CHAPTER 9

CONDEMNATION
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9.00.00.00 - CONDEMNATION

9.01.00.00 - EMINENT DOMAIN

9.01.01.00 General

Eminent domain is the inherent power of government to acquire private property for public use. The owners of such private property shall not be deprived of their property without just compensation as provided in the Fifth and Fourteenth Amendments to the United States Constitution and Article I of the California Constitution.

Condemnation is the legal proceeding by which the power of eminent domain is exercised.

The Department may condemn property to be used for highway and related purposes by authority of S&H Code Section 102. The CTC must first adopt a Resolution of Necessity pursuant to Section 1245.230 of the Code of Civil Procedure (CCP).

9.01.02.00 Record of Condemnation Case Status

The District Condemnation Unit, hereinafter referred to as District, maintains a record of the status of condemnation cases commencing with submittal of the District's Request for Resolution of Necessity to Headquarters. The record is kept current through the duration of the action.

9.01.03.00 Condemnation Process

The condemnation process requires continuous communication between the District, Legal, and HQ R/W. District Management's involvement early and often throughout the process is crucial to help identify and offer guidance for the resolution of issues. Respective roles and responsibilities are set out in the flowcharts in Section 9.16.00.00 at the end of this chapter. The flowcharts provide an overview of the process; the steps involved and the sequence of action may vary. In addition, the flowcharts outline actions taken by Legal that may not be discussed in this chapter.

Condemnation must be completed within a short time frame, and all eminent domain actions are subject to fast track rules that accelerate the process. (See Section 9.02.15.00.) Although timelines may vary depending on local court rules, the typical time frame should closely follow the indicated schedule.

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9.01.04.00 Notice of Intent to Adopt Resolution of Necessity

CCP Section 1245.235(a) states that "The governing body of the public entity may adopt a resolution of necessity only after the governing body has given each person whose property is to be acquired by eminent domain and whose name and address appears on the last equalized county assessment roll notice and a reasonable opportunity to appear and be heard on matters referred to in Section 1240.030." The District initiates condemnation by mailing a Notice of Intent to Adopt Resolution of Necessity to property owners whose property is required (Exhibit 9-EX-1). The Notice must be signed by a senior level Right of Way Agent or above.

NOTICE REQUIREMENTS

- Include one of the following forms of property identification as "Exhibit A": Resolution of Necessity Maps and/or Legal Description,

  or

  Specific property address and appraisal map clearly showing property, or tax assessors map,

  or

  Department's Grant Deed

- Send Notice to owners listed in the last equalized county assessment roll, other verified owners of the real estate that are not identified on the tax rolls, and lessees and month-to-month tenants **only** if they own realty improvements within the acquisition area (as opposed to possessing a right to occupy) **and** are on the tax rolls.

- Serve or mail Notice no later than 30 days prior to the date of the meeting at which the CTC will consider the Request. Notices may be sent even earlier to accommodate an anticipated Condemnation Evaluation Meeting or Condemnation Panel Review Meeting and avoid rescheduling a selected CTC meeting.

- Personally serve or mail Notice First Class, Return Receipt Requested.

If the owner refuses service or delivery, mail Notice First Class (without Return Receipt Requested). Prepare an affidavit detailing the steps taken to provide the required notification.

If the owner(s) cannot be located with reasonable diligence, the Notice should be mailed to the last known address and to the person on the tax rolls at the address listed with the tax assessors. Documentation of all research to locate the owner must be included in the parcel diary. This documentation may be needed for inclusion in a

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Declaration of Due Diligence and, when signed by the agent, may be required as a support document for the Application to Publish (CCP 1245.230 and 1245.235).

9.01.04.01 Notice of Intent to Adopt a Resolution of Necessity for Properties That Are Subject to a Conservation Easement

In addition to the Department's standard Notice of Intent (Notice) requirement as outlined above per Section 9.01.04.00, CCP Section 1240.055 establishes additional Notice requirements for the acquisition of properties which are subject to a conservation easement. In order to comply with the provisions of CCP 1240.055, Exhibit 9-EX-1A shall also be used for these special types of acquisitions.

The Department shall provide notice (Exhibit 9-EX-1A) to the holder of the conservation easement not later than 105 days prior to the respective hearing in which a Resolution of Necessity (RON) will be sought for the subject property, or at the time of the first written offer, whichever is earlier. However, to comply with Federal Regulations, the conservation easement holder shall still be provided a reasonable time to consider the first written offer (at least 30 days) prior to sending out said Notice of Intent.

The intent of CCP 1240.055 is to encourage the parties to consult early in the process and assist in identifying potential and significant impacts of the proposed acquisition and the feasible alternatives or mitigation measures that will avoid or substantially lessen significant impacts on the conservation easement in order to avoid delays in the eminent domain proceeding. As a result, the following items are included in Exhibit 9-EX-1A:

- A description of the public use or improvement that the Department is considering for the property subject to a conservation easement.
- That written comments on the acquisition, including identifying any potential conflict between the public use proposed for the property and the purposes and terms of the conservation easement, may be submitted no later than 45 days from the date the Department mailed the Notice of Intent to the holder of the conservation easement.

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- That the holder of the conservation easement, within 15 days of receipt of the Notice of Intent, shall do all of the following:

  - Send a copy of the Notice of Intent by First Class Mail to each public entity that provided funds for the purchase of the easement or that imposed conditions on approval or permitting of a project that were satisfied in whole or in part by the creation of the easement.
  - Inform the public entity that written comments on the acquisition may be submitted no later than 45 days from the mailing of the Notice of Intent.
  - Inform the Department of the name and address of any public entity that was sent a copy of the Notice of Intent.

- That the holder of the conservation easement (and any public entity who has been provided a copy of the Notice of Intent by the holder of the conservation easement) have the right to appear and be heard on the matter referred to in Code of Civil Procedure Sections 1240.510 and 1240.610.

The Department, within 30 days after receipt of any comments from the easement holder or any public entity with regard to the acquisition, shall respond in writing to the comments via First Class Mail. Depending on the comments received, close coordination between the District Right of Way and Environmental offices will be required to adequately address and provide the Department's written response in a timely fashion.

Where property subject to a conservation easement is sought to be acquired, the Resolution of Necessity shall refer specifically to either Code of Civil Procedure Section 1240.510 (compatible use) or 1240.610 (more necessary use) as the appropriate authority.

9.01.05.00 Change in Notice

If either of the following occurs, the District must immediately notify the owner(s) by mail that the Request will not be considered on the date of which they were notified and that a new Notice will be provided.

- If for any reason (such as a design change) information in a Notice or legal description already provided to the owner(s) ceases to be correct prior to adoption by the CTC.

- If the District elects to defer CTC consideration from the time set forth in the original Notice.

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The District must provide a new Notice, subject to all of the above requirements, before a revised resolution request may be submitted for CTC consideration.

A new Notice of Intent (Exhibit 9-EX-1 and/or Exhibit 9-EX-1A) is not required if CTC consideration has been deferred at the owner's request or if the owners request to appear results in a District Condemnation Evaluation or Condemnation Panel Review Meeting. The District must, however, provide written notification of the deferred date and location to the owner at least 15 days in advance of the new meeting. This notification should be in the form of a one-page letter informing the owner of the deferred date and location, and must have the original Notice of Intent as an attachment.

If the Notice was mailed and the date of the CTC meeting or the location is in error or has changed, a Correction Letter (see Exhibit 9-EX-6A) may be mailed in lieu of a new Notice. The letter should be sent by First Class Mail, Return Receipt Requested.

9.01.06.00 Grantor's Request for Appearance

If an owner believes that their property should not be required or that the transportation project should be modified to avoid their property, the owner may request an appearance before the CTC regarding the Resolution of Necessity. Pursuant to CCP 1245.235, this request must be made in writing and on file with the CTC within 15 days from mailing of the Notice. In response to the request, the District conducts a Condemnation Evaluation Meeting, and coordinates with Headquarters to facilitate a Condemnation Panel Review if necessary, which continues the negotiating process and assures that all issues are identified and resolved, if possible, prior to the CTC meeting.

In order for the Department to adequately address the owner's issues, it must fully review all proposals presented by the owner. Design and other functional units' responses to the issues raised during the negotiation process may vary in the level of analysis and consideration. To assure that the owner is receiving fair consideration and that the Department is presenting a credible basis for its design criteria, Right of Way agents are to document property owner specific issues and forward these issues in writing to the appropriate functional unit(s) for a written response to facilitate the agents' follow-up discussions with the property owner. By formalizing the response process, the issues, the consideration and justification or modification for the design will be clearly defined and conveyed to the owner at the earliest possible time in the negotiation discussions.

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9.01.06.01 Local Boards

By statute, local government boards (City Council and County Boards) may at the request of the Department hear resolution of necessity requests on State Highway projects (Right of Way Manual Chapter 17, Section 17.04.09.03). The process is described in Exhibit 9-EX-8, "Resolution of Necessity (First and Second Level Reviews) Guidelines for Local Agencies Performing Work on the State Highway System."

For additional information regarding "Processing Department Resolutions of Necessity (RON) through the California Transportation Commission (CTC), County Board of Supervisors (Board), or City Councils (Council)," reference is made to Exhibit 9-EX-9.

9.01.07.00 District Condemnation Evaluation Meeting (Formerly Known as First Level Review Hearing)

The purpose of the District Condemnation Evaluation Meeting is to identify and resolve all property owner's issues, if possible, at the District Level. The District conducts the Condemnation Evaluation Meeting, which is attended by the District Director, Deputy District Directors from Design and Right of Way, and the owner(s) and/or their representative(s). The meeting should be limited to the appropriate functional managers, the Single Focal Point, and the Headquarters Design Coordinator. Other staff should be available on standby or by phone to be called upon as deemed appropriate to provide supplemental project information to the participants, if necessary. The Deputy District Director of Right of Way will chair the meeting. The Chair reminds the owner the CTC will only consider issues of project need, project design, and the necessity of purchasing the owner's property; the CTC will not consider issues of compensation.

If during negotiations the District determines that there is a high probability that the owner will request an appearance before the CTC, to facilitate project scheduling control the District Condemnation Evaluation Meeting may be held either prior to sending the Notice of Intent, or thereafter, but prior to receiving a formal request to appear by the owner. The decision to have the Condemnation Evaluation Meeting prior to sending the Notice of Intent will be considered on a case-by-case basis and requires the prior approval of a District R/W Manager. This is another option that allows the District total control and timing of the Condemnation Evaluation Meeting, and the opportunity to identify and find early resolution of issues with the property owner.

Prior to the Condemnation Evaluation Meeting, the District shall have a District Management briefing meeting with the District Director and/or other appropriate District Management personnel regarding all the issues related to the parcel, as well as a strategy for moving forward. Having a full understanding of the issues, alternatives,

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and the legal or design limitations will improve the decision process for District Management.

If after the Condemnation Evaluation Meeting the owner decides not to appear before the CTC, the owner must send a letter to the Executive Director of the CTC withdrawing their previous request to appear. The District may prepare the letter for the owner. An executed copy is forwarded to HQ R/W&LS.

9.01.08.00 Condemnation Panel Review Meeting (Formerly Known as Second Level Review Hearing)

The purpose of the Condemnation Panel Review Meeting is for the Panel to conduct an independent review of the project and its impact on the subject property, and to evaluate all issues brought forward. If issues concerning the adoption of the Resolution remain unresolved after the Condemnation Evaluation Meeting and the District's recommendation is to proceed with the project, District Design in coordination with Right of Way prepares an Appearance Information Sheet (AIS) and Fact Sheet. For additional information regarding these two documents, please refer to Appendix JJ of the Project Development Procedures Manual. These documents include a complete report of the Condemnation Evaluation Meeting and are sent to the Headquarters Division of Design (DOD) Chief, Attn: RON Appearance Request, Mail Station 28, with a copy to the Headquarters Division of Right of Way and Land Surveys (HQ R/W&LS) Chief, Attn: Office Chief R/W Project Delivery, Mail Station 37. This submittal, which is recommended by the District Deputy Directors from Design and Right of Way, and approved by the District Director, is the District's request to proceed with a Condemnation Review Meeting. The District Director's approval may not be delegated.

In response to this submittal, the Chief, Division of Design (or delegate), after consulting with the Chief, Division of Right of Way and Land Surveys (or delegate), may take the following actions: 1) Refer the request to the Condemnation Panel, to develop a recommended course of action for the Chief Engineer, or 2) Refer the project back to the District for additional design studies or modifications.

If the request for Appearance is referred to the Condemnation Review Panel to proceed with a Condemnation Panel Review Meeting, HQ R/W convenes the Panel. The standing Panel membership consists of the Division of R/W&LS Office Chief, Project Delivery; the Division of Design Office Chief, Resolutions of Necessity; and the Legal Division Assistant Chief Counsel, Real Property. To ensure scheduling flexibility, the standard Panel membership may be supplemented as necessary by the HQ Design Coordinators, the Assistant Chief of the Division of Design, the Assistant Chief of the Division of R/W&LS, or an attorney from the appropriate Region/District Legal Office. The R/W Panel member will act as the Panel chairperson and designate a Right of

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Way staff person to serve as the secretary to the Panel. Representatives from District R/W and Design attend the meeting, but are not members of the Panel.

Attendance at the Condemnation Panel Review Meeting shall include the owner and/or their representative(s), the Panel, the Panel secretary, the District Director and the Deputy District Directors from Design and Right of Way. The meeting should be limited to active participants and decision makers only. Department representation at this meeting should be minimized and limited to the managers listed, with potential expert presenters and other staff available on standby, if necessary. For locally funded projects or consultant-designed projects, the District may invite additional representatives to the Condemnation Panel Review Meeting to provide detailed information.

The purpose of the Condemnation Panel Review Meeting is for the Panel to conduct an independent review of the project, its impacts to the subject parcel, and to evaluate all issues brought forward. Should the Department be unable to reach mutual agreement with the owner, the Panel's review serves to validate that the proposed design provides the greatest public good while imposing the least private injury. This step is necessary in order to provide the Chief Engineer with an appropriate recommendation that will allow the Department to move forward with the Resolution of Necessity.

The Panel chairperson or designated secretary to the Panel will begin the Condemnation Panel Review Meeting by explaining the purpose of the meeting and the procedures to be followed. District Managers make a presentation to the Condemnation Review Panel and the owner describing the project using suitable maps and plan exhibits. This presentation shall be conducted by management level persons from both Design and Right of Way. The Design manager will present the design portion, and the R/W manager will present the real estate portion. The property owner will be asked to present their concerns about the project or the proposed acquisition as presented, along with any suggestions they may have to reduce or mitigate project impacts.

If issues remain unresolved at the conclusion of the Condemnation Panel Review Meeting, the Panel secretary in coordination with the Panel members prepares a Panel report and recommendation to the Deputy Director Project Delivery (also known as the Chief Engineer) for presentation of a Resolution of Necessity to the CTC.

HQ R/W prepares a package for the CTC that contains a Summary of Issues, Condemnation Review Panel Report, Fact Sheet, and Maps. HQ R/W notifies the owner by certified mail of the date, time, and location of the CTC hearing, and includes a copy of the same package created for the CTC.

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The District Condemnation Evaluation and Condemnation Panel Review Meetings shall be conducted separately to afford the District every opportunity to discuss the project and to negotiate a settlement with the property owner. The District Condemnation Evaluation Meeting must be held far enough in advance of the Condemnation Panel Review Meeting to allow adequate time for the District to consider and evaluate recommendations discussed at the District meeting, and provide a written response to the property owners addressing the issues they raised. Results of all evaluations are to be included in the Appearance Information Sheet (AIS) and the District's presentation during the Condemnation Panel Review Meeting.

9.01.08.01 Combined District Condemnation Evaluation and Condemnation Panel Review Meetings

The Chief Engineer has delegated the District Directors the authority to combine the District Condemnation Evaluation and Condemnation Panel Review Meetings for those projects where the property owner's issues are not related to the project's design. Exceptions to this are considered on a case-by-case basis and require prior documented support of both Chiefs of DOD and Division of Right of Way & Land Surveys. When this authority is exercised, the District Director shall provide in writing to the Chief Engineer, Attn: Chief DOD, a notice of the decision to combine the meetings and verification that the property owners' issues are not design related. The District will be responsible for notifying the Panel secretary to coordinate the Panel's participation at the combined meeting. The District also assumes the responsibility of preparing and finalizing the Appearance Information Package which includes the Panel Report (see Exhibit 9-EX-2), and to prepare the District Director or Deputy District Director to present the Department's draft CTC presentation to the Chief Engineer at the Resolution of Necessity Dry Run held in Headquarters. The Single Focal Point will coordinate the District's handling of the necessary deliverables and assessing potential risks for the District. The Chief Engineer will determine at the conclusion of the District's Resolution of Necessity Dry Run presentation if the "Resolution" is ready to move forward to the CTC for consideration. The Panel Report, which is approved by the Chief Engineer, is the Department's authorization to proceed before the CTC to obtain the Resolution of Necessity. The District is required to meet the Office of CTC Liaison's predetermined deadlines for submittal of documents and presentations, so book items can be finalized for the CTC's agenda (refer to current year Preparation Schedule).

