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| STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION | EXHIBIT |
| **SUMMARY OF DAMAGE ALTERNATIVES** | 7-EX-6 (Rev. 1/98) |
| (Form #) |  |

# (See Discussion of Damages for Details)

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| I | A. | Value of Remainder: Before Condition |  |  | $ |  |
|  |  | Land | $ |  |  |  |
|  |  | Improvements | $ |  |  |  |
|  | B. | Value of Remainder: After Condition Assuming No Curative Work | | | $ |  |
|  |  | Land | $ |  |  |  |
|  |  | Improvements | $ |  |  |  |
|  |  | Severance Damages: Assuming No Curative Work | | | $ |  |
|  |  | Land | $ |  |  |  |
|  |  | Improvements | $ |  |  |  |
| II |  | Curative Work Alternatives |  |  |  |  |
|  |  | Alternative 1: (Brief Identification of Work) | | | $ |  |
|  |  | Cost of Work | $ |  |  |  |
|  |  | Other Severance Damages | $ |  |  |  |
|  |  | Alternative 2: | $ |  |  |  |
|  |  | Cost of Work | $ |  |  |  |
|  |  | Other Severance Damages | $ |  |  |  |
| III |  | Primary Appraisal Approach to Damages (Before Benefits) | | | $ |  |
|  |  | Excess Land Purchase | $ |  |  |  |
|  |  | or |  |  |  |  |
|  |  | Damages | $ |  |  |  |
|  |  | Construction Contract Work | $ |  |  |  |
| IV |  | Alternate Appraisal(s) |  |  | $ |  |
|  |  | Excess Land Purchase | $ |  |  |  |
|  |  | or |  |  |  |  |
|  |  | Damages | $ |  |  |  |
|  |  | Construction Contract Work | $ |  |  |  |
| V |  | Benefits |  |  | $ |  |

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# Discussion of Damages

I A. Value of Remainder: Before Condition

Discuss briefly the before condition emphasizing elements being damaged. If the entire ownership has not been valued, discuss the reasons and describe the method of valuing the portion of the property affected.

I B. Value of Remainder: After Condition Assuming No Curative Work

Discuss the uses of remainder assuming no curative work and before benefits. Discuss basis of damage reasoning and support of damage amounts. Reference and discuss pertinent market data, if any. If no helpful comparable data exist, discuss scope of investigation and reason for appraisal judgment that damages do in fact occur. If severance damages cannot be reliably measured by market comparison, discuss the method of valuation used. If the cost to cure method of measuring the severance damage is considered the most appropriate, discuss the reasons why an after condition valuation of the remainder in an uncured condition would have no practical application.

II Curative Work Alternatives

If no curative work is feasible, briefly give the reasons. If curative work alternatives are practical, describe the work proposed including the cost estimates (use separate page if necessary) and the source of cost data. Include construction Contract Work alternatives, if any. Discuss the valuation of other severance damages which will accrue even if curative work is accomplished.

III Primary Appraisal (Before Benefits)

Discuss the reasons for selection of the approach of excess land purchase, payment of severance damages, or the combination of severance damages, curative work and/or Construction Contract Work used as the primary appraisal.

IV Alternate Appraisals

Discuss possible alternative approaches, but *only if* Alternate Appraisals (RW 03-2) are included for each.

V Benefits

Discuss benefit probabilities, if any. Discuss the basis of benefit reasoning and support of benefit amounts if capable of valuation. If no helpful comparable data exist, discuss scope of investigation and reasons for appraisal judgment that benefits in fact occur.

**Subject: Noncompensable Damage Items in Condemnation Actions**

1. **Damages to business**. When considering the value of the real property taken or damaged, actual damage to the business itself is not recoverable although loss of profits may be used to show a diminution in market value of the remainder (*People ex. rel. Dept. Public Works v. Giummara Vineyards Corp.* (1966) 245 Cal.App.2d 309,319; *Orange County Flood Control Dist. v. Sunny Crest Dairy, Inc.* (1978) 77 Cal.App.3d 742,759).

However, the Eminent Domain Law does provide for compensation to be paid for a loss of goodwill. (Code of Civil Procedure 1263.510.) A damage to business or loss of profits as such are not compensable, but may be shown to result in a compensable loss of goodwill to the business.

2. **Expense for moving personal property**. It is still the general rule that a property owner may not be compensated in an eminent domain action for the cost of rearranging or removing personal property. Displaced property owners and lessees are entitled to receive relocation assistance reimbursing them for actual and reasonable expenses incurred in moving personal property and actual direct losses of tangible personal property as a result of moving (Gov. Code §7262). However, if the owner of improvements pertaining to the realty elects to remove them and if the condemnor does not object to their removal, the owner is entitled to be compensated for the cost of such removal and relocation (Code Civ. Proc. §1263.260).

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3. **Temporary damages to the use and occupancy of property reasonably incident to construction requirements.** In general, inconvenience and annoyance suffered by the property owner as a result of construction activity are not compensable. However, if the interference is unnecessary and substantial, the property owner may be entitled to recover damages (*Heimann v. City of Los Angeles* (1947) 30 Cal.2d 746,754-6).

4. **Damage due to annoyance and inconvenience suffered by the public generally.** This statement is still generally true; however, there are exceptions. For example, a property owner may recover damages for diminution in property value of the remainder caused by noise, fumes and other annoyances inherent in the daily use of a freeway (*People ex. rel. Dept. Pub. Wks. v. Volunteers of America* (1971) 21 Cal.App.3d 111) or by noxious odors emanating from a sewage treatment plant (*Varjabedian v. City of Madera* (1977) 20 Cal.3d 285).

Another exception is that an inverse condemnation action may be initiated by a property owner to recover diminution of value due to noise, dust and fumes, even though no portion of the property was taken for the project (*Harding v. State, ex. rel. Dept. of Transportation* (1984) 159 Cal.App.3d 359).

5. **Circuity of travel caused by dividing a highway.** This statement is still true and is based upon the general principle that the State may, through lawful exercise of its police power, regulate an increasing volume of vehicular traffic (see e.g., *Holman v. State of California* (1950) 97 Cal.App.2d 237,243).

6. **Rerouting or diversion of traffic or changing of a two‑way street to a one‑way street.** This statement remains true and is based upon the legal principle stated in No. 5, above (see e.g., *People v. Thomas* (1952) 108 Cal.App.2d 832,838; *People v. Russell* (1957) 49 Cal.2d 185,197).

7. In general, all those types of damages which can be considered to be conjectural, speculative and remote. In two recent cases, courts have agreed with the general proposition that "severance damages must be based upon real physical disturbance of a property right and a decrease in market value of the property rather than upon remote possibilities which are highly speculative and conjectural" while allowing property owners to be compensated for the diminution in fair market value of their remainder (1) because of reduction in probable income from the operation of a lemon grove *(Ventura County Flood Control Dist. v. Security First Nat. Bank* (1971) 15 Cal.App.3d 996, 1002) and (2) because they would have to inform prospective buyers that the acquiring agency had a right to change its present use of the strip taken (City of Salinas v. Homer (1980) 106 Cal.App.3d 307, 312).