



Partial Acquisition Appraisals for Public Projects

The appraisal of real property for public projects often represent unique and challenging appraisal assignments. Many of these assignments are partial acquisitions for specific public projects such as road widening, pipeline easements, flood control and other purposes. The acquisition for public projects are commonly done under the threat of eminent domain. Specific procedures and guidelines are established by law and administrative procedures. Consider that two appraisals are often required for complex and high value acquisition. The primary purpose of an appraisal for a governmental agency is to establish a basis to establish just compensation. It is the agency that determines just compensation in order to compensate the owner for the loss of property rights. Just compensation cannot be less than the approved appraisal.

Because there is a remainder with a partial acquisition, it is critical to know how the remainder is impacted by the acquisition and the project. . This is because a remainder property exists after the acquisition. It is essential to know how the remainder is impacted by the take and the project.

The appraisal problem for partial acquisitions is essentially a before and after process using either the "Federal Rule" or "State Rule," depending on the individual State where the subject property is located. The Federal Rule is a strict before and after analysis which includes an analysis of damages and benefits. Consideration is given to any changes to the highest and best use and marketability in the before and after conditions. The State Rule is a form of a before and after analysis. The State Rule requires the appraiser to value the part to be taken plus any damages to the remainder property as a result of the taking and project. In addition, the appraiser must consider any benefits to the remainder. Benefits are items that enhance value such as a positive change to the highest and best use or improved marketability. Under the State Rule benefits can only be used to deduct damages. This is a significant difference between the Federal and State Rules. Under the Federal Rule if the remainder is of greater value in the after condition as compared to the before condition, the owner is considered compensated. No money is offered. Under the State Rule the agency will pay for the part taken.

Typically, the appraiser is to develop an opinion of value for the land to be acquired (taken) and the contributory value of any improvements in the take area. In developing an opinion of value of the land, it is typically required to find sales of comparable vacant land. Depending on the market, the availability of vacant land sales can be a challenge.



There are instances where a cost-to-cure expenditure may be used to mitigate damages by providing a property condition with similar utility in relation to the before condition. Such cost-to-cure may fully mitigate the damages or deduce damages. Cost-to-cure typically is used when the damages being cured are greater than the cost to cure option.

Consider the following partial acquisition for a road project where a portion of the property in the after condition is separated from the portion where the residence is located. In this case the residence does not have severance damages. Damages are only to the land. The following is damage calculations are based on the State of California Department of Transportation Right of Way Manual.

The following procedure is used to analyze damages in relation to benefits in the after condition:

- A. Value of the whole before acquisition
- B. Value of the part acquired as part of the whole
- C. Value of the remainder as part of the whole (Line A less Line B)
- D. Value of the remainder after the acquisition and before considering benefits

- E. Severance Damages (Line C less Line D)
- F. Value of the remainder after the acquisition and after considering benefits

- G. Benefits (Line F less Line D)
Net Damages (difference between line E and G)

The State of California is a "State Rule" State. California Civil Code Section 1263.410 states:

(a) Where the property acquired is part of a larger parcel, in addition to the compensation awarded pursuant to Article 4 (commencing with Section 1263.310) for the part taken, compensation shall be awarded for the injury, if any, to the remainder.

(b) Compensation for injury to the remainder is the amount of the damage to the remainder reduced by the amount of the benefit to the remainder. If the amount of the benefit to the remainder equals or exceeds the amount of the damage to the remainder, no compensation shall be awarded under this article. If the amount of the benefit to the remainder exceeds the amount of damage to the remainder, such excess shall be deducted from the compensation provided in Section 1263.510, if



any, but shall not be deducted from the compensation required to be awarded for the property taken or from the other compensation required by this chapter.

The subject rural residential/agriculture property/estate view site is located at _____ is also referred to as Assessor's Parcel No. _____. The subject property in the before condition is a 21.862 acre parcel/site improved with rural residential improvements. Improvements include a 2-story, 3-bedroom, 2.5-bath residence. The 2 car garage is attached. The residence was constructed approximately 10 years ago. Ancillary uses include barn type structure located easterly of the residence.

The specific appraisal assignment pertains to a proposed partial acquisition for right of way purposes for planned highway improvements include 8.577 acres in fee . *In the after condition a 5.625 acre remnant remainder will be located between the new highway and the existing residence. The 5.625 acre remnant loses utility to the residence resulting in a diminution of value (severance damages) for that portion of the property.*

The 5.625 acre island between the road still provides support to the residence in providing septic facility options. The current owner has indicated that he grazes livestock as a life style. This 5.625 acre island, in terms of market perspective, will essentially be a remnant parcel to the 6.5 acre house site. It is legally connected to the larger remainder and does not create an independent parcel.

The 5.625 remainder has reduced utility. Such remnants demonstrate reduced utility. Based on market conditions the remnant is considered to maintain 25% of its before condition unit value. This area can be used for septic system expansion or used for life style agriculture such as equestrian use. By calculation the amount of damages are 5.625 acres x \$41,000 per acre x 75% = \$172,969. 57,656

Determining damages cannot be speculative or conjectural. The degree in damages can range from a nominal amount to nearly 100% of its separation from the remainder 6.5 acre home site. There is no indication that there would be damages to the existing residence and house site. Severance damages (diminution of value) may occur if there is a change in the highest and best use of the property and/or there is a decrease in marketability. Marketability includes a demand for the loss of utility where the market would pay less for the property as a result of the difference.



In the after condition the home site will be smaller at 6.5 acres. Its contributory unit value of the land will increase based on the principles of diminishing returns and contribution. Generally, the larger parcels become, the value increases but at a decreasing rate. Therefore, the unit (per sq. ft. or per acre) value decreases. Since the remainder is smaller it is necessary to research the sales of smaller rural residential parcels. The value of smaller parcels similar in size to the remainder was determined to be \$76,000 per acre.

A. Value of the whole before acquisition (21.826 acres x \$41,000 per acre = \$894,866)	\$894,866
B. Value of the part acquired as part of the whole (8.577 acres x \$41,000 per acre = \$351,659)	\$351,659
C. Value of the remainder as part of the whole (Line A less Line B)	\$543,207
D. Value of the remainder after the acquisition and before considering benefits (6.5 acres x \$41,000 per acre = \$266,500 plus 5.625 x \$41,000 x 0.25 = \$57,656)	\$324,156
E. Severance Damages (Line C less Line D)	\$219,051
F. Value of the remainder after the acquisition and after considering benefits (6.5 acres x \$76,000 per acre = \$494,000 plus remnant 5.625 x \$41,000 x 0.25 = \$57,656)	\$551,656
G. Benefits (Line F less Line D) \$227,500	
Net Damages (difference between line E and G)	(\$ 8,449)

Benefits exceed damages. Therefore, there are no damages.

Another problem with partial acquisitions is determining the contributory value of any improvements within the take area. One of the tasks for the appraiser is to determine how the improvements in the take area. Say a partial acquisition for a major road upgrade required the removal of a group of trees that provided a visual barrier and some level of sound attenuation of a residence in the before condition. The loss of trees would reduced



the marketability of the residence in the before condition. The existing residence would have diminished utility if the trees were not present. Since the location of the residence and not the land is in question, any possible severance damages would be to the residential structure. However, improved access was considered a significant benefit that could eliminate or reduce the damages to the residential improvement. Nonetheless, the contributory value of the trees should consider in the before condition notwithstanding the public project. The degree of utility of the trees should be measured. Improvements within the take area must be valued in the before condition and not considering the proposed or pending public project.

Severance damages are often difficult to support. Real estate is an imperfect market and data may not produce accurate conclusions. The loss of value certain property characteristics may be more difficult to prove. In the case of the loss of trees, just compensation may be better served by considering the degree of contributory value to the primary use of the property. The costs to create an after condition similar to the before condition may be an appropriate solution if the trees are economic. For example, a fence that supports the highest and best use in the before condition should be replaced based on its replacement cost. Trees that support the highest and best use of the property contribute to the value of the whole.

About the Author

David R. Lewis, ASA, MRICS, SR/WA has 36 years in working for local government municipalities. This includes working for two "qualified agencies" and was the Right of Way Section Manager for the County of Sonoma, California. He is also a land use planner with both advance and current planning experience. As a real property appraiser, assignments include subdivisions, vacant land, commercial/industrial properties, eminent domain, and diminution of value. He is an expert witness in California Superior Court. Over the last 5 years he has his own independent practice.