Specific details regarding the Resolution of Necessity Process, procedures for performing the District Condemnation Evaluation Meeting and the Condemnation Panel Review Meeting, along with outlines and suggested formats for the Appearance Information Sheet and Fact Sheet are found in Chapter 28 of the Project Development Procedures Manual.

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Although the Resolution of Necessity process usually occurs well after most required project approvals have been obtained, its importance cannot be minimized. Projects have been delayed or modified as a result of property owner challenges. Careful and complete documentation of the project need and design throughout the entire project development process is essential. As such, District management's involvement early and often throughout the entire process cannot be overemphasized. The goal of the process is to find early resolution of issues that benefits both the public and the property owner, without the necessity of filing an action of eminent domain.

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DISTRICT CONDEMNATION EVALUATION AND CONDEMNATION PANEL REVIEW MEETINGS

Responsible Party	Action
District	Sends notice to the owner of the CTC meeting at which the Resolution of Necessity will be considered. (See Exhibit 9-EX-1 and/or Exhibit 9-EX-1A.)
Owner	Notifies the CTC of intent to appear at the CTC meeting to object to the Resolution of Necessity.
HQ R/W	Notifies the owner that consideration of the Resolution of Necessity by the CTC will be delayed pending further investigation. (See Exhibit 9-EX-3.)
HQ R/W	Asks the District to conduct a Condemnation Evaluation Meeting. (See Exhibit 9-EX-4.)
District	Notifies owner of the date, time, location, and purpose of Condemnation Evaluation Meeting. (See Exhibit 9-EX-5.)
District	Conducts meeting to brief District Management on all known issues prior to the Condemnation Evaluation Meeting.
District	Conducts Condemnation Evaluation Meeting. Provides follow-up letter to property owner to address the issues that were raised during the Condemnation Evaluation Meeting.
District	Design and R/W prepare an Appearance Information Sheet and Fact Sheet and submit to HQ Division of Design with a copy to HQ Division of Right of Way. See Chapter 28 of Project Development Procedures Manual **OR** — Obtains a written withdrawal of the owner's request to appear.

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DISTRICT CONDEMNATION EVALUATION AND CONDEMNATION PANEL REVIEW MEETINGS (CONTINUED)

Responsible Party	Action
District	R/W schedules the Condemnation Panel Review Meeting after coordinating with the Condemnation Panel members, the District managers, and the owner.
District	Arranges for a meeting location.
District	Notifies the owner by letter of the date, time, location, and purpose of the Condemnation Panel Review Meeting. (See Exhibit 9-EX-6.)
District	R/W coordinates with the Condemnation Panel for a field inspection of property (usually held the day of the Condemnation Panel Review Meeting).
Condemnation Panel	Conducts the Condemnation Panel Review Meeting.
District Managers	Makes presentation to the Condemnation Review Panel and the property owner at the Condemnation Panel Review Meeting describing the project and impacts to the subject property. The Design Manager presents the design portion and the R/W Manager presents the R/W portion.
District	Notifies owner of the date and location of the CTC meeting (see 9.01.05.00).
Condemnation Panel	Reviews statutory and Department requirements. If requirements are met, prepares the Panel Report and recommendation to the Chief Engineer to proceed with a Resolution of Necessity for presentation to the CTC.
HQ R/W	Prepares CTC package and notifies the owner by certified mail of the CTC hearing. (See Exhibit 9-EX-7.)

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9.01.09.00 Requesting the Resolution of Necessity

A separate Resolution must be obtained for each ownership. An ownership may consist of more than one parcel, but no more than one ownership may be included in a Resolution, Request, or Notice.

The legal and policy requirements below must be met for each ownership prior to submitting the Request to HQ R/W.

LEGAL AND POLICY REQUIREMENTS

- There must be an approved appraisal report on the property, and the full amount of that appraisal must have been offered. A "Waiver Valuation" is not an appraisal and cannot be used for condemnation purposes. It must be upgraded to an appraisal prior to requesting a Resolution of Necessity (see 8.01.08.00). In addition, a minimum value offer of $1,000 is required prior to submitting a request for a Resolution of Necessity (see 8.01.26.00).

- A reasonable number of acquisition calls must have been made on the property owner, and the owner must have been allowed a reasonable time to consider State's offer [49 CFR 24.102(f)]. For most properties, no less than three personal calls and 30 days would be considered reasonable.

- Where improvements on the remainder or that straddle the right of way line are to be acquired, Acquisition must advise R/W Engineering of the necessity of including either the Condemnation Improvement Removal Clause or the Condemnation Improvement Severance Clause in the legal description. See 6.12.08.00, 6.12.08.01, and 6.12.08.02.

- A personal acquisition call must have been made on the owner within 30 days prior to serving or mailing the Notice. The owner(s) must have been advised that:
    - The State will proceed with condemnation and will serve or mail the Notice soon.
    - The owner has a right to appear before the CTC to be heard on matters referred to in CCP 1240.030; the CTC may not consider issues of compensation.
    - The owner must file a request to appear within 15 days of service or mailing of the Notice. Otherwise, the right to appear before the CTC will have been waived.

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LEGAL AND POLICY REQUIREMENTS (CONTINUED)

- A Notice (see Exhibit 9-EX-1 and/or Exhibit 9-EX-1A) must have been provided to all parties with an ownership interest in the real estate (see 9.01.04.00; 9.01.04.01).

- There must be an updated Litigation Guarantee for condemnation purposes, or a Preliminary Title Report must have been upgraded to a Litigation Guarantee. The Litigation Guarantee, Title Report, or Title Report Supplement must be current (no older than six months) at the time the Notice of Intent (NOI) is mailed. If a Title Report is used in lieu of a Litigation Guarantee, a Litigation Guarantee must be ordered at the time of mailing the NOI. An update of the Litigation Guarantee must be ordered after recording of the Lis Pendens. See Section 9.02.11.00.

9.01.10.00 Submission of Request for Resolution

The District should submit the Request for Resolution to HQ R/W a minimum of 45 days prior to the CTC meeting to ensure processing.

The CTC office semiannually establishes dates and locations of CTC meetings. HQ R/W sends this information to the districts as soon as it is available.

9.01.11.00 Preparation of Resolution

HQ R/W reviews the Request for Resolution based on information provided in the District's request package. Each package must contain the following items:

RESOLUTION REQUEST

- Resolution of Necessity (RON) Request (Form RW 9-8) or, alternately, the electronic request from the RON Generator (for Department use only).
- Completed Request for Confirmation of Market Value (Exhibit 8-EX-5).
- Copy of Notice of Intent.
- The legal description.
- Resolution of Necessity Maps: Index Map marked "Exhibit A" and detailed Resolution of Necessity Map marked "Exhibit B," etc.
- Declaration of Mailing or Affidavit of Service of Notice.
- Copy of the vesting page from a current (not older than six months from the time the NOI is mailed) Title Report or Litigation Guarantee.

Per existing delegations, all Resolution Packages are to be approved by the Region/District Right of Way Manager prior to submittal to HQ R/W.

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9.01.12.00 Specific Statutory Authority

See the list at the end of this section for a summary of condemnations for which specific statutory authority must be cited in the Resolution.

9.01.13.00 Adoption of Resolution

If the CTC votes to adopt the Resolution, HQ R/W immediately sends a notice to the District indicating the Resolution was adopted and follows up by sending the original and two copies of the Resolution. Headquarters Legal sends a certified copy of the Resolution to the Regional Legal Office.

9.01.14.00 Rescission of Resolution

The Region and District should request a rescission of a Resolution where it is impractical, due to design revisions or for other reasons, to pursue acquisition of a parcel based on the original resolution authorizing condemnation. This lessens the Department's exposure to inverse condemnation actions under the provisions of CCP Section 1245.260.

Regions and Districts will submit a request to HQ R/W&LS for rescission using the Resolution of Necessity request package format. This may be done manually or electronically. If a suit has been filed and subsequently dismissed, the date of dismissal should be included in the package.

The existing electronic RON Generator (for Department use only) contains an option to produce a rescinded Resolution of Necessity package using the same data input as would be used to create a request for Resolution of Necessity. The RON Generator automatically produces the language needed for the rescission package. This is the preferred method.

The manual method will include resubmitting all the data from the original Resolution of Necessity Request using Form RW 9-8. HQ R/W&LS will produce an electronic package using the resubmitted data and submit the request for rescission to the CTC. The original resolution item number, consent item language, ownership information, parcel number, map and legal description, explanations, etc., are to be included for reference. If copies of the original resolution request are to be used for the resubmittal, the transmittal must clearly state that a rescission is being requested and provide a reason for the request.

The rescission will become a voting item on the CTC agenda of a specific month. Adoption of the rescission by the CTC removes the Department's right to condemn the

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subject property rights. If Regions or Districts subsequently decide to condemn the parcel, the Resolution of Necessity process must begin anew.

9.01.15.00 Filing of Suit Within Six Months of Adoption

The District should request a Resolution only if it intends to file a suit within six months after the Resolution is adopted. CCP Section 1245.260 provides that if eminent domain is not commenced within six months, the property owner may bring an inverse condemnation action. The court could require the Department to acquire the property, allow the owner to recover damages for any interference with the possession and use of the property, or both. It is important, therefore, that the District request, file, and serve suit papers as soon as possible after a Resolution is adopted. Or, if the suit is not filed within six months, the District must request rescission of the Resolution.

Note: To speed the filing process, the District should consider requesting the suit papers when issuing the Notice of Intent.

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SPECIFIC STATUTORY AUTHORITY – SUBSTITUTE CONDEMNATION

Explanation:
Whenever the Department requires property for highway purposes and the property is devoted to, or held for, another public use for which the power of eminent domain might be exercised, the Department may condemn substitute property to be exchanged for the required right of way if the owner of the required right of way consents in writing to the exchange.

When the Department acquires substitute property in its own name, relocates the public use, and then conveys the improved property to the owner of the required right of way, the Department is acting under CCP 1240.330. The Department must follow this procedure when either a court order, a judgment in eminent domain proceeding, or a written agreement requires the acquisition of substitute property that will be devoted to the displaced public use.

If the owner of the required right of way does not have the power to condemn substitute property, the Department must rely on either CCP 1240.330 or 1240.350. (See Form RW 9-10.)

If the Department is condemning property pursuant to CCP 1240.350 to provide utility service to, or access to a public road from, property that is not acquired for public use but that is cut off from utility service or public road access as a result of the Department's acquisition, the owner's consent is desirable, but not a prerequisite. However, the Department must take into consideration the cost and hardship to the owner whose property is to be condemned or acquired to provide the utility service or access.

Requirements:
It is necessary to set forth:

- Date and terms of the agreement between the Department and the other party.
- Degree of title owned by the other party.
- Degree of title the Department will condemn for exchange purposes.

In addition, the map forwarded with the Resolution Request shall delineate the right of way the Department will acquire from the other party.

The Resolution shall specifically reference CCP 1240.320. (See Form RW 9-9.)

The Resolution shall include a statement that the property is necessary for the purpose specified in CCP 1240.330, if applicable.

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SPECIFIC STATUTORY AUTHORITY
– SUBSTITUTE CONDEMNATION (CONTINUED)

When the Department acquires rights for a utility company, care should be exercised to ensure the legal description includes all rights, restrictions, and limitations required by the company. As a general rule, the legal description should not provide for acquisition of greater rights than the utility company holds in its present right of way. However, special circumstances may dictate otherwise. For example, the PUC may impose higher standards on replacement construction. If the Regional Legal Office wants to amend the utility company's legal description for the Resolution, the Regional Legal Office and utility company should confer and agree upon the change.

Authority:
S&H Code 104(b)
CCP 1240.320
CCP 1240.330
CCP 1240.350

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SPECIFIC STATUTORY AUTHORITY – CONDEMNATION OF EXCESS LAND

Explanation:
If the Department proposes to condemn property that is excess to its needs, the property is classified as either a remnant or excess. (Condemnation of a remnant is discussed below.) The Department may acquire property as excess when the remainder or a portion of the remainder will be left in such size, shape, or condition as to be of little value to its owner or to give rise to a claim for severance or other damages.

Requirements:
Section 1240.150 provides broad authorization for the Department to acquire remainders by a voluntary transaction or a condemnation action initiated with the owner's consent. If acquisition of only a portion of a property would leave the remaining portion in such shape or condition as to constitute an uneconomic remnant, the Department shall offer to acquire the entire property and may do so if the owner agrees. Since exercise of authority under this CCP section depends upon consent and concurrence of the owner, the language is broadly drawn to authorize acquisition whenever the remainder would have little or no value to its owner rather than little market value.

Authority:
Acquisition by any means is authorized under CCP 1240.150 when owner expressly consents.

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SPECIFIC STATUTORY AUTHORITY
– CONDEMNATION OF EXCESS LAND – PARTIAL STRUCTURE

Explanation:
If the property is needed for public use and a structure is located partly on the property to be acquired and partly on other property, the Department may acquire the entire structure by agreement with the owner or by condemnation initiated with the owner's consent.

Requirements:
There are a number of alternatives available to the parties that may be less costly or more convenient than taking only part of the structure and paying severance damages on this basis. In some cases, severance may so destroy a structure that total demolition in one operation is the only economically or practically feasible alternative. The parties may also agree that the Department will purchase the structure and relocate it.

Authority:
CCP 1240.150

For authority to condemn the structure where the parties cannot agree, see CCP 1263.270 (court order to acquire entire improvement).

For other possibilities, see CCP 1263.610 (Department to relocate structure or perform other work for owner).

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SPECIFIC STATUTORY AUTHORITY – CONDEMNATION FOR COMPATIBLE USE

Explanation:
The Department may acquire property appropriated to public use if the proposed use will not unreasonably interfere with or impair the existing public use or future public use that can be reasonably expected.

Requirements:
The Resolution must specifically reference CCP section.

Authority:
CCP 1240.510

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SPECIFIC STATUTORY AUTHORITY
– CONDEMNATION FOR MORE NECESSARY PUBLIC USE

Explanation:
The Department may acquire property appropriated to a public use if the Department's use is a more necessary public use.

The Department's authority under this CCP section will not prevent continuance of the appropriated use if such use will not unreasonably interfere with, impair, or require a significant alteration of the Department's project (see CCP Section 1240.630).

Requirements:
A Letter of Consent should be obtained. If not, the Department must be able to prove to the Court that its use is a more necessary public use than the use to which the property is appropriated.

A statement as to the more necessary public use is required.

The Resolution must specifically reference CCP section.

Authority:
CCP 1240.610

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SPECIFIC STATUTORY AUTHORITY – CONDEMNATION FOR FUTURE USE

Explanation:
The Department may condemn property for future use only if there is a reasonable probability that its date of use will be within seven years from the date the Complaint is filed or within such longer period as is reasonable. The date of use is the date the property is actually devoted to the use or project construction is commenced (i.e., the date the contract is awarded).

Requirements:
All projects, except Federal Advance Acquisition Fund projects and those requiring reasonably longer periods should be commenced within the seven-year period. The Resolution and Complaint must reference CCP 1240.220 and give estimated date of use.

If the project will be awarded within such longer period as is reasonable, and not within the seven years, the Resolution and Complaint must state that the acquisition is pursuant to Federal Highway Act of 1973 and give the estimated date of use.

Authority:
CCP 1240.210 through 1240.250.

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SPECIFIC STATUTORY AUTHORITY
– CONDEMNATION OF AN EASEMENT TO REMOVE IMPROVEMENTS

Explanation:
See Manual Section 6.12.08.01, CCP Section 1263.270, and Form RW 9-12.

Requirements:
The legal description shall include the Condemnation Improvement Removal Clause.

Authority:
CCP 1263.270

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SPECIFIC STATUTORY AUTHORITY – CONDEMNATION OF AN EASEMENT TO SEVER IMPROVEMENTS AT OR NEAR THE RIGHT OF WAY LINE

Explanation:
See Manual Section 6.12.08.02.

Requirements:
Consent of the owner is required, and the legal description shall include the Condemnation Improvement Severance Clause.

Authority:
CCP 1263.610

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SPECIFIC STATUTORY AUTHORITY – CONDEMNATION OF REMNANTS

Explanation:
The Department may acquire property as a remnant when it would be left in such size, shape, or condition as to be of little market value. Owners may prevent condemnation if they prove the Department has reasonable, practicable, and economically sound means to prevent the property from becoming a remnant.

A taking of excess property is not authorized to:

- Avoid the cost and inconvenience of litigating the issue of damages.
- Preclude payment of damages, including substantial amounts in appropriate cases.
- Coerce the owner to accept whatever price the Department offers for the property actually needed.
- Afford the Department an opportunity to recoup damages or unrecognized benefits by speculating on the future market for the excess property. (See Form RW 9-11.)

Requirements:
Facts establishing the applicability of reasonable, practicable, and economically sound criteria should be specifically stated. Even where these criteria apply and consent of owner is not a condition precedent to the taking, the Department is required to seek such consent. The Regional Legal Office and District Right of Way should confer on any proposal to condemn as a remnant.

The request shall contain the following information:

- Area and value of the right of way including improvements.
- Area and value of the excess or remnant before acquisition.
- Value of the excess or remnant after acquisition.
- Amount of damages in excess of benefits if not acquired.
- Discussion of any new easements proposed for the excess land in the "after" condition.
- Reasons why there are not reasonable, practicable, and economically sound means to prevent the property from becoming a remnant.

Owner's opinion or reasons for refusing consent to acquisition.

Authority:
CCP 1240.410

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9.02.00.00 - CONDEMNATION SUITS

9.02.01.00 Request for Suit Papers

Immediately after passage of the Resolution by the CTC, the District requests the appropriate Regional Legal Office to prepare the papers necessary for filing suit.

One Resolution covering each ownership is mandatory, and a separate condemnation suit on each ownership is the normal practice. However, a multi-ownership condemnation suit is permissible when the District and the Regional Legal Office agree such action is desirable.

INFORMATION REQUIRED FOR SUIT PREPARATION

- Parcel Résumé
  - Brief parcel description.
- Staff Appraisal
  - Appraisal report prepared by District Appraisal staff.
- Appraisal Summary Statement
  - Appraisal Summary Statement prepared and signed.
- Title Reports
  - Furnish litigation guarantee report and supplemental reports bringing title up to date. Preliminary title reports must be upgraded to litigation guarantees prior to obtaining a resolution of necessity.
  - Make explanatory notations as to specific exceptions in the left-hand margin of the reports where title is to be taken subject to exceptions or the exceptions do not affect the parcel sought to be condemned.
  - A copy of the title exception identified as "excluded" by the agent may be requested by Legal to confirm that it is unnecessary to include the defendant identified in the exception.

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INFORMATION REQUIRED FOR SUIT PREPARATION (Continued)

- Title Reports (Continued)
  - Easements and other interests identified as exceptions in the Title Report/Litigation Guarantee which are excluded, due to the belief they are outside of the needed right of way, should be confirmed by Right of Way Engineering prior to note of exclusion by the Right of Way Agent. Make note on Title Report that exception was omitted with concurrence from Right of Way Engineering.

- Expenditure Authorization
  - Include the EA number below the file reference so the Regional Legal Office can apportion charges.

- Maps & Exhibits
  - Two copies of the identified exhibits are to be included in the suit request: one for the legal pleadings and one for the legal file.
  - **Legal Description** - a copy of the legal description that was approved as part of the CTC Resolution is included. The legal description is incorporated into the Complaint.
  - **Exhibit Maps** - The Maps which were submitted as part of the Resolution package must be included. The maps are attached as Exhibits "A" and "B," etc., in the Complaint. "Exhibit A" is the Index Map. "Exhibit B," etc., are the Parcel Maps.
  - **Appraisal Summary Statement** - The Appraisal Summary Statement is included as an Exhibit for the Summary of the Basis of the Appraisal.
  - **CA-13 (Transfer of Funds)** - is attached as an Exhibit for the Notice of Deposit in some County Courts.
  - **Copy of Certified CTC Resolution** - is attached as an Exhibit for the Declaration in Support of the Order for Possession in some County Courts.

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INFORMATION REQUIRED FOR SUIT PREPARATION (Continued)

- Names
  - Include full names of owners and tenants owning realty. Also identify and include full names of any persons, including spouses, actually in possession of the property or claiming an interest therein that do not appear in the title report so they can be properly named as defendants. Include lessees impacted by project if unrecorded lease and not in Title Report.
  - If vesting indicates a married person, as to his sole and separate property, the spouse must be identified and the name included in the interests not named in the Title Report. California is a community property State and all care must be taken to clear potential ownership interests.

- Taxing Agencies
  - Name counties only if they have interests other than *ad valorem* property taxes. Review CCP Section 1250.250 for specific requirements. (See also Sections 9.02.08.00 and 9.15.04.00.)

- Order for Possession
  - When requesting an OP, include the appraiser's name and qualifications to allow preparation of the Summary of the Basis for the Appraisal.
  - Segregate the summary as to value of the property to be acquired, severance damages, benefits, and goodwill, if applicable.

- Other Information
  - Include any other advice or information on the various exceptions that may assist the Regional Legal Office in the preparation of suit papers.

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9.02.02.00 Information Required for Suit Preparation

The District reviews the parcel legal description prior to requesting suit papers to assure it is identical to the legal description in the Resolution of Necessity. If the legal description differs from the legal description in the adopted resolution, a note needs to be included communicating why and how the descriptions differ. The information in the table on the preceding page is forwarded to the Regional Legal Office with the suit request, along with the declarations and staff appraisal.

The Index Map and Parcel Map submitted to headquarters in the resolution package are to be included in the suit request forwarded to the Regional Legal Office, as well as a copy of the Appraisal, Appraisal Summary Statement, Transfer of Funds, and a copy of the Certified CTC Resolution. The information in the table on the preceding page is forwarded to the Regional Legal Office with the suit request.

9.02.03.00 Suits Involving Public Utilities

Suits involving public utilities usually are not necessary, especially if the utility owns easement title. Arrangements normally can be made by using a Joint Use Agreement or Consent to Common Use Agreement that will satisfy all parties.

When fee-owned public utility land is necessary for a transportation project, a controversy may arise regarding valuation of the property or the type of interest the State is to acquire. If either is probable, the District should consult with the Regional Legal Office and R/W HQ Office of Project Delivery immediately.

If no agreement is reached and eminent domain appears likely, the District mails the Notice of Intent specifying the type of title to be condemned, i.e., fee reserving an easement to the utility or an easement out of the utility company's fee. The District must identify the relevant Code Sections to be included in the Resolution Request (see CCP 1240.320, 1240.330, 1240.510, and 1240.610).

The District should not presume that Rights of Entry with or without the waiver clause will always be available from the utility company.

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9.02.04.00 Suits Involving Railroads

Suits involving nonoperating property owned by railroad companies are handled like any other property.

If the required property is used for operating railroad purposes, consult R/W HQ before initiating condemnation procedures. Every effort should be made to avoid condemnation of railroad operating property by obtaining rights of entry and construction agreements. (See the Railroad Section of the Acquisition Chapter.)

When a project involves crossing the railroad right of way at grade or by a grade separation structure, the California Public Utilities Commission (PUC) must approve the construction. Approval of the PUC is subject to an agreement between the State and the railroad. Beginning July 1, 2003, the Division of Right of Way will prepare and process Service Agreements for grade crossings and Construction and Maintenance Agreements for grade separations. Although a suit can be filed and the Superior Court may grant an OP, construction cannot begin on the parcel until PUC approval has been obtained.

If the railroad disagrees with the State's plans for the project, the PUC will hold a hearing. The PUC hearing process can take six months or more to complete.

9.02.05.00 Filing Suit Papers

The Regional Legal Office prepares the following and forwards the originals to the District for filing and/or recording:

- **Summons and Complaint** - originals.
- **Lis Pendens** - original.
- **Application and Declaration for Order for Possession** - original, if requested.
- **Order for Possession** - original, if requested.
- **Notice of Deposit and Summary of the Basis for the Appraisal** - original, if requested.
- **Civil Cover Sheet** - original.
- **Declaration in Support of the Order for Possession** - original.

Pursuant to Government Code Section 6103, the Department does not pay filing fees.

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For purposes of determining date of value, suit papers should be filed prior to depositing the amount of probable compensation with the court.

9.02.06.00 Recordation and Service of Lis Pendens

Immediately after filing of the suit, the District must record the original Lis Pendens with the county recorder of each county in which the property affected by the suit is located. Service of the Lis Pendens is concurrent with service of the Summons and Complaint. (See CCP Section 1250.150.) Court rules and County Recorder's procedures vary in each county. The original Lis Pendens should be forwarded to the attorney upon receipt, as it is used as a trial exhibit.

9.02.07.00 Filing Complaint and Issuance of Summons

The District shall arrange for filing of the original Complaint and for issuance of original Summons by the clerk of the court within six months of adoption of the Resolution. In most cases, the county clerk acts in the capacity of the clerk of the court. The District retains the original Summons until such time as proof of service or return to the court is necessary. The original Summons must be submitted to the Court when filing a Default.

The District and the Regional Legal Office should confer on the safekeeping of the Original Summons to ensure it is not misplaced.

See Section 9.03.04.00 for return of original Summons to the court.

9.02.08.00 Request for Segregation of Taxes on Partial Takings

For partial takings of locally assessed properties, the District processes a request for segregation or prorating of taxes immediately after the taxes are subject to cancellation. This occurs on the effective date of possession as set forth in the OP or, in the absence of an OP, upon the recordation of the document (Deed or Final Order of Condemnation) conveying the property to the State.

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9.02.09.00 Conforming Copies of Summons, Complaint, and Lis Pendens

When filing the Suit Papers with the Court, it is recommended that the District submit the following to the Court:

- **Civil Cover Sheet, Summons and Complaint** - one original copy and at least one copy to be conformed.
- **Lis Pendens** - one original copy to be retained by the agent and at least two copies. The original and copies should be stamped by the Court to identify the case number and other identifying information which the County Court stamps (Judge, Department, etc.). Some Courts will retain a copy to be made a part of the Court file. This practice varies depending on the County and the Branch. The Original must be retained to be filed with the County Recorder. If the parcel crosses county lines, two original documents must be prepared so an original can be filed with the County Recorder of each county in which the parcel is located. The original must be stamped with the Government Code Section 6103 to alleviate the requirement of paying recording costs. Some Counties will require the paying of the recording costs. This is a courtesy which most counties honor; but due to budget shortages, some counties will require the payment of fees.
- **Application and Declaration for Order for Possession** - one original copy, one copy to be marked "received" and one copy for conforming.
- **Notice of Deposit and Summary of the Basis for the Appraisal** - one original copy, one copy to be marked "received" and one copy for conforming.
- **Order for Possession** - one original copy, one copy to be marked "received" and one copy for conforming to be left with the Court Clerk.
- **Ex-Parte Application for Order for Possession**

Before they are served on the defendants, each copy of the Summons, Complaint, and Lis Pendens must be conformed to agree with the originals. Maps must be inserted in the copies of the Complaint in the same manner and form as contained in the original. See Section 9.08.03.00 if an OP is also being served.

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9.02.10.00 Coordination with Regional Legal Office

The Regional Legal Office forwards copies of each pleading filed with the court or received by Legal to the District so that a complete file is maintained, or as agreed to by the District and the Regional Legal Office. The Regional Legal Office and the District should coordinate activities and maintain communications necessary to meet timetables required by the CCP or the courts. The District should advise the Regional Legal Office of the status of action and any settlements made through Right of Way Contract. The Regional Legal Office must be advised by the District immediately when escrow closes so the case can be dismissed.

9.02.11.00 Status of Title When Suit Is Filed

When the necessary suit filing procedures have been completed, the District orders a litigation guarantee report or supplemental report from the title company to show the condition of title as of the recordation date of the Lis Pendens. This permits a current review of the status of title to assure that all parties having an interest in the property are served. It is essential that status of title is current in the event of a withdrawal of deposit application. See Section 9.09.03.00.

9.02.11.01 Review Litigation Guarantee

The agent should review the updated litigation guarantee to identify additional interests to be added to the suit as "Does" (new defendants), and to identify exceptions which have been cleared and may be dismissed from the suit. The agent with the notations of new findings should send a copy of the update to the attorney of record upon receipt.

9.02.12.00 Suits with Orders for Possession

See Sections 9.03.00.00 and 9.08.00.00 for procedures to follow after the filing of the Complaint.

9.02.13.00 Rearrangement of Improvements Involved in Condemnation Action–Stipulations

After a condemnation action has been filed, expenditures shall not be made for rearrangement of buildings, fences, or roadways; restoration of water supply; changes in irrigation pipelines; construction of ditches; etc.; for the

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purpose of mitigating damage except under specific agreement (stipulation). The stipulation shall be executed by all parties who would have to execute an agreement for the sale of the property. The Regional Legal Office drafts the stipulation based on information provided by the District.

The terms of any partial settlement of a transaction shall be included in a stipulation to be filed in the proceeding. The stipulation shall provide that in the event of trial, the defendant will not claim damages for any of the items covered by the stipulation.

9.02.14.00 Memorandum of Case Status

Promptly after filing the suit, the Region or District completes a Condemnation Status Report in the form required by the Regional Legal Office. The memorandum is used regularly to transfer R/W information to the Legal Office for the suit. Regions and Districts will coordinate with the Legal Office to establish format, content, and scheduling of the memorandum.

9.02.15.00 Fast Track Procedures

9.02.15.01 General

The Trial Court Delay Reduction Act of 1986 (Fast Track) is intended to expedite the processing of condemnation cases through the court system. The Act is contained in the Government Code, commencing with Section 68600, and is implemented by Title 4 (Rule 1901-1914) of the Rules of Court. It requires that each county adopt rules to implement the Act. Each District should obtain the rules for its respective counties.

The program ensures that general civil matters filed in the Court are expeditiously pursued from filing to trial. To accomplish this early resolution of cases, the Court will monitor and, where necessary, direct the progress of proceedings.

9.02.15.02 Procedure

The Regional Legal Office has overall responsibility for compliance with the Act. Since procedures and forms vary from county to county, the District should check with the Regional Legal Office on procedures to be followed.

At the time the Complaint is filed, the case is set for a Case Management Conference within 120 days and may be assigned to a judge. At the time of

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the conference, the Court will review the status of proceedings and make orders necessary to ensure that the matter is ready for trial at the earliest possible date. Where appropriate, the Court will set the matter for further conferences.

Legal must file an At-Issue Memorandum in order to secure a trial date. The Court Executive Officer will set the trial within 90 days of the Case Management Conference, unless specifically ordered otherwise by the Court.

The Judicial Council of California has adopted two forms that are important in the implementation of the Act. They are Notice of First Case Management Conference, Form DR-100, and Case Management Conference Questionnaire, Form DR-110.

All the following documents must be served to all defendants within 60 days and proof of service returned to the court as soon as practicable.

- **Summons** - one endorsed copy.
- **Complaint** - one endorsed copy.
- **Lis Pendens** - one recorded copy of the Lis Pendens and one endorsed copy. The original is forwarded to Legal after recording is completed.
- **Notice of First Case Management Conference**

The Department is responsible for serving a copy of Notice of First Case Management Conference on each defendant and providing the Court with proof that such service was accomplished.

The following is suggested language to use as a Notice:

> In accordance with the California Rules of Court 1901 through 1914 and the Trial Court Delay Reduction Rules of _____ County.
> The matter is set for a Case Management Conference on _____. Pursuant to Rule 1905, this case is assigned to The Honorable _____.

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9.03.00.00 - SERVICE OF SUMMONS, COMPLAINT, AND LIS PENDENS

9.03.01.00 General

The DDC-R/W is responsible for arranging service. The District shall proceed with service unless directed by the Regional Legal Office to wait for their instructions.

9.03.02.00 Time for Defendant to Answer

After personal service has been made, the defendant has 30 days to appear.

9.03.03.00 Establishing Date of Value

The District shall promptly serve all defendants in the condemnation action when it is apparent negotiations have reached an impasse. The date of value is the date the complaint is filed (commencement of the action) if the case is brought to trial within one year of the filing. To retain the date of value, extended delays should not be allowed.

If the case is not brought to trial within one year, the date of value is the date the trial begins. Except, if the delay is caused by the defendant, the date of value is the date the complaint is filed. A date of value is also established on the date when a deposit of probable compensation has been made (CCP 1263.110 through 1263.150).

To reduce appraisal revisions, re-appraisals, or revising offers due to challenges of a fair market value offer (Government Code 7267.2), the deposit of probable compensation should be made after the suit is filed. This ensures that, if they so desire, property owners can immediately withdraw the amount deposited, which reflects current market value.

9.03.04.00 Return of Summons

A condemnation action shall be dismissed and no further proceedings taken if Summons and Complaint have not been served and returned into court within three years from the commencement of the action (CCP Sections 583.210 and 583.250). Local "fast track" rules may require return of summons within a short period of time, e.g., 60 days, after commencement of the action. Violation of these rules may result in sanctions, including

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dismissal of the action if lesser sanctions are ineffective. Therefore, return of summons or other proof of service must be made to the Legal Office within 50 days so the documents can be filed with the court within 60 days. This requires the Right of Way Agent to check services of Summons, as shown by the condemnation record on any given action, sufficiently in advance of the expiration of the three-year period. This permits the service of any unserved defendants with whom settlement has not been made or who have not filed an answer or other appearance in the action.

As noted in Section 9.03.20.00, subsequent or additional Summons may be issued. However, an additional Summons does not extend the three-year period within which the Summons must be served.

In some cases, it may be necessary to publish Summons, ordinarily for 30 days. Time is required to investigate and prepare papers to obtain an Order for Publication. The defendant is allowed an additional 30 days after completion of publication to answer before a default can be entered. For these reasons, matters relating to service of Summons must be checked and final decisions made and implemented not later than two and one-half years (30 months) after the case has commenced.

9.03.05.00 Manner of Service

The District should make every effort to make service by personally delivering a copy of the Summons, Complaint, and Lis Pendens to the defendant or to a person authorized to receive service of process. Making service by leaving and mailing copies may be used when personal service has been unsuccessful.

The four methods of service of the Summons, Complaint, and Lis Pendens are listed below in "Methods of Service."

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METHODS OF SERVICE

- **Personal Delivery**
  A person may be served by personal delivery of a copy of the Summons, Complaint, and Lis Pendens to the individual or to a person authorized by the condemnee to receive service of process.

- **Leaving and Mailing Copies**
  In lieu of personal delivery on a corporation, association, or public entity, service may be made by leaving a copy of the Summons and Complaint in the office of the person who was intended to be served with the person apparently in charge during the usual office hours. Thereafter, copies should be mailed by First Class Mail, postage prepaid, to the person who was intended to be served at the place where the Summons and Complaint were left.

  Substitute service of an individual or person authorized to receive service is not available for individual defendants unless personal service was first attempted. (Two or three attempts to personally serve the defendant at a "proper place" ordinarily qualify as "reasonable diligence.")

  If a copy cannot be personally served upon an individual or a person authorized to receive service (or a minor or a conservator) with reasonable diligence and at least two or three attempts, a copy may be left at such person's house or usual place of business. A competent member of the household or a person apparently in charge of the place of business who is at least 18 years of age must be present at the time the copy is left. The person must be informed of the contents of the Summons, Complaint, and Lis Pendens. Thereafter, a copy must be mailed by First Class Mail, postage prepaid, to the person intended to be served at the place where the copy was left. (See Form RW 9-13.)

  As pertains to husband (H) and wife (W), personal service on Spouse W is not deemed service on Spouse H unless Spouse H authorized Spouse W to accept service on his behalf. The authority is based upon an oral or written statement by Spouse H. Spouse W's saying she has authority to accept service on behalf of Spouse H is not sufficient. Similarly, service on a person's lawyer is not sufficient if that lawyer is not specifically authorized to accept service in the action.

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- **Service by Mail**
  A copy of the Summons, Complaint, and Lis Pendens may be mailed by First Class Mail, postage prepaid, to the person to be served. A return envelope addressed to the sender, postage prepaid, two copies of a Notice and Acknowledgment of Service, and an unsigned copy of the Declaration of Mailing must be included. (See Forms RW 9-13, RW 9-14, and RW 9-16.)

  If the person to be served by mail fails to comply and return the acknowledgment within 20 days from the date of mailing, that person is liable for reasonable expenses incurred thereafter in serving or attempting to serve the individual by any other authorized method.

- **Service by Publication**
  If service cannot be made by any other authorized manner after reasonable diligence, service may be made by publication. See Section 9.03.13.00.

9.03.06.00 Service on Person Outside State

Besides all the other authorized methods of service, a person located or residing outside the State may be served by sending a copy by First Class Mail and obtaining a return receipt. Service of a summons by this form of mail (certified or registered mail with return receipt requested) is deemed complete on the tenth day after such mailing. (Code of Civil Procedure Sections 415.40 and 417.20.)

9.03.07.00 Service on Minors, Incompetents, and Trustees

Although the following relates to making personal service on minors, incompetents, and trustees, the alternate methods of making service listed under Section 9.03.13.00 may also be used.

When service is made on a minor under the age of 18 but over the age of 12, a copy is delivered personally to the minor's mother, father, guardian, or, if no such person can be found with reasonable diligence, whatever person has care or control of the minor or resides with the minor. If the minor is under 12 years of age, service is made on the parent or guardian only.

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Where service is made on a person who has been judicially declared incompetent and for whom a guardian or conservator has been appointed, service must be made personally on both the incompetent and the guardian or conservator. In certain situations, the court can authorize dispensing with service on the incompetent for good cause.

When a named defendant is sued as a trustee and as an individual, service should be made in each capacity, i.e., one copy served on defendant as trustee and another copy served on defendant as an individual.

9.03.08.00 Service on a Corporation

Service on a domestic or foreign corporation is made by personally delivering a copy of the Summons, Complaint, and Lis Pendens to the president or other head of the corporation, vice president, secretary, assistant secretary, treasurer, assistant treasurer, general manager, or person designated for service of process or authorized to receive service of process. (See CCP Section 416.10, Corporation Code Section 1502.)

If service is to be made on a bank, the copy may be delivered to the above-enumerated officers, or agents thereof, or to a cashier or assistant cashier thereof.

CCP Section 412.30 requires that the copy of the Summons served on a corporation shall contain a notice stating in substance that the person served has been served on behalf of the corporation, which must be designated by name in the notice. An appropriate form of this notice has been incorporated in the Summons form under the title "Notice to the Person Served."

The summons itself must notify the person to whom it is delivered of the capacity in which he or she is being served or if he or she is being served on behalf of another. In an action against a corporation, partnership, or other unincorporated association, the summons form itself must notify the person to whom it is delivered that he or she is being served on behalf of a specific entity defendant (and also individually, if such is the case). It is not enough that the corporation or partnership is named as a defendant in the action. Nor is it sufficient that the process server tells the person served that he or she is being sued on behalf of the entity-defendant.

Consult with the Regional Legal Office for guidance in making proper service if a corporation has forfeited its charter or right to do business, has been dissolved, or is in bankruptcy.

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9.03.09.00 Service Where Appropriate Agent of Corporation Cannot Be Found

If the agent designated for service of process cannot be found with reasonable diligence, if no person has been designated, or if none of the officers or agents of the corporation enumerated in Section 9.03.08.00 can be found, service can be made by personal delivery to the Secretary of State after the necessary court order is obtained. The Regional Legal Office will prepare the necessary papers and have the proper order made.

9.03.10.00 Service on a Partnership or Unincorporated Association

CCP Section 412.30 requires that the copy of the Summons that is served shall contain a notice stating, in substance, that the person served has been served on behalf of the partnership or unincorporated association, which must be designated by name in the notice. Service is to be performed as shown in the following table. If questions arise concerning service, consult with the Regional Legal Office for guidance.

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PARTNERSHIPS OR UNINCORPORATED ASSOCIATIONS

Type of Association	Conditions	Service
General or Limited Partnership	Agent has been designated for acceptance of service of process with the office of the Secretary of State.	Serve the person so designated, a general partner, or the general manager of the partnership.
Not a General or Limited Partnership	Agent has been designated for acceptance of service of process with the office of the Secretary of State.	Serve that person, the president or other head of the association, vice president, secretary, assistant secretary, treasurer, assistant treasurer, or general manager.
Unincorporated Association	No person has been designated as agent for acceptance of service of process with the office of the Secretary of State or that person cannot be found at the address specified with the office of the Secretary of State and no person listed above can be found within the State after a diligent search.	Regional Legal Office must apply to the court for an order that service be made by delivering a copy of the process to any one or more of the association's members designated in the order and by mailing a copy of the process to the association at its last known address.
Unincorporated Association	No officer or other person on whom Summons may be served can be found within the State.	Regional Legal Office must apply to the court for an order authorizing service to be made by publication of summons.

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9.03.11.00 Service on Public Agencies

CCP Section 416.50 provides the following procedure for service on a public agency:

"(a) A summons may be served on a public entity by delivering a copy of the summons, and of the complaint to the clerk, secretary, president, presiding officer, or other head of its governing body.

"(b) As used in this section 'public entity' includes the state and any office, department, division, bureau, board, commission, or agency of the state, the Regents of the University of California, a county, city, district, public authority, public agency, and any other political subdivision or public corporation in this state."

The District should contact the public agency to determine who is authorized to accept service on behalf of the agency. Service on a public agency should include the Lis Pendens.

When another State agency has an interest, the Department's practice is to mail informational copies of Summons, Complaint, Lis Pendens and title report to that State agency and the Attorney General's office.

9.03.12.00 Service on Tax Collecting Agencies

It is not necessary to name a tax collecting agency in the complaint when its only interest is an *ad valorem* tax lien. However, a courtesy copy of the Summons and Complaint should be provided as notice for computation of the amount of tax to be paid out of the judgment. (See Section 9.02.08.00.) If prepaid taxes are involved, see Acquisition Section 8.04.24.00.

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9.03.13.00 Service by Publication

The law authorizes service by publication in the following cases:

- Defendant cannot be located with reasonable diligence.
- No person who may be served on defendant's behalf can be located.
- The identity of the defendant is unknown, e.g., there are heirs or devisees, or all persons are named as defendants under CCP 1250.220.

  (See Section 9.03.09.00 and CCP 415.50 and 1250.130.)

Publication is authorized under CCP Section 1250.125 even if the offer required by Government Code Section 7267.2 has not been made. This requirement is a prerequisite for securing a Resolution of Necessity. [See CCP Section 1250.125(c) for a conditional exception.]

The Department's practice is to publish Summons against those defendants who cannot be located even though the property in question may be of low value.

An Order for Publication of Summons must be obtained from the court. The Order will designate the newspaper or other publication in which the Summons is to be published as well as the period of publication. When publication is ordered, personal service of a copy of the Summons and Complaint on a defendant out of the State is effective on deposit in the post office, mailed to defendant at defendant's last known address. A service is complete at the expiration of the time prescribed in the Order of Publication and the date of deposit in the post office.

To obtain an Order for Publication, a Declaration or Declarations must be filed with the court to support the Order. These Declarations are required to show the court that all available means of locating and serving the defendant have been exhausted. Facts must appear in the Declarations indicating a sincere desire and honest effort to locate the defendant.

The statutes provide that reasonable diligence must be exercised in order to obtain an Order for Publication of Summons. Reasonable diligence means more than a perfunctory search and requires more than a casual inquiry of one or two former neighbors or a letter written at random. It means that a systematic investigation and inquiry must be conducted in good faith.

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Declarations must state the facts and not mere conclusions of law or fact. Hearsay is not acceptable, and the information should be recent. If the information is contained in a letter, the letter should be attached to the Declaration.

Statements relative to the last known address of a defendant will carry little weight unless the source of this knowledge is given. The Declaration should contain the names and addresses of all relatives, friends, or employers of the defendant interviewed and the dates of such interviews. It should contain information about the inquiries made at or around every place the defendant is known to have resided or been employed.

The Declaration must show a search of the latest city directory, telephone books, tax rolls, and register of voters was made, giving dates. In cases where a name similar to the defendant's is found, the Declaration must show inquiry about the defendant at the address given and must set forth the information obtained by such inquiry. If a name similar to that of the defendant is not found, the declaration must so state. The names and addresses for all persons contacted and the actual statements made by each person, not the declarant's conclusion therefrom, should be noted.

The District should give the facts pertaining to the search for the defendant to the State's attorney, who will prepare the necessary Declaration to be made by the agent. It is important that the search be made within a reasonable time of the filing of the Declaration. If the information is stale, the court will refuse to make its Order for Publication.

The publication of the Summons should be commenced immediately after obtaining the Order. The Order will require the Summons and Complaint to be posted on the property within 10 days of the order. In instances where the last known address is given, the Order will provide for the mailing of a copy of the Summons and Complaint to defendant at the last known address. A Declaration of Mailing is necessary.

9.03.14.00 Service by Publication—Unknown Defendants

CCP Section 1250.220 provides for effecting service on "all persons unknown claiming any title or interest" and "the heirs and devisees of (naming such deceased claimant), deceased." Consult the Regional Legal Office for procedure. (See Section 9.03.13.00.)

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9.03.15.00 Service on Intervening Interest

The recording of the Lis Pendens furnishes notice to all persons of the pendency of the action. Any person who may acquire an interest in the property subsequent to the institution of the proceeding is bound by the judgment made therein. It is the Department's practice, when feasible and practical, to serve Summons and Complaint upon such person or persons who purchase or obtain any interest in the property under condemnation. This is done primarily to avoid the possibility of any adverse claim.

9.03.16.00 Service on Fictitious Defendants

A person or a corporation not named in the Complaint as defendant can be served under the provisions in the Complaint naming a fictitious defendant. If an interest is found that was not known at the time the suit was prepared, the person or corporation holding this interest can be served by designating such person or corporation by one of the fictitious names.

Service must be made on fictitious defendants in the manner in which they are named and sued in the Complaint. If Doe One to Doe Ten have been sued specifically as heirs of a deceased person, Doe Eleven to Doe Thirteen as trustees, and Jane Doe or John Doe as the unknown spouse of a listed defendant, these designations must be used when the true names are ascertained. In the event that a corporation is served as a "Doe," the summons must notify the person served that he or she is being served on behalf of a specific corporation, and that the corporation is being served as a specific "Doe."

The party making service on fictitiously named defendants must comply with CCP Section 474. The appropriate notice required is shown on the Summons under Notice to the Person Served. Reference to the appropriate type of service must be marked. If in the Complaint the numbers of the fictitious defendants are written (e.g., DOE ONE to DOE THIRTY), then the designation of the particular DOE NUMBER required in the above notice should also be written (e.g., DOE TWENTY, not DOE 20).

9.03.17.00 Proof of Service - Named Defendants

The District should send all Proofs of Service (Form RW 9-13) to the Regional Legal Office immediately after service has been made. The Regional Legal Office and District will coordinate to decide which office will take the lead in filing all Proofs of Service with the Court.

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The name of the month should be written out instead of using numerals representing the month. The specific address of service should be shown. The number of the parcels in which the various defendants have an interest should be shown only on the copy of the Proof of Service.

The name of the defendant must appear in the Proof exactly as it appears in the Complaint and the Summons. If the name was incorrect or if the party has been sued under an erroneous name, the party should be served as one of the fictitiously named Doe defendants and the appropriate proof of service made. (See Section 9.03.16.00.)

When a named defendant is sued as a trustee, this designation should appear wherever the name does. If such a defendant is sued both as a trustee and as an individual, the Proof should show service upon each, just as the name appears in the Complaint.

9.03.18.00 Proof of Service - Domestic or Foreign Corporation, Partnership, or Unincorporated Association

If notice of the capacity in which a person is served is required on the copy of the Summons, the Proof of Service must recite that such notice appeared on the copy of the Summons that was served, per CCP Section 417.10. (See Section 9.03.08.00.) Since the form of Proof of Service includes an appropriate statement, it is important to verify that this notice was appropriately marked on the copy of the Summons served when signing the Proof.

9.03.19.00 Proof of Service - Fictitious Defendants

The Proof of Service upon a fictitiously named defendant must comply with the provisions of CCP Section 474 before the default can be entered. (See Section 9.03.16.00.) The form of Proof of Service includes an appropriate statement of proper notice being given.

9.03.20.00 Subsequent or Additional Summons

If the Complaint has been filed, subsequent or additional Summons may be issued against any or all defendants on the request of the plaintiff. A plaintiff may secure the issuance of a Summons at any time up to the expiration of the three-year limitation on service and return of Summons. More than one Summons for a defendant may be outstanding at one time. No distinction is made between the original and subsequent or additional Summons.

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If a Summons is lost after service has been made but before it is returned, its return is excused. CCP Section 417.30 provides that a declaration of the process server may be returned in lieu thereof. Consult the Regional Legal Office if it appears that an additional Summons may be necessary.

9.03.21.00 Service Complete

Personal service is complete at the time of delivery (CCP Section 415.10). Substitute service is deemed complete on the tenth day after the mailing (CCP Section 415.20). Service by mail and acknowledgment of receipt are deemed complete on the date the defendant signs the acknowledgment [CCP Section 415.30(c)].

9.03.22.00 General Information

As part of the "Notice to the Person Served," there is a place on the bottom of the front page of the summons form for the server of the summons and complaint to insert the date on which the summons was served. The purpose of entering this date is to assist the defendant in determining the due date of his or her responsive pleading. However, failure to enter the date does not affect the validity of service. [See CCP Sections 415.10 and 412.20 (a).]

The person serving the summons and complaint should also obtain information that may later be needed to prove validity of service or to prove up a default. This information includes:

1. The full name of the person served, and, if such person is being served on behalf of a corporation or other entity, his or her office or capacity, and

2. If the defendant is in military service.

Federal law requires an affidavit or declaration that the defendant is not in military service before any default judgment can be rendered (Soldiers' and Sailors' Civil Relief Act, 50 USC Section 520). Since the acquisition agent is required to execute this portion of the request for entry of default, he or she may want to verify that the defendant is not in military service.

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9.04.00.00 - USE OF INDEPENDENT EXPERTS

9.04.01.00 Qualified Independent Experts

The District shall maintain records of individuals and firms qualified as experts in appraising property rights in their geographic area. These records shall show the education, experience, and other qualifications of each individual and firm. Although a contract may be entered into with a firm, the name of the individual must be designated to guarantee the report is prepared by a qualified expert.

9.04.02.00 Prequalification of Independent Experts

When it is necessary to contract for independent expert services with individuals or firms not previously qualified, the District shall obtain from a candidate for qualification:

- A completed application for independent expert.
- An appraisal report previously prepared as an example of the expert's work.

The District is responsible for approving the qualifications for all independent experts.

The District's investigation of an expert's qualifications should reveal if an expert is already prequalified in another district. Information obtained by the other district may be useful in determining an expert's qualifications.

9.04.03.00 Time and Method of Selection

As soon as it becomes apparent an eminent domain complaint will be filed, the DDC-R/W or the delegated representative shall consult with the Regional Legal Office on whether to employ independent experts. The District Condemnation Branch and the District Appraisal Branch shall coordinate their efforts in determining the experts qualified to appraise the particular property and deliver the report within a specified time. The District shall transmit the names of the experts to the Regional Legal Office for concurrence on the experts to be employed.

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9.04.04.00 Non-Civil Service Extended Employment

In exceptional cases, an independent expert may be employed on a per diem basis. This employment must be coordinated through the District Personnel Branch.

Time sheets are prepared for signature of the independent expert. The Regional Legal Office approves the total number of days for pretrial conference and court appearance, and the DDC-R/W approves time spent for field investigation and appraisal preparation.

9.04.05.00 Use of Staff Independent in Lieu of Hiring Independent Appraisers

The District should consider the use of staff independent appraisers where feasible and permissible under provisions of the Government Code.

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9.05.00.00 - CONTRACTS WITH INDEPENDENT EXPERTS

9.05.01.00 Contract Form

Standard contract forms are used to contract with independent experts for appraisal and expert witness services.

9.05.02.00 Contract Requirements

The table on the following page lists provisions that must be included in the contract when the expert is required to prepare a report and/or to act as an expert witness in a condemnation trial.

9.05.03.00 Rate of Pay

The expert is paid an hourly rate for preparation of the appraisal report up to a specified maximum fee. In establishing the hourly rate, the District should consider the type and class of expert suitable for the particular assignment and the expert's current employment in other districts. The District should estimate the number of hours required to complete the assignment, taking into consideration, but not restricted to, the following:

- State's appraisal of subject property.
- information on local economic conditions.
- available sales and listing information.
- whether the joint factual data system is to be employed.
- number of parcels involved.
- previous fees paid for view and inspection.
- if the expert has recently worked in the same neighborhood on similar types of property.
- any special estimates that may have been secured and paid for by the expert.

An estimate of the fee should then be based on the number of hours required, multiplied by the hourly rate.

In addition, the expert is paid an hourly rate for additional services not within the scope of the original report, such as pretrial conferences with the State's

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attorney and appearances in court or at depositions. (A normal court workday consists of the regular hours the court generally is in session.)

Where the expert is employed on a strict hourly basis, the fee for services shall be based on the expert's ability as required for the specific case.

9.05.04.00 Responsibility for Final Terms and Proper Fee

The District Approving Manager has final responsibility for determining the final terms of the contract and the proper fee for the report. In addition, he/she must recommend approval of the contract after it is signed by the expert.

The DDC-R/W, or authorized representative, shall approve the appraisal fee and hourly rate before the contract is submitted to the expert.

9.05.05.00 Presubmission Conference

A presubmission conference with the District and the State's attorney shall be required as a term of the expert's contract. This requirement assures that all contract obligations are met before the final report is submitted. The District arranges for the presubmission conference and notifies the State's attorney of the time and place of the conference. The Acquisition Agent and/or Senior should attend the Presubmission Conference. Presubmission conferences should be held at least two weeks before the date set for the exchange of lists of expert witnesses and statements of valuation data.

9.05.06.00 Specialty Contracts

Contracts with independent specialty appraisers shall include attachments with specific instructions to assure that the specialty appraiser is aware of all report requirements. The real estate appraiser and the specialist should confer on the valuation after both have inspected the property. They should determine any differences of opinion on the function or utility of individual items of machinery and equipment and on the valuation procedure to be followed.

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CONTRACT REQUIREMENTS

Provision	Requirement	Explanation
Scope of Work	1. Description of property by Superior Court case number and parcel. 2. Date of valuation (as specified by State's attorney). 3. Statement of exact nature of the service to be performed.	Indicate if the services include preparation of an appraisal report, acting as an expert witness, or other valuation duties.
Report Format	The appraisal report format shall conform to the requirements of the Appraisal Chapter of the Right of Way Manual.	Per delegations, the District or HQ's Appraisal Branch reviews the report for proper appraisal procedure and conformance with the Manual (see Section 9.05.11.00). The Regional Legal Office and Acquisition Branch will not use the report in any manner until this review is complete and authorization to use the report is granted.
Report Delivery	1. Date of report delivery. 2. Report delivery date may not be extended without written authorization by Legal or authorized representative. 3. Report shall be addressed to the attorney in charge of the Regional Legal Office, c/o of the DDC-R/W or authorized representative.	If extension of the date for report delivery is necessary, the State's attorney makes arrangements through the DDC-R/W or authorized representative. Legal sends written authorization to the expert granting the extension.
Term	1. Beginning date and termination date. 2. Contract is of no force and effect until approved by the State. 3. Payment cannot be made for work performed prior to date of the agreement or after its termination date.	In establishing a termination date, the Legal should allow sufficient time for completion of the trial prior to termination of the contract. Legal should advise the expert that any work performed prior to receiving an executed copy of the contract is at the expert's own risk.

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CONTRACT REQUIREMENTS (Continued)

Provision	Requirement	Explanation
Payment	1. Total payment for all services, showing the fee to be paid for each parcel included in the contract. 2. Payment for the complete report. 3. A sum per hour for pretrial conferences with the State's attorney or additional services not within the scope of the original report. 4. A sum per hour for appearances in Court or at depositions as a witness.	Legal shall authorize additional services in writing. The expert shall act as a witness pursuant to directions from the State's authorized representative.
Termination	Statement that the expert must cease work at the State's request whereupon payment shall be prorated on the ratio of work completed to total work required to complete the report.	The expert shall furnish written documentation justifying prorated payment for completed work. If the parcel involved is acquired by negotiations, Legal must immediately notify the expert and District in writing so that unnecessary work is not done at State's expense.

9.05.07.00 Contract to View and Inspect

If an OP is obtained and imminent construction requires the use of property, arrangements should be made with the experts to spend such time as necessary inspecting, measuring improvements, and taking pictures of the property prior to clearing the right of way. This is essential to ensure that experts are properly qualified to testify in court about the values and damages involved.

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Type	Description
Scope	The contractor shall view, inspect, and take the necessary measurements, photographs, notes, etc., of the parcels described and notify the State's attorney of the completion of the assignment on or before a specified date.
Additional Services	The contract shall provide that the contractor will enter into an additional contract in the event services are required for a complete appraisal and testimony involving any or all of the parcels described.
Termination Date	The termination date for the view and inspect contract shall be sufficiently far enough in the future so the contract will still be in effect on the date the State might require the contractor's service in preparing a complete appraisal.

9.05.08.00 Amendments to Existing Contracts

An amendment is required if it appears a contract will expire before the required services are completed for reasons beyond the control of the contractor or if additional funds are required because the scope of work is enlarged. Legal submits an Amendment request in the same manner as an original contract request, and the amendment should be executed prior to expiration of the original contract.

It should be made clear to the contractor that additional work must be authorized in writing and with a mutual understanding of the nature of the work and approximate charge prior to performance.

9.05.09.00 Date of Valuation

Generally, the date of valuation is the date of Deposit of Probable Compensation which should typically occur after the suit papers have been filed. If no deposit has been made and the trial commences one year after the filing of the Complaint, the date of valuation becomes the date of the trial, unless the delay has been caused by the defendant. If the trial commences within one year of the filing of the Complaint, the date of valuation is the date the Complaint was filed.

The value of the part to be acquired, any damages, and benefits are based on conditions at the time of the filing of the Complaint. Improvements made subsequent to the date of the service of the Summons and Complaint shall not be taken into account in determining compensation unless one of the conditions in CCP Section 1263.240 is established. If improvements are

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removed or destroyed, the general rule is that the person in possession bears the risk of loss. (See CCP Section 1263.230.)

9.05.10.00 Special Litigation Information

An independent appraiser should be impartial, not partisan. The State's attorney must rely heavily on the appraiser for advice and education on the technical problems of the case. While not concerned with the tactics of the case, the appraiser must be in a position to not only consult with the attorney on the forensic aspects of the litigation, but to point out any matters the attorney should be prepared to handle.

The entire report serves to assist the State's attorney in meeting with the adversary and rebutting their contentions. In addition, the appraiser should have information in their file not to be relied upon, but that might be of particular value to the attorney in this regard. Examples of matters that might be included are listed below:

- Sales the appraiser might have used except for special facts surrounding the transactions.
- Listings, offers, and options.
- Rents being asked for on the subject and comparable properties.
- Indications of the owner's valuation theory when in conflict with the appraiser's conclusions.
- Speculative matters not relied upon, but that should be known to the trial attorney.
- All other matters that might be of assistance to the trial attorney, but not relied upon by the appraiser.

There are certain matters that cannot be relied upon by an expert as a basis for an opinion of value. These matters are listed in the Evidence Code, Section 822.

9.05.10.01 Independent Appraisers

The independent appraiser shall not be given a copy of the staff appraisal, the Appraisal Summary Statement, the Valuation Summary Statement, or the value of the appraisal. It is imperative that the expert's opinion is impartial and not influenced by the staff appraisal.

If a copy of the Notice of Deposit is provided to the independent appraiser, the value should be blacked out.

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9.05.11.00 Report Analysis

After the independent appraiser has had an opportunity to resolve any suggested corrections, the District or HQ's Appraisal Branch, depending on delegations, prepares a separate Report Analysis (Exhibit 7-EX-18) for the completed appraisal of each trial ownership in the report. The staff appraiser who prepared the acquisition appraisal will not prepare the Report Analysis. The analysis is also used for subsequent revisions and is modified for other expert studies and reports.

The instructions above also apply to other condemnation reports prepared by staff expert witnesses, however they do not apply to loss of goodwill reports. The Appraisal Branch includes the following in the Report Analysis:

- **Compliance** - Comment on compliance with report standards and compare staff and independent reports. If a significant difference exists between the staff and independent appraisals or between independent appraisals, explain the difference.

- **Value** - Tabulate the major value of the current staff appraisal, the experts' appraisals, and other experts' appraisals received to date in the Analysis Section. If the submission is a revision of a previous appraisal, show both the original and updated amounts. If the transaction has been concluded by settlement or judgment, show the amounts and explain the delay in transmittal. Comment on major differences in value or other important information.

The Appraisal Branch returns the report to the Project Delivery (Acquisition) Branch with the originals and sends a copy of each analysis to the State's attorney. The Appraisal Branch shall neither approve nor disapprove the report. The analysis will not contain recommendations as to possible settlement amounts or negotiation approaches.

The Project Delivery (Acquisition) Branch then authorizes use of the appraisal to reach a settlement either by negotiations or trial, after considering court exposure, effect on other transactions, etc. (See Section 8.01.28.00.)

This section is not in conflict with the approval of fee payment on Independent Expert Claim (Form RW 9-18). Fee payment approval is dependent upon the expert's compliance with the contract regardless of the acceptability of the appraisal conclusions.

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9.05.12.00 Pretrial Settlements Over Approved Appraisal Amount

To meet State and Federal requirements for establishing and updating just compensation, the District will handle all settlements that exceed the amount of the approved staff appraisal as follows:

- Prior to filing of an eminent domain suit and hiring of an independent expert witness, any settlement for property that exceeds the amount of the approved staff appraisal is considered an Administrative Settlement (see Section 8.01.29.00).

- Once an eminent domain suit has been filed and independent expert witness has been hired, any settlement proposal based upon new appraisal data from the expert witness is considered a Legal Settlement (see Section 8.01.29.01). For Legal Settlements, an Attorney's Legal Settlement Memo must be received and approved prior to delivery of any payment. This does not preclude processing the check request (Form RW 9-20) through the Division of Accounting as soon as settlement is confirmed.

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9.06.00.00 - CLAIMS AND PAYMENT

9.06.01.00 Requesting Payments for Independent Expert Claims

Independent expert claims are submitted on Form RW 9-18 in two stages:

- **Initial Claim -** for completion of the required report or special contractual assignment.
- **Supplemental Claim(s) -** for pretrial conferences, trial time, and authorized additional work.

If the report covers only one ownership, the initial and supplemental claims may be consolidated on the same form.

The District includes the expenditure authorization number and appropriate stamp in the upper margin for claims on Federal program projects.

9.06.02.00 Initial Claims

The expert must submit a single initial claim to cover all work not withdrawn by the State. Partial payments of the initial claim for partially completed reports are not allowed. Any deviation from this policy must be explained in Remarks. The District must not recommend payment for work not complying with accepted professional quality standards.

If the State withdraws parcels, the State and the expert must reach an understanding regarding the proper amount of the adjusted claim. The expert submits an invoice for the remaining contracted work in accordance with the contract and with the adjusted invoice amount.

9.06.03.00 Supplemental Payments

Pretrial conferences, trial time, and authorized additional work are billed after completion of all work required for single trial ownership. A single claim for all supplemental work performed for a trial ownership is preferred but exceptions may be allowed in protracted cases. A supplemental claim is not to cover more than one trial ownership.

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The description of additional work must specifically detail the type of work involved and the dates such work was completed. Sufficient substantiation must be included to show the work is outside the scope of the original report. The Continuations section or extra pages can be used if necessary.

The State's attorney certifies with a certification stamp and his or her signature any claims for Pretrial Conferences, Trial Dates, and Additional Work requested in Item B. The Legal contract manager audits and certifies all claims for additional work with the receiving record stamp, and approves payment of claims by signing the Receiver.

9.06.04.00 Right of Way and Legal Expert Witness Contract Process and Payment Guidelines

Refer to the following link for the current Right of Way and Legal Expert Witness Contract Process and Payment Guidelines:
The Right of Way and Legal Expert Witness Contract Process and Payment Guidelines ((internal Caltrans link).

9.06.05.00 Business Goodwill Appraisal Experts

Business goodwill appraisals are no longer reviewed and approved by the Division of Right of Way and Land Surveys. The Department's four Legal offices have full discretionary power as relates to the use of contracted business goodwill appraisals that are intended to be used in support and preparation for litigation.

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9.07.00.00 - TRIAL PREPARATION PROCEDURES

9.07.01.00 General

It is Departmental policy to strive for settlement in each case, including the time during which the parcel is subject to condemnation proceedings. The assigned acquisition agent should attend all settlement and pretrial conferences.

9.07.02.00 Final Offer of Compensation to Defendant

Subsequent to trial, the Court may determine that the State's final offer of compensation was unreasonable and defendant's offer of settlement was reasonable in light of evidence submitted and compensation awarded. In this case, costs allowed to defendant shall include defendant's litigation expenses (CCP Sections 1250.410, 1033.5, and 1255.140). Litigation expenses include reasonable attorney fees, appraisal fees, surveyor fees, and fees of other experts.

A statutory offer, while made in contemplation of the possible exposure to litigation costs, is not to be justified solely on that basis. The CFRs must also be used to justify such an offer.

Since it is imperative that the required final offer reflect all the compensation in the proceeding, the DDC-R/W and the State's attorney must discuss and have complete understanding on all matters relating to the compensation in the proceeding. The State's attorney files and serves such final offer.

The District must observe the following procedures in cooperation with the Regional Legal Office.

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PROCEDURES FOR FINAL OFFER OF COMPENSATION

- The fee appraiser or staff independent appraiser submits the appraisal to the Regional Legal Office 90 days or more prior to trial.
- The Regional Legal Office forwards a copy of the appraisal to the District with a recommendation that it be authorized for use in negotiation or trial.
- The District may use the condemnation appraisal for either negotiation or trial purposes as authorized by Legal.
- Forty-five (45) days or more prior to trial, the State's attorney and the DDC-R/W, or authorized representative, determine whether it is in the best interest of the Department to file a final offer of compensation (statutory offer) with the Court in an amount that exceeds the authorized appraisal.
- The Regional Legal Office files the statutory offer at least 20 days prior to the date of the trial (CCP Section 1250.410). A statutory offer should be supportable by the CFRs and the Administrative Settlement guidelines. Said statutory offer shall include all elements of required compensation, including compensation for loss of goodwill, if any, and shall state whether or not interest and costs are included.
- If the final offer is accepted, the District R/W representative summarizes the discussions with the attorney in writing to support and document acceptance and settlement. This agreement may be placed in the Parcel file if no confidentiality is intended.

9.07.03.00 Photographs

The District should take sufficient photographs showing the condition of the subject property so the State's attorney will have a complete picture of its condition. The photographs should be taken prior to construction and conform to the date of the commencement of the action, as nearly as possible. The person taking the photographs should number them and keep a record of the date(s) taken.

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9.07.04.00 Court Exhibit Maps and Engineering Expert Witness

The District provides R/W Engineering testimony and preparation of exhibit maps for use in the court trial. See the Right of Way Engineering Chapter 6, Sections 6.01.05.00 and 6.01.08.00, for additional information.

9.07.05.00 Setting Case for Trial

A parcel in condemnation should be set for trial after all parties having an interest therein have been served, have filed appropriate appearances, or are in default. The DDC-R/W, or designated representative, is responsible for advising the Regional Legal Office to request that the parcel be set for trial.

9.07.06.00 Jury Fees

Once a jury has been demanded, it is the District's responsibility to ensure that jury fees are deposited with the court at least 25 days prior to the trial date. It is also the District's responsibility to ensure jury fees and court reporter fees are paid during and after a trial. County courts vary on their requirements of the paying of jury costs during the trial. If the costs must be paid on a daily basis, the District may use a credit card or a draft purchase order. If the Court is able to delay receipt of the costs until the trial concludes, obtain an invoice from the Court Clerk and order an expedited check. The District is responsible to deliver the check to the Court and obtain a receipt.

9.07.07.00 Other Court Deposits

Allowance of fees and payment procedures are included in Sections 8.01.35.00, 8.63.11.00, and 8.68.02.00.

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9.08.00.00 - POSSESSION PRIOR TO JUDGMENT

9.08.01.00 Order for Possession

The Department should not obtain an Order for Possession (OP) until physical possession of the property is needed for construction or related purposes. An OP may be applied for *ex parte* concurrently with filing of the Summons and Complaint papers or later. The Court issues the OP if it determines the Department is entitled to acquire the property by eminent domain and has deposited the probable compensation. An OP is supported by depositing probable compensation in the Condemnation Deposit Fund of the State Treasury.

Only one deposit is made on a case, regardless of the number and kinds of interests in the parcel. No deposit is made for fictitious defendants or any separate interest. The need for the OP and variations in amount requested from the approved appraisal must be explained.

A completed Request for Transfer of Funds (Form RW 9-19) is sent to District P&M in sufficient time to allow for verification of funding availability and encumbrance of the required amount prior to application to the court for an OP. See Condemnation Flowchart Item 10. P&M transmits Form RW 9-19 to R/W Accounting to request issuance of CA-13, Notice of Transfer of Funds.

9.08.02.00 Issuance of Order for Possession

Based on information supplied by the District, the Regional Legal Office prepares a Notice of Deposit and Summary of the Basis for the Appraisal for signature by the Appraiser. The District inserts the date of the deposit of funds in the Notice using the CA-13 date. The Notice and Summary must accompany the Application and Order for Possession (also prepared by the Legal Office) when the District submits them to the Court. Actual appearance in court may be required in some jurisdictions.

The District requests a Superior Court judge to sign the OP submitting the CA-13, Notice, and the Application. The original OP is filed with the County Clerk, together with the Notice and the Application. The Court may ask to see the CA-13 when the OP is signed, or it may require the CA-13 to be attached as an exhibit for the Notice of Deposit in the County Clerk's case file. When the documents are filed, sufficient copies must be conformed and sent to the Regional Legal Office for service.

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9.08.03.00 Service of Notice of Deposit and Summary of the Basis for the Appraisal

The District makes initial service of the Notice if the OP is to be served at the same time as the Summons and Complaint. CCP Section 1255.020 requires such service to be made on all parties named in the suit in the same manner as provided in CCP Section 1255.450 for service of OPs. This fulfills technical service requirements set forth in CCP Section 1255.020.

Occasionally, it is necessary to serve the OP after service of the Summons and Complaint. Then, either the District or the Regional Legal Office serves the Notice in accordance with CCP Section 1255.450. This must be a joint determination to ensure an orderly process of service.

A court award draws interest from the date possession is to be taken, as specified in the Order. If any portion of the deposit is withdrawn prior to judgment, that portion does not draw interest.

9.08.04.00 Increase or Decrease in Amount of Deposit

The Department, or any other party having an interest in the property, may move to have the Court redetermine and order the appropriate deposit. Or, the Court on its own motion can order the deposit increased (CCP Section 1255.030). The District notifies the Regional Legal Office immediately when redetermination of the deposit is sought by the District, other party, or the Court.

If the deposit is to be decreased pursuant to CCP 1255.030 (a) and (e), the Regional Legal Office prepares a Notice of Motion for Order to Decrease Deposit and to Release Balance of Deposit to Plaintiff, at the request of the Condemnation Section. The District serves the Notice of Motion on all parties along with the Declaration in Support of Motion for Order to Decrease Deposit and to Release Balance of Deposit to Plaintiff. Decrease below the amount already withdrawn is prohibited by statute.

The State's attorney prepares the Motion and Order. After the Order is signed by the Court and filed, the District serves the Order on all parties.

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9.08.05.00 Deposit Initiated by Defendant

When the property to be acquired is a dwelling of not more than two units and at least one is occupied as a residence by a defendant owner, or the property is subject to a leasehold interest, the resident or the lessor may initiate a deposit. The resident or lessor serves a notice on the Department requiring the Department to deposit the probable compensation at a specified date and not earlier than 30 days after service of said notice. CCP Sections 1255.040 and 1255.050 provide certain sanctions against the Department if such deposits are not made. The District should contact the Regional Legal Office if it receives such a notice.

The Regional Legal Office will probably receive the notice and will forward the notice and request for deposit to the District to arrange for the deposit.

The Department may obtain an OP, if it chooses, 30 days after making a deposit under this section. The District should inform the Regional Legal Office whether possession is desired.

9.08.06.00 Conformed Copies of Order for Possession

Before being served on a defendant, each copy of the OP must be conformed to agree with the original as filed.

9.08.07.00 Preparation of Excess Land Inventory Record

The Condemnation Section, at the time of filing the OP, notifies the acquisition agent whenever excess lands are included in an OP. The acquisition agent must prepare an Excess Land Inventory and Disposal Record inventory card and forward it to the Excess Land Section.

9.08.08.00 Service of Order for Possession

The District is required to serve a copy of the OP on all record owners of the property and on all occupants, if any. A record owner is defined as the owner of the legal or equitable title to the fee or lesser interest in property as shown by recorded deeds or other recorded instruments.

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Service of the OP shall be made by personal service except as follows:

- If the person on whom service is to be made has previously appeared in the proceeding or been served with Summons in the proceeding, service of the OP may be made by mail upon such person and their attorney of record, if any.

- If the person on whom service is to be made resides out of the State, has departed from the State, or cannot with due diligence be found within the State, service may be made by registered or certified mail addressed to such person's last known address.

- The Court, for good cause shown on *ex parte* application, may authorize the plaintiff to take possession of the property without serving a copy of the OP on a record owner not occupying the property. In such cases, the District should immediately request the Regional Legal Office to obtain a Court order allowing the Department to dispense with service of the OP.

- A single service on or mailing to one of several persons having a common business or residence address is sufficient. For instance, service on husband or wife is sufficient for a family unit.

9.08.08.01 Time Requirements

If the property is lawfully occupied by a person dwelling thereon or improved as a farm or business operation, service of the OP and the 90-Day Notice (issued by the Relocation Assistance Section) may be made concurrently. When there is concurrent service, the effective dates of both documents must coincide. The Relocation Assistance Branch will serve a 30-Day Notice to Vacate at the end of the first 60 days of the Information Notice. Close coordination is required between Relocation and Acquisition to have the effective dates coincide. (See Section 10.03.10.00.)

In all other cases, service shall be made not less than 30 days prior to the time possession is to be taken. If uncertain, always give 90 days' notice. Service of the OP may be made at the same time as or following service of Summons.

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9.08.08.02 Circumstances

Service shall be made not less than 30 days prior to the time possession is to be taken pursuant to the Order under the following circumstances:

1. The Department has deposited probable compensation pursuant to a deposit initiated by an owner (CCP 1255.040 and 1255.050) **or**

2. The Department has deposited the probable compensation and the defendant in possession has either:

    - Expressed in writing a willingness to surrender possession of the property on or after a stated date, **or**

    - Withdrawn any portion of the deposit.

If the District seeks possession on either of the two conditions in 2. above, CCP Section 1255.460 requires that the OP:

- Recite that the OP is made pursuant to CCP Section 1255.460.

- Describe the property to be acquired. The description may be by reference to the Complaint.

- Include the date after which the Department is authorized to take possession. This can be the date requested by the defendant, or, if a portion of the deposit is withdrawn, not less than 30 days after the date the deposit was made.

9.08.09.00 Emergency Situations - No Appraisal

Emergency projects are those that preserve health, safety, welfare, or property. In emergency situations where there is insufficient time to complete an appraisal of a required property prior to the date possession is needed, Regions/Districts have the authority to approve use of an estimated compensation. The appraiser executes an affidavit stating:

- The reasons why possession must be obtained immediately.

- That an adequate appraisal cannot be made in time.

- The status and estimated date of availability of the appraisal.

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- A good faith estimate of the probable amount of compensation.

CCP Section 1245.230 requires an appraisal and offer thereof be made within 90 days of the adoption of a Resolution of Necessity. The Regional Legal Office prepares a motion requesting the Court to accept the estimated compensation as the deposit. The motion accompanies the Notice of Transfer of Funds, the OP, and the affidavit. The Court issuance of the OP requires compliance with the affidavit, which must be as accurate as possible.

9.08.10.00 Order for Possession - 3-Day Notice

The Court may make an OP to be effective in not less than three days and as it deems appropriate under the circumstances of the case if a deposit of probable compensation has been made and the Court finds:

- The Department has an urgent need for possession, and

- Possession will not displace or unreasonably affect any person in actual and lawful possession.

When asking the Regional Legal Office for a 3-day OP, the District shall state the justification. The Regional Legal Office prepares the Application, the Declaration, and the OP and sends them to the District. The designated Right of Way Agent shall review and sign the Declaration and follow procedures for filing the OP.

9.08.11.00 Declaration of Service of Order for Possession

Where service of the copy of the OP is by regular or certified mail, a Declaration of Mailing (Form RW 9-14) shall immediately be executed and transmitted to the Regional Legal Office.

Where a copy of the OP is personally served, the District sends the Proof of Service to the Regional Legal Office. The Declaration of Personal Service should state that the person served is a record owner or a person in possession.

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9.08.12.00 Notice of Tax Cancellation

Upon securing possession under OP, the District must notify the appropriate local taxing authorities of the action taken. (See Acquisition Section 8.66.04.00 for variations in notice requirements.)

9.08.13.00 Stay of Order for Possession Because of Hardship

Within 30 days of service of an OP, a defendant or occupant may request the Court to stay its Order and set a new possession date or impose terms and conditions on the property's use. The Court may do this upon a dual finding of fact, e.g., substantial hardship on the defendant or occupant versus the Department's need in seeking early possession. The Court may make an Order appropriate to the circumstances.

A defendant may make a motion to stay the Order, in which case the Regional Legal Office coordinates with the District to present evidence in support of obtaining the OP.
Where a person occupying property refuses to move by the possession date indicated in the OP, possession can be obtained through a Writ of Assistance. The District notifies the Regional Legal Office to initiate this process as necessary.

9.08.14.00 Disposing of Building Improvements on Property Under Order for Possession

The right to use the land under OP includes the right to dispose of improvements. The Property Management chapter includes instructions covering the issuance of Bills of Sale for such improvements. Right of Way Improvements and Personal Property Inventory and Disposal Record must be prepared at the time of obtaining possession. If there is a dispute as to whether an item is an improvement, the court can be asked to make a determination. (See CCP 1260.030.)

9.08.15.00 Owner Abandons Personal Property

If an owner refuses to remove personal property or abandons it, the District shall refer the problem to the Regional Legal Office. It may be necessary to arrange through a law enforcement agency for removal and storage of the personal property in a public warehouse for the account of the owner.

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9.09.00.00 - WITHDRAWAL OF DEPOSIT BEFORE JUDGMENT

9.09.01.00 Defendant's Rights

Under CCP Section 1255.210, a defendant may file and serve a verified application for withdrawal of all or a portion of the deposit. Defendant can also have the deposit invested for the benefit of all defendants upon proper motion to the Court (CCP Section 1255.075). Interest on the amount withdrawn ceases at the time of withdrawal.

9.09.02.00 Objections to Withdrawal

The Department has 20 days after receipt of service of the Application to object to the withdrawal or until the time for all objections has expired, whichever is later. The Regional Legal Office shall immediately prepare the necessary objection on verification from the District that there are currently other parties to the proceeding or parties believed to have interests in the property.

The Department may file an objection to the withdrawal when other parties to the proceeding are known or believed to have an interest or when the bond filed by the applicant (or sureties therein) is insufficient. The Court may require that a bond (undertaking) be filed when there are conflicting claims to the amount sought to be withdrawn or when the amount to be withdrawn exceeds the original deposit, which had been increased. (See CCP Sections 1255.230 and 1255.240.)

The Regional Legal Office must file the objection with the Court and serve the applicant within 20 days of receipt of service. Then the District must expeditiously serve all other interests with a notice advising that they may appear within 10 days of service of the notice to object to the application for withdrawal.

9.09.03.00 Application for Withdrawal of Deposit

Because of the limited time involved, the District must send, without delay, a verified application to the Court with a copy to the State's attorney. The application shows the applicant's interest in the property and the amount to be withdrawn. The State's attorney contacts the District to get the names and addresses of all parties having an interest in and/or possession of the property.

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Since this information must be provided at once, it is imperative that the District have a current title report or litigation guarantee. It is the District's responsibility to provide the address of all defendants to Legal. After receipt of the information, the State's attorney prepares a Notice of Application for Withdrawal of Deposit and Declaration of Service and serves it on the parties whose names and addresses are set forth therein. The Notice must be served in time for a return of service to be made to the Court within the required 20-day period.

At the time the suit is requested, the agent should provide to Legal a list of all recorded and unrecorded interests. The agent should identify which funds are to be allocated to a lessee and which amount to the owner. The attorney should be informed if the defendants are disputing allocation of funds.

9.09.04.00 Service of Application for Withdrawal and Declaration of Service

The Regional Legal Office prepares a Notice and Declaration of Service of Application of Withdrawal and forwards it to the District. The District serves the Notice and Declaration on all parties who have not previously appeared or who have not been served with a Summons. Service is by personal service unless the party resides out of state, has departed from the state, or cannot be found with due diligence within the state. Then, service may be made by registered or certified mail sent to such party's last known address.

The Regional Legal Office serves, by regular mail, those parties who have previously been served with a Summons or who have appeared in the proceeding and their attorneys of record. The service includes parties whose default has been entered, but not parties who have disclaimed or who have been dismissed.

The District shall forward the Declaration of Service to the State's attorney without delay once all parties have been served. The Regional Legal Office prepares a report of service and files and serves the report on the applicant. The report contains the names of parties served and the dates of service, as well as the names and last known addresses of parties known to or believed to have an interest but who have not previously appeared or who have not been served personally.

It is important that the Right of Way records reflect any withdrawal so the amount is credited when settlement is reached. The withdrawal must also be reflected in the record of deposits to assure that any subsequent Order authorizing withdrawal of Deposit directs the release of no greater amount

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than the balance remaining on deposit after payment of the earlier withdrawal.

The Court order to withdraw all or any portion of the amount deposited by the State will not include interest on such amount to the date of withdrawal. Payment of interest is made only after judgment has been rendered. Separate computations are necessary in all cases where a withdrawal has been made from the deposit. Interest is computed in the judgment on the principal amount of compensation from the OP date to date of payment of the amount withdrawn. A separate computation is made on the balance of the award from the date of withdrawal to the date of payment of the remaining balance.

9.09.05.00 Procedure for Withdrawal

After all notices are given, the Court holds a hearing to determine the amounts to be withdrawn and who shall withdraw them. If no other parties have an interest in the property, no hearing is necessary. If no party having an interest in the property appears and objects within 10 days after service of notice, all objections are waived and a hearing is not necessary.

The Order of the Court authorizing the withdrawal directs either the State Treasurer or the Court (County Clerk) to pay the amount authorized to the defendant or other persons determined to have an interest in the property. Prior to issuing payment, the defendant or other persons authorized to receive payment are to complete the Payee Data Record (STD. 204). This information is to be forwarded to the appropriate entity processing the payment request. Whether the Order is directed to the State Treasurer or to the County Clerk depends on whether the original deposit was made with the County Clerk or into the Condemnation Deposits Fund in the State Treasury. In most cases, the deposit is in the State Treasury (CCP 1255.070).

It is preferred that the State Attorney take the lead on the mailing of the Certified Order to the State Treasurer rather than have the owner's attorney do it. Payment is made as directed by the Order, usually to the defendant or defendant's counsel. The Department Cashier will provide the designated person in each district, as well as the State Attorney, with a copy of a Claim Schedule. Payment is made directly to the defendant or other parties authorized in the Order. The District should follow up on applications for withdrawal to determine whether such payments have actually been made. The State's attorney obtains copies of the Order and forwards one copy to the District.

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9.09.06.00 Waiver of Defense

If any portion of the money deposited is withdrawn, the party waives all defenses to the action except a claim for greater compensation. The amount withdrawn shall be credited upon the judgment ultimately entered in the proceeding.

9.09.07.00 Waiver of Objection

If no other party has objected and there is no independent reason for the Department's objection, the Department's objection shall be waived when the Regional Legal Office forwards the Report of Service, Notice of Application for Withdrawal, and Declaration of Service to the Court. The Regional Legal Office shall file a copy of the waiver signed by the State's attorney with the Court and serve it on the applicant.

9.09.08.00 Deposit–Conflicting Claims to Amount Withdrawn

The Court must determine whether the applicant shall file a bond (undertaking) to secure a third party claimant. If the Court allows withdrawal and parties have not been served, the Court may require a bond by the applicant to indemnify the Department against liability. Unless the bond is required because of an issue as to title, the applicant can recover premiums paid as part of recoverable costs in the eminent domain proceeding.

9.09.09.00 Repayment of Amount of Excess Withdrawal

A party who withdraws an amount in excess of any entitlement, as finally determined, must pay the excess to the party entitled thereto. The Court enters judgment to that effect.

The judgment does not include interest except in the following cases:

- **Withdrawal by Another Defendant** - An amount to be paid to a defendant shall include legal interest from the date of its withdrawal by another defendant.
- **Excess Withdrawal** - If the defendant who requested the Department to increase the original deposit has made an excess withdrawal, any amount of the excess attributable to the increased deposit shall be repaid to the Department including legal interest from date of withdrawal.

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In the case of an excess withdrawal, the Court may grant a defendant up to one year to repay the Department. If the Court authorizes such delay in repayment, the District records an abstract of the judgment in the appropriate county. If repayment has not been made by the expiration of the authorized delay period, the District shall notify the Regional Legal Office. It determines the appropriate means to recover the excess withdrawn plus interest, if applicable.

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9.10.00.00 - JUDGMENT OF CONDEMNATION

9.10.01.00 General

The Regional Legal Office prepares the Judgment and forwards the documents to the District for filing with the Court.

9.10.02.00 Judgment by Default

The Department takes defaults in condemnation proceedings only after making a diligent effort to induce the property owner to answer. Prior to entering a default under any condemnation proceeding, the Regional Legal Office sends a letter to the property owner giving a final date for appearance.

The Court requires military affidavits before granting a judgment by default. The party serving the Summons and Complaint must obtain sufficient facts to thereafter make a military affidavit, if required.

9.10.03.00 Time of Paying Judgment

CCP Section 1268.010 requires the plaintiff to pay the full amount required by the judgment within 30 days after final judgment.

The District will make every reasonable effort to pay the amount of the award on the date the judgment is entered to keep payment of interest to a minimum. The District should not have the judgment signed until it is in a position to deposit the award, plus interest under OP if any, computed to the date the judgment will be signed and entered. If a motion for a new trial will be made by the State, State's attorney will request the District to delay making the deposit.

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9.10.04.00 Method of Paying Judgment

Payment is made by either or both of the following methods:

- **Payment of Judgment Directly to the Defendant** – Any amount that the defendant has previously withdrawn shall be credited as a payment on the judgment.
- **Deposit of Money with the Court Pursuant to CCP Section 1268.110** – It is State's practice to pay the defendant directly rather than deposit into Court. The State may deposit with the Court when there are outstanding issues regarding settlement.

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9.11.00.00 - DEPOSITS AND SCHEDULES

9.11.01.00 Deposit of Award and Costs

The District makes two separate deposits and/or payments:

- **Amount of Award** - plus interest on possession (if any), computed to the date of payment of the award computed at the apportionment rate. (See CCP Sections 1268.310 and 1268.350.)

- **Amount of Defendant's Costs** - the State's attorney will advise the District of the amount of the property owner's legal costs. (See Section 8.01.35.00.)

9.11.02.00 Interest for Possession

If an OP is involved, the District pays the award, together with interest, to the party directed in the judgment. The payment may be made to the defendant, defendant's counsel, or to the court.

9.11.03.00 Interest on Award

Compensation, including damages, awarded in an eminent domain proceeding draws interest pursuant to CCP Section 1268.310 from the earliest of the following dates:

- The date of entry of judgment.

- The date the plaintiff takes possession of the property.

- The date after which the plaintiff is authorized to take possession of the property as stated in an OP.

The compensation award ceases to draw interest pursuant to CCP Section 1268.320 on the earliest of the following dates:

- The date the amount deposited as probable compensation has been withdrawn by the person entitled thereto.

- The date of deposit of the amount of the award.

- The date a person is paid the amount to which they are entitled.

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9.11.04.00 Offset Against Interest

If after the date interest begins to accrue (date of possession), the defendant continues in actual possession of or receives rent, issues, or profits from the property, the value of such possession and of such rents or other income is offset against the interest that accrues during such period.
[CCP Section 1268.330(b)] Value of possession should be presumed to be the rate of interest on the compensation award for the period defendant continues in possession and receives rent or other income. The District gathers the necessary facts to determine whether an offset against interest should be made so this issue may be tried in the condemnation proceedings.

9.11.05.00 Payment of Judgment

When the judgment payment is deposited with the Court, the District must obtain a receipt from the County Clerk in order to obtain the FOC and to schedule payment of the judgment.

When the judgment payment is paid to the defendant or to the defendant's counsel, the District must have the party sign a receipt of funds and provide a satisfaction of judgment or partial satisfaction of judgment for the defendant or the defendant's counsel to sign. The District or Regional Legal Office will determine who will file the document once it is accepted.

9.11.06.00 Appeal or Motion for New Trial by Defendant - State in Possession

The District should deposit the amount of the judgment at time of entry of judgment to stop the accrual of interest. Except where the defendant has withdrawn the judgment award, the State should not obtain the FOC until the appeal is terminated and the judgment becomes final. Otherwise, the State would be responsible for creating a cloud on the title should the judgment be reversed.

It is particularly important that the Department not withdraw the deposit under an OP during the pendency of an appeal. If the judgment is reversed, State's possession would not be supported by the constitutionally required deposit.

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9.11.07.00 Scheduling of Judgments for Payment

To schedule payment for judgments, the district submits Form RW 9-20, Condemnation Check Request-Invoice, to R/W Accounting together with, but not limited to, the following items:

- **Judgment in Condemnation** - A certified copy specifying the amount of compensation to be paid by State.
- **Interest Calculation Worksheet** - one copy, if applicable.
- **Federal Participation Memo (Form RW 8-16)** - two copies.
- **Payee Data Record (Form STD. 204)**

Explain in detail any difference between the amount of the judgment and the amount being scheduled and not accounted for above.
A certified copy of the FOC is retained in District files. A certified copy is defined as a copy that has been formally certified by the County Clerk as a true and correct copy of the original on file. Endorsed or conformed copies are identical to the original, but have not been certified as true and correct copies.

9.11.08.00 Tax Identification Numbers

Requirements for securing Tax Identification Numbers in condemnation cases are identical to the regular acquisition procedures described in Manual Section 8.04.43.00. Every effort should be made to secure Payee Data Records for all condemnees.

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9.12.00.00 - FINAL ORDER OF CONDEMNATION

9.12.01.00 Recording of Final Order of Condemnation - Vesting of Title

CCP Section 1268.030(c) provides that title to the property described in the Final Order of Condemnation (FOC) vests in the State upon the date that a certified copy is recorded in the Office of the Recorder of each county in which the property is located. After the judgment has been entered and the judgment is paid, the Judge signs the FOC upon being shown the receipt for deposit or a signed, full Satisfaction of Judgment. A Satisfaction of Judgment signed by the defendant or defendant's attorney must be presented with the FOC if payment has been made directly to the defendant. Since payment for the property will have been deposited prior to issuance of the FOC, it is essential that the required certified copy be recorded immediately to vest title to the property in the State.

After the FOC is recorded, the Regional Legal Office prepares, serves, and files a Notice of Entry of Judgment, Deposit Pursuant to Judgment, and Notice of Recording of Final Order on all defendants or the defendant's counsel unless Notice has been waived in the judgment. If Notice is waived, a courtesy copy of the FOC may be mailed to the previous owner of the property.

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9.13.00.00 - SETTLEMENT AND DISMISSAL

9.13.01.00 Settlement by Judgment After Entry into Right of Way Contract

In some cases where a negotiated settlement has been made with a defendant through a Right of Way Contract, it may be necessary to secure a Judgment in Condemnation or a Default Judgment for technical or other reasons, such as clearing the remaining interest from title. Before Judgment in Condemnation is secured, a written agreement should be entered into with the defendant or the defendant's attorney providing for the cancellation of all contractual obligations included in the Judgment. Failure to do this creates duplicate obligations.

The Agreement of Cancellation should be executed in duplicate and distributed as follows:

- One copy to the defendant or the defendant's attorney.
- One copy affixed to the executed original Contract in the District file.

If the defendant, or the defendant's attorney, refuses to enter into such a written agreement, the District should submit complete information to the Regional Legal Office with a request for instructions on how to proceed to complete the acquisition.

A DM Series - Actual Possession clause must be included in the Deed whenever the State has the right to take possession under Court order or has taken actual possession through Right of Entry or OP. (See Section 6.06.11.00.)

9.13.02.00 Settlement by Right of Way Contract

Whenever a parcel included in a condemnation suit is settled by Right of Way Contract, the action shall be dismissed. If a deposit has been made for an OP, provision should be made for its release.

The District should not request a dismissal until it obtains consent from all attorneys who have filed an answer alleging an interest in the parcel and escrow has closed. The attorneys representing such interests should be advised of the proposed settlement and the provisions concerning the distribution of the payment.

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9.13.03.00 Settlement After Withdrawal of Deposit

Whenever a withdrawal of funds has been made by the defendant and a negotiated settlement is subsequently reached, the Contract shall include a provision wherein the defendant acknowledges receipt of the amount withdrawn as a credit to the State against the total payment provided for in the Contract. A similar provision shall also be included if settlement is by stipulated judgment.

9.13.04.00 Approval of Stipulated Judgments

The District will secure approval from HQ R/W before entering into a Stipulated Judgment whenever:

- The amount of the stipulation is substantially in excess of the highest value based upon an authorized appraisal report that would have been testified to if the action had proceeded to trial. Any limitations under current delegations will apply.

- When the proposed payment is not substantially at variance with the authorized appraisal report but where the settlement (with the exception of the form of the instrument) does not conform to the criteria and conditions for district-approved contracts. (See Acquisition Chapter.)

- When it is proposed to exchange noncontiguous excess land. (See Section 8.03.07.00.)

After approval is secured by letter, fax, or telephone, the District shall submit to HQ R/W a Memorandum of Settlement fully explaining the details of the stipulated settlement.

9.13.05.00 Release of Deposit - Settlement by Judgment

The Order for Release of Deposit can be filed with the Final Order of Condemnation. The District should notify the attorney of record upon payment of the judgment, as specified in the judgment, so the FOC and Release can be prepared.

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9.13.06.00 Abandonment of Proceedings

Under certain circumstances, the Department may abandon all or part of a parcel after suit has been filed. If an abandonment is contemplated, the District should consult with the Regional Legal Office.

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9.14.00.00 - DEPOSIT RELEASES

9.14.01.00 Responsibility for Release of Deposit

The DDC-R/W is responsible for the prompt release of deposits. The District should review the status of these deposits periodically to ensure release immediately following the vesting of the property in the State, regardless of whether title was acquired through Court proceeding or by deed.

9.14.02.00 Release of Deposit, or Cancellation of Deposit, After Filing of Suit

When a parcel is settled by a Judgment in Condemnation, the condemnation deposit is released by court order (Request and Order for Release of Deposit). The Regional Legal Office will prepare said document and will coordinate with the District, the responsible party, for the filing of the Order. It is preferred that the Order for Release of Deposit be filed concurrently with the Final Order of Condemnation. Three copies of the Order should be delivered to the Court. One of the copies is to be received by the Court along with a request that the Court certifies two copies of the Order, upon filing of said documents. The Division of Accounting, Cashiering Unit, requires two certified copies of the Order.

If the case is dismissed, the District is responsible to cancel the deposit. The standard release request form, RW 9-21, should be filled out canceling the deposit and stating the reason the deposit is canceled. The reason for the cancellation is identified on the form by checking the appropriate box. A court order is not required.

9.14.03.00 Cancellation of Deposit Prior to Filing of Suit

A condemnation deposit on a parcel settled by right of way contract or decertified prior to a case being filed needs to be canceled by the District. The standard release request form, RW 9-21, should be filled out by the District canceling the deposit. The appropriate box should be checked providing the Division of Accounting, Cashiering Unit, and the State Treasurer with the reason the deposit is canceled. The original form is then sent to the Division of Accounting, Cashiering Unit.

The standard release request form, RW 9-21, Release of Condemnation Deposit, contains the necessary language for the District's affidavit; necessary explanatory data is added in the appropriate boxes. In addition, for

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stipulated and court-ordered judgments, two court-certified copies of the Request and Order for Release of Deposit must be included.

9.14.04.00 Processing of Order for Release of Deposit

The District shall transmit the Release of Condemnation Deposit (RW 9-21) and two certified copies of the Order for Release of Deposit, if applicable, to the Division of Accounting, Cashiering Unit, for processing. Accounting arranges for the transfer of the deposit from the Condemnation Deposits Fund to the State Transportation Fund. After this transfer has been made, the transaction will appear on the R/W Accounting Weekly Report, which is then forwarded to the District P&M Office to confirm the deposit has been released.

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9.15.00.00 - GENERAL CLOSING PROCEDURES

9.15.01.00 Ordering Policy of Title Insurance

After recordation of the FOC, the District shall secure a Policy of Title Insurance to insure the interests acquired by State.

9.15.02.00 Record of Condemnation

Upon completion of a trial, the District forwards a copy of the attorney's Trial Report to HQ R/W. Two copies of the MOS are forwarded to the Regional Legal Office. Trial Reports are required when there is a contested award. Trial Reports are not required for stipulated judgments, but written concurrence from Legal is necessary for all Legal Settlements. The District submits Supplemental Memoranda to HQ R/W as events occur covering retrials, appeals, or situations where the Court has amended the original verdict.

9.15.03.00 Improvements Acquired

The District lists improvements acquired through condemnation trial or secured under an OP on Right of Way Improvements and Personal Property Inventory and Disposal Record in the same manner as those acquired through Right of Way Contract. When improvements are acquired by condemnation but without an OP, the inventory is prepared concurrently with Page 3 (Alternate) of the MOS.

9.15.04.00 Prepaid Tax Cancellation

Prepaid current taxes on property acquired after the lien date, which would have been subject to cancellation if unpaid, are recoverable from the State. Money owed by the State for the tax refund is paid as part of the defendant's cost bill. The State arranges to recover this money from the taxing agency pursuant to the Revenue and Taxation Code.

When property is acquired by eminent domain, the following requirements apply to recovery of prepaid taxes:

- If the State has taken possession of the property prior to judgment, the property owner must claim payment for these taxes as part of the cost bill filed after judgment in condemnation.

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- If the State has not taken possession of the property prior to judgment, the property owner must claim payment for these taxes by means of a supplemental cost bill filed not later than 30 days after recording of the FOC. (See Section 8.66.03.00 of the Acquisition Chapter.)

9.15.05.00 Filing of Recorded Document

Procedures for filing of recorded documents are set forth in the Acquisition Chapter, Section 8.67.00.00, "Filing of Completed Transactions."

