STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION

MANUAL CHANGE TRANSMITTAL

RW 0001 (REV. 10/93)

XX	R/W MANUAL CHANGE (1993 Edition)	RWMC-- **77**
	PROCEDURAL HANDBOOK (1984 Edition)	RWPH-___-__-__ TRANSMITTAL#__

TITLE	APPROVED BY	DATE ISSUED
CONDEMNATION	MICHAEL LAHODNY	July 23, 1999 Page 1 of 1
SUBJECT AREA Eminent Domain: Specific Statutory Authority	ISSUING UNIT Project Delivery	

SUMMARY OF CHANGES

Revises Table on pages 9.01-6 through 9.01-9.

PURPOSE

Revises page 9.01-8 to remove the requirement that the consent of owner is needed to sever or remove improvements within the right of way.

EFFECTIVE DATE

Effective immediately.

REVISION SUMMARY

Chapter	Remove Old Page	Insert New/Revised Page	Replace Interim Change
9 - Sections	9.01 - 8 (Rev. 5/98)	9.01 - 8 (Rev. 7/99)	N/A

SPECIFIC STATUTORY AUTHORITY			
Type of Condemnation	**Explanation**	**Requirements**	**Authority**
Of Excess Land	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.	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.	Acquisition by any means is authorized under CCP 1240.150 when owner expressly consents.
	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.	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.	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).

SPECIFIC STATUTORY AUTHORITY			
Type of Condemnation	**Explanation**	**Requirements**	**Authority**
For Compatible Use	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.	The Resolution must specifically reference CCP section.	CCP 1240.510
For More Necessary Public Use	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).	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.	CCP 1240.610
For Future Use	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).	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.	CCP 1240.210 through 1240.250.
Of an Easement to Remove Improvements	See Manual Section 6.08.07.01, CCP section 1263.270, and Form RW 9-12.	The legal description shall include the Condemnation Improvement Removal Clause.	CCP 1263.270
Of an Easement to Sever Improvements at or near the Right of Way Line	See Manual Section 6.08.07.02.	The legal description shall include the Condemnation Improvement Severance Clause.	CCP 1263.610