



NATIONAL COOPERATIVE HIGHWAY RESEARCH PROGRAM
REPORT

114

**EFFECTS OF PROPOSED
HIGHWAY IMPROVEMENTS ON
PROPERTY VALUES**

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**NATIONAL COOPERATIVE HIGHWAY RESEARCH PROGRAM
REPORT 114**

EFFECTS OF PROPOSED HIGHWAY IMPROVEMENTS ON PROPERTY VALUES

**STANLEY F. MILLER, JR.
REAL ESTATE RESEARCH CORPORATION
ST. PAUL, MINNESOTA**

**RESEARCH SPONSORED BY THE AMERICAN ASSOCIATION
OF STATE HIGHWAY OFFICIALS IN COOPERATION
WITH THE FEDERAL HIGHWAY ADMINISTRATION**

**AREAS OF INTEREST:
TRANSPORTATION ADMINISTRATION
LAND ACQUISITION
LEGAL STUDIES**

**HIGHWAY RESEARCH BOARD
DIVISION OF ENGINEERING NATIONAL RESEARCH COUNCIL
NATIONAL ACADEMY OF SCIENCES—NATIONAL ACADEMY OF ENGINEERING 1971**

NATIONAL COOPERATIVE HIGHWAY RESEARCH PROGRAM

Systematic, well-designed research provides the most effective approach to the solution of many problems facing highway administrators and engineers. Often, highway problems are of local interest and can best be studied by highway departments individually or in cooperation with their state universities and others. However, the accelerating growth of highway transportation develops increasingly complex problems of wide interest to highway authorities. These problems are best studied through a coordinated program of cooperative research.

In recognition of these needs, the highway administrators of the American Association of State Highway Officials initiated in 1962 an objective national highway research program employing modern scientific techniques. This program is supported on a continuing basis by funds from participating member states of the Association and it receives the full cooperation and support of the Federal Highway Administration, United States Department of Transportation.

The Highway Research Board of the National Academy of Sciences-National Research Council was requested by the Association to administer the research program because of the Board's recognized objectivity and understanding of modern research practices. The Board is uniquely suited for this purpose as: it maintains an extensive committee structure from which authorities on any highway transportation subject may be drawn; it possesses avenues of communications and cooperation with federal, state, and local governmental agencies, universities, and industry; its relationship to its parent organization, the National Academy of Sciences, a private, nonprofit institution, is an insurance of objectivity; it maintains a full-time research correlation staff of specialists in highway transportation matters to bring the findings of research directly to those who are in a position to use them.

The program is developed on the basis of research needs identified by chief administrators of the highway departments and by committees of AASHO. Each year, specific areas of research needs to be included in the program are proposed to the Academy and the Board by the American Association of State Highway Officials. Research projects to fulfill these needs are defined by the Board, and qualified research agencies are selected from those that have submitted proposals. Administration and surveillance of research contracts are responsibilities of the Academy and its Highway Research Board.

The needs for highway research are many, and the National Cooperative Highway Research Program can make significant contributions to the solution of highway transportation problems of mutual concern to many responsible groups. The program, however, is intended to complement rather than to substitute for or duplicate other highway research programs.

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This report was prepared by the contracting research agency. It has been reviewed by the appropriate Advisory Panel for clarity, documentation, and fulfillment of the contract. It has been accepted by the Highway Research Board and published in the interest of effective dissemination of findings and their application in the formulation of policies, procedures, and practices in the subject problem area.

The opinions and conclusions expressed or implied in these reports are those of the research agencies that performed the research. They are not necessarily those of the Highway Research Board, the National Academy of Sciences, the Federal Highway Administration, the American Association of State Highway Officials, nor of the individual states participating in the Program.

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FOREWORD

By Staff

Highway Research Board

In establishing fair market value of a property, inequities, either to the property owner or to the public agency, are frequently created because the property has increased or decreased in value as a result of the proposed public improvement or the announcement thereof. This report discusses the effects of enhancement and diminution in value and suggests alternative land acquisition methods to eliminate the causes. Right-of-way engineers and agents, attorneys, appraisers, and other officials engaged in the acquisition of property for public use will find much of interest in this research report.

The date of valuation of property acquired by public agencies is normally the same as the date of taking of such property. Due to proposed public improvements, or the announcement thereof, there may be enhancement or diminution in value of the property taken. This change in value prior to the taking may come about because the property is under threat of condemnation or because there is excessive speculation and change in ownership of surrounding properties resulting from knowledge of the pending public improvement. Enhancement occurs when knowledge of the pending improvement appreciates the property value prior to the actual taking of such property. Conversely, diminution occurs when the pending highway improvement depresses the value of the property.

The general objectives pursued by Real Estate Research Corporation in this research were to (a) assemble and overview statutory and case law on the subject of enhancement and diminution, (b) study the valuation and legal problems involved, (c) develop alternative legal and valuation methods, and (d) present case studies to demonstrate the effect of such change in value. In the reporting of the research and its findings, basic principles of valuation practice are described, factors that cause enhancement or diminution in value are identified, and the impact of condemnation on market value of real property is discussed. Statutory and case law provisions bearing on the subject are also identified.

To assemble all known factors bearing on the problem, the researchers conducted extensive field investigations, interviews, and library research. Interviews were conducted with a selected sampling of highway department personnel, and certain parcels were personally inspected by the research team to identify their characteristics as they may apply to the study.

The report contains a comprehensive table of statutory eminent domain provisions for the 50 states as pertaining to market value, enhancement, and diminution. The conclusions include an identification of the advantages and disadvantages of alternatives proposed to reduce the problem of enhancement and diminution.

Appraisers, legal practitioners, right-of-way engineers and agents, as well as other public works officials, will find this document of practical use. It presents in a condensed version the many ramifications and suggested solutions related to a vexatious problem.

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The assistance and cooperation of the University of Minnesota Law School and the legal research assistance of Thomas Sedgwick and Darwin Klockers were essential to the conduct of the project.

Interviews and correspondence with the following persons have been especially helpful: A. H. Christian, Right-of-Way

Engineer, Texas Highway Department; J. H. Dillard, Research Engineer, Virginia Department of Highways; J. L. Hetland, Jr., Chairman, Minneapolis-St. Paul Metropolitan Council; H. L. Kagen, Chief Right-of-Way Agent, California Division of Highways; T. Kolderie, Executive Director, Citizens League, Minneapolis; H. J. Lewis, Engineer, Bureau of Right-of-Way, Alabama Highway Department; E. R. Lorens, Director of Right-of-Way Standards, Minnesota Department of Highways; L. Moser, Chief, Right-of-Way Division, Maryland State Roads Commission; J. C. Powers, Director of Right-of-Way, Massachusetts Department of Public Works.

EFFECTS OF PROPOSED HIGHWAY IMPROVEMENTS ON PROPERTY VALUES

SUMMARY

The research assignment was to study the general principles and techniques of valuation and law that, as a consequence of the date of actual valuation or of its announcement, cause enhancement or diminution in the value of surrounding properties or of those being taken by the state. Methods eliminating these causes have also been studied.

The assignment indicated that particular attention was to be given to the statute and experience in the State of Maryland. The agency broadened the scope of the study to examine, in more detail, four additional states—Minnesota, Alabama, Texas, and California—as representative of four other regions of the country. Although case law was investigated in these five states, the agency did not exclude readily identifiable case law in any other state during the course of the studies. Further, the statutory law that was considered pertinent to the problem and research objectives was examined for each of the 50 states.

Frequently, the date of the taking and the date of valuation are the same. However, and especially in urban areas, valuation of the property on that date often creates inequities, either for the property owner or for the state, because of an enhancement or diminution in value of surrounding properties or of properties being taken by the highway department.

The change results from the public improvement or the announcement thereof. Diminution occurs when knowledge of the highway improvement depreciates the value of the property to be taken prior to the date of taking or the date of valuation. Enhancement occurs when such knowledge appreciates the value of the property prior to the date of taking or the date of valuation.

The objectives of this study have been:

1. To assemble and survey statutory and case law now existing on the subject of enhancement or diminution, particularly the statute and experience in the State of Maryland.
2. To study the valuation and legal problems involved.
3. To develop and objectively set forth alternative valuation and legal methods, and to state the pros and cons of each.
4. To suggest revisionary language if, as the result of the study, it is concluded that legislation is needed.
5. To present case studies that demonstrate such enhancement or diminution.

Valuation Practices

The principles applicable to real estate value include: demand; supply of land and improvements; substitution that tends to delimit value; analysis of highest and best use; conformity of uses; and anticipation of future benefits. The valuation

factors applicable to these principles that are most pertinent to this study include: trends of the economic base of the region, community, and neighborhood; location and access; time of sale, purchase, or valuation; and transitions in land use.

Changes in any of these value principles and the factors common to each will, in varying degrees, cause enhancement or diminution. Time has been determined to be one of the most significant principals of valuation. Values are subject to constant change; a valuation made yesterday could be different today and change again tomorrow. Because time often leads to changes in value, date of valuation is most important in an appraisal. It is considered to be the duty of the appraiser to obtain the date of appraisal and not his prerogative to assign a date.

Of the various approaches to estimates of market value, the three recognized and most generally used are income approach, market data comparison approach, and cost approach. Each of these approaches has the essential built-in technique to lead to a valid estimate of value on a specific date.

It has been observed that there are important axioms in the use of any appraisal technique:

1. The estimate of value will be applicable only to the date as of which it is made.
2. The precision of the estimate of value will generally be in direct ratio to the ability, experience, or qualification of the appraiser.
3. The estimate of value, if related to the actions of the market rather than to legal precepts (exclusive of police powers), will denote how much "a willing buyer" will pay "a willing seller."

The date of valuation is a most significant factor in an estimate of market value; in condemnation appraisals it is generally the single most important element. The factors and principles that must be legally incorporated into the estimate will, of course, affect the outcome. For example, an estimate of "market value" as of the date of the trial will differ from another estimate of "value" on the same date purportedly based on an exclusion of any changes caused by the knowledge of construction of a freeway.

Case Study Data

On examination, valuation case studies previously made by various states denote a broad and apparent failure by appraisers to recognize enhancement in the value of remainders. It is important here to note that all of these studies purport to have recognized and made adjustment for an economic increase in values in control areas and in the remainder area. However, none of those reviewed appeared to recognize the general beneficial increase that is authorized in many states.

A case study in Minnesota indicates that land values increased as much as four or five times between the date of the announcement and the date of the commissioners' award. It further indicates that if the state had the authority to acquire the entire tract, including excess land, the public would have gained the benefits of the land value increment in the remainder. The inequity to the state, in this case caused in part by a time lag, is obvious. Further, if advance acquisition had been authorized, further savings would have been available.

A case study in Cleveland indicates diminution in value as a direct result of the city's actions (in this case, urban renewal); the diminution was caused by economic factors that made the property unrentable.

From analysis of valuation principles, it appears that inequities could be avoided if:

1. The date of valuation is nearer the date of announcement, such as the day before announcement.
2. The state could make payment for and obtain possession of the property within a reasonable time—such as six to eight months—after announcement and in advance of its needs.
3. The state could obtain excess land that may or may not be needed for construction.
4. Preliminary planning of highways could be expedited or announcement delayed until plans are complete.

Legal Considerations

Statutory law principles vary from state to state. Provisions for a public use are found in all state statutes, but only a few provide for excess takings; these range from no provision at all and a partial authorization with consent of the owner, as in Minnesota, to a rather concise clear-cut provision, as in Hawaii.

The date of valuation requirement—so significant in any appraisal for condemnation purposes—is ambiguous in some states. In some others (Louisiana, for example) it is “before the contemplated improvement was proposed.” Others stipulate the date of summons; still others, the date of award by commissioners. In North Dakota, it is the date of trial. The period of time from the date of announcement of a highway to the date of trial, in some cases, can be as long as a decade, and inequities in value will result between the states. An inordinate lapse of time between announcement and date of value will cause general enhancement in a rising economy, through economic value adjustments alone. Diminution in value can affect the owner during the same period. It appears that the authority to acquire property well in advance of need can be combined with a date of valuation nearer the date of announcement.

The dates on which the states obtain title to the property vary as much as the date of valuation. Because control of the land is important, the date of designation should be correlated with the date of valuation and each of these dates should be combined with advance acquisition to attain the most equitable methodology.

For the state to benefit from enhancement or for the owner to be protected from diminution in value of the remainder, it appears that the authority to acquire excess land would be beneficial to both. The advantages and disadvantages of permissive authority to take excess land or to acquire land in advance of need have been weighed, and the advantages appear to be in the majority. These principles will permit valuation nearer the date of announcement and reduce severance damages, and will permit any inordinate enhancement of remainders to benefit the public. It appears the benefit will be nationwide. However, to attain the benefit it will probably be essential for the Congress to pass enabling legislation authorizing appropriations for each of the states. Money could be set up as a revolving fund for excess land acquisition.

Finally, (1) more rapid planning, (2) permissive excess takings, (3) advance acquisition, (4) joint land utilization authority, and (5) a better correlation of the date of valuation with the date of announcement will combine to result in a decrease in the cases and causes of enhancement or diminution in value that arise after the announcement of the highway. These changes should be accompanied by an upgrading in the ability of appraisers to recognize potential economic and physical changes that may cause an enhancement or diminution.

Revolutionary thinking and new concepts should be considered in right-of-way

alignment and acquisition. Urban renewal allows acquisition of land by the government, not for itself, but for a public purpose, to be resold on the open market for private development. This concept has been accepted. But urban renewal projects are linked to over-all community planning, economic land-use analyses, and marketability studies. Federal highway projects often are not.

It is over-all community planning that has responsibility for the future shape of an urban area and that must suggest generally where roads ought to be built and when.

It appears that statutory authority is generally (but not always) needed to eliminate the concept of "use" before either the federal or state governments can proceed effectively—as renewal and redevelopment authorities can—under a revised concept of "public purpose." The concept of public purpose should be based on sound community planning, economic planning, and studies of land use and marketability. The use of land for a public purpose could then be combined with new thinking and with further studies oriented to joint land use, earlier valuation, advance acquisition, excess land acquisition, relocation, and similar doctrines. Over-all reduction in enhancement or diminution caused by the extensive time lags so often encountered between the announcement of a highway and the dates of valuation and transfer should be the outcome.

CHAPTER ONE

INTRODUCTION AND RESEARCH APPROACH

The research approach has been to analyze the valuation and legal factors causing an enhancement or diminution of value that results from a knowledge of the pending improvement as this knowledge relates to the date of taking or date of valuation.

In the course of field investigations, interviews, library and other research, and analyses of statutory and case law, the researchers completed the following basic assignments:

1. Analysis, and in some cases personal inspection, of the parcels involved in selected economic impact remainder studies conducted by various highway departments throughout the United States, to identify their application to a study of the causes of enhancement or diminution.
2. Interviews or correspondence with selected right-of-way personnel in a sampling of highway departments in five broad general areas of the country—Minnesota in the North, Maryland and Massachusetts in the East, Alabama in the South, Texas in the Southwest, and California in the West.
3. Review of pertinent published literature on the subject of benefits, damages, enhancement, or diminution as these relate to value and highway right-of-way acquisition.
4. Limited research of case law in the States of Minne-

sota, Maryland, Alabama, Texas, and California that regulate the following categories of reference in state eminent domain statutes:

- A. Public use requirement.
- B. Fair market value or formula used in determining compensation.
- C. Date at which the valuation for purposes of compensation is to be made.
- D. Designation date (date when possession passes or title vests, or date at which administrative determinations to take land is made).
- E. Enhancement of property taken or of remainder by reason of the taking and as a setoff against the value of the property taken and/or the remainder.
- F. Effect of enhancement or diminution of value by reason of the announcement of the taking.
5. Research of the legal statutory provisions regulating the taking of land for highway purposes in each state, in the categories of reference stated previously.
6. Review of the definitions of terms that recur in a study of this nature.
7. Review of the basic and fundamental principles of value and compensation and of methods of valuation.

CHAPTER TWO

FINDINGS**BASIC PRINCIPLES OF MARKET VALUE AND COMPENSATION****The Basic Principles of Real Estate Value**

The value of any real estate has significance only as it satisfies specific needs and desires. Land acquires value when an individual desires and can use it, and value is based on the elements of utility, scarcity, purchasing power of the buyer, and on the needs and desires of the seller. In effect, it is substantially related to the potential land use and is rooted in the economics of the community, the area, and the neighborhood in which it is located. Because it is ever changing, it is conceivable that, through some unique factor or reasoning on the part of the potential buyer and seller, the value of a specific parcel of land will be worth significantly more or less on the day after it is sold. It is thus important to obtain a clear-cut understanding of the principles of real estate value, stripped of all legal ramifications except those police powers of the community that regulate uses—such as zoning, building codes, traffic routing, and parking. The value factors considered most important to this study include:

Supply and Demand

Demand for land is greatly influenced by its supply, or scarcity. Demand is desire, but in an economic sense it is only desire that is backed up by purchasing power.

Transition

Changes in the environment of the city, neighborhood, and individual properties both within and contiguous to the right-of-way are continually in transition, and these factors generally interact with the value of the property under consideration.

Substitution

The value of a specific parcel of land tends to be indicated by the value of an equally desirable substitute property that may be offered on the market. Further, the value of a parcel will tend to coincide with the value indicated by actions of informed buyers in the market for comparable properties. The theory of substitution also delimits the upper extremity of value by way of the cost of a substitute parcel of land and analysis of new construction.

Highest and Best Use

Utility creates value in proportion to the amount and location of essential uses of land within the general vicinity. The value is created and maintained through the interaction of supply and demand, and the highest and best use is the use that will produce the greatest net return.

Conformity of Use

Conformity, when related to the highest and best use, will result in a reasonable degree of social and economic homogeneity. It is important to note here that the value of an overimprovement sometimes diminishes toward the value level of conforming properties, and that if the use does not conform as an underimprovement it will nevertheless assume a trend in value upward to the level of conforming properties. During a long lapse of time between announcement of highway and acquisition of the right-of-way, it is probable that improvements within the right-of-way will not be maintained and the property will, therefore, not conform to the contiguous properties outside the right-of-way.

Anticipation

By definition, “anticipation” infers that value is the worth of future benefits derived from the ownership and use of the property. It will not be the value established by what it sold for in the past or the cost to create it. Thus, recent sale prices of comparable properties are indications of the present worth of properties that informed buyers and investors anticipate ownership to yield in the future.

In recapitulation, value is based on a multitude of economic factors that are mostly related to the desires and needs of buyers and sellers. Thus, any significant change in a community, neighborhood, or even a tract of land can have either a subtle or a dramatic impact on value. The proposed location of a major thoroughfare within an area is an example of a change that will create an impact on values within the immediate area. The impact on values both inside and contiguous to the right-of-way will be related to time of:

1. The initial announcement of the pending improvement.
2. The first announcement of the establishment of a right-of-way line.
3. The announcement that land will be acquired.
4. The announcement of the date on which land will be acquired.
5. The announcement that construction has commenced.
6. The completion and opening of the highway.

Not only will the highway announcements create an impact on land values, but the principles of value related to the economics of the area will have a continuing impact on value. It appears that the impact would be heightened by increased lapse of time between the various actions of the state.

The Basic Principle of Compensation

People who are forced to move from their property because of public projects often suffer certain financial losses. Some of these losses involve the value of the taking of real property by the state; others do not. In either case, the persons involved are compelled to make personal sacrifices, presumably for the public good. It is, therefore, the duty of the state to compensate them for these sacrifices. Such compensation should place them in substantially the same status, in terms of economic and other well-being, that they occupied before being displaced.

Thus, the basic idea behind real estate values and compensation in condemnation consists of "making people whole" in relation to the injuries they sustain from displacement. To put it another way, the public project should have a relatively neutral impact on those displaced. That is, the changes it imposes on them should be identically offset by the compensation provided to them. In some cases, this basic principle must be substantially modified, as in the cases of benefits. Nevertheless, it is the fundamental concept on which the law concerning compensation is based and on which the researchers' analysis is built.

SURVEY OF VALUATION PRACTICES AND PROCEDURES

It is axiomatic that a brief discussion of current appraisal valuation techniques and procedures will lead to a better understanding of those factors to be taken into consideration in an estimate of value of the property. When these factors are understood, the causes of enhancement or diminution in value will be more readily recognized in relation to the date of valuation.

To be considered in the valuation of real estate in eminent domain procedures, as in any other case, is the use the owner has been making of it, as well as the highest and best use.

Factors Relating to Value

Economic Base

A parcel of land is, in effect, a portion of the community in which it is located. Thus, a valuation analysis must include growth trends of the urban area, land-use trends, population components that include the age levels and family income levels, and projections of all these trends. The relationship between all of these elements and the value of real estate is both direct and indirect. Consideration of employment levels, of industrial growth projections, and of shifts in this sector of the economy will certainly have a bearing on determination of value, and an understanding and sound knowledge of these economic principles is the foundation of the real estate market.

Location

The location of the site is an important ingredient of value, and both the economic and physical factors of location are significant to all land users. For example, residential property must be well oriented to schools, transportation facilities, shopping centers, churches, and recreational centers,

and must be in conformity with other parts of the residential community. Industrial users are concerned indirectly with some of the factors that apply to residential properties but directly with such factors as transportation, the size of the site, parking facilities, employment availability, suppliers, tax structure, and other economic and cultural amenities. Retail land users combine many of the factors important to both residential and industrial properties. As these are changed by the highway plans and construction, values, too, will change.

Access factors of location to be considered include the accessibility of the property to the various categories of thoroughfares—such as feeder streets, main arterials, the state highway system, and the Interstate network. The fundamentals of location are related to the needs and desires of the property owner. For example, a good service station site should be oriented to a reasonably good volume of traffic in a stable area with dense residential backup; an industrial user could need rail service, or could desire immediate access to an Interstate system, whereas residential property owners are concerned with the accessibility of shopping centers, employment, and recreational facilities in other portions of the community. As these factors change through highway design, values tend to change.

Time of Purchase

The wise purchaser who can project his needs into the future will take advantage of the situation in all growing urban areas where land is sold by the acre on the periphery and by the square foot closer to the center of activity or the core area. He will purchase the property and either allow it to remain dormant or select a suitable interim use until the need for the site arises. In an analysis of value, it is important to gather data surrounding previous sales in order to recognize the trend of prices within a general area as being either upward or downward. If there is an inordinately long delay in the procedure after the date of announcement of a pending highway improvement, changes in value will follow.

In broad general terms these are a few of the factors to include in the analysis of any property when estimating its market value, and these are the factors to be included in analysis of the property, no matter how cursory, by a buyer and seller who are negotiating a transaction in the market place. It should be noted that there are no legal constraints, other than zoning and such, placed on the person who wishes to obtain the property for a specific purpose, nor placed by the seller who has decided that he wants to sell at the highest possible dollar value.

There are, of course, other factors that bear on the property and that will be taken into consideration by the knowledgeable buyer; included in these are zoning regulations, restrictive use covenants, building codes, and access rights. Other elements will be taken into consideration by the buyer and seller when an improvement on the land is included in the sale. Common to all types of improvements are the date of construction, physical condition, functional obsolescence, and economic factors within the area in

which the property is located. The last include rent levels, their past trends, future projections, and expense ratios. Each type of user will have a different set of criteria on which to base his decision. All of these will be important, both in the value before and the value after a taking, and as the criteria are changed over a period of time, or because of construction of the highway, values will change.

Factors Related to Estimation of Market Value

With variations in degree, there are three generally recognized approaches to estimating market value that are described in a later section, but all have a number of points in common, such as:

Date of the Appraisal

In the majority of cases it is not left to the discretion of the appraiser to fix the date of valuation. This is considered to be the responsibility of his client. It is therefore significant that, in the case of a highway taking, it is the responsibility of the condemning authority to determine the date for appraisal through either statutory or case law techniques.

Highest and Best Use

The potential use and the value of a property are directly related to the uses to which the land can be put, and they are generally, but not always, those allowable under the local plan or zoning restrictions. Value can be controlled to some degree by regulation of the highest and best use, and market demand for allowable use or uses is extremely important and critical. Urban renewal projects, for example, make use of this principle by creating a specific plan that restricts land uses within the completed renewal project. On the other hand, such police powers as zoning are subject to change and, if the market recognizes the potential for change the appraiser who does not recognize it is doing his client an injustice.

Market Demand

Fundamentally, value is estimated on the basis of comparison with unencumbered fee land that is of similar size and location and has similar property rights. The addition or subtraction of property rights can cause an enhancement or diminution in value, and special benefits are recognized. A comparison of market demand and economic feasibility is inherent in each of the approaches to value. Market demand is a composition of all of those factors recognized by buyers and sellers in the market place and even those not generally recognized by either.

Valuation Techniques

Three generally recognized approaches to value subscribed to by such important appraisal groups as the American Institute of Real Estate Appraisers and Society of Real Estate Appraisers are generally recognized by most governmental and political subdivisions. The basic approaches are sometimes known by different names, and there are degrees of

modification and amplification and techniques that are outgrowths of refinement. Those discussed here are considered basic.

Market Data Comparison Approach to Value

In the market data comparison approach the comparability of previous land sales and offerings presently on the market within the neighborhood are examined. Often, sales and offerings in similar areas that have progressed through the same stage of life cycle are analyzed. These market data are then compared and adjusted for those value factors that cause a difference in price and value or both. The factors would include the time of sale, location, topography, size of the tract, accessibility, the supply and demand of available sites, and other economic considerations.

Use productivity must be measured for most businesses, and land users have productivity limitations and site requirements that are common or unique to their particular types of industry. For example: industrial users would not normally consider an air space site feasible because of an ample supply of alternative surface sites; on the other hand, high-density users like hotels or office buildings could consider and sometimes afford to use air space over a freeway or a site on an Interstate ramp access point.

In analysis of the comparable factors of physical improvements, the building under appraisal is compared to the sale property's component parts, adjusted for such factors as age, type of construction, design, deterioration, functional problems, and obsolescence. Other economic factors—such as tax levels, rental trends and expenses, and over-all demand for such levels—are also compared. Therefore, a change in an area's economic viability that has been caused by the freeway will probably lead to value changes over a period of time.

At this point, it can be seen that time appears to be a vital factor in the valuation of the property and that a lapse of time can cause enhancement or diminution in value.

Cost Approach to Value

The cost approach to value is based on the value of the land found through the market data comparison approach; to this is added the depreciated value of the improvements. This depreciated value is determined through an analysis of the cost to construct, new, at the date of the appraisal, less depreciation from such various sources as physical deterioration, functional obsolescence, and economic obsolescence. The last is based on rental levels and possible rental loss, if any, for the property in its extant location as opposed to a more desirable location.

In this approach to value it is apparent that the time of valuation is fundamental and acts as a constraint on the value of the property. Earlier discussion indicates how the value of the land may change over a period of time, but here there are other related factors such as rent and construction cost levels. Increases in costs at a rate faster than depreciation can lead to changes in value. For example, the rise in cost of a typical three-bedroom one-story rambler in the Twin Cities has been similar to national trends.¹

¹ *Boeckh's Cost Index*, 6th ed. E. H. Boeckh Associates, p. 16V.

Figure 1 shows that such a house with average-quality construction (1,100 sq ft of ground-floor area) could have been constructed in 1948 at \$11,900, in 1958 at \$14,784, and in 1968 at \$19,646. The cost rose approximately \$6,000 between the date of the Federal Highway Act of 1956 and December 1968. This is an increase of approximately 43 percent in 12 years, or approximately 3.6 percent per year; on the other hand, it is important to note that from 1958 to 1963 the increase was only about 6.01 percent, or slightly more than 1 percent per year. Between 1963 and 1968 the increase was 25.2 percent, or slightly more than 5 percent per year. It can be argued that physical deterioration may have offset this. On the other hand, for depreciation measured on a straight-line basis, 3 percent per year might be high in some cases, low in others. Conversely, deterioration at the rate of 5 percent per year, even if a straight-line method were considered acceptable, would show only a 25-year physical life for the structure. There is ample evidence that well-maintained houses will last much longer than this.

However, the important point here is not a discussion of the relative changes in construction costs in any given period of time, or a discourse on depreciation rates. The fundamental concept is that the date of valuation can be an extremely important factor in a heated economy. Construction cost rates can rise more rapidly than depreciation rates and can cause an offset in value. If, at the same time, construction costs are trending upward, land values are also spiraling upward, and the value of the property within the proposed right-of-way will rise. Counter trends will be observed if the economic level of the neighborhood area is moving downward as a result of population movements or noncompatible land-use trends; these may lead to lower land values and higher economic obsolescence depreciation.

Income Approach to Value

The income approach to value is based on the capitalization of the net annual income derived from projections of the gross income; from these are deducted the necessary real estate expenses and vacancy reserves. In some cases the net annual income is capitalized to produce an over-all value, and in others the residual net income to the building is capitalized and the value of the land is added to it. In either case, the basic data for derivation of this valuation technique come from the market, rent levels, land values, and expense ratios, and economic factors therefore bear heavily on the estimate made by this technique.

The same factors common to the other approaches—such as the date of valuation, economic rent levels, and the value of the land found through comparison—all relate to the market at a specific point in time by this approach.

Each of the approaches described is related to the market demand for property in a given place at a specific point in time. Each is related to the economic factors and other influences on supply and demand. Each approach to value will denote the enhancement or diminution effects of a proposed or announced highway, or of lapse of time, on value. Each analysis will recognize changes affecting the property, its physical characteristics, accessibility, and orientation to the neighborhood, or its over-all market viability. But it

should be noted that date of valuation is significant in each.

Up to this point the valuation factors and criteria for value and the appraisal concepts for analysis of property values, as these can be related to proposed or contemplated highway construction and acquisition valuation, have been discussed, but not the legal constraints other than restrictive covenants or zoning restrictions that will have affected market value of the property. Under this definition of market value, it is assumed that a proposed highway would be taken into consideration by knowledgeable buyers and sellers, and the plans for the improvement, if known, would also be analyzed by them.

FACTORS CAUSING ENHANCEMENT OR DIMINUTION OF VALUE

It is important for both market value and compensation to be related to the constraints placed on a parcel affected by highway acquisition. If the theory of compensation is in terms of market value rather than the summation of many small parts, the ultimate estimate of value should, on the average, result in an equitable estimate of both at a specific point in time. The valuation expert should not become too involved in legal terminology, nor should he be concerned about what is admissible or inadmissible in testimony. Rather, he should consider in his estimate of value the factors that a willing buyer and a willing seller would take into consideration in negotiating a transfer of property. The more important elements that cause value fluctuations are examined here.

Access is a property right accruing to an owner of property abutting on a street. It is a right of ingress and egress, more commonly called a right of access, when a property abuts on a street or highway. It is a right to go back and forth across the boundary line between the parcel and the street or highway.

If the right to access is impaired or eliminated and is no longer "reasonable," the value of the parcel may be diminished as substantially as if it had been physically moved to a new and less valuable location. On the other hand, if it is improved, as when a parcel gains a corner location on a ramp interchange as a result of highway construction, there could be substantial enhancement in value. The right of "reasonable" access depends on the facts and circumstances of the case, and the definition of "reasonable" is often not readily discernible. It would seem that every right, including access, should be fixed and certain, rather than "reasonable."²

In some cases, as in the construction of a median strip, there can be a change in value regardless of legal principles involved. Police power legislation may limit the right—in this case, of access—and become a factor to be considered in the valuation, inasmuch as it could change an absolute fixed right to something less. There are different degrees in the right of access, including those cited in the following examples:

1. Consider a farm in a rural area; it has two points of access to a highway, and if the state were to take all of the

² KALTENBACH, HENRY J., "The Elastic Right—Access." *Appraisal Journal* (Jan. 1967) p. 9.

right of access except these two points, there would probably be negligible diminution.

2. Consider a farm on the periphery of an urban area and suitable for development as a subdivision—its highest and best use; it has two rights of access. If the state were to take all of the access except the two points, the damage might be considerably higher.

3. Consider the case of a filling station on a corner; it has right of access to each of two abutting streets at any point off the street. If the access were restricted to only one point on one street, there might be a cause of damage, and hence a diminution in value considerably greater than in the other two examples.

These examples also demonstrate the principle that a valuation date is very important to the ultimate value of the property. In a rapidly growing metropolitan area, the progression of the rural farm to a potential subdivision and ultimately to a highly valuable service station site could conceivably take place within a period of two to three years.

Location

The principle of location has been emphasized as being common to all types of land use. For example, it can be stated that commercial and industrial enterprises covered in past investigations have been located under the following concept:

The selection of new locations by commercial and industrial enterprises is governed by functional considerations. These facilities will seek to obtain a location available within the limits of cost that may be peculiar to the individual enterprise and that will permit the optimum performance of the function contemplated for the new establishment.

Officials of any commercial enterprise selecting a location consider a large number of factors. They weigh the relative merits of price against highway exposure; of distance from market against the distance of residence of employees; of tax rates against other elements of cost; and of a complexity of other factors. The very nature of this complexity and the scope of this study precludes the making of any categorical statements about specific types of enterprise and their locational criteria. There are certain generalizations, however, that can be made as follows:

1. For most commercial and industrial functions a site on a major highway is more desirable than a site equal on all other counts but not located on a major highway. This general statement will not always hold true with respect to sites with rather difficult access from the highway, if the specific enterprise depends on good access.

2. Other things being equal, many enterprises would like a site on a major highway but will not pay a premium or sacrifice other elements of desirability to obtain such a site.

3. Many enterprises are dependent in various degrees on the existing network of highways. A number of cases were found where a site was desired fronting on a specific Interstate and, more particularly, at on- and off-ramp locations.

Prices of land for acceptable locations, like the prices of other competitive commodities, reflect the interplay of

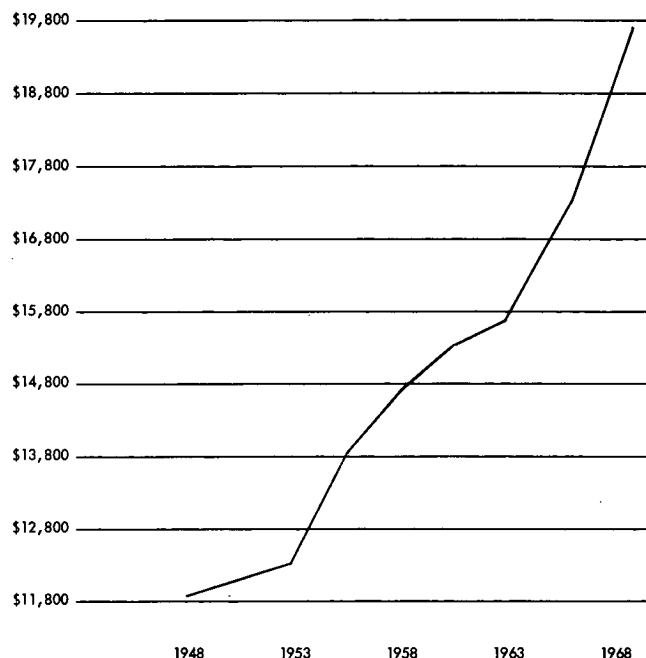


Figure 1. Estimated construction costs for a three-bedroom frame house containing 1,100 sq ft. Cost of land not included. (Minneapolis-St. Paul, 1948-68)

supply and demand. As business expands, the community needs more room and needs sites for more plants and retail establishments, and prices tend to go up. As cities grow and as the highway networks make more distant areas accessible to sources of labor supply or to markets, sites that were previously unacceptable for commercial or industrial locations become acceptable, their availability on the market will then tend to enhance the value of the land, and prices will go up.

On the other hand, if Interstate networks were not built, close-in locations now well served by highways would tend to appreciate rapidly in price as the supply of such land diminishes. But, as new areas are being opened up on the periphery of urban areas, the land prices in close-in locations will tend to stabilize and the sites on the periphery will seek the level of those closer in. Thus, the owners of distant sites will then benefit from appreciation in land values instead of the owners of sites closer in.

For either group to benefit, of course, an expanding economy must call for a continued demand for commercial and industrial sites. The continuation of this demand will provide the economic base for increased land values over a period of time in suburban areas. Thus, the Interstate highway system will have an effect in determining the geographic distribution of increased land values, and, after the highway improvement is announced, these factors will cause transitional changes in land use and adjustments in land value.

Recent studies have indicated that many large industrial concerns are moving out a considerable distance from the core cities to sites where rail spurs might be lacking, and are

depending instead on trucking, which is becoming more important because of proximity to a freeway.

It follows that location on Interstate highways, in the proximity of an interchange with ingress and egress ramps, would be given increasing priority. As a result of this particular trend, it is obvious that locations on freeway interchanges or on ramps with good access will become increasingly limited while demand is being generated. Thus, it is observed that the market values of such locations will start to spiral upward.

This is borne out in other studies and analyses made of freeway locations of major service station sites contiguous to ingress and egress ramps. It has been found that major oil companies, especially in urbanized areas, will seek out these sites and buy them well in advance of the actual construction of the freeway, as soon as sufficient information can be gained before or after the public announcement, and often prior to the actual condemnation. When there is a lapse of time between the public announcement and construction, prices for such sites often have an inordinate enhancement.

Transitional Use

Transitions in use or changes in the highest and best use of property are often responsible for changes in value; these account for enhancement or diminution in value within and contiguous to the right-of-way. An example of an enhancement in value would be to assume a hypothetical single-family dwelling located on a street in the early stages of transition from residential to commercial use. The house has a market value of \$15,000 for residential use. Comparable sales indicate that lots of similar size have sold recently for commercial purposes for as high as \$13,000. The upward pressure on land values has begun to reach the point where the land underneath the house is worth \$13,000 and the improvements \$2,000. As soon as transfers reflect lot sales at \$15,000, the transition will be complete and the improvements will have little or no value.

This example demonstrates that outside factors other than highway acquisition can cause an increment in land values. However, it is important to note that a lapse of time in an area of rapid transition can result in pressures on value. In a situation of this sort the date of the taking for highway purposes is not too material until the value of the land for commercial uses exceeds the value of the land and improvements for residential uses. But, it does point out the importance of analysis during the early design stages of trends in land value along the highway right-of-way.

The change to a better highest and best use not foreseen at the time of acquisition will result in lower estimates of damages to remainders. Recent analyses of remainder values of approximately 350 individual case reports in Texas revealed that approximately two-thirds of the remainders studied were considered to be damaged in the appraisal process. But further analysis indicated that actually less than one-third of those were damaged, and in the majority of those cases the damages paid the property owner were greater than the damage suffered. This result is similar to other remainder impact studies throughout the country.

The major cause of the variance in estimates and actual sales was a trend toward a change in land use along the Interstate, from lower uses to commercial uses. These took place before, during, and after the construction of the improvement.³

The type of transition taking place, the viability of the change, the size of the area under transition, and the ability of the structures to produce a return greater than rising land charges—all have a bearing on value at a specific date or point in time. Examples of transitional changes would include:

1. A neighborhood undergoing a change from single-family to multifamily residential uses, signaling a potential increment in value of the land.
2. A zoning change abolishing long-standing multifamily residential uses to permit commercial use, perhaps causing an upward thrust in land values.
3. A change from peripheral low-density land uses to higher density uses.
4. The effect of a condemnor's precondemnation activities on the fair market value of private property located within an area that may be subject to a future condemnation.⁴

After the project has been authorized, there are three possible effects on market value of the intended taking area—up, down, or stability.

Zoning

More and more appraisals and courts are beginning to recognize the trend in land use under the concept of highest and best use. Zoning, and its effect on land value, bears on this. As cities grow and suburbs expand, it is obvious that all of the land is not going to continue to be zoned for agricultural uses around a suburban community. This is apparent in the study of land trends in any rapidly growing community, be it Orlando, Fla., St. Louis, or Seattle. Land contiguous to the city that a few years ago could have been purchased at \$100 or \$200 per acre for agricultural uses now, through speculation, land assembly, and investment, has continued an upward trend. It is not uncommon to find this increment as high as 20 to 50 percent per year. This trend holds true as locations change; the relative prices are higher closer to the center of the city than they are on the extreme periphery. Suburbs are formed, cities and villages are chartered, and zoning regulations follow. However, most zoning codes generally contain a provision for change procedures.

Zoning developments in themselves do not involve condemnation proceedings. However, the condemnation proceedings usually follow for parks, utilities, streets, and for accessibility to highways. Broadly speaking, valuation of a property within a dominant growth trend—if it is based on agricultural uses even though zoned as such—would be a disservice to the client. In this respect an appraiser, or the

³ CHRISTIAN, A. H., "This and That About Right-of-Way." *Right of Way* (Dec. 1967) p. 26.

⁴ SNITZER, EDWARD L., "Increase or Decrease in Fair Market Value Because of a Future Condemnation." *The Real Estate Appraiser* (July-Aug. 1968) p. 53.

state considering the location of a right-of-way, must recognize speculative value trends—and the connotation put on the word “speculation” is in no sense to be considered derogatory. As in many forms of investment, the speculative investor is betting on eventual rezoning to a higher and better use. These zoning trends make it important to select the proper date of valuation. When land uses become more dense and related to higher and better uses, the greater is the likelihood that a change of zoning could be construed as being a more sound assumption rather than a speculative or conjectural one.

Some states have attempted to forestall enhancement by asking that the right-of-way be zoned for a specific land use between the time of announcement and probable acquisition. This would appear from a valuation standpoint to be an inequitable solution. The highest and best use at a specific point in time would continue to be related to other lands in the area. Legally it might be construed as selective, or the taking of a property right without benefit of compensation.

Other Police Powers

There are many areas of inadmissible evidence and legal constraints that may or may not be taken into consideration by courts in condemnation cases; nevertheless, these can be definitely and absolutely germane to market transactions by buyers and sellers.

An example of this concept lies in the interpretation by some courts that the exercising of police powers by city or state is a noncompensable item of valuation. However, consider the following: The sales and service facilities of a major automobile agency are located on one side of a street; its body repair shop and used car display area are situated immediately across the street, which is 66 ft wide and has very little traffic volume. As of the date of valuation, there is freedom of movement of cars back and forth between the two facilities. The city or state widens the street and erects a median strip in the center that thus presents an effective barrier to the freedom of movement previously enjoyed and makes it necessary to travel four blocks between the two facilities in order to move vehicles back and forth.

Regardless of legal principle involved, it is not necessarily logical and prudent to assume that the entire unit (that is, the property on both sides of the street) would be sold at exactly the same price (all other things being equal) through a willing buyer-willing seller transaction on a date of valuation before and on a date after the construction of a median strip. Constraints applied by legal interpretation in a situation like this could result in an inequity through inaccurate valuation principles. The action could result in a decrease in value of the whole measured by the market after the announcement of the state's intention. It could cause a movement of industry out of the immediate vicinity and result in a tax loss to the community.

It is concluded that although legal constraints may be placed on the use of the property and these may result in enhancement or diminution of the property, it is the ultimate buyer and seller acting in concert through

negotiation who will ultimately arrive at market value. It certainly can be argued that the state has the absolute right to regulate the health and welfare of its citizens. But it can also be demonstrated that the application of police powers, especially if announced at the time of a taking, can produce an upward or downward pressure on the market demand for a parcel of land and can, therefore, cause enhancement or diminution at the moment the act is placed in force.

General and Special Benefits

The subject of benefits has been set forth by Mr. Ralph Luttrell, for 24 years Chief of Land and Acquisition Section, Lands Division, U.S. Department of Justice. He describes general benefits as those arising from the fulfillment of the public object that justified the taking, and special benefits as those arising from the peculiar relation of the land in question and the public improvement. Although it need not be peculiar to the land in question, it must differ in time rather than in degree from the benefits that are shared by the public at large.⁵

A special benefit would result from the construction of a highway where a valuable business site would be created at an intersection or where access to the property is improved by the taking. A general benefit would occur where there has been a general increase in values of the neighborhood of the government's project without regard to the facts of an individual taking.

Benefits as well as damages are to be estimated as of the date of the taking (and this must be better defined), the benefits being those capable of present estimate and reasonable computation. Although the possibility that the state might abandon the project is a proper consideration in assessment of benefits, the property owner has no vested right in the continuation of a public improvement, even though benefits have been assessed or set off in the acquisition of the land.

Some of the special and general benefits that could result from a highway project would include:

- Paving or hard surfacing (general benefit).
- Change from an inside lot to a corner site (special benefit).
- Value trends in real estate resulting from the improvement (general benefit).
- More convenient access (special benefit if to a particular parcel of land; for example, drainage of a swamp on a specific parcel).
- Provision of sewerage (special benefit).
- Improved ingress and egress (either general or special, or both).
- Widening of street, making more land saleable (general benefit, but could be special).

General and special benefits will always be recognized as a cause of enhancement in value, but usually the special benefits will be the only value setoff in a condemnation proceeding—but more important is the need to recognize benefits at an early valuation date.

⁵ LUTTRELL, RALPH J., “Eminent Domain—The Realtor, the Appraiser and the Lawyer.” *Appraisal Journal* (Oct. 1963) p. 493.

Severance

Severance is generally (but not always) considered to be an element that results in diminution in value and it can arise from the partial taking of a parcel of land.

Severance damages would include (1) a significant reduction in size of a parcel; (2) leaving of a landlocked parcel (generally speaking, but not always); (3) taking of access; (4) change of access through limitation (sometimes but not always); (5) more difficult planning; (6) higher development costs. These problems are usually recognized only after the right-of-way lines and construction plans have become definitive and firm.

Time

Changing price levels are caused by the ebb and flow of trends over a period of time. The mere fact that certain conditions and certain values prevailed in the past is no assurance that they are a standard norm or that they will reoccur again in the future and that, therefore, prices will not fluctuate. Owners are generally optimistic in anticipating a market much higher than appears reasonable. On the other hand, buyers' reactions tend in the other direction. But when related to all of the economic factors surrounding the property, time tends to cause the value of the property to seek a level similar to other offerings and sales within the general area on a specific date. It is indicated herein that many of the valuation factors are closely related to time and the date of valuation.

General economic conditions existing at one time may be quite different at another date not far removed. If the buyer, seller, or appraiser is to take account of the significance of changes in economic conditions in this approach to value, he must have a wide and unprejudiced background and knowledge of trends. He must not only be aware of what is currently happening, but he must also be able to know what it means and be able to project these trends into the future.⁶

It is extremely important to note that time is one of the basic factors, one of the first factors, that causes differences in the market data being analyzed and the ultimate value of the property under appraisal. It is a factor that by itself does not cause enhancement or diminution in value. However, it must be recognized that either of these results could take place over a period of time.

The specific date of appraisal or acquisition or sale is of vital importance in the analysis of value of any property, for the value of real property fluctuates. It is a rarity to find a constant value over a period of time, because the factors that create or destroy value are always in the process of change. Thus, an opinion of value is valid only for that period of time when it was formulated.

Unfortunately, in the condemnation, acquisition, or appraisal of the property to be appropriated by the state, it may be months, even several years, from the time the right-of-way line is established, through the date of valuation, to the final award of damages. Occasionally, depending on local legal procedure, the appraiser for the state or the owner may be testifying to his original market value esti-

mate as of a specific date some years before. On the other hand, he may be called on to appraise the property anew, or to reappraise it. He may have to value the property as of the date of filing of a petition to condemn, the date of the trial, the date of the commissioners' award, or whatever date might be common practice within the jurisdiction.

Summary

In summary, some of the many factors causing enhancement or diminution of the value of a parcel of real estate have been identified. Some of these are physical factors, some are caused by transitional changes in the neighborhood or community, others are caused by the impact of new zoning or police power changes, and some of these are considered benefits. In the case of a highway taking, there are a number of special benefits applicable to specific parcels of property and others that are considered to be general benefits to the immediate neighborhood.

There are, of course, other factors that bear on value. The economic fabric of the community is woven into the physical attributes of the site or area, and many factors are pertinent to an estimate of value. All of these factors result in a web of the strands of value that affect the parcel of real estate. But, most important, the lapse of time is such a vital ingredient that it must be considered to be the most singular and significant factor in any valuation analysis, inasmuch as it appears to be interrelated to all of the others.

IMPACT OF CONDEMNATION ON MARKET VALUE

In this study of valuation procedures as they relate to market value and condemnation, it has become increasingly apparent that the primary impact on value occurs on the date of the public announcement of the proposed highway improvement.

As soon as the public announcement is made, market activity commences to a degree not previously observed. This activity continues until long after construction. From its formative stages onward, this activity arises from various sources that include but are not limited to:

1. Speculative activity.
2. Occupants of the anticipated right-of-way seeking new locations.
3. Highway-oriented land users seeking new sites on the proposed right-of-way.
4. Occupants deciding to "sit tight" and remain to see what happens in the future.

After announcement of a project, there are at least three possible effects on the market value of property located within the right-of-way or immediately adjacent to it.

1. The value is stabilized because all potential buyers other than the condemnor have been eliminated; or
2. The value is enhanced simply because of speculation on what the condemnor will pay for the property when it is acquired, or because of a possibility that the property will not finally be taken, but instead that the whole or a usable remainder will be nearer to and will receive the benefits of the intended public project.

⁶ AMERICAN INSTITUTE OF REAL ESTATE APPRAISERS, *The Appraisal of Real Estate*. 3d ed., Chicago (1960) p. 346.

3. The value is depressed, causing entire neighborhoods to deteriorate and vacant land to remain undeveloped. In addition, tenants vacate, refuse to renew old leases, and refuse to enter into new leases—each of which results in a diminution of market value.

The fact that there is substantial evidence of changes in market value as a result of the preacquisition activities of the state is cause for increased concern.⁷ The problem appears to be to achieve stabilized market value that will not cause inequities.

Enhancement in value results from the favorable impact of the improvement. The public should not be expected to pay for the enhanced value that it created itself. As the Supreme Court of the United States held in *United States v. Cors*, 337 U. S. 325, 333 (1949):

. . . [T]he government ought not to pay any increase in value arising from the known fact that the lands probably would be condemned. The owners ought not to gain by speculating on probable increase in value due to the government activities.

Diminution in value can result from an unfavorable impact caused by the improvement or announcement thereof. Others have recognized this problem of depressing effects on value, which has been referred to as "condemnation blight." However, it is almost a universal rule that the owner may recover the value as of the date of the taking and not as of the date of announcement.

Factors Causing Change in Value

A determination of all of the causes of enhancement or diminution in value would probably be out of date within a short time. Some significant causative factors are listed to demonstrate the magnitude of the problem. Although the enhancement factor has been recognized in great detail in previous analyses and impact studies of remainders, the causes of diminution are often more subtle, as the following topics show:

Enhancement Factors

1. Speculation.
2. Better access.
3. Transitional land changes to better uses.
4. Better locations and exposure.
5. A final market in an already depressed area.
6. Date of value.

Diminution Factors

1. Deterioration in the quality of life.
2. Inability of property owners to sell property at reasonable prices during waiting periods.
3. Decline in the value of properties during the waiting period because of neighborhood and individual property deterioration.
4. Loss of income suffered by owners of rental property because of the departure of tenants.
5. Costs of maintaining property after its fair market value has been established for purposes of litigation.

6. Increased city costs to counteract vandalism and other deterioration, which eventually raise local taxes.

7. Disruption of local communication through the blocking of streets.

8. Reduction in the quantity and quality of commercial and other services available in the area.

9. Reduction in employment opportunities in the right-of-way area and increased costs of traveling to work.

10. Spillover of deterioration in the right-of-way during the waiting period.

11. Increased competition for housing among low-income households.

12. Reduction in the efficiency of community facilities through loss of patronage or overloading.

13. Adverse changes in the accessibility of various parts of the metropolitan area.

14. Losses resulting from the process of construction.

15. Date of value.

LEGAL CONSIDERATIONS

The analyses of the cause and effect of enhancement or diminution in value that are discussed previously are oriented to the market and to the action of buyers and sellers. Any corrective actions to be taken by the condemning authorities will be limited by statutory and case law requirements of the various states, unless these can be revised. Regardless of the legal revisions, each must be related to the market and to a specific date. Statutory condemnation provisions vary from state to state, and case law between the states is not consistent.

Statutory Provisions

The agency examined the statutes in each of the 50 states and the District of Columbia, and made a cursory examination of case law in Alabama, California, Maryland, Minnesota, and Texas, to obtain background data on procedures and techniques for the country as a whole, for representative areas, and for selected states within each area. The examination was based on the following categories of reference in state eminent domain procedures:

- A. Public use requirement.

- B. Fair market value or formula used in determining compensation.

- C. Date at which the valuation for purposes of compensation is to be made.

- D. Designation date (date when possession passes or title vests, or date at which administrative determination to take land is made).

- E. Enhancement of property taken, or of remainders by reason of the taking, or as a setoff against the value of the property taken and/or the remainder.

- F. Effect of enhancement or diminution of value by reason of the announcement of the taking.

These reference points for each state are summarized by category in Table 1. Even a cursory inspection of these requirements shows the extensive variance between the state laws.

Annotations on those statutory provisions examined comprise Appendix B.

⁷ SNITZER, EDWARD L., "The Law and Condemnation Appraising." *The Real Estate Appraiser* (July-Aug. 1968) p. 53.

TABLE 1

STATUTORY EMINENT DOMAIN PROVISIONS PERTAINING TO MARKET VALUE, ENHANCEMENT, OR DIMINUTION

State	Public Use Required	Compensation Determination			Date of Valuation OR Market Value										Designation Date		Filing Date	
		Body	Commission State Court or Jury	Reference to Value or Compensation Yes No	Proposed Improvement	Taking	Title Passes	Award	First Notice Summons Declaration Petition	Trial	No Provision	Award or Possession	Initiation or Proceeding, Declaration, or Stipulation, Final Order, or Judgment					
Alabama	X	X																
Alaska	X	X	X															
Arizona	X	X	X															
Arkansas	X	X	X															
California	X	X	X															
Colorado	X	X	X															
Connecticut	X	X	X															
Delaware	X	X	X															
District of Columbia	X	X	X															
Florida	X	X	X															
Georgia	X	X	X															
Hawaii	May	X	X															
Idaho	X	X	X															
Illinois	X	X	X															
Indiana	X	X	X															
Iowa	X	X	X															
Kansas	X	X	X															
Kentucky	X	X	X															
Louisiana		X	X															
Maine	X	X	X															
Maryland	X	X	X															
Massachusetts	X	X	X															
Michigan	X	X	X															
Minnesota	X	X	X															
Mississippi	X	X	X															
Missouri	X	X	X															
Montana	X	X	X															
Nebraska	X	X	X															
Nevada	X	X	X															
New Hampshire	X	X	X															
New Jersey	X	X	X															
New Mexico	X	X	X															
New York	X	X	X															
North Carolina	X	X	X															
North Dakota	X	X	X															
Ohio	X	X	X															
Oklahoma	X	X	X															
Oregon	X	X	X															
Pennsylvania	X	X	X															
Rhode Island	X	X	X															
South Carolina	X	X	X															
South Dakota	X	X	X															
Tennessee	X	X	X															
Texas	X	X	X															
Utah	X	X	X															
Vermont	X	X	X															
Virginia	X	X	X															
Washington	X	X	X															
West Virginia	X	X	X															
Wisconsin	X	X	X															
Wyoming	X	X	X															

[illegible]

Summaries of the statutory law requirements that have the most significant bearing on market value and on enhancement follow.

Significant Principles Related to Market Value

Public Use.—It appears that all of the states (with the possible exception of one) have a requirement that land be taken for public use. Some are narrow and others, such as Alabama, are much broader in scope. The advantages of a broad provision would enable the state to acquire excess right-of-way, to eliminate many remainders, to facilitate planning changes, and to reduce future unforeseen acquisition costs.

In Minnesota a specific statute authorizes excess acquisition as follows:

M.S.A. 161.23 EXCESS ACQUISITION. Subdivision 1. Acquisition of entire tract. Whenever the commissioner of highways determines that it is necessary to acquire any interest in a part of a tract or parcel of real estate for trunk highway purposes, he may acquire in fee, with the written consent of the owner or owners thereof, by purchase, gift, or condemnation the whole or such additional parts of such tract or parcel as he deems to be in the best interests of the state. Any owner or owners consenting to such excess acquisition may withdraw his or their consent at any time prior to the award of commissioners in the case of condemnation proceedings, or at any time prior to payment in the case of purchase. In the event of withdrawal the commissioner shall dismiss from the condemnation proceedings the portion of the tract in excess of what is needed for highway purposes.

Subd. 2. Conveyance of excess. If the commissioner of highways acquires real estate in excess of what is needed for trunk highway purposes as authorized in subdivision 1 hereof, he shall, within one year after the completion of the construction, reconstruction, or improvement of the highway for which a portion of the real estate was needed and required, notify the governor that such excess real estate may be sold. The governor, in behalf of the state, after such notification shall convey and quitclaim such excess real estate to the highest responsible bidder, after receipt of sealed bids following published notice of the sale for three successive weeks in a newspaper or trade journal of general circulation in the territory from which bids are likely to be received. The deed may contain restrictive clauses limiting the use of such real estate in the interests of safety and convenient public travel when the commissioner finds that such restrictions are reasonably necessary.

Subd. 3. Leasing. The commissioner may lease for the term between the acquisition and sale thereof and for a fair rental rate and upon such terms and conditions as he deems proper, any excess real estate acquired under the provisions of this section, and any real estate acquired in fee for trunk highway purposes and not presently needed therefor. All rents received from the leases shall be paid into the state treasury. Seventy percent of the rents shall be credited to the trunk highway fund. The remaining thirty percent shall be paid to the city, village, borough, or township where the real estate is located.

Subd. 4 Limitation on construction of section. Nothing contained in this section shall be construed to prevent the commissioner from acquiring lands, real estate, or interests in lands or real estate necessary for trunk highway purposes, without the consent of the owner or owners thereof.

It is possible that elimination of the words "with the consent of the owner" from this Minnesota statute would provide much greater latitude in planning.

The Alabama code appears to have the advantage of permitting such action without consent: CODE OF ALABAMA tit. 19, ch. 1 (1967) is entitled "Condemnation of Lands for Public Uses," but there is no specific requirement in the statute other than in tit. 19, § 1 ". . . proposing to take lands, . . . for any uses for which private property may be taken"

Method of Determination of Compensation.—The methods used by each jurisdiction provide for various methods of determining "just compensation" or "value." In many states it is accomplished by commissioners appointed by the court. In most states there is no requirement that the individuals be qualified real estate appraisers. It would appear that if a group of unqualified persons fixes an award there would be a greater chance for enhancement or diminution to occur.

The South Carolina provisions (§ 25-56) allow for the condemning authority to appoint a referee, and for the land owner to appoint a referee. These two appointees then designate a third referee and the three of them determine the compensation to the land owner. No standard for determining the land's value is explicitly prescribed.

Market Value.—A good definition of market value would appear to be essential. Although courts have recognized many definitions, few statutes cover the phase of valuation. The Maryland and Pennsylvania provisions are acceptable from a valuation point of view, and so is that provided in the valuation section of this report. The Maryland statute (1967) follows:

§ 6: FAIR MARKET VALUE: . . . price as of valuation date for the highest and best use of such property which a seller, willing but not obligated to sell, would accept for the property, and which a buyer, willing but not obligated to buy excluding any increment in value caused by the project for which the land was taken.

A clear definition of market value provided by statute would tend to equalize the opinions of those responsible for estimating market value.

Date of Valuation.—The date of valuation appears to be one of the most significant factors in the valuation of real estate and the elimination of enhancement or diminution. Expediting the acquisition will tremendously effect the over-all cost.

Mr. John C. Powers, Director of Right-of-Way, Department of Public Works, State of Massachusetts, has stated in an interview that the authority for advance or excess acquisition is a proper way to eliminate enhancement. For example, he queries what would happen if an interchange with ample access were to be placed in the center of a man's property. The value would immediately increase from that of raw acreage to something much higher in terms of dollars per square foot, as the research agency's case study of Minneapolis-St. Paul shows. It appears to be time for the public, rather than one individual, to obtain the benefit. For example, it is possible for the design engineers to move a right-of-way line 100 to 200 ft at any

time without legal problems. However, if this has to be done after the original taking, or during or immediately prior to the construction of the improvements, it generally is going to cost considerably more to obtain a very small additional portion of the right-of-way. Therefore, to have long legal arguments about what is needed for right-of-way in a legal sense is ridiculous if the original design or change is not subject to effective challenge. Mr. Powers' arguments appear sound and are based on facts.

The Massachusetts date of taking is not precise. It is stated in the statute as follows:

ANN. LAWS MASS. ch. 79, § 12 (1966): Damages for property taken shall be fixed at a value thereof before the recording of the order of taking.

In Maryland, the date of value is even less precise:

MD. ANN. CODE art. 33A, § 4 (1967): The value of the property sought to be condemned and of any adjacent property of the defendant claimed to be affected by the taking shall be determined as of the taking, if taking has occurred, or as of the date of trial, if taking has not occurred, unless an applicable statute specifies a different time as of which the value is to be determined.

Maryland case law does little to refine the date. If anything, it causes confusion as to what is meant by "taking," probably meaning the date of "payment of the amount required."

Various other dates are indicated by other states that recognize a specific date; many have no date specified. Selected statutes provide the following definitions: New York, § 14 (1968), "The date of evaluation is the date of the award by the commissioners." Montana, § 93-9913 (1967), "The date of evaluation for the purpose of assessing damages is the date of service of the summons." [See also NEV. REV. STAT. § 37.120 (1967)]. Pennsylvania, § 1-402 (1968), "The date of evaluation is the date of filing the declaration of taking." Louisiana, § 19:9 (1968), "Value before the contemplated improvement was proposed."

It appears that laws such as that in New York will have the disadvantage of dragging out the date of value. Delay can result in change, and changes caused by a single value element are difficult to determine. Nevada and Montana valuations can be effective sooner—but are still open to delay. Louisiana's is more appropriate, but such precision as "the date of announcement of the improvement" would reduce interpretive arguments.

Designation Date.—The designation date, or the date of acquiring title, is important for full control of the proposed right-of-way. As long as the condemnee retains title, enhancement or diminution can and does take place. The sooner the state can acquire title the less chance there will be for a change in value. Payment of a deposit or of market value in the early stages of acquisition might present a problem in appropriation. If such problems exist, delay in announcement or in requiring title would tend to cause confusion and public annoyance. These problems can be remedied in part through right-of-way control and advance acquisition.

Specific goals of advance reservation are: (1) to facilitate land development compatible to highway corri-

dors, (2) protect preferred locations and alignments of future highways, (3) reduce overall land costs to public agencies, (4) assure best possible investment of public funds in highway improvements, (5) gain time for orderly acquisition and clearance of rights-of-way, (6) decrease inconvenience to people affected by highway construction by providing enough time for their readjustment and relocation, and (7) aid future land use development by local units of government.⁸

Summary of Findings on Right-of-Way Control.—There appears to be no single accepted method of preserving or controlling future right-of-way. A concept that is effective in one state may not be effective in another due to local conditions. Any approach must be designed to complement local constraints. Various methods of right-of-way control to reduce costs have been tried by various states.

All of those concepts were covered in a survey by the Commonwealth of Virginia. All have been tried by other states. The breakdown of the 50 responses is summarized as follows:⁹

CONCEPT	NO. OF STATES
Official map (prepared as a plat and recorded)	18
Zoning (regulation of use)	20
Subdivision regulations (setbacks, dedication and other controls)	21
Protective buying (purchase when proposed)	40
Price freezing (values prior to announcement)	2
Contract deferred payments (purchase plan)	3
Joint use of right-of-way (lease, air rights, minerals, etc.)	16
Remainder parcel (damage value offset)	35

Every state contacted indicated that right-of-way acquisition was one of its major problems.

The size of the revolving fund for advance acquisition of right-of-way is not sufficient to enable the Virginia department to fully employ available techniques or suggested methods of protecting future rights-of-way.

An analysis of the Virginia records indicates that more definitive legislation may be needed to enable the department of offset damages by the enhancement in value created by the location of a highway.

Enhancement of Remainder.—In about 50 percent of the states, enhancement in value of the remainder is offset against damages to the remainder. However, about four states can offset enhancement against the part taken (Table 1). Obviously, if the offset is allowed against both, the acquisition costs will be less.

An example of an offset statute against only the remainder and damages is apparent in Maryland (ANN. CODE, art. 33A, § 5(b) (1967)):

⁸ *Advance Reservation of Land for Future Highway Use*. Wisconsin State Highway Transportation Planning Program. (2nd Draft—U. & A. P.: 11/8/67).

⁹ WALTON, L. E., JR., and SAVAGE, W. R., III, "An Investigation of Methods of Protecting and/or Reducing Costs of Future Rights-of-Way." *Virginia Highway Research Council Bulletin* (Dec. 1967) pp. 5-6.

Where part of a tract is taken the damages to be awarded . . . shall be the fair market value of such part taken, but not less than the actual value of the part taken plus the severance or resulting damages, if any, to the remainder of the tract by reason of the taking and of the future use by the plaintiff of the part taken. Such severance or resulting damages are to be diminished to the extent of the value of the special benefits to the remainder arising from the plaintiff's future use of the part taken.

Although this section is new, it is a restatement of the law that has existed in Maryland for many years. [*Duvall v. Potomac Elec. Power Co.* 234 Md. 42, 197 A.2d 892 (1964).]

On the basis that a deduction which impugns the amount awarded the condemnee for those portions of his land actually taken deprives him of his constitutional right to just compensation, the Maryland Court takes the view that deductions for benefits are operative only as respects damage to the remainder in a partial taking. The benefits may not diminish the amount awarded the condemnee as compensation for land taken. [*Pumphrey v. Tabler*, 175 Md. 498, 2 A.2d 668 (1938).]

An example of an offset against both the remainder and the part taken and an assessment is the Connecticut statute (1966):

C.G.S.A. § 13A-73: Owner shall be paid for all damages and the state shall receive from such owner the amount or value of all benefits resulting from such taking, or other improvement.

It is also important to recognize that whatever the date of value, the failure to recognize an enhancement in value that is solely and directly attributable to the improvement might tend to provide an inaccurate value of the acquired property.

The Iowa Constitution (art. 1, § 18) recognizes this and can be summarized as:

[D]amages shall be assessed by a jury who shall not take into consideration any advantages that may result to said owner on account of the improvement for which [the land] is taken.

It is recognized that acquisition costs will be lower if:

1. The highway benefits are not woven into value before the taking.
2. Enhancement can be offset against both the part taken and the remainder in the valuation after the taking.
3. The difficulty in identification of future benefits could often be negated by early acquisition and excess takings.

Diminution in Value.—Diminution in value and its possible causes has been significantly overlooked by the vast majority of states; except as it applies to enhancement offsets, only about seven states have a provision for this factor in their statutes. Pennsylvania statutes include both. In the following, damages may be offset by enhancement:

§ 1-606 allows set off of special benefits up to but not exceeding the total damages, including those to the remainder and those to the portion taken.

Changes caused by a general knowledge of the imminence of condemnation cannot be recognized in Pennsylvania. § 1-604 states:

Any change in the fair market value prior to the date of condemnation which the condemnor or condemnee establishes was substantially due to the general knowledge of the imminence of condemnation, other than that due to physical deterioration of the property within the reasonable control of the condemnee, shall be disregarded in determining fair market value.

A law such as the foregoing could result in an inequity to the owner caused by functional or economic obsolescence if there is an extreme lapse of time between the announcement of the highway, the date of valuation, and the date of acquiring title unless, of course, a very early date (such as the announcement of the highway) is fixed as the valuation date.

Case Law Provisions

The researchers examined case law in Alabama, California, Maryland, Minnesota, and Texas pertaining to the same frame of reference as outlined previously for state statutes. It has been observed that, in general, those factors not covered by statute are amplified in case law experience. A study by Vance provides a needed in-depth analysis of pertinent case law on the subject. Reference should be made to this report for more definitive data.¹⁰

Significant Principles Related to Market Value

Public Use.—The rather stringent requirements of the past for a public use appear to be slackening. Broader interpretation and less stringent attitudes on the part of the public are in evidence in public housing and urban renewal, and to a lesser degree in highway projects. As "public use" becomes equal to public "reason," public "benefits," and public "purpose," the concept of "excess takings" will be facilitated. The latitude required by the state in making action decisions to acquire excess land will in many cases eliminate the enhancement characteristics of remainders.

Market Value Determination.—This selected study of case law points to a lack of intrastate and interstate consistency in definition of market value. Although in many cases the definitions are acceptable, a clear-cut, comprehensive definition would tend to eliminate different interpretations, and, with an understanding of market economics, it might reduce diminution cases caused by changing economic conditions.

Date of Valuation.—The date of valuation is a significant principle in valuation practice and theory. To ignore a specific date by statute will lead to endless interpretation. An examination of selected case law leads into a bewildering lack of conformity among the states. Even courts within the same state tend to lack uniformity when facing the problem of a specific date of value.

For example, to follow the procedure in Minnesota, that the date when the court-appointed commissioners file the award is the date of valuation, leads to many inequities to both the state (the public) and the property owner. In the case described earlier, the commissioners were not even appointed until ten years after the announcement. Further, in Minnesota, the commissioners' award should be filed

¹⁰ VANCE, JOHN C., "Valuation Changes Resulting from Influence of Public Improvements." *NCHRP Research Results Digest 11* (1969).

within 90 days of the appointment, but there are cases on record where commissioners have been allowed as many as three 90-day extensions. At that rate, the award date can be put off another year.

Obviously, values can change in ten years and generally there is a change in one year.

Designation Date.—As in the date of valuation, if the designation date is related to the valuation date, the same factors will produce inequities.

Further, if the state is allowed to abandon condemnation once started, as in Minnesota case law, the industry or other owner who has with foresight acquired a new site and/or constructed a new facility will certainly experience a problem in forced liquidation—possibly at a price below market value.

If, as in Texas, the state is forced to double the amount of the award to obtain possession, there will be an adverse effect on public funding.

The Maryland code, Section 6, appears to be a partial solution if the “date of specific administrative determination to acquire” is not delayed too long. That evidence of fluctuation of value after that date will not be considered is an important advantage.

Special Benefits.—The theory of allowing an offset of enhancement in value of the remainder against damages thereto tends to eliminate evasive enhancement when it is applied also to the part taken, as in the following example:

Value of the whole “before the taking,”	
10 acres @ \$1,000 per acre	\$10,000
Value of remainder “after the taking,”	
including special benefits, 5 acres	
@ \$1,500 per acre	—7,500
Value of part taken, including damages	
to the remainder	\$ 2,500

Although this is a seemingly equitable solution, there would appear to be a possible disadvantage in this theory. Under some circumstances (such as a delay in taking, an economic increment, or a substantial change in highest and best use) the value of the remainder could have increased to \$2,100 per acre. The total value of the remainder would then be higher than the value of the whole “before the taking.” To assess the owners for such benefits would probably entail inordinate litigation.

The state could obtain the benefits from this type of enhancement for the public if it had the right of taking excess lands.

Enhancement or Diminution Caused by Announcement.—If the property is acquired after the announcement the difficulties of relating changes in value from any cause, including the highway plans, will become greater as time increases. The facts are emphasized in the following axiom:

The impact of economic, physical, environmental, sociological and governmental factors and their subelements over a period of time are the genesis of enhancement or diminution in the value of real estate.

To extract the percentage change or dollar amount of a change in value caused by a particular subelement of this axiom would, in each case, be an extraordinary task that would increase in its complexity as each month and year elapses between the date of announcement and the date of valuation. The solution to this problem appears to be a reduction in time between the date of valuation and the date of announcement.

CHAPTER THREE

INTERPRETATION, APPRAISAL, APPLICATION

The various valuation and legal principles involved in the acquisition of property for highway purposes have been reviewed in this study, with the objective of isolating the legal and valuation procedures that result in inequities because of enhancement or diminution. It has become apparent that one such problem evolves from the date selected for valuation, which is most frequently long after the announcement. The increasingly wider dispersion of knowledge of the pending improvement and its construction result in enhanced or diminished value to the properties, as these changes affect the value of the whole property and as they affect the remainder. The various states require valuation dates that range from the rather

ambiguous period before the announcement to the day of the trial. The time period from announcement to final award and/or payment is measured in terms of years, and a decade is not uncommon.

To try to pinpoint the cause and effect of one single element—such as a pending highway—on value at a point in time over a period of ten years involves speculation and conjecture. To estimate value the “day before” the announcement is an exceedingly insignificant problem by comparison. The date of valuation is therefore one of the most vital elements in an estimate of market value in eminent domain proceedings.

Other important problems are:

- The hesitancy and/or lack of authority for the state to acquire excess land.
- The inability of appraisers to recognize enhancement in remainder parcels.
- The lack of authority for states to reserve or acquire right-of-way before need can be demonstrated.

This study of the statutes and case law and the principles of valuation as they relate to estimates of market value results in certain important axioms:

Enhancement or diminution in value is caused by the improvement or prior knowledge thereof and should be eliminated from the estimate of value. [Similar to MD. CODE, art. 33A, § 6 (1967).]

The date of acquisition and/or valuation should be nearer (preferably immediately before) the public announcement. [Similar to PA. CODE § 1-604 (1968).]

The state must have the permissive authority to acquire entire properties to eliminate the value enhancement of certain remainders. [HAWAII STAT. § 8-2 (1965).]

It appears that the most significant solution to the problem lies in the potential of acquiring or reserving rights-of-way, and in some cases excess land (to avoid remainder parcels), in advance of actual needs at a date in reasonable proximity to the date of valuation.

Briefly, the source of the entire acquisition valuation and legal problem arises from planning, public hearings, acquisition, and construction—which commonly take place over a period of five to ten years. In the initial years of planning, data could become public knowledge but would generally relate to more than one alternate alignment. In the middle stages the knowledge is made public. In the final stage, acquisition often takes place within six months or less of construction. During this long period, economic pressure acts on development and values.

Some of the alternate solutions to inequities are advance acquisition or reservation and excess acquisition.

ADVANCE RESERVATION

WIS. STATS., § 84-295 (1965) provide a method of attaining advance reservation of land to prevent conflicting costly development. It is accomplished by filing an "official map" with the register of deeds after a public hearing (announcement). After filing, limitation and prohibitions are imposed on new construction and on alterations and additions to improvements other than normal or emergency repairs. No damages will be allowed on acquisition for any deviation from this requirement. However, the state must buy or give permission to build or construct within 60 days after notification from owner.

A proposed statute for Minnesota prepared in 1968 under the direction of Edward R. Lorens (Appendix C) combines portions of the Wisconsin statute and the Virginia survey.¹¹ It provides that the state will issue a building permit but that, if property is taken, payment will not be made nor

damages allowed for such improvement. The owner can then file a hardship request, and the state may authorize acquisition of the entire property by agreement or condemnation proceedings, or may decline to authorize acquisition or issue permit. If the property is purchased, two-thirds of the state's estimate will be paid, plus semiannual interest on the balance for five years after agreement. Possession is given on execution of the agreement.

EXCESS LAND ACQUISITION

The authority for taking excess land appears to be covered adequately in the Hawaii statute:

Public property may be taken for public use. Private property may also be taken by the Territory or any County in excess of that needed for such cases where small remnants would otherwise be left or where justifiable cause necessitates such taking to protect and preserve the contemplated improvement, or public policy demands such taking in connection with such improvement, in which case the condemning authority may sell or lease such excess property, with such restrictions as may be dictated by considerations of public policy in order to protect and preserve such improvements. [REV. L. OF HAWAII, § 8-2(1965).]

The power to sell unneeded lands appears to be a necessary implication in sound advance acquisition as well as in the purchase of excess land in the beginning. Barton's research indicates that 16 states provide condemning authority with a power to sell in whole or part when such lands are not needed.¹² Three (Indiana, Oklahoma, and Virginia) give the prior owner first option to repurchase.

SUMMARY OF VALUATION FACTORS THAT WILL ELIMINATE CONDEMNATION EFFECTS ON MARKET VALUE

The valuation of property and its market value are both strongly related to the date ascribed to such value. Thus, the methods available to bring about a resultant elimination of either enhancement or diminution from appraisals or acquisitions must be associated and related to the acts on a specific date early in the proceedings.

The alternatives are few. In many states, changes may be impossible until legal and planning constraints are revised or removed. Nevertheless, it is likely that the institution of one or more of the following practices will result in valuation procedures more equitable to both the property owner and the state:

1. That private property be either acquired or paid for as of the date of public announcement. To continue to appraise it for valuation purposes as of that date—months or years later—will not effectively eliminate the cause and effect factors. This method can be termed "advance acquisition."
2. That authorization to acquire the entire parcel rather than small segments of an ownership will, at times, eliminate either enhancement or diminution effects and give the state (the people) the benefits of enhancement in value of the remainders. On the average, these will more than offset

¹¹ WALTON and SAVAGE, *op. cit.*, p. 5.

¹² BARTON, S., "Conclusions Regarding Constitutionality of Use of Eminent Domain for Advance Land Acquisition in Minnesota." Thesis, University of Minnesota Law School (1967) pp. 1-49.

diminution of a minor number of parcels. This can be termed "excess acquisition."

3. That regulatory actions through such avenues as police powers or filing of maps and plats will not eliminate the problems of enhancement or diminution in value between the announcement and the date of valuation, but that such actions will possibly confuse the issue.

4. That authorization for the state to use lease prac-

tices involving air rights and excess land (similar to urban renewal provisions) would benefit the public. This method can be termed "joint land uses."

5. That more cooperative planning in conjunction with communities would be desirable. Studies in greater depth of economic land use and marketability appear essential. Both would tend to aid in the identification of potential causes of enhancement or diminution.

CHAPTER FOUR

CONCLUSIONS AND SUGGESTED RESEARCH

VALUATION PROCEDURES AND TECHNIQUES

Technical Considerations

It appears that no technical changes will be necessary in market value appraisals. If existing methodology is followed in accepted format, the end result will generally be correct.

Procedural Considerations

Valuation procedures that are now followed appear to need reexamination. This is more apparent after a cursory review of the remainder impact studies conducted by the various states. The majority of these studies denote a wide divergency between the appraised value of the remainder and the sale price a number of years later.

In many of these cases the appraisal has been made long before the date of taking, which is generally the date of comparison. The date of sale used in the analysis can be a year or more after the date of taking. In the studies examined, statements appear to the effect that "it is estimated there was a ten percent general increase in property values within the area not influenced by the highway." In one Texas case, the enhancement due to the highway is shown as 70.4 percent. Yet, other economic factors affected value, including: A change in zoning; and general benefits attributable to the highway (not allowable deductions). A more accurate analysis and projection of the highest and best use might have predicated the first factor; the second, however, could not have been considered.

More thorough and sophisticated analysis of the market and economic trends of an area, and projections of the effects of highways on value, will lead to more equitable valuation projection of remainders. The only disadvantage is the expense involved in retaining better qualified market analysts. The higher fees would be offset by a hopefully more accurate portrayal of the market.

A more thorough study of the market and economic impact on value during the period of planning the right-of-

way alignment should be considered as an aid in projecting growth and value trends and, other things equal, should help determine which alternative would produce the least impact on the community, and hence the least change in values.

"Decisions from competent general planners are needed by Highway Departments on what this area is going to become or something to tie to," as a former director of planning for the Bureau of Public Roads once stated.¹³

Studies of the joint use of right-of-way should be considered. The use of air rights and surface rights under viaducts are examples of potential methods for the state to gain through leasing or sale. Such rights, of course, are uses appropriate only in urban areas of high intensive land use and should properly be considered in the location and planning stages.

All of the valuation procedural methodology to be considered is keyed to a more sophisticated and thorough analysis of right-of-way value trends made by qualified people prior to announcement, or at an early valuation date. It would have the following advantages and disadvantages:

ADVANTAGES

- More accurate remainder valuation.
- Reduction in damage payments.
- Revenue from joint use.
- Better identity on economic impact.
- Reduced cost of right-of-way.
- Higher and better uses of land.

DISADVANTAGES

- Lack of qualified analysts.
- Higher fees to consultants.
- Higher salaries for the state right-of-way agents.

¹³ KOLDERIE, TED, "Future Highway Decisions Must 'Tie To' Community Planning in Metro Area." *Citizens League News* (Jan. 31, 1969).

Observation.—It appears that the advantages of more thorough analysis of value trends, economic trends, and projections will result in significant savings at an extremely modest extra cost, by comparison.

LEGAL PROCEDURES AND TECHNIQUES

Various statutory changes that could be considered by the various states will tend to eliminate enhancement or diminution in value. All appear to be interrelated; most have been tried in at least one state; all have a direct or indirect correlation with valuation principles.

Public Use—Excess Acquisition and Joint Land Uses

A statute such as that in Hawaii (Appendix B) will permit excess takings and have advantages that will offset any disadvantages. However, it requires a recognition of the principle that by displacing low-income persons from their homes for any public use (including roads) the state has an obligation to provide alternative housing.

ADVANTAGES

The public benefits from remainder enhancement.
Many remainders are eliminated.
Lease income provides either short- or long-term public benefit.
Previously made remainder impact studies provide needed depth for analysis and, if properly interpreted, will be useful valuation recognition guides.
Entire properties can be acquired to eliminate excessive severance damage.
Early acquisition can offset enhancement or diminution of remainder caused by unseen economic factors.
Any possible joint-use ventures (air rights, etc.) will be facilitated.
Remainders can be used for more low-income and/or public housing when right-of-way traverses depressed areas, by combining appropriations with HUD.

DISADVANTAGES

Higher qualification level of personnel is needed for proper recognition of suspect enhancement or inordinate damage.
More thorough economic and market feasibility studies are essential.

Date of Valuation

The principle that the date of valuation is significant is discussed elsewhere. A statute such as that in Louisiana would result in valuations being made nearer the date of announcement.

ADVANTAGES

Appraisers would be less apt to be influenced by market data after the date of valuation.
Enhancement of properties within the right-of-way would not be as prevalent.

DISADVANTAGES

Diminution may take place due to owners' inability to lease or sell at fair levels.
Number of hardship cases may increase.

Although more advantages and disadvantages could be cited, disadvantages of an early valuation date are fraught with anticipated diminution and hardship problems unless payment for the property can be made and possession by the state can be obtained in advance of actual needs.

This leads to the concept of early acquisition, reservation, highway conservation zones, or "advance acquisition."

Advance Acquisition

The concept of advance acquisition will be interrelated to an early date of valuation and the concept of taking excess land. The proposed Minnesota statute (Appendix D) and the Wisconsin statute discussed earlier are both considered to be adequate. However, each would appear to need a provision similar to Hawaii's (Appendix B) to permit excess takings, future sales, and lease authorization for private uses if lands are not needed.

Authorization for advance taking, when combined with both the authority to acquire excess land and proper valuation procedures (oriented to economic market analysis), appears to be a major consideration.

ADVANTAGES

Those cited previously.
Discourages development in right-of-way.
Reduces acquisition costs.
Reduces hardship and diminution cases.
Protects preferred locations and alignments of highways.
Improves public reactions.
Simple to envision and apply, and less costly.
Prevents economic waste.
Encourages more orderly peripheral development.
Reduces costly private development in proposed right-of-way.
Permits engineering and design flexibility.
Conserves valuable land in high-density areas through joint use.
The welfare of the public would improve substantially.
A revolving fund for payment and sales proceeds could be invested in interim short-term securities.
"Official maps" similar to subdivision plats would be more definitive and would enable the public to better visualize the affected properties.
A first option for repurchase by a former owner will nullify objections that the state is in the real estate business, and consideration should be given to allowing such an option to be assignable.

DISADVANTAGES

FHWA and states will need earlier funding availability.
Overreaction of legislative bodies will be encountered.
Problems of acquisition, budgeting, and funding may interfere with construction costs.
By themselves or in combination, the "official map," subdivision controls, setbacks, or zoning are police powers and impugn on property rights and value.

CONCLUSIONS

It will only be a combination of factors that will completely eliminate the causes of enhancement or diminution. More rapid engineering and design will facilitate an earlier date

of valuation—but not entirely. If the taking of excess land is permitted, it will tend to alleviate enhancement or diminution in remainders, but this, too, is not enough. Advance acquisition, if permitted, will reduce the causes of enhancement or diminution in the right-of-way and, to a limited degree, contiguous to it. Joint land uses linked with HUD funding and private development will tend to improve land uses contiguous to the right-of-way, and, further, the state can regain costs of acquisition within the right-of-way through such uses as air rights.

Most of these methods will require legal authority. A

need is recognized for more thorough analyses of economic trends and of market feasibility and of value trends in the early planning stages to isolate potential valuation problems. If the causes of enhancement or diminution can be combined with a projected valuation date, if the potential causes of enhancement or diminution in value can be isolated in the planning stages, steps can be taken to negate those causes by engineering, change, valuation date revision, or other legal remedies. The agency recommends economic-market-valuation pilot studies of actual alignment as a significant forward step.

APPENDIX A

DEFINITION OF TERMS

To avoid misunderstanding, several of the terms used in this study that recur are defined here.¹

ACCESS RIGHTS. (1) The right of ingress to and egress from a property that abuts on an existing street or highway. It is an easement in the street that is appurtenant to abutting property and is a private right, as distinguishable from rights of the public. The law is well established in the United States that the right of access cannot be denied or unreasonably restricted unless other reasonable access is available or provided. (2) The right of a riparian owner to pass to and from the waters within the width of his premises as they border the water.

ACCESSIBILITY. (1) The relative degree of effort (time and cost) by which a site can be reached. (2) A location factor that will implement the most probable profitable use of a site in terms of ease and convenience.

APPRAISAL. An estimate and opinion of value. The act or process of estimating value. Usually, a written statement of the appraiser's opinion of value of an adequately described parcel of property as of a specified date. Synonym: valuation.

APPRAISAL DATE. The date as of which the value estimate is applicable and valid.

BENEFITS. (1) General Benefits.—The benefits that accrue to the community at large, to the area adjacent to the improvement, or to other property similarly situated as that taken but which property is not taken. (2) Special Benefits.—Those benefits that accrue directly and solely to the advantage of the property taken. (3) Setoff Rule.—The rule with respect to setting off special benefits. The federal

courts and courts of some states allow setoff of benefits against both the value of the land taken and the damages to the residue. In other jurisdictions the rule allows the setting off of benefits against only the damages to the residue.

CONDEMNATION. The act of government (federal, state, county, municipal), and of duly authorized units of government and public utility companies invested with right of eminent domain, to take private property for public use and benefit, upon the payment of just compensation. It is the act of the sovereign in substituting itself in place of the owner, and/or the act of taking all or a part of the rights of an owner.

DAMAGES. In condemnation, the loss in value to the remainder in a partial taking of a property. Generally, the difference between the value of the whole property before the taking and the value of the remainder after the taking is the measure of the value of the part taken and the damages to the remainder. Two types of damages are recognized—consequential and severance.

DIMINUTION IN VALUE. “The act of lessening or decreasing value or desirability.”²

ENHANCEMENT IN VALUE. “To increase, advance, augment or elevate; to make or become greater in value or desirability.”²

EXCESS CONDEMNATION. The policy on the part of the condemnor of taking, by right of eminent domain, more property than actually is necessary for the public improvement.

HIGHEST AND BEST USE. The most profitable likely use to which a property can be put. The opinion of such use

¹ AMERICAN INSTITUTE OF REAL ESTATE APPRAISERS, *Appraisal Terminology and Handbook*. 4th ed. (1962).

² Webster's New Collegiate Dictionary. G. C. Merriam Company (1961).

may be based on the highest and most profitable continuous use to which the property is adapted and needed or is likely to be in demand in the reasonably near future. However, elements affecting value that depend on events or a combination of occurrences that although within the realm of possibility, are not fairly shown to be reasonably probable, should be excluded from consideration. Also, if the intended use is dependent on an uncertain act of another person, the intention cannot be considered. It is a use of land that may reasonably be expected to produce the greatest net return to the land over a given period of time—the legal use that will yield to land the highest present value. It is sometimes called optimum use.

LOCATION. Position with respect to human activities. Location is one of the basic elements contributing to the value of a property, and accessibility is the principal measure of the value of location.

MARKET VALUE. (1) As defined by some courts, the highest price estimated in terms of money that a property will bring if exposed for sale in the open market, allowing a reasonable time to find a purchaser who buys with knowledge of all the uses to which it is adapted and for which it is capable of being used. (2) Frequently, it is referred to as the price at which a willing seller would sell and a willing buyer would buy, neither being under abnormal pressure. (3) It is the price expectable if a reasonable time is allowed to find a purchaser and if both seller and prospective buyer are fully informed. The essential difference between market price and market value, as defined here, lies in the premises of intelligence, knowledge, and willingness, all of which are contemplated in market value but not in market price. Stated differently, at any given moment of time, market value connotes what a property is actually worth and what market price it may be sold for.

PARTIAL TAKING. The taking of only a part of a property for public use under the power of eminent domain; compensation must be paid for it, taking into consideration the damages and/or benefits to the remainder property.

POLICE POWER. Control by government, under which the public health, safety, morals, and welfare are served and to which property rights are subjected.

PROPERTY RIGHTS—BUNDLE OF RIGHTS. An undivided ownership of a parcel of real estate embraces a great many rights such as the right to its occupancy and use; the right to sell it in whole or in part; the right to bequeath; the right

to transfer, by contract for specified periods of time, the benefits to be derived by occupancy and use of the real estate. These rights of occupancy and use are called beneficial interests. An owner who leases real estate to a tenant transfers one of the rights in his bundle, namely the beneficial interest, or the right to use or occupancy, to the tenant in accordance with the provision of the lease contract. He retains all the other rights in the bundle. As compensation for the temporary relinquishment of the beneficial interest in the real estate, the owner receives rent. This rent constitutes a property separate and apart from the property comprising the untransferred rights in the bundle. After the lease is consummated, therefore, the owner is the possessor of two different properties: (a) The lease and the income it commands; and (b) The title to the fee, subject to the lease, including the right to the recovery of the beneficial interest in the real estate at the expiration of the lease contract.

REMAINDER. (1) A term designating that portion of a larger parcel remaining in the fee owner after a partial taking in condemnation. (2) An estate in property created simultaneously with other estates by a single grant and consisting of the rights and interest contingent upon and remaining after the termination of the other estates.

VALUE. The measure of value is the amount (for example, of money) that the potential purchaser probably will pay for possession of the thing desired. The ratio of exchange of one commodity for another (for example, one bushel of wheat in terms of a given number of bushels of corn); thus, the value of one thing may be expressed in terms of another thing. Money is the common denominator by which value is measured. It is the power of acquiring commodities in exchange, generally with a comparison of utilities—the utility of the commodity parted with (money) and that of the commodity acquired in the exchange (property). Value depends on the relation of an object to unsatisfied needs; that is, on supply and demand. Value is the present worth of future benefits arising out of ownership to typical users and investors.

ZONING. The public regulation of the character and intensity of the use of real estate through the employment of the police power. This is accomplished by the establishment of districts, in each of which uniform holding restrictions relating to use, height, area, bulk, and density of population are imposed on the private property.

APPENDIX B

STATUTORY LAW RESEARCH

The categories emphasized in the following review of statutory law are:

- A. Public use requirement.
- B. Fair market value or formula used in determining compensation.
- C. Date at which the valuation for purposes of compensation is to be made.
- D. Designation date (date when possession passes or title vests, or date at which administrative determination to take land is made).
- E. Enhancement of property taken or of remainder by reason of the taking or as a setoff against the value of the property taken and/or the remainder.
- F. Effect of enhancement or diminution of value by reason of the announcement of the taking.

Quotations and annotations to pertinent statutory law, by state, bear these letter classifications.

ALABAMA

- A. ALA. CODE, tit. 19, ch. 1, is entitled "Condemnation of Lands for Public Uses," but there is no specific requirement in the statute other than in tit. 19, § 1 ". . . proposing to take lands, . . . for any uses for which private property may be taken. . . ."
- B. Tit. 19 § 13: Commissioners "shall assess separately the damages and compensation. . . ." They may "view the lands to be subjected and must receive all legal evidence offered by any party touching the amount of damages and the amount of compensation they are entitled to receive."
- E. Tit. 19 § 14: ". . . provided that in the condemnation of lands . . . for public highways, the commissioners may, . . . take into consideration the value of the enhancement to the remaining lands of such owner that such highway may cause."

ALASKA

- A. § 19.05.080: Public use is required when highway department exercises power of eminent domain.
- B. § 19.05.090: Department shall pay into court the amount it considers to represent a reasonable valuation for lands taken.
- D. § 19.05.090: A declaration of taking is necessary for title to vest in the state. Such declaration is not effective until eminent domain proceedings have been instituted in court and a copy of the declaration has been filed in the office of the recorder.

ARIZONA

- A. A.R.S., § 12-1111: Land may be taken for "all public uses authorized by the government of the United

States," plus an enumerated list that appears to include public and private uses. Also art. 2, § 17 of the ARIZONA CONSTITUTION provided for taking for specific private uses.

- B. § 12-1122: Court or jury shall assess the value of the property sought to be condemned.
- C. § 12-1123: Actual value at the date of the summons shall be the measure of compensation and damages.
- D. § 12-1126: Property shall vest in the state when final order of condemnation has been filed.
- E. § 12-1122: Court or jury shall assess any benefit by reason of the improvement of the taking to the portion not taken. If this benefit is equal to any damage assessed to the part not taken by reason of the improvement, then the owner shall receive compensation only for the part taken. If the benefit to the remainder is less than the damage to the remainder, the benefit shall be deducted from damages.

ARKANSAS

- A. § 76-539: Implicit requirement of public use. § 76-532: Highway Commission given authority to acquire land for state highway purposes.
- B. § 76-533: Jury impaneled to ascertain the amount of compensation. § 76-521: Provides that consideration must be given, in condemnations for right-of-ways, that lands are required to be assessed at 50 percent of their true value, and also that owners of automobiles and trucks not living next to a state highway pay the same gas and auto license tax as those owning lands adjoining a state highway.
- C. None.
- D. § 78-536: State has right to possession upon filing declaration of taking and making deposit of estimated compensation with the Clerk of Court. § 76-536: Title vests upon making the deposit.
- E. § 76-521: In condemnation suits for right-of-way, there shall be deducted, from the value of any land taken, the benefits of said state highway to the remaining lands of the owner.

CALIFORNIA

- A. WEST'S ANN. GOV. CODE, § 184: State or those authorized by the state may acquire property for public use. WEST'S ANN. C.C.P., § 1237: Eminent domain is the right to take possession of private property for public use.
- B. WEST'S ANN. C.C.P., § 1248: Court must ascertain the value of the property sought to be condemned. § 1249: No improvements put on the property subsequent to the date of the service of the summons shall be included in the assessment. § 1249.1: Im-

provements on the property at such date that affect the value of the land shall be considered in the assessment of compensation unless removed or destroyed before a specified time.

- C. § 1249: Actual value of the land at the date of the issuance of the summons.
- D. § 1253: Property vests when final order of condemnation is filed in the office of the recorder.
- E. § 1248: Court must assess damages to part of land not taken by reason of severance and improvements by the state. Also assess benefits to remainder by reason of state improvement. If benefits equal damages, no compensation allowed as to remainder. If benefit less than damages, deduct former from latter and allow difference to landowner. If the benefit is greater than the damage, the benefit shall not be deducted from the value of the portion taken.

COLORADO

- A. C.R.S. § 50-1-1: Taking may be for public or private use.
- B. § 50-1-1: Requires that just compensation be made. § 50-105: Commissioners shall, after hearing evidence and viewing premises, certify the property compensation to be paid. § 50-1-17: In all cases, the owner shall receive the full and actual value of all property actually taken.
- C. § 50-1-17: Amount of compensation shall be determined as of the date the petitioner is authorized by agreement, stipulation, or court order to take possession, or the date of trial or hearing to assess compensation, whichever is earlier.
- D. § 50-1-16: Upon the entry of a rule describing the land, compensation, etc., as per 50-1-6(3) the state shall become seized in fee.
- E. § 50-1-17: Value of benefits to remainder may be deducted from value of damages to remainder, but not from value of land actually taken.

CONNECTICUT

- A. CONN. STAT., tit. 13A is entitled "Highways and Bridges." Ch. 238, part IV is entitled "Land Acquisition and Disposal." This is a special domain statute covering, in the terms of C.G.S.A. § 13A-73, the taking of land for the layout, alteration, extension, widening, change of grade, or improvement of any state highway, and is thus not covered by CONN. STAT., tit. 48 governing eminent domain for other purposes.
- B. § 13A-75: State shall pay owner just compensation.
- E. § 13A-73: Owner shall be paid for all damages and the state shall receive from such owner the amount or value of all benefits resulting from such taking, or other improvement.

DELAWARE

- A. 17 DEL. C., § 138: Property necessary to be taken or used in the construction, reconstruction, or maintenance of any state highway or proposed state highway.

- D. 10 DEL. C., § 6110: After filing of the condemnation proceeding, the state, on filing a notice of intention to take possession on a specific day and upon deposit in court of a sum estimated to be just compensation, has the right to enter into possession of the property. Title shall vest in plaintiff on the date of payment of the final award.

DISTRICT OF COLUMBIA

- A. D.C.C.E., § 16-1311: Any municipal use authorized by Congress.
- B. § 16-1314: Just compensation. § 16-1317: Jury shall view and examine the land and hear evidence by interested parties.
- C. § 16-1314: Value of the property as of the date of taking (filing the declaration and deposit of money).
- D. § 16-1314: A declaration of taking may be filed with the complaint or before judgment declaring the property to be taken. Upon filing of the declaration and deposit of money into court, title to the property vests in the District of Columbia and the property shall be deemed taken.
- E. § 16-1317: When only a part is taken, benefit to the remainder must be considered and the appraisal made accordingly. The District of Columbia Code also has a section dealing with real property for the United States. Item A, § 16-1351 authorizes the taking for public purposes. Otherwise, items B, C, and D are the same, while no reference is made to the subject matter of item E. (See § 16-1353.)

FLORIDA

- A. F.S.A. § 336.46: Authorizes county commissioners to acquire lands for purposes connected with county roads, and § 337.27 vests power of eminent domain in the highway department for purposes connected with the state highway system.
- C. F.S.A. § 73.071: Date of trial or date title vests, whichever is earlier.
- D. § 74.031: Declaration of taking may be filed with the petition or at any time before judgment.
- E. § 73.071: Enhancement by reason of improvement offset against damage to remainder only, not against value of property appropriated when suit is brought for condemnation of a road, canal, levee, or water-control facility right-of-way. No mention in reference to taking for other purposes. Florida also has a proceeding supplemental to eminent domain whereby possession of the property may be immediately taken rather than after judgment pursuant to § 73.111. If this procedure is used, a § 74.031 declaration of taking is filed, (§ 74.01) a deposit made in court, at which time title passes and the land is deemed taken, and compensation shall be ascertained as of the date of surrender of possession (§ 74.061), such surrender being made pursuant to court order (§ 74.051). Furthermore, § 73.041 provides that if land is used to which the state does not have title or has defective title, and

eminent domain proceedings are started with respect thereto, the compensation shall be determined as of the date of the appropriation.

GEORGIA

- A. GA. CODE ANN., § 36-104A: Public purposes.
- B. § 36-104A: Just compensation. § 36-505: In estimating the value of the land, take into account all legitimate purposes to which the property could be appropriated.
- D. § 36-606: Upon payment of the amount of the award and final judgment and appeal, title shall vest in the state.
- E. § 36-504: Consequential benefits to property not taken are set off against consequential damages to such property. However, the latter shall not be a setoff against the value to the property taken. Georgia also has a special eminent domain proceeding regarding land to be taken for highway purposes. However, it was declared unconstitutional in *Calhoun v. State Highway Department*, 223 Ga. 65, 153 S.E.2d 418 (1967).

HAWAII

A. HAWAII REV. LAWS, § 8-2:

Public property may be taken for public use. Private property may also be taken by the territory or any county in excess of that needed for such cases where small remnants would otherwise be left or where justifiable cause necessitates such taking to protect and preserve the contemplated improvement, or public policy demands such taking in connection with such improvement, in which case the condemning authority may sell or lease such excess property, with such restrictions as may be dictated by considerations of public policy in order to protect and preserve such improvements.

- B. § 8-21 deals with the assessment of damages in the taking for public use; however, a definition of "fair market value" or other synonymous terms is not provided.
- C. Pursuant to § 8-22, the date of service of the summons is the date for purposes of valuation.
- D. An official designation date is not provided by the statute.
- E. Pursuant to § 8-21, special benefits only may be deducted from the award. They may be used to offset both the compensation for the part taken and the damages to the remainder.
- F. Not covered by statute.

IDAHO

- A. IDAHO CODE, § 7-701: Public use by implication.
- B. § 7-711: Value of property sought to be condemned and all improvements thereon pertaining to realty.
- C. § 7-712: Value as of the date of the summons.
- D. § 7-717: Any time after trial and judgment entered, or pending appeal, after a deposit is made in court the plaintiff may be authorized to take possession. § 7-716:

When payment after judgment has been made, or a bond has been deposited in court, an order of final condemnation is filed, at which time title vests in the plaintiff.

ILLINOIS

The issues covered are the same as those for Hawaii; therefore, only the letter is used.

- A. ILL. STAT., ch. 47 § 1 contains a clear implication that property may be taken for public use only. This interpretation is supported by *Dep't. Pub. Works and Bldgs. v. Farina*, 29 Ill. 2d 474, 194 N.E.2d 209 (1964).
- B. Although there is a wealth of case law as to the Illinois definition of "fair market value," the statute contains no specific definition.
- C. In Illinois, the date of evaluation is the date of filing the petition for condemnation.
- D. An official designation date is not provided.
- E. § 9.6 requires special benefits to be considered in assessing damages. § 9 implies that special benefits may be deducted from damage to the remainder but not from compensation for the portion taken.
- F. This issue is not covered by the statute.

INDIANA

- A. IND. ANN. STAT., § 3-1701: Public use by implication.
- B. § 3-1706: Refers only to fair market value of property and improvements pertaining to realty.
- C. § 3-1706: Value as of the date of the § 3-1703 notice to defendants to show cause why property should not be appropriated.
- D. § 3-1708: Plaintiff may pay to Clerk of Court the damages assessed and is thereupon entitled to take possession and hold the interest therein.
- E. § 3-1706: Benefit to remainder is deducted from damage to remainder by reason of the taking and the state improvement, but not from value of land actually taken.

IOWA

- A. I.C.A., § 471.1: Public improvement.
- B. § 472.14: Value of land and improvements thereon.
- D. § 472.25: Upon filing of commissioner's report (§ 472.14) with sheriff, applicant may make deposit with sheriff and have the right to take possession.
- E. IOWA CONST., art. 1, § 18: . . . damages shall be assessed by a jury who shall not take into consideration any advantages that may result to said owner on account of the improvement for which [the land] is taken."

KANSAS

- A. KAN. STAT. ANN., § 26-513: Public use by implication.
- B. § 26-513: Just compensation value of property.
- C. § 26-513: Value at time of taking (no definition of time of taking).

- D. § 26-507: Within 30 days of appraiser's report (§ 26-506), state may pay the amount of the award to the Clerk of Court, at which time title vests.
- E. § 26-513: Damages in partial taking are the reduction in value of that portion remaining after the taking. The statute then enumerates factors to be considered in determining damages. Effect appears to be that benefit by reason of improvement is a setoff against total damages, and not only against damages to remainder.

KENTUCKY

- A. KY. REV. STAT. ANN., § 177.081: Specific provision for eminent domain proceedings by Highway Department to acquire land deemed necessary for the construction and maintenance of highways.
- B. § 177.083: Value of property taken.
- E. § 177.083: Value of benefit to remainder subtracted from damages thereto, but there is no limitation as to whether, if benefits are greater than damage, such is subtracted from the value of land actually taken. However, in *Dep't. of Highways v. Sherrod*, 367 S.W.2d (1963), this provision was held unconstitutional.

LOUISIANA

- B. L.S.A.-R.S. § 19:9: Value that the property possessed.
- C. § 19:9: Value before the contemplated improvement was proposed.
- D. § 19:13: Payment after judgment or deposit into court vests title. Special section dealing with land for highway purposes allows passage of title before judgment (§ 19:62).
- E. Do not deduct from the land appropriated any amount for the benefit derived by the owner for the contemplated improvement or work.
- F. § 19:9: By defining value of property before contemplated improvement was proposed, this would seem to exclude diminution of value by reason of the announcement of the taking.

MAINE

- A. 23 M.R.S.A. § 153: Authorizes commission to acquire lands for state highway purposes. 21 M.R.S.A. § 812: General statute authorizing taking whenever public exigencies require it.
- B. 23 M.R.S.A. § 155: Just compensation.
- D. § 154 requires a proposed date of taking in a petition to be served on the owner of the land.
- E. § 154: Special benefits occurring to remainder by reason of the improvement are set off against gross damage (value of property taken and severance damages) or if no severance damages, then against the value of property taken.

MARYLAND

- A. MD. ANN. CODE, art. 33A, § 1: Public use by implication.

- B. § 6. FAIR MARKET VALUE. "... price as of the valuation date for the highest and best use of such property which a seller, willing but not obligated to sell, would accept for the property, and which a buyer, willing but not obligated to buy, would pay therefor excluding any increment in value caused by the public project . . ." for which the land was taken.
- C. § 4: Value as of date of taking or date of trial, whichever is earlier.
- D. § 9: Upon payment of judgment and costs, title shall vest.
- E. § 5: Damages to remainder by reason of the taking are diminished to the extent of the value of special benefits to remainder by reason of the taking.
- F. § 6: Exclude from fair market value any diminution in value occurring between date of specific administrative determination to acquire the property and the date of actual taking, if the diminution was caused by the taking and was beyond the reasonable control of the property owner.

MASSACHUSETTS

- A. MASS. ANN. LAWS, ch. 79, § 1: Establishes eminent domain procedure. Ch. 82, § 8: Authorizes commissioners to acquire land for highways pursuant to ch. 79.
- C. § 12: Damages for property taken shall be fixed at a value thereof before the recording of the order of taking.
- D. § 3: Upon recording the order of taking, title vests provided, when taking is for a highway, title will not vest until possession has been taken.
- E. § 12: Damages to part not taken (remainder) caused by the taking shall offset by the benefit accruing to same. Also a provision that if no part of the land is taken, but it has sustained special and peculiar damage, this shall be offset by the benefit thereto.

MICHIGAN

- A. M.C.L.A. § 213.1: Authorizes taking for public use. § 213.361: Authorizes taking for public highway purposes.
- B. § 213.366: Just compensation.
- C. § 213.369: Upon filing declaration of taking and depositing award in court, title vests.
- D. § 213.367: May file declaration of taking with the petition or at any time before judgment.

MINNESOTA

- A. MINN. CONST., art. 1, § 13 provides: [P]rivate property shall not be taken, destroyed or damaged for a public use without just compensation therefore, first paid or secured." The courts have construed this to mean that property may be taken for public use only [*Visina v. Freeman*, 252 Minn. 177, 89 N.W.2d 635 (1958)]. M.S.A., § 117.01 also implies that the taking must be for public use.
- B. A statutory definition of "fair market value" is not pro-

vided, except to the extent that § 117.08 vests the power to determine it in court-appointed commissioners.

- C. § 117.16 implies that the date of evaluation shall be the date the commissioners file their award. This interpretation is supported by Minnesota case law.
- D. § 117.15: Upon payment of damages, petitioner is entitled to possession and to appropriate the land to public use.
- E. § 117.08 requires the commissioners to determine both the compensation for the property taken and the damage to the remainder in a partial taking. The statute does not prescribe the method of computation; however, the case law is clear that special benefits are to be deducted from both the compensation for the land taken and the damage to the remainder. *State v. Hayden Miller Co.*, 263 Minn. 29, 116 N.W.2d (1962).
- F. This issue is not covered by the statute.

MISSISSIPPI

- A. MISS. CODE ANN., § 2749: Establishes procedure for taking property for public use. § 2083: Authorizes taking for state highways.
- B. § 2760: Due compensation.
- D. § 2762: Upon payment of award after judgment, applicant is entitled to possess and appropriate land for public use.
- E. § 2760: No deduction for benefits incident to the public use for which taking occurred.

MISSOURI

- A. V.A.M.S., § 226.270: Authorizes condemnation for highway purposes pursuant to ch. 523.
- D. § 523.055: Petitioners entitled to possession within 15 days after deposit of award with Clerk of Court.

MONTANA

- A. MONT. REV. C. REPL. vol. 7, § 93-9902 requires that property be taken for public use. § 93-9902 limits the public uses to only those specified in the statute.
- B. § 93-9912(1): The commissioners appointed by the court shall determine the value of the property sought to be appropriated and all improvements thereon pertaining to the realty, and of each and every separate estate and interest therein; if it consists of different parcels, the value of each parcel and each estate or interest therein must be separately assessed. (The statute makes no reference to a standard for measuring value.)
- C. § 93-9913: The date of evaluation for the purpose of assessing damages is the date of service of the summons.
- D. § 93-9919: The condemnor takes title upon payment of the award and after the final order of condemnation. This is the only apparent designation date.
- E. § 93-9912(2)(3): This section indicates that enhance-

ment of the value to the remainder of the property is to be set off against the depreciation in value to the remainder only and not against the value of the portion taken in a partial taking.

- F. Not covered by the statute.

NEBRASKA

- A. NEB. REISSUED REV. STAT. (1943) vol. 4, art. 76, § 76-701 defines "property as meaning any such interest in real or personal property as the condemnor is empowered by law to acquire for public use."
- B. § 76-710 allows damages to be assessed by appraisers appointed by the court. However, the statute does not prescribe the standard to be used to measure such damages.
- C. The date of evaluation of the property is not specified by the statute.
- D. An official designation date is not prescribed.
- E. The statute does not indicate whether enhancement of the value of the remainder is set off against damages or against the value of the remainder only.
- F. Not covered by the statute.

NEVADA

- A. NEV. REV. STAT., vol. 2, ch. 37, § 37.040(1) requires as a condition precedent to the entry of a judgment of condemnation that the use to which the property is to be applied be a public use.
- B. No standard is prescribed to measure the value of the property taken or to ascertain the amount of damages.
- C. § 37.120: Sets the date of valuation for the purpose of determining damages as the date of service of the summons.
- D. § 37.160: Title vests upon entry of final order of condemnation on deposit of the award and when the final order has been recorded with the county clerk. This is the only apparent designation date.
- E. § 37.110(4): Enhancement of the value of the remainder is set off against the depreciation of the remainder only, and not against damages for the portion taken.
- F. Not covered by the statute.

NEW HAMPSHIRE

- A. N.H.R.S.A. 4:20 limits the condemnation to public use.
- B. Three court-appointed commissioners determine the value of the property. No standard such as "fair market value" is imposed on the commissioner by the statute to determine damages.
- C. The statute prescribes no date of valuation of the property for purposes of determining damages.
- D., E., and F. are also not covered by the statute.

NEW JERSEY

- A. N.J.S.A. 20:1-1 requires the condemnation to be for public use.
- B. Value is determined by the three court-appointed com-

missioners pursuant to 20:1-9, the statute makes no reference to fair market value or a synonymous term that might determine a standard for measuring damages.

- C. 20:1-9 sets the date of evaluation as the date of the filing of the petition to have the court appoint commissioners.
- D., E., and F. are not covered by statute (although there is a lot of case law available).

NEW MEXICO

- A. N. M. STAT. ANN. 1953, vol. 5, ch. 22, art. 9, § 22-9-30 to 22-9-38 impliedly declare a public use in certain mineral and oil well businesses and, to the extent that these businesses are able to exercise a condemnation right, public use is not required by the statute. Otherwise, public use is required.
- B. The measure of compensation is to be the property's actual value as determined by court-appointed commissioners.
- C. § 22-9-9 sets the date of evaluation as the date of notice of the condemnation.
- D., E., and F. are not covered by the statute.

NEW YORK

- A. N. Y. CONSOLIDATED LAWS ANN., BOOK 9A, CONDEMNATION LAW § 3 requires that condemnation be for public use only.
- B. § 14 gives the commissioners appointed by the court the duty to ascertain and determine the compensation that ought justly to be made to the property owners. The statute does not prescribe the method to be used to determine the compensation.
- C. The date of evaluation is the date of the award by the commissioners.
- D. Not covered by statute.
- E. § 14 indicates that real or supposed benefits that the owners derive from the public use are not to be considered when determining damages. However, the case law applies this statute to general benefits only.
- F. Covered by statute only to the extent described in "E."

NORTH CAROLINA

- A. N. C. GEN. STAT., vol. 2A, ch. 40, § 40-2 requires the taking of private property by right of condemnation to be for public use.
- B. § 40-17 empowers the court-appointed commissioners to ascertain and determine the compensation to the property owners. However, the standard for such a determination is not defined.
- C. Not indicated by the statute.
- D., E., and F. Not covered by the statute.

NORTH DAKOTA

- A. N. D. GEN. CODE, vol. 6, § 32-15-02 requires the taking of private property by right of condemnation to be for public use.
- B. § 15-22 empowers the jury, or court, or referee, if a jury is waived, to ascertain the damages to the property

owner. The standard used to determine value is undefined by the statute.

- C. § 32-15-23 sets the date of evaluation of the property as the date of trial.
- D. Not covered by the statute.
- E. § 32-15-22 prescribes that enhancement of the value of the remainder is set off against damages to the remainder only. If the enhancement exceeds these damages, it is not also set off against the compensation given for the portion taken.
- F. Not covered by the statute.

OHIO

- A. OHIO REV. CODE ANN., tit. 55 § 5519.01, and tit. 1 § 163-01 require taking of the property for a public use. The statute does not cover any of the other questions.

OKLAHOMA

- A. OKLA. STAT. (1961), ch. 27, § 6 prescribes, "Any private persons, firm or corporation shall have power to exercise the right of eminent domain in like manner as railroad companies for private ways of necessity or for agricultural, mining and sanitary purposes." Therefore, it appears that if eminent domain is for public use only, then "public use" takes on a broad definition in Oklahoma.
- B. Ch. 27, § 2: The governor appoints three resident householders in the county of the property being taken. These appointees appraise the value of the land taken and the damage to the remainder. However, no standard such as "fair market value" is prescribed.
- C., D., E., and F. Not covered by the statute.

OREGON

- A. ORE. REV. STAT., vol. 1, ch. 35, § 35.010, and ch. 772, § 772.015 allow for the condemnation of private property by private corporations that are authorized under the statute. To this extent, public use is not required. However, ch. 281, § 281.310, on condemnation generally, does require it to be public use.
- B. The statute requires suit by the condemning authority in any court of competent jurisdiction to determine the assessment of damages for the taking of property. No standard for the measuring of the value of the property is prescribed.
- C., D., E., and F. are not covered by the statutes.

PENNSYLVANIA

- A. PURDON'S PA. STAT. ANN., tit. 26 requires the taking to be for public use.
- B. § 1-603 defines fair market value as the price that would be agreed to by a willing and informed seller and buyer, taking into consideration, but not limited to, the following factors:
 1. The present use of the property, and its value for such uses.

2. The highest and best reasonably available use of the property, and its value for such use.
3. The machinery, equipment, and fixtures forming part of the real estate taken.
4. Other factors as to which evidence may be offered.

- C. § 1-402: The date of evaluation is the date of filing the declaration of the taking.
- D. § 1-404 requires the condemnor to file notice of declaration of taking in the office of the recorder of deeds in all counties in which the property is located.
- E. § 1-606 allows setoff of special benefits up to but not exceeding the total damages, including those to the remainder and those to the portion taken.
- F. § 1-604 states, "Any change in the fair market value prior to the date of condemnation which the condemnor or condemnee establishes was substantially due to the general knowledge of the imminence of condemnation, other than that due to physical deterioration of the property within the reasonable control of the condemnee, shall be disregarded in determining fair market value."

RHODE ISLAND

- A. R.I. GEN. LAWS (1956) vol. 6, tit. 37, § 37-6-5, requires the taking to be for public use.
- B. Not covered.
- C. § 37-6-14 sets the evaluation as the date of filing the condemnation papers.
- D. § 37-6-14: The official designation date is when the acquiring authority files in the office of the recorder of deeds, where the property is situated, various condemnation papers, including a description of the property and a plat, etc.
- E. and F. Not covered.

SOUTH CAROLINA

- A. S.C. CODE (1962) vol. 6, tit. 25, ch. 2, § 25-53 gives a clear implication that the law requires public use to the object of the condemnation.
- B. § 25-56 allows for the condemning authority to appoint a referee, and for the landowner to appoint a referee. These two appointees then designate a third referee and the three of them determine the compensation to the land owner. No standard for determining the land's value is explicitly prescribed.
- C. through F. Not covered by the statute.

SOUTH DAKOTA

- A. S.D. CODE (SUPP. 1960), ch. 37.40, § 37.4001 requires the taking of private property under right of condemnation to be for public use.
- B. § 37.4007 allows for a jury to ascertain the just compensation for the property proposed to be taken. However, no standard to determine the amount of the compensation is provided.
- C. and D. Not covered by the statute.
- E. § 37.4010 provides that the jury should take into consideration the benefits that may accrue to the owner

as the result of the condemnation; but the statute does not prescribe whether such benefits are to be set off against total damages or only against damages to the remainder.

- F. Not covered by the statute.

TENNESSEE

- A. TENN. CODE ANN., vol. 5, tit. 23, ch. 14, § 23-1401 gives the right of condemnation to those entities authorized to construct internal improvements. The reasonable implication is that this means for public use.
- B. § 23-1413 provides for a jury to determine the damages to the owner. However, no standard to determine the amount of compensation is provided.
- C. and D. Not covered by the statute.
- E. § 23-1414 provides that special benefits are to be deducted from damages to the remainder, but that compensation for the land taken shall be given without deduction.
- F. Not covered by the statute.

TEXAS

- A. VERNON'S TEX. ANN. CIV. ST. art. 3264 requires eminent domain to be exercised for public use only.
- B. Art. 3265 provides that three commissioners appointed by the county judge shall determine damages and award to the landowner the market value of the land taken. Market value is not defined.
- C. and D. Not covered by the statute.
- E. Art. 3265 allows for any increase in value to the remainder in a partial taking to be set off against damages to the remainder. No provision is made for setoff against damages to the portion taken (i.e., compensation for the portion taken).
- F. Not covered by the statute.

UTAH

- A. UTAH CODE ANN. (1953), vol. 9, ch. 34, § 78-34-1 requires the right of eminent domain to be exercised for public use only.
- B. § 78-34-9 requires a court or a judge thereof to value the premises sought to be condemned and to fix the damages to the property owner. A standard such as "fair market value" is not prescribed.
- C. § 78-38-11 requires the actual value of the property at the date of service of the summons to be the measure of compensation.
- D. Not covered by the statute.
- E. § 78-34-10 allows for benefits to the remainder to be deducted from damages to the remainder but not from the compensation given for the portion taken.
- F. Not covered by the statute.

VERMONT

- A. VT. STAT. ANN., vol. 6, tit. 19, ch. 5, § 221 requires the taking to be for public use.
- B. § 221 provides that damages are to be equal to the value

for the most reasonable use of the property or the right therein, and of the business thereon.

C. and D. Not covered by the statute.

E. § 221 requires enhancement or special benefits to the owner resulting from the condemnation to be used to offset both damages to the remainder and the compensation paid for the portion taken.

F. Not covered by the statute.

VIRGINIA

A. CODE OF VA. (1950), vol. 5, tit. 25, § 24-46.7 requires, as a condition precedent to the initiation of a condemnation action, that the condemning authority file a petition alleging the public uses to which the property taken will be put.

B. § 25-46.19 provides for a commission summoned by the court to meet and determine the compensation to the property owner. A standard such as "fair market value" is not provided to aid in this determination.

C. and D. Not covered by the statute.

E. § 25-46.20 allows peculiar benefits to be offset against damages to the remainder.

F. Not covered by the statute.

WASHINGTON

A. R.C.W.A. § 8.04.018 requires that the property be appropriated for public use only.

B. § 8.04.110 provides that the property owner may demand a trial to determine damages to the remainder and compensation for the portion taken; but a standard is not provided for computing these figures.

C. and D. Not covered by the statute.

E. § 8.04.080 allows for the special benefits derived from the taking to be offset against both the damage to the remainder and the compensation for the property taken.

F. Not covered by the statute.

WEST VIRGINIA

A. W. VA. CODE, vol. 15, § 54-1-1 requires that the property be taken for public use, and § 54-1-2 enumerates those public uses for which it may be taken.

B. § 54-2-5 provides that compensation and damages shall be determined by five commissioners who are disinter-

ested freeholders; but a standard is not prescribed to guide the commissioners in computing the compensation and damages.

C. and D. Not covered by the statute.

E. § 59-2-9 allows special benefits to be deducted from the damages to the residue, but not from compensation for the portion taken.

F. Not covered by the statute.

WISCONSIN

A. WIS. STAT. ANN., vol. 4, § 32.02 requires the condemnation authority to act for public purposes.

B. § 32.09(2) provides that compensation shall be determined on the basis of the most advantageous use to which the property might be put, limited to only those uses that actually affect the present market value.

C. § 32.09, in conjunction with § 32.06, fixes the date of evaluation of the property as the date of filing and *lis pendens*.

D. Not covered by the statute.

E. § 32.09(3) prescribes that special benefits accruing to the property and affecting its market value because of the planned public improvement shall be considered and used to offset the value of the property taken and the damages to the remainder, but in no event shall such benefits be allowed in excess of the value of the property taken plus damages to the remainder.

F. Not covered by the statute.

WYOMING

A. WYO. STAT. ANN., vol. 2, § 1-743 requires that condemnation be exercised for public purposes only.

B. § 1-767 provides for the appointment of commissioners to determine the compensation to the land owner; but a standard is not prescribed to aid them in their determination.

C. § 1-775 provides that the day on which the property is to be evaluated is the day of appraisal.

D. Not covered by the statute.

E. § 1-775 allows the value of the benefits or advantages, if any, to lands of the property owner not taken to be deducted from the damages to these lands. No provision is made for the deduction of benefits from the portion taken.

F. Not covered by the statute.

APPENDIX C

VALUATION CASE STUDIES OF THE EFFECT OF TIME ON VALUE

GENERAL CASE STUDIES

Illinois

East of St. Louis on I-55 and I-70, which merge for a short distance in this part of Illinois, is the Collinsville Interchange. At this point on State Route 157 are several new service stations, a large motel and restaurant, and other businesses, together with a new multimillion-dollar motel and housing project on the bluff above the interchange.

In 1949, H. D. Brinkoff purchased 77 acres here and paid between \$300 and \$400 per acre. Later, Illinois acquired 33 acres "right out of the middle of the farm" for the interchange of I-55 and I-70 with Route 157. The state bought this property at \$29,000, or \$833 per acre.

"Then we sat tight and waited," said Mr. Brinkhoff. An oil company began negotiating, and the first service station soon opened.¹ Since then, parcels of land subsequently have changed hands often. One well-located acre last sold for \$50,000. In the past few years, some 70 acres adjoining the interchange have been sold for a total of approximately \$1 million, or an average of approximately \$14,500 per acre. Subsequently, Collinsville annexed the booming area.

Observation.—Land values surrounding interchanges increase in value.

California

In 1963–64 the California Highway Department under Stewart J. Hill, Headquarters Right-of-Way Agent, prepared a report on Glendale² and the proposed location of the Ventura Freeway, Route 134, through that city.

As a result of this study it was found that real estate activity in Glendale had increased since the adoption of a route for the Ventura Freeway. Even though the freeway had not been built, properties close to the proposed route had increased in value by 40 percent since announcement in 1959, compared to an increase of about 20 percent to properties in the rest of the city. It was concluded that this price increase reflected development of an intensive demand for property along the proposed route that anticipated by many years the benefits of freeway construction.

Glendale is an older urban area. Changes are not readily perceived because they occur in an area already devoted to urban uses. The route through which the highway ran had compatible neighborhood land uses that were well defined, and it is essentially a residential community.

The California Highway Department found that shortly after route adoption the benefits of the freeway construction were anticipated by private investors, who took advantage by upgrading the area from single- to multifamily residential. This transition produced an enhancement in land values in the neighborhood. No pronounced effect was ob-

served on single-family land-use values. This study was based on more than 2,000 individual sales made between January 1959 and July 1963. It was found that approximately one-third of these occurred during the two-year period before the route adoption and the balance in the 2½-year period after the route adoption.

Maryland

In the Shot Tower Industrial District in Baltimore, Jones Falls Expressway, I-83, will be at grade to proximity of the Orleans Street Viaduct. From this point it will rise on a structure to a maximum height of slightly higher than 40 ft to a point where I-83 connects with I-95 to the south.

Background of Development of the Area

Manufacturing operations sprang up along Jones Falls Valley shortly after the Baltimore harbor became established near Fells Point and it was completely built up by the early 1900's. Many small services, such as barber shops, luncheonettes, bars, and similar establishments, are located in the area. Adjacent residential areas, including the Italian neighborhood to the southeast and the Negro ghetto to the northeast, are undergoing urban renewal activities.

The recent success of Shot Tower Industrial Park reaffirms the demand of industry for this area because of its many locational and geographical advantages. Evidence of the continued attractiveness of this industrial area is seen in the increase in rents paid for loft space over the last few years. Certain buildings are now commanding as much as \$0.10 more per sq ft than the present going rate in other parts of the community.

Future Trends of the Area

The area is in a period of transition to higher uses or rehabilitation of present uses. The expansion of municipal and federal facilities in the Old Shot Tower Historic Park, a proposed rapid transit system, the proposed community college (which is one portion of the Inner Harbor Project under urban renewal)—all have a bearing on the transitional changes.

For example, the *Sun Paper*, which employs approximately 1,715 persons, built a new building in the Shot Tower Industrial Park in 1950. Pennsylvania Railroad (now Penn Central) also considered this a key location and holds on to its facilities and station site in spite of the extension of the Jones Falls Expressway.

The Freeway Impact

The extension of I-83 through the industrial district will break up the continuity and integrity of the district to some degree if it is built at grade. However, the additional access provided by the expressway may more than compensate for

¹ JORDAN, ROBERT PAUL, "Our Growing Interstate Highway System." *National Geographic* (Feb. 1968) p. 210.

² HILL, STUART L., "Glendale Report." *California Highways and Public Works* (Mar.-Apr. 1964) 6 pp.

dividing the district. Increased accessibility should heighten the demand for replacement locations for industrial uses.

All units had been purchased, condemned, and demolished, as of May 1968, in the area under construction to the north. In the area to the south, not under construction, there are 56 uses to be taken, consisting of 14 warehouses, 8 manufacturers, 4 retailers, 2 institutions, and 28 miscellaneous uses that include small hotels, offices, etc., and about 1,360 parking spaces.

Among the largest employers yet to be taken are Universal Carloading and Distributing Company, Independent Ice Company, and Flynn and Emrich Company; Penn Central will move its operation to a new site between the Orleans Street Viaduct and Monument Street. Farther south of Baltimore Street, to Pratt Street, there are 17 uses, including 14 warehouses, 2 manufacturers, one retailer, and approximately 400 parking spaces.

As a result of the taking, there will be a substantial shortage of parking in the area. Among the firms to be dislocated in this segment are National Casket Company, Baltimore Wholesale Grocery, A. K. Robins, and John Dittmar and Sons. Of these, Baltimore Wholesale and Dittmar have already purchased ground in the Canton Industrial District. National Casket has expressed the desire to move to a more efficient site in the downtown area; however, they could be persuaded to stay if enough land were available. A. K. Robins would prefer to remain in the vicinity of the downtown.

Condemnation has been planned for this segment of the Interstate since 1953. For 15 years the condemnation has been in an on-again, off-again state of flux. Occupants of the land have been in a condition of indecision concerning future planning. As a result of the condemnation, slightly higher rates of physical deterioration set in within the condemnation area, compared with those same factors in segments adjacent to it. For various reasons some of these do not necessarily bear directly on market value, but indirectly they cause a diminution. Included in these are the following:

1. Capital expenditures to the structure may not be insurable after authorization to condemn has been given by the local government. Although this regulation is somewhat vague and not general, in the Jones Falls area an even more vague understanding has resulted because of the starts and stops of the planning.

2. When construction began in the northern segment, many firms in the southern portion purchased land in the suburbs before condemnation proceedings began, because they had anticipated (but did not get) an early settlement. This meant a loss of working capital.

3. Few repairs have been made on buildings within the condemnation boundaries in anticipation of their being condemned.

4. Removal of high-intensity employers to the suburbs will result in a loss of employment to the city of Baltimore. For example, Pittsburgh Plate Glass, which employed 120 people, moved to Cockeysville, 18 miles from the condemned location. In a period of high employment this is

probably not a major factor, but it could cause higher unemployment within the city under different economic constraints.

The research agency has concluded that a number of factors in connection with the Jones Falls Expressway will enhance values in contiguous segments, as, for example:

1. The expressway will act as a barrier separating the downtown from primarily residential and heavy industrial-type uses.

2. Increased access to the residential areas in the valley will probably help the areas, and the residential users in this portion of the study area are far enough away from the expressway so that it neither is aesthetically unattractive nor does its proximity lower land values.

3. The residential area to the southeast called "Little Italy" may experience an increased volume of business in its restaurant section that will necessitate expansion, as the area will be only two blocks away from the largest interchange (I-83 and Pratt Street).

4. Although access will be improved, and on- and off-ramps will be interspersed along the expressway to prevent the flow of too much traffic into the downtown on any one street, extremely crowded conditions will be in evidence during rush hours.

Observation.—Economic losses to the city can be offset by transitional land-use changes that enhance values.

Minnesota

The St. Paul City Council served notice on the Highway Department on January 10, 1969, that it wanted in 60 days a firm indication of the future course of Minnesota 212 through a portion of the East Side.

The proposed highway has been in the planning stages for approximately ten years. The Council became concerned with the portion of the proposed highway that will run through the East Seventh Street–Arcade area. Currently, there is a petition of Wolff properties to rezone, from residential to light industrial, a number of lots along Minnehaha between Arcade and vacated Hope Street. A portion of this land is being used as a used car lot. The firm would like to construct a three-story parking ramp and auto storage facility to be tied into the Merit auto showroom on East Seventh Street. Tentative plans for Highway 212 show that it will separate land on Minnehaha from the existing showroom on East Seventh.

Reports indicate that the right-of-way acquisition could be five to ten years away. The attorney for Wolff cited that it is unfair to expect all development to cease while highway officials make up their minds. This has been a commonly referred-to complaint of businessmen and homeowners of the East Side who may or may not be in the path of the future Minnesota 212.

Various public meetings have been held by the Highway Department outlining possible routes east of the Arcade–East Seventh area. The latest was on October 24, 1968, when residents of the community were advised of three alternate routes east of White Bear, but the Highway Department has given no indication of when the final route will be selected and when acquisition can begin.

Observation.—The real estate market within the right-of-way areas has been disturbed. Improvement plans by owners are deferred or put off indefinitely. Sales resistance is encountered when houses are placed on the market for resale, and in some cases speculators hoping to obtain a profit on a condemnation have stepped in to obtain some properties in depressed areas.

Alabama

It appears that advance acquisition studies carried out by the Bureau of Public Roads indicate the desirability of advance planning that would include early acquisition. Alabama studies indicate the benefits of acquiring the rights-of-way can be significant if they are acquired well in advance of need.

A case is cited in Birmingham, Ala., of a large, undeveloped shopping center site purchased by the State Highway Department in 1959; it was not to be needed for highway purposes until sometime in 1967 or 1968. The site was purchased for \$275,000, or at about 10 percent of the several million dollars that would have been involved if the shopping center had been constructed and the highway acquisition delayed nine or ten years.³

Innumerable shopping center analyses conducted by the research agency show a certainly not uncommon increase in land alone of from \$0.10 to \$0.20 per sq ft to more than \$1.50 per sq ft after the development of a major shopping center facility.

It can be argued that the highway "did not have to go through the middle of the shopping center," but at this point it is necessary to consider the actual engineering and construction costs involved in amending a highway. Conceivably, to go around it would have meant an adjustment in the right-of-way line a mile, or even two, on either side of the shopping center, and it still would have been necessary to pay the inflated land values caused by the shopping center development. The case in point is an example of increase in land values surrounding a shopping center development; it was likewise found in Southdale Shopping Center in Edina, Minn., south of Minneapolis, where land was purchased in the late 1950's at approximately \$2,000 per acre. Land on the periphery of the shopping center is now selling for commercial uses at \$2 and \$3 per sq ft.

Observation.—Advance, or early acquisition will reverse the trend of paying enhanced values for right-of-way after enhancement.

CASE STUDIES OF REMAINDER PARCELS

Within the past few years the vast majority of the state highway departments have analyzed and published numerous case studies on severance damages or benefits resulting from the highway right-of-way taking. In general, it can be said that many of these case studies point up a change in use after the taking that is a higher and better use of the property and was brought about by improved access and zoning changes. In general, these studies either broadly or specifically reflect reasons for changes in value because of

changes in time (but only as it applies to the type and time of construction) and usually because of a change in use. Only a sample of this type of study is presented here.

Texas

The whole of a Texas property was located approximately 13 miles south of downtown Dallas and fronted on existing U.S. Highway 77. The neighborhood was developed with small retail businesses fronting on the same highway. The whole property, 80,000 sq ft, consisted of four 100- × 200-ft lots; two fronting on U.S. Highway 77 were zoned commercial, and two fronting on Altaire Street were zoned residential. The two lots fronting on the highway were improved with a tavern, residence, and miscellaneous improvements, and the two on the street were vacant.

For the widening of U.S. Highway 77 to Interstate standards, in September 1960 the state acquired by negotiation 21,700 sq ft, including the major improvements. The taking left a 58,300-sq-ft remainder improved with the septic tank system.

A full freeway was under construction with an estimated project completion date of October 1965; however, the segment at the remainder was completed and opened in October 1964. The main lanes and one-way frontage roads are at grade level. Access from the remainder is permitted onto the frontage road. Visibility from the remainder is good.

In May 1963, approximately two years and five months before the estimated completion date of the project, the two south lots of the remainder sold for \$11,000. The following month the purchaser bought the two north lots for \$9,000, or a total price of \$20,000 for the remainder. A one-story office building was built on the two south lots and sold to a firm for office space. A two-story office building was built on the two north lots, the owner occupying part of it and leasing the other part as office space. The purchaser bought the abutting lot to the south and this remainder sale is discussed in another case study not discussed here. Zoning has been changed to commercial for a 200-ft depth fronting on I-35E and the balance fronting on Altaire Street is zoned residential.

Whole property value before	\$24,635
Part acquired	—12,900
Remainder value before acquisition	\$11,735
Appraised remainder value after acquisition	—11,460
Indicated damages	
Improvements—(loss of utility)	\$ 275
Remainder sold, May, June 1963	\$20,000
Remainder value, Sept. 1960	—11,735
Difference	\$ 8,265
	or, +70.4%

During the two years and eight months between right-of-way acquisition and sale of the remainder, it is estimated there was a 10 percent general increase in property values within the area not influenced by the highway. Subtraction of this general increase from the sale price and comparison

³ TURNER, FRANCIS C., "What is Highway Progress?" *Right of Way* (Oct. 1967) p. 9.

of this value with the appraisal remainder value before acquisition indicates that the remainder was enhanced by the highway construction.⁴

Virginia

The Commonwealth of Virginia has published a tabulation of the results of remainder studies made in various political subdivisions. Table C-1 gives a recapitulation of various sales in the districts indicated. Results vary, but individual sales of remainders ranged from an increase of about 9 percent to an increase of more than 25,000 percent over the original estimated value of the remainder. However, the increases appear to form a pattern that, in general, denotes that "the longer the lapse of time—the greater the increase."⁵

CASE STUDIES OF SPECIFIC PARCELS OR AREAS

Minnesota (St. Paul)

An unimproved property located about seven miles east of the St. Paul central business district contained 125.6 acres before the taking. The taking consisted of two parts, one 11.47-acre parcel and one parcel containing 42.68 acres, or a total of 54.15 acres. To avoid confusion this discussion is concerned with only the 42.68-acre taking.

In 1956, before the taking, the site was gently rolling and had drainage that appeared good, and the area was in the early stages of transition to single-family residential. Alternate uses in the area would have been industrial.

The highest and best use after the taking was commercial. The state proposed to construct a diamond interchange of I-694 with State Highway 212 within the center of the 125.6-acre tract.

⁴ *Right-of-Way Remainder Studies*. Case Study Remainder 9018-3-6-52, Interstate 35E in Dallas, Texas. Texas Highway Department (May 1965).

⁵ WALTON, L. E., JR., and SAVAGE, W. R., III, "An Investigation of Methods of Protecting and/or Reducing Costs of Future Rights-of-Way." *Virginia Highway Research Council Bulletin* (Dec. 1967) p. 6.

TABLE C-1

EFFECT OF ENHANCEMENT OF REMAINDER PARCEL DUE TO HIGHWAY LOCATION

DISTRICT	EST. VALUE OF REMAINDER (\$)	SALE PRICE (\$)	ENHANCE- MENT DUE TO HIGHWAY (%)	LOSS TO COMMON- WEALTH (\$)
Bristol	88,433	312,802	+254	224,369
Salem	21,746	50,000	+130	28,254
Lynchburg	38,908	86,550	+122	47,642
Richmond	288,229	1,395,380	+384	1,107,151
Suffolk	78,911	502,500	+537	423,589
Fredericksburg	173,311	403,250	+133	229,939
Culpeper	2,124,993	4,061,743	+91	1,936,750
Staunton	682,678	1,503,063	+120	820,385
Total	3,497,209	8,315,288	+138	4,818,079

The sequence of events, values, sale prices, offerings and awards follows:

MONTH/ YEAR	EVENT	ACRES	PRICE (\$)	PRICE PER ACRE
10/51	A confirmed sale	125.6	24,000	188
11/55	Research agency's estimates based on sale at 10% increase per year	125.6	31,400	250
11/56	"Before" public announcement (Research agency's estimate)	125.6	33,280	265
12/56	First public announcement	125.6		
12/56	"After" public announcement (Research agency's estimate)	125.6		350-400
8/59	Sale to condemn- nee	125.6	90,647	709
10/62	Appraisal for owner	125.6	125,000	1,000
12/62	A confirmed offer to purchase	125.6	153,000	1,200
1/64	Minn. Highway Dept. staff appraisal	125.6	91,000	725
12/64	Minn. Highway Dept. staff appraisal	125.6	123,500	980
4/65	Condemnation petition filed Cty. Dist. Court			
7/65	Condemnation Appraisal Commissioners sworn			
8/65	Appraisal for owner "Before"	125.6	165,000	1,320
	Remainder "After"	71.4	99,000	1,385
	"Taking" and "Damages"	42.68	51,750	1,215
9/65	Appraisal Commissioners' valuation hearing			
9/65	Commissioners' award filed (by practice in Minn., this is date of valuation & taking)	42.68	44,000	1,035
12/65	Highway Dept. fee appraisal	42.68	56,000	1,315
1/66	Case settled out of court	42.68	55,500	1,300
2/66	Construction of I-694 started in area			
8/66	Sale by owner to major oil company	9.4	80,000	8,500
1969	Construction projected for completion			

Observation.—In Minnesota the date of award is the date of value. This case points out the impact of enhancement on the land at various stages in the highway taking cycle. It is believed to be an accurate and typical example (except as to the degree of enhancement, which will vary). But, it does point out that if the state had acquired the right-of-way in 1956, at the time of announcement, it could have saved about \$40,000 on this one parcel, including an adjustment for value changes resulting from time.

More important, the state could have participated in the enhancement it created if it could have been authorized to acquire or value the entire tract in 1956 at the market value (about \$300 per acre) for \$37,680. The following example portrays this potential transaction. The interest shown is the estimated rate of return that the state should have been required to pay on its investment from 1956 until disposal. It is recognized that other methods of arriving at a net return could have been used in the example. The intent here is to demonstrate that a more equitable distribution of enhancement and benefits would be possible and could be significantly meaningful.

Cash-Flow Projections

Advance acquisition (1956) 125.6 acres	
@ \$300 per acre	\$ 37,680
Gross sales income (estimated)	
Remainder: (1968-1969) 71.4 acres	
@ \$7,000 per acre	\$500,000
Right-of-way: (1966) 54.15 acres	
@ \$300 per acre	16,245
Gross return in 12 years	<u>\$516,245</u>

The use of the right-of-way by the state did occur within ten years and sales took place prior to 1968. To the researchers' knowledge, not all of this land has in fact been sold. However, a 12-year land absorption-marketing period appears to be appropriate and conservative. Further, the example uses a much higher interest rate, at 7 percent, than the state would have to pay for the use of money.

The future worth of an investment of \$37,680 made in 1956 in 12 years at 7 percent, based on a factor of about 2.11, indicates the amount the state would have to obtain to recapture its investment in 1968

\$ 79,505

Including the part needed for highway purposes, the indicated net return that the state would have received if advance acquisition had been used—before minor expenses and payments (if any) in lieu of taxes—would have been

\$436,740

Minnesota (Minneapolis)

The use of evidence and the conditions prior to date of taking are important in a case involving the Minneapolis Housing and Redevelopment Authority.⁶ In 1959 and 1960 the Authority filed condemnation petitions for an urban

renewal area. Subsequent litigation by the owners of the Metropolitan Building delayed its date of taking. [*Housing and Redevelopment Authority v. Minneapolis Metropolitan Co.*, 273 Minn. 256, 141 N.W.2d 130 (1966).] July 7, 1961, was the actual date of the taking and valuation of the property. Under Minnesota law the date of the taking is the date of court-appointed Commissioners' Board award.

The renewal plan had been in effect for two and one-half years. Most of the properties had been acquired, and the area and land uses surrounding the building had changed from low-grade hotels and bars to vacant land awaiting development.

Commissioners' award was \$690,000, as of July 7, 1961. The jury award on appeal was \$740,000. Witnesses for the owner gave opinions of value ranging from \$850,000 to \$1,058,000. The Authority's witnesses fixed the value between \$559,532 and \$765,000.

The Authority's witnesses were allowed to depict the character of the area prior to the changes caused by redevelopment activity. In giving opinions of value, witnesses for the Authority testified to the desirability of the area before the date of the taking and to the effect of the area on the value of the property. Their opinions were predicated on the conditions prior to any condemnation.

The court instructed the jury as follows:

In determining the fair market value of the land and building you are required to consider the property as though there had been no other pending condemnation. . . . You are to decide the market value of the property . . . on July 7, 1961, if there had not been any condemnation or demolition by the authority of any properties in the lower loop area.

The owner contended that it was an error to allow evidence relating to conditions prior to the date of taking. The owner argued that the constitution entitled him to have fair market value determined as of the date of the taking.

As of 1968, one section of the Minnesota Housing and Redevelopment Act (M.S.A. 462.445, subd. 3) provided:

An award of compensation shall not be increased by reason of any increase in the value of the real property caused by the assembly, clearance or reconstruction . . . for the purposes of this act of the real property in an area.

The court upheld the provision and position of the authority and, among other things, stated that by the same reasoning no decrease in market value caused by the taking can be considered.

Thus, if there were favorable economic factors prior to renewal and prior to the date of taking, the owner could establish those factors as they relate to market value. The court concluded:

Neither an owner nor a condemnor is permitted to gain by any increase or decrease in the value of land taken due to the impact upon land values generated by an area redevelopment project for which the tracts included are acquired. It was held that the constitutional requirement of just compensation at the date of taking does not include the right to any enhancement of value resulting from the taking and that the court's application of the rule embodied in the statutory provision did not prejudice any of the owner's rights.

Observation.—If the date of announcement were to have

⁶ THEISS, WILLIAM R., in *The Appraisal Journal* (Oct. 1966) p. 605.

been used, the date of valuation confusion in the minds of the owner, appraisers, and jury could have been reduced. Although the court holds that enhancement or diminution caused by the taking cannot be considered, it appears to permit changes by economic circumstances.

Ohio

In 1957, Cleveland authorized an urban renewal plan (gross property income, \$8,000).

In 1958, property owners' appraisers estimated value at \$51,000.

In 1959, Cleveland passed an ordinance authorizing acquisition of defendants' property.

In 1960, city's expert witness placed a value on the property of \$34,000 to \$35,750.

In 1962, suit was commenced to assess damages.

In 1962, city appraisers estimated value at time of trial at from \$25,600 to \$28,850 (gross property income, \$600).

In 1962, a jury verdict was \$30,000.

In 1957, the property was situated in a solidly built community with residential, commercial, retail, and manufacturing structures. However, in 1957 the county welfare department instructed relief tenants to move out of the area, and buildings were acquired and demolished on a piecemeal basis.

Facts found by the court were that the decreased gross income from the property was directly caused by activities by the city of Cleveland. The court of appeals of Cuyahoga Falls agreed with the defendants' appeal that, in view of the actions by the city of Cleveland since 1957, it was erroneous to determine the fair market value as of the time of the trial (1962).

The appeals court stated that at the time of trial, the property was virtually abandoned, vandalized, badly deteri-

orated, and in the midst of a wasteland, and the trial court had been permitted to view the premises in such a dilapidated state, and that the evaluation of the property as it was at the time of trial was unjust. Further, the property owner was compelled to suffer a substantial loss while the city was permitted to obtain the property at a much depreciated value.⁷

The court also cited cases holding that the fair market value of the condemned property that is part of the program of public improvement cannot be enhanced by the value of such improvement. Consequently, the reverse of this should also be true—depreciation caused by the program should not decrease the fair market value of the property.

The court refused to apply the general rules and standards that the fair market value of the condemned property, which is part of the program of public improvement, cannot be enhanced by the value of such improvement, and the court refused to apply the general rules and standards that the time of trial be used as the date of valuation. *City of Cleveland v. Carcione*, 190 N.E.2d 52 (1963).

Observation.—A review of these case studies indicates that the date of valuation is of significant and primary concern in condemnation. To use the date of the public authorization of the improvement for the date of valuation (but only if the property is acquired and paid for on that date) would tend to eliminate enhancement or diminution or, at least, to lessen the impact that such improvements will have on value.

Further, if the state were to be given the authority to acquire entire properties contiguous to its right-of-way alignment, it would alleviate the enhancement gained by the owner and lessen the impact of such improvements on value.

⁷ THEISS, WILLIAM R., in *The Appraisal Journal* (Oct. 1963) p. 525.

APPENDIX D

PROPOSED MINNESOTA "ADVANCE ACQUISITION" ACT *

A BILL FOR AN ACT FOR ESTABLISHMENT AND CONTROL OF LOCATIONS AND RIGHT-OF-WAY WIDTHS FOR FUTURE FREEWAYS OR EXPRESSWAYS

Be it enacted by the Legislature of the State of Minnesota: SECTION 1. DETERMINATION OF NEED. Where, as the result of its investigations and studies, the commissioner of highways finds that there will be need in the future, for the development and construc-

tion of segments of a state trunk highway as a freeway or expressway, and where the commissioner determines that in order to prevent conflicting costly economic development on areas of lands to be available as rights-of-way when needed for future development, there is need to establish, and to inform the public of, the approximate location and widths of rights-of-way to be needed, the commissioner may proceed to establish such location and the approximate widths of rights-of-way in the following manner.

Comments.—Intent of this Act is to forestall costly improvement of properties located within the limits of highway corridors intended for future highway construction in urban

* Prepared February 21, 1968, by Edward R. Lorens, Director of Right-of-Way Standards, Minnesota Department of Highways, and Donald J. Lalor, Chief Right-of-Way Agent, Hennepin County Highway Department, Minneapolis, Minnesota. Unpublished and not formally introduced to the Minnesota State Legislature.

areas. It is not intended as a freeze on property values within that corridor.

SECTION 2. PUBLIC HEARING. The commissioner shall hold a public hearing on the matter in a courthouse or other convenient public place in or near the region to be affected by the proposed change, which public hearing shall be advertised and held as are state trunk highway hearings.

Comments.—It is intended that public hearings shall be held for all projects the same as any proposed for early or immediate construction.

SECTION 3. PREPARATION OF MAP. The commissioner may make a survey and shall prepare a map showing the location of the freeway or expressway and the established corridor widths of the rights-of-way to be needed for the freeway or expressway, including the right-of-way to be needed for traffic interchanges with other highways, grade separations, frontage roads and other incidental facilities and for the alteration or relocation of existing public highways to adjust traffic service to grade separation structures and interchange ramps. On such map, there shall also be shown the existing highways and the property lines and ownership of lands to be needed, as indicated by county auditor's records.

Comments.—This plan of right-of-way control pending acquisition required for construction will require preparation of a right-of-way map with designation of a proposed right-of-way corridor and center line for preparation of commissioner's orders prior to any commitment of acquisition. It is expected that exact right-of-way limits and final construction plans will not be required for purpose of control by this Act inasmuch as entire properties will be acquired in accordance with the procedure, and final right-of-way determination will not be required until disposal of excess right-of-way is considered. Procedure of corridor acquisition based on total taking of entire property holdings was used several years ago to expedite right-of-way acquisition pending firm survey and plan information. Disposal of excess right-of-way after completion of highway construction will offset some of the cost of early acquisition and will also lessen the amount normally paid for severance damage due to partial taking.

SECTION 4. APPROVAL OF MAP. The approval of such map and notice of such action shall be filed in the office of the register of deeds, or registrar of titles of the county wherein the land is located. Submittal of an approval map for filing shall include an index of properties affected by proper registry in the office at the register of deeds or registrar of titles.

Comments.—Approval and filing procedure shall be the same as for any project of normal acquisition.

SECTION 5. PUBLIC NOTICE. The notice of such action and of such filing shall be published once each week for three successive weeks in a newspaper of general circulation in such county, and within 60 days following such filing, notice of such filing shall be served by personal service on occupants and the owners of record on the date of filing, as such ownership is shown by record in the office of the county auditor.

Comments.—Public notice as provided here is considered necessary as due notice to affected property owners of their rights.

SECTION 6. SUBSEQUENT CHANGE. With like approval, notice and publications, and notice to the affected record owners, the commissioner of highways may from time to time supplement or change such map.

Comments.—It is expected that proposed right-of-way needs may change but the public is entitled to notice of such change by the same procedure as for original right-of-way designation.

SECTION 7. RESTRICTION OF IMPROVEMENT. After map is filed, no one shall erect or move in any additional structure, nor rebuild, alter or add to any existing structure within the area of the rights-of-way as shown on the map or in such proximity thereto as to result in damage to any part of tract ownership when the right-of-way is acquired, without first giving notice to the department of highways within 60 days of such contemplated improvement. This requirement shall not apply to any normal or emergency repairs or replacements which are necessary to maintain an existing structure or facility in approximately its previously existing functioning condition.

Upon receipt by the highway department of such notice of contemplated improvement, the department shall issue permit for the requested improvement with specific advice to the applicant that when the right-of-way is acquired for highway construction, no payment will be made for newly constructed improvements, acquired improvements, nor for consequential damages to adjoining property under the same ownership due to taking of improvements constructed within the right-of-way after public notice and filing of official right-of-way map.

Comments.—This portion of the proposed Act may be controversial until there is full understanding of the procedures of petition for relief by Section 8 hereof, and basis of payment by order of relief as in Section 9. It is intended that a property owner be allowed to place improvements within the proposed right-of-way but that no payment be made therefore nor for consequential damage and adjoining property of the same owner. Any permit issued for such construction must be with explicit advice on these conditions.

SECTION 8. PETITION FOR RELIEF. An owner of property who does not choose to develop said property under terms of permit granted by the state for such development as recited in Section 7 hereof, may allege (1) by sworn statement that diligent and bona fide efforts have been made to sell the affected property which is the subject of allegation and that a buyer has not been found, and (2) that the commissioner would be justified in ordering relief in accordance with provisions of Section 9.

Comments.—This section is intended as relief for the property owner who desires to make improvements but cannot abide by condition of no payment for such improvement at time of right-of-way acquisition. It is also intended as relief on hardship basis for the owner who cannot sell his property for a reasonable price in the face of eventual right-of-way acquisition.

SECTION 9. ORDER FOR RELIEF. Upon receipt of a petition for relief the commissioner shall take one of the following actions:

A. He may authorize acquisition of the entire property affected by eventual highway construction by purchase agreement or eminent domain proceedings in accordance

with procedure for normal acquisition of right-of-way. Decision for payment of full market value based on appraisals as of the date of petition for relief shall be by the commissioner and shall consider the amount of outstanding mortgage or contract for deed.

B. He may refuse to authorize acquisition under any terms within the immediate future other than as provided in Section 7 hereof.

C. He may issue permit for immediate construction as requested with alteration of permit so as to assure full payment for land and any improvements hereon in the course of normal acquisition of the property as required for construction.

D. He may authorize acquisition of the entire property by direct purchase agreement with payment on the following basis:

1. Cash payment in the amount of two-thirds of the state's estimate of value of the property being acquired for deed on the property, but in no case less than outstanding mortgage or contract plus semiannual interest payment on the remaining one-third of the state's estimate of value until final determination of value at the time of need for construction purposes but in no case longer than five years after consummation of the acquisition agreement. Final payment to the owner shall be based on the appraised value at the time of need for construction purposes with credit to the state for initial cash payment as required above. If initial valuation is less than the final determination of value, additional interest payment based on the difference in final value and initial valuation shall accrue to the owner for the total time from order granting relief under Section 9 hereof, until time of final payment. Interest shall be credited to the state on a similar basis in the event initial valuation is greater than final determination. Rate of interest to be paid shall be determined by the commissioner as current interest rate in the market place.

2. In the event that the appraised value for final payment under Paragraph D-1 is unacceptable to the owner, determination of that value shall be by proceedings in eminent domain with credit for previous payments and additional interest payments or credits in accordance with provisions of Paragraph D-1.

Comments.—Under the provisions of this section the commissioner has four alternative courses of action: Courses A, B, and C are self-explanatory; Course D-1 provides a basis of cash payment based on a percentage of the state's estimate of value in today's market, plus interest on the remainder in semiannual payment until time of acquisition of the balance of the project required for construc-

tion. The state's estimate of basis of this payment is not intended to be the basis of final payment and its preliminary intent could well be based on full and true tax valuation. Final payment would be by regular appraisal of market value at the time of need for highway construction as for any normal acquisition. The provision for regular interest payments plus the interest payments themselves should allow any owner sufficient capital to make a replacement purchase with assurance of full payment based on current market value at time of construction needs.

Paragraph D-2 of Section 9 provides for final payment by condemnation procedure in the event agreement cannot be reached by direct purchase for final payment.

SECTION 10. RIGHT OF POSSESSION. Right of possession of the subject property shall pass to the state upon execution of an agreement between the state and owner for payment in accordance with provisions of Section 9 hereof, and duly recorded in the office at the register of deeds or registrar of titles in the county wherein the property is located. Fee title to the property shall vest in the state after final payment for said property. Current taxes shall be due and payable by the vendor upon right of possession by the state. No subsequent taxes shall be assessed thereafter.

Comments.—It is intended that the state take possession of all properties acquired by agreement as provided in this Act. Right of possession will include all privileges of occupancy, leasing, or disposal, as for parcels of ordinary right-of-way acquisition.

SECTION 11. LEASING. After gaining the right of possession to the subject property the commissioner may lease said property for fair rental upon terms and conditions as he deems proper until such time as the improvements thereon are disposed of prior to highway construction. He may enter into further lease agreement for that part of the property not required for construction purposes until such time as that property is determined as excess and disposed of in accordance with provisions for disposal of excess property. All rents received from the leases shall be paid into the state treasury. Seventy percent of the rents shall be credited to the trunk highway fund. The remaining thirty percent shall be paid to the city, village, borough, or township where the real estate is located.

Comments.—Leasing procedure for properties acquired under terms of this Act will be the same as for any other parcel of right-of-way as provided in Minnesota Statutes 161.23, subd. 3.

APPENDIX E

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- WALTON, L. E., JR., and SAVAGE, W. R., III. "An Investigation of Methods of Protecting and/or Reducing Costs of Future Rights-of-Way." *Virginia Highway Research Council Bulletin* (Dec. 1967).
- West End Urban Renewal*. Stockton Redevelopment Agency, Stockton, Calif. (1966) 10 pp.
- What Freeways Mean to Your City*. Automotive Safety Foundation, Washington, D.C. (1964) 56 pp.
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