

Memorandum

Flex your power!
Be energy efficient!

To: DISTRICT DIRECTORS
REGION DISTRICT CHIEFS

Date: December 21, 2007

From: SUZETTE M. MUSETTI 
Chief
Office of Appraisals and Local Programs

DONALD E. GREBE 
Chief
Office of Right of Way Project Delivery

Subject: Implementation of AB 1322

Section 102 of the Streets and Highways Code relating to transportation was amended on October 10, 2007 by Assembly Bill 1322 to read as follows:

102. (a) In the name of the people of the State of California, the department may acquire by eminent domain any property necessary for state highway purposes.
- (b) For any property that the department is acquiring by, or under threat of, eminent domain, the department shall, in a timely manner, provide a copy of all appraisals it performed or obtained for the property to the property owner. If any appraisals that are performed or paid for by the department are first provided to the property owner, the appraiser shall provide a copy of those appraisals to the department.

In order to comply with this change in the law, the following procedures and practices are to be implemented by January 2, 2008.

1. Appraisal reports must be limited to a single ownership, or to parcels that constitute an integrated operation. This change is required to protect the confidentiality of the Department's offers to acquire. If a segregable property interest is appraised, such as for machinery and equipment, lessee owned crops, timber or mobile homes, those property interest valuations will be reported in a memo format appraisal and included in the realty report. The owners of the lesser interests will receive a copy of the approved memo appraisal containing their property interest valuation. Only one copy of the appraisal per segregable interest is required to be provided.
2. An addendum containing terms will be included in every appraisal. See attached example.
3. Comparable Data pages, form RW-7-11, are changed to be two pages instead of one page. The first page will mirror the comparable data currently provided in the Appraisal Summary Statement and will also contain a photograph. All confidential information will be contained on the second, and subsequent, as needed, page(s). The second page of the form is to be transmitted to reviewers separately, and a copy retained in the appraiser's file consistent with the Department's file retention plan. The appraiser must take care to avoid including confidential information in the appraisal narrative, but to include that information on the second page of the form RW-7-11 instead. See attached example.

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4. The Parcel Diary, form RW-7-1, will not be included in the appraisal report, but transmitted to reviewers and acquisition agents separately.
5. The Excess Property Inventory Valuation (VTA), form RW-7-13, will not be included in the appraisal report, but transmitted to reviewers and acquisition agents separately.
6. The Parcel Summary Page, form RW-7-4, is eliminated from the Manual. For distribution to other functions, form RW-7-9 can be used as a substitute.
7. The Acquisition agent will provide a copy of the approved appraisal to the property owner at the initiation of negotiations (first written offer). Approved revisions, if any, will be provided to the property owner in a timely manner.
8. Appraisal Summary Statements are optional at the initiation of negotiations, but are mandatory at the onset of the filing of eminent domain actions. Acquisition agents may find that the Appraisal form RW 7-9 is a helpful tool for explaining the State's offer in lieu of the Appraisal Summary Statement. When and if condemnation is necessary, attaching the Appraisal Summary Statement to the Notice of Deposit, will suffice. The Summary of the Basis for Just Compensation paragraph will continue to be required in all appraisal reports.
9. The Application & Declaration For Order of Possession is revised to include an additional sentence indicating that the Acquisition agent delivered the approved appraisal report to the owner.

These practices and procedures will apply to approved appraisals and approved appraisal revisions only. Waiver Valuations are exempt from these changes. Any appraisals performed in lieu of staff will also be subject to the provisions of this memo, as will any appraisals performed or contracted by Local Public Agencies (LPAs) for work on the State Highway System, as the Department will ultimately take title to the land acquired for those projects. Care should be taken through careful wording of the cooperative agreement to ensure that the LPAs are made aware that the statutory provisions stated above apply to them in this situation.

The Regions/Districts are strongly urged to hold joint Acquisition, Appraisal and Local Programs staff meetings to discuss these changes. Cooperation and coordination between these functions will help ensure the successful implementation of the revised practices. As such, the Regions/Districts should consider re-emphasizing the practice of joint field reviews.

If you have any questions concerning this policy, please contact Suzette Musetti, Chief, Office of Appraisals and Local Programs at (916) 654-5728, or Don Grebe, Chief Office of Project Delivery at (916) 654-4456.

c: BRhinehart
HQ Office Chiefs
HQ Appraisal, Acquisition, Local Program Seniors
RBWilliams, HQ Legal

APPRAISAL TERMS

Benefit to Remainder

Benefit to the remainder is the benefit, if any, caused by the construction and use of the project for which the property is taken in the manner proposed (by the plaintiff) whether or not the benefit is caused by a portion of the project located on the part taken. (Section 1263.430-Statutes)

Comparable Sales

When relevant to the determination of the value of property, a witness may take into account as a basis for his opinion the price and other terms and circumstances of any sale or contract to sell and purchase comparable property if the sale or contract was freely made in good faith within a reasonable time before or after the date of valuation. In order to be considered comparable, the sale or contract must have been made sufficiently near in time to the date of valuation, and the property sold must be located sufficiently near the property being valued and must be sufficiently alike in respect to character, size, situation usability, and improvements, to make it clear that the property sold and the being valued are comparable in value and that the price realized for the property sold may fairly be considered as shedding light on the value of the property being valued. (California Statutes; Section 816)

Damage to Remainder

Damage to the remainder is the damage, if any, caused to the remainder by either or both of the following:

- (a) The severance of the remainder from the part taken.
- (b) The construction and use of the project for which the property is taken in the manner proposed (by the plaintiff) whether or not the damage is caused by a portion of the project located on the part taken. (Section 1263.420-Statutes)

Easement

An interest in real property that conveys use, but not ownership of a portion of an owner's property. Access or right of way easements may be acquired by private parties or public utilities. Governments dedicate conservation, open space, and preservation easements. (The Dictionary of Real Estate Appraisal, 4th ed. Appraisal Institute)

Fair Market Value

- (a) The fair market value of the property taken is the highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for so doing, nor obliged to sell, and a buyer, being ready, willing, and able to buy but under no particular necessity for doing so, each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available.

- (b) The fair market value of property taken for which there is no relevant, comparable market is its value on the date of valuation as determined by any method of valuation that is just and equitable. (11 California Code of Civil Procedure Section 1263.320)

Fee Simple (Fee)

Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police powers and escheat. (The Dictionary of Real Estate Appraisal, 4th ed. Appraisal Institute)

Highest and Best Use

“The reasonably probable and legal use of vacant land or an improved property which is physically possible, appropriately supported, financially feasible and that results in the highest value”

Improvements Pertaining to Realty

- (a) As used in this article, “improvements pertaining to the realty include any machinery or equipment installed for use on property taken by eminent domain, or on the remainder if such property is part of a larger parcel, that cannot be removed without a substantial economic loss or without substantial damage to the property on which it is installed, regardless of the method of installation.”

In determining whether particular property can be removed “without substantial economic loss” within the meaning of this section, the value of property in place considered as a part of the realty should be compared with its value if it were removed and sold. (Code of Civil Procedures 1263.205)

Items Pertaining to Realty

Personal property that cannot be removed without substantial physical damage or economic loss. (Code of Civil Procedures 1263.205)

Larger Parcel

An analytical premise unique to the field of eminent domain valuation. (11 Real Estate Valuation in Litigation, Eaton)

1. In condemnation, the tract or tracts of land that are under the beneficial control of a single individual or entity and have the same, or an integrated, highest and best use. Elements for consideration by the appraiser in making a determination in this regard are contiguity, or proximity, as it bears on the highest and best use of the property, unity of ownership, and unity of highest and best use.
2. In condemnation, the portion of a property that has unity of ownership, contiguity, and unity of use, the three conditions that establish the larger parcel for the consideration of severance damages in most states. In federal and some state cases, however, contiguity is sometimes subordinated to unitary use. (The Dictionary of Real Estate Appraisal, 4th Edition)

Personal Information

The term "personal information" means any information that is maintained by an agency that identifies or describes an individual, including, but not limited to, his or her name, social security number, physical description, home address, home telephone number, education, financial matters, and medical or employment history. It includes statements made by, or attributed to, the individual. (Civil Code 1798.3)

Remainder

In eminent domain condemnation, that portion of a larger parcel remaining in the ownership of the property owner after a partial taking. (The Dictionary of Real Estate Appraisal, 4th ed. Appraisal Institute)

Unit Rule, or Undivided Fee Rule

The unit rule has two aspects; one relating to the interests, or estates, into which ownership of real estate may be carved, and the second relating to the various physical components of real estate.

The first aspect of the unit rule requires that property be valued as a whole rather than by the sum of the values of the various interests into which it may have been carved, such as lessor and lessee, life tenant and remainderman, and mortgagor and mortgagee, etc. This is an application of the principle that it is the property, not the various interests, that is being acquired.

Appurtenant easements and similar use restrictions create an exception to this aspect of the unit rule. When lands are encumbered by such an appurtenant easement, they are valued as encumbered.

A second aspect of the unit rule is that different elements or components of a tract of land are not to be separately valued and added together. Such a procedure results in a summation or cumulative appraisal, which is forbidden in appraisals for federal acquisitions, as it is in general real estate appraisal practice. (Uniform Appraisal Standards for Federal Land Acquisitions 2000)

TYPE OF TRANSACTION:

PROPERTY LOCATION/ADDRESS:

ASSESSOR'S PARCEL NO:

GRANTOR:

GRANTEE:

SALES/LISTING DATA:

SALES DATE:

PRICE:

RECORDING DATA:

Book/Pg/Inst.
Recording Date:

DTT:

TERMS (if listed on the recorded deed):

SITE DATA:

ZONING:

PRESENT USE:

HIGHEST & BEST USE:

APPROX. DIMENSIONS:

PARCEL SIZE:

UNIT VALUE:

IMPROVEMENTS:

PICTURE:

Date Inspected:

By:

REPORT AND ANALYSIS OF CONFIDENTIAL INFORMATION:

Transaction Confirmation:	Name	Phone #:	Date:
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Date Inspected:

By:
