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<input type="checkbox"/>	PROCEDURAL HANDBOOK (1984 Edition)	RWPH-____-____ TRANSMITTAL#____

TITLE: APPRAISALS	APPROVED BY:  SUZETTE M. MUSETTI	DATE ISSUED: JAN 14 2015
		Page 1 of 1
SUBJECT AREA: CHAPTER 7 - APPRAISALS	ISSUING UNIT: OFFICE OF APPRAISALS AND LOCAL PROGRAMS	
SUMMARY OF CHANGES: Revises Section 7.09.00.00.		

PURPOSE

This manual change clarifies special types of severance damages and substitute condemnation in the analysis of potential curative work alternatives.

Although damages due to annoyance and inconvenience to the general public are not compensable, there may be an exception if the property value of a remainder is reduced due to noise, fumes, and/or other annoyances inherent in the daily use of a freeway. Clarification was added to note that these special types of severance damages should be discussed with HQ R/W Appraisals and Legal prior to completion of the appraisal.

In instances where an acquisition deprives a property of access to a public road or utility service, it may be appropriate to consider substitute condemnation as a potential curative work alternative. To restore the utility of such parcels, and in doing so, to minimize severance damages, the State may provide substitute access or utility service (Code of Civil Procedure Section 1240.350). Clarification was added to include this policy as an optional consideration in damage alternative analyses.

In addition, formatting updates were applied and, where applicable, general typographical errors were corrected throughout the section.

PROCEDURES

- 7.09.03.00 Clarifies policy regarding noncompensable and/or special damage exceptions (noise, fumes, etc.).
- 7.09.07.00 Clarifies policy regarding substitute condemnation as a potential curative work alternative.

EFFECTIVE DATE

Immediately.

MANUAL IMPACT

- Remove the superseded pages and insert the attached pages in the Manual.
- Record the action on the Revision Record.

REVISION SUMMARY

<u>Chapter</u>	<u>Remove Old Pages</u>	<u>Insert New/Revised Pages</u>
	Remove the following in its entirety:	Replace with the following in its entirety:
7 - Sections	Table of Contents (REV 3/2014) 7.09.00.00 (REV 2/2004)	Table of Contents (REV 9/2014) 7.09.00.00 (REV 9/2014)

CHAPTER 7

APPRAISALS TABLE OF CONTENTS

7.01.00.00	APPRAISAL POLICIES AND GENERAL REQUIREMENTS
01.00	General Overview
01.01	Definition of Market Value
01.02	Necessity for Appraisal
02.00	Appraisal Report Not Required
03.00	Uniform Relocation Assistance and Acquisition Policies Acts
04.00	Standards
04.01	Appraiser Qualifications
04.02	Jurisdictional Exception
05.00	Separation of Appraisal and Acquisition Functions
06.00	Prerequisites for “ <i>Preliminary Right of Way</i> ”
07.00	Dual Report Requirements
08.00	Donations
08.01	Credit Toward State’s Matching Share
09.00	Dedications
10.00	Notice of Decision to Appraise
11.00	Parcel Diary
12.00	Responsibility for Providing RAP Information
13.00	Legal Opinions
14.00	Responsibility for Preparation
15.00	Appraisal Review
15.01	Cumulative Review Concept
15.02	Review Appraiser Concept
16.00	Review Appraiser Process
16.01	Minor Deficiencies
16.02	Major Deficiencies
17.00	Approval Authority
18.00	Criteria for Use of Independent Fee Appraisers
19.00	Report Processing and Records
20.00	Memo of Transmittal
21.00	Tables
7.02.00.00	APPRAISAL REPORTS
01.00	Federal Project Numbers
02.00	Report Identification Numbers
03.00	Organization, Content, and Sequence
04.00	Parcel Numbering
05.00	Number of Parcels Per Report
06.00	Parcels Straddling an Expenditure Authorization
07.00	Parcel Groups - Mutual Owners
08.00	Parcel Groups - Integrated Operation
09.00	Dual Report Process
09.01	Corrections and Revisions
09.02	Review Process

7.02.00.00	APPRAISAL REPORTS (Continued)
10.00	Replacement Housing Valuation Reports
11.00	Calculations
12.00	Noncomplex Valuations of \$10,000 or Less
13.00	Waiver Valuation In Lieu of an Appraisal
13.01	Waiver Valuation (\$2,500 or Less) - Contents and Requirements
13.02	Waiver Valuation (\$2,501 to \$10,000) - Contents and Requirements
14.00	Nominal Values (\$2,500 or Less)
7.03.00.00	APPRAISAL PREPARATION
01.00	The Appraisal Summary - Purpose
02.00	Appraisal Summary Format
03.00	Alternate Appraisals
04.00	Appraisals of Excess Property for Acquisition
04.01	Uneconomic in the Market
04.02	Uneconomic to the Owner, or for the Convenience of the Owner
04.03	To Avoid Large Windfall Relocation Payments to Single Family Owner-Occupants
05.00	Legal Larger Parcel and Subparcels
06.00	Allocation Between Excess and Right of Way
07.00	Excess Parcel Inventory Value (VTA)
08.00	Rental Rates
7.04.00.00	VALUE CONCEPTS AND CONSIDERATIONS
01.00	Value Basis
02.00	Total Value
03.00	Encumbered Fee
04.00	Mineral, Water, Oil and Gas Rights
05.00	Improvement Bonds and Assessments
06.00	Leasehold Interests "Bonus Values"
07.00	Change in Grade Only
08.00	Access Rights
09.00	Temporary Easements
10.00	Permanent Easements
11.00	Unit Values
12.00	Hazardous Waste and Hazardous Material Definition
12.01	Hazardous Waste General
12.02	Certification
12.03	R/W HW/Materials Coordinators Activities
12.04	Hazardous Materials
12.05	HW Site Identification
12.06	Notification
12.07	Valuation
13.00	Market Value of Nonprofit, Special Use Properties

7.05.00.00	METHODS OF VALUATION
01.00	Value Approaches
02.00	Sales Comparison Approach
02.01	Comparable Data
02.02	Analysis of Comparable Data
03.00	Assessor's Office Data
04.00	Cost Approach
05.00	Income Approach
05.01	Income Schedule
06.00	Review of Owner's Claimed Out-of-Pocket Expenses
7.06.00.00	LAND
01.00	General
02.00	Timber Land
03.00	Agricultural Land
04.00	Valuation of Williamson Act or Farmland Security Zone Lands and Timberland Production Zone Land
05.00	Valuation of Land Encumbered by Conservation Easement
05.01	Open-Space Easements
05.02	Wildlife Conservation Easements
05.03	Agricultural Conservation Easements
05.04	Replacement Conservation Easements
05.05	Comparison of Statutes Regarding Valuation of Conservation Easements
06.00	Outdoor Advertising Sites
7.07.00.00	IMPROVEMENTS
01.00	General
02.00	Single Family Residence and Two to Four Unit Multi-Residence - Form Appraisal
03.00	Miscellaneous Improvements and Landscaping
04.00	Agricultural Improvements
05.00	Valuation of Fences
06.00	Valuation of Water Sources
07.00	Improvements - Little or No Value
08.00	Improvements - Interim Value
09.00	Improvements - Purchase or Curative Work?
10.00	Improvement Relocations or Replacements Exceeding Depreciated Value Less Salvage
11.00	Relocation, Rearrangement, or Reconstruction Estimates
12.00	Building Check Sheets
13.00	Service Station, Commercial and Industrial Buildings
14.00	Tenant or Lessee-Owned Improvements (Excluding Personal Property)
15.00	Retention Value
7.08.00.00	IMPROVEMENTS PERTAINING TO THE REALTY
01.00	General
02.00	Appraisal Page Format
03.00	Replacement Cost
04.00	Depreciated Value
05.00	Salvage Value
06.00	Improvements Not Pertaining to Realty Under Section 1263.205

7.09.00.00 DAMAGES, BENEFITS, AND CONSTRUCTION CONTRACT WORK

- 01.00 General
- 02.00 Severance Damages
- 03.00 Noncompensable Damages
- 04.00 Cost to Cure
- 05.00 Benefits
- 06.00 Summary of Severance Damages and Benefits
- 07.00 Damage Alternatives
- 08.00 Utility Service Damage
- 09.00 Construction Contract Work
- 10.00 Utility Main Relocations
- 10.01 Private Utility Connections
- 11.00 Access Openings

7.10.00.00 REVISION AND REVIEWS

- 01.00 General
- 02.00 Changes in Unapproved Appraisals Requiring Division Approval
- 03.00 Changes in Approved Appraisals-Unacquired Parcels
- 04.00 Revised Appraisal Pages
 - 04.01 Submittal of Revised Pages
- 05.00 Revised Parcel Appraisals
- 06.00 Memorandum of Adjustment
- 07.00 Changes in Approved Appraisals on Acquired Parcels
- 08.00 Parcel Splits and Mergers
- 09.00 Parcel Cancellations
- 10.00 Review of Condemnation Parcels
- 11.00 Report Analysis for Nondelegated Parcels

7.11.00.00 OUTDOOR ADVERTISING SIGNS

- 01.00 Valuation
- 02.00 Definitions
- 03.00 Process
- 04.00 Payment Schedules/Application Renewal Permit Fees
- 05.00 Appraisal Procedures for Outdoor Advertising Signs

7.12.00.00 MOBILE HOMES

- 01.00 Mobile Homes - General
- 02.00 Mobile Homes - Realty
- 03.00 Mobile Homes - Personalty
- 04.00 Mobile Homes - Special Procedures
- 05.00 Mobile Homes - Format

7.13.00.00	SPECIAL APPRAISAL REPORTS
01.00	General
02.00	Material Site Appraisals
03.00	Disposal Site Appraisals
04.00	Office and Maintenance Station Site Appraisals
10.00	Joint Acquisition Appraisals
20.00	Protection Appraisals
30.00	Appraisals for Other Agencies
40.00	Staff Litigation Reports
50.00	UTILITY, RAILROAD AND GOVERNMENTAL OWNERSHIPS
50.01	Public Utility Property
50.02	Fee Land
50.03	Improvements
60.00	Railroad Property General Prerequisites
60.01	Valuation of Railroad Properties
70.00	Governmental, Indian, Functionally Replaced Publicly Owned Facilities, and State Land
7.14.00.00	EXCESS LAND APPRAISALS
01.00	General
01.01	Excess Land Methods of Disposal
01.02	Excess Land Valuations
01.03	Review and Approval of Excess Land Appraisals and Public Sale Estimates
02.00	Market Value Appraisals
02.01	Format, Content, and Standards
02.02	Dual Report Requirements
03.00	Market Value Determination of \$10,000 or Less
03.01	Format, Content, and Standards
04.00	Public Sale Estimates
04.01	Format
04.02	Content
04.03	Examples of Supporting Data
05.00	Review of Request for Proposal Submittals (RFP)
7.15.00.00	AIRSPACE ESTIMATES, BID LEASE VALUATIONS AND APPRAISALS
01.00	General
02.00	Estimates
03.00	Appraisals - General
03.01	Format
03.02	Standards and Methods
03.03	Preparation
04.00	Bid Lease Valuations
05.00	Rental Rate Appraisals

7.16.00.00	RENT DETERMINATION
01.00	General
02.00	Content
03.00	Review and Approval Process
04.00	Special Circumstances
05.00	Nominal Value Nonresidential Rentals
7.17.00.00	BUSINESS GOODWILL APPRAISALS
01.00	Statute - Compensation for Loss of Goodwill
02.00	Interpretation of the Eminent Domain Law, Court Cases, and Legal Issues
03.00	Burden of Proof
04.00	Notification Letter to the Business Owner
05.00	Timing for the Preparation and Completion of the Goodwill Appraisal
06.00	The Goodwill Appraisal Report
07.00	Parcel Diary
08.00	Cross-referencing the Goodwill and Real Estate Appraisal Reports
09.00	Parcel Numbering
10.00	Review and Approval Process
11.00	Project Influence
12.00	Appraisal Report Components and Sequence
13.00	Goodwill Valuation
14.00	Business Valuation Methods
15.00	Analyzing Financial Statements and State Income Tax Returns
16.00	Betterment at the Relocation Property
17.00	Disadvantages at the Relocation Property
18.00	Compensation to Business Owners Under the Relocation Assistance Program (Pursuant to Section 7262 of the Government Code and 49 Code of Federal Regulation Part 24)

7.09.00.00 - DAMAGES, BENEFITS, AND CONSTRUCTION CONTRACT WORK

7.09.01.00 General

The possibility of damages and benefits will be investigated in every partial acquisition. This investigation will include local market data, similar after-condition land development and highest and best use analyses, and other applicable information.

Any damages and/or benefits will be supported and clearly documented in the parcel appraisal. Severance damages and benefits will be shown as separate totals. Benefits, if any, will be subtracted from severance damages. Any net benefits or damages will be shown separately.

The results and support of the investigation which reveals that no damages and/or benefits occur must be shown in the appraisal report. Such analyses may materially assist negotiations in cases where unsubstantiated claims for damages might be made.

Benefits which result due to construction of the project in the manner proposed should be described, valued, and supported even if it is determined that there are no damages. Benefits may presently be incapable of being valued; the nature of the benefits should then be described in the appraisal. Legal opinions should be secured when there is uncertainty regarding compensable damages.

7.09.02.00 Severance Damages

A severance damage is a loss in value to the remaining property after acquisition and construction in the manner proposed. Severance damages are valued by the appraisal of the remainder as a portion of the total property in the before condition and as a freestanding remainder in the after condition (disregarding the benefits of the construction project). The remainder is considered damaged if it is worth less after construction of the project due to a legally compensable reason. The after condition valuation requires the same support as the before condition valuation. Severance damage analyses should consider when the damages will occur (Code of Civil Procedure Sections 1263.420 and 1263.440).

The parcel appraisal must specifically state the reasons for the severance damage and discuss the comparable data or investigation results supporting the severance damage estimate. Comparable data used will be referenced under the heading "Market Data (After)."

Generally, any severance damages to a larger parcel functioning as a unit, especially under an agricultural use, will be measured by any decrease in market value of the remainder(s) (*Department of Public Works v. Lundy*). Under very narrowly described circumstances, damages to the continued operation of the remainder(s) as a unit may be considered (*Department of Public Works v. Cozza*); these include items such as increased cost, difficulty, and hazard. If this form of damages is considered applicable, the Region/District must furnish particulars to HQ R/W Appraisal Branch and request a legal opinion prior to completion of the appraisal.

Compensable damages to the remainder may be caused by either or both of the following (see CCP Section 1263.420):

- (a) The severance of the remainder from the part taken.
- (b) The construction and use of the project for which the property is taken in the manner proposed by the plaintiff, whether or not the damage is caused by a portion of the project located on the part taken.

7.09.03.00 Noncompensable Damages

The following types of damages have been found by the courts not to be compensable, or in certain respects, may be compensable only under laws other than those of eminent domain. Therefore, the following noncompensable damages should generally not be included in real property acquisition valuations:

A. *Damages to business*

However, loss of goodwill is compensable if proven by the owner. Handling of such losses is treated under R/W Manual Section 7.17.00.00.

B. *Expenses for moving personal property*

However, displaced property owners and tenants may be entitled to payment for moving personal property under the Relocation Assistance Program.

C. *Temporary damages to the use and occupancy of property reasonably incident to construction requirements*

Unnecessary and substantial interference may be compensable. The appraiser should confer with HQ R/W Appraisal Branch and Legal to assist in the determination of damage compensability.

D. *Damage due to annoyance and inconvenience suffered by the public generally*

Exceptions to this may include diminution in property value of the remainder caused by noise, fumes, and/or other annoyances inherent in the daily use of a freeway. These types of severance damages are generally dependent on the specific circumstances in each case and must be measurable within the market. It is important to note that the damage must be sustained by the property itself rather than the owners. The appraiser should confer with HQ R/W Appraisal Branch and Legal to assist in the determination of damage compensability.

If noise damages are assessed in the appraisal, written documentation from Project Development will be included in the report. This documentation should confirm that no noise attenuation measures are included in the proposed construction plans.

E. *Circuity of travel caused by dividing a highway*

Damages concerning circuity of travel can occur under many circumstances. The appraiser should confer with HQ R/W Appraisal Branch and Legal to assist in the determination of damage compensability.

F. *Rerouting or diversion of traffic or changing of a two-way street to a one-way street*

G. *In general, all those types of damages which can be considered to be conjectural, speculative, and/or remote*

7.09.04.00 **Cost to Cure**

Some severance damages may be mitigated or entirely eliminated by estimating the cost to cure the damage. The appraiser must first show the total estimated severance damages to the remainder which would occur if not cured. After the damage amount is estimated, the appraiser can explore potential costs to cure those damages. Damages are measured by the lesser of these two costs: the potential damage (loss in value) to the remainder or the cost to cure the damage. The estimated cost to cure may not exceed the estimated severance damage. Since cost to cure damages are a form of severance damages, they are to be offset by any benefits.

The supporting data and sources used to estimate cost to cure damages must be shown in the appraisal report in accordance with R/W Manual Section 7.05.04.00 relating the documentation of cost estimates.

7.09.05.00 **Benefits**

Benefits are valued by the appraisal of the remainder before and after the acquisition and construction of the project in the manner proposed. Benefits analyses should consider when the benefits will occur. (See CCP Sections 1263.430 and 1263.440.)

The appraiser must provide a descriptive analysis with adequate support for any estimated benefits.

Benefits are to be offset against any severance damages in the valuation. If benefits are estimated to the remainder, such benefits will be quantified and shown in the appraisal report, even if it is determined that there are no severance damages to the remainder. When excess benefits remain after the offset against severance damages, the excess benefits shall be shown in the report. Benefits can be used to offset any loss of goodwill that may occur to a business located on the property if owned by the fee owner. (See CCP Section 1263.410.)

7.09.06.00 **Summary of Severance Damages and Benefits**

Severance damages and/or benefits shall be summarized on a before-and-after value basis in the appraisal report. A "Summary of Severance Damages and Benefits" (Form RW 7-12) shall be used for the summary.

In cases where severance damages and/or benefits are relatively minor, it will not be necessary to include a before-and-after value summary.

7.09.07.00 **Damage Alternatives**

The "Summary of Damage Alternatives" and "Discussion of Damages" (Exhibit 7-EX-6) are the suggested formats to be used to compare practical alternative damage approaches and to discuss damage elements. The "Discussion of Damages" section will be used in cases where damages, other than minor adjustment curative work, are present.

If no feasible curative work alternative can be proposed to mitigate severance damages, the "Discussion of Damages" will so state. If severance damage estimates are inconclusive using before-and-after valuations, or are impractical due to the size or nature of the remainder, or if the cost to cure the severance is the best measure, the "Discussion" will give the reasons for the approach used. If the severance damages are valued by market comparison, the "Discussion" will reference the comparable data used and explain the comparative analysis. If market data is inconclusive as a basis for the estimation of damages, the "Discussion" should include a description of the scope of the market investigation and the reason supporting the opinion of damages.

The formats contained in Exhibit 7-EX-6 should be used to substantiate a purchase of excess land, except in the following cases: (1) landlocked remainders; (2) properties with major improvements straddling the right of way line; (3) sites reduced below zoning minimums; (4) public utility or governmental properties. Even in these exceptions, comments should describe investigations of possible curative work alternatives and reasons for rejections.

It is important to note that in some cases, potential curative work alternatives may include substitute condemnation. The most common situation where substitute condemnation should be considered occurs where an acquisition would deprive a property of access to a public road or utility service. To restore the utility of such parcels, and in doing so, to minimize severance damages, the State may provide substitute access or utility service. CCP Section 1240.350 provides the discretionary authority for substitute condemnation of additional property “as reasonably necessary and appropriate (after taking into account any hardship to the owner of the additional property) to provide utility service to, or access to a public road from, any property that is not acquired for such public use but which is cut off from utility service or access to a public road as a result of the acquisition by the public entity.” When proposing substitute condemnation as a means to minimize severance damages, the appraisal report (along with the resolution of necessity) shall specifically refer to CCP Section 1240.350 and include a statement that the substitute property is necessary for the purpose specified in this section.

7.09.08.00 **Utility Service Damage**

The grantor must be fully compensated for all justified damages due to relocation of utilities, including payment for severing water, sewer, and gas lines and wiring extending into the right of way area, if such work is to be performed by grantor.

7.09.09.00 **Construction Contract Work**

Occasionally, work in or outside of the State right of way is required to restore the utility of remaining property (i.e., road/driveway approach, cattle pass, utility sleeve) and may be most economically and/or practically performed by the State’s highway contractor. The work and estimated cost will be described as “Construction Contract Work.” The feasibility and cost of the proposed work must be estimated or verified by Region/District Project Development prior to submission of the appraisal. Sources of estimated costs will be included in the report and documented in the Region/District’s appraisal file. Costs must be justified by the value of the remainder and must be less than the potential damage which would occur if the construction work was not performed.

Only work for the grantor’s benefit to the remainder is considered to be “Construction Contract Work” as it is a form of a damage payment. Work of greatest benefit to the public or required by the highway construction will not be classified as “Construction Contract Work.”

The appraisal must clearly show the computations and explain the reasons for proposing construction contract work that is not offset when benefits are present. Minor construction contract work for driveway reconstruction, domestic utility reconnections, etc., should be proposed regardless of the presence of benefits.

Construction contract work may also include curative work for a remainder which is to be performed by a clearance contractor or public utility agency. The feasibility and cost of the proposed work will be estimated or verified by the Region/District Property Management or Utility Clearance Branches prior to submission of the appraisal.

The Appraisal Summary (RW 7-9) will show a “Construction Contract Work” heading for all partial acquisitions. The heading will show the remark “None Required” or contain a description and valuation of required construction contract work, including proposed engineering station locations. The total of all construction contract work will be carried forward to the Parcel Summary Page (if used).

Construction contract work can benefit more than one property. If multiple properties are benefited, the total amount of construction contract work will be split among the various properties at the amount of benefit each property receives. A reference will be made in each parcel appraisal that the construction contract work benefits other parcels.

7.09.10.00 **Utility Main Relocations**

Relocation of utility transmission lines up to the point of owner’s service is usually included in agreements with the utility company. Such relocations need not be considered in the parcel appraisal, with the one exception: the extension of utility mains for the sole benefit of few properties remaining after State acquisition. In these cases, the utility main relocation costs must be justified by the values of the affected remainders.

If payment of severance damages or purchase of remainders is less costly, it should be considered.

7.09.10.01 **Private Utility Connections**

The relocation of private connections can be handled in one of the following ways:

- Reconnection by the grantor through a damage payment.
- Reconnection by the utility company as part of the utility agreement.
- Reconnection by the highway contractor as construction contract work.
- Reconnection by the clearance contractor as construction contract work.

Whenever possible, the appraisal analysis should anticipate how private relocations and reconnections will be accomplished. The estimated cost for work performed by the grantor will be shown as a “Damage.” Reconnection by any other means will be shown as “Construction Contract Work.” If construction plans or utility company plans are incomplete, the appraisal will describe the various utility services and discuss possible relocation and reconnection requirements, potential challenges (if any), and estimated costs.

An analysis will also describe the parcel’s utility sources and possible relocation requirements, if any. Such analyses should consider grantor-owned well water, sewerage, and other utility systems.

7.09.11.00 **Access Openings**

All proposed openings within areas of access restriction to allow direct private access to the highway (either permanent, temporary, or locked gate) will be listed on the Appraisal Summary (RW 7-9) under the heading “Access Openings.” Do not list public road openings included in Freeway Agreements or road approaches from conventional highways or frontage roads. Costs will be valued under “Damages” or “Construction Contract Work,” if appropriate.

All access openings must be confirmed by Region/District Project Development. The necessity for locked gates or temporary openings must be fully explained in the parcel appraisal. All listed access openings will be properly delineated on the Appraisal Map and included on the List of Access Openings in the appraisal report.

NOTES: