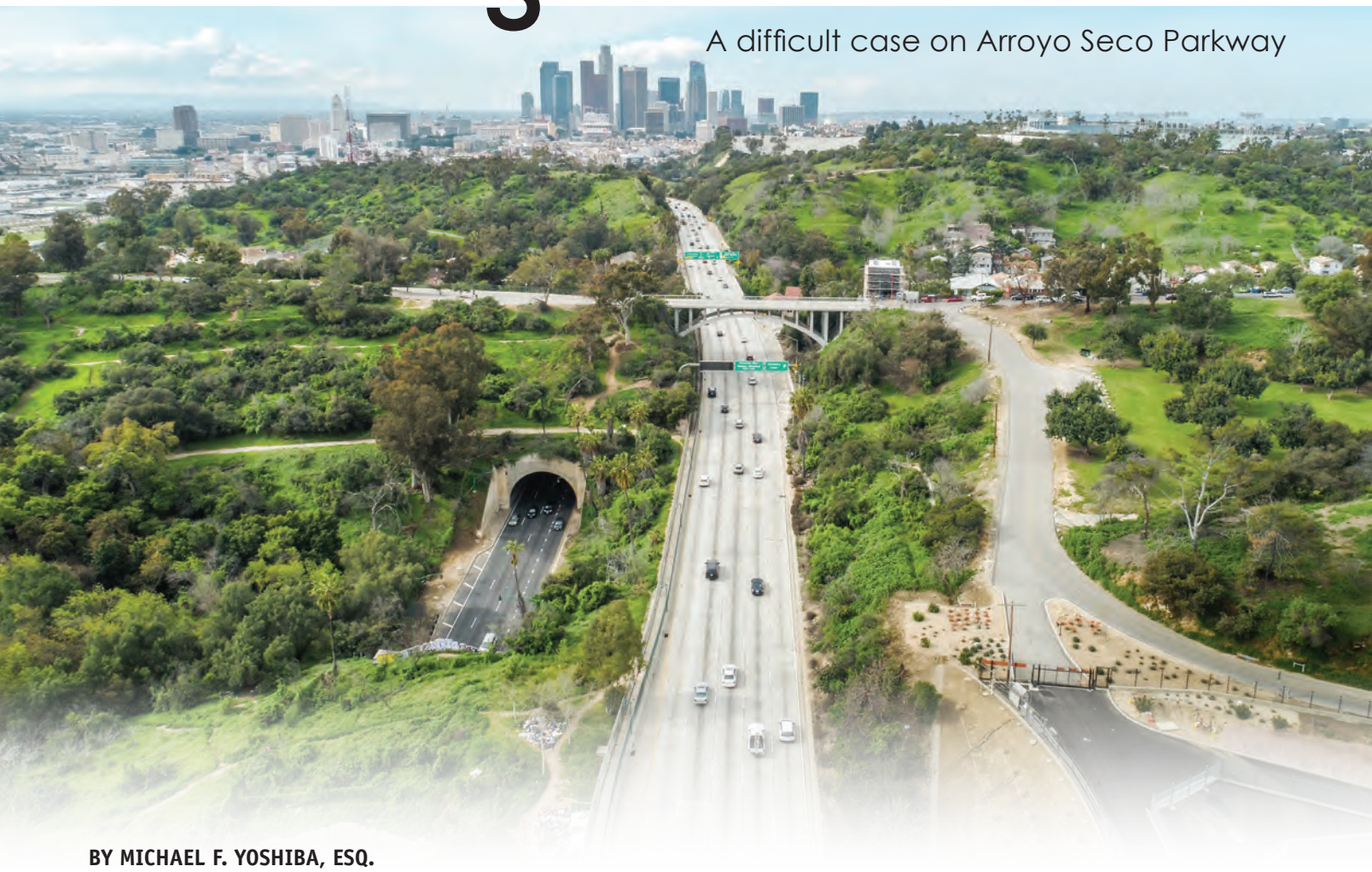
Cliffhanger on Route 66

A difficult case on Arroyo Seco Parkway



BY MICHAEL F. YOSHIBA, ESQ.

One can only imagine the sheer panic that must have ensued after a brick-sized jagged rock crashed onto and through the windshield of an unsuspecting daily commuter as she snaked through the Los Angeles morning freeway rush hour traffic on her way to work. The commuting car was traveling southbound on a local two-lane freeway transition ramp that hugged the hillside adjacent to Elysian Park and Dodger Stadium. The transition ramp was constructed prior to the 1940s by cutting away a portion of the lower hillside, thus creating an approximate 200-foot high steep embankment, the toe of the slope being only a few feet from the roadway.

The driver sustained serious personal injuries from the shattered windshield glass and significant damage to her car. She proceeded to file a claim against the State of California.

History of Location

The accident location was within the original 6.2 mile Arroyo Seco Parkway, California's first freeway, which dates back to the 1940s. The Arroyo Seco Parkway project marked the beginning of the freeway era on the west coast and in the Golden State. Now 8.2 miles and designated as California State Route 110, the Arroyo Seco Parkway, runs from downtown Los Angeles to Pasadena, California. It is a National Civil Engineering Landmark, a National Scenic Byway and the first of just two California Historic Parkways. The Arroyo Seco Parkway was also designated as one of the final legs of US Route 66 on its way to the Pacific Ocean.

The subject accident occurred midway through the transition ramp that connects southbound Interstate 5 freeway with the southbound State Route 110 freeway as it enters downtown Los Angeles. The State of California owned a highway easement over the steep embankment but did not own the underlying fee or the rights to use or occupy the top of the embankment slope.

Dangerous Condition of Public Property?

The issue raised by this claim and lawsuit was whether the accident occurred as a result of a dangerous condition of public property. More specifically, was the falling rock the result of poor maintenance

of the embankment or an independent bad act of an individual? Whether the rock fell from the unmaintained embankment or if someone intentionally threw the rock from the top of embankment with mischievous or criminal intent. Both sides had the difficult task of proving and disproving the origins of the offending rock.

Causation

Both sides reviewed sparse construction records and an unfortunate dearth of maintenance records pertaining to the embankment location. No records or photos were found of the privately-owned top of the embankment slope. Maintenance records existed for the occasional roadway falling rock and debris cleanup at this location. Construction records were on microfiche and didn't provide useful detail concerning slope cut, design or post-construction condition.

The State contended that the rock did not fall off the embankment from gravity and poor maintenance. Instead the rock was likely thrown from the private property at the top of the slope. According to the State's consultant geologist, the rock was dissimilar to the soil and rocks that existed on the embankment and could not have originated from the hillside. Combined with the fact that upon inspection of the top of slope, there were the same dissimilar rocks near the embankment edge and scattered among empty beer bottles, party trash and car tire tracks. The upper area was saturated with graffiti and general vandalism to street traffic signs.

Attorneys for the injured driver cited the State's lack of regular slope maintenance, and the unfortunate inevitability of this type of accident happening at this location. They believed that the rock-type conclusion of the State's geologist was sorely inconclusive and the State could not definitively prove that the rock didn't fall from an ill-maintained embankment. Furthermore, the physics of the accident damage was consistent with a rock falling from mid-slope and not the top of the slope.

Resolution

Ultimately, discovery in litigation proved difficult for both parties trying to prove what didn't happen and disprove hypothetical scenarios where facts were sparse. With the initial burden upon the claimant to prove that the State was the cause of the harm alleged, and the State relying upon a defense predicated upon the absence of conclusive evidence, both parties decided to settle the case.

Postscript

This forced litigation along Route 66 at the Arroyo Seco Parkway created momentum for an ad hoc review of this embankment and maintenance thereupon. Design of this roadway stretch predated more recent laws concerning personal injury claims on public property and the safety features incorporated into more modern roadways built adjacent to steep embankments.

With public safety going forward as the primary concern and this being a heavily used transition ramp into downtown Los Angeles, the State decided to implement a more permanent solution to falling rocks at this location. The State installed steel mesh netting (chain link fencing) across the entire embankment and anchored that into slope. Debris and trash were removed along top slope and memorialized in photographs. The embankment was stabilized and almost all rocks and debris formerly ending up on the transition road has been eliminated. ✪

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