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9.16.00.00 - CONDEMNATION TIMELINE AND FLOWCHARTS

EMINENT DOMAIN LITIGATION TIMELINE

Month	Action
0	File summons, complaint, and order for possession, deposit amount of probable compensation
1	Contract for Independent Appraiser/Expert Witness
2	Complete service of summons, complaint, and order for possession
3	Answers filed by all defendants
4	
5	File joint at-issue memorandum
6	
7	Trial setting and status or case management conference
8	Presubmission conference - Legal, Right of Way, and Independent Appraiser
9	Review for contract payment of independent appraisal
10	Authorization to use independent appraisal for negotiation
11	Exchange of valuation data
12	Statutory final offer and mandatory settlement conference
13	Trial begins

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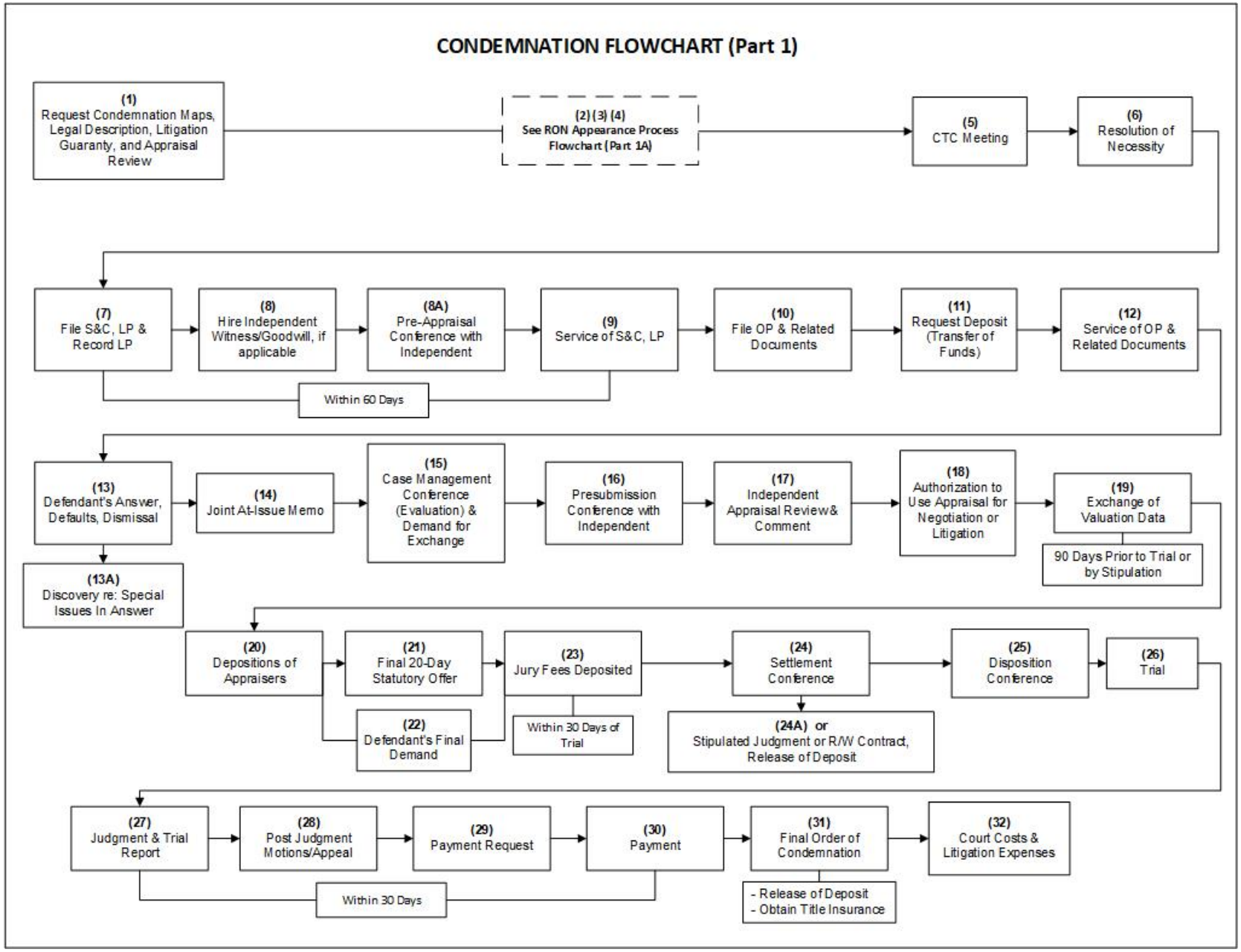

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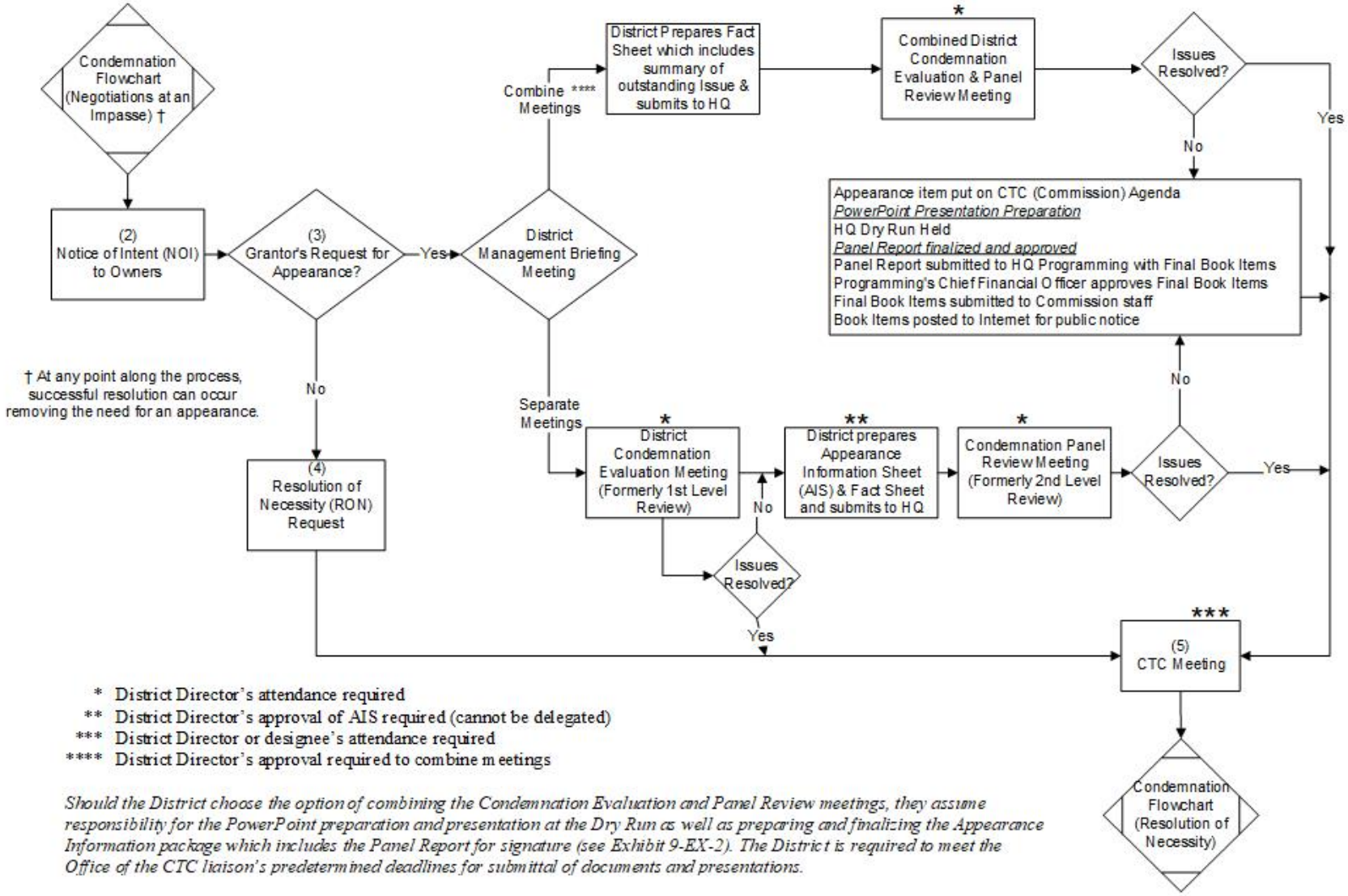
RESOLUTION OF NECESSITY (RON) APPEARANCE PROCESS FLOWCHART (Part 1A) †



* District Director's attendance required
** District Director's approval of AIS required (cannot be delegated)
*** District Director or designee's attendance required
**** District Director's approval required to combine meetings

Should the District choose the option of combining the Condemnation Evaluation and Panel Review meetings, they assume responsibility for the PowerPoint preparation and presentation at the Dry Run as well as preparing and finalizing the Appearance Information package which includes the Panel Report for signature (see Exhibit 9-EX-2). The District is required to meet the Office of the CTC liaison's predetermined deadlines for submittal of documents and presentations.

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RIGHT OF WAY/LEGAL CONDEMNATION FLOWCHART (Part 2)

Activity	Responsible Party	Summary of Responsibilities
1	District R/W Office	Requests documents from R/W Engineering. Also, requests litigation guaranty or update, if dated.
1a	District R/W Engineering	Prepares maps and legal descriptions.
1b	District R/W Office	Requests Appraisal Branch to confirm market value (Confirmation of Market Value Memo). Can be requested earlier.
2	District R/W Office	Makes decision to seek Resolution of Necessity. Determines parties receiving notice. Sends a minimum of 30 days prior to CTC meeting date (personal call required within 30 days of mailing). Checks maps and descriptions.
3	District R/W Office	If grantor requests an appearance, responsible for initiating the process and conducting the District Condemnation Evaluation Meeting; Having a District Management briefing meeting prior to the District Condemnation Evaluation Meeting; Preparing the Appearance Information Sheet and Fact Sheet. Setting up the Condemnation Panel Review Meeting, if required.

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RIGHT OF WAY/LEGAL CONDEMNATION FLOWCHART (Part 2) (Continued)

Activity	Responsible Party	Summary of Responsibilities
3	District R/W Office	**OR:** If the District chooses to combine the Condemnation Evaluation and Condemnation Panel Review meetings, then the District is responsible for: Having a District Management briefing meeting; Preparing a Fact sheet, which includes a summary of the owner's outstanding issues; Setting up the combined Condemnation Evaluation and Panel Review Meeting.
	HQ R/W	Conducts the Condemnation Panel Review Meeting, if required, or the combined Condemnation Evaluation and Panel Review Meeting.
4	District R/W Office	Submits Resolution of Necessity request to HQ R/W a minimum of 45 days prior to CTC date. R/W Agent completes the form based on information from the map, the appraisals, and the parcel diary.
5	CTC	CTC adopts Resolution of Necessity.
6	HQ Legal	Sends certified Resolution to Regional Legal Office.
	HQ R/W	Sends original plus copies of Resolution to District R/W.

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RIGHT OF WAY/LEGAL CONDEMNATION FLOWCHART (Part 2) (Continued)

Activity	Responsible Party	Summary of Responsibilities
7	District R/W Office	Compiles the necessary information required for Legal to prepare the Summons and Complaint and Lis Pendens documents (title report, appraisal, parcel diary, legal description and maps, and the CTC Resolution). **Note:** Compiling information, transmitting to Legal and preparation of suit papers can be done prior to passage of the CTC Resolution.
	Legal	Prepares the Summons and Complaint, Lis Pendens, and maybe OP documents.
	District R/W Office	Files Summons and Complaint and Lis Pendens, then records the Lis Pendens, deposits amount of probable compensation.
8	District R/W Office	Hires independent(s) with Legal's concurrence.
8a	District R/W Office	Legal and District R/W should hold a pre-appraisal conference with the hired witness to discuss the appraisal problem, legal concepts, etc.
9	District R/W Office	Completes services to all named defendants; completes proofs of service and submits to Legal.
	Legal	Checks proofs for completeness and correctness, and files with the Court.

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RIGHT OF WAY/LEGAL CONDEMNATION FLOWCHART (Part 2) (Continued)

Activity	Responsible Party	Summary of Responsibilities
10	District R/W Office	Sends Legal the necessary information for preparation of the Order for Possession, Notice of Deposit, and Summary for Basis for Appraisal.
	Legal	Prepares the OP and related documents.
	District R/W Office	Files the OP and related documents with the Court.
11	District R/W Office	Submits Request for Transfer of Funds to District Planning and Management.
12	District R/W Office	Completes services to those who have possessory or equitable interests; completes proofs of service and submits to Legal. **Note:** If property is occupied, a 90-day Notice to Vacate must also be served. [See RAP Section 10.03.09.00 and 49 CFR 24.203 (c).]
	Legal	May sometimes serve by mail those who have possessory or equitable interests who were personally served Summons and Complaint and Lis Pendens. Checks all proofs for complete and accurate information.
13	Legal	Sends copies of Answer to District R/W Office. Requests Default and files Disclaimers, if necessary.
13a	Legal	Discovery on Special Issues in the "Answer" (such as: goodwill, delay, etc.).
14	Legal	Informs Court that case is ready for trial calendar.

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RIGHT OF WAY/LEGAL CONDEMNATION FLOWCHART (Part 2) (Continued)

Activity	Responsible Party	Summary of Responsibilities
15	Legal	Court sets date for Disposition (Evaluation) Conference and Trial. Legal serves and files Demand for Exchange of Valuation Data within 10 days after trial is set.
16	Legal	Prior to completion of the independent's report, Legal and District R/W shall hold a presubmission conference with the hired witness to review appraisal concepts, date of value, market data, compensable items, etc. Also checks the parcel areas and the proposed project with the independent appraiser.
17	District R/W Office	District reviews, comments, and completes Exhibit 7-EX-18; HQ R/W authorizes use if it is a high-value parcel.
	Legal	Reviews and comments on District's analysis.
18	District R/W Office	Acquisition Branch requests authorization to use the report for settlement or trial.
19	Legal	Exchanges and deposits with Court—Expert Witness list and Statement of Valuation Data—90 days before trial.
20	Legal	Takes depositions of appraisers and other designated experts.
21	District R/W Office	Determines and approves the Statutory Offer based on all available data and Legal's recommendation.
	Legal	Serves and files the final offer at least 20 days before trial.

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RIGHT OF WAY/LEGAL CONDEMNATION FLOWCHART (Part 2) (Continued)

Activity	Responsible Party	Summary of Responsibilities
22	Defendant's Attorney	Defendant's attorney files final demand at least 20 days before trial.
23	Legal or District R/W	Deposits Jury fees with the Court 30 days before trial.
24	District R/W Office	If a Settlement Conference is scheduled, the Acquisition Agent/Senior attends and is prepared with a settlement proposal.
	Legal	Represents and advises District.
24a	Legal	If settlement is reached by Stipulated Judgment, Legal prepares the documents and forwards to District R/W for the payment request to be initiated.
	District R/W Office	If settlement is by R/W Contract, agent prepares documents in same manner as for a regular transaction.
25	Legal	Parties present the Joint Issues Disposition Conference Report to the Judge.
26	Legal	Prepares for the trial. In some Districts, R/W Department assists.
27	Legal	Prepares the Judgment and sends draft to R/W so the payment request is initiated. Also prepares trial report for contested settlements and submits to District R/W for approval within 10 working days after conclusion of trial.
	District R/W Office	DDC-R/W approves the trial report. A copy is returned to Legal, one goes to Acquisition.

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RIGHT OF WAY/LEGAL CONDEMNATION FLOWCHART (Part 2) (Continued)

Activity	Responsible Party	Summary of Responsibilities
28	Legal	Prepares or defends against motion for new trial and/or Appeal.
29	District R/W Office	Prepares the necessary paperwork to enable payment processing by Division of Accounting.
30	District R/W Office	Delivers payment to defendant's attorney and obtains a receipt or, if applicable, deposits in Court. **Note:** For Legal Settlements, delivery of payment is to be made only after receipt and approval of Attorney's Legal Settlement Memo.
31	Legal	Prepares the FOC and release of deposit responsibilities.
	District R/W Office	Prepares MOS. For contested settlements, sends copy of the trial report to HQ R/W. Files and records the FOC with the Court. Obtains Title Insurance.
32	Legal	If necessary, prepares motion to tax litigation costs. Prepares points and authorities and declaration re: reasonableness of offer and demand.
	District R/W Office	Processes payment request through Division of Accounting.

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9.17.00.00 – DELEGATIONS

9.17.01.00 Delegations of Authority

As referenced in Section 2.05.01.00, the delegation matrix for Condemnation is noted below. The delegation matrix reflects the associated policy and RW Manual reference for each delegated item. The matrix also distinguishes whether an item is delegated to the District or Headquarters (HQ) level, along with the lowest level of sub-delegation authorized.

Reference (Statutory, WBS, Director's Policy, Deputy Directive, etc.)	**RW Manual Section**	**Responsibility**	**Delegation**	**Lowest Level of Sub-Delegation**
CCP §1245.235	9.01.04.00	Notice of Intent to Adopt Resolution of Necessity	District	Senior RW Agent
CCP §1245.230	9.01.11.00	Request for Resolution of Necessity Approval (RW 9-8); or Alternately RON Generator (Electronic Format Approval)	District	RW Manager
CCP §1245.235	9.01.13.00	Provide District Notification of CTC's Adoption of Resolution of Necessity	HQ	Senior RW Agent
CCP §1255.010	9.08.01.00	Request for Transfer of Funds	District	Senior RW Agent
CCP §1245.230	9.08.09.00	Order for Possession – Emergency Situations – No Appraisal	District	Supervising RW Agent

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9-EX-5	District Notice to Owner of Condemnation Evaluation Meeting
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9-EX-6A	District Notice to Owner Regarding a Change in the Date or Location of the CTC Meeting
9-EX-7	HQ R/W Notice of CTC Appearance Schedule
9-EX-8	Resolution of Necessity (First and Second Level Reviews) Guidelines for Local Agencies Performing Work on the State Highway System
9-EX-9	Processing of Department Resolutions of Necessity (RON) Through the California Transportation Commission (CTC), County Board of Supervisors (Board) or City Councils (Council)

Exhibits are located online:

- External Exhibits site
- Internal Exhibits site (internal Caltrans link)

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RW 9-21	Release of Condemnation Deposit

Forms are located online:

- External Forms site
- Internal Forms site (internal Caltrans link)

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