FORWARD

TENNESSEE DEPARTMENT OF TRANSPORTATION

RIGHT-OF-WAY DIVISION

The Right-Of-Way Division is one of many operating divisions within the Tennessee Department of Transportation. A Headquarters Division Office is located centrally with the other Division Headquarters Offices. The Right-Of-Way Division has a Division Director with a staff of functional specialists headed by senior Transportation Managers. There are four regional field offices geographically located to address statewide needs. A Regional Transportation Manager 2 manages each of these offices, and they deal with all facets of highway right-of-way administration. There is a very wide variety of specialized expertise required unique to state highway agencies such as: *fiscal management*, *contract administration of appraisal and acquisition*, *utility* and *railroad coordination* and *relocation*, *issuance of utility encroachment permits*, *cost estimates of right-of-way* and *utilities*, *right-of-way plans reviews*, *right-of-way in house appraisals* and *contract fee appraisers*, *review appraisals*, *arranging for court Testimony*, *acquisition of real estate*, *hazardous materials mitigation*, *preparation of settlement letters*, *relocation assistance of people*, *property management*, *excess land disposal*, *preparation of contracts* and *working with the Attorney General's office to settle court cases*.

The four Regional Transportation Managers 2 report to the Regional Directors. Subordinate personnel have continuous contacts with the Right of Way Division Central Office Personnel. These field offices generate much of the central office work.

There is a constant dialog with a high volume of correspondence and reports between the Division Headquarters personnel and the four Regional office personnel.

The core objective of the Division effort is to have right-of-way available timely in advance of highway construction contracts. There is a sense of urgency to get punctual and accurate information transmitted between offices in order to meet the deadlines for a fast pace highway construction program and the attendant follow-up work required to assure compliance with all Federal, State and Local laws, regulations and executive orders.

This right-of-way manual has been prepared to assist division employee's, other Tennessee Transportation Department personnel and State Government Personnel as well as clientele not in State Government when working with the Transportation Department on matters related to right-of-way.

Jeff Hoge
Right-of-Way Division Director

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Table of Contents

CHAPTER I	**ORGANIZATION**	**I-1**
CHAPTER II	**ADMINISTRATIVE AND FINANCIAL PROCEDURES**	**II-1**
CHAPTER III	**CONTRACTS**	**III-1**
CHAPTER IV	**PROJECT DEVELOPMENT**	**IV-1**
CHAPTER V	**PUBLIC INFORMATION**	**V-1**
CHAPTER VI	**RIGHT-OF-WAY PLANS**	**VI-1**
CHAPTER VII	**APPRAISAL & APPRAISAL REVIEW**	**VII-1**
CHAPTER VIII	**ACQUISITION**	**VIII-1**
CHAPTER IX	**RELOCATION**	**IX-1**
CHAPTER X	**PROPERTY MANAGEMENT**	**X-1**
CHAPTER XI	**LEGAL**	**XI-1**
CHAPTER XII	**MODIFIED ACQUISITION PROCEDURES**	**XII-1**

Original Issue: April 1997
Revised: December 2015

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STATE OF TENNESSEE DEPARTMENT OF TRANSPORTATION
RIGHT-OF-WAY PROCEDURES MANUAL
RIGHT OF WAY DIVISION

INTRODUCTION

This document is a working manual that describes the organization of the Right-of-Way Division and outlines the policies, procedures and practices to be followed in carrying out the responsibilities of each office. The manual incorporates the major functions performed by the Division of Right-of-Way.

The Manual is written to assist officials of the Department in coordinating departmental affairs and to inform the Federal Highway Administration of our policies and procedures. Most importantly; however, it is written for our internal use to instruct new employees, and to serve as a guide to the operating right-of-way employee in the performance of their assigned duties.

This manual includes a description of operational procedures and provides a detailed discussion of the process by which all major right-of-way functions are to be accomplished. Its provisions provide for full compliance with applicable laws and implementing regulations and as such, strict adherence, to the instructions is expected. Deviations from the requirements of the manual will be allowed only by approval of the Right-Of-Way Division Director or a designee.

Chapters I, II and III of the manual include discussions on a number of general items, some of which are not directly related to project development, others of which involve management operations or incorporate the activities of more than one operational element. Chapter I deals with the organization of the office depicted with tables of organization for each office. Chapter II incorporates many of the administrative tasks of the Division and in addition, describes its financial responsibilities. Chapter III incorporates the general requirements for all contracts administered by the Division of Right-of-Way.

Chapter IV, as an aid to the user, provides an overview of the project development process as it relates to the Office of Right-of-Way. It includes a synopsis of each of the major functions, involving right-of-way, in the development of a highway project. In addition, each item is referenced to that chapter of the manual in which its detailed instructions are incorporated.

The remaining chapters are devoted to the detailed operating procedures and work processes of the various right-of-way functions. To the greatest extent possible, chapters are segregated according to the functional areas. Also, many of the chapters contain detailed descriptions of the flow of those processes that involve a fairly complex chain of events. Flow charts are included in Chapter IV to provide a graphic representation of the process as an aid to the user.

As is the case with any directive of this type, changes must occasionally be made. Necessary changes will be accomplished through the issuance of Central Office Procedures (C.O.P.'s). A C.O.P. may include provisions for a formal amendment to the manual, but often times will merely supersede the provisions of some portion of the manual and will not incorporate a formal revision (see Chapter II for more details on C.O.P.'s). Also, the entire manual will be reviewed on an annual basis to determine if amendments or revisions are necessary. All C.O.P.'s issued during the intervening twelve months which were not formally incorporated in the manual will be incorporated at that time.

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Chapter I
ORGANIZATION

Table of Contents ..... Page

I GENERAL 2

II RESPONSIBILITIES 2

III DEPARTMENT OF TRANSPORTATION TABLE OF ORGANIZATION 3

IV CENTRAL OFFICE RIGHT-OF-WAY DIVISION TABLE OF ORGANIZATION.....4

V. UNIFORM REGIONAL RIGHT-OF-WAY FIELD OFFICE ORGANIZATION CHART.....5

ORGANIZATION

I GENERAL

The Right-of-Way Division reports to the Assistant Chief Engineer of Design. The Division consists of the Right-of-Way Office and the Utilities Office. The Headquarters Office oversees administration of policy and procedures. The Regional Offices oversee the daily operations.

The Table of Organization for the Department of Transportation included on page 3 of this Chapter shows the relationship of the Right-of-Way Division to the other organizational elements of the Department. The lines of authority are indicated on the following charts as clearly as tables of organization can depict. The organization of the Right-of-Way Division, indicating established lines of authority is also shown on the organization tables/charts on pages 3 through 5 of this Chapter. There may be some minor deviation from the charts by the various offices.

II RESPONSIBILITIES

The Right-of-Way Division is responsible for the acquisition, clearance and utility adjustments of rights-of-way for most State or State-aid highway construction projects and for managing the non-highway use of the State's highway rights-of-way.

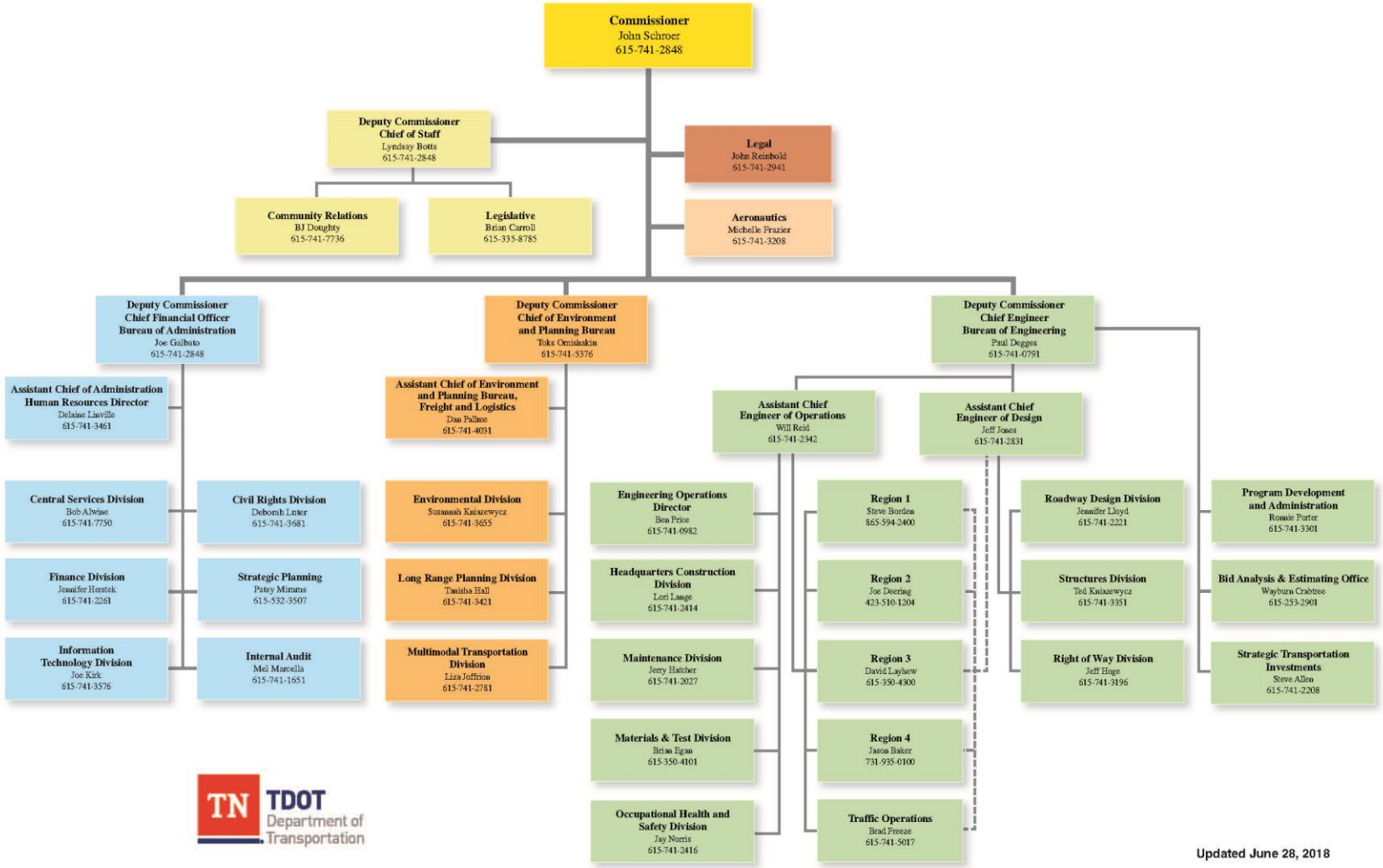
The field offices are the operational arms of the Division. The regional personnel are directly responsible for the expeditious acquisition of rights-of-way, relocation assistance for people and businesses, utility adjustments, property management and excess lands monitoring/reporting in accordance with established policy and procedures.

The central office is responsible for coordinating all phases of right-of-way, for establishing the policies and operating procedures of the Division and for monitoring field office operations. In addition, it is responsible for the majority of appraisal and appraisal review activities, contracting for fee appraisals and fee appraisal reviews, and right-of-way acquisition services as needed.

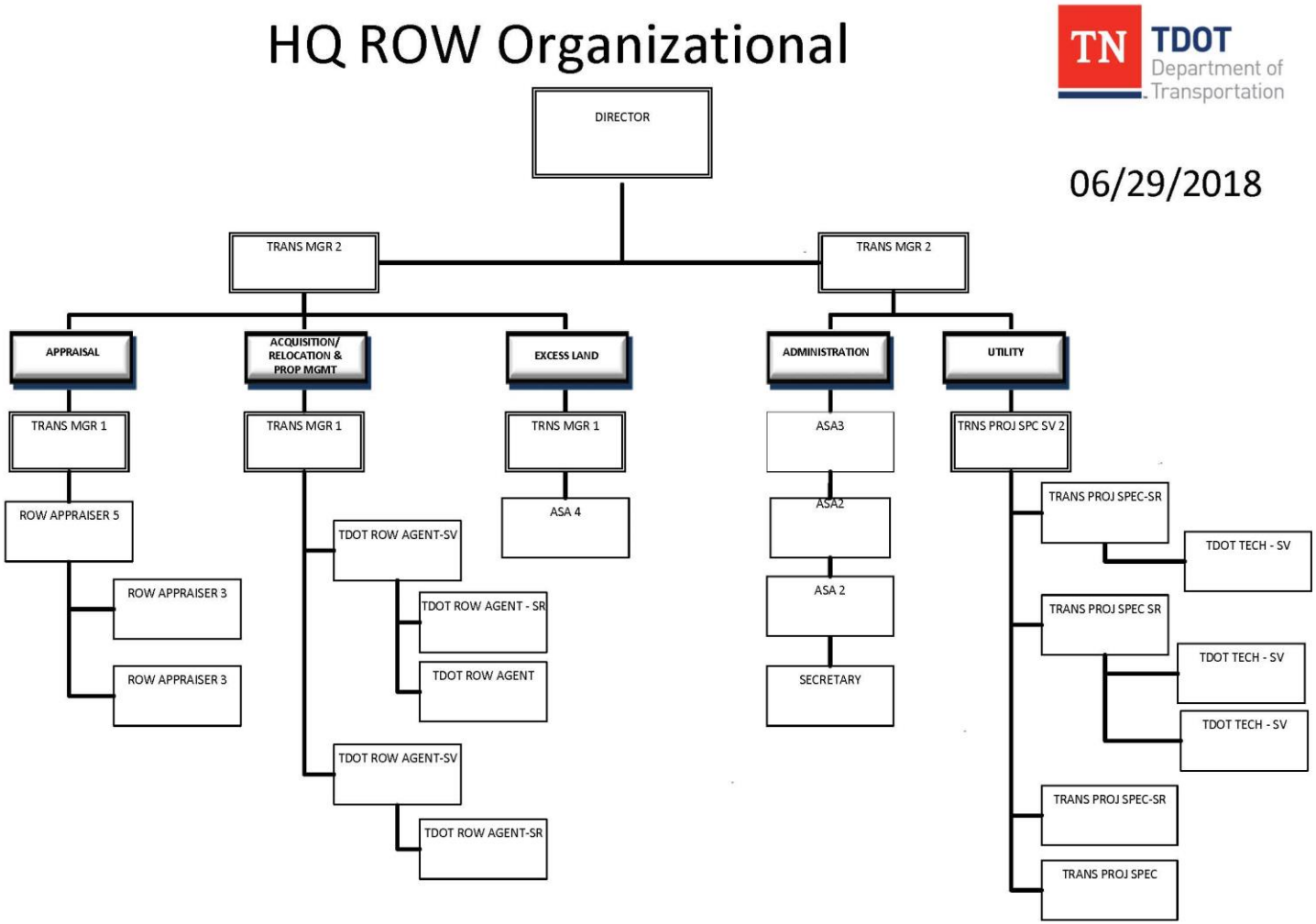
The detailed duties and responsibilities of each office and of the personnel within the Offices are outlined throughout the remaining chapters of this manual.

ORGANIZATIONAL CHARTS

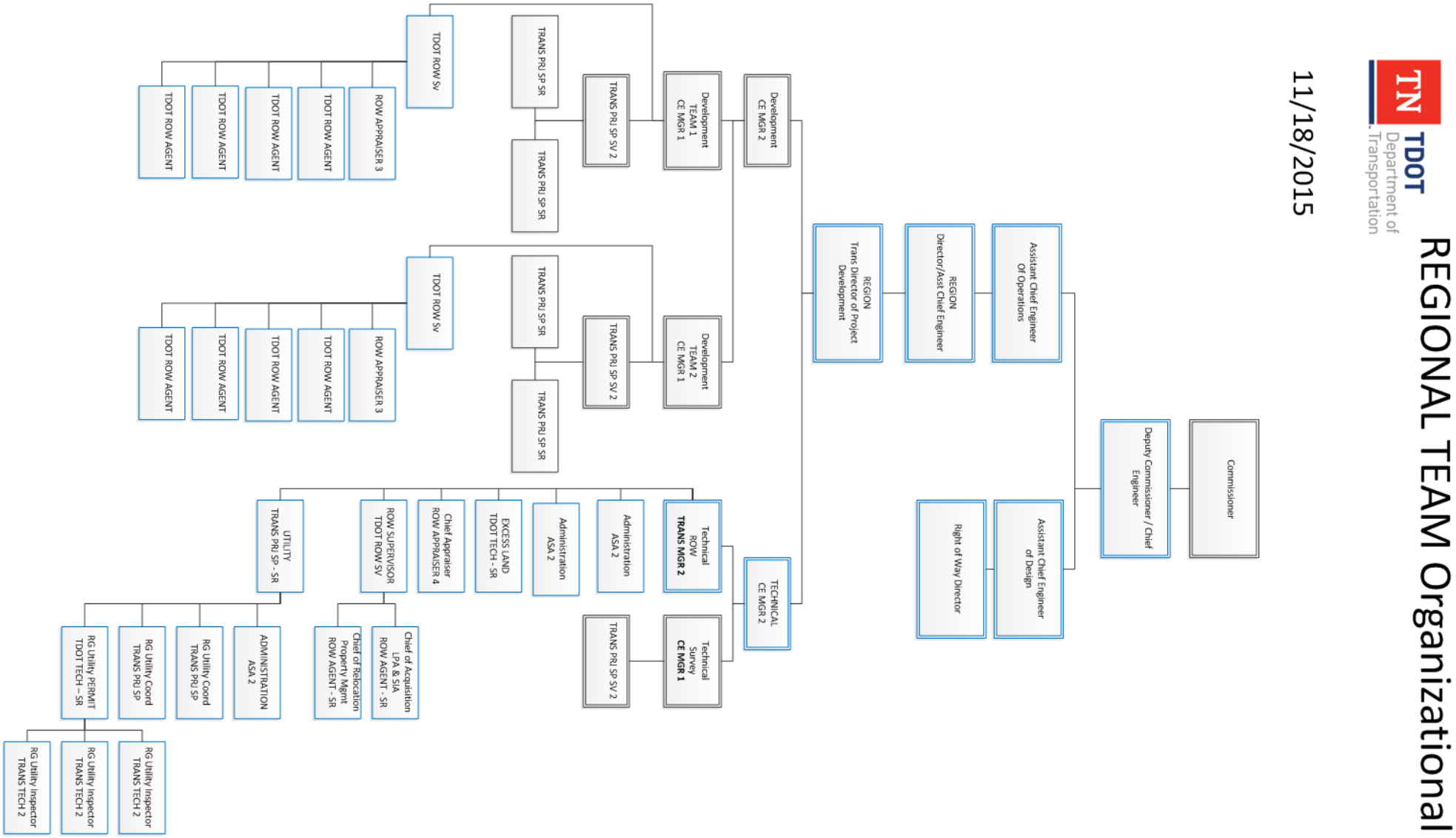
III. DEPARTMENT OF TRANSPORTATION TABLE OF ORGANIZATION



IV. CENTRAL OFFICE RIGHT-OF-WAY DIVISION TABLE OF ORGANIZATION



V. UNIFORM REGIONAL RIGHT OF WAY FIELD OFFICE OF ORGANIZATION CHART



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Chapter II
ADMINISTRATIVE AND FINANCIAL PROCEDURES

TABLE OF CONTENTS ..... Page

PART ONE: REPORTS & REPORTING REQUIREMENTS 3
I. GENERAL 3
II. MULTI-PROJECT SCHEDULING REPORTS 3
A. General 3
B. Top Management Report 3
C. Right-Of-Way Activities & Events 3
III. RIGHT-OF-WAY CERTIFICATION 3
PART TWO: RECORD KEEPING 4
I. GENERAL 4
II. PROJECT FILES 4
A. General 4
B. File Maintenance 4
C. File Identification 5
III. MULTI-PROJECT RECORD SYSTEM 6
IV. GENERAL FILES 6
V. FINAL RECORDS 6
PART THREE: MANUAL CHANGES 7
I. CENTRAL OFFICE PROCEDURES 7
II. ANNUAL EVALUATION 7
PART FOUR: RIGHT-OF-WAY AUTHORIZATIONS 8
I. GENERAL 8
II. THE AUTHORIZATION PROCESS 9
III. SPECIAL CASES 9
A. General 9
B. Hardship Acquisition or Protective Buying 9
C. Total Take-Partial Take Authorization 11
D. Early Acquisition 11

PART FIVE: RIGHT-OF-WAY PAYROLL CHARGES 12
I. GENERAL 12
II. INSTRUCTIONS FOR COMPLETING TIME SHEET 12
III. CONTROLS 13
PART SIX : RIGHT-OF-WAY EXPENDITURES 14
I. GENERAL 14
II. PROCESSING RIGHT-OF-WAY EXPENDITURES 14
III. SPECIAL CASES 15
IV. INSTRUCTIONS FOR COMPLETING FORM DT-1606 16
V. INSTRUCTIONS FOR COMPLETING VOUCHERS WITHIN THE EDISON SYSTEM 16
VI. EDISON EXPENDITURE ACCOUNT CODES 17
VII. FEDERAL-AID PRE-AUDIT INELIGIBILITY NOTIFICATION 17
ATTACHMENTS 19

PART ONE:
REPORTS & REPORTING REQUIREMENTS

I GENERAL

In the Division of Right-Of-Way a number of reports are generated or received on a regular basis. Some of these reports are issued for use as a management tool, while others are used to generate additional documents. The following discussions cover the majority of reports and/or reporting requirements that are generated on a regular basis.

II MULTI-PROJECT SCHEDULING REPORTS

A. General

The Department uses a Program, Project and Resource Management (PPRM) scheduling system to plan, schedule and monitor the progress of highway projects. This is a computer generated system containing all proposed highway projects for a five-year period. The system is based on predetermined job standards for all major functions. A number of management reports are generated from the schedule. The schedule is maintained and updated daily by responsible personnel. The individual section chiefs in each of the field offices are responsible for recording the items that come under their responsibility. It is important that these updates be complete and as accurate as possible. It is noted that the central office staff completes certain activities.

B. Top Management Report

It contains an overview of all projects contained in the scheduling system. It lists the proposed starting point for a number of key events in the project development process. It also provides a status report on current activities and lists the earliest construction letting date. The report is obtained through the PPRM scheduling system.

C. Right-Of-Way Activities & Events

This report lists the proposed starting time for a number of key right-of-way activities. It also provides a status report on activities under way and lists the earliest construction letting date.

III. RIGHT-OF-WAY CERTIFICATION

Before advertising the physical construction of a highway project for bids, the Right of Way Division must certify as to the availability of right-of-way. This certification is the responsibility of the Right-of-Way Division Director or designee and will be accomplished under the procedures outlined in Chapter 4, III, P.

PART TWO:
RECORD KEEPING

I GENERAL

Each field office is responsible for maintaining an official records system. These official files are to be maintained in a specified location under the direct supervision of the Administrative Services Assistant. At the discretion of the Regional Transportation Manager 2 responsibility for any or all of the official files may be delegated to one or more section chiefs. The files are to be made available for inspection at reasonable times by authorized State or Federal Representatives. The records system must contain as a minimum, project files, multi-project records, general files for pre-project activity, a voucher control system. The requirements for the voucher control system is described elsewhere in this chapter. The requirements for the remaining items are as described below.

II PROJECT FILES

A. General

While it is a common and advisable practice for the several operational elements to maintain working files on those tracts under their control, these working files cannot replace the official file. All documents pertinent to the project or to individual tracts on the project must be incorporated in the official files. It is suggested that duplicates be made of all pertinent material and that one copy be transferred to the official file immediately. This method may not be practical for all offices. In any event, a system must be established in each field office to ensure that all applicable file material is transferred to the file no later than the date that a voucher is requested for the payment of an item.

B. File Maintenance

In order to establish a degree of uniformity among the field offices, it is recommended that all project files be maintained as described below. For each project, the following general folders should be establish and filed in the sequence shown:

1. General Correspondence--This should be used to file all project related correspondence that does not pertain to a particular tract or occupant. It should be maintained sequentially by date of correspondence.

2. Contracts--All information on contracts involving more than one parcel should be incorporated and should include all proposals, awards and payment documents related to the various contracts.

3. Proposal and Acceptance--All information relative to the proposals and acceptance of the proposals (resolutions) by the Local Government should be included.

4. Voucher Request and Voucher Received File--A record of all vouchers requested should be kept current with a receipt of the same.

5. Plan Revisions--All plan revision requests and approval actions should be included. If practical, each request and the associated approval action should be filed sequentially

6. Project Activities--This should incorporate such items as public meeting reports, relocation plans, public announcements, reports, plan reviews and other documents of this nature. The relocation data booklet, and appraisal brochures should either be incorporated in the folder or placed immediately following it, unless they are maintained by a section chief.

In addition to the general folders, a separate folder should be established for each acquisition and for each relocation on the project. If, for example, a project includes a duplex, one side occupied by the property owner and the other side occupied by a tenant, three folders should be established; an acquisition folder, a relocation folder for the owner occupant, and a relocation folder for the tenant occupant. At the discretion of the Regional Transportation Manager 2, the relocation and acquisition folders for the owner occupants may be combined. If combined they must be appropriately labeled. (See item C following.)

C. File Identification

For control purposes all file folders are to be adequately labeled. The following method of folder identification is suggested:

1. Each folder should contain the project number and the county in which the project is located.
2. Each folder should contain additional identification as follows:
   a) General subject of the folder--including correspondence.
   b) Acquisition--the tract number
   c) Relocation--the tract number followed by the occupancy status and displacee name.
      The following symbols are suggested for use as occupancy status codes:
      00 owner occupant
      T-0 tenant occupant
      B business
      NP nonprofit organization
      F farm

III. MULTI-PROJECT RECORD SYSTEM

Each field office must establish and maintain a system under which certain key project elements will be recorded as they occur for all active projects under their control (i.e. IRIS). The system should be established so that the user is able to identify by project when and if all key elements have occurred. This should be accomplished by maintaining the accepted ROW Computer Data Program. As a minimum, all items necessary to complete the Right-Of-Way Certification must be incorporated into the system.

IV GENERAL FILES

General files should be established, preferably by county and route number, to record pre-project correspondence and documents. As right-of-way projects are established, the general files should be reviewed to determine if any file material needs to be transferred to the project files. If so, the transfer should be made. All material found to be superfluous should be discarded at this time.

V FINAL RECORDS

The project records will be reviewed for completeness. The project files will then be labeled for storage and retained in the archives section for a minimum of three (3) years. The field office will be responsible for retaining any pertinent project documents for future reference. Charges or credits that arise on a closed project will be handled as follows:

The field office will contact the central office, in writing, giving details of the charge or credit and reasons for same. The central office will advise the field office as to how the charge or credit will be handled.

PART THREE:
MANUAL CHANGES

I. CENTRAL OFFICE PROCEDURES

As discussed in the Introduction, necessary interim changes in procedure will be accomplished by the issuance of Central Office Procedures. A Central Office Procedure (C.O.P.), is issued as a formal policy statement by the Right-Of-Way Division Director. A C.O.P. will be issued only to revise an operating procedure made as a result of a significant change in Departmental Policy. All C.O.P.'s will follow the same basic format. A C.O.P. will be titled by subject, designated by numeric sequence code for each calendar year, and contain a date on which the change becomes effective. Each C.O.P. will itemize the affected section or sections of the manual. If appropriate, an explanation as to why the change is being made may be given. The details of the revised procedure will then be discussed. Finally, to further clarify the change, the procedural differences and their impact may be discussed.

II. ANNUAL EVALUATION

At the end of each calendar year, the Right-of-Way Division Director or an appointee will review the entire manual to determine if amendments or revisions are needed. This review will take into account any findings made as a result of either internal or external investigations, suggestions or recommendation from the field offices, changes in Department policy, and any other pertinent information. At the conclusion of the review, all needed revisions will be written and circulated, as appropriate, for comments. After consideration of comments received, the revisions will be finalized and distributed to all manual holders. A cover letter containing instructions for incorporating the changes will accompany the distribution. All C.O.P.'s issued during the year will also be formally incorporated in the manual at that time.

PART FOUR:
RIGHT-OF-WAY AUTHORIZATIONS

I. GENERAL

The right-of-way authorization grants to the Division of Right-Of-Way authority to commence specified right-of-way activities and to charge to a project, costs incurred while accomplishing the authorized activities. There are three distinctive phases in the right-of-way authorization process, as follows:

A. Authorization For Incidentals--Includes all preliminary right-of-way activities such as title reports, but not appraisals.
B. Authorization To Appraise--Includes all preliminary right-of-way activities including property appraisals.
C. Authorization To Acquire--Includes all right-of-way activities through the acquisition of rights-of-way.

The first phase (incidental) authorization will normally occur soon after the Design Public Hearing. After changes resulting from the hearing are made, Right-Of-Way Plans for Incidentals are printed and issued. These plans initiate the incidental authorization process. In some cases incidental activities may be authorized at an earlier date. For example, on Bridge Replacement projects incidentals will be authorized no later than the date of the Right-Of-Way Field Review, and if no earlier plans are available, the plans used for the field review will be used to accomplish incidental activities.

The second phase (appraisal) authorization will be issued only after the Right-of-Way Plans have been completed and approved. This will occur in most cases shortly after the field office has completed the plan check and submitted the appropriate letter to the Design Division (See Chapter VI for details on the plan check process.)

Phase Three (Acquisition) can be authorized without obtaining an accepted proposal from the local government. An accepted proposal is desired but not required to begin the acquisition phase.

On many projects, two and possibly all three phases of a project will be authorized concurrently. The following are examples of situations where authorizations covering several phases will be issued concurrently:

A. It is Department policy that on projects with ten or fewer tracts phase I and phase II authorizations will be issued concurrently. Certain bridge replacement projects may be excepted from this policy.

B. On projects with no displacements, the appraisal and acquisition phases will often be issued concurrently.

II. THE AUTHORIZATION PROCESS

Federal-Aid and State Funded Projects Are Handled Alike For Authorization Purposes except for federal oversight projects. According to the Stewardship and Oversight Agreement between TDOT and FHWA, FHWA will approve the authorization.

All authorizations originate with the Program Development and Administration Division. The ROW Activities letter, issued with the plans and mailed to the central office and the ROW field office will be the authorization for initiation of incidental work, (Item 2). The acquisition authorization on projects is made by approval of the CA-5 from the Program Development and Administration Division. The Program Development and Administration Division will transmit the acquisition authorization to the Right-of-Way Division Director and appropriate regional Right-of-Way Office.

III. SPECIAL CASES

A. General

There will be occasions when circumstances require that special and restrictive authorizations be granted. The details of these limited authorizations will be fully explained on the CA-5 which is sent to the field office. It is incumbent on the Regional Transportation Manager 2 to ensure that only those activities authorized are initiated.

B. Hardship Acquisition/Protective Buying

In extraordinary cases or emergency situations, the Right-of-Way Division Director or designee and/or the Regional Transportation Manager 2 may request an authorization to acquire a particular parcel or a limited number of parcels within the limits of a proposed highway corridor for one of the following reasons:

1) Protective Buying: the Department must clearly demonstrate that development of the property is imminent and such development would limit future transportation choices. A significant increase in cost may be considered as an element justifying a protective purchase.

2) Hardship Acquisitions: The Department must accept and concur in a request for a hardship acquisition based on a property owner's written submission that:

   a) supports the hardship acquisition by providing justification, on the basis of health, safety or financial reasons, that remaining in the property poses an undue hardship compared to others; and

b) documents an inability to sell the property because of the impending project, at fair market value, within a time period that is typical for properties not impacted by the impending project.

To obtain Federal-Aid participation, the following must be complied with. Prior to the Department obtaining final environmental approval, the Department may request FHWA agreement to provide reimbursement for advance acquisition of a particular parcel or a limited number of parcels, to prevent imminent development and increased costs on the preferred location (Protective Buying), or to alleviate hardship to a property owner or owners on the preferred location (Hardship Acquisition) provided the following conditions are met:

(1) The project is included in the currently approved STIP;

(2) The Department has complied with applicable public involvement requirements in 23 CFR parts 450 and 771;

(3) A determination has been completed for any property subject to the provisions of 23 U.S.C. 138; and

(4) Procedures of the Advisory Council on Historic Preservation are Completed for properties subject to 16 U.S.C. 470(f) (historic properties)

(Environmental decisions. Acquisition of property under this section shall not influence the environmental assessment of a project, including the decision relative to the need to construct the project or the selection of a specific location).

The Regional Transportation Manager 2, when requesting such an authorization will submit the request to the Right-of-Way Division Director or designee. The request should contain a synopsis of the problem, a copy of the property owner's request (if applicable), supporting documentation, Right of Way Form-44 (cost estimate) and a sketch of the property or properties involved as they relate to the highway corridor, and the Managers recommendation for action. If the request originates in Headquarters, the Headquarters Transportation Manager 2 will follow the same process. If plans are available, a copy of all applicable plan sheets with the tract or tracts involved outlined should be submitted instead of the property sketch.

The Right-of-Way Division Director or designee will review the submission and take appropriate action. If the Right-of-Way Division Director or designee does not approve the request, the field office will be so informed. If the request is approved, it will be forwarded to the Program Development and Administration Division for action. All authorizations will be in the same sequence and format as with the standard authorization process. This will likely be a single stage authorization for the acquisition of the tract or tracts affected.

C. Total Take - Partial Take Authorizations

In certain unique cases, there may be a need to begin acquisition activities before the entire project is ready. In such cases, a limited authorization may be granted to acquire either all or some of the total take tracts. In these cases, the authorization will specify what tracts are included. The authorization may incorporate all total takes, or specific designated tract numbers. A special set of right-of-way plans will normally be issued for projects of this type. The actual authorization process will be in accordance with the standard procedures discussed earlier in this section of the manual.

D. Early Acquisition

The Department may initiate the acquisition of real property at any time it has the legal authority to do so based on program or project considerations. The Department may undertake early acquisition for corridor preservation, access management, or other purposes. Acquisition costs incurred by the Department prior to executing a project agreement with FHWA are not eligible for Federal-aid reimbursement. However, such costs may become eligible for use as a credit towards the Department's share of a Federal-aid project if the Department follows the conditions established in "23 CFR 710.501 (b)(1-7)".

PART FIVE:
RIGHT-OF-WAY PAYROLL CHARGES

I. GENERAL

To be paid, all employees of the Office of Right-Of-Way must complete a time sheet which is to be turned in to their immediate supervisor no later than the 16th and 1st of each month. The document serves a dual purpose; it is used both to record the attendance of all employees, and to distribute their time to the proper accounts or projects.

Appropriate distribution of an employee's time to the proper account or project is extremely important. If an employee is actively engaged either directly or indirectly in a project related activity, he is to charge the time involved to the applicable project. All other time must be charged to the appropriate overhead account.

If an activity leads to the accomplishment of a project result, the time involved may legitimately be charged to that project. If, however, an activity has something else as its primary goal, even though it may incidentally affect a particular project, the time involved may not be charged to a project. If, for example, a section supervisor holds regular meetings with his staff to review accomplishments, discuss problems and so forth; both the supervisor and his staff must charge this time to overhead. In the Right-Of-Way Director, only the Right-of-Way Division Director and his clerical staff are excluded from charging time to projects. All other employees are eligible to charge time to projects. If, however, an employee charges any of his time to a project during a pay period, he must complete the time sheet accordingly.

II. INSTRUCTION FOR COMPLETING TIME SHEET

During any pay period that an individual makes time charges to a project, he must submit a time sheet covering his daily activities for the time period.

The time sheet must provide an accurate accounting of all time charged. Also, there must be consistency in the record of work shown on this form, and dates shown on other records on file pertaining to a function performed by that person on a certain date. For these reasons, it is recommended that all employees record their activities on a daily basis rather than attempting to reconstruct the record after an extended time period.

For each working day the employee must record the project number or overhead account and the total number of hours worked. If an employee works on more than one project in a day, the activity on each project must be completely recorded.

III. CONTROLS

It is the responsibility of the employee's immediate supervisor to examine time sheet for accuracy. He must also review the total hours claimed so that he may attest to the reasonableness of those hours and he must check all project activity claims to ensure that the charges are valid. Upon completion of the review, the supervisor will approve the time sheet. It is recommended that the supervisor make occasional spot checks of activities and other documents as a crosscheck against activities shown on the employee's time sheet. The Supervisor will compare the time sheet for all employees under his control and his designee will enter all pertinent data.

PART SIX:
RIGHT-OF-WAY EXPENDITURES

I. GENERAL

Project **Edison**, the State of Tennessee's Enterprise Resource Planning (ERP) Solution, is a suite of integrated software applications that are used to perform administrative business functions. As part of Edison implementation, Business Units, Department IDs, and Work Unit Descriptions have changed. Transportation's Department ID is now 40100. The following chart outlines the Right of Way specific information:

	Old TDOT Unit	Department ID	Short Description
Headquarters	6340	4036340000	ROW Dir
Region 1	1941	4121941000	R1 ROW Fld
Region 2	2942	4122942000	R2 ROW Fld
Region 3	3943	4123943000	R3 ROW Fld
Region 4	4944	4124944000	R4 ROW Fld

II. PROCESSING THE RIGHT-OF-WAY EXPENDITURES

Within Edison, all payments are made either by warrant or direct deposit. The voucher is created within Edison by entering data on multiple screens. Saving this information automatically generates a Voucher Identification number. Supporting documents are no longer mailed to Finance and Administration; they are scanned and uploaded to Filenet as part of the voucher. The methods of payment have changed as follows: 1) the contract payment, 2) the single payment voucher, and 3) the regular voucher. Object detail codes have been replaced with Accounting Codes and our Activity Codes are now NIGP codes. The DT-1606 is no longer used **except** for court recodes. (For detailed instructions, please refer to your TDOT Edison Regional/District Manual, Right-of-Way payments section). The section supervisor will review the claim to ensure that the requested amounts are proper. When the section supervisor completes the review, the package will be forwarded to the Regional Transportation Manager 2 or his/her designee. The entire package will be reviewed to ensure that the necessary documents are included and approved. It is suggested that the Administrative Assistant be delegated approval authority for this activity. After approval, the payment is entered into Edison. Since documentation is uploaded with the voucher in Filenet, the Region field office may file the original document with printed copies of the voucher from Edison. Two copies are printed, one is highlighted pink to be filed in the corresponding project tract file and the other copy is highlighted blue to keep in a suspense file until receipt

of the payment warrant. Once Edison processes the voucher and Transportation accounts approves the transaction, the payment warrant will be transmitted directly to the originating field office, and forwarded to the records section. The records section or the section that originated the voucher will match the suspended blue voucher with the correct payment warrant. It is noted that in some instances the field Transportation Manager 2 or his/her designee may be the agent responsible for the claim. The above procedures will be followed on all but the following special cases:

1. Right-of-Way Contracts (CRW)

2. Payment of Attorney and Expert Witness fees.

3. Final Judgment or Compromise Settlement.

III. SPECIAL CASES

A. Consultant services contracts are prepared by the appropriate section manager and approved by the Right-of-Way Director at Headquarters. These contracts are two (2) year on-call continuous contracts for Right-of-Way acquisition, relocation, appraisal and utility coordination work on an “as needed” basis. The contract itself is loaded into Edison and given a purchase order number with a specific dollar amount. The Transactional Contract is actually the Master Work Agreement. The Purchase Order is the “encumbrance” of an individual work order. Each work order will be a separate Purchase Order. If the project has plans revisions, these contracts may have several supplemental contracts in addition to the original contract.

B. When an invoice for payment of Attorney fees and/or Expert Witness fees is received, it will be transmitted to the Administrative Assistant. The Administrative Assistant will ensure that all documents (letter from the Attorney General’s office to the Regional Transportation Manager 2 accompanies the request for payment) and the necessary receipts are included with the invoice. These payments are pre-approved by the Attorney General’s office. The procedures for payment should be followed as stated in the Section II above.

C. Final Judgments and Compromise Settlements

Both stipulated settlements and court awards are handled in the following manner. After receipt of approval of settlement or court award by the Deputy Attorney General, a worksheet is initiated and completed for approval by the Transportation Manager 2 or his/or designee. Once reviewed and approved by either the Transportation Manager 2 or his/her designee, the worksheet is returned and processed for payment in Edison. The worksheet is the approved documentation uploaded in Filenet.

Once Edison processes the voucher and Transportation accounts approves the transaction, the payment warrant will be transmitted directly to the regional field office, and forwarded to the records section. The payment warrant is

transmitted directly to the Attorney General's office for finalizing of the condemnation case.

IV. INSTRUCTIONS FOR COMPLETING FORM DT-1606

Any time a final settlement or judgment is made, all monies previously deposited with the court must be recoded. The Right-of-Way Form DT-1606, "STARS ROW STANDARD CODING FORM" is used for this purpose (until a procedure is established in Edison). To aid in proper completion of the Form DT-1606, specific examples of proper coding are provided in the "GUIDELINES FOR STARS STANDARD CODING FORM."

V. INSTRUCTIONS FOR COMPLETING VOUCHERS WITHIN THE EDISON SYSTEM

A. Detailed step-by-step instructions for completing a voucher transaction are provided in the TDOT Edison Regional/District Manual. There are three types of payments: single payment voucher, regular voucher entry, and the contract/purchase order voucher (most commonly used with contracts which require specific dollar amounts per project).

B. Multiple payments are no longer limited within the Edison system. As each voucher is able to add as many lines as necessary as long as the payment is being made to the same vendor. An example would be recording fees and copy fees may be combined on one voucher as long as the payments is to the same Register especially since our projects consist of many tracts; therefore, recording deeds, orders of possession, and copy fees are recorded on a continuous basis.

C. Before any charges can be made to a project, a Task Profile number is assigned to that particular project. To verify that a Task Profile has been set up, please refer to your TDOT Edison Regional/District Manual for Step-by-step instructions. If the Regional office has received final plans and a Task Profile number has not been established, the Administrative Assistant must request this as soon as possible in order not to delay any charges or payroll time. The Budget Office has directed by memorandum dated October 12, 2010, that requests for Task Profile numbers must be submitted by e-mail to Edison.TXRequest@tn.gov The request must include your Department ID number. Task Profile references are available at Transportal>Business Applications>TDOT Edison>General Information. Please note that when a project is awarded to begin construction the Task Profile number will change and you will need to follow the same procedures as above.

VI. EDISON EXPENDITURES ACCOUNT CODES

The following **Table** is a partial example of Account Codes needed to process a voucher:

Type of payment	NIGP Code	Description	Expenditure Account Code	Task Profile
Single Payment Voucher Entry	968-66 (covers all right-of- way services	Option purchase or Administrative settlement	71702000	TX _ _ _ _ _ _
Regular Voucher Entry	968-66	Initial Court Deposit and Additional Court Deposits	71702001	TX _ _ _ _ _ _

Note: In Addition to the two types listed above, if acquisition includes payment for fee simple, the quantity of land must be entered as acreage in the quantity field of the invoice line. As stated previously, helpful topics and hints are located on TDOT Transportal, under the heading, Business Applications, scroll down the list to TDOT Edison, then select the topic you need for a quick reference.

VII. FEDERAL-AID PRE AUDIT INELIGIBILITY NOTIFICATION (FHWA Form 1367)

The Federal Highway Administration from time to time may determine that certain project charges are ineligible for Federal participation. The Department will be notified of the ineligible charges by issuance of a Federal-Aid Pre-Audit Ineligibility Notification (FHWA Form 1367). This notice will provide the amount of the ineligible charge, the nature of the charge, the tract(s) involved, and the reason that the charge is considered to be ineligible.

Upon receipt of a PR-1367 by the Department, an action copy will be transmitted to the Right-of-Way Division Director, who will in most cases forward it to the responsible Regional Transportation Manager 2 for a determination as to whether a reclaim is possible. If the determination is made to re-document the claim, the central office section chief responsible for the activity will be instructed to take necessary action to re-document the claim. Also, once the determination is made a copy of the PR-1367 will be forwarded to the regional office. The Regional office will also be told whether a reclaim will be attempted. Upon receipt by the field office, the PR-1367 will be forwarded to the Regional Transportation Manager 2 or a designee. As a first step the Regional Transportation Manager 2 will determine if the costs

involved have been forwarded for payment. If so, he will immediately complete and forward to the central office, ROW Form DT-1606, recoding the payment either non-participating or suspense. The PR-1367 reference number should be noted on the request. If the costs involved have not been billed, the Regional Transportation Manager 2 or a designee will file the notification for appropriate action at the time a payment voucher is requested. Because of the nature of FHWA reviews, most cited costs would have been submitted for payment before the issuance of a PR-1367. Therefore, almost without exception a Form DT-1606 will be completed any time a PR-1367 is received in the field office. If a reclaim is to be made, the central office section chief will take appropriate action to obtain all information needed to re-document the claim. He will then prepare a response to the Federal Highway Administration for delivery to and signature of the Right-of-Way Division Director . The Right-of-Way Division Director will review the response, and if the response adequately resolves the problem, will transmit it to the FHWA requesting Federal-Aid participation in the cited item(s). If the reclaim documents are satisfactory, the FHWA will clear the citation by issuance of an amended PR-1367 and Transportation Accounts will take appropriate action. If not satisfactory, the Department will be so notified and the process will start over.

ATTACHMENT A i
FORM DT-1606: (Not Actual Size)

TENNESSEE DEPARTMENT OF TRANSPORTATION
STARS ROW STANDARD CODING FORM

DOCUMENT NO: R **1** 002606
DATE: **2** _ / _ _ / _ _
FISCAL MO / YR: **3** _ / _ _

D S O U C S	AMOUNT	R E V	OBJECT DETAIL	MSA	ACT	EXPENDITURE ACCOUNT	SUB JOB	C B I	VENDOR NUMBER	REFERENCE DOCUMENT	T/C	REV SRC	REFERENCE CODE
4	**5**	**6**	**7**	**8**	**9**	**10**	**11**	**12**	**13**	**14**	**15**	**16**	**17**

DESCRIPTION: **18**
VENDOR NAME: **19**
ADDRESS: **20**

DESCRIPTION:
VENDOR NAME:
ADDRESS:

DESCRIPTION:
VENDOR NAME:
ADDRESS:

DESCRIPTION:
VENDOR NAME:
ADDRESS:

DESCRIPTION:
VENDOR NAME:
ADDRESS:

DESCRIPTION:
VENDOR NAME:
ADDRESS:

CODED BY: 21 DATE: _ _ / _ _ / _ _
APPROVED BY: 21 DATE: _ _ / _ _ / _ _
ENTERED BY: 21 DATE: _ _ / _ _ / _ _

DT-1606
12-02-87

ATTACHMENT A ii
FORM DT-1606: (CONTINUATION)

TENNESSEE DEPARTMENT OF TRANSPORTATION
STARS ROW STANDARD CODING FORM

DOCUMENT NO: R **1** 002606
DATE: **2** _ / _ _ / _ _
FISCAL MO / YR: **3** _ / _ _

DSOUCS	AMOUNT	REV	OBJECT DETAIL	MSA (TRACT NO.)	ACT	EXPENDITURE ACCOUNT	SUB JOB	CBI	VENDOR NUMBER	REFERENCE DOCUMENT	T/C	REV SRC	REFERENCE CODE

DESCRIPTION:
VENDOR NAME:
ADDRESS:

DESCRIPTION:
VENDOR NAME:
ADDRESS:

DESCRIPTION:
VENDOR NAME:
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DESCRIPTION:
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DESCRIPTION:
VENDOR NAME:
ADDRESS:

CODED BY:_____ DATE: _ _ / _ _ / _ _
APPROVED BY:_____ DATE: _ _ / _ _ / _ _
ENTERED BY:_____ DATE: _ _ / _ _ / _ _

DT-1606-A
01/23/91

Chapter III
CONTRACTS

TABLE OF CONTENTS ..... PAGE

PART I: CONTRACTS 2
I GENERAL 2
II. CONTRACTING WITH MINORITY FIRMS 2
III. ANNUAL SOLICITATION OF POTENTIAL BIDDERS 2
IV. CONTRACT PROCEDURES 3
A. General 3
B. Small Purchase Procedures 3
C. Non-Competitive Negotiations 5
V. CONTRACTS WITH FORMER EMPLOYEES 5
ATTACHMENT A 6
PART II: RIGHT OF WAY AND UTILITIES CONSULTANTS 7
I. PURPOSE 7
II. PREQUALIFICATION PROCESS 7
A. Application 7
B. Approval 8
III. CONSULTANT SECTION 8
A. Letters of Interest 8
B. Evaluation and Selection 9
IV. CONTINUING CONTRACTS 9
V. EXPEDITED PROCUREMENT FOR ENGINEERING SERVICES 9
VI. ADMINISTRATIVE SETTLEMENTS FOR ACQUISITION/RELOCATION CONTRACTS 10
A. Reasonable Additional Expenses 10
B. Authorization to Make Administrative Settlements 10
C. Basis For Making Administrative Settlements 10

PART I:
CONTRACTS

I. GENERAL

This chapter of the manual is written to describe the policies of the Office of Right-Of-Way concerning service contracts for right-of-way acquisition related activities. It is not intended to cover the purchase of supplies, equipment or other items of this nature.

It is our policy that the procurement of services, without regard to dollar value, will be conducted in a manner that provides maximum free and open competition. The procedures discussed in the remainder of this chapter and elsewhere in the manual have been designed with this policy in mind.

II. CONTRACTING WITH MINORITY FIRMS

It is the policy of the Department to award a fair share of contracts to minority and female businesses. Accordingly, our procedures have been written to ensure that minority and female businesses are utilized when possible as sources of services. It is important that the contracting official be aware of the affirmative steps that have been instituted. These steps include the following:

1. Include minority and female businesses on solicitation lists.
2. Ensure that minority and female businesses are solicited whenever they are potential sources.
3. When economically feasible, divide total requirements into smaller tasks or quantities so as to permit minority and female participation.
4. Where requirements permit, establish delivery schedules, which will encourage participation by minority and female businesses.

III. SOLICITATION OF POTENTIAL BIDDERS

In January and July of each year the headquarters Right-of-Way office will publish on the department website a notice (ATTACHMENT A) soliciting inquiries from individuals or businesses interested in performing miscellaneous right of way acquisition, relocation, and property management related services as outlined in the notice. At the time the notice is published, the central office will be so notified.

As the notice instructs, all inquiries will be sent to the field office. As the inquiries are received, they will be forwarded to the appropriate section chief for appropriate action concerning inclusion on the solicitation list.

IV. CONTRACT PROCEDURES

A. General

All procurement transactions, without regard to dollar value will be conducted in a manner that provides maximum free and open competition. The following general procedures have been designed to provide such competition.

While the detailed requirements concerning specific services are discussed in the manual chapter where the procedural requirements of a function are covered, these general contracting procedures are to be followed in all cases.

B. Small Purchase Procedures

These procedures are to be utilized for the procurement of services that are estimated to cost less than $25,000.00 in the aggregate.

1. Written Solicitation

a. A proposal for the required service will be prepared in accordance with established procedures. Proposal requirements for a particular service are outlined in the manual chapter in which the details of that function are discussed.

b. From the solicitation list for that particular function a minimum of three and not more than fifteen potential suppliers will be selected. The following criteria should be used in the selection process:

1) Location of the potential supplier.

2) Availability of the supplier for work in the locale.

3) Minority or female status of the potential supplier.

4) Recent or current work under contract with the potential supplier.

IF THERE ARE QUALIFIED MINORITY AND/OR FEMALE FIRMS NOT CURRENTLY UNDER CONTRACT AT LEAST ONE MUST BE SELECTED TO BE SUBMITTED A BID PROPOSAL

c. The proposal will be submitted to the selected potential suppliers.

d. On the date established in the proposal, all bids will be opened and evaluated.

e. The contract will be awarded to the lowest bid. All other bidders will be promptly notified.

ANY OR ALL BIDS MAY BE REJECTED FOR GOOD CAUSE. IF, HOWEVER, BID ARE REJECTED, THE RESPONSIBLE OFFICIAL MUST PROVIDE A WRITTEN STATEMENT OUTLINING THE REASONS FOR REJECTING THE BIDS. THIS STATEMENT MUST BE INCORPORATED IN THE FILE.

2. Competitive Negotiations

This procedure may be followed for the procurement of services costing less than $2500 in the aggregate, when written solicitation is not feasible.

a. A vendor from the solicitation list will be selected.

b. The responsible official will contact the selected vendor and attempt to verbally negotiate a contract.

c. If satisfactory terms are reached the contract will be awarded.

d. If satisfactory terms cannot be reached, a second vendor will be selected and negotiations begun.

e. This process will continue until satisfactory contract terms can be obtained.

f. All verbal negotiations should be adequately documented and appropriately filed.

3. Formal Advertising

This procedure is to be followed for the procurement of services estimated to cost $25,000.00 or more in the aggregate. The contracting official will follow the same procedures described for written solicitation under Small Purchase Procedures. In addition an invitation to bid will be publicly advertised. To comply with the public advertising requirement, the contracting official will place in a daily newspaper of the major city closest to the project, a notice that bids are being accepted. This notice is to be published for a minimum of 2 days.

The notice itself must include the type of service required, the location where the service is to be performed, the approximate extent of the work, and the closing date for receiving bids.

C. Noncompetitive Negotiations

Noncompetitive Negotiations is procurement through solicitation of a proposal from only one source. Noncompetitive Negotiations may only be used for the procurement of services when one of the following conditions exist:

1. The service is available only from a single source,

2. Public exigency or emergency, where the urgency for the service will not permit a delay incident to competitive procedures or;

3. After solicitation of a number of sources, competition is determined inadequate.

If this method is used in obtaining a contract, the reason for doing so must be thoroughly documented and appropriately filed. Also all contracts awarded under Noncompetitive Negotiations must be approved by the Regional Transportation Manager 2 or a designee.

V. CONTRACTS WITH FORMER EMPLOYEES

A contract may not be awarded to an individual who is, or within the past six months has been, a State employee. For the purposes of applying this rule, an individual shall be deemed a state employee until such time as all salary, termination pay and payments representing annual leave have been made. A contract with a company or corporation in which a controlling interest is held by any state employee or past state employee shall be considered to be a contract with the individual.

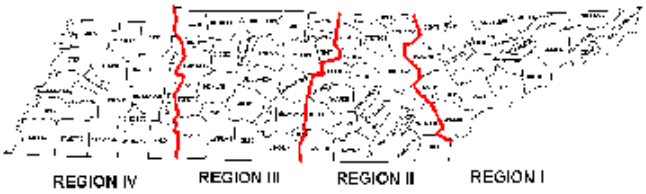
The prohibition against employment and contracting does not apply to previous employees that retired from State employment through the Employees Retirement Program and draws an annuity. Employees may check with the Personnel Specialist relative to contracting after retirement.

ATTACHMENT A

NOTICE

The Office of Right-of-Way of the Tennessee Department of Transportation is seeking firms and individuals interested in providing services in connection with right-of-way acquisition for highway projects. The services involved are:

1. Removal or demolition of structures located in the highway right-of-way.
2. Routine maintenance of right-of-way: grass cutting, trash removal.
3. Protection services—
   protecting structures in the right-of-way from theft and vandalism.
4. Providing animal and pest control in highway right-of-way.
5. Providing real estate title reports and closing real estate transactions.
6. Providing cost estimates for moving personal property—
   commercial, industrial and residential moves.
7. Providing cost estimates for construction or reconstruction of all type of structures and other improvements.
8. Providing cost estimates for the relocation or adjustment of private utility service—
   septic systems, wells, water or sewer lines, and electrical service.



Firms or individuals interested in performing any of the above services must provide written notification to the Transportation Manager 2 in the Region or Regions where consideration for employment is desired no later than March 29, 2013. This written notice should indicate the service or services to be offered. Individuals or sole proprietorships will be required, under penalty of perjury, to attest to their status as United States citizens or qualified aliens as defined by 8 U.S.C. 1641(b); and those who knowingly and willfully make false or fraudulent statements or representations regarding their status as United States citizens or qualified aliens are subject to liability under the False Claims Act, T.C.A. 4-18-101 et seq. Evaluation proceedings will be conducted within the established guidelines regarding equal employment opportunity and nondiscriminatory action based upon the grounds of race, color, religion, national origin, sex, creed, age, and disability. Interested certified Disadvantaged Business Enterprise (DBE) firms as well as other minority-and/or women-owned firms are encouraged to respond to all advertisements by TDOT. For more information on DBE certification, please contact the Civil Rights Office Small Business Development Program at (615) 741-3681. Details and instructions for DBE certification can be found at the following website: http://www.tdot.state.tn.us/civil-rights/smallbusiness/
If you have any questions about this notice, please contact the Transportation Manager 2 at the nearest region office.

REGION I
Ms. Andrea Hall
Transportation Manager 2
7345 Region Lane
Knoxville, TN 37901

REGION III
Mr. Neal Priest
Transportation Manager 2
6601 Centennial Blvd.
Nashville, TN 37243-0360

REGION II
Ms. Jacquelyn Wolfe
Transportation Manager 2
P.O. Box 22368
Chattanooga, TN 37422-2368

REGION IV
Mr. Steve Chipman
Transportation Manager 2
300 Benchmark Place
Jackson, TN 38301

THE TENNESSEE DEPARTMENT OF TRANSPORTATION IS AN EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

PART II:
RIGHT-OF-WAY CONSULTANTS

I. PURPOSE

Negotiated contracts for right-of-way services are covered by the Federal Brooks Act and allowed under Tennessee Code Annotated 12-4-109. When the need arises to employ a consultant, the appropriate Central Right-of-Way Office (Acquisition/Relocation or Appraisal) negotiates with a pre-qualified consultant in accordance with the Tennessee Department of Transportation (TDOT) policy for "Standard Procurement of Engineering and Technical Services".

II. CONTRACTS: PRE-QUALIFICATION PROCEDURES

The Department shall solicit interested consulting firms as outlined in TDOT's policy for "STANDARD PROCUREMENT OF ENGINEERING AND TECHNICAL SERVICES".

A. Application

1. Acquisition/Relocation

Interested firms will send in completed copies of Form DOT-CS-100 to the Director of the Design Division or his/her designee. For details about the criteria considered in the procurement process, see TDOT's policy for *"STANDARD PROCUREMENT OF ENGINEERING AND TECHNICAL SERVICES".* Said policy" can be found at:

http://www.tn.gov/tdot/topic/consultantinfo

The Design Office distributes a copy of the DOT-CS-100 to the appropriate Transportation Manager 1 in the Right of Way Division's Central Office for approval. After checking and procuring any additional information required from the consultant, the Right-of-Way Review Panel will then approve or disapprove the pre-qualification request.

2. Appraisal

Interested individuals will send in completed copies of Form DT-1742 to the Director of the Design Division or his/her designee. For details about the criterial considered in the procurement process, see TDOT's policy for STANDARD PROCUREMENT OF ENGINEERING AND TECHNICAL SERVICES". Said "Policy" can be found at:

http://www.tn.gov/tdot/topic/consultantinfo .

The Design Office distributes a copy of the DT-1742 to the appropriate Transportation Manager 1 in the Right of Way Division's Central Office for

approval. After checking and procuring any additional information required from the consultant, the Right-of-Way Review Panel will then approve or disapprove the pre-qualification request.

B. Approval

The proper Central Right of Way Office will then send an approval or disapproval letter to the Design Division or his/her designee. The Design Division Office will then officially notify the consulting firm/individual that it is either being placed on the Department's Pre-qualified List, additional information is needed for pre-qualification, or it is not qualified.

When a firm is added to the pre-qualified list of R.O.W. Consultants, the firm's pre-qualification status shall remain in effect for a period of three (3) years plus three (3) months grace period, beginning with the date of TDOT's letter of approval from the Design Division; thereafter, the firm must reapply for pre-qualification renewal. No notice of expiration of pre-qualification will be given by TDOT.

1. Acquisition/Relocation

New firms seeking pre-qualification may submit a DOT-CS-100 at any time. Currently pre-qualified firms should only submit a new DOT-CS-100 when a company name change, merger, or buy out necessitates or when existing pre-qualification is set to expire. Changes in approved personnel for Acquisition/ Relocation Firms are handled through the Right-of-Way Division's Central Office and do not require a new DOT-CS-100.

2. Appraisal

Individuals seeking to be pre-qualified for the first time may submit a DT-1742 at any time. Currently pre-qualified individuals should only submit a new DT-1742 when existing pre-qualification is set to expire. Changes in an appraiser's certification, designation or qualifications are handled through the Right of Way Division's Central Office and do not require a new DT-1742.

III. CONSULTANT SELECTION

Selection of consultants by the Department shall be in accordance with the provisions shown below.

A. Letters of Interest

Upon determination of need for a consultant for a specific project or projects, TDOT shall seek Letters of Interest from pre-qualified firms by advertising through the appropriate media. Advertisements for consultant services will clearly state that all firms shall be pre-qualified or have a completed DOT-CS-

100 or DT-1742 with original signatures filed with the Department by the deadline for the letters of interest.

B. Evaluation and Selection

The committee shall take affirmative aggressive steps consistent with the Department's related DBE goals to identify and give selection consideration for employment to Disadvantaged Business Enterprises professionally qualified in the disciplines required under the proposed work. The three (3) firms deemed most qualified will be recommended to the Commissioner. The Commissioner shall rank the firms in order of preference, and the Department will negotiate with the highest qualified firm. All considered firms who were unsuccessful in the selection process shall be so notified.

1. Acquisition/Relocation

The Consultant Evaluation Committee shall evaluate the current statements of qualification and performance data for those submitting letters of interest and choose several firms who would make viable selection candidates. The committee shall invite, from those firms, the submission of proposals on Form DOT-CS-200. This invitation will include a scope of work, a list of evaluation factors and their relative importance.

2. Appraisal

Applicants for appraisal services will be required to submit a letter of interest; however they will not be required to submit a proposal.

IV. CONTINUING CONTRACTS

By utilizing the Tennessee Department of Transportation (TDOT) policy for "Standard Procurement of Engineering and Technical Services", the Central Right of Way Office may contract with an appropriate number of firms for continuing contracts (on a 5-year basis). After securing a continuing contract with a firm, the Department's Right-of-Way Office may contact the firm for an estimate to do a specific project (work order) and attempt to negotiate a price for the firm's services. If an agreed price can be established, the firm will then be sent an "Official Work Order" from the Right-of-Way Division Director's Office and asked to proceed with the work.

V. EXPEDITED PROCUREMENT FOR ENGINEERING SERVICES

When the contract cost of the services does not exceed $150,000, small purchase procedures may be used. Price negotiations will be obtained from an adequate number of qualified sources with a minimum of two. Awards will be made to the responsible firm whose proposal is most advantageous to the program with price and other relevant factors considered. Note: A firm must be pre-qualified to be considered.

VI. ADMINISTRATIVE SETTLEMENTS FOR ROW SERVICES CONTRACTS

Administrative Settlements for acquisition/relocation contracts or work orders is any settlement with a consultant following the Department's receipt of the consultant's final invoice requesting payment for "reasonable additional expenses".

A. Reasonable Additional Expenses

These expenses are expenditures incurred by the consultant to maintain its project field office during an extended period of time due to delays by the Department in supplying plans, plans revisions, Form 2's, etc. to the consultant as agreed to in the contract or work order. "Reasonable additional expenses" shall include actual rent, utilities and secretary and project manager costs incurred by the consultant during the time extension. These shall not include costs for negotiations, closings or relocations unless they are for additional tracts or relocations added after the contract or work order was issued. This does not include any unnecessary costs, such as cable TV. Said time extension must be pre-approved by the Central Right-of-Way Office in writing, and each time extension may not exceed two (2) months without being re-approved by the Central Right-of-Way Office.

B. Authorization to Make Administrative Settlements

The Central Right-of-Way Office designee will discuss the consultant's final invoice with the Regional Transportation Manager 2 and the Right-of-Way Consultant Review Panel to determine a fair settlement amount. The Right-of-Way Division Director will then send a letter to the Chief Engineer requesting his approval of the settlement. If the settlement is approved, the Regional Right-of-Way Office will attach a copy of the settlement approval document to the consultant's final invoice and send to the Finance Office requesting payment for the approved amount.

C. Basis for Making Administrative Settlements

Administrative Settlements may be made when it is determined that such action is reasonable, prudent and in the public's interest. Consideration shall be given to all pertinent information such as:

1. The dates indicated in the contract/work order on which the Department promised to provide information to the Consultant versus the actual dates that the information was supplied.

2. Written approval from the Central Right-of-Way Office authorizing the Consultant to maintain its project field office for an extended period of time due to the Department's delays in furnishing information to the Consultant.

3. The actual costs of the reasonable field office expenses.

4. The unit prices for negotiations, closing, and relocations in the contract/work order.

5. The number of added tracts after contract/work order execution which had to be negotiated and closed by the Consultant.

6. The number of added relocations after contract/work order execution which had to be handled by the Consultant.

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Chapter IV
PROJECT DEVELOPMENT

Table of Contents ..... Page

I. GENERAL 2

II. PRE-ACQUISITION 2

A. Conceptual Stage Relocation Plan 2

B. Preliminary Cost Estimate 2

C. NEPA Public Hearing 3

D. Preliminary Value Engineering Field Review 3

E. Design Public Hearing 3

F. Right-of-Way Field Review 3

G. Right-of-Way Cost Estimate 3

H. Authorization for Incidentals 4

I. Title Work 4

J. Proposal to Local Government 4

III. ACQUISITION STAGE 4

A. Right of Way Plans Issued 4

B. Authorization to Appraise and Acquire 4

C. Preliminary Group Inspection 5

D. Stake Right-of-Way 5

E. Deed Preparation 5

F. Right-of-Way Public Meeting 5

G. Utility Service Connection Determination 5

H. Appraisal Work 5

I. Salvage Appraisal 6

J. Appraisal Review 6

K. Negotiations 6

L. Relocation Assistance and Payments 6

M. Closing 6

N. Condemnation 7

O. Property Inventory and Clearance 7

P. Right-of-Way Certification 7

IV. FLOW CHARTS 9

I GENERAL

This chapter of the manual outlines the typical sequence of events in the development of a highway project that involves the Right of Way Division.

The Chapter demonstrates either graphically or by narrative that operating element in the Department responsible for initiating a particular activity and the document by which the activity is initiated. It also names the operating element responsible for accomplishing the activity and incorporates a synopsis of the process involved. Another feature of the chapter is that it references the section of the manual in which the details of a particular activity are discussed.

This chapter is designed to serve a twofold purpose; first, to provide the reader with a basic understanding of the various duties and responsibilities of the Right of Way Division and, second, to provide the operating employee a convenient reference to the chapters that contain the detailed guidelines for carrying out each function.

II. PRE-ACQUISITION

A. Conceptual Stage Relocation Plan (Chapter 9)

The Environmental Division, by memorandum to the Right-of-Way Division Director or designee requests that this activity be accomplished. The Right-of-Way Division Director or designee instructs the field office, by memorandum, to begin the activity. Responsibility for this activity lies with the field office project team. It involves, in part, a survey of all proposed alternates to determine the approximate number of business and residential displacements and the characteristics of the household involved. A survey of the local housing market must be accomplished and interviews with local officials conducted. Using the data obtained, a report is then written for inclusion in the environmental document.

B. Preliminary Cost Estimate (APR) (Chapter 7)

This activity is requested and initiated in conjunction with the Conceptual Stage Plan. The field office appraisal section is responsible for accomplishing this activity. It involves a survey of the project alternates to determine land usage and type and number of improvements. A market survey in sufficient detail to provide a reasonable estimate of value for the land and improvements involved must be accomplished. Information concerning the number of displacements is made available by the relocation section. Using the data obtained a cost estimate is prepared on a standard form.

C. NEPA Public Hearing

The Legal Office schedules this activity. Both the central office and the field office receive a copy of a memorandum transmitting the public notice of the hearing. The field office will normally have a representative attend the hearing.

D. Preliminary Value Engineering Field Review

Notification concerning this activity is made by memorandum from the Design Division issued concurrently to both the central office and the field office. It is the responsibility of the Regional Transportation Manager 2 to designate a representative or representatives to attend the review. This activity normally involves an office and field inspection of the right-of-way plans as developed to that date.

E. Design Public Meeting

The Legal Office schedules this activity. Right-of-Way is notified in the same manner as for the Corridor Public Hearing. The field office normally has a representative attend this hearing.

F. Right-of-Way Field Review

Notification of this activity is by memorandum from the Design Division issued concurrently to both the central office and the field office. It is the responsibility of the Regional Transportation Manager 2 to designate a representative or representatives to attend the review. This review involves an office and field inspection of the right-of-way plans as developed to that date.

G. Right-of-Way Cost Estimate

The same memorandum that schedules the Right-of-Way Field Review initiates this activity. The field office appraisal section is responsible for accomplishing this activity. Using the plans printed for the field review, a survey of the project is made to determine the land usage and type and number of improvements proposed for acquisition. Also to be investigated is the possibility of damages occurring to any property due to the acquisition. Sufficient studies of the market must be accomplished to arrive at a realistic value estimate.

Information on relocation statistics is obtained from the relocation section. The cost estimate is then compiled on a right-of-way Form-44.

H. Authorization for Incidentals

The Right-of-Way Division Director and the Field Office are notified by copy of the right-of-way activities letter with item #2 dated and initialed. The Regional Transportation Manager 2 is responsible for initiating all activities approved by this authorization.

I. Title Work

This activity is initiated by the Regional Transportation Manager 2 immediately after receipt of preliminary plans and notification that incidentals are authorized. When a service contract is to be obtained, this activity involves transmitting proposal requests to qualified vendors, reviewing proposals received and awarding the contract. When the work is to be done in-house, Right of Way staff will be responsible for this activity in conjunction with the staff attorney.

J. Proposal to Local Government

It is the responsibility of the regional TDOT ROW Supervisor to generate Right of Way proposals and resolutions as needed. The regional TDOT ROW Supervisor will insure that all documents are executed by the appropriate local officials and forwarded to the Headquarters ROW Office. The Headquarters TDOT ROW Supervisor will circulate the documents to the Legal office for approval and the Commissioner's office for signatures.

III. ACQUISITION STAGE

A. Right of Way Plans Issued

These plans are issued by the Design Division to both the Right-of-Way Division Director and the Regional Transportation Manager 2 . It is their responsibility to ensure that the plans are appropriately distributed, as the plans themselves initiate a number of subsequent activities.

B. Authorization To Appraise and Acquire

The Regional Transportation Manager 2 is responsible for initiating all activities approved by this authorization. Acquisition activities are initiated by the Program Development and Administration Division. The authorization is transmitted to the Right-of-Way Division Director and appropriate Regional Right of Way office by copy of CA-5. The central office subsequently transmits the authorization to the appropriate field office.

C. Preliminary Group Inspection (PGI)

The field office ROW Appraiser 4 is responsible for ensuring that this activity is scheduled. It is to be scheduled immediately after receipt of the Right of Way Plans from the Design Division. This activity involves a field survey of the project to determine the complexity of the appraisals, to identify unusual problems, and to arrive at an estimate of appraisal costs. At the conclusion of the review, a report of inspection is written.

D. Stake Right-of-Way

The Regional Transportation Manager 2 is responsible for ensuring that this activity is accomplished. Upon receipt of the Right of Way Plan, he will request that the appropriate section, which may vary between offices, begin staking the right-of-way.

E. Deed Preparation

This activity is initiated by the Regional Transportation Manager. The actual preparation of deeds will normally be accomplished by ROW Transportation Project Specialists assigned to the right-of-way field office. The field office legal staff will review the deeds prior to execution.

F. Right-of-Way Public Meeting

It is the responsibility of the field office TDOT ROW Supervisor to ensure that this meeting is scheduled. It will normally be scheduled after the Right of Way Plans are issued; however, it may be advanced or delayed as the need arises. (Note: Probably after appraisal contracts are signed, four to six weeks after receipt of final plans). The meeting itself involves a detailed discussion of the entire acquisition process, presented by representatives of the field office staff.

G. Utility Service Connection Determination

This activity is the responsibility of the field office project team. It is to be accomplished after receipt of the Right of Way Plans. It requires that a determination be made as to the need to adjust or relocate utilities in order to maintain service to remainder lands. Cost estimates are obtained as necessary and a utility adjustment is prepared on a standard right-of-way form.

H. Appraisal Work

The Transportation Manager 1 of the central office appraisal section is responsible for ensuring that this activity is accomplished. After appraisal authorization and upon receipt of the PGI report, this activity will be started. It involves issuing work orders with either staff or fee appraisers, obtaining approval of the work orders, and notifying the appraisers to begin the assignment.

I. Salvage Appraisal

This is the responsibility of the field office project team, and is to be started after receipt of the ROW Form 2. It requires that a determination be made as to the retention value of improvements proposed for acquisition. This determination is to be made on a standard ROW Form-50.

J. Appraisal Review

The activity is the joint responsibility of the field office tech group and project teams. The activity is to begin immediately upon receipt of the first appraisal product. It involves a review of all appraisals and appraisal documentation as well as a determination as to the fair market value of each property appraised. At the conclusion of the review, a review report is issued on a standard right-of-way form. The review report will not be issued until after authorization to acquire has been granted.

K. Negotiations

The field office project team is responsible for accomplishing this activity. It is to be started immediately after receipt of the appraisal review report. It requires that certain forms be completed, that written offers be tendered, and that follow-up contacts be made when necessary. This process requires that all reasonable steps be taken towards obtaining amicable settlements. At the conclusion of negotiations, a certification is completed.

L. Relocation Assistance and Payments

The process is the responsibility of the field office project team. Certain aspects of the relocation process may be acted on, any time after incidental authorization. For example, contacts may be made with potential dislocatees, after the initial survey to obtain information for the relocation plan. Much of the preliminary activity, however, is initiated by receipt of the Right of Way Plans. Included are such things as the housing survey, certain moving cost determinations and other functions necessary to make payment determinations. Only after acquisition is authorized may offers of payment be made. Also, as negotiations are initiated, serious attempts must be made towards assisting the dislocatee in finding suitable replacement property. Actual payments are only made after the dislocatee becomes eligible.

M. Closing

The Regional Transportation Manager 2 or his designee is responsible for assuring that this activity is accomplished. It is initiated, on amicable settlements, by the negotiator's certification. Either staff or fee personnel may accomplish this activity. The warrant for payment is transmitted to the closing agent who then makes an appointment with the property owner(s) for deed transfer and appropriate disbursement of funds.

N. Condemnation

Condemnation activity is initiated by the project team. The Regional Transportation Manager 2 or designee is notified by the negotiator's certification that negotiations were unsuccessful. A request for approval, along with a voucher request, is sent to the Regional Transportation Manager 2 or designee. After approval, the voucher request is sent to the accounts section. The Regional Transportation Manager 2 or designee is responsible for notifying the property owner that condemnation is eminent. He is also responsible for notifying and providing all necessary documents with the payment voucher for court deposit to the attorney assigned to handle legal affairs on the project.

O. Property Inventory and Clearance

This activity is the responsibility of the field office project team and regional TDOT ROW Agent Senior and is initiated to inventory and inspect the vacated property, and arrange for clearance of the improvements.

P. Right-of-Way Certification

The Central Right of Way Office is responsible for certifying the justification availability of right of way prior to the construction contract bid letting. The Regional Office responsible for the project shall maintain current and accurate data needed for certification.

The certification document will affirm that:

1. No additional rights-of-way were required

OR

2. All necessary rights-of-way or the rights to occupy and use of all necessary rights-of-way have been acquired in accordance to current FHWA directives.

OR

3. All necessary rights-of-way or the rights to occupy and use of all necessary rights-of-way have been acquired in accordance to current FHWA directives with the exception of a few remaining parcels.

AND

4. All displaced individuals and families have been relocated to decent, safe, and sanitary housing.

OR

5. The State has made available to displaces adequate replacement housing.

OR

6. Relocation advisory assistance was not required.

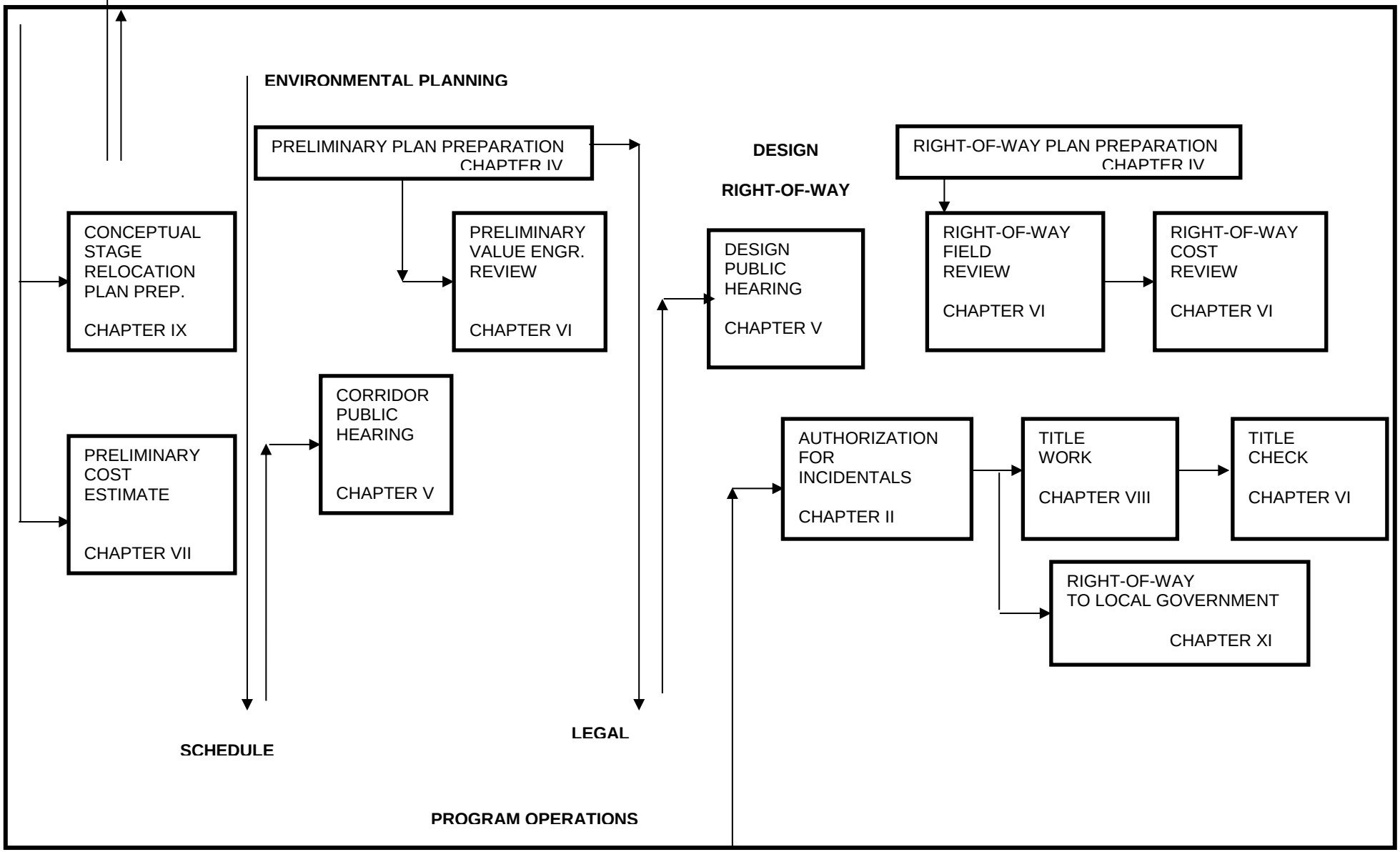
If certification is made without rights to occupy and use of all necessary rights-of-way, a letter will be prepared outlining why moving forward with the project is in the best interest of the public. This public interest justification (PIJ) will also include anticipated availability dates for all rights-of-way not available.

All PIJ's for projects on the Interstate System will be reviewed and approved by the Directors of TDOT's Right of Way and Construction divisions prior to submission to the Federal Highway Administration for final approval.

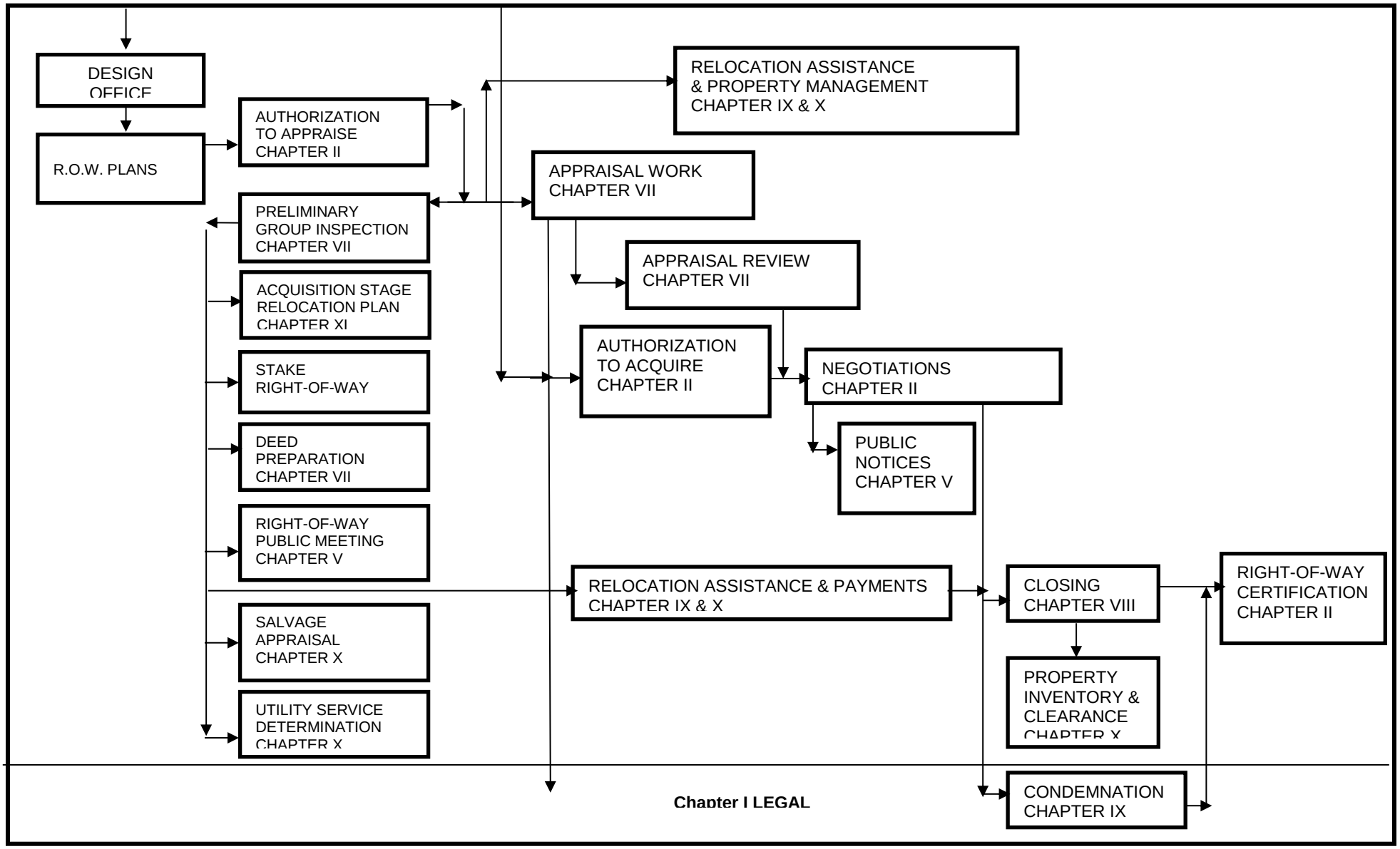
All other PIJ's will be reviewed and approved by the Directors of TDOT's Right of Way and Construction divisions prior to submission to TDOT's Chief Engineer for final approval.

IV. FLOW CHARTS

A. PRE-ACQUISITION



B. ACQUISITION STAGE



Chapter V
PUBLIC INFORMATION

Table of Contents ..... Page

I. GENERAL *2*

II. PUBLIC MEETINGS *2*

III. RIGHT-OF-WAY PUBLIC MEETINGS *3*

IV. NOTICE OF PROPOSED ACQUISITION *3*

V. BROCHURES *4*

A. General 4

B. Acquisition Brochure 4

C. Relocation Brochure 4

I. GENERAL

It is important for a number of reasons to involve the public in the decision making process and to keep them informed and aware of the project as it develops. It is also important to provide information concerning the status of right-of-way acquisition to those persons directly affected by the project.

The dissemination of information to and the involvement of the public in the development and implementation of any public works project is to a certain degree required by law. More importantly, it is easier to communicate with a person who has had a say in the decision making process and one who is fully informed and aware of the implications and impact of the project as it affects him.

II. PUBLIC MEETINGS

Before the final location and design of a highway project is determined, the Bureau of Environment and Planning arranges for public hearings to be held. These hearings or the opportunity for such hearings are afforded on all highway projects, which require the acquisition of significant amounts of right-of-way or have significant adverse impact on abutting real property.

The Department may elect to hold up to four separate public meetings, a NEPA public meeting and a design public hearing, or hold combined public meeting depending on the nature of the project, the amount of pre-hearing public involvement and the extent of public interest in the project.

As provided in Chapter XI, the central office is provided advance notification of public hearings by the Legal Office. The Regional Transportation Manager 2 is responsible for ensuring that a qualified representative of the Right-of-Way Division is present at all public meetings.

The Department uses a formal presentation in conjunction with an open question and answer forum in holding public meetings. A prepared handout is made available to all persons attending the meeting. Included in the handout is a general statement of the relocation benefits available to persons displaced by the acquisition of right-of-way for the project.

That person responsible for representing right-of-way will be appropriately identified as the right-of-way representative. He will ensure that adequate quantities of the acquisition and relocation brochures are available for distribution to all interested parties. He will also be prepared to respond to questions on the acquisition process and/or the relocation program.

III. RIGHT-OF-WAY PUBLIC MEETING

It is the policy of the Right-of-Way Division to conduct public meetings on all major right-of-way projects. A public meeting is a meeting at which the specifics of the acquisition process and the relocation program will be discussed with property owners and occupants who will be directly affected by the acquisition of right-of-way for the project. Persons whose properties are scheduled for acquisition and occupants of those tracts will be invited to attend the right-of-way meeting. The invitation may be made by personal letter or by public announcement at the option of the TDOT ROW Supervisor.

It is suggested that the meeting consist of a brief presentation of the acquisition process and a general description of relocation benefits available to be followed by a general question and answer period. At the conclusion of the meeting specific questions may be fielded on a one to one basis. As a minimum the following persons should be in attendance:

The TDOT ROW Supervisor or his assistant, and any other section representatives deemed appropriate by the TDOT ROW Supervisor.

The TDOT ROW Supervisor is responsible for determining if a right-of-way meeting will be held and, if so, for scheduling and conducting the meeting. The meeting will normally be scheduled after receipt of the Right-of-Way Plans, but it may be advanced or delayed as necessary.

IV NOTICE OF PROPOSED ACQUISITION

All property owners must be provided advance notice of the Department's interest in acquiring the real property needed for the highway construction.

Upon receipt of the Right-of-Way Plans the TDOT ROW Supervisor or a designee will prepare ROW Form-4 in duplicate for all tracts. The original of the Form-4, along with a copy of the acquisition brochure will be mailed or hand carried to all property owners on the project. A copy of the Form-4 will be retained for the project records.

NOTE: This notice is not to be confused with RA Form-101 "Relocation Information Notice" discussed in Chapter IX. Form-101 will be issued to all displacees in accordance with the procedures outlined in Chapter IX.)

V. BROCHURES

A. General

To further assist property owners and displaced persons, the Right-of-Way Division has developed both an acquisition and a relocation brochure. These brochures provide pertinent information to affected persons in a concise and readable format. The requirements for distribution of these brochures are discussed in Chapters VIII and IX respectively.

B. Acquisition Brochure

The acquisition brochure provides a brief summary of the acquisition process and discusses the rights of the owner.

C. Relocation Brochure

The relocation brochure describes the relocation assistance and payments available to displaced persons and outlines the Department's replacement housing policy.

Chapter VI
RIGHT-OF-WAY PLANS

Table of Contents ..... Page

I. PURPOSE 2

II. PLAN REQUIREMENTS 2

A. General 2

B. Composition of the ROW Plan 3

III. ISSUANCE OF PLANS 5

A. General 5

B. Preliminary Field Review 6

C. Preliminary Plans 6

D. Right-Of-Way Field Review 6

E. Right-Of-Way Plan Check 7

F. Right-Of-Way Plans 8

G. Special Cases 8

H. Hardship Acquisition/Protective Buying or Total Take Authorizations 9

IV. PLANS REVISIONS 9

A. Departmental Coordination 9

B. Central Office Procedures 11

C. Field Office Procedures 12

V. RECORDING PLANS IN COUNTY REGISTER'S OFFICE 13

I. PURPOSE

The purpose of the Right-Of-Way Plan is to show clearly and accurately all essential information about each tract of land required to build and maintain a particular section of highway. General information useful to the owner, the abstractor, the attorney, the appraiser, the engineer and anyone who may be interested in some phase of the location, acquisition and use of the lands in the right-of-way or abutting lands, will be shown.

II. PLAN REQUIREMENTS

A. General

Departmental requirements for details that should be shown in a satisfactory set of Right-Of-Way Plans include, but are not limited by, Federal requirements for Federal-aid projects. Requirements set forth below are considered to be appropriate for all Right-Of-Way Plans.

Right-Of-Way Plans should show the existing and proposed right-of-way lines, the widths to be acquired, proposed limits of slope, centerline and stationing with appropriate ties to intersecting property lines and changes in right-of-way widths. The lines and areas of any additional easements, either temporary or permanent, that are required should be clearly designated and shown. For each tract to be acquired, the plans should show:

1. a tract identification number,
2. the property ownership lines,
3. the name(s) of the property owner(s), and
4. the boundaries of the area to be acquired, fully dimensional, and
5. the total acquisition, and remainder areas

All pertinent data affecting the cost of the right-of-way such as structures, access roads, improvements, underground storage tanks and fences should be shown.

On projects where the access rights have been or are to be acquired, the location of access control lines and all approved points of entry to or exit from the right-of-way should be fully defined.

The size, form, and arrangement of Right-of-Way plans should conform to the general requirements for highway plans and should contain sufficient dimensional and angular data to permit ready identification and correlation with the legal descriptions of all tracts and easement areas that are required by the associated highway project. To fulfill their purpose, a satisfactory set of the

Right-of-Way Plans must show all existing factors affecting the value of the part to be taken and all proposed construction features which may affect the value of any remainder or remainders on each tract. In general, this requires that all construction features be shown in sufficient detail to present the appraiser with a clear picture of the situation before the taking and a clear projection of the situation after the highway is completed. To accomplish this purpose, the Right-of-Way Division Director confers from time to time with responsible representatives of the Design Division to arrive at a mutual understanding as to details required on the Right-of-Way Plans.

B. Composition of the Right-of-Way Plan

This section incorporates the general standards for the makeup of the Acquisition Stage Right-of-Way Plan.

1. Size and Form
   Standard 36" X 22" sheets, with 1/2" margins, and a 2" margin on left edge, shall be used. Reduction of these sheets to 1/2 size may be made as found to be practical. Single or double plan and profile sheets may be used.

2. Title Sheet
   A location sketch, scale, index of sheets, signatures of officials, pertinent dates, if applicable, the Federal-aid project number, termini and route number of the project, length of project, etc. should be shown.

3. Typical Cross Section Sheet(s)
   Typical sections of all proposed road improvements, including frontage roads, connectors, and driveways are essential. Limiting locations of each section should be shown if more than one section applies to the improvements. Each section should show its relation to the control profile grade line and centerline of survey. A tabulation of quantities, usually shown on the typical cross section sheet, is not necessarily shown or required on the Right-of-Way Plan. Also, notes pertaining to construction details are generally not necessary.

4. Present Layout and Proposed Layout Sheets
   At risk of duplicating some requirements set forth above, the following should be included:

   a. Centerline and stationing

   b. Existing topography--including all existing drainage

c. Proposed right-of-way limits. All breaks in right-of-way should be referenced to the proposed centerline or appropriate baseline unless coordinates are used. The reference line shall not be changed or in any way altered after right-of-way acquisition is authorized.

d. Proposed access control lines

e. Proposed partial access control lines. All breaks in access control should be referenced as in c. above.

f. Proposed slope limits

g. Existing right-of-way lines and property lines, with tract numbers of affected properties. Sufficient information should be included to allow a complete and accurate legal description of the areas to be acquired, to be drafted with all bearings, distances, etc. necessary to calculate a closure.

h. Existing and proposed access to all tracts.

i. Easements
All easement areas shown should be appropriately designated and properly labeled. For the most part, drainage easements and easements for working areas, such as construction of slopes and detours, are considered to be terminable by nature and should be labeled "Construction Easement". In certain instances where ponding or flooding may occur a permanent easement will be acquired and will be labeled "Permanent Drainage Easement". Any easement required for a particular special purpose should reflect its proposed usage by note or by nomenclature.

j. Construction features
All proposed construction features that would affect right-of-way acquisition including drainage structures, special ditches, retaining walls, guardrail etc., should be shown. This would necessarily include any features that could affect the amounts paid in damages to owners of remaining properties.

k. Profile sheets
The profile sheets should show existing ground profile, proposed grades and all proposed drainage that affects right-of-way.

l. Disposition of existing pavement
Pavement to be removed should be so noted along with any restoration applicable to the affected area.

5. Property Map--Appropriate Scale
   Where tracts on a project are of such size that each tract can be shown in its entirety on the plan sheet, where all access to each tract can be shown and where other nearby features that may affect value can be included on the plan sheet, then a property map will not usually be required. When this is not the case and the plan sheet cannot show all of the above, a property map is an essential part of the set of plans. This should consist of a map prepared on standard plan sheets showing the proposed right-of-way limits, complete boundaries of affected properties, all existing and proposed access to each affected property, streams, roads, railroads, and any other features not shown on the present layout sheet that could affect the value of a tract or its remaining area. The following items should also be included:

   a. Utilities--Names and addresses of owners of utilities should be tabulated.
      On certain type projects, these may be tabulated on the first present layout sheet.

   b. Areas--Total area of affected property, area to be acquired and area of each remainder left and right of centerline are required. Area to be acquired must show area with access control separate from area with uncontrolled access if feasible. Easement areas should be shown as distinct from areas acquired inside the right-of-way limits, and the area of an easement should not be superimposed on the area of another type of acquisition. If an easement is required for more than one use, the nomenclature for the easement should show the more restrictive use. In accordance with design standards all areas less than 0.1 acre will be shown in square feet. All larger areas will normally be shown in acres except as noted in applicable memorandum to designers. If a property map is not provided with the set of plans, a tabulation of areas as set forth above should be provided on the present layout sheet, or on a separate sheet provided for that purpose.

III. ISSUANCE OF PLANS

A. General

The procedures described in this section are applicable to those projects advanced under the normal development process. There are exceptional cases such as those described in Chapter II, Right-of-Way Authorizations, Special Cases, where the normal development process is not followed. Under those special cases, plans will be issued as described in Item F. below.

B. Preliminary Field Review

Usually before the design hearing, the Design Division will schedule a field review of the preliminary plans. Both the Central Office and Field Office will be notified of the inspection by memoranda and a copy of the plans. It is the responsibility of the field office TDOT ROW Supervisor to ensure that right-of-way is represented at the review.

C. Preliminary Plans

Sometime after the Design Hearing, Preliminary Right-of-Way Plans should be issued by the Design Division. Copies of the plan will be distributed to both the central office and the appropriate field office. Preliminary plans will be identified by stamping the plans as follows, "Preliminary Plans For All Incidentals". These plans may be used in the accomplishment of a number of incidental activities including the following:

1. Authorization to proceed with incidentals.

2. Proposal to local government.

3. Title Reports.

D. Right-of-Way Field Review

After the design public hearing the Design Division will schedule a field review of the Right-of-Way Plan. Both the central office and field office will be notified of this inspection by memorandum and copy of the plan. It is the responsibility of the field office Transportation Project Specialist to ensure that Right-of-Way is represented at this review. It is important that these plans be reviewed from a right-of-way stand point prior to the field review, so that significant or potential problems can be presented and discussed before the plans are finalized. The following list contains a number of significant items that should be included in the Right-of-Way Plan. Any of these items not included should be noted and presented in the field review.

1. Properly defined present and proposed right-of-way lines.

2. Station and offset distance for each break including access control, P.C.'s, and P.T.'s, etc., in the proposed right-of-way line and permanent easement.

3. Bearing of each property line within the taking of each tract shown on the present layout.

4. The length of each property line or segment of a property line within any area to be acquired for either right-of-way or permanent easements.

5. The length of each segment of proposed right-of-way line and permanent easement line between intersecting property lines.

6. All existing driveways or other entrances and their proposed tie in. Profiles and slope lines should also be shown.

7. All significant improvements on each tract which might be affected by the acquisition, including such things as trees, landscaping or paving (with any marked parking spaces).

8. All private utilities, such as septic tanks, field lines, wells and underground storage tanks.

9. All existing signs, showing clearly whether they are within the existing right-of-way, the proposed right-of-way or any easement areas.

The reviewer should also be cognizant of possible construction features, such as cattle passes or retaining walls that might be incorporated to mitigate damages. He should also ensure that the table of acquisition shows the appropriate units for all areas. There may be times when the standard discussed in Paragraph II-B-5 will not be appropriate and the proper units of area should be used.

ALL OF THE ABOVE ACTIVITIES ARE TO BE INITIATED IN ACCORDANCE WITH PROCEDURES OUTLINED ELSEWHERE IN THIS MANUAL.

After final environmental approval has been received by the Department, right-of-way funding for appraisals and acquisition may be authorized.

E. Right-of-Way Plan Check

Upon receipt of Title Reports, the Regional Transportation Manager 2 will have them compared to the Preliminary Plan. This plan check requires a complete comparison of the current deed for all tracts against the information shown on the Preliminary Plan.

This review should, as a minimum verify the correctness of ownership and the deed reference and indicate the validity of all property lines. All plan errors must be noted. At the conclusion of the review a plan check letter will be composed and transmitted directly to the project team design section. The letter should contain a list of the corrections to be made.

F. Right-of-Way Plans

After receipt of the above noted "plan check letter", the Survey Design Division will ensure that all appropriate changes are made. They will then issue Right-of-Way Plans identified by the following stamp:

"For ROW Acquisition Only". These plans will not, except in extreme cases, be issued until after the plan check letter has been submitted. To ensure this, the transmittal to the Manager of Program Operations and Right-of-Way/Central Office will state that the letter was received and all appropriate changes were incorporated in the Plan. The Right-of-Way Plans will be used to accomplish all appraisal and acquisition activities.

A Right-of-Way meeting (if applicable) is normally held after receipt of the Right-of-Way Plans; however, it may be advanced or delayed as the need arises.

APPRAISAL AND ACQUISITION ACTIVITIES ARE TO BE INITIATED IN ACCORDANCE WITH PROCEDURES OUTLINED ELSEWHERE IN THE MANUAL.

G. Special Cases

On certain types of projects, and for other specific reasons the normal plan development process will not be followed.

1. Special Bridge Replacement Projects
   On those bridge replacement projects to be acquired under accelerated procedures no separate preliminary plan will be issued. The plan issued for the Right-of-Way Field Review will serve as the Preliminary Plan and will be used to make the right-of-way plan check and to accomplish all incidental activities.

2. Projects With 10 or Fewer Tracts
   On projects, other than the above noted accelerated bridge projects, only the Right-of-Way Plans will be issued. There may be a Right-of-Way Field Review, however no Preliminary Plan will be issued and there will be no formal right-of-way plan check. All incidental activities will be accomplished using the Right-of-Way Plans.

H. Hardship Acquisition/Protective Buying or Total Take Authorizations

While the normal plan development process is under way, special circumstances as outlined in Chapter II, Part Four Section III.B may necessitate that a special right-of-way plan incorporating only certain tracts be developed. These special plans will normally be issued as Right-Of-Way Plans for the tract or tracts involved. Under these circumstances, there will be no separate plan check and the necessary incidental activities will be accomplished using the Right-of-Way Plans.

The project in general will however continue to develop as previously described.

IV. PLANS REVISIONS

A. Departmental Coordination

1. General

In many cases, a revision to the highway plan for some reason may have an effect on the operations of other divisions or offices in the Department. For example, a change in road grade could affect damages to an abutting property owner. In this example, the construction change would be of concern to the Right-Of-Way Office. In order to ensure functional departmental coordination, the procedures outlined below will be utilized. These procedures are to be followed in all cases where a request for plans revision is made.

Personnel in the design section in either the field offices or central office are not required to submit plan revision requests to revise highway plans. These employees are excepted from requirements for submitting such requests because of their original responsibility for plan development. They must, however, notify the Office of Right-of-Way concerning all proposed revisions as soon as it is determined that a revision should be made.

All other Offices and Divisions must submit a Plan Revision Request in order for a plan change to be made. In all cases, the request must indicate the reason for the change. The reason must be clearly set forth and documentation must be provided to clearly justify the revision. If appropriate, sketches of the proposed revisions should be attached to the request. Plans errors or omissions will be corrected by the design section upon notification by any other office or division.

2. Plan Revisions Prior to the Right-of-Way Plans

Prior to the issuance of Right-of-Way Plans, all plan changes will be accomplished by letter that is submitted directly to the project team design section. A formal Plan Revision Request is not necessary. These letters may

be submitted under the signature of the Regional Transportation Manager 2 or his designee.

3. Plan Revisions Prior to Construction Letting

Before the project is let to construction contract, all Plan Revision Requests must be submitted to the Regional Transportation Manager 2 who will review the request. Review responsibility may be delegated to the TDOT ROW Supervisor. If he/she finds the request acceptable, he/she will recommend approval and transmit the request to the project team design section. If it is determined that the request is not appropriate, additional information may be requested from the field office, or the request may be returned to the field office for further consideration.

NOTE:
The reviews accomplished by the Office of Right-of-Way should only be considered from a right-of-way standpoint. It is presumed that right-of-way will be consulted when modifications to construction or design features can be expected to have a significant impact on right-of-way acquisition before the request is initiated. If not, the reviewing official when necessary may check with the originator to determine if accommodations for right-of-way considerations might be feasible. He must, however, accept the revision if changes are not possible, no matter how severe the effect on right-of-way. The reviewer could suggest, through separate Plan Revision Request, modifications to the right-of-way to lessen the impact of the proposed change, or he might suggest to the originator that he consider the modification in his proposed plan revision.

4. Plan Revisions After Construction Letting

After the date of project letting, all Plan Revision Requests should be submitted to the Regional Director for review. If the proposed revision involves right-of-way, the Regional Transportation Manager 2 will be consulted as necessary. The request will be forwarded to the project team design section for approval. After approval, if right-of-way matters are involved, a copy of the request will be forwarded to the Regional Right-of-Way Office. If the revision creates a difficult right-of-way problem, the project team design section should be notified immediately. It may be that the revision must be made as shown; however, if the impact on right of-way is extreme, modifications to the revision may be a possibility and should be discussed.

5. Plan Revisions for Tract Mitigation

The Tennessee Department of Environment and Conservation will issue the necessary permit and attach the list of restrictions to the permit. A copy of the permit will be sent to the Environmental Division of the Department of Transportation in Nashville, stipulating the permit is subject to mitigation restrictions. The Environmental Division will issue a "Revision Request for Wetland Mitigation" for the pertinent project and send the request to the appropriate Regional Right of Way Transportation Manager 2. The Regional Right of Way Office will prepare the plan revision request and attach the "Revision Request for Wetland Mitigation" and include the marking of the physical location of the mitigation site on the right of way plans. Included next to the marked location of the mitigation site will be the following statement:

> **Notice: The use of disposal of this tract, or any part thereof, is restricted by ARAP/§ 401 Permit, NRS # ____ on file at the Office of Environmental Planning and Permitting, Tennessee Department of Transportation, Ninth Floor, James K. Polk Bldg., 505 Deaderick Street, Nashville, Tennessee. Any actions affecting this tract of land must comply with the provisions of the permit.**

As of the date of the plan revision, the notice of restrictions will become a permanent part of the official plans for the project. Once the revision information is included on the Right of Way plans sheet, it will be the responsibility of the Regional Right of Way Office to send a half-size copy of the right of way plans sheet with the revision to TDEC. It should be sent to the following division of TDEC, Division of Water Pollution Control, 7th Floor, L & C Annex, 401 Church Street, Nashville, Tennessee 37243. Any subsequent plan revisions affecting the permitted site will follow the same procedure. When the project is completed and closed, the entire set of plans will be filed in the County Clerk's Office in compliance with T.C.A. 54-5-110 and Chapter VI, Part V of the Right of Way Procedures Manual. The copy of the original permit will remain on file in the Environmental Planning and Permitting Division.

B. Central Office Procedures

1. General

A qualified individual in the Right-of-Way Office designated by the Right-of-Way Division Director shall maintain a file of Right-of-Way Plans in the right-of-way central office. It is this person's responsibility to ensure that approved revisions to plans are properly inserted as they are issued by the regional project development team. Experience has shown that superseded sheets are often of value in keeping records. For this reason, the revised sheet shall be fastened over the superseded sheet.

The Right-of-Way Division Director, or his designee, will act on the Request as outlined in Item A, above. When a Plan Revision is received from the project team design section, the field Regional Transportation Manager 2 or a designee shall match Plans Form-2 and the revised sheets from an overall view to help ensure that revisions to the Right-of-Way Plans are properly received, and to pick up, if possible, any deviations from the normal plans revision system. Where there has been a Plan Revision Request to cause a plan revision, the Plans Supervisor shall match Plans Form-2 with the corresponding copy of the Plan Revision Request in his file of such; he will pull the file folders on the tracts affected, mark on an appropriate sheet the status of acquisition of those tracts and deliver the packet to the Chief Review Appraiser's Office.

Upon receipt of the packet described above, the Review Appraiser and Chief Review Appraiser will take action in accordance with the procedure set out in Chapter VII of this manual.

2. Plan Changes to Local Governments

When a proposal is made to a local government for a highway project, that government is furnished a set of the Preliminary Right-of-Way Plan. Complete sets of the Right-of-Way Plans shall be sent to concerned local governments, when issued, to replace the Preliminary Plan. A revision to those plans may be pertinent to their needs as a matter of record. The Right-of-Way Field Office shall transmit revised plan sheets to the county and/or city concerned with the project. The Regional Transportation Manager 2 or designee will arrange to receive a sufficient number of copies of revised sheets to permit this function.

C. Field Office Procedures

1. General

Right-of-Way Office Procedures outlined above for handling plans and revisions in the central office are strongly recommended for use in the field office. Identical methods are not mandatory. However, the Regional Transportation Manager 2 shall maintain a workable system that ensures a file of current Stage Right-of-Way Plans and a system which will ensure that acquisition of any property is not made before proper authorization is given.

2. Numbering of Tracts Added to Plans

Any time that a plan revision entails the assignment of additional tract numbers, the acquisition status of any parent tract must be considered in the assignment of a tract number. The following procedures will be followed in numbering additional tracts added to the plans. Any time a tract is subdivided and there are separate tracts concerned, all new tracts will be added using the parent tract number and an alphabetic suffix starting with A and continuing in alphabetical order. For example, a single sell off from tract 1 would be added to the Plan as tract 1-A. If, after a tract has been acquired, it is found that an

additional taking will be required, a new tract number will be assigned for the amended acquisition. All tracts added for this reason will be designated by adding the suffix S to the original tract number. For example an additional taking from tract 22 would be added to the plans as tract 22-S.

Reference is made to Chapter XI of this Manual for the assignment of tract numbers for tracts added to the plans because of inverse condemnations.

V. RECORDING OF PLANS IN COUNTY REGISTER'S OFFICE

In accordance with TCA 54-5-110 on all projects for which the Right-of-Way Office acquires the Right-of-Way the Regional Transportation Manager 2 shall cause the Right of Way Plans to be filed and recorded in the office of the Register of Deeds in the county where the acquisition is located. Where a project is located in more than one county, a set of plans will be filed and recorded in each county. The Regional Transportation Manager 2 shall submit charges for recording without undue delay in order that the project can be closed immediately thereafter.

In like manner to the above, plans shall also be recorded for any project for which a local government acquires any right-of-way in the name of the State of Tennessee.

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Chapter VII

APPRAISALS & RELATED ISSUES

Table Of Contents ..... Page

I. COST ESTIMATES 3

A. General 3

B. A.P.R. Cost Estimates 3

C. Preliminary Cost Estimate 4

D. Estimate of Right-of-Way Costs 4

E. Special Estimates 5

II. PRELIMINARY GROUP INSPECTION 7

A. General 7

B. Purpose of the P.G.I. 7

C. Special Appraisal Considerations 8

D. Inspection Report 10

III. STAFF APPRAISERS 10

IV. APPRAISAL CONTRACTS 11

A. General 11

B. Developing the Work Order Attachments 11

V. APPRAISER QUALIFICATIONS 12

A. Staff Appraisers 12

B. Private-Sector Appraisal Consultants 12

VI. APPRAISER EVALUATION 13

A. Project Performance 13

B. Annual Performance Evaluation 14

VII. PROCESSING THE APPRAISAL PRODUCT.....15

A. General.....15

B. Regional Office Responsibilities 16

C. Central Office Responsibilities.....18

VIII. APPRAISAL REVIEW 18

A. General 18

B. ROW Form-39, Appraisal Documentation Request 19

C. Reviewing Appraiser's Review Report 19

D. Uneconomic Remnants 20

E. Plans Revisions & Additional Right-of-Way Acquisitions 20

IX. *APPRAISAL EXTENSIONS* 21

X. *APPRAISAL REVISIONS DUE TO CONDEMNATION* 21

XI. *INVOICING & PAYMENT FOR SERVICES RENDERED* 23

I COST ESTIMATES

A. General

The Right-Of-Way Division will often be called upon to provide estimates of the cost of obtaining right-of-way for construction projects. These requests may be made at a very early stage where only a general location is available, or at a more advanced stage where a specific centerline or various alternate centerlines are available, or in the latter stages of project development where, for the most part, right-of-way limits have been established. The earliest of these estimates is referred to as an Transportation Investment Report (TIR) Estimate; the second as a Preliminary Cost Estimate (not always required); and the last as the Estimate of Right-of-Way Cost. There will also be instances where requests will be made for special estimates on specific tracts considering acquisition costs under different design alternatives. All of the various types of cost estimates will, under most conditions, be developed by the regional office appraisal staff.

B. TIR. Cost Estimates (Transportation Investment Report)

The Planning Division will request these estimates by memorandum to the Right-of-Way Division Director. The Right-of-Way Division Director or a designee will in turn, by memorandum, instruct the appropriate regional office to complete the estimate. Upon receipt of the memorandum in the regional office, the Field office ROW Appraiser 4 will be so notified and the estimate will be assigned to a right-of-way appraiser or right-of-way agent in the office. The appraiser or agent will conduct market research to the extent necessary to develop a credible estimate of acquisition costs.

The Relocation section will be contacted, if necessary, for an estimate of the number of relocations and their estimated costs. After obtaining all necessary data, the appraiser or agent will complete the estimate using ROW Form 44-A, "Right-Of-Way Report for Location Study."

After completing the estimate, the appraiser or agent will submit it to the Field office ROW Appraiser 4. The Field office ROW Appraiser 4, upon concurrence, will deliver the estimate to the Regional Transportation Manager 2 who will have it transmitted to the originator of the request. A copy will be transmitted to the central office and one retained in the regional office.

C. Preliminary Cost Estimate

This activity is requested by either the Design or Planning Division by memorandum to the Right-of-Way Division Director. The Right-of-Way Division Director or a designee will, by memorandum, instruct the regional office to complete the estimate. The regional office will follow the same procedure as for the T.I.R.. cost estimate.

It should be noted that when this request is made, it is often made in conjunction with a request for the conceptual stage relocation plan. In these instances, the relocation section will be responsible for assembling and transmitting the document. The appraisal section, upon completing its estimate of acquisition costs, will provide the estimate to the relocation section for its use in completing the document.

D. Estimate of Right-of-Way Costs

1. General

The Estimate of Right-of-Way Costs is an important document, and is used as the basis for programming funds for the acquisition of right-of-way. It is also used as the source of certain data that must be provided to the FHWA on Federal-Aid Projects. These estimates will be completed using ROW Form-44, "Estimate of Right-of-Way Costs".

2. Procedures

As circumstances require, at the request of the Field office ROW Appraiser 4, the Design Division will furnish Preliminary Right-of-Way Plans to the Field office ROW Appraiser 4 for review. Plans' concerns will be transmitted back to the Design Division for consideration prior to the Right-of-Way Field Review.

At the conclusion of the Right-of-Way Field Review, the TDOT ROW Supervisor will transmit a copy of the Right-of-Way Plans to the Field office ROW Appraiser 4 with instructions to develop the Estimate of Right-Of-Way Costs. The Field office ROW Appraiser 4 may develop the cost estimate, or assign the cost estimate responsibility to a staff appraiser who will, within 30 days, conduct the necessary research and complete the estimate which will then be reviewed and amended, or reviewed and approved by the Field office ROW Appraiser 4, and entered into the Right-of-Way Information Data Base. The TDOT ROW Supervisor will be notified of the completed cost estimate, and shall conduct his/her own review. Upon approval by the TDOT ROW Supervisor, he/she shall transmit the estimate to the Right-of-Way Division Director or a designee who will review the estimate and transmit it as follows:

a. The original to central files.

b. One copy to the Program Development and Administration Division.

3. Completing ROW Form-44 "Estimate of Right-Of-Way Costs"

a. General

This estimate is used to program funds for the right-of-way project; therefore it must be as accurate as is practicable. The extent of market research must be such that a realistic value can be placed on the various types of properties encountered along the project. It is recommended that the appraiser attempt to estimate a separate value for each tract shown on the plans. This value estimate should incorporate any damages anticipated. The separate estimates should then be appropriately combined for use with ROW Form-44.

b. Completing the Form

1). Incidentals

A “per-tract” amount for incidental costs should be used. This amount, will vary depending on whether a project has relocations or not, or if the project is a Modified Acquisitions Project. These costs may be developed in the central office or the regional offices. The per-tract allowance includes the elements of survey and design, and those costs associated with administration of acquisition. Historic costs from past projects can be an informational source.

2). Relocation

If necessary, relocation data and amounts can be obtained from the regional office relocation section. The estimator should contact the relocation section chief soon after receipt of the assignment. In most cases the transfer of information can be handled informally. On residential tracts, the estimate will be based on standard per-tract figures for moving costs and housing supplements. In the case of businesses, field survey and tract-by-tract estimates of moving costs should be accomplished. (Farms and non-profit organizations are to be included in the business section for purposes of the estimate.)

3) Land, improvements & damages

4) Acquisition of Contaminated Right-of-Way Parcels (See Chapter VIII, Part V)

The aggregate of all “per-tract” estimates developed by the appraiser or agent will be entered into the Right-of-Way Information Data Base.

E. <u>Special Estimates (Impact of Design Alternatives)</u>

From time to time, the Design Division may have need for input as to how various design alternatives may come to bear on the value of the remainder of one or more project tracts. When such opinions are needed, the request will be

transmitted in writing to the Regional Transportation Manager 2. Upon receipt of the request, the Regional Transportation Manager 2 will forward the request and all particulars to the Field office ROW Appraiser 4, who will conduct the necessary research and develop the estimate or assign the project to a member of the appraisal staff.

Since this estimate will have a significant impact on the decision of whether or not to incorporate a design feature into the construction of the project, an accurate estimate is absolutely necessary. While a documented appraisal report is not necessary, much of the same research and analysis is required. The appraiser must conduct a thorough highest and best use analysis of the property –both before and after the proposed acquisition and construction. A sound before-value estimate is essential. In the after situation, this analysis must be made under each design premise. Once required decisions have been made as to highest and best use of the property, appropriate research must be conducted to develop an opinion of after-value and amount due owner under each scenario. It is the responsibility of the Field office ROW Appraiser 4 to amend as necessary and ultimately approve the results of the study for recommendation to the Regional Transportation Manager 2, who shall then review, amend as necessary, and then approve the results. Once approved, the results will be transmitted in writing to the Design Division. An additional copy will be transmitted to the central office, and one copy along with all work papers will be retained in the official files of the regional office.

There may be instances where the valuation problem is very complex to the extent that a private-sector appraisal consultant should be employed. In such cases, the following procedure is to be followed.

The Regional Transportation Manager 2 or Field office ROW Appraiser 4 shall contact the Central Office Transportation Manager I whose duties include those of contracting for appraisal services. At this time, the complexity of the assignment, the potential appraisers and the estimated costs should be discussed. If the project on which the design decision question is posed is sufficiently near, from a time standpoint, the Transportation Manager I shall consider the prudence of contracting for the “special estimate” appraisal along with the normal contracting for appraisal services for the project.

Whether the “special estimate” appraisal assignment is conducted independently or in conjunction with normal appraisal service contracting for the project, when the appraisal is received, the Field office ROW Appraiser 4 shall notify the Design Division of the conclusions reached in the appraisal.

II. PRELIMINARY GROUP INSPECTION

A. General

Upon receipt of final R.O.W. plans, the Field office ROW Appraiser 4 will schedule a Preliminary Group Inspection (P.G.I.). The Field office ROW Appraiser 4, a member of the relocation staff, and an engineer, at a minimum, must comprise this project field inspection team. Each member shall have had an opportunity to review the plans prior to visiting the project. (It shall be the responsibility of the TDOT ROW Supervisor to make plans available to those who will be in attendance on the P.G.I.)

The Regional Transportation Manager 2, the TDOT ROW Supervisor, and the Central Office Transportation Manager I should be extended invitations to attend and participate in the field inspection.

It is permissible to conduct P.G.I's using "Preliminary Plans"; however, when a PGI is made using Preliminary Plans, the PGI report will need to be updated upon receiving Final Plans.

B. Purpose of the P.G.I.

The main purpose of the P.G.I. is to make a determination about the appraisal requirements for the project. It is the basis from which all contract proposals will be developed. The P.G.I team should conduct the inspection so that determinations concerning the following points can be made:

1. Appraisal problem for each tract.
2. Appraisal License and experience/expertise requirement for each tract.
3. Type of appraisal necessary (Formal or Formal Part-Affected (FPA).
4. Whether relocations are involved.
5. Sequencing of occupied tracts.
6. Number of appraisals necessary for each tract.
7. Whether the appraisal problem is so unique that a special proposal is needed.
8. Estimated appraisal fee for each tract.
9. Identify those tracts eligible to be Nominal Payment Parcels (NPP's).
10. Potential utility adjustments, potential environmental problems.
11. Need for consideration of additional information on plans or possible plan revisions.
12. Identify tracts that will require determination of real property / personal property, and tenant-owned property that are to be included in the real

property appraisal report. The PGI team shall conduct the inspections necessary and furnish the appraisers with a list of the personal property items that are to be included in the appraisal. Where there is a tenant(s) in occupancy, tenant owned property shall be identified and included on the list. (See "Special Emphasis" below)

13. Need for any alternate appraisals.

14. Observe and investigate any drainage or access problems.

The P.G.I. should, in most cases, include an office review during which an analysis of the appraisal requirements should be completed and preliminary determinations reached. The office review should be followed by a field inspection to the extent necessary to confirm or revise all preliminary determinations. This inspection, depending on the project, might involve only a thorough inspection of one or two complex tracts, or a complete review of all tracts on the project.

C. Special Appraisal Considerations (Special Emphasis)

The P. G. I. Group, while conducting their inspection, should be aware of the following situations, and when situations of this type are encountered each should be discussed and resolved:

1. Personal VS. Real Property

   There may be occasions when improved tracts contain personal property items that are adaptable to being moved, but which might otherwise be considered a part of the real property. Members of the relocation and property management sections should prepare an inventory of those items to be moved as personal property. A list of any items of personal property to be appraised and purchased will be included in the P.G.I. Report, and provided to the appraiser(s) prior to preparation of the appraisal contract. This list should include any known tenant-owned improvements.

2. Requirement For Two Appraisals

   There are no specific requirements for two appraisals on any tract. However there may be instances where, because of anticipated appraisal problems, the P.G.I. Group feels that two appraisals should be obtained. These instances should be in cases of complex valuation problems, questions of potential incidental damages, or potential condemnation problems. These situations should occur infrequently on normal projects. The group should use discretion in making such determinations.

3. Buildings Shown To Be Partially Within the Proposed Right-of-Way

   In instances where a structure lies partly within the proposed right-of-way, a determination must be made whether to acquire the entire building or to cut off the part within the proposed right-of-way and reface the remainder. In those instances where the course of action is obvious, the appraiser shall

be given special instructions one way or the other at the contracting stage. In those instances whereby the least costly alternate may not be readily apparent, the appraiser shall, as a part of his/her appraisal analysis, make the determination through consideration of the alternatives and conduct the appraisal accordingly. Where special engineering, architectural, or general contractor expertise is required, with TDOT approval, the appraiser shall be allowed to employ the consultant personnel required, and be responsible for paying for the charges with reimbursement by TDOT.

4. Special Construction Items

   The P.G.I. Team should make themselves aware of situations where design modifications or special construction features could have a significant impact on acquisition costs. For example, the group might find a case where the addition of a small retaining wall or a pipe instead of an open ditch could result in a substantial reduction in potential damages to a remainder. If so, the team should reach a conclusion as to the estimated savings, and request that a plan revision be considered.

5. T.V.A., U.S. Corps of Engineers, Department's of State Government, Postal Service, and Railroad Land Acquisitions.

   After receiving appraisal authority, the Regional Transportation Manager 2, or a designee, must contact that person in the Right-of-Way Central Office who is responsible for this type of acquisition or transfer of title.

6. Appraisal Waiver Provision (Nominal Payment Parcel (NPP))

   An appraisal is not initially required if the agency determines the valuation problem is uncomplicated <u>and</u> the fair market value of the proposed acquisition is believed to be $10,000.00 or less. The P.G.I. team-report will identify and recommend to the Central Office Transportation Manager I of the existence of such tracts. Upon approval by the Central Office Transportation Manager I, tracts designated for “NPP” treatment shall be eliminated from the private-sector appraisal consultant proposals. (Any disagreement between the P.G.I. Team and the Central Office Transportation Manager I, or any uncertainty about a tract shall result in that tract being appraised as opposed to being treated as an “NPP”.)

On approval of the P.G.I. report by the Central Office Transportation Manager I, all tracts then designated and identified in the appraisal service contracting area of the Right-of-Way Information Data Base for “NPP” treatment shall be reported to the Regional Transportation Manager 2 by the Field office ROW Appraiser 4.

The Regional Transportation Manager 2 will assign these tracts to a right-of-way appraiser or agent to proceed with development of just compensation

amounts for each tract. Where appraisals have been developed by private-sector appraisal consultants on the same project, these can and should be used as a guide for "equity of treatment". On projects where all tracts qualify for "NPP" treatment, the responsible appraiser or the agent with appraiser assistance will conduct the necessary research to prepare the estimated amount of compensation. The minimum offer will be $300.00 All NPP tracts require field inspection. The completed Form 2-NPP will be submitted to the TDOT ROW Supervisor for approval prior to negotiations. The approved offer will be made in accordance with Chapter VIII or Chapter XII of this ROW Procedures Manual.

If negotiations are unsuccessful, an appraisal must be made, reviewed, and another offer made before a tract is eligible for condemnation.

D. Inspection (PGI) Report

At the conclusion of the P.G.I. team's field inspection and office review, a formal inspection report will be entered into the Right-of-Way Information Data Base. The Central Office Transportation Manager I will be notified by the Field office ROW Appraiser 4 (notification must include an e-mail transmission) that the project P.G.I. has been loaded. All information within the P.G.I. report shall be considered in the preparation of contract attachment(s). Substantive deviations between what is called for in the P.G.I. report and the proposed details of the contract attachment(s) shall be discussed between the Field office ROW Appraiser 4 and the Central Office Transportation Manager 1 –with the Central Office Transportation Manager 1 having final authority in the matter.

If design modifications or construction items were discussed at the P.G.I. level, the Field office ROW Appraiser 4 will confer with the Regional Transportation Manager 2 as to the possibility and extent of acquisition cost savings. If the estimated savings are judged to be substantial, the appropriate persons in the Design Division will be contacted to ascertain if the proposal is feasible and cost effective. This contact should be made as soon as possible, since a special provision in the appraisal contract might be necessary. As soon as a decision is reached, the Transportation Manager I will be notified as to the course of action to be taken.

III. STAFF APPRAISERS

With Central Office concurrence, if it is determined by the Regional Transportation Manager 2 that staff appraisers are to be used on a project to prepare appraisals and reviews, the assignment will be made by the Field office ROW Appraiser 4.

IV. APPRAISAL CONTRACTS

A. General

All appraisal contracts for right-of-way acquisition and excess land disposition will be carried out in compliance with the general contracting procedures discussed in Chapter III of this Right-of-Way Procedures Manual.

Whether a single-tract or multi-tract assignment, requirements for completion shall be evaluated at the Regional and Central Office levels. Once the P.G.I. report has been transmitted to the Central Office, it will be reviewed and amended as necessary, or reviewed and approved by the Central Office Transportation Manager I. With the Field office ROW Appraiser 4's recommendation, the Central Office Transportation Manager I will analyze the project to determine the number and level of expertise of consultant appraisers that will be needed to complete all appraisals. Once potential appraisal consultants have been identified, the contracting process will proceed in accordance with the procurement provisions outlined in Chapter III of this Right-of-Way manual. .

B. Developing the Work Order Attachments

All work order attachments fall into one of two categories: (1) Original or (2) Supplemental. After approval of the P.G.I. Report, in concert with contracting procedures, the following shall be adhered to:

1. All appraisal service work order attachments shall be prepared by the Central Office Transportation Manager I.

2. While there is no specific prohibition against assigning an entire project to one appraiser, where project size and other factors suggest, more than one appraiser should be employed.

3. If certain tracts will require two appraisals, any such tracts should be incorporated into each work order attachment with the same due date for each appraiser being retained.

4. For all improved tracts whereby the proposed acquisition will result in relocation of the occupant (tenant or owner), appraisal service work orders shall call for all such tracts to be scheduled in the early stages of the appraisal contract assignment.

V. APPRAISER QUALIFICATIONS

A. Staff Appraisers

All staff appraisal positions (listed below) require a State of Tennessee Appraisal License and a General Certification.

Right-Of-Way Appraiser 3

Right-Of-Way Appraiser 4

Right-Of-Way Appraiser 5

B. Private-Sector Appraisal Consultants

1. General

Before a private-sector appraisal consultant can be considered for appraisal service assignments, he/she must be pre-qualified and approved by the Right-of-Way Central Office Consultant Evaluation/Approval Committee. In its decision-making process, the committee will consider such things as licensure/certification standing (past & present) with the Tennessee Real Estate Appraiser Commission, education (general, appraisal & eminent domain), years and type of appraisal experience, necessary staffing to perform required appraisal services, demonstrated ability to meet scheduling demands without compromising the Department's guidelines and requirements, and those of the Uniform Act, competency in reading and correctly interpreting right-of-way plans, and experience in giving depositions and expert testimony.

From the list of individuals who have received pre-qualification status, the Right-of-Way Central Office Consultant Evaluation/Approval Committee will submit the names of those individuals who have, at the appropriate time, also submitted a "letter of interest" to the Right-of-Way Division Director. The names of those individuals will be submitted to the Procurement Approval Committee for final approval.

2. Pre-Qualification Recruitment

As outlined in Chapter III, "Contracts", the Department advertises annually through print media and on its web site for a number of potential services. Appraisal services are among those included in the advertisements. These advertisements request that all offers for appraisal services be transmitted to the appropriate Central Office Division.

If at any time, either as a result of the annual advertisement or other reason, any regional office receives an employment inquiry from a private-sector appraisal consultant, the regional office shall direct that person to the

Central Office Transportation Manager I in charge of contracting for appraisal services**.**

Applications for pre-qualification will not be forwarded from one TDOT office to another. Applicants shall be responsible for adhering to the application process.

3. Processing Pre-Qualification Applications At The Division Level

Upon receipt of an pre-qualification inquiry, the Central Office Transportation Manager I will direct the interested applicant to the TDOT web site, and request the applicant download a DT-1742 application, complete all aspects of the application and mail it to the addressee listed on the web site. As promptly as possible, the application will be reviewed by the Central Office Transportation Manager I in charge of appraisal service contracting and the ROW Appraiser 5 to determine if the applicant appears to meet the qualifications for pre-qualification. Upon review of the DT-1742 application, the Central Office Transportation Manager I shall present the application and supporting to the Right-of-Way Central Office Consultant Evaluation Committee with a recommendation to approve or deny the application. The applicant will be notified in writing of the Committee's decision. If the applicant does not meet the qualifications to perform appraisal work for TDOT, they will be notified in writing as to the reason(s). Pre-qualification approval has a life of 3 years per application. New applications can be submitted at any time. It is the applicant's responsibility to maintain his/her pre-qualification status.

VI. APPRAISER EVALUATION

A. Project Performance

For project assignments with five or more tracts, the appraiser with appraisal review responsibilities shall prepare a project performance evaluation when the Market Data Brochure and 60% of the tract appraisals have been submitted for review and payment. A "Consultant-Appraiser Project Performance Evaluation" form supplied by the Central Office Transportation Manager I responsible for appraisal service contracting shall be provided to each Field office ROW Appraiser 4 for dissemination as necessary to review appraisers. These project evaluations shall serve as the basis for annual evaluations, and shall be maintained in the regional office for a period of at least three years, after which at the discretion of the Field office ROW Appraiser 4, those older than three years may be appropriately disposed of. If at any time the review appraiser finds project performance lacking by the consultant appraiser, the Field office ROW Appraiser 4 shall be made aware of the review appraiser's specific concerns. The Field office ROW Appraiser 4 shall make the Central Office Transportation Manager I aware of the problem(s) and what actions should be taken.

B. Annual Performance Evaluation

1. Documentation

On an annual basis, early in the calendar year, each consultant appraiser will be evaluated on his/her performance during the preceding calendar year. An "Annual Consultant-Appraiser Evaluation" form, supplied by the Central Office Transportation Manager I responsible for appraisal service contracting, shall provide the basic form via e-mail in the later part of the year to be evaluated. Each Field office ROW Appraiser 4 shall consult with members of his/her appraisal staff for the purpose of evaluating those appraisal consultants who performed appraisal services in his/her region during the previous calendar year. (For those appraisal consultants who worked in two or more regions in a calendar year, evaluations from each respective region are appropriate.) Individual evaluations on each appraisal consultant who performed work shall be conducted and submitted to the Central Office Transportation Manager I and Right of Way Appraiser 5 by the first of every year for review. Evaluations shall be compiled and presented to the Right-of-Way Central Office Consultant Evaluation/Approval Committee. These evaluations will play a role in the ultimate determination of the Continuous Contract Panel.

The Central Office Transportation Manager I or Right of Way Appraiser 5 will maintain a file for each private-sector consultant appraiser. This file should contain the most recent qualifications statement, photo copy of Appraiser License/Certification from the Tennessee Real Estate Appraiser Commission, photo copy of Certificate of Errors & Omissions Insurance in the required amount, the annual evaluations submitted by any of the regional offices where the appraiser has performed an appraisal, and any other pertinent documents.

The Right-of-Way Division recognizes that its Consultant Appraisers vary widely in terms of education, experience, and expertise. However, there is no attempt to group appraisers according to a classification system. Respective Field office ROW Appraiser 4s shall maintain the necessary level of familiarity with an individual appraiser's performance and qualifications so as to competently advise the Central Office Transportation Manager I.

VII. PROCESSING THE APPRAISAL PRODUCT

A. General

The Right-Of-Way Division is structured into four regional offices and a central office. The Central Office has the sole responsibility for and authority over contracting for appraisal service activity performed by approved private-sector appraisal consultants. The Central Office also monitors the appraisal and appraisal review activity within each of the Regional Offices.

The traditional operational mode is for appraisals to be conducted by private-sector appraisal consultants, with the appraisal reviews performed by TDOT staff appraisers. However, nothing precludes the reversal of these activities or the performance of both activities exclusively by one group or the other. Any variance from the traditional mode of operation due to workload or unforeseen factors requires agreement between the Regional Transportation Manager 2 and the Central Office Transportation Manager I. Agreement lacking, the Central Office Right-of-Way Division Director shall be the final authority.

After receipt of the PGI Report from a Regional Office and prior to contracting with any approved private-sector appraisal consultants, a determination will be made by the Central Office Transportation Manager I and the respective Field office ROW Appraiser 4 as to whether NPP and appraisal review activities for a given project will be conducted by the Regional Office, alternate Regional Office, or by the Central Office. Clearly, and with rare exceptions, NPP and appraisal review activities can and should be conducted at the home regional level. NPP's cannot be performed by private-sector appraisal consultants.

If at any time, a potential conflict of interest arises between a property owner, consultant appraiser, and/or review appraiser, the Field office ROW Appraiser 4 shall be notified by the appraiser and/or review appraiser. The Field office ROW Appraiser 4 shall immediately notify the Central Office Transportation Manager I, and the two shall resolve the matter, or report it to the Right-of-Way Division Director.

In the total process of "approved offer" development, "no person shall attempt to unduly influence or coerce an appraiser, review appraiser, or waiver valuation preparer regarding any valuation or other aspect of that appraisal, review or waiver valuation. Persons functioning as negotiators may not supervise or formally evaluate the performance of any appraiser or review appraiser performing appraisal or appraisal review work, except that, for a program or project receiving Federal financial assistance, the Federal funding Agency may waive this requirement if it determines it would create a hardship for the Agency".

B. Regional Office Responsibilities

It is the responsibility of the Field office ROW Appraiser 4 to ensure that title reports, plans and cross-sections are provided to the appraisal consultants who will be developing proposals. Once negotiations between the Central Office Transportation Manager 1 and the appraisal consultant have been finalized, the Central Office Transportation Manager I shall notify the Field office ROW Appraiser 4. Each consultant appraiser shall have the right to one full-size and one half-size set of right-of-way plans. Cross sections will be furnished in a full size or half size set. Copies of all plans' revisions will automatically be sent to each consultant appraiser for a particular project, regardless of individual tract appraisal responsibility.

All appraisal products together with requisite copies and appropriate invoicing shall be delivered to the Regional Office for the region in which the project is located, except in those cases whereby:

1. The appraisal reviews will be conducted by an alternate Regional Office; in such cases, all appraisal products together with requisite copies and appropriate invoicing shall be delivered to the Alternate Regional Office. The Alternate Regional Office shall be responsible for entering all information into the Right-of-Way Information Data Base.

2. The appraisal reviews will be conducted at the Central Office; in such cases, all appraisal products together with requisite copies and appropriate invoicing shall be delivered to the Regional Office for the region in which the project is located, and the Regional Office will forward one copy of the Market Data Brochure and one copy of each appraisal to the Central Office for review. The home Regional Office shall make all initial entries into the Right-of-Way Information Data Base. The Central Office shall make the balance of Data Base entries relative to Review and Form 2.

3. The Market Data Brochure

   After receipt of the Market Data Brochure in the regional office appraisal section, it will be date-stamped, recorded, entered into the Right-of-Way Information Data Base, and forwarded to the appropriate review appraiser.

   After cursory review of the Market Data Brochure, the review appraiser will notify the Field office ROW Appraiser 4 that the brochure has been given preliminary approval for invoice payment purposes only. A payment package will be prepared and forwarded in accordance with the procedures outlined in the payments section of this Chapter. All copies of the Market data Brochure will be retained in the regional office until the review appraiser gives final approval.

4. The Appraisals

Appraisals are grouped for delivery to the regional office by attachment due date; however, nothing precludes the appraiser from early submission. After each appraisal has been received in the regional office, it will be date-stamped, recorded, entered into the Right-of-Way Information Data Base, and forwarded to the appropriate review appraiser. Any appraisal report not submitted within the time frame stipulated in the contract or a specific contract extension date granted prior to the original due date, will be so noted in the consultant appraiser's permanent file.

After cursory review of each appraisal report, the review appraiser will notify the Field office ROW Appraiser 4 that the report has been given preliminary approval for invoice payment purposes only. A payment package will be prepared and forwarded in accordance with the procedures outlined in the payments section of this Chapter. All copies of each appraisal report will be retained in the regional office until the review appraiser gives final approval of each report.

5. Utility Adjustments

The property management section is responsible for providing private utility adjustments. These estimates should be attached to the appraisal package before the package is submitted to the review appraiser. However, in the absence of the utility adjustment being attached to the appraisal report early on, the review appraiser may conduct a partial review, but may not complete the review and cannot issue a Form 2 (Authorized Purchase Offer).

<u>Just as the Central Office Transportation Manager I is responsible for critical entries into the Right-of-Way Information Data Base, so too each individual Field office ROW Appraiser 4 and each review appraiser. Absence of proper input results in a data base with diminished value.</u>

6. Controls

Each regional office appraisal section is responsible for monitoring the progress of all projects in its region from the date the appraisal contract is initiated through the issuance of the final Form 2. Each Field office ROW Appraiser 4 is responsible for notifying appraisers when plan revisions or court update appraisals are needed, and shall notify the Central Office Transportation Manager I by e-mail when such services are needed. Appraisal fees for such services typically approximate 50% of the original fee, and consultant appraisers are contractually obligated to perform such updates. However, when circumstances dictate some other amount –be it more or less than the 50% figure— the final fee shall be negotiated between the appraiser and the Central Office Transportation Manager I. Failure to reach a mutual agreement will negatively impact future assignments

possibilities. To ensure that appropriate controls are in place and operating, each regional office is sent a copy of each and every "original and/or supplemental work order attachment" for all projects in its region.

C. Central Office Responsibilities

All contracting for appraisal services will be conducted in accordance with TDOT procurement policy as outlined in Chapter III of this manual. As previously discussed, it is the responsibility of the Central Office Transportation Manager I, but with regional input, to develop the requests for proposals and select/approve those appraisers to whom the proposal requests will be transmitted. The central office will negotiate the contracts for appraisal services on a project. After contracts are finalized, the regional office will be notified by transmittal of a copy of the approved contract with attachments.

VIII. APPRAISAL REVIEW

A. General

The review function serves two main purposes. The first purpose is to ensure that all appraisal products are written in compliance with The *Uniform Act*, *The Department's Guidelines for Appraisers,* and *Uniform Standards of Professional Appraisal Practice*. The second purpose is to determine if the appraisal report submitted for review represents a credible effort which provides sound and reasonable advice upon which to base a fair market value "good faith" offer. The review appraiser has several subordinate responsibilities such as determinations concerning uneconomic remnants, segregating tenant-owned improvements from fee-owned improvements, and inclusions of utility adjustments.

The review appraiser must ensure that the appraisal report and the market data brochure are complete, that the appraiser has applied sound judgment and provided reasonable and logical support for all conclusions. The review appraiser does not have to completely agree with all opinion statements and conclusions of the appraiser but must be satisfied that the appraiser has properly supported the conclusions reached.

The appraisal report serves as advice. The review appraiser may approve an offer of more or less than that indicated in the appraisal. When doing so, explanation and support are absolutely essential, inasmuch as the appraisal report will be provided to the property owner along with the statement of approved offer. The minimum offer will be $300.00.

It is expected that the appraisal review will incorporate both a desk audit and a field inspection. The field inspection may be waived at the discretion of the review appraiser. However, it must be explained why no field inspection was made.

B. ROW FORM-39 Appraisal Documentation Request

In reviewing the appraisal report, the review appraiser may determine that one or more of the appraisal reports or the market data brochure fail to meet the requirements set forth above or that corrections or additional information are needed. The review appraiser has the option of contacting the appraiser by phone, personal visit, e-mail, fax, or regular mail. Written correspondence may or may not include TDOT's ROW Form 39 to call attention to and resolve the related concerns or problems. If the review appraiser feels the problems or concerns are of a minor nature, the first consideration should be recognition that while perfection is an admirable goal, it is not a requirement in order to do business with TDOT nor should perfection be expected in any report. In such cases where there are deviations from perfection, the review appraiser need only comment as necessary on the Appraisal Review Form and Approved Offer Form (TDOT Form 2) and make any value changes appropriate or simply comment and then approve the report. If, on the other hand, the appraisal problem is serious, then appropriate communication with the appraiser is essential. Whatever mode of communication utilized, it should be documented.

An appraisal cannot be approved nor can a review be issued on any tract where a Form 39 or its documented written or verbal equivalent has been issued until an acceptable response has been received. In cases where there are two or more appraisals on a tract, the review appraiser may approve a value even though there is an outstanding Form 39, provided that the Form-39 was not issued on the approved appraisal. Upon receipt of the appraiser's response to the Form-39 the review appraiser will examine the response and, if acceptable, prepare a Form-2. If unacceptable, the review appraiser may prepare his/her own appraisal, or request that a second appraisal be ordered from a different appraiser. All Form-39's and appraiser's responses will be filed in the proper tract file. Consistent failure on the part of any appraisal consultant to provide adequate responses to Form 39 requests should be reported to the Central Office Transportation Manager I.

C. Reviewing Appraiser's Review Report

1. ROW FORMS-2.1, 2.2 and Assumptions and Limiting Conditions comprise the main body of the review report, but may, as state and federal law and USPAP change, be supplemented as necessary. The review report is an "appraisal document" and therefore must comply with Standard 3 of USPAP. The review appraiser will complete a Review Report for each tract appraised, utilizing Form-2.1, 2.2 (Certificate of Review) and Assumptions and Limiting Conditions.

2. The Form-2 is not an appraisal document, but a formal "Approved Offer Transmittal". As such, it need not necessarily be signed by an appraiser, but must be signed by an authorized TDOT employee. It is a basic offer

accounting of payments for all acquisitions with due consideration given to damages and special benefits. The minimum offer will be $300.00.

D. Uneconomic Remnants--Alternate Approved Offers

If the acquisition of only a portion of property would leave the owner with an uneconomic remnant, the acquiring agency shall offer to acquire the uneconomic remnant along with the portion of the property needed for the project. While the acquiring agency is required to make an offer for the remnant, the property owner is under no obligation to sell the remnant to the acquiring agency. ". (CFR 49-24-B-102-K)

If the TDOT staff determines a remainder qualifies under the Federal definition as an uneconomic remnant, then the TDOT staff shall make the necessary calculations toward an "Alternate Approved Offer" in addition to the "Approved Offer". The "Approved Offer" will be the typical offer for the partial acquisition. The "Alternate Approved Offer" will be based on the acquisition encompassing not only the acquisition shown on the plans, but include the uneconomic remnant(s) determined by the review appraiser to be created by the partial acquisition.

An uneconomic remnant is a "parcel of the real property in which the owner is left with an interest after the partial acquisition of the owner's property, and which the acquiring agency has determined has little or no value or utility to the owner". (CFR 49-24-A-2-27)

Uneconomic remnants do not have to be valueless, and in fact may well have some utility and value –if only to an adjacent property owner; however, in order to be classified as an uneconomic remnant, utility and value to the present owner must be severely limited. Generally speaking, an uneconomic remnant will not have a readily identifiable independent developmental capacity, but may only have value for assemblage.

Notwithstanding the above, nothing shall preclude the appraiser from considering special benefits which may accrue to the remnant.

E. Plans Revisions and Additional Right-Of-Way Acquisitions

In accordance with the provisions of Chapter VI, Regional ROW Appraiser 4 will be notified of all right-of-way plans revisions for projects being reviewed in the region. Said revisions will be distributed to the appropriate review appraiser. For projects whereby the appraisal review function will be conducted by an alternate region, revisions will be transmitted to the home-region Field office ROW Appraiser 4 who in turn will transmit the revisions to the alternate-region Field office ROW Appraiser 4 who will then distribute the revisions to the appropriate review appraiser. It will be the review appraiser's responsibility to determine if the revisions will have an impact on the amounts due owners. The specific action taken by the review appraiser is first determined by what phase

of the appraisal process the project and affected tract(s) are in. Upon a plan revision which affects one or more specific tracts or creates a new tract or tracts, one of the following actions –per tract-- by the review appraiser must be taken upon approval by the Field office ROW Appraiser 4:

1. The original offer remains valid. No corrective action needs to be taken.

2. The original offer remains valid; however, acquisition areas require amendment.

3. Review appraiser will modify approved offer based on modified acquisition areas.

4. Original appraisal has not been submitted. Appraiser will be sent the revision and incorporate it into his/her appraisal analysis and report.

5. Original appraisal has been submitted. Current offer is no longer valid. A revised appraisal is needed.

6. Revision has resulted in a new tract. New original appraisal is needed.

IX. APPRAISAL EXTENSIONS

All requests for extension(s) of the appraisal contract must be in writing, and may only be approved, in writing, by the person who approved and executed the contract or a designee on behalf of TDOT, (most typically the Central Office Transportation Manager I).

Request(s) for contract extension(s) will be forwarded by the consultant appraiser directly to the Central Office Transportation Manager I who will review the request(s). If the request is acceptable to the Central Office Transportation Manager I, the appropriate entry will be made into the Right-of-Way Information Data Base, the original letter of request will be marked “approved”, signed by the Central Office Transportation Manager I, and dated. The original will be returned to the appraiser, a copy will be sent to the appropriate regional office, and a copy sent to central files. If the requested extension date is deemed unacceptable, the Central Office Transportation Manager I, with input from the appropriate Field office ROW Appraiser 4, will contact the appraiser, investigate the specific circumstances, and negotiate the best delivery date possible. Continued failure on the part of any consultant appraiser to meet contract deadlines will play a role in future assignments. Nothing shall preclude the Central Office Transportation Manager I from canceling the late assignment and employing another consultant appraiser.

X. APPRAISAL REVISIONS DUE TO CONDEMNATION

Anytime an acquisition cannot be negotiated between TDOT and a property owner, the proposed acquisition tract will be transferred to the Office of the Attorney General. The AG's office may continue to negotiate or request the court with jurisdiction to establish a date of possession, and then continue to negotiate. At the AG's discretion, an appraisal update request or second opinion request shall be transmitted to the appropriate Regional Transportation Manager 2 for approval. If approved, the request will then be transmitted to the Central Office Transportation Manager I who will then contract with the consultant appraiser.

The Field office ROW Appraiser 4 or his/her designee must be certain that the consultant appraiser has the plans that reflect the proposed acquisition as of the Date of Possession. Delivery of the updated or new appraisal report should accommodate the needs of the Deputy or Assistant Attorney General handling the case. Any delivery date extensions must be approved first by the aforementioned attorney.

The type of appraisal needed (Formal or Formal Part-Affected) shall be at the discretion of the attorney.

When updated appraisals are received in the regional office appraisal section, each will be stamped, "received", recorded and entered into the Right-of-Way Information Data Base. At the AG's discretion/request, a staff appraiser will review the dated or second opinion appraisal.. If a private-sector consultant appraiser was used on the project, and is currently under contract, the private-sector consultant appraiser may review the updated appraisal/s. The review appraiser shall review the updated appraisal or second opinion appraisal to determine if it is appropriate, reasonable and adequately supported. Normally only a desk audit will be necessary or expected.

Upon completion of the review, the updated appraisal will be transmitted to the appropriate attorney. A revised review will not normally be issued for updated appraisals unless requested by the attorney through the Regional office. Instead the updated appraisals will be transmitted to the attorney with pertinent information. The transmittal letter to the attorney will include project number, tract number, owner's name, name of appraisers, type of appraisal, amount of updated appraisals, and amount of deposit. A statement reflecting that a revised review will be issued upon written request from the attorney will be included. ROW Form-40-A may be used for the transmittal to the attorney. (A review conducted by the Central Office is handled differently in that a 40-B will be utilized to transmit the review to the Regional Office. The Regional Office will then transmit the appraisal report along with a 40-A to the appropriate Deputy or Assistant Attorney General.) The review appraiser may, as beneficial to the attorney, communicate and assist the condemnation attorney to expedite the court case or settlement.

XI. INVOICING & PAYMENT FOR APPRAISAL SERVICES RENDERED

A. Each one of the Continuous Contract Appraisers is issued a “CRW” number at the beginning of each Continuous Contract period. For technical contracting reasons, the Continuous Contract Periods are five years in length; however, “work orders” can only be issued during the first two years of each respective contract. In effect, each Continuous Contract Appraiser is issued a new “CRW” number every two years in which he/she requests and qualifies for Continuous Contract status. Continuous Contract periods do not overlap; however, more than one Continuous Contract “CRW” Number per appraiser can be in effect at any given point in time. It is the Continuous Contract appraiser’s responsibility to invoice for appraisal services rendered on a project under his/her “CRW” number for the respective project.

All invoices must include:

1. Name of the individual appraiser
2. Company name & mailing address
3. Date of invoice
4. County in which the project is located
5. State project number
6. Federal project number, in applicable
7. CRW Number
8. Work order number
9. Attachment (alpha) Identification (A, B, C, D, ...)
10. Whether the invoice is for a Market Data Brochure; Original Attachment; or Supplemental Attachment
11. Tract Number
12. Fee

For specific tract appraisals, items 1 through 12 above must be included on each invoice. In addition, for projects requiring a Market Data Brochure, on a “per tract” basis, the total fee, the Market Data Brochure prorate share, and the net appraisal fee must be shown.

For dual-county projects, in addition to all the above, each invoice must show on a “per tract” basis the county and state project number.

Upon receiving a Continuous Contract, each individual appraiser is required to submit to the TDOT Finance Central Office (1) Substitute Form W-9 and (2) Automatic Clearing House Form (ACH). Both of these forms are necessary for payment for services rendered to be accomplished. All payments for appraisal services are by direct deposit.

Chapter VIII
ACQUISITION

Table Of Contents ..... Page

PART I: ACQUISITION TITLE EVIDENCE AND TITLE REPORTS 5

I. GENERAL 5

II. TITLE REPORTS 5

III. CONTRACTING FOR TITLE REPORTS 5

IV. PAYMENT FOR TITLE REPORTS 6

V. DISTRIBUTION OF TITLE REPORTS 6

VI. PLAN CHANGES 7

PART II: INSTRUMENTS OF CONVEYANCE 7

I. PURPOSE 7

II. RIGHTS TO BE ACQUIRED 7

III. LIMITS OF TAKING 7

IV. ACQUIRING ALL INTERESTS 8

V. ACQUIRING TENANT OWNED IMPROVEMENTS 8

VI. OWNER RETENTION OF IMPROVEMENTS 8

VII. MINERAL RIGHTS 8

VIII. DEEDS 9

A. General 9

B. Consideration Stated In Deed 9

C. Covenants Not Allowed 9

D. Descriptions of Acquisitions 9

IX. THE WARRANTY DEED 10

A. General 10

B. General Statement 10

C. Acquisition With No Access Control 10

D. Where Full Access Control is Acquired 10

E. Where Partial Access Control is Acquired 10

F. Where A Permanent Easement Is Required 11

G. Where A Construction Easement is Required 11

H. Where a Slope Easement Is Required 11
I. Acquisition of Improvements Located Partially Within The Right-Of-Way 11
J. Underground Storage Tank Liability Clause 12
X. SPECIAL PROJECTS 12
A. Foothills Parkway and Natchez Trace Parkway 12
B. Local Interstate Connectors 12
PART III: NEGOTIATIONS 13
I. GENERAL 13
II. WHO MAY NEGOTIATE 13
A. Staff Employees 13
B. Fee Negotiators 13
C. Negotiations By Other Public Agencies 14
III. SEPARATION OF FUNCTIONS 14
A. Negotiation 14
B. Supervision 15
C. Delivery of Payment 15
IV. ASSIGNMENT OF NEGOTIATIONS 15
A. Standard Procedures 15
B. Selecting The Negotiator 15
V. PREPARATION FOR NEGOTIATION 16
VI. MAKING THE OFFER 16
A. Fair Market Value Offer 16
B. Retention Of Improvements By The Owner 17
C. Offer to Purchase An Uneconomic Remnant 17
VII. CONTACTING THE OWNER 18
A. General 18
B. Property Owner Resides In Region 18
C. Property Owner Resides In The State But Outside The Region 18
D. Out-of-State Property Owner 19
E. Multiple Ownership 19
F. Problem Cases 19

VIII. COMPLETING THE STANDARD FORMS 20
A. ROW Form-17B 20
B. ROW Form-30A 21
C. ROW Form-32A 21
D. Uneconomic Remnants 21
IX. INITIATIONS OF NEGOTIATIONS 21
A. Information To Be Presented 21
B. Instructions 22
X. SUBSEQUENT CONTACTS 23
XI. REVISED APPRAISAL 23
XII. ADMINISTRATIVE SETTLEMENTS 24
A. Definition 24
B. Persons Authorized To Make Administrative Settlements 24
C. Basis for Making Administrative Settlements 25
D. Written Justification For Adm. Settlements 25
E. Procedures 25
XIII. CONCLUDING NEGOTIATIONS 26
A. Settlement Reached 26
B. Negotiations Unsuccessful 27
C. Condemnation Approval 27
XIV. SPECIAL CASES 27
A. Tenant Owned Improvements 27
B. Leasehold Interests 28
C. Donations 29
D. Right-of-Entry 29
E. Improvements Located Within the Right-of-Way 30

PART IV: CLOSINGS 33
I. GENERAL 33
II. CONTRACTING FOR THE CLOSING FUNCTION 33
A. Closing Agents Will Submit Receipts For Payments 33

B. Complete All Closings Within 45 Days 33
C. Errors And Omissions Insurance Coverage Required 34
D. Property Title Update At Time Of Closing Required 34
E. Adequate And Timely Monitoring The Status Of Right-Of-Way Projects 34
III. THE CLOSING TRANSACTION 34
A. Preparation For Closing 34
B. Closing 35
C. Payment of Incidental Expenses 36
D. Transmittal of Closing Instruments 36
E. "Roll Back" Taxes 37
PART V: ACQUISITION OF CONTAMINATED RIGHT-OF-WAY PARCELS 38
I. Definitions 38
II. Hazardous Waste/Petroleum Procedures 39
A. Identifying Contaminated Sites (Petroleum and Non-Petroleum) 39
B. Coordination of Contamination Information 40
III. Acquisition of Hazardous Waste/Petroleum Contaminated Parcels 41
A. Valuation of Hazardous Waste/Petroleum Contaminated Parcels 41
B. Acquisition 41
IV. Remediation of Contaminated Sites 42
A. Remediation by the Department 42
B. Remediation by the Owner 43
C. Federal Participation in Site Testing and Remediation Cost 43

PART VI: STATEWIDE STORMWATER MANAGEMENT PLAN REQUIREMENTS 44
I. GENERAL 44
II. POLICY 44
III. PROCEDURE 44

PART I:

ACQUISITION TITLE EVIDENCE AND TITLE REPORT

I. GENERAL

In order to protect the interests of the Department, title must be established before the acquisition of any interest in real property. Under normal circumstances the Department will obtain a preliminary title report before the Initiation of Negotiations and will update the title report immediately before closing a tract. If there is any question as to the Department's right to acquire a particular interest in property, it will be referred to the field office staff attorney for disposition prior to acquisition.

II. TITLE REPORTS

As stated above, the Department will obtain title reports for all tracts on a project for which any interest will be acquired. On the majority of projects, thorough title searches and Certified Reports of Title will be accomplished by either staff personnel or through the services of a title company or a fee attorney. In all such cases, the title report will be completed on ROW Form-49 to which will be attached copies of all recorded deeds, subdivision plats, liens, sell offs, easements, divorce decrees, wills, judgments and other pertinent documents. ROW Form-49 also contains a space for a five year sales history which must be completed.

It is the responsibility of the Regional Transportation Manager 2 to determine whether the title report will be accomplished by staff or fee personnel. When it is determined that the activity will be accomplished in house, the Regional Transportation Manager 2 will submit a request to the staff attorney. If it is determined that the activity will be accomplished by fee personnel, the procedures of Section III below will be followed.

III. CONTRACTING FOR TITLE REPORTS

All contracts for title reports will be made in compliance with the general contracting procedures outlined in Chapter III of this manual. When it is determined that title services will be obtained by contract, the TDOT ROW Supervisor or a designee will, after receipt of authorization for incidentals, prepare a proposal on ROW Form-61 and an "Invitation to Bid" on ROW Form-60. Then, from the approved list of Providers, select at least 3 firms who will be invited to bid on the contract. When possible, it is suggested that six or more firms be invited to bid on a contract. All firms selected will be mailed a copy of ROW Form-60, three copies of ROW Form-61, a copy of the cover sheet map, the acquisition table from the right-of-way plan and a bid envelope properly addressed and stamped "SEALED BID". At the time and place stipulated, the bids will be opened and examined for completeness and conformity with the requirements outlined on ROW Form-60. All acceptable proposals will be ranked according to the dollar amount of the bid and the contract

will be awarded to the low bidder. The TDOT ROW Supervisor or a designee will award the contract by signing and dating the approved contract. The approved contract will be distributed as follows:

1. One copy to the firm.
2. One copy to the project file.

The copy sent to the firm will be accompanied by a letter instructing the firm to begin work, a copy of the right-of-way plan and sufficient quantities of ROW Form-49. All other bidders will be notified in writing that their proposals were not accepted. Copies of these letters along with copies of all submitted proposals will be incorporated in the project file.

It should be noted that closing services will often be obtained as a part of the contract for title services. This decision will be made by the Regional Transportation Manager 2 at the time he/she makes his decision concerning title services. See Part Four of this chapter for further details on the closing function.

If closing services are not to be included, ROW Form-61 will be appropriately marked.

IV. PAYMENT FOR TITLE REPORTS

When delivering the title reports on a project, the firm will submit an invoice, in triplicate, for the agreement amount plus the cost of document copies, as supported by receipted bills. All costs must be on a per tract basis. The TDOT ROW Supervisor TDOT ROW Supervisor or a designee will check the adequacy of the submission and, if acceptable, prepare a payment package in accordance with the procedures outlined in Chapter II. The invoice and receipted bills for copying costs must be attached to the voucher request.

There will be situations in which a tract on the right-of-way plan has been sold into more than one tract between the time the plans were made and the date the title search is made. In these cases, there will be more than one title reports whereas the plans indicate that there should be only one. When title information is received indicating that such a situation exists, a request for a plans change should be initiated to conform to the title information. See Chapter VI for details on plan revisions. It is emphasized that no request for payment of a title report should be made until the above plans change request has been submitted.

V. DISTRIBUTION OF TITLE REPORTS

Upon receipt of title reports, the TDOT ROW Supervisor TDOT ROW Supervisor or a designee will check the adequacy of the reports and if acceptable distribute them to the project file, and project team.

VI. PLAN CHANGES

Any time a plan change adds additional tracts to the project, a title report must be obtained. The Regional Transportation Manager 2 must make a determination as to who will obtain the title report. If the project is under fee contract, the Regional Transportation Manager 2 may elect to have the fee person prepare the title report. In such cases he or a designee will transmit a written request to have the additional title reports prepared along with a copy of the applicable plan sheets. From this point all standard operating procedures will be followed.

PART II: INSTRUMENTS OF CONVEYANCE

I. PURPOSE

The purpose of this Part is to provide general procedures for preparing Instruments of Conveyance for use in acquiring the necessary rights-of-way in accordance with the approved plan.

II. RIGHTS TO BE ACQUIRED

Except for rare cases as explained below, the Department will acquire in the name of the applicable governing body, fee simple title to rights-of-way inside the right-of-way limits as shown on the approved plan. Exceptions will be made only when obtaining land rights from the Tennessee Valley Authority, the U.S. Corps of Engineers, other U.S. Government Agencies, railroads, Cities and Counties. Any other exception shall be cleared through the Right-of-Way Division Director. The Deed shall not indicate that the property is being acquired for a specific purpose nor shall it specify that the land is being acquired for the use of a Department or Bureau of the State.

Access control rights are to be acquired, along with fee simple, for controlled access projects and also on partially controlled access projects for that part of the right-of-way shown to be controlled access by the right-of-way plan.

III. LIMITS OF TAKING

Generally, acquisition is limited to property within the limits shown on the approved right-of-way plan. Under Departmental policy, no additional land takings are permitted without written approval of the Right-of-Way Division Director, except for uneconomic remnants as set out by the Review Appraiser.

IV. ACQUIRING ALL INTERESTS

Except for cases where real property interests are acquired from a lessee with a release from the landowner, all interests in a right-of-way tract are to be acquired in a single conveyance. Departure from this policy will be made only on a case by case basis through advice from the staff attorney.

V. ACQUIRING TENANT OWNED IMPROVEMENTS

The acