

The Rise and Fall of Hayward's Route 238 Bypass

Annotated Table of Contents

Note: Subheadings are generally included in the chapter summaries.

Chapter 1: Early 1960s: A Plan, a Start

Freeways started in 1906 with the construction of the Long Island Motor Parkway and boomed during the Eisenhower era. The 1955 San Francisco Freeway Revolt was one of a few protests, stopping construction in mid-air. In 1960 the state highway department, Caltrans, planned “The Foothill Freeway” from Castro Valley to Fremont through neighborhoods and hills. During a hearing, three sisters protested an alignment through Dry Creek, a ranch to be given to park use. The alignment was changed with a perception of room for parks and highways, ignoring a Hispanic neighborhood that was being aligned upon.

Chapter 2: 1961: Foothill Freeway Approved

In 1961, the California Highway Commission approves a new 8-lane freeway to replace the existing State Route 238 running from I-580 in Castro Valley to Washington Boulevard in Fremont. In 1967, the Commission approved another freeway, State Route 92, to run from the San Mateo Bridge to I-580 in Dublin Canyon east of Castro Valley. The lack of a connection to Hilary Road/Castro Valley Boulevard to the college campus precipitated the extension of an alternative road, Harder Road. Caltrans began buying up and condemning homes and businesses and renting out houses.

Chapter 3: Crash Landing

A grassroots group was formed to combat Caltrans condemnations of homes. Jim Grace, a community activist of Portuguese descent, organized homeowners in the path of the Foothill Freeway. Along with a crack team of lawyers, La Raza Unida successfully sued the U. S. Secretary of Transportation, the California Highway Commission, and Caltrans in a class action. Caltrans tenants now had to get relocation assistance. The Peckham Injunction was a major legal precedent made possible by a remarkable confluence of forces—modest homeowners, a local activist, a new generation of public interest attorneys, and major new laws benefitting the environment and housing.

Chapter 4: 1970s Back in Hayward

Judge Peckham limited accountability only to the federal and state governments, sparing City of Hayward. Hayward creates a “Housing Advisory Committee” to find ways of meeting housing requirements of the preliminary injunction. Caltrans becomes landlord to 172 tenants from the right-of-way that was bought up.

Chapter 5: MTC Does Policy

Up to about 1970, transportation planning was anarchic, with too many elected officials wanting too much money with too few funds. The 1962 Transportation Act created Metropolitan Planning

Organizations for transportation. All projects in the Bay Area had to go through the Metropolitan Transportation Commission to get state or federal funding, the Foothill Freeway included. In 1977 to 1979, the MTC evaluated the freeway and recommended improving Interstate 880 instead. MTC allowed a much shorter project, the Bypass, if Hayward could find the funding, Meanwhile, in 1978 local advocates started the Hayward Area Planning Association to fight the freeway, save open space, and promote sustainable growth.

Chapter 6: Traffic part 1: Bad Modeling

Diving deep and at length, the analysis describes how four-step computer programs model traffic and have fatal flaws for longer term projections. HAPA had a special study done of the Bypass, the Usage Study, which revealed important insights into the traffic flows and discovered that heavy flow on the Bypass was primarily due to removing traffic from Mission Foothill.

Chapter 7: Traffic part 2: Good Economics

The chapter discussed three definitions of congestion, personal travel time budgets, personal travel time budgets, and three conceptual models—capacity, congestion, and pricing—with pricing the best concept to answer the question, “how much enough” and provide funds when capacity is needed based on market demand. Given the success of free freeways, the history of road economics from the 1800s to the present argues how things have changed and now justify pricing.

Chapter 8: The Empire Strikes Back

In 1981, Hayward’s lobbyist and State Senator John Holmdahl got the “Holmdahl bill,” which created a new funding category, the Local Agency Transportation Improvement Program, which could fund a bit of the bypass from sale of surplus land from an adjacent project. The bill, explained in detail, created the framework for, eventually, a far different result. Bob Swanson, representing the tenants, was muscled aside. The City’s research “proved” the Bypass was needed but missed deadlines and was still short of funds.

Chapter 9: 1980s: Hayward, Caltrans, Tenants, CATS

In the wake of La Raza Unida’s court victory, Caltrans was unable to buy right-of-way or demolish their buildings. As the years passed, tenant life in the corridor had low rents but conflicts with Caltrans over bad management, shabbiness, and sometimes complete decrepitude. In 1984, Audrey LePell and friends organized CATS, a citizen advocacy group, and joined HAPA in fighting the freeway.

Chapter 10: The Quest for Cash

While the Foothill Freeway was stalled, other projects were underway, e.g., in 1985, a huge freeway interchange at State Route 238, Interstate 238, and Interstate 580. With the decline of the gas tax, the whole state was hurting for highway funds, and the legislature setup a county-level sales tax for transportation to be approved by the voters. In Alameda County, Measure B described the alignment as being along Mission Foothill, not where Caltrans was planning it. Everyone involved knew the real Bypass ran to the east through houses and hills. A clerical error?

HAPA's argument was excluded from the voter's pamphlet. The voters loved Measure B and created the Alameda County Transportation Agency (ACTA) to administer it.

Chapter 11: The Draft EIS on the Bypass

Measure B created the impetus to go forward with the Draft Environmental Impact Statement (Draft EIS) which led to intense local controversy. The project would cost \$140.6 million and had funding of \$74.6 million leaving a gap of \$46 million. The Draft EIS ignored the need for a flyover from Castro Valley to Bypass and grabbed its funding without admitting it. CATS and HAPA mobilized people for a large Caltrans public hearing on the Bypass hearing. Many attended, speaking pro and con, an excellent example of an open democratic process for citizens. If a speaker timed out, they had a chance to come back at the end and finish up.

Chapter 12: The Draft EIS on the Bypass continued

Founder of CATS Audrey LePell offers viable alternatives to the Bypass. Later, the Sierra Club and the US Environmental Protection Agency weighed in in writing with views strongly opposed to the project.

Chapter 13: Parallel Play

From 1987 to 1990 the two sides were active without engaging each other. Caltrans and other agencies processed the draft EIS up the bureaucratic ladder to the California Transportation Commission in 1987. In 1988, a number of shortfalls in the sales tax dramatically lowered the funds ACTA was expecting. Hayward Mayor Giuliani tried to get more MTC funding but was rebuffed by Supervisor Knox and others. Meanwhile, CATS held rallies and walks and HAPA ground out several analyses of the many cons of the Bypass, long on policy and short on political effect.

Chapter 14: Back to Federal Court

In 1987, Caltrans resumed an effort to comply with the Peckham Injunction of 1971 by negotiating a consent decree with the opposition, particularly the Caltrans tenants represented by Steve Ronfeldt, a public interest attorney. He negotiated a settlement strongly benefitting the tenants, but it took a long time. At the hearing in San Francisco in the federal courthouse in a large chamber before a federal judge, a lone private citizen, George Godinez, spoke from the heart about his difficult history as a Caltrans tenant.

Chapter 15: Agencies, Procedures, Traffic, Money, Shrinkage

During the late 1980s and early 1990s, Caltrans and other agencies struggled to find more funding and meet regulatory requirements. The agencies were convinced that traffic required new freeway capacity but had to steadily shrink the scope of the planned improvements. In particular, a flyover to benefit Castro Valley at the north end was robbed of its funding to pay for Stage 1, which itself was greatly scaled down from the Bypass and would only reach California State University, Hayward.

Chapter 16: Clerical Error?

CATS and HAPA advocated fixing what they believed to be a clerical error in the description of the 1986 expenditure plan. The text stated the Bypass would be “along Mission Foothill,” when the actual alignment would be further east. During a Caltrans open house meeting, former County Supervisor Bob Knox revealed. The wording of the Bypass in the Measure B voter pamphlet was not a clerical error; it was an intentional act by former Hayward Mayor Alex Giuliani and Knox to avoid any controversy over the real Bypass alignment and win the vote for the transportation sales tax. HAPA and CATS smelled a rat and found a lawyer. Caltrans stymied CATS proposals by insisting the Bypass solves problems on I-880.

Chapter 17: Measure L of 1992

The Bypass still lacked funds. The Chamber of Commerce put an initiative, Measure L, for the voters to make the Bypass Hayward’s highest priority, with funds coming from others. HAPA sued to fix a false and misleading ballot argument and was partially successful. The president of Cal State Hayward told the voters the freeway had been promised when the campus was approved in 1959. He accepted, without thought, the myth. HAPA debunked this as best it could. Opponents of Measure L waged a poorly funded grassroots campaign and lost narrowly to a well-funded pro-freeway campaign with substantial out-of-town funds. Voters in Castro Valley affected by the Measure were unable to vote.

Chapter 18: Cal State comes to Hayward

The 1992 pro-Measure L campaign to make a Bypass Hayward’s top priority relied in part on arguments that had supposedly been made more than 20 years earlier when the location of the Cal State Hayward campus was being considered. One erroneous claim was that a freeway serving the campus had been promised back then and, therefore, should still be built even if as a scaled-back Bypass. The idea of a freeway to serve students had indeed been floated in the 1957-59 debate over where to locate a campus for the East Bay, but a freeway was never formally proposed in the ultimate decision.

Chapter 19: Hayward: A House Divided

From 1986 to 1996, the City of Hayward sponsored a series of neighborhood planning meetings run by local residents supported by city staff. There were seven neighborhoods along the Bypass alignment, six of which opposed the Bypass, to one degree or another, and one of which took no position. In the middle of 1993, a city-wide General Plan Update Task Force approved a new plan directly opposed to the Bypass. The city council adopted the recommendation so that Hayward had diametrically opposed policies in its General Plan.

Chapter 20: The Agencies Struggle

Despite the reduction to Stage 1, the Bypass was still too expensive and the ACCMA looked for further cost cutting. MTC included the Bypass in its planning but not with specific funding and on a very long list of possible projects. The Bypass remained with limited funding from Measure B, the Holmdahl Bill, and the City, even after taking funds from the flyover.

Chapter 21: Federal Politics

More than a year after Caltrans submitted the Final EIS to the Federal Highway Administration, the FHWA kicked it back to Caltrans, a serious blow to the project. FHWA was concerned with mistakes in the Regional Transportation Plan, the Transportation Improvement Plan, conformity with the Clean Air Act, available funds, and failure to reach a "logical terminus." The agencies wrote a Supplemental Draft EIR to fix the problems. MTC did the conformity analysis, but it was a deeply flawed process, which had not been fixed by Sierra Club litigation in earlier years. The Regional Alliance for Transit, a group of advocates of transit, engaged MTC to run on the MTC model the RAFT assumptions, with produced excellent results.

Chapter 22: Lobbying the Agencies

In 1993, HAPA did yet another analysis with alternatives. In 1994, CATS and HAPA lobbied ACCMA to not put \$70 million from Measure B for the Bypass into the Countywide Transportation Plan, but they did succeed in persuading ACTA to study a one-way loop system in downtown Hayward. It was tweaked by a consultant and the revision, CATS2, improved intersection levels of service to approximately that of the Bypass. Caltrans, however, was uninterested in exploring this alternative. The Environmental Protection Agency severely criticized the Bypass, the Supplemental Draft EIS, and Caltrans' failure to consider the CATS2 alternative.

Chapter 23: Sue the B...!

In 1996, CATS and HAPA laid the groundwork for litigation based on the revelation from Bob Knox about the wrong alignment in the Measure B voter pamphlet. HAPA and CATS wrote letters to ACTA advising them to not spend money voters intended for one project on a different project. They researched the history and documents and got a declaration from Supervisor Knox. After much delay, in July 1997 they sued but soon lost. They appealed.

Chapter 24: Measure B Redivivus

The 1986 Measure B was so successfully that transportation agencies decided to do it again. ACTA pointed a large advisory group of diverse interests, with central Alameda County as a caucus for that area. The public meetings went largely against the Bypass and assiduous lobbying of the central group led them to endorse projects without mentioning the Bypass. In 1999, ACTA rubberstamped the new plan leaving the Bypass high and dry.

Chapter 25: MTC Regresses

In 1998, MTC switched from opposition to support of funds for the Bypass, claiming, incorrectly, that it was a local project when in fact the Holmdahl Bill was all state funding. Meanwhile, local elections were having results that largely favored no Bypass. The mayor's race was strongly contested by two anti-Bypass candidates. Particularly important was the election of a new State Senator who was opposed by a supporter of the Bypass. Supervisor Gail Steele, a longtime strong opponent of the Bypass, continued to get elected despite attacks on her for her position. Pro-Bypass advocates made personal attacks on Bypass opponents.

Chapter 26: The Ruvolo Decision

The HAPA appeal finally reached the appellate court in 1999 and was argued by HAPA attorneys Stuart Flashman and Chris Peeples. They found, too late for their briefing, a precedent in water bond cases that stopped officials from using funds from a voter-approved project to something else. Flashman broke the rules by bringing it up in oral argument and was told to sit down, but the point was made. CATS and HAPA won a decisive opinion on the law from the three-judge panel. The case set a precedent and dramatically changed the tone of Bypass politics.

Chapter 27: The SR 238 Bypass vs. I-880

In 1999, the ACCMA studied many projects in the I-880 corridor, including alternatives to the Bypass. HAPA asked the ACCMA to consider its "Scenario 1" alternative which proposed a flyover from I-238 to I-880 and other suggestions. HAPA tried to help with its ideas, with an interesting discussion of old railroads from the 1860s onward. In April, the ACCMA Technical Working Group met and unanimously voted to stop the whole study, apparently because it risked debate over alternatives to the Bypass.

Chapter 28: So Close! But No Lawsuit

By the turn of the century, the Final EIS was nearing completion. The next big hurdle for the Bypass came in the form of a slender, orange-striped, black and brown snake. The U. S. Fish and Wildlife Service required the Federal Highway Administration to determine potential impact on the threatened Alameda Whipsnake, as the Bypass would pass through federally protected critical habitat. Caltrans issued the Final EIS showing the Bypass was now "fully funded," based on a liberal decision by the FHWA. CATS and HAPA looked at litigation on the inadequacy of the Final EIS based on the California Environmental Quality Act, which required alternatives be analyzed, but other developments intervened just in time.

Chapter 29: Growing Support

In the 2000s, the agencies continued to push the project but opposition to it began to grow. AC Transit, the Hayward Unified School District, the Hayward Area Recreation and Park District, the Castro Valley Municipal Advisory Council, Senator Figueroa, Supervisor Steele, and more Hayward City Council members openly opposed the project. HAPA studied the amount of housing that would be lost to the Bypass, bringing into focus a major cost. The attacks on Bypass opponents continued.

Chapter 30: Judgment

The Ruvolo court sent three simple factual issues back down to the trial court for resolution. ACTA defended the Bypass but got caught by attorney Flashman making contradictory arguments in sworn testimony. Judge Gordon Baranco was guided by Ruvolo, and a judgment on the facts changed nothing: "voter funds could not be used on a different project." ACTA made one last appeal which was denied, and at the same time created a procedure involving the interested parties to try to find some consensus alternative. The local newspaper gave up on the Bypass.

Chapter 31: Political End of Bypass

The City Council became concerned that other jurisdictions might find a way to grab the Bypass funds in Measure B. The Working Group proposed major widenings of Foothill and Mission but HAPA opposed it, resulting in a “near consensus.” The Council followed some clever advice from the city manager in order to repeal Measure L: Measure U asked the voters to authorize the Council to “pursue a project which qualifies for Measure B.” No mention of the Bypass. 62% of the voters agreed to whatever it might be. Senator Figueroa continued helping the Caltrans tenants.

Chapter 32: The Official End of the Bypass

HAPA continued to propose alternatives without success, but HAPA and CATS were more successful in opposing over-widenings of Mission and Foothill. The appeals were dangling in the courts. Then, ACTA, having lost the final appeal, decided to give up, pay the HAPA attorneys almost \$300,000, and move on. Caltrans Legal, but not the local department, fought on to the bitter end and, eventually, had to give up too, netting another \$4,000 for HAPA. The leader of HAPA recovered the loan he had taken out on his house. The slow train wreck was finally over.

Chapter 33: The Loop and the LATIP

Despite high revenues anticipated from the sale of now-surplus right-of-way, the alternative project was too expensive. In 2005, the City eliminated the Mission and Foothill over-widenings and an underpass, leaving mainly a one-way “Loop” around downtown Hayward. Citizen opinion was split. The Council got a bill prioritizing using funding surplus right-of-way funding for the Loop, thus blocking other cities from using the funds on I-880 and other projects. ACTA made five decisions needed to move everything forward. The City widened D Street, continuing the loss of historic buildings. Francisco Zermeño won a seat on Council opposing the Loop but at the last minute, on the final vote, switched to support the project.

Chapter 34: New Hopes for Old Lands

All the Caltrans land had to be sold to fund new projects, but what was the land worth? The City studied all of the right-of-way and implemented new land use designations and zonings and approved everything in a program EIR. HAPA persuaded the Council to support “Sustainable Mixed-Use” for the old quarry close to Cal State, which would allow a very low parking ratio and high-density development.

Chapter 35: Justice for Tenants

With a new project and new land uses approved, it remained to provide justice for the Caltrans tenants. Ronfeldt negotiated, over many months, for a detailed program of relocation benefits, replacement housing, and an opportunity for tenant purchase based on city funds, avoiding the controversy over use of gas tax funds. It was more complex than it looked. The injunction of 1971 was now moot, and with it the consent decree with its tenant protections. The parties agreed to a friendly lawsuit in state court which would provide easy enforcement of a now very lengthy and detailed agreement.

Chapter 36: Dead Freeway Management, Continued

The demise of the Bypass required many more steps. The legislature passed one final law for Hayward, AB 1386, to authorize the next steps: relinquishment (removal) of state highway route numbers, making non-state highways (like the Loop) eligible for LATIP funds, rescission of the Bypass project, continue the LATIP, setup a fund for all the LATIP money and other details. The LATIP to build the Bypass became the framework for ending it. Hayward was eager for relinquishment to be free of problems of dealing with Caltrans. AB 1386 was the last of five laws concerning Hayward's problem. Caltrans and the ACCMA presented to the CTC a new LATIP that prioritized the Loop over the I-880 projects.

Chapter 37: 2010, A Big Year

2010 was the big year for cleaning up and starting over. The choreography of policies included the superior court approval of the agreement with the tenants, the CTC approval of a new LATIP, the CTC relinquishment of the route numbers, the carrying out of the agreement with the tenants, the end of the 1971 La Raza Unida litigation, the CTC rescission of the Bypass, etc. CATS meowed its last meow, dedicated a bench in Memorial Park, and disbanded.

Chapter 38: Rebirth of the Land

Land frozen in time for over 50 years became a Phoenix rising from the ashes to new life. Caltrans had been a terrible landlord but was marvelously efficient in selling hundreds of properties at auction—relentless disposition. Approximately 32 of the Caltrans tenants were able to buy their own homes. Towards the end, the City bought nine remaining large parcel groups. The city manager negotiated purchase from Caltrans with an option to buy, giving the City control over the land. Two of these parcels moved along quickly and were sold for development. Four more were in negotiation in 2019. Only four remained with major decisions ahead.

Chapter 39: Rebirth of the Money

The gas taxes that bought right-of-way for the Bypass in the 1960s, locked in the land for about 50 years, came back to life in the LATIP account. The bureaucracy made it difficult to find accounting details. By the end of 2018, about \$99,000,000 had come in with \$56,000,000 more expected in the future. About \$20,000,000 had been spent on the Corridor/Loop, with \$17,000,000 more to spend. The total value of the land would be about \$155,000,000; HAPA's estimate of land value from an earlier year turned out to be closer than that of the agencies. About \$118,000,000 remained undecided.

Chapter 40: Sale to City of Hayward

The largest sale of excess right-of-way was of 10 major "parcel groups" to the City of Hayward in 2016. These parcels were located at: Industrial to Mission, Mission to Tennyson, Tennyson to Calhoun St., Calhoun St. to Harder Road, Harder Road to Carlos Bee, Carlos Bee to Dobbel Creek old quarry, PG&E corridor to Carlos Bee, Water tanks above City Center to Grove Way, and Apple Ave. to I-580 east bound on ramp.

Chapter 41: Loop Denouement

Implementation of the Loop only deepened advocates' awareness of the many problems of an expressway tightly circling the downtown. HAPA sent the City a long analysis of 15 problems and proposals for reform. After years of delay, the City studied a new downtown specific plan to achieve "complete streets." After a long process, the Council adopted a specific plan calling for reverse to a two-way system with a priority for making A Street two-way again. Unfortunately, it will take years to accomplish, calls for a dysfunctional large oval traffic circle, many intersection widenings, and parking structures. HAPA sued to get the parking structures out of the plan and the Council was persuaded to do so without going to trial.

Chapter 42: Loop Operational Problems

The Loop caused several operational problems. Traffic on B and C Streets were increased. It caused "jack rabbiting," pulse traffic, and inefficient lane use. The Loop reduced northbound from three routes to two. Intersections were often blocked by other vehicles. You often needed to cut through other streets in order to navigate through the one-way portions of A Street. The Loop required intense, perilous lane changing.

Chapter 43: Conclusions

Some unfinished business remains, a small number of unsold Caltrans properties, and revenues and expenditures of the LATIP. While the Bypass is gone, Hayward and the nation have not confronted the high costs of American car culture and the promise of more sustainable livable neighborhoods. Citizen advocates must be persistent with no guarantee of success, and more advocates are needed to move beyond auto dependency. This history had to be written or it would be forgotten as the people of Hayward leave the Bypass behind and create a new landscape. As living memory recedes into the past, the story is not over. There is more to tell. A difficult local politics over the Bypass spanned decades of struggle, reflecting great cultural change from unquestioned freeway building to saving the City from the freeway. After a long political and legal process, the law caught up with the Measure B deception; the Bypass finally had too many wounds to survive. The politics involved federal, state, regional and local governments, the courts, the media, citizen groups, the voters, elections, laws, lobbying, money, indeed, every dimension of the political process, each with its systemic characteristics, which are analyzed.