the Gruen report and the EIS was the examination in the latter of transportation alternatives to the construction of the Century Freeway. The five alternatives were: the I-105 project alternative; the no project alternative; the exclusive busway alternative; the street improvements alternative; and the combined exclusive busway and street improvement alternative. Each alternative assumed a regional transportation context of: planned arterial street improvements, existing and South Coast Rapid Transit District bus service, and a low- level future regional freeway system. Caltrans had been directed to hold additional public hearings in part to present alternatives to the public and to discuss the air pollution impacts.

Judge Pregerson wrote in his September, 11, 1972 order refusing to amend the preliminary injunction:

"The Court realizes that the delay caused by the injunction will increase the cost of the Century Freeway if it is ever completed, temporarily inconvenience many individuals, and hinder the planning programs of several of the cities along the route of the freeway.

It is necessary, however, to look to the ultimate benefit which hopefully will accrue to everyone living in the Los Angeles area from compliance with our federal and state environmental protection laws." (@1357)

Nothing in the project archives suggests that the Court, plaintiffs, or defendants expected the EIR/EIS process, nor the injunction, to last from mid-1972 until late-1979. According to one Caltrans attorney involved with the case during the injunction:

"I stood up in open court in all my naiveness and told the court that I was afraid that I would have to ask for six months to complete the EIS. They told me that was outrageous, and I said, 'I know it is, judge, and we'll probably do it in less time.'"

Reasons cited by Caltrans interviewees for the extended period necessary to complete the environmental process include:

- Caltrans inexperience at preparing NEPA/CEQA documents;
- The complexity of identifying and evaluating project alternatives;
- The difficulty of coordinating the evaluation of project alternatives with a changing fiscal environment;
- The difficulty of keeping pace with advances in the science of air quality impact analysis and changes in air quality regulations; and
- The need to develop documents able to withstand predicted legal challenges and scrutiny at various levels of government.

Center for Law respondents and local officials, in addition to the factors cited above, attributed bureaucratic inertia and organizational incompetence as sources of perceived delays in EIR/EIS certification.

Several interviewees reported that, in retrospect, EIR/EIS preparation only seemed to have consumed an inordinate amount of time; even with almost twenty years of environmental document preparation experience, processing documents for a project as complicated as an urban freeway is still bound to be a multi-year undertaking. One attorney for the Center for Law stated:

"They always say, 'Well, we'll do this in a year.' Well, I call that federal time. A year in federal time is usually three years and maybe then some....(I)t just takes forever. I mean, you've got to get a million people to sign off on things....(I)t's not unusual. We have had other projects stopped and had similar experiences."

FHWA and Caltrans interviewees shared the perception that the "delay" caused by environmental processing was not an anomaly.

3. Environmental Analysis and Mitigation Measures After the Consent Decree

Plaintiffs' counsel conceived of and justified many of the requirements of the Consent Decree as means to mitigate some of the adverse impacts attributed to the construction of the Century Freeway. In addition, several interviewees who favored the requirements of the consent decree justified the increased cost related to these requirements as partially compensating for the negative impact of the Century Freeway on the corridor neighborhoods and businesses:

"Caltrans had already displaced thousands of people in a mostly Black and Hispanic community; it was a way, one of many ways, to put back to the community....Their attitude was, you take the land, you pay somebody some money, they go away and then you move forward -- without looking at the overall economic impact that it [the freeway] had on the weakest link in the economic chain of L.A. County."

In assessing the impact of the consent decree on implementation of the Century Freeway, it is necessary to analyze whether characteristics of our Comparison Project were realistic or whether the Comparison Project would have been insufficient under evolving environmental, transportation, and housing law. While this exercise involves some speculation, we can identify several changes in the Century Freeway which, independent of the decree, can be understood as mitigation measures which were proposed in the final EIS. Although there is considerable disagreement as to how many of these measures would have been *implemented* without the influence of the Consent Decree, the Center for Law stated that before the signing of the Consent Decree, there was no guarantee that these mitigation measures would be incorporated into the final project (No. Civ. 72-355-HP, Declaration of John R. Phillips and Jan G. Levine Re. Benefits Established by the Final Consent Decree, 11-13-79).

Freeway Design

The air quality mitigation measures proposed in the final EIS included ramp metering to improve free-flow conditions and a public transitway in the freeway median. This transitway would be designed for bus or rail mass transit; however the EIS stated that the transit agencies involved had not yet made the necessary funding and implementation commitments.

A primary difference between the two scenarios involves the construction of mass transit facilities. The actual I-105 includes a rail system built concurrent with the freeway, whereas the Comparison Project would only have required that the median permit the future construction of a

rail/busway system. While this represents a significant short-term difference in mitigation measures, internal Caltrans memos and statements by the California Air Resources Board suggest that a mass transit system would eventually need to be installed. For example, in 1978 a series of letters and memoranda among ARB, EPA, DOT, FHWA, and Caltrans discussed ARB requirements that Caltrans commit to the mitigation of air pollution effects of the I-105 by building HOV lanes before ARB would sign off on the EIS. The theme of the initial ARB letters was that the air quality impact assessment of the EIS was deficient. The initial response by Caltrans was that the agency would probably put in HOV lanes but it would not guarantee this action. After a number of meetings among the involved agencies, Caltrans received a sign-off from the ARB for the EIS. And, in a letter to ARB (4-6-78), Caltrans stated that it was firmly committed to incorporating high-occupancy lane features into the initial construction. A final letter to FHWA from EPA acknowledged that FHWA's specific requirement to incorporate the HOV lanes and ramp metering elements into the proposed project represents a firm commitment.

In contrast to the letters between ARB and Caltrans, the Center for Law observed in its Declaration of Benefits (11-13-79) that the settlement terms of the Consent Decree are largely responsible for the construction of mass transit capabilities. For example, Center for Law representatives stated that following a tentative agreement reached with Caltrans in September, 1978, they traveled to Washington, D.C. with Caltrans counsel Joseph Montoya and J. Anthony Kline, the Governor's Legal Affairs Secretary, to meet with DOT officials. Plaintiffs' counsel believes that as a direct result of settlement negotiations, the Surface Transportation Act of 1978 designated the Harbor Freeway as an interstate freeway. This designation made construction of the Harbor busway financially feasible, thus allowing a direct mass transit link with the Century Freeway transitway and with other mass transit projects (Declaration of Benefits, 11-13-79).

Housing

One of the more striking differences between the actual Century Freeway and the Comparison Project is the number of replacement and replenishment housing units. The actual Century Freeway involves construction of approximately 1000 replacement units, whereas the Comparison Project would require half this amount. It is also estimated that 2000 replenishment units will be constructed under the actual Century Freeway, while none would have been constructed under the Comparison Project.

Both the Center for Law and Caltrans appear to be in agreement that the replenishment units are a result of the Consent Decree settlement terms. To be sure, some in Caltrans had

already recognized the need to mitigate the loss of housing stock: "Aggravation of the communities; already insufficient supply of affordable housing stock is significant and should be mitigated" (Freeway/Transitway Community Housing Needs Study, 1979). However, statements made in the Caltrans Comments on the Declaration of Benefits (12-5-79) credit the Consent Decree: "the only major benefit that can indisputably be ascribed to the Consent Decree is the 4,200 living units in housing replenishment."

The Center for Law justified the need to build replenishment housing:

"Los Angeles County currently has a severe shortage of low-and moderate-income housing. Had the Century Freeway been built as originally planned, the housing stock would have been further depleted in areas such as Watts/Willowbrook where it is already desperately needed. Plaintiffs urged that both state and federal defendants should interpret the applicable statutory and state constitutional provisions more broadly to require the replenishment of the housing stock in the communities rather than follow the normal practice of merely providing compensation for displacees.

We argued that under the 'mitigation' responsibilities set forth in both state and federal laws and the 'last resort housing' concepts of federal law, that defendants had an obligation not to decrease the available housing stock" (Declaration of Benefits, 11-13-79)

Norman Emerson, the DOT Regional Representative for Region IX during the period, provided additional evidence that the housing program was perceived as a mitigation measure: "the Secretary agreed in concept to a housing program that would mitigate the freeway's impact on the region's housing stock. An important factor in the Secretary's decision was the issuance of new guidelines by the Council on Environmental Quality for implementing NEPA, which provided DOT with clear authority for mitigation action of the magnitude required to address the housing issue" (Emerson, 1980).

Training/Employment

The actual Century Project required that contractors utilize corridor businesses and residents, and that a center for Century Freeway Employment be established. The Comparison Project would not have required either of these measures. In discussing the need for the employment action plan, plaintiffs' counsel observed: "Our goal was to ensure that these people, who live in communities which have been bisected by the freeway's path and which will endure the disruption caused by its construction for the next decade, secure some of the benefits from the

freeway as well as its most negative impacts; and "without this plan it is likely that the participation of MBE's, minorities and women in the Century Freeway project would not be as great as it will be under the plan" (11-13-79).

Both the EIS and the Gruen report discuss the adverse impact that the construction of the freeway would have on both businesses and residents, and the resultant short-term loss of tax revenue. Although some Caltrans officials stated that the freeway would contribute to the employment of residents by increasing their access to job opportunities, a study commissioned by Caltrans (Oakes, 1981) determined that the Century Freeway would bring little benefit in terms of improved access for those who reside in the corridor area because of the location of the most likely employment opportunities for these residents. Most employment opportunities were found to be either significantly north or south of the east-west Century Freeway, which thereby limited any meaningful decrease in travel times. However, some increase in access to the west-side employment centers from the eastern end of the Freeway would occur, but this was negated by a poor job skill match. Most of these opportunities required specific job skills or professional training, lacking among the majority of corridor residents. According to the report the majority of freeway corridor residents had little or no training and therefore needed entry level unskilled employment to enter the job market. The report concluded that with the implementation of mass transit facilities connected to other freeways, some increase in access to entry level employment west and south of the corridor would occur, but travel times would still remain high (Oakes, 1981). [Please see Chapter VII for an analysis of the economic impacts on the corridor which may be attributed to the Consent Decree.]

C. THE IMPACT OF THE FREEWAY ON THE QUALITY OF THE SURROUNDING NEIGHBORHOODS AND COMMUNITIES

Most of the residents and public officials of the corridor cities commented on the appearance of the corridor during the injunction period. Although the long delay cannot be attributed to the consent decree, for many respondents the impacts of the injunction and that of the consent decree were inseparable. Interviewees mentioned "blight", "chaos", "detrimental impacts", "mess", "shock" and "devastation" as effects of the termination of the implementation processes for the Century Freeway.

"The vacant houses and the neglect of maintenance and security created the 'blight' which quickly pervaded the corridor. The blight--the use of these houses by vagrants and petty criminals--generated the political firestorm which forced the judicial process to its conclusion: the consent decree."

"...the effect was devastating...you know a big mound of dirt right in front of you...and jobs, they were gone, and people didn't know what to do. You get squatters, and these are poor communities to begin with."

The narrative and pictorial results presented in the remainder of this chapter refer to results of Questionnaire Two (see description in Chapter I), in which respondents reported perceived environmental and social impacts associated with the actual Century Freeway and the Comparison Project.¹

1. Short-Term Impacts

Economic Impacts

Utilization of corridor businesses Caltrans respondents indicated that both the Century Freeway and the Comparison Project would have a net beneficial short-term effect on the utilization of corridor businesses in project-related construction activities. However, non-Caltrans respondents indicated that the Century Freeway would have a positive impact on the utilization of corridor business, but the Comparison Project would have a somewhat harmful effect on the utilization of corridor business.

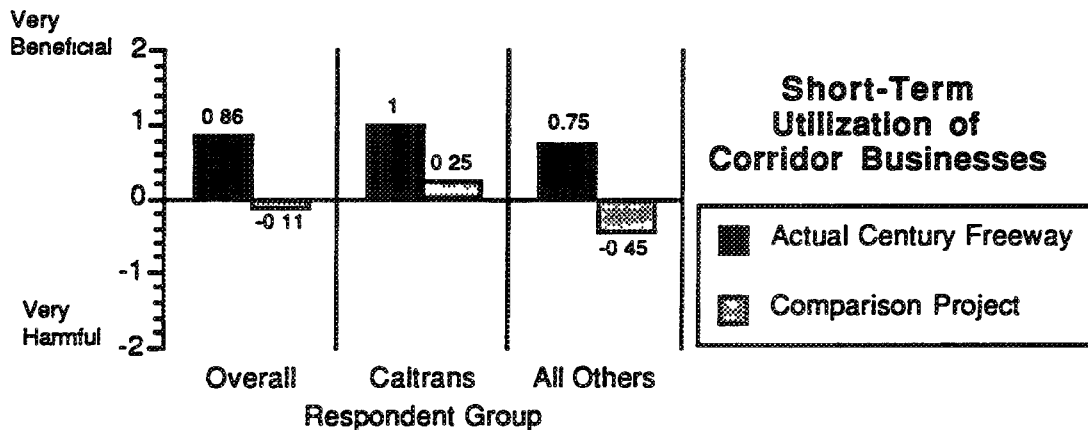


Figure XI-1

Employment of corridor residents The employment of corridor residents in project-related construction activities was rated positively by Caltrans for both the Century Freeway and the Comparison Project. However, non-Caltrans respondents felt that the Comparison Project would have a slightly harmful impact on the employment of corridor residents in construction work.

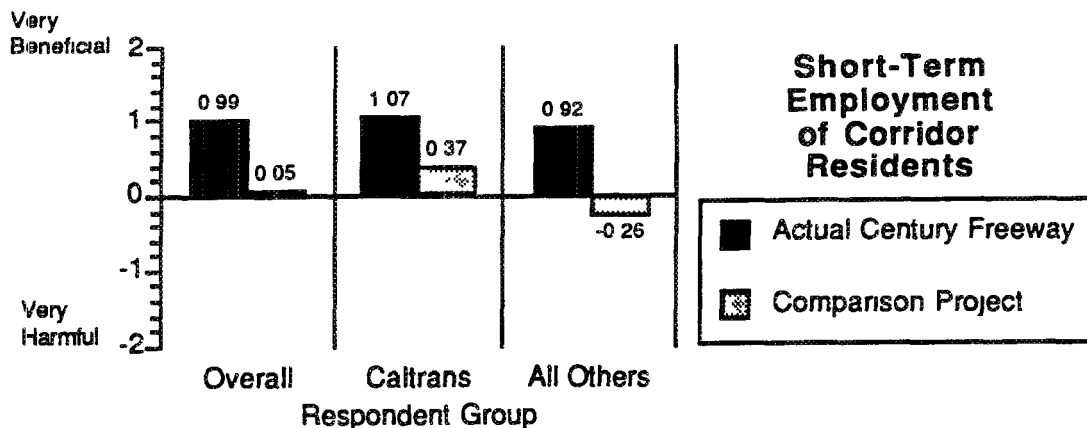


Figure XI-2

Displacee relocation assistance The perception of Caltrans respondents was that both the Century Freeway and the Comparison project would have a positive impact on relocation assistance provided to residents; however, the actual I-105 would have a much greater positive impact. Non-Caltrans respondents indicated a positive impact for the actual Century Freeway, but a negative impact for the Comparison. Some interviewees from Caltrans reported extra efforts had been taken on the I-105 to provide for the needs of displacees (such as the establishment of an outreach office in the Watts area). However, other respondents evaluated the steps taken by Caltrans as inadequate to meet the needs of the displacees. Our archives include a number of letters written by residents thanking the Advocate for intervening on their behalf in disputes with Caltrans. For example:

“They [the Advocate] have always been a great help to me financially and emotionally. I was very depressed [many] times, and they were my only hope. Thank you for having this kind of help for people who are forced to be in a situation like mine”.

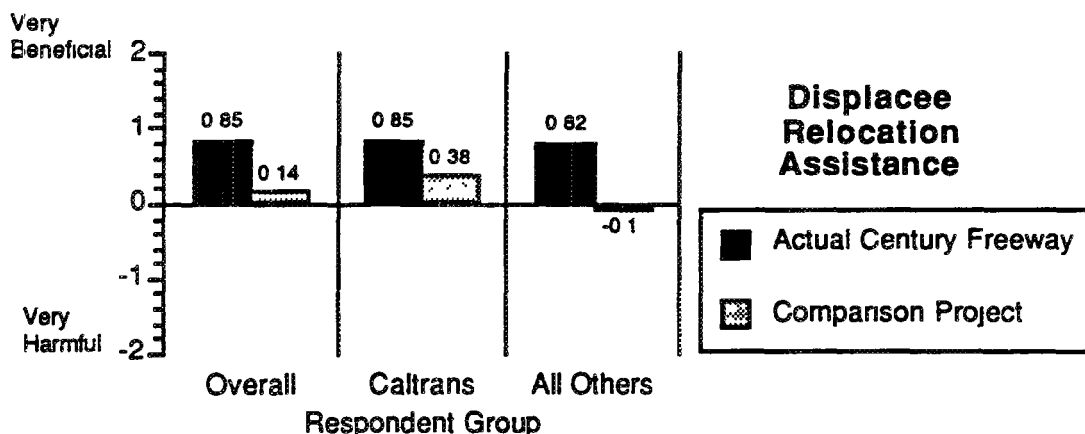


Figure XI-3

Community Cohesion and Well-being

Residential Displacement Overall, respondents indicated that there would be a negative impact on residential displacement from both the actual Century Freeway and the Comparison Project, with the comparison project rated as slightly more harmful. Non-Caltrans respondents were more negative than was Caltrans in their perception of the impact on displaced residents. The small gap between the actual Century Freeway and the Comparison Project is understandable as there was no difference in the number of residents displaced under the scenarios. Nine percent (9%) of Caltrans respondents live in the freeway corridor area compared to half of all other respondents (51%). Corridor residents may have a unique sensitivity to the adverse social impacts that residents incur when they are displaced. As one respondent commented:

"You don't know what it means if you live out by the section that's next to the 605 or up near the 405, and the only thing comparable they offer you is back over in South Central L.A., and you have two male sons, 12 and 13 years old, they may not live to see 14."

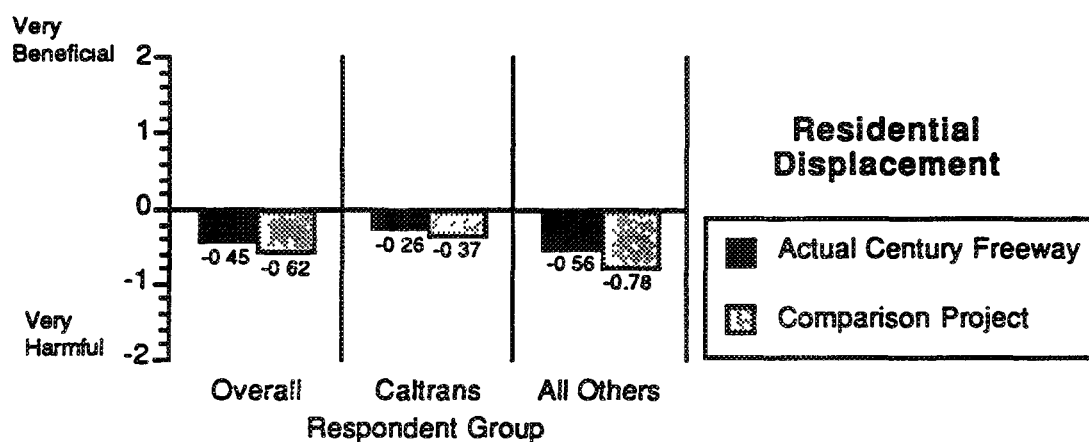


Figure XI-4

Crime Rate Overall, respondents perceived a greater increase in the crime rate under the Actual Century Freeway scenario than would have occurred under the Comparison Project. In addition, overall respondents indicated that both the actual Century Freeway and the Comparison Project would have a slightly negative effect on the crime rate. In fact, in comparison to all other groups, Caltrans perceived the greatest negative impact from crime occurring from the actual Century Freeway. Some Caltrans officials expressed the belief that the most significant impact from crime resulted from the long delay created by the injunction:

"You had about sixteen miles of boarded-up housing. Those became havens for squatters, and for people who were abandoning pets....So there was a problem with squatters, there was a problem with wild dogs."

Members of other organizations also expressed frustration over the increase in crime rate in the corridor. This situation was mentioned in several interviews as one of the most serious adverse impacts created by the Century Freeway construction. Again:

"Those houses were boarded up, Caltrans did not provide adequate security, they became just havens for crime and drug activity."

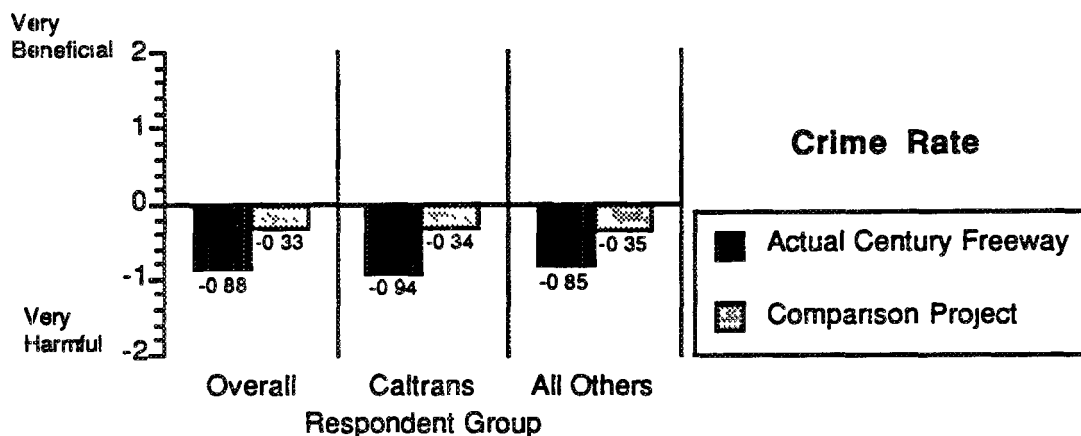


Figure XI-5

However, interviews with Caltrans officials described attempts to control the area:

"It was an extremely difficult situation. We tried to maintain that right of way...{undertook} all kinds of special efforts to maintain it. It became very difficult. We would fence it, fences would get torn down....It was a great spot just to get rid of all your rubbish....We initiated a lot of special programs...I think we did a reasonable job; but I don't think by any stretch of the imagination we did an adequate job. There [were]...situations where houses would get torn down...and we couldn't go down and remove them. We had to go to court, on a case by case basis, to get approval to remove a house."

"We spent untold thousands, millions probably, trying to protect the right of way, keep it clean, keep it liveable, keep it usable by the people."

Access to police and fire protection Caltrans and non-Caltrans respondents perceived the actual Century Freeway as having a greater negative impact on access to police and

fire protection. This perception is congruent with the Comparison Project's earlier completion date. The average non-Caltrans respondent also indicated that access would be much worse under the actual Century Freeway scenario. Once again, this may reflect the higher percentage of respondents in this group who live in the corridor area, and therefore, have a unique understanding of the effects of the Century Freeway on their community.

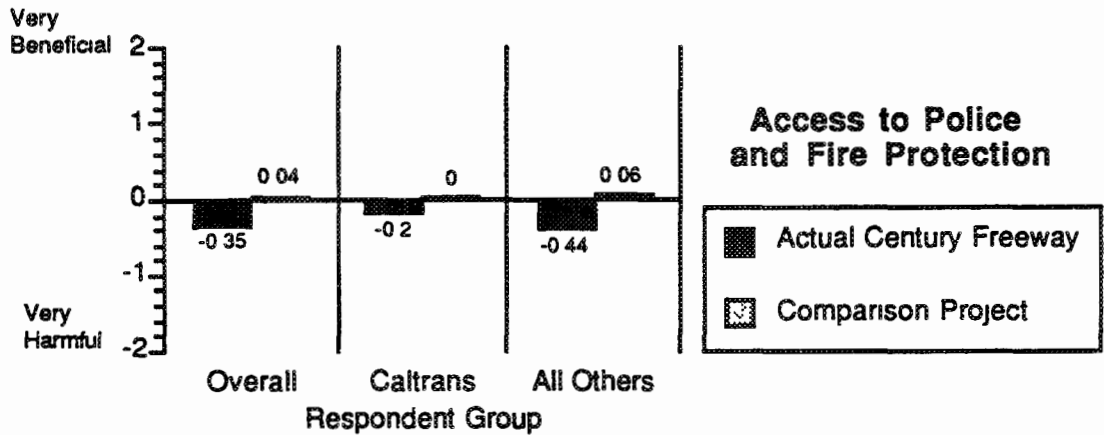


Figure XI-6

Property Maintenance Both Caltrans and non-Caltrans respondents rated the impact of freeway construction on property maintenance much worse under the actual Century Freeway scenario as compared to the Comparison Project. This response may also reflect the later predicted date of freeway completion for the actual Century Freeway (1993) than for the Comparison Project (1987). Once again, the negative impact on property maintenance is rated worse by non-Caltrans respondents than Caltrans respondents.

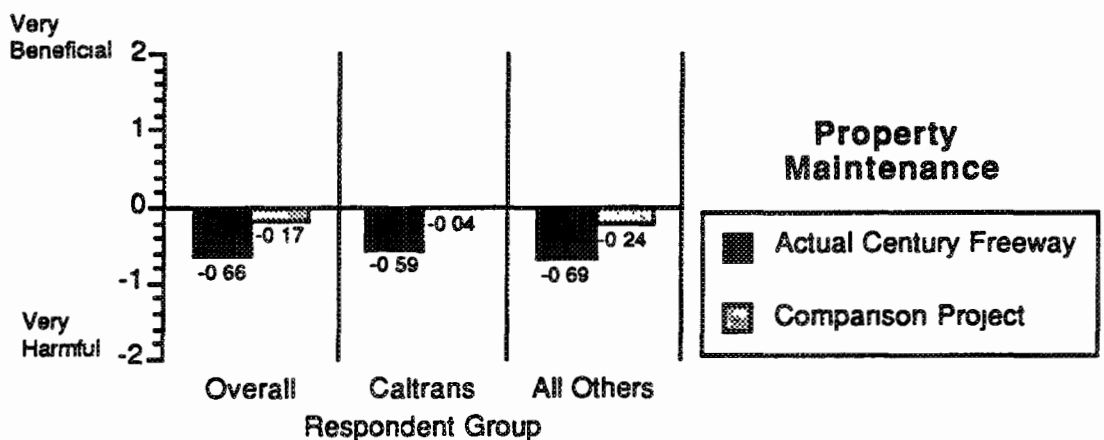


Figure XI-7

Community Planning Efforts The difference in response between Caltrans and non-Caltrans respondents is quite distinct. Several Caltrans respondents indicated that there would be a negative impact on planning efforts under the actual Century Freeway scenario and a positive impact on planning efforts under the Comparison scenario. The longer completion period for the actual Century Freeway may be the reason for this response. However, the opposite result was indicated by non-Caltrans respondents; there would be a positive effect under the actual Century Freeway scenario, but a negative effect under the Comparison Project. This perception may reflect the greater amount of oversight of Caltrans required by the consent decree. We speculate that respondents may associate this form of citizen participation with better community planning.

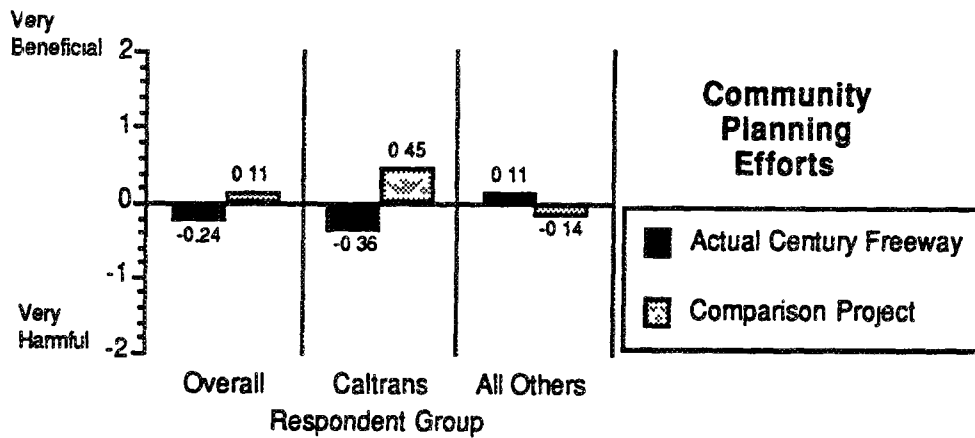


Figure XI-8

2. Long-Term Impacts

Impacts presented below are discussed within broad categories. We review data on whether differences between the actual Century Freeway and the Comparison Project would exist after completion of the freeway.

Economic Impacts

Survey results describe considerable disparity between Caltrans and others in assessments of the economic impacts of the freeway. Caltrans respondents indicated that, in general, both the prosperity of corridor businesses and residents would be greater under the Comparison project than the actual Century Freeway, but for those who participated in project-related construction activities, the benefits would be greater for the actual Century Freeway. Non-Caltrans respondents indicated that the greater economic benefits would occur under the

actual Century Freeway scenario for all residents and businesses, regardless of their participation in project-related activities. Overall, respondents felt that the greatest long-term economic benefit would be to those residents and businesses who participated in corridor related activities during the construction of the actual Century Freeway.

Gaps here are smaller than for short-term economic impacts: In the long run, differences between the two scenarios evidently are perceived as less important. As one Caltrans interviewee commented on the uncertainty created during the injunction:

"I know cases where shopping centers were proposed and the developers or the financiers would withdraw from the project....and the message that we kept getting was 'At least tell us what you're going to do. Are you going to leave this scar across this community?'...In the case of the commercial investors, it was kind of a wait-and-see."

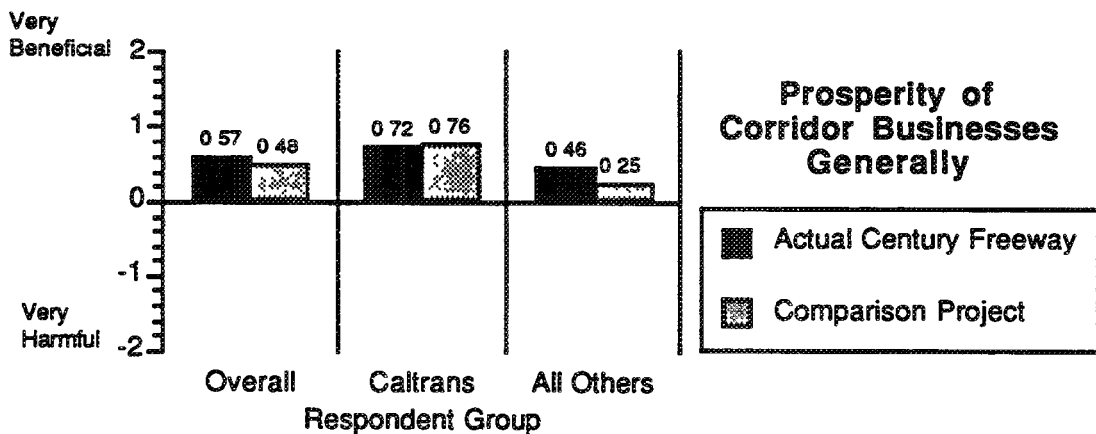


Figure XI-9

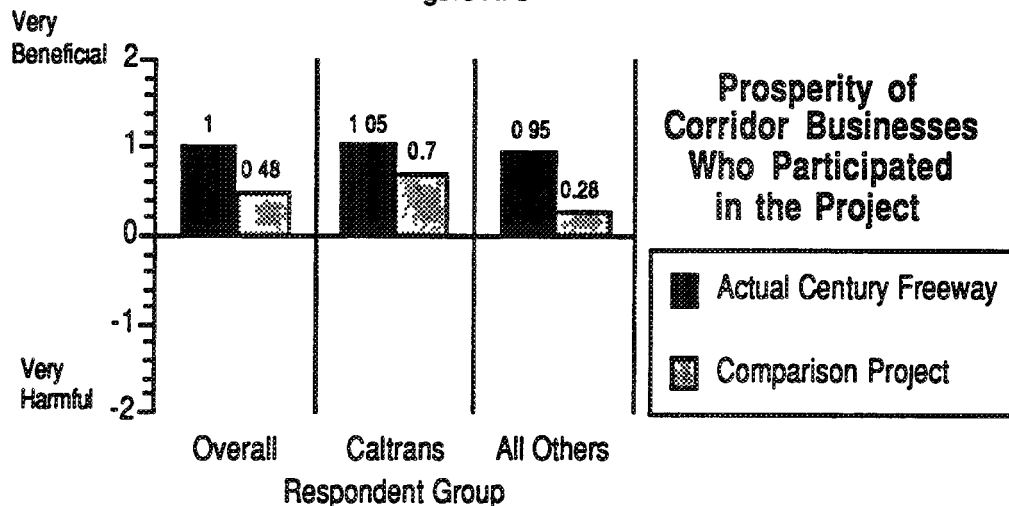


Figure XI-10

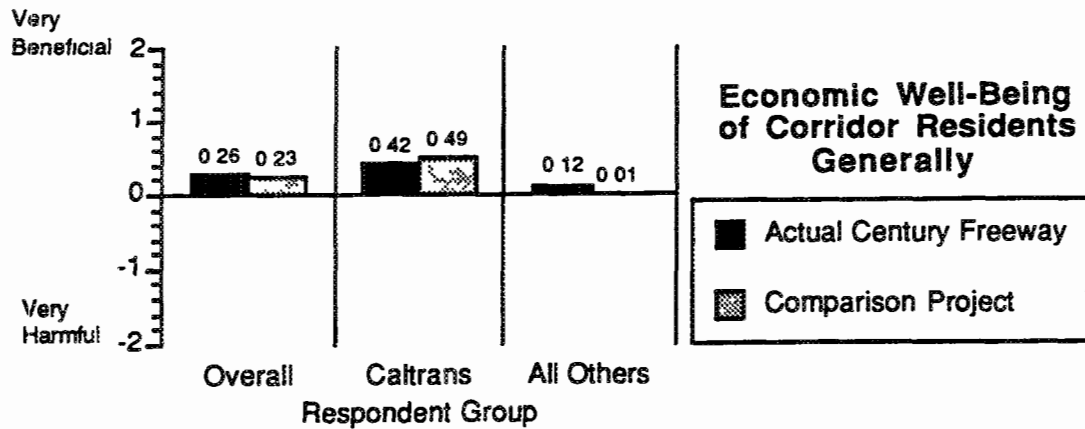


Figure XI-11

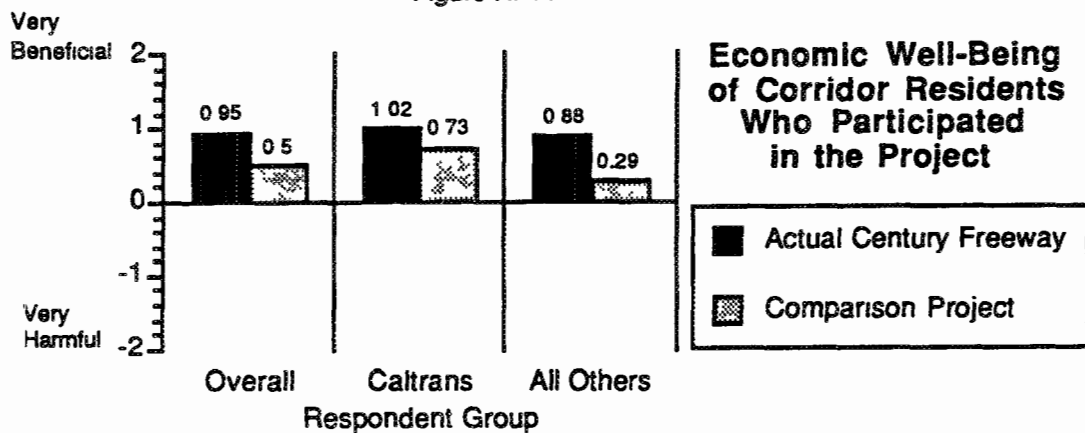


Figure XI-12

Extensive additional analysis of economic impacts is presented in Chapter VII.

Community Cohesion and Well-Being

The actual Century Freeway and the Comparison Project did not differ significantly in their long-term impacts on community cohesion and well-being. Overall, respondents indicated that the actual Century Freeway would have a slightly more beneficial impact than the Comparison Project. However, respondent groups differed in their perceptions of the degree of impact. This difference is most notable for community redevelopment. Caltrans respondents have a much higher perception of the beneficial impact of the freeway on long-term community redevelopment efforts. As one respondent commented: "[Caltrans had] an engineering culture, which did not have to deal with the social issues in building of the ground transportation system." Another respondent noted: "It [the freeway] was an engineering decision. It was not a social decision at all."

In contrast, other respondents, especially those who reside in the corridor area, tended to report a more personal awareness of possible negative impacts of the freeway on their communities:

"Freeway access and visibility may be tempting for commercializing fringes which have been residential for 50 years. Economic development opportunities versus neighborhood feeling?"

"We are victims of an automobile/freeway system forced upon us by a cabal of developers, bureaucratic highway engineers and self-seeking political leaders. Caltrans is a loose cannon."

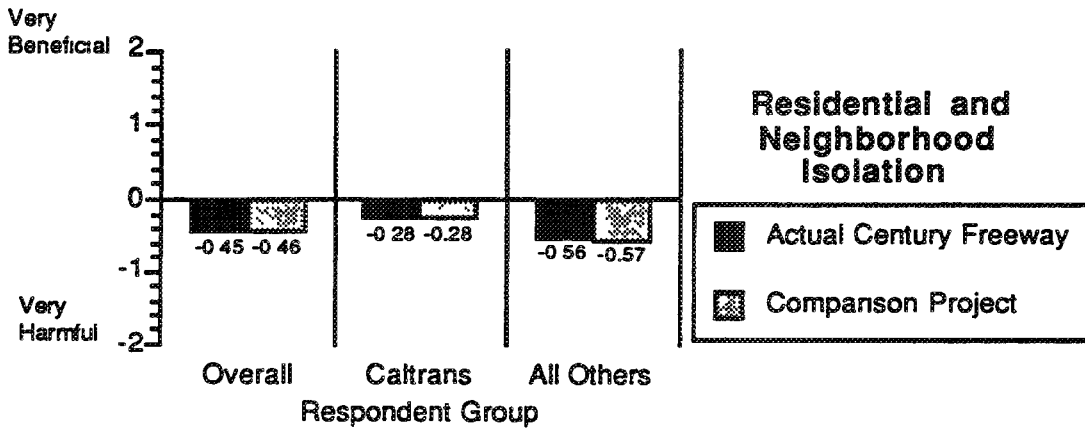


Figure XI-13

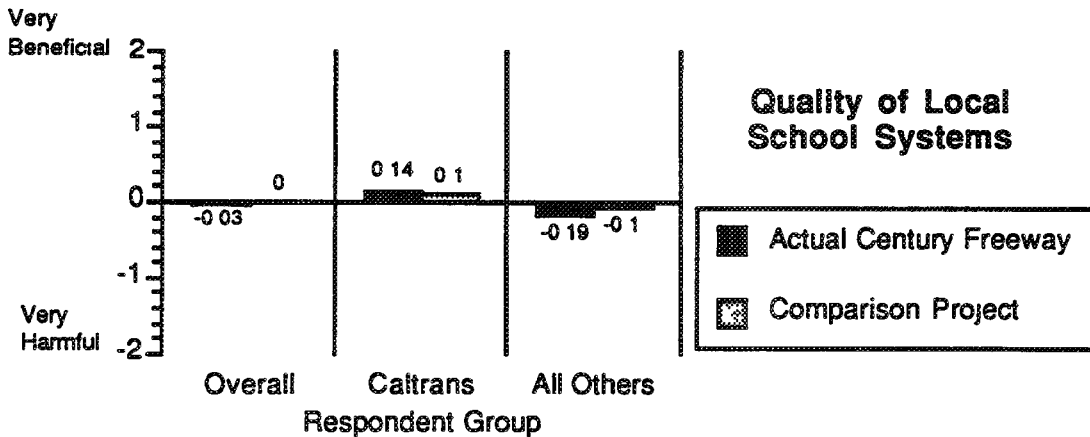


Figure XI-14

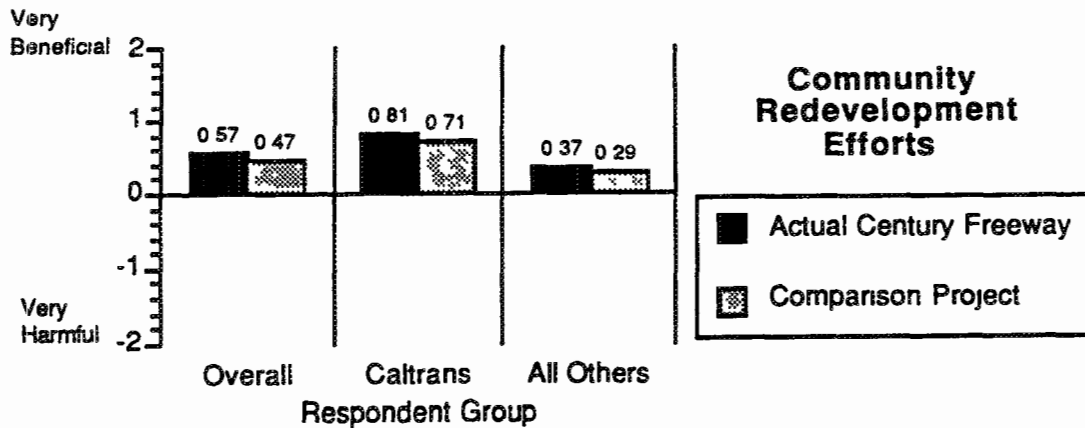


Figure XI-15

Aesthetics

In general, our sample perceived the aesthetic quality of the *freeway* system as improving under the actual Century Freeway. **Caltrans** perceived freeway aesthetics as more beneficial than did all other respondents. When we examine the impact of the freeway on *corridor city* aesthetics, **non-Caltrans** respondents rated the freeway as harmful under both scenarios, while the dominant perception of Caltrans officials was positive. The perception of the aesthetic impact of the freeway was not limited purely to the impact of the freeway itself. Concerns about housing were also expressed. As one non-Caltrans respondent stated: "Replacement housing is good and bad. Early 'affordable' homes looked stripped down, cheap and boxlike. Or houses moved in were left vacant and no aesthetics."

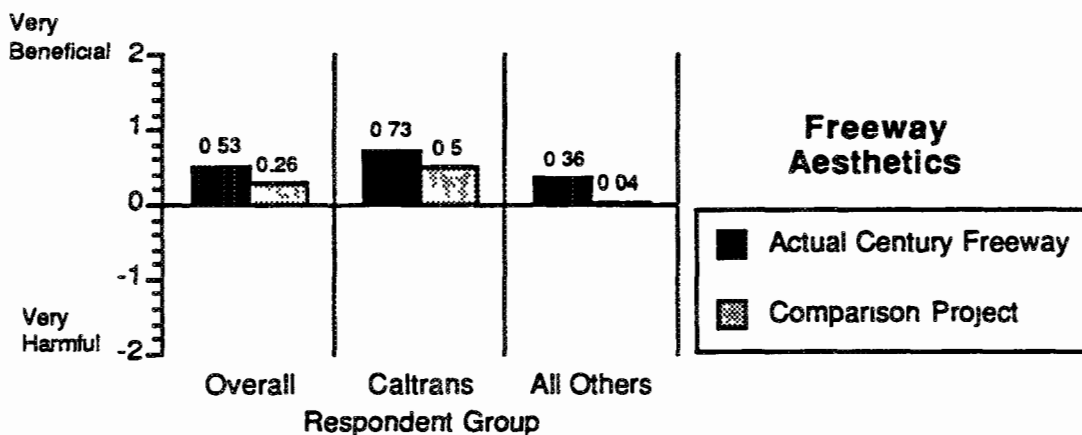


Figure XI-16

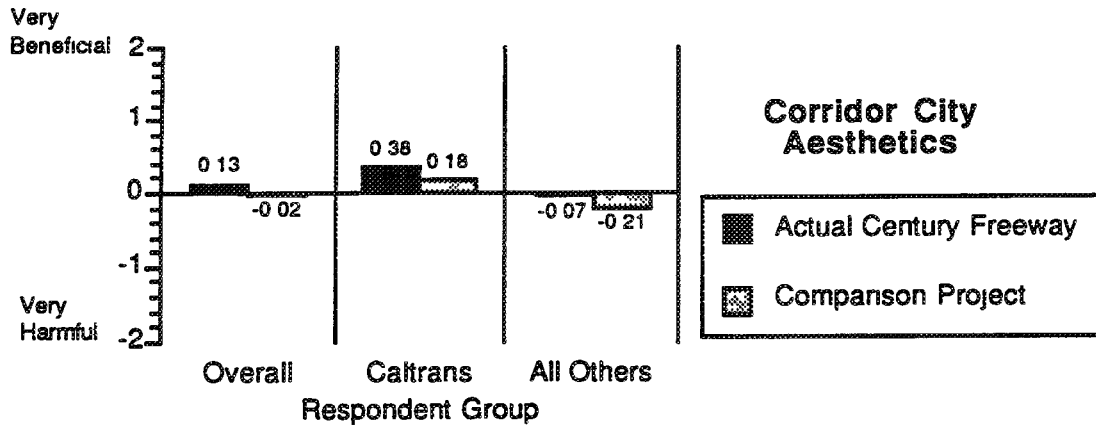


Figure XI-17

Pollution

Overall, respondents under both scenarios perceived the impacts on air pollution to be somewhat negative. In addition, overall respondents indicated a slightly greater degree of harmful impacts under the Comparison Project. The most notable difference between the groups concerned the noise level adjacent to the freeway. Caltrans officials predicted a positive impact on noise levels under both scenarios. However, non-Caltrans respondents indicated a negative impact on noise for both the actual Century Freeway and the Comparison Project.

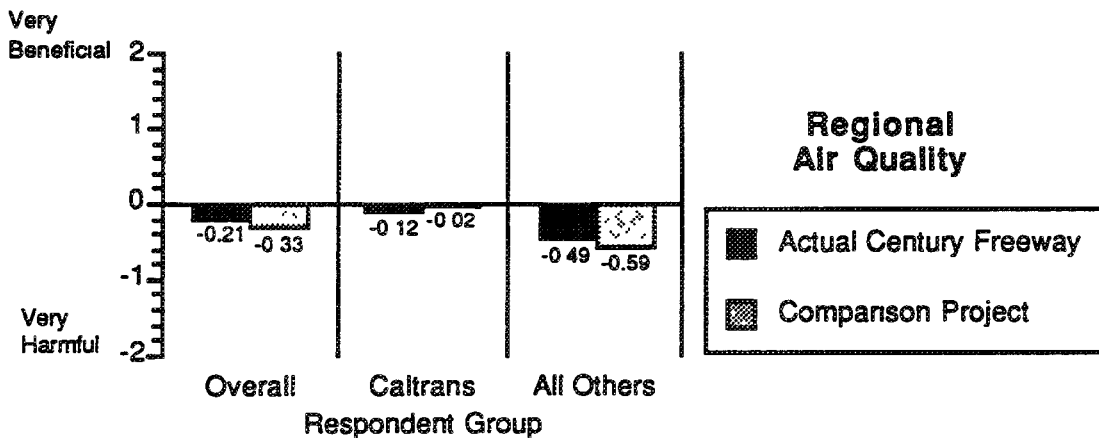


Figure XI-18

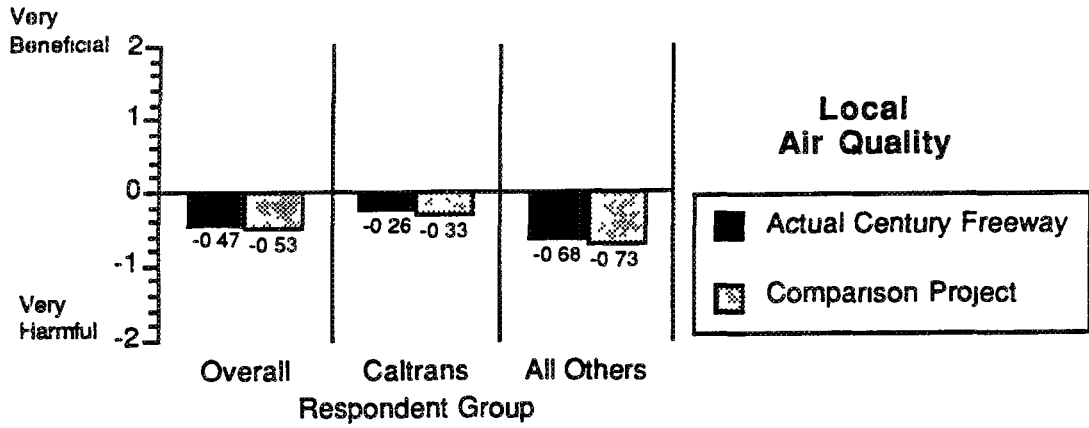


Figure XI-19

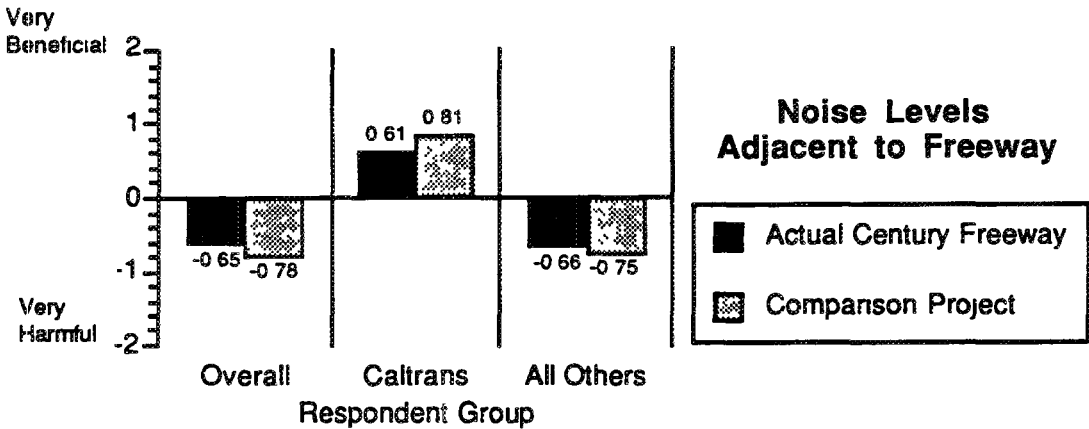


Figure XI-20

Traffic Congestion and Movement

Overall, respondents felt that freeway congestion would be less under the Comparison Project than under the actual Century Freeway. (Recall the reduction from eight lanes for the Comparison Project to six lanes for the actual Century Freeway.) When we examine mass transit availability, the above finding is reversed. Overall, respondents now perceive a much more beneficial impact on mass transit under the actual Century Freeway. (For a comparative analysis of the transportation effects of the actual and Comparison Project scenarios, see Chapter X.)

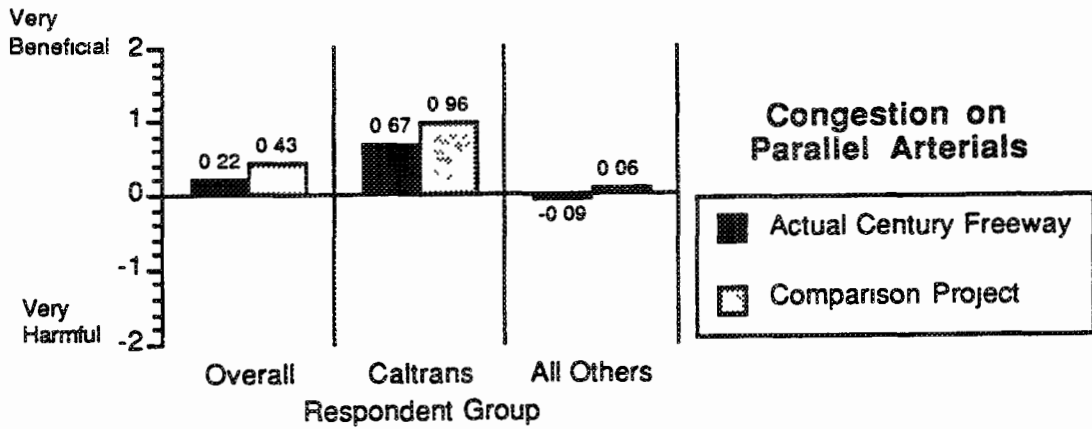


Figure XI-21

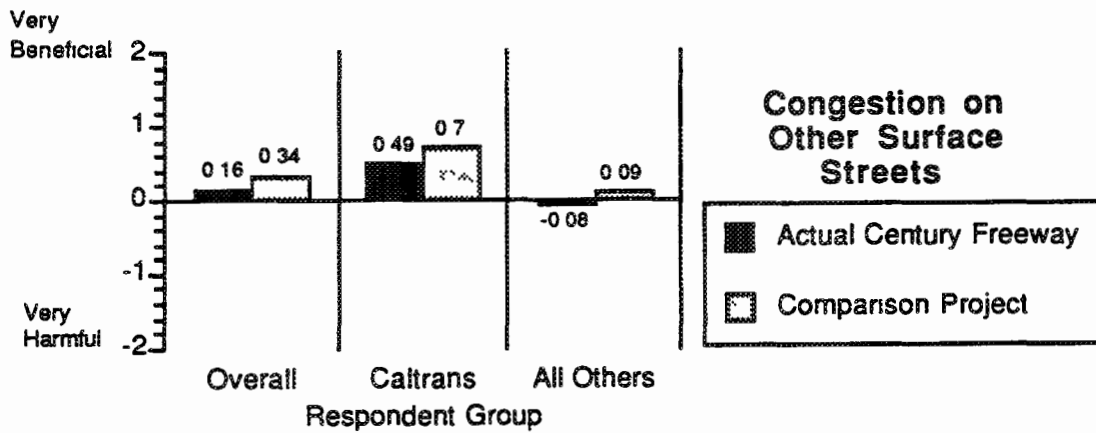


Figure XI-22

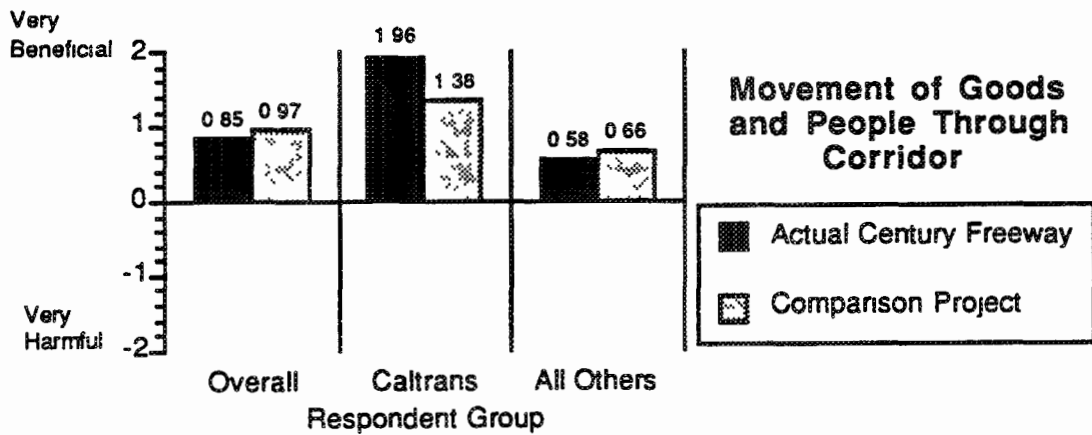


Figure XI-23

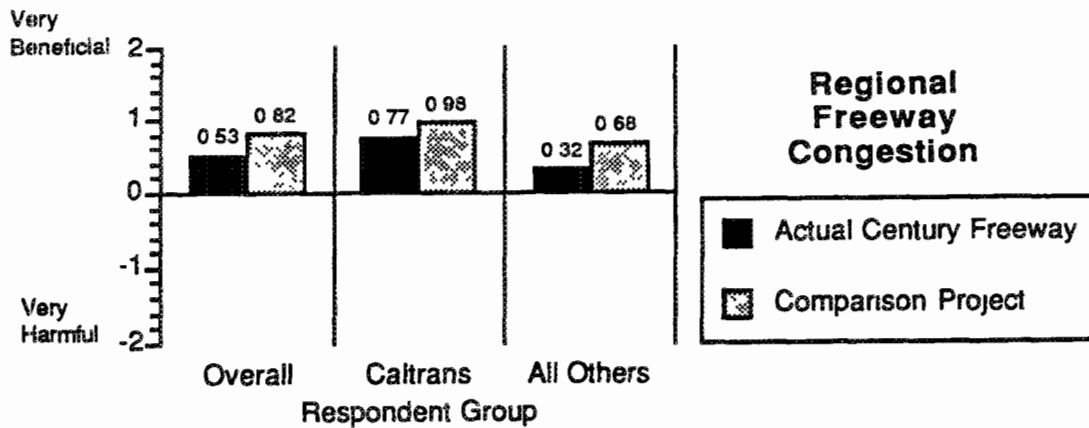


Figure XI-24

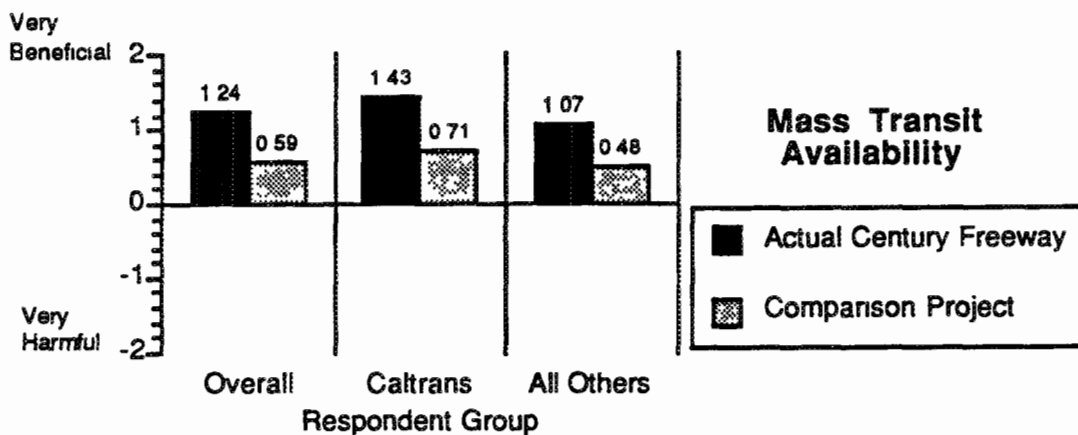


Figure XI-25

Housing

Overall, respondents rated the actual Century Freeway as having a beneficial impact, and the Comparison Project as having a harmful impact on the housing supply. The greatest difference between the actual Century Freeway and the Comparison Project for all long-term impacts was reported in response to the question on the affordable housing supply. Overall, respondents felt that the actual Century Freeway would have a large beneficial impact on the availability of affordable housing. In contrast, overall respondents rated the Comparison Project as having a negative impact on affordable housing. However, one problem consistently mentioned by interviewees was that, because of the long delay, those individuals who were originally displaced by the freeway were not beneficiaries of the increased housing supply:

"I know a few people who have stayed in the corridor, and I guess they eventually will get something better....Although most of the displaced had left, especially the early displaced."

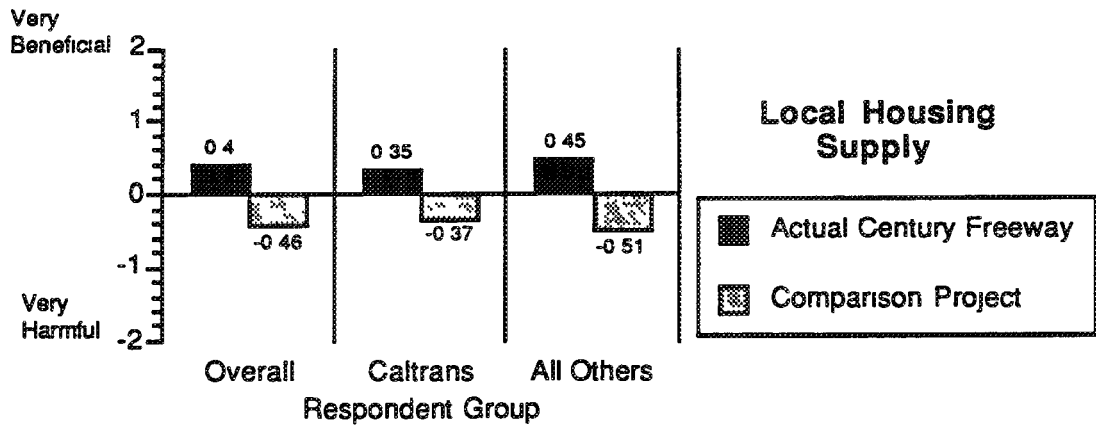


Figure XI-26

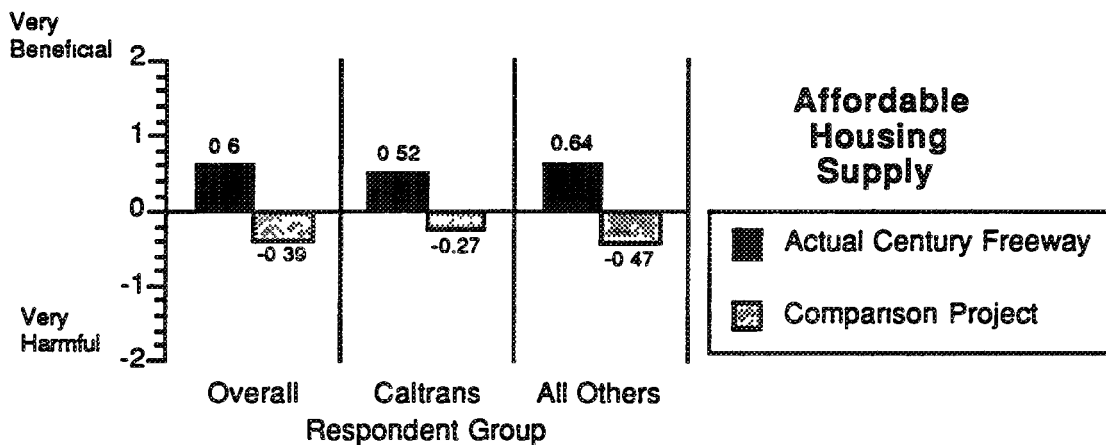


Figure XI-27

Extensive additional analysis of impacts on housing is presented in Chapter V.

Overall Impacts

Overall, the actual Century Freeway was rated as having a more positive impact on overall environmental and social indicators than the Comparison Project. The dominant perception of Caltrans respondents was that the freeway had positive social and environmental impacts in both scenarios. This finding is congruent with the views expressed by Caltrans interviewees that the overall benefits resulting from a freeway will outweigh any negative consequences (See Chapter III). However, non-Caltrans respondents rated the freeway as slightly beneficial regarding overall social and environmental impacts of the actual Century Freeway, and harmful regarding overall environmental impacts for the Comparison Project. Local officials have a more negative perceptions of impacts generally as the summary graphs in Chapter III illustrate.

Relations with Caltrans

Caltrans respondents saw damage to community relations under the actual Century Freeway. Others, while concluding that the prestige of Caltrans in the eyes of the public was slightly more negative under the Comparison Project, actually rated community relations as somewhat less negative under the actual Century Freeway. However, these respondents still rated community relations overall as negative in both conditions.

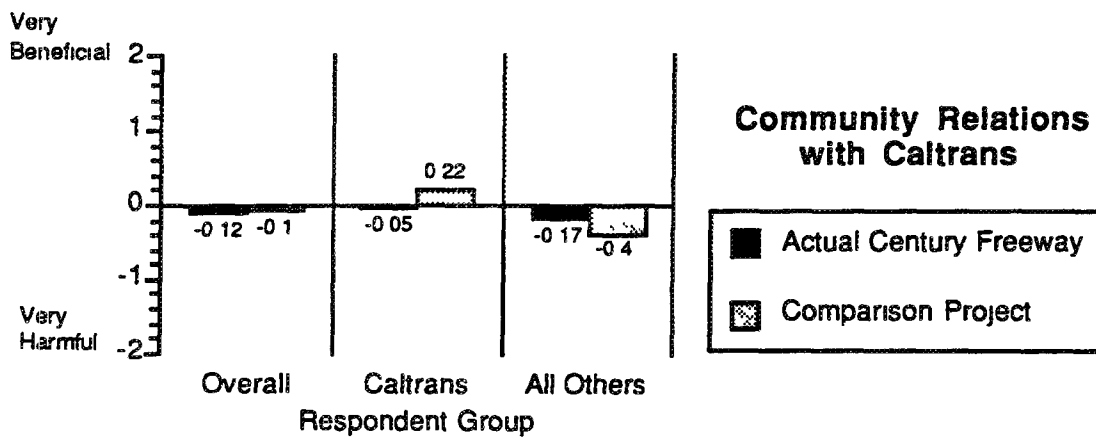


Figure XI-28

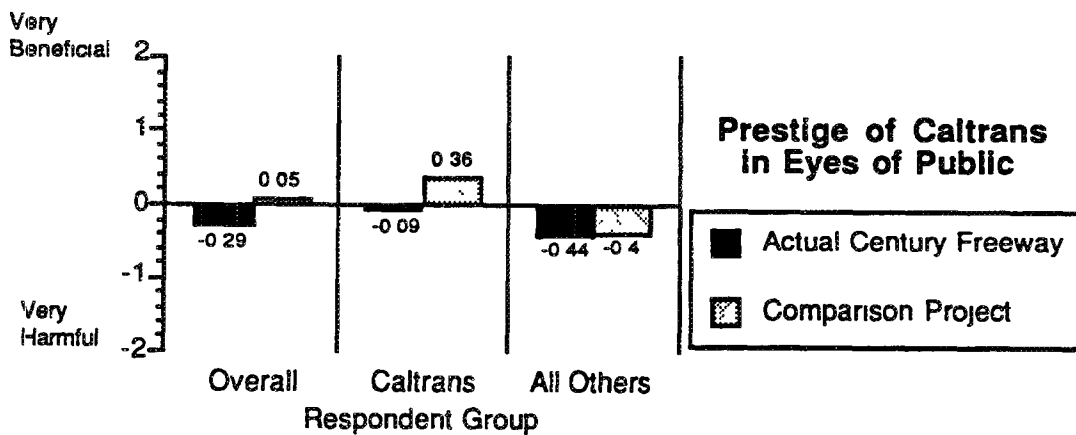


Figure XI-29

Extensive additional analysis of organizational impacts is presented in Chapters VIII and IX.

¹Results presented in this chapter include data only from respondents to our second questionnaire who indicated they had knowledge of the freeway's impacts. And for graphs presented in this chapter, "Overall" refers to all respondents; "Caltrans" to Caltrans respondents; and "All Others" to all respondents except Caltrans and FHWA respondents.

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APPENDIX A
RESEARCH TECHNICAL AGREEMENT

THIS AGREEMENT is entered into this 1st day of December, 1988
 by and between the California Department of Transportation and The Regents of the University of California. The Regents of the University of California and the Director of Transportation agree that the research study herein described shall be performed in accordance with the provisions of the Transportation Research Master Agreement Standard Agreement No. 74E344), and the following:

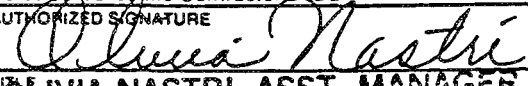

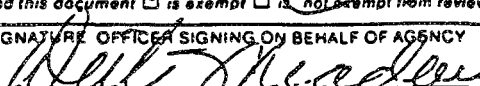
Federal participating portions of the Transportation Master Agreement shall apply:

1. Project Name: "Court Intervention, the Consent Decree, and the Century ~~City~~ Freeway"
2. Contractor's Principal Investigator: Professor Joseph F. DiMento
University of California, Irvine
3. State's Contract Monitor: James E. Turk
District 7 - I105 Liaison
Caltrans
4. This research will be performed in accordance with the contractor's proposal (UCI -12685) titled, "Court Intervention, the Consent Decree, and Century ~~City~~ Freeway" herein attached and made a part of this agreement.
5. The contractor shall update and provide copies of reports as specified in Article I-B of the Transportation Research Master Agreement.
6. The performance period shall begin on January 1, 1989, contingent upon approval by the State, and terminate on December 31, 1990, unless extended by an amendment to this agreement. This agreement is subject to immediate termination in the

Division of Construction
Responsible Unit

-(cont'd)-

IN WITNESS WHEREOF, this agreement has been executed by the parties hereto, upon the date first above written

STATE OF CALIFORNIA	CONTRACTOR	
DEPARTMENT OF TRANSPORTATION <small>hereafter called the State or Caltrans</small>	THE REGENTS OF THE UNIVERSITY OF CALIFORNIA <small>hereafter called the Contractor or UC</small>	
AUTHORIZED SIGNATURE 	AUTHORIZED SIGNATURE 	
TITLE DICK MEADOWS	TITLE OLIVIA NASTRI, ASST. MANAGER	
DEPARTMENTAL CONTRACTS OFFICER	CONTRACTS & GRANTS	
<small>(Continued on _____ sheets which are hereby attached and made a part hereof)</small>	FUND State Highway Account	Federal Catalog No -
DEPARTMENT OF GENERAL SERVICES USE ONLY	AMOUNT ENCUMBERED \$ 100,000	ENC NO IA54J273
<small>ORIG POLICY BUDGET</small>	UNENCUMBERED BALANCE \$ 150,000	APPROPRIATION Transportation
Department of General Services	ADJ INCREASING ENCUMBRANCE \$ 0	ITEM 2660
APPROVED	ADJ DECREASING ENCUMBRANCE \$ 0	CHAPTER 115 913
 8 1989	FUNCTION 2660-001-042 State 100%	STATUTES 88
ELIZABETH YOST Chief Deputy Director	LINE ITEM ALLOTMENT 54-051 E.A. 07-201-400080	FISCAL YEAR 88/89
	I HEREBY Certify upon my own personal knowledge that budgeted funds are available for this encumbrance	T.B.A. NUMBER obi. 7132
	SIGNATURE OF ACCOUNTING OFFICER 	BR NUMBER
	I hereby Certify that all conditions for exemption set forth in State Administrative Manual Section 1209 have been complied with and this document <input checked="" type="checkbox"/> is exempt <input type="checkbox"/> is not exempt from review by the Department of Finance	DATE 12/29/88
	SIGNATURE OFFICER SIGNING ON BEHALF OF AGENCY 	DATE 1/29/89

Research Technical Agreement
The Regents of the University of California
December 1, 1988

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RTA-54J273

event that Federal Highway Administration or State funding is not provided for in the 1988/89 fiscal year or any subsequent fiscal year or portion thereof, which is included in the performance period of this agreement.

The funding for any fiscal year shall not be considered approved until the Governor signs the State budget for that year.

7. The total amount payable by the State under this agreement shall not exceed the sum of :
- \$100,000 through June 30, 1989;
 - \$100,000 through June 30, 1990;
 - \$ 50,000 through December 31, 1990;
- Totalling: \$250,000 through December 31, 1990.

These total amounts shall include reimbursement to the contractor for travel expenses or per diem in compliance with the contractor's travel policy where travel is necessary to perform the research.

Unexpended funds obligated for each fiscal year may be carried over for payment for work performed in the next two fiscal years within the performance period of the contract.

APPENDIX B
SURVEY WAVE ONE

UNIVERSITY OF CALIFORNIA, IRVINE

CENTURY 105 PROJECT

ALTERNATIVE CENTURY FREEWAY SCENARIOS SURVEY

Introduction: One of the issues that the Century 105 Project Team is addressing concerns what we are calling "baseline alternative scenarios" for freeway development derived from different plausible, but not experienced, litigation histories. In order to analyze the impacts of the consent decree there must be "baseline alternative scenarios" against which to compare the existing situation. We would like your help in constructing those baselines.

This survey briefly sketches two possible alternative litigation histories. In the one scenario, you are asked to consider freeway development under conditions in which the Keith v. Volpe lawsuit and injunction occurred but there was no consent decree. In the other scenario, you are asked to assume that the Keith v. Volpe lawsuit and all litigation actually filed after February 17, 1972 never occurred. Your insights are required to "fill in the blanks" of these histories with descriptions of various aspects of the freeway project, given the general assumptions we provide.

All the items in the survey can be answered by simply circling answers or filling in the blanks, but we have allowed space for comments on most of the items. We encourage your comments on the items themselves and/or your responses. We will ensure that your responses are kept anonymous and that they appear only in summarized reports, without reference to individuals.

Thank you for your time and participation. Your input will be very helpful in providing the baseline data for our research. Should you have any questions regarding the survey or any other aspect of our study, please feel free to call our project office at (714) 856-4254. We would appreciate it if you could complete the questionnaire within the next two weeks.

Century Freeway With Keith v. Volpe But Without A Consent Decree

SCENARIO ONE: CENTURY FREEWAY WITH KEITH v. VOLPE, BUT WITHOUT A CONSENT DECREE

This scenario describes freeway development given the Keith v. Volpe lawsuit and the resulting injunction, but assumes that parties to the litigation, for whatever reasons, were not able to reach a mutually acceptable settlement in court and the consent decree. At the same time, you should assume that the same legal, technological, political, social, and economic conditions which actually affected Caltrans and freeway development between 1972 and the present still occurred. Please answer the following questions given these assumptions. We have provided space between each question for any additional comments you may have regarding each issue we present.

1 How might the lawsuit ultimately have been resolved if plaintiffs and defendants had not negotiated a consent decree? (Please circle only one number)

- Independent mediators would have been used to design a mutually acceptable freeway without arguing the case 1
- Independent mediators would have been used to design a mutually acceptable freeway after arguing the case 2
- The defendants would have won the lawsuit 3
- The plaintiffs would have won the lawsuit. 4
- Other (please specify) _____ 5

2 Under this scenario, would there have been additional public hearings?

- yes (please describe below) ... 1
- no 2

3 Would a formal environmental impact statement have been prepared for the project?

- yes 1
- no 2

4 Would a Century Freeway have been constructed under this scenario?

yes 1
no 2

If you answer "yes" to this question, please complete the remainder of the survey. If you answer "no" to this question, please explain your answer in the space below and skip to page 10 where the Scenario Two survey questions begin.

5 Would the ultimate route of the freeway through the city of Hawthorne have been the same as the route designated by the California Highway Commission in 1965? (Please circle only one number.)

- Yes, but without a freeway agreement signed by Hawthorne 1
- Yes, with a freeway agreement signed by Hawthorne 2
- No, the western terminus of the freeway would have been east of Hawthorne..... 3
- No, the "Northern Route" through Inglewood would have been selected 4
- No, a bell-shaped curve similar to the current freeway alignment would have been negotiated.. 5
- None of the above/other (please explain below)6

6 Under this scenario, groundbreaking for the Century Freeway would have occurred in 19 ____.

7 The construction of the freeway would have been broken down into ____ separate projects

8. The freeway would have been opened to traffic (Please circle one number only)

- As individual segments were completed 1
- Only after the entire route was completed 2

Scenario One
Century Freeway With Keith v. Volpe But Without A Consent Decree

9 Under this scenario, the entire route of the freeway would have been open to traffic in 19 _____

10 The freeway would have included _____ lanes in each direction for mixed flow traffic

11 The freeway would have included (Please circle one number only)

- No HOV lanes 1
- A single HOV lane for buses and carpools 2
- One HOV lane in each direction for buses and carpools 3
- Two HOV lanes in each direction for buses and carpools 4

12 Please indicate which of the following the freeway would have included under this scenario (Circle one number in each row)

		Yes	No
A.	A median which would permit future construction of HOV lanes	1	2
B	A median which would permit future busway use	1	2
C	A median which would permit future construction of additional mixed flow traffic lanes	1	2
D	A median which would permit future light rail use	1	2
E	A busway constructed concurrent with freeway construction	1	2
F	A light rail line constructed concurrent with freeway construction	1	2
G	Metered ramps	1	2
H	Linkage of Century Freeway Transitway to Harbor Freeway Transitway	1	2
I	Transit stations	1	2

13 The freeway would have included _____ interchanges with local streets

14 The federal government would have been responsible for _____% of highway program costs

15 Under this scenario, would a separate agency have represented the interests of Century Freeway displacees?

Yes 1
 No 2

If yes, please indicate which agency: _____

16 Caltrans would have been required to (Circle one number in each row)

		Yes	No
A	Meet the relocation needs of families displaced by the project, without providing for the construction of additional housing units	1	2
B	Meet the relocation needs of families displaced by the project, which would entail construction of some replacement housing units according to the "last resort" provision of the Uniform Relocation Act	1	2
C	Replenish housing for communities which had lost housing due to the project	1	2

If you indicated that a "last resort" housing program (16B) would exist, please answer questions 17, 18, and 19. If you circled 'no' for question 16B, please skip to the next page.

17. If a "last resort" housing program Approximately _____ "last resort" housing units would have been provided

18 If a "last resort" housing program Would a government agency have taken responsibility for implementation of the "last resort" housing program?

Yes (indicate agency _____) 1
 No (describe how program would be implemented below) 2

19 If a "last resort" housing program Would federal highway trust funds have been used for the "last resort" housing program?

Yes 1
 No 2

If no, please indicate how a "last resort" program would have been funded

Scenario One
Century Freeway With Keith v. Volpe But Without A Consent Decree

If you indicated that a "replenishment" housing program (16C) would exist, please answer questions 20, 21, and 22 and 23. If you circled "no" for question 16C, please skip to the next page.

20 If a "replenishment" housing program Approximately _____ "replenishment" housing units would have been provided

21 If a "replenishment" housing program Would a government agency have taken responsibility for implementation of the "replenishment" housing program?

Yes (indicate agency _____) 1
 No (describe how program would have been implemented below) 2

22 If a "replenishment" housing program Would federal highway trust funds have been used for the "replenishment" housing program?

Yes..... 1
 No2

If no, please indicate how a "replenishment" program would have been funded

23 If a "replenishment" housing program Please indicate which of the following individuals would have been eligible to purchase or rent "replenishment" dwelling units (Circle one number in each row)

		Yes	No
A	Displacees	1	2
B	Any corridor residents	1	2
C	Any individuals on Housing Authority waiting lists	1	2
D	Other(s) Please specify below	1	2

Scenario One
Century Freeway With Keith v. Voipe But Without A Consent Decree

25 Under this scenario, how would affirmative action for freeway subcontractors have been handled by Caltrans? (Please circle one number in each row)

		Yes	No
A	The same as any other Caltrans project during the time of construction	1	2
B	In accordance with all relevant federal and state laws	1	2
C	By a special affirmative action program whose goals for minority and women subcontractors exceeded existing federal goals	1	2
D	By a special affirmative action program whose goals for minority and women subcontractors exceeded existing state goals	1	2
E	By a civil rights office in District 7	1	2
F	In cooperation with an affirmative action committee outside of Caltrans responsible for monitoring affirmative action compliance	1	2
G	Other (Please specify below)	1	2

26 Who would have been responsible for monitoring compliance with affirmative action procedures for subcontractors? (Please circle one number in each row)

		Yes	No
A	Caltrans Headquarters civil rights	1	2
B	District 7 civil rights	1	2
C	Federal Highway Administration	1	2
D	A separate agency funded by Caltrans	1	2
E	A separate agency not funded by Caltrans	1	2
F	Contractors	1	2
G	Other (Please specify below)	1	2

27 Under this scenario, how would affirmative action for freeway construction employees have been handled by Caltrans? (Please circle one number in each row)

		Yes	No
A	The same as any other Caltrans project during the time of construction	1	2
B	In accordance with all relevant federal and state laws	1	2
C	By a special affirmative action program whose goals for minority and women subcontractors exceeded existing federal goals	1	2
D	By a special affirmative action program whose goals for minority and women subcontractors exceeded existing state goals	1	2
E	By a civil rights office in District 7	1	2
F	In cooperation with an affirmative action committee outside of Caltrans responsible for monitoring affirmative action compliance	1	2
G	Other (Please specify below)	1	2

28 Who would have been responsible for monitoring compliance with affirmative action procedures for construction employees? (Please circle one number in each row)

		Yes	No
A.	Caltrans Headquarters civil rights	1	2
B	District 7 civil rights	1	2
C	Federal Highway Administration	1	2
D	A separate agency funded by Caltrans	1	2
E	A separate agency not funded by Caltrans	1	2
F	Contractors	1	2
G	Other, please specify below	1	2

SCENARIO TWO: CENTURY FREEWAY WITHOUT KEITH v. VOLPE

In this scenario we would like you to assume that the Keith v. Volpe lawsuit and all litigation actually filed after February 17, 1972 (the date Keith v. Volpe was filed) *never occurred*. At the same time, you should assume that the same legal, technological, political, social, and economic conditions which actually affected Caltrans and freeway development between 1972 and the present still occurred. Please answer the following questions given these assumptions. We have provided space between each question for any additional comments you may have regarding each issue we present.

1 Would a Century Freeway have been constructed under this scenario?

yes 1
no 2

If you answer "yes" to this question, please complete the rest of the Scenario Two survey questions. If you answer "no" to this question, please explain your answer in the space below and skip to page 18.

2 Under this scenario, would there have been additional public hearings?

yes (please describe below) 1
no 2

3 Would a formal environmental impact statement have been prepared for the project?

yes ... 1
no 2

4 Would the ultimate route of the freeway through the city of Hawthorne have been the same as the route designated by the California Highway Commission in 1965? (Please circle only one number)

- Yes, but without a freeway agreement signed by Hawthorne 1
- Yes, with a freeway agreement signed by Hawthorne 2
- No, the western terminus of the freeway would have been east of Hawthorne 3
- No, the "Northern Route" through Inglewood would have been selected 4
- No, a bell-shaped curve similar to the current freeway alignment would have been negotiated..... 5
- None of the above/other (please explain below) 6

5 Under this scenario, groundbreaking for the Century Freeway would have occurred in 19 _____

6 The construction of the freeway would have been broken down into _____ separate projects

7. The freeway would have been opened to traffic (Please circle one number only)

- As individual segments were completed..... 1
- Only after the entire route was completed..... 2

8 The entire route of the freeway would have been open to traffic in 19 _____.

9 Under this scenario, the freeway would have included _____ lanes in each direction for mixed flow traffic

10 The freeway would have included (Please circle one number only)

- No HOV lanes 1
- A single HOV lane for buses and carpools.. .. 2
- One HOV lane in each direction for buses and carpools .. . 3
- Two HOV lanes in each direction for buses and carpools 4

Scenario Two
Century Freeway Without Keith v. Volpe

11 Please indicate which of the following the freeway would have included under this scenario (Circle one number in each row)

		Yes	No
A	A median which would permit future construction of HOV lanes	1	2
B	A median which would permit future busway use	1	2
C	A median which would permit future construction of additional mixed flow traffic lanes	1	2
D	A median which would permit future light rail use	1	2
E	A busway constructed concurrent with freeway construction	1	2
F	A light rail line constructed concurrent with freeway construction	1	2
G	Metered ramps	1	2
H	Linkage of Century Freeway Transitway to Harbor Freeway Transitway	1	2
I	Transit stations	1	2

12 The freeway would have included _____ interchanges with local streets

13 The federal government would have been responsible for _____ % of highway program costs

14 Under this scenario, would a separate agency have represented the interests of Century Freeway displacees?

Yes 1
No 2

If yes, please indicate which agency: _____

15 Caltrans would have been required to (Circle one number in each row)

		Yes	No
A	Meet the relocation needs of families displaced by the project, without providing for the construction of additional housing units	1	2
B	Meet the relocation needs of families displaced by the project, which would entail construction of some replacement housing units according to the "last resort" provision of the Uniform Relocation Act	1	2
C	Replenish housing for communities which had lost housing due to the project	1	2

If you indicated that a "last resort" housing program (question 15B above) would exist, please answer questions 16, 17, and 18. If you circled "no" to question 15B, please skip to the next page.

16 If a "last resort" housing program Approximately _____ "last resort" housing units would have been provided

17 If a "last resort" housing program Would a government agency have taken responsibility for implementation of the "last resort" housing program?

Yes (indicate agency _____)	1
No (describe how program would be implemented below)	2

18 If a "last resort" housing program Would federal highway trust funds have been used for the "last resort" housing program?

Yes	1
No	2

If no, please indicate how a "last resort" program would have been funded

If you indicated that a "replenishment" housing program (question 15C above) would exist, please answer questions 19, 20, and 21 and 22. If you circled "no" for question 15C, please skip to the next page.

19 If a "replenishment" housing program Approximately _____ "replenishment" housing units would have been provided

20 If a "replenishment" housing program Would a government agency have taken responsibility for implementation of the "replenishment" housing program?

Yes (indicate agency _____) 1
No (describe how program would have been implemented below) 2

21 If a "replenishment" housing program Would federal highway trust funds have been used for the "replenishment" housing program?

Yes 1
No 2

If no, please indicate how a "replenishment" program would have been funded

22 If a "replenishment" housing program Please indicate which of the following individuals would have been eligible to purchase or rent "replenishment" dwelling units (Circle one number in each row)

		Yes	No
A	Displacees	1	2
B	Any corridor residents	1	2
C	Any individuals on Housing Authority waiting lists	1	2
D	Other(s) Please specify below	1	2

Scenario Two
Century Freeway Without Keith v. Volpe

24 Under this scenario, how would affirmative action for freeway subcontractors have been handled by Caltrans? (Please circle one number in each row)

		Yes	No
A	The same as any other Caltrans project during the time of construction	1	2
B	In accordance with all relevant federal and state laws	1	2
C	By a special affirmative action program whose goals for minority and women subcontractors exceeded existing federal goals	1	2
D	By a special affirmative action program whose goals for minority and women subcontractors exceeded existing state goals	1	2
E	By a civil rights office in District 7	1	2
F	In cooperation with an affirmative action committee outside of Caltrans responsible for monitoring affirmative action compliance	1	2
G	Other (Please specify below)	1	2

25 Who would have been responsible for monitoring compliance with affirmative action procedures for subcontractors? (Please circle one number in each row)

		Yes	No
A	Caltrans Headquarters civil rights	1	2
B	District 7 civil rights	1	2
C	Federal Highway Administration	1	2
D	A separate agency funded by Caltrans	1	2
E	A separate agency not funded by Caltrans	1	2
F	Contractors	1	2
G	Other (Please specify below)	1	2

26 Under this scenario, how would affirmative action for freeway construction employees have been handled by Caltrans? (Please circle one number in each row)

		Yes	No
A	The same as any other Caltrans project during the time of construction	1	2
B	In accordance with all relevant federal and state laws	1	2
C	By a special affirmative action program whose goals for minority and women subcontractors exceeded existing federal goals.	1	2
D	By a special affirmative action program whose goals for minority and women subcontractors exceeded existing state goals	1	2
E	By a civil rights office in District 7.	1	2
F	In cooperation with an affirmative action committee outside of Caltrans responsible for monitoring affirmative action compliance	1	2
G	Other (Please specify below)	1	2

27 Who would have been responsible for monitoring compliance with affirmative action procedures for construction employees? (Please circle one number in each row.)

		Yes	No
A.	Caltrans Headquarters civil rights	1	2
B	District 7 civil rights	1	2
C	Federal Highway Administration	1	2
D	A separate agency funded by Caltrans	1	2
E	A separate agency not funded by Caltrans	1	2
F	Contractors	1	2
G	Other (Please specify below)	1	2

Alternative Scenario Plausibility

Given your knowledge of the history of the Century Freeway and the changing regulatory, fiscal and political environments affecting Caltrans and other relevant parties, which of the two scenarios is the more plausible alternative scenario for the development of the Century Freeway? (If you feel that both scenarios are implausible, we would like you to select the less implausible of the two scenarios for the development of the Century Freeway) (Circle one number only)

- Scenario One (Keith v. Volpe, but without a consent decree) 1
- Scenario Two (without Keith v. Volpe) 2

Background Information

1 For how many years have you been involved in any capacity on the Century Freeway Project?

Number of years involved = _____

2 For each of the following, please indicate the degree to which you perceive yourself to be or have been

		Not at all					Extremely
A	Involved in the planning of the Century Freeway in the early 1970's	1	2	3	4	5	
B.	Involved in the Century Freeway lawsuit in the early 1970's	1	2	3	4	5	
C	Involved in the negotiations leading to the 1979 consent decree	1	2	3	4	5	
D	Involved in the negotiations leading to the 1981 consent decree	1	2	3	4	5	
E	Influential on the development of the Century Freeway	1	2	3	4	5	
F	Influential on the outcome of the Century Freeway lawsuit	1	2	3	4	5	
G	Knowledgeable with regard to the history of the Century Freeway	1	2	3	4	5	
H	Emotionally involved with the Century Freeway project	1	2	3	4	5	
I	Satisfied with the history of the Century Freeway	1	2	3	4	5	

Thank you for completing the questionnaire. If there are any comments you would like to make, please use the space provided below. Please check for any unanswered questions, place in the return envelope, and mail as soon as conveniently possible to

Century 105 Project
Public Policy Research Organization
310 Social Ecology
University of California, Irvine
Irvine, CA 92717

ADDITIONAL COMMENTS

APPENDIX C
REPRESENTATIVE INTERVIEW GUIDE

4
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Interview # _____

Interviewers: JD DH PL DVH

Name _____

Address _____

Present Position _____

Position relevant to 105 _____

Organization Code: _____

Period of Involvement with 105 _____

Date _____

Length of Interview _____

INTRODUCTION As our letter of introduction explained, we are undertaking an in depth study of the Glenn Anderson Century 105 Freeway-Transitway.

The project aims:

- 0 to chronicle the history of the development of the freeway and
- 0 to identify the impact of the consent decree on the project.
- 0 This type of project can be endlessly fascinating and unlimited: We, however, have to limit. So we have designed a structured interview which, of course, cannot cover all of the interesting aspects of the project but which, we think, will contribute to a valuable public policy study.

The handout describes some of the factors we will address. COPY OF A BRIEF, OFFICIAL DESCRIPTION OF THE RESEARCH TASK.

This is a mammoth task, and we wish to do the most objective, comprehensive, job possible--and one useful to policy formation.

We have a structured interview guide which we would like to make

our way through, but, we are interested in any substantive insights you may wish to offer.

In order to produce the most complete and objective study possible, all interview information will be reported anonymously.

However, if you wish to be quoted and identified we can accommodate that request. If so, we will send you pages reflecting our summary of your quotation before the final report is completed and allow you a few days to suggest changes or corrections.

Check here if interviewee wishes to see non anonymous responses attributed to her or him. _____

Some administrative questions and then, if time allows, some substantive inquiries.

DO YOU MIND IF I USE A TAPE RECORDER?

- 0 One feature of the Century Freeway Consent Decree which immediately struck us was the size of the Housing Program. As you know, the scope of the Century Freeway Housing Program is mammoth. Are you aware of any other housing relocation/replenishment programs that are comparable in size?
- 0 We have been told that HCD had not constructed a single unit of housing prior to its being selected as lead agency for the Century Freeway Housing Project. What, historically, had been HCD's mission and what were its strengths as an organization?
- 0 An article in the Los Angeles Times asserted that HCD was selected as lead agency for the Century Freeway Housing Program because it was "small, innovative, and not highway oriented or in the Caltrans bureaucracy." What are your impressions on the reasons why HCD was assigned responsibility for the CF Housing Program?
- 0 What proportion of HCD's total workload was Century Freeway-related during your tenure with the Department?
- 0 Could you briefly describe the status of the Century Freeway Housing Program when you became HCD Director? What sort of program did you inherit? PROBE as to number of units constructed, staffing in key positions, any funding or staffing problems, interorganizational relationships, etc.

0 I would like you now to take a moment to describe in a drawing or picture the organizations and people that are responsible for implementation of the Century Freeway Housing Program. Indicate through arrows and lines who reports to whom. We'd like to know who's doing what, and who is in charge. Obviously, there is no right answer to this question. We are simply trying to get a map of what peoples' perceptions are concerning how this project is organized.

0 For the next several minutes I'd like to pursue a different line of questioning. I'd like you to look at this series of cards, each card describing a different part of the 1981 consent decree. We're interested in your knowledge of the decree itself. Would you please tell us whether you knew each was a requirement of the decree, and if so, whether you originally approved of the requirement. Here are your choices for this set of questions. HAND OVER SECOND CARD LISTING POSSIBLE ANSWERS. Any questions before we begin? Feel free to comment on the items as you go through them.

9. 3700 units total
Knew of existence: yes no not sure
Approved then: yes no not sure
COMMENTS:

10. 1,175 Element
Knew of existence: yes no not sure
Approved then: yes no not sure
COMMENTS:

11. 1,025 Element
Knew of existence: yes no not sure
Approved then: yes no not sure
COMMENTS:

12. \$110 million Element
Knew of existence: yes no not sure
Approved then: yes no not sure
COMMENTS:

13. HCD lead agency for housing
Knew of existence: yes no not sure
Approved then: yes no not sure
COMMENTS:

14. Housing Advisory Committee
Knew of existence: yes no not sure
Approved then: yes no not sure
COMMENTS:

15. Phasing fwy, hous. constr.
Knew of existence: yes no not sure
Approved then: yes no not sure
COMMENTS:

16. Advocate
Knew of existence: yes no not sure
Approved then: yes no not sure
COMMENTS:

17. Adv. serves pleasure of plaintiffs
Knew of existence: yes no not sure
Approved then: yes no not sure
COMMENTS:

18. feds pay 92% housing
Knew of existence: yes no not sure
Approved then: yes no not sure
COMMENTS:

19. emp. action. plan general
Knew of existence: yes no not sure
Approved then: yes no not sure
COMMENTS:

28. orgs. funded by ct + FHWA
Knew of existence: yes no not sure
Approved then: yes no not sure
COMMENTS:

We would also like to know whether the inclusion of each element into the project has been good public policy. In other words, we would like to know whether the element has promoted or countered the general welfare. I'd like you to choose one of the responses on this card for each part of the project described on the colored cards. HAND RESPONDENT CARD WITH ANSWERS. In addition to selecting one of the responses on the gray card, I encourage your comments on the implementation and/or impacts of any of these elements. Do you have any questions before we begin?

HAND RESPONDENT SET OF CARDS

- | | | | | |
|-----|--|---|---|----|
| 9. | 3700 units total
COMMENTS: | P | C | DK |
| 10. | 1,175 Element
COMMENTS: | P | C | DK |
| 11. | 1,025 Element
COMMENTS: | P | C | DK |
| 12. | \$110 million Element
COMMENTS: | P | C | DK |
| 13. | HCD lead agency for housing
COMMENTS: | P | C | DK |
| 14. | Housing Advisory Committee
COMMENTS: | P | C | DK |
| 15. | Phasing fwy, hous. constr.
COMMENTS: | P | C | DK |
| 16. | Advocate
COMMENTS: | P | C | DK |

- | | | | | |
|-----|--|---|---|----|
| 17. | Adv. pleas. of plaint.
COMMENTS: | P | C | DK |
| 18. | feds pay 92% housing
COMMENTS: | P | C | DK |
| 19. | emp. action. plan general
COMMENTS: | P | C | DK |
| 28. | orgs. fund ct + FHWA
COMMENTS: | P | C | DK |

0 Would you like to add any additional comment on the implications of these or any other aspects of the consent decree?

I would now like to present a series of statements describing a hypothetical consent decree's formulation and implementation. I'd like you to indicate whether each statement is an accurate or inaccurate descriptor of the Century Freeway Consent Decree's formulation and implementation. PROBE: How important to understanding what's happened to Century is accuracy or inaccuracy of these statements.

1. Nonparties to the litigation who are involved in implementing the decree participated in its formulation.
2. The writers of the decree anticipated how difficult it would be to get reliable information on compliance.
3. The writers of the decree recognized bureaucratic rivalries and inertia which would prove obstacles to implementation.

4. There was a "fact-finding" stage in decree formulation which involved gathering information about the institutions which the consent decree would modify.
5. The court served as a guardian of the rights of absent class members in approving the consent decree.
6. The consent decree describes in detail the actions defendants have agreed to undertake as well as deadlines for achieving the required changes.
7. The decree contains reporting requirements that produce reliable information to determine whether defendants are meeting their obligations.
8. The decree provides for the free exchange of information among parties upon request.
9. The decree provides for a monitor whose sole authority is to gather information, assess the extent to which defendants are complying with the decree, report to the court, and offer assistance in resolving minor disputes.
10. The decree provides for the creation of new bodies outside the formal judicial system which resolve disputes and lessen the need for the court to intervene.
11. Plaintiffs in the litigation resulting in the decree have discernible, homogeneous interests.
12. Defendants in the litigation are officials of organizations with an identifiable and coherent structure.
13. The defendant organizations have more or less consistent interests.
14. The decree allows agencies to evade accountability by securing judicial blessing for disputable policy choices.
15. The court was willing to assume a central role in implementing the decree and demonstrated a commitment to effective enforcement.
16. The judge tended to choose its approach in dispute resolution on a case-by-case basis to best achieve progress in each particular case.

17. Success in resolving by agreement whatever disputes arise depends essentially upon keeping alive the original spirit of consent.
18. The critical factor in achieving the changes desired by the decree is people with the vision, commitment, and courage to make the consent decree work.

=====
0 What were the major difficulties HCD faced in administering the housing program?

follow-up: How did you try to overcome those difficulties? Are difficulties related to complexity of task, organizations, etc.

0 On a more personal level, would you describe for us some specific decisions you faced as an administrator which you found particularly difficult or challenging?

0 Press accounts of the housing program have been critical of the quality of construction of Century Freeway units and a high vacancy rate. To what extent do you feel these criticisms are justified?

0 How has the Century Freeway project been integrated into HCD's organizational structure? We're interested in the creation of new divisions, branches, offices, and/or committees. PROBE: What necessitated the creation of these groups? What's the function of the groups? When were the groups formed; do they still exist?

0 What informal working groups or associations have been formed within HCD to deal with Century Freeway Consent Decree issues?
PROBE AS ABOVE

0 Could you comment on the relationship between HCD headquarters in Sacramento and the Century Freeway Housing Program vis a vis responsibility for day to day project administration and project oversight?

0 Can you cite any specific features of HCD's structure, personnel, or disposition regarding the housing program which have acted either as impediments to implementation of the program or which have promoted implementation of the program?

The consent decree requires interaction between agencies which traditionally had not interacted (for example, Caltrans and HCD), as well as creates new agencies (for example, the Office of the Advocate and the Century Freeway Affirmative Action Committee) with which HCD must interact. I would like to focus for the next few questions on interorganizational relationships.

0 Would you agree that Caltrans, HCD, FHWA, the Office of the Advocate, CFAAC, and the Center for Law are the organizations with the biggest impacts on implementation of the consent decree? If not, what other organizations are central to implementation?

0 To what extent does HCD perceive these other organizations as partners in the implementation of the housing program, and to what extent as HCD's opponents in implementation of the housing program? How have these roles changed over time?
PROBE: GET COMMENTS ON EACH OF THE ORGANIZATIONS.

CT:

FHWA:

CFAAC:

Advocate:

Center for Law:

0 Can you identify any structural, procedural, or dispositional characteristics of these organizations which, from HCD's perspective, have made implementation of the Consent Decree difficult? Let's start with Caltrans. (ALSO DO CFAAC, CENTER FOR LAW, FHWA, ADVOCATE, OTHER ORGS. WHICH INTERVIEWEE MENTIONS. TRY TO GET CONCRETE EXAMPLES)

0 Did HCD staff participate in any informal interorganizational working groups to deal with housing program implementation?
PROBE as necessary

- 0 One document whose preparation required great interorganizational cooperation is the Century Freeway Housing Plan. How would you assess the utility of the Housing Plan prepared for the Housing Program? What were its strengths and weaknesses, and how was the Plan used by HCD?

I would like to focus a bit more closely on the relationship between Caltrans and HCD.

- 0 In general, how did the roles of Caltrans and HCD differ with respect to implementation of the housing program?
- 0 How were the roles and responsibilities of HCD and Caltrans vis a vis the CF Housing Program officially defined? Are you aware of any difference in interpretations of the various roles of Caltrans and HCD under the Brown administration versus under the Duekmejian administration?
- 0 A former Century Freeway Housing Program Executive Director wrote that "the most serious threat to Consent Decree implementation is the blatant and undisguised attempt by Caltrans to assume control of the housing program." Do you feel this assertion is accurate? While you were at HCD, what strategies did Caltrans use to "get control" of the project?

follow-up: What strategies did HCD use to retain control?

0 Some have identified personality conflicts as a source of tension between HCD and Caltrans. Would you comment on the extent to which perceived tensions are based on individual or interpersonal factors as opposed to organizational factors?

0 How important to the success of the housing program was local community support? Did resistance to the program change over time? Why?

follow-up: What strategies were used to try to overcome or otherwise deal with local community opposition?

0 In your view are there any other problems with the design or implementation of the CD which we have not touched on?

0 Do you feel that the Center for Law in the Public Interest has acted to further the public interest in the story of the Century 105?

0 What would you cite as the major cost [financial or otherwise] of the Consent Decree?

0 What would you cite as a major benefit of the consent decree?

0 If there is one lesson the world should learn from the story of the Century Freeway and the Consent Decree, what would that lesson be?

We've just about reached the end of the structured interview. However, we do have a few more items we'd like to cover with you.

0 Are there archival materials (correspondence, memos, reports) available through (you, your office) that can be made available to us?

Probe as to the nature of the archival material.

0 Could you please name two of the major figures in the 105 story whom you think we should interview? Why?

<u>Name</u>	<u>address or contact</u>	<u>phone</u>
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0 If you were designing the study, what issues would you like to see us explore?

APPENDIX D
SURVEY WAVE TWO

ALTERNATIVE CENTURY 105 FREEWAY PROJECT COMPARISONS

As part of our research on the Century 105 Freeway, Caltrans officials, plaintiffs' attorneys, and others have assisted us in developing an alternative scenario for freeway construction had the litigation regarding the freeway not resulted in the present consent decree. We are calling this alternative scenario the "Comparison Project." The table below and on the next page depicts the similarities and differences between the "Comparison Project" and the "Actual Century Freeway."

Given this description of an alternative freeway project, we would like you to compare the impacts of it relative to the impacts of the actual Century Freeway under the consent decree. *Although the "Comparison Project" may not perfectly reflect your view of how the Century Freeway might have been constructed if a different legal history had occurred, this is a consensus version to which we will make all future comparisons.* For your convenience, we have included an additional copy of the table below, printed on the enclosed yellow card.

Thank you for your time and participation. We will ensure that your responses are kept confidential and that they appear only in summarized reports, without reference to individuals. Should you have any questions regarding the survey or any other aspect of our study, please feel free to contact our project office at (714) 856-4254. We would appreciate it if you could complete the questionnaire within the next two weeks.

SUMMARY OF SIMILARITIES AND DIFFERENCES BETWEEN THE COMPARISON PROJECT AND THE ACTUAL CENTURY FREEWAY

	ACTUAL CENTURY FREEWAY	COMPARISON PROJECT
FREEWAY CONSTRUCTION PROCESS		
a. Additional public hearings would have been held after issuance of the 1972 injunction	yes	yes
b. Formal Environmental Impact Statement (EIS) would be prepared	yes	yes
c. Groundbreaking would have occurred in	1982	1979
d. Ongoing oversight of project by the court	yes	no
e. Number of separate construction projects	more than 80	about 20
f. Freeway opened to traffic	only after entire route completed	as segments are completed
g. Entire route opens in	1993	1987
FREEWAY DESIGN		
a. Route features bell-shaped curve around Hawthorne	yes	yes
b. Number of lanes for mixed flow traffic	6 lanes	8 lanes

	ACTUAL CENTURY FREEWAY	COMPARISON PROJECT
FREEWAY DESIGN (continued)		
c Number of high occupancy vehicle (HOV) lanes	2 HOV lanes	2 HOV lanes
d Mass transit	rail built concurrent with freeway	median permits future rail/busway
e Number of local interchanges	10	16
HOUSING		
a Number of replacement units constructed	about 1,000	about 500
b Number of additional units constructed to replenish housing stock in affected communities	about 2,000	none
c Lead agency for implementation of housing program	Dept of Housing & Comm Dev	Caltrans
d Federal highway trust funds used for replacement housing	yes	yes
e Federal highway trust funds used for replenishment housing	yes	not applicable
f Establishment of a separate agency to represent the interests of Century Freeway displacees	yes	no
TRAINING/EMPLOYMENT/AFFIRMATIVE ACTION ISSUES		
a Establishment of pre-apprenticeship training programs for potential construction workers	yes	yes
b Project requires contractors to utilize corridor businesses and residents	yes	no
c Establishment of a center for Century Freeway employment	yes	no
d Establishment of technical assistance programs for minority and women-owned businesses	yes	yes
e Establishment of a separate agency to provide an outreach program for potential female construction workers	yes	no
f Establishment of a separate agency to monitor and enforce compliance with affirmative action procedures for Century Freeway construction and employment	yes	no
g Goals for women and minority subcontracting and employment would exceed existing federal goals	yes	no
h Establishment of a local Caltrans Civil Rights office to monitor affirmative action compliance	yes	no

A. MONETARY COST COMPARISON

Please evaluate the monetary costs of the Comparison Project (as described in the table) relative to the actual costs of the Century Freeway Project. In this question we are referring to the actual cost to State Department of Transportation only. Use as your reference constant dollars spent (i.e., ignore the effects of inflation) and indicate the magnitude of the cost differences for each of the activities listed below. For example, circling "-3" on item A below would indicate that the cost of right of way acquisition for the Comparison Project would have been much less than the cost of right of way acquisition for the actual Century Freeway (CIRCLE ONE NUMBER IN EACH ROW.)

Comparison Project would be ...		Much Less Than Actual			The Same As Actual		Much More Than Actual	
		-3	-2	-1	0	+1	+2	+3
A.	Right of way acquisition	-3	-2	-1	0	+1	+2	+3
B.	Right of way property management	-3	-2	-1	0	+1	+2	+3
C.	Maintenance of right of way rental properties	-3	-2	-1	0	+1	+2	+3
D.	Project design	-3	-2	-1	0	+1	+2	+3
E.	Freeway construction	-3	-2	-1	0	+1	+2	+3
F.	Project administration	-3	-2	-1	0	+1	+2	+3
G.	Legal support	-3	-2	-1	0	+1	+2	+3
H.	Corridor maintenance	-3	-2	-1	0	+1	+2	+3
I.	Affirmative action monitoring and enforcement	-3	-2	-1	0	+1	+2	+3
J.	Other training and employment programs	-3	-2	-1	0	+1	+2	+3
K.	Replenishment housing	-3	-2	-1	0	+1	+2	+3
L.	Replacement housing	-3	-2	-1	0	+1	+2	+3
M.	Relocation assistance	-3	-2	-1	0	+1	+2	+3

If you have any additional comments on the cost comparisons, please use the space provided here:

B. ENVIRONMENTAL AND SOCIAL IMPACTS

In this section, we are interested in both the short-term and long-term environmental and social impacts of both the Comparison Project and the Actual Century Freeway Project. First, using the scale shown below, we would like you to evaluate the likely short-term environmental and social impacts of the "Actual Century Freeway Project," and then the "Comparison Project." By 'short-term' we mean the period of time before and during the construction of the Century Freeway. For example, if you believe that the Actual Century Freeway Project would have been "somewhat harmful" for community planning efforts and the Comparison Project would be "very beneficial," you would circle "-1" in the box under Actual Century Freeway and "+2" in the box under Comparison Project. Please circle the number which best represents your evaluation for all items listed below for both the Actual Century Freeway Project and the Comparison Project.

Very Harmful Somewhat Harmful No Effect Somewhat Beneficial Very Beneficial
 -2 -1 0 +1 +2

Short-Term Impact Category	ACTUAL CENTURY FREEWAY					COMPARISON PROJECT				
A. Utilization of corridor businesses in project-related construction activities	-2	-1	0	+1	+2	-2	-1	0	+1	+2
B. Employment of corridor residents in project-related construction activities	-2	-1	0	+1	+2	-2	-1	0	+1	+2
C. Utilization of minority-owned businesses in project-related construction activities	-2	-1	0	+1	+2	-2	-1	0	+1	+2
D. Utilization of women-owned businesses in project-related construction activities	-2	-1	0	+1	+2	-2	-1	0	+1	+2
E. Employment of minority members in project-related construction activities	-2	-1	0	+1	+2	-2	-1	0	+1	+2
F. Employment of women in project-related construction activities	-2	-1	0	+1	+2	-2	-1	0	+1	+2
G. Residential displacement	-2	-1	0	+1	+2	-2	-1	0	+1	+2
H. Displacee relocation assistance	-2	-1	0	+1	+2	-2	-1	0	+1	+2
I. Crime rate	-2	-1	0	+1	+2	-2	-1	0	+1	+2
J. Access to police and fire protection	-2	-1	0	+1	+2	-2	-1	0	+1	+2
K. Residential and neighborhood property maintenance by homeowners near corridor	-2	-1	0	+1	+2	-2	-1	0	+1	+2
L. Community planning efforts	-2	-1	0	+1	+2	-2	-1	0	+1	+2

Now, using the scale shown below, we would like you to evaluate the likely long-term environmental and social impacts of the Actual Century Freeway Project and then the Comparison Project. Please circle the number which best represents your evaluation for all items listed below for both the Actual Century Freeway Project and the Comparison Project.

Very Harmful Somewhat Harmful No Effect Somewhat Beneficial Very Beneficial
 -2 -1 0 +1 +2

Long-Term Impact Category	ACTUAL CENTURY FREEWAY					COMPARISON PROJECT				
A Local air quality	-2	-1	0	+1	+2	-2	-1	0	+1	+2
B Regional air quality	-2	-1	0	+1	+2	-2	-1	0	+1	+2
C Noise levels adjacent to the freeway	-2	-1	0	+1	+2	-2	-1	0	+1	+2
D Congestion on parallel arterials	-2	-1	0	+1	+2	-2	-1	0	+1	+2
E Congestion on other surface streets	-2	-1	0	+1	+2	-2	-1	0	+1	+2
F Movement of goods and people through the corridor	-2	-1	0	+1	+2	-2	-1	0	+1	+2
G Regional freeway congestion	-2	-1	0	+1	+2	-2	-1	0	+1	+2
H Mass transit availability	-2	-1	0	+1	+2	-2	-1	0	+1	+2
I Freeway aesthetics	-2	-1	0	+1	+2	-2	-1	0	+1	+2
J Corridor cities aesthetics	-2	-1	0	+1	+2	-2	-1	0	+1	+2
K Prosperity of corridor businesses generally	-2	-1	0	+1	+2	-2	-1	0	+1	+2
L Prosperity of corridor businesses who had participated in project-related construction activities	-2	-1	0	+1	+2	-2	-1	0	+1	+2
M Economic well-being of corridor residents generally	-2	-1	0	+1	+2	-2	-1	0	+1	+2
N Economic well-being of corridor residents who had participated in project-related construction activities	-2	-1	0	+1	+2	-2	-1	0	+1	+2
O Prosperity of minority-owned businesses generally	-2	-1	0	+1	+2	-2	-1	0	+1	+2
P Prosperity of minority-owned businesses who had participated in project-related construction activities	-2	-1	0	+1	+2	-2	-1	0	+1	+2
Q Prosperity of women-owned businesses generally	-2	-1	0	+1	+2	-2	-1	0	+1	+2
R Prosperity of women-owned businesses who had participated in project-related construction activities	-2	-1	0	+1	+2	-2	-1	0	+1	+2
S Economic well-being of minority members generally	-2	-1	0	+1	+2	-2	-1	0	+1	+2
T Economic well-being of minority members who had participated in project-related construction activities	-2	-1	0	+1	+2	-2	-1	0	+1	+2
U Economic well-being of women generally	-2	-1	0	+1	+2	-2	-1	0	+1	+2

Very Harmful Somewhat Harmful No Effect Somewhat Beneficial Very Beneficial
 -2 -1 0 +1 +2

Long-Term Impact Category	ACTUAL CENTURY FREEWAY					COMPARISON PROJECT				
V Economic well-being of women who had participated in project-related construction activities	-2	-1	0	+1	+2	-2	-1	0	+1	+2
W Impact on sales tax revenues	-2	-1	0	+1	+2	-2	-1	0	+1	+2
X Local property tax base	-2	-1	0	+1	+2	-2	-1	0	+1	+2
Y Local housing supply	-2	-1	0	+1	+2	-2	-1	0	+1	+2
Z Affordable housing supply	-2	-1	0	+1	+2	-2	-1	0	+1	+2
AA Residential and neighborhood isolation	-2	-1	0	+1	+2	-2	-1	0	+1	+2
BB Quality of local school system	-2	-1	0	+1	+2	-2	-1	0	+1	+2
CC Community redevelopment efforts	-2	-1	0	+1	+2	-2	-1	0	+1	+2
DD Community relations with Caltrans	-2	-1	0	+1	+2	-2	-1	0	+1	+2
EE Prestige of Caltrans in the eyes of the public	-2	-1	0	+1	+2	-2	-1	0	+1	+2
FF Overall environmental impacts	-2	-1	0	+1	+2	-2	-1	0	+1	+2
GG Overall social impacts	-2	-1	0	+1	+2	-2	-1	0	+1	+2

If you have any additional comments on short-term and long-term environmental and social impacts, please use the space provided here:

C. PROCEDURAL AND ADMINISTRATIVE IMPACT COMPARISON

Another area of our research concerns how the process of building the Comparison Project may have been different from the process of building the actual Century Freeway. Using the actual Century Freeway as a baseline, please evaluate the Comparison Project according to the items listed below. For example, if you circle "+3" for "average length of time to award construction contracts" you would be indicating that the average time to contract award would be much longer were the Comparison Project constructed than has been the case for the actual Century Freeway. (CIRCLE ONE NUMBER IN EACH ROW)

Comparison Project would be ...		Much Less Than Actual		The Same As Actual		Much More Than Actual		
		-3	-2	-1	0	+1	+2	+3
A	Average length of time to award construction contracts	-3	-2	-1	0	+1	+2	+3
B.	Average length of time between contract award and project completion	-3	-2	-1	0	+1	+2	+3
C	Magnitude of design/engineering challenges	-3	-2	-1	0	+1	+2	+3
D	Magnitude of construction logistics challenges	-3	-2	-1	0	+1	+2	+3
E	Project oversight by FHWA	-3	-2	-1	0	+1	+2	+3
F	Involvement of Caltrans officials based in Sacramento	-3	-2	-1	0	+1	+2	+3
G	Overall number of Caltrans employees working on the project	-3	-2	-1	0	+1	+2	+3
H.	Number of Caltrans employees "loaned" to other agencies involved with project	-3	-2	-1	0	+1	+2	+3
I.	Number of new offices/branches created within Caltrans due to project	-3	-2	-1	0	+1	+2	+3
J	Complexity of contract award process	-3	-2	-1	0	+1	+2	+3
K	Complexity of M/WBE certification process	-3	-2	-1	0	+1	+2	+3
L.	Issuance of change orders on construction contracts	-3	-2	-1	0	+1	+2	+3
M	Complexity of subcontractor substitution process	-3	-2	-1	0	+1	+2	+3
N	Percentage of subcontractors substituted	-3	-2	-1	0	+1	+2	+3
O	Number of injuries to construction workers	-3	-2	-1	0	+1	+2	+3
P	Number of certified M/WBEs	-3	-2	-1	0	+1	+2	+3

Comparison Project would be ...		Much Less Than Actual			The Same As Actual			Much More Than Actual
Q	Number of M/WBE failures	-3	-2	-1	0	+1	+2	+3
R	Public scrutiny of contract award process	-3	-2	-1	0	+1	+2	+3
S	Caltrans' autonomy with regard to project implementation	-3	-2	-1	0	+1	+2	+3
T	Intensity of Caltrans efforts to monitor and enforce affirmative action requirements	-3	-2	-1	0	+1	+2	+3
U	Caltrans' sensitivity to potential environmental costs of freeway construction	-3	-2	-1	0	+1	+2	+3
V	Caltrans' sensitivity to potential social costs of freeway construction	-3	-2	-1	0	+1	+2	+3
W	Degree to which project implementation affected by state and federal political changes	-3	-2	-1	0	+1	+2	+3
X	Degree to which project implementation affected by changes in state and federal economies	-3	-2	-1	0	+1	+2	+3
Comparison Project would be ...		Much Worse Than Actual			The Same As Actual			Much Better Than Actual
Y	Subcontractor quality	-3	-2	-1	0	+1	+2	+3
Z	Construction employee quality	-3	-2	-1	0	+1	+2	+3
AA	Quality of M/WBE certification process	-3	-2	-1	0	+1	+2	+3
BB	Quality of Caltrans contract compliance enforcement	-3	-2	-1	0	+1	+2	+3

If you have any additional comments on the administrative and procedural issues, please use the space provided here.

D. ORGANIZATIONAL ATMOSPHERE COMPARISON

Now, using the actual Century Freeway as a baseline, please evaluate the Comparison Project with respect to organizational atmosphere in Caltrans along the dimensions listed below. For example, if you circle "-3" for "employee loyalty to Caltrans" you would be indicating that there would be much less loyalty to Caltrans were the Comparison Project to have been constructed than has been the case for the actual Century Freeway. (CIRCLE ONE NUMBER IN EACH ROW)

Comparison Project would be ...	Much Less Than Actual			The Same As Actual			Much More Than Actual
A. Willingness of Caltrans employees to put in a great deal of effort beyond that normally expected	-3	-2	-1	0	+1	+2	+3
B. Employee loyalty to Caltrans	-3	-2	-1	0	+1	+2	+3
C. Loyalty to Caltrans departments to which employees were assigned	-3	-2	-1	0	+1	+2	+3
D. Caltrans' prestige in the eyes of:							
1. Environmental advocates	-3	-2	-1	0	+1	+2	+3
2. Affirmative action/civil rights advocacy groups	-3	-2	-1	0	+1	+2	+3
3. Corridor cities	-3	-2	-1	0	+1	+2	+3
4. Other cities in District 7	-3	-2	-1	0	+1	+2	+3
5. State legislators	-3	-2	-1	0	+1	+2	+3
6. Highway departments in other states	-3	-2	-1	0	+1	+2	+3
E. Conflict among Caltrans departments	-3	-2	-1	0	+1	+2	+3
F. Conflict between Caltrans employees and contractors	-3	-2	-1	0	+1	+2	+3
G. Conflict between Caltrans District 7 and ...							
1. Caltrans headquarters	-3	-2	-1	0	+1	+2	+3
2. local/regional housing authorities	-3	-2	-1	0	+1	+2	+3
3. Housing and Community Development (HCD)	-3	-2	-1	0	+1	+2	+3
4. Federal Highway Administration (FHWA)	-3	-2	-1	0	+1	+2	+3
5. corridor cities	-3	-2	-1	0	+1	+2	+3

Comparison Project would be ...		Much Less Than Actual			The Same As Actual		Much More Than Actual
H	Conflict among Caltrans employees	-3	-2	-1	0	+1	+2 +3
I	Caltrans employee efforts to secure transfers to non-Century 105 projects	-3	-2	-1	0	+1	+2 +3
J	Caltrans employee efforts to secure employment with organizations other than Caltrans	-3	-2	-1	0	+1	+2 +3
K	Time spent on professional development activities by Caltrans employees	-3	-2	-1	0	+1	+2 +3
Comparison Project would be ...		Much Worse Than Actual			The Same As Actual		Much Better Than Actual
L	Understanding by Caltrans employees of what the public policy makers expected of the organization with regard to:						
1	affirmative action	-3	-2	-1	0	+1	+2 +3
2	providing replacement housing on new projects	-3	-2	-1	0	+1	+2 +3
3	providing replenishment housing on new projects	-3	-2	-1	0	+1	+2 +3
M	Understanding by Caltrans employees of what Caltrans expected from them	-3	-2	-1	0	+1	+2 +3
N	Overall morale among Caltrans employees assigned to the Century 105 project	-3	-2	-1	0	+1	+2 +3

If you have any additional comments on the organizational atmosphere issues, please use the space provided here:

E. BACKGROUND QUESTIONS

1. Since we expect that not all areas covered in this questionnaire are known by all individuals that we are surveying, we would appreciate it if you would provide us with your assessment of your knowledge about the following aspects of the Century Freeway Project. (PLEASE CIRCLE ONE NUMBER IN EACH ROW.)

How much knowledge do you have with respect to	None	A Little	Some	Quite A Bit	A Great Deal
A. History of the Century Freeway Project	1	2	3	4	5
B. Monetary costs of construction of the Century Freeway Project	1	2	3	4	5
C. Monetary costs of affirmative action in the Century Freeway Project	1	2	3	4	5
D. Monetary costs of housing in the Century Freeway Project	1	2	3	4	5
E. Environmental impacts of the Century Freeway Project	1	2	3	4	5
F. Social impacts of the Century Freeway Project	1	2	3	4	5
G. Administrative impacts of the Century Freeway Project	1	2	3	4	5
H. Transportation components of the consent decree itself	1	2	3	4	5
I. Affirmative action components of the consent decree itself	1	2	3	4	5
J. Housing components of the consent decree itself	1	2	3	4	5

2. Please circle the one number in each row which best describes your level of involvement in the following:

	None	A Little	Some	Quite A Bit	A Great Deal
A. Professional involvement with the implementation of the consent decree	1	2	3	4	5
B. Emotional involvement with the Century Freeway Project	1	2	3	4	5

3 Please circle the one number in each row which best describes your agreement or disagreement with each of the following statements

	Strongly Disagree	Disagree	Undecided	Agree	Strongly Agree
A The benefits of the actual Century Freeway <u>design and construction process</u> will outweigh the costs of the process.	1	2	3	4	5
B The benefits of the actual Century Freeway <u>Housing Program</u> will outweigh the costs of the program	1	2	3	4	5
C The benefits of the actual <u>affirmative action program</u> will outweigh the costs of the program	1	2	3	4	5
D I am satisfied with the history of the Century Freeway.	1	2	3	4	5

4 For how many years have you been involved with the Century Freeway Project?

Number of years involved = _____

5 In what department or functional area do you work?

Department or functional area _____

6 Which of the following best describes your functional level within the organization in which you work? (CIRCLE ONE NUMBER ONLY)

- Professional level 1
- Managerial level 2
- Executive level 3
- Other. _____ 4

7 Do you work in or near the Century Freeway corridor?

- Yes..... 1
- No..... 2

8 Do you live in or near the Century Freeway corridor?

- Yes..... 1
- No. 2

Thank you for completing the questionnaire. If there are any additional comments you would like to make, please use the space provided below. Or, if you would prefer to speak directly with us, please call (714) 856-4254. Please check for any unanswered questions, place in the self-addressed envelope and return to us as soon as conveniently possible.

Additional Comments

For reference, our address is:

Century 105 Project
Public Policy Research Organization
310 Social Ecology
University of California
Irvine, CA 92717
(714) 856-4254

APPENDIX E

RULES AND PROCEDURES FOR IMPLEMENTING THE HOUSING PROGRAM

Appendix E: Summary of Rules and Procedures for Implementing the Housing Program

Project delivery is separated into subsidiary processes. First is the development of the semi-annual Housing Implementation Schedule which matches CFHP housing needs and the Century Freeway construction schedule with specific housing construction processes. Parallel to the construction-related processes are the Participant Pool, Ownership Disposition and Tenant Selection Processes. Ownership disposition and Tenant Selection Processes are to be completed by the time the construction is finished and units are ready for occupancy (Caltrans Office of Management Analysis, 1984).

RFP and IFB time for construction are estimated at 9 months and 6 months respectively (Caltrans Office of Management Analysis, 1984). However, the average number of weeks required for each process is estimated at 179 and 97. This time allows for preparation, proposal selection and construction in the RFP process and land acquisition, project design, IFB preparation, bid selection and construction in the IFB process.

Land for the CFHP is obtained in one of three ways: 1) buying a parcel expressly for replenishment housing 2) transferring it from already owned excess land or 3) requiring the contractor to supply it complete with housing.

The Invitation for Bids process begins after the development of the Plans, Specifications and Estimates (PS&E) by HCD/CFHP. These are sent to Caltrans District 7 Right-of-Way Replenishment Housing Branch. Then follows drafting the contract language and special requirements, including setting Minority Business Enterprise goals; certifying the parcel for construction, advertising for and evaluating bids; contract award and the development's construction. The contract preparation phase ends when the final Invitation for Bid (Green Book) is published. Contract Award is complete when a bidder is selected based on cost and civil rights

criteria. The contractor is notified to begin work.

The RFP process is used when the State desires a developer to build on privately held land. The process includes preparing the RFP, advertising for and selecting proposals, and the construction of the development. The Housing Implementation Schedule determines the size and nature of the RFP as well as the critical dates throughout the RFP process. The RFP Preparation Phase includes drafting and approval of the RFP, setting Affirmative Action Goals, and publishing the RFP. The selection phase includes receiving developer proposals and several sequential reviews to determine if the proposals are responsive to the terms and conditions of the RFP. These reviews include completeness, minority and female business involvement, land appraisal, and technical evaluation.

Those proposals deemed responsive are then ranked and conditional commitments made. After the conditional commitment, the developer presents working drawings, minority and female business subcontractor lists, and related documents for review. After these are reviewed and approved, State and Federal funds are encumbered. The proposal selection phase ends after the contract closing when the pre-construction conference is held. The technical pre-construction meeting is the first step in the RFP construction phase. The acceptance of the project by the HCD/CFHP Housing Production Unit and payment in full terminate the phase.

Ideally in both processes, concurrent Ownership and Rental Property Disposition and tenant selection are ongoing so that the completion of construction, property disposition and occupancy are completed at the same time. The participant pool includes all corridor displacees, housing authority referrals, and members of the general public who have submitted applications for CFHP participation and have been accepted by the Finance and Disposition Unit.

The Ownership Disposition Process matches potential buyers to specific housing projects. It begins 180 days before project completion with the selection of at least three participants from the

pool for each unit in the project. The Ownership Disposition Process includes marketing meetings, lotteries, loan qualification, homeowner training, and escrow. The process ends when escrow closes and the homeowner moves into the unit.

When rental properties are built as part of the Century Freeway Housing Program, they must be sold to private property management companies or public agencies with jurisdiction over rental properties. Neither HCD nor Caltrans has authority to permanently operate CFHP rental units.

The Sources Sought Phase of the rental property disposition process is an optional part of this sale. It is designed to identify the potential market for RFP plus give the CFHP staff feedback from the industry. The properties are sold through the RFP process. The RFP is developed by CFHP staff and reviewed and approved by HCD Headquarters, FHWA, Caltrans and CFAAC. A proposal is selected and the rental property is sold.

In addition to selling the rental properties developed by the CFHP, tenants must be found.

Prospective tenants come from the participant pool. The process includes screening the applicants and ends when the rental property owner accepts the tenant and notifies CFHP.

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<p>16 Abstract</p> <p>This report chronicles the history of the Century Freeway (known officially as the Glenn M. Anderson Freeway/Transitway or I-105) and analyzes the impact of litigation in its construction. Sources of data include interviews with key participants in the project, mailed questionnaires, and a variety of archival materials.</p> <p>In 1972, a lawsuit and resulting injunction halted work on the Century Freeway. By then approximately 18,000 people had been displaced from the freeway right-of-way. The injunction required the then Division of Highways to develop a formal environmental impact statement on the entire Century Freeway project and to carry out additional public hearings. In 1979, parties to the lawsuit entered into a consent decree, amended two years later, which laid out the terms under which the project would go forward.</p> <p>The I-105, projected to cost over two billion dollars, traverses nine cities and the County of Los Angeles. At completion in 1993, the freeway will be 17 miles long, six lanes wide, and contain areas for high occupancy vehicles and for rail transit; it will be landscaped and noise attenuated, and it will be surrounded by thousands of housing units linked to its development.</p> <p>The impacts of an injunction and consent decree on the construction and implementation of the Century Freeway have been felt primarily in time of commencement of construction; date of completion; situs of institutional management; significant but not dramatic design changes and environmental impact mitigations; perceived costs; and controversial changes in the provision of replacement and replenishment housing and the affirmative action process. Additionally, Caltrans itself experienced modest structural changes and its relationships with other agencies and organizations have been influenced, in some cases seriously.</p>			
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**COURT INTERVENTION, THE CONSENT DECREE, AND
THE CENTURY FREEWAY**

Final Report

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Joseph DiMento, Principal Investigator
Jace Baker
Robert Detlefson
Dru van Hengel
Dean Hestermann
Brenda Nordenstam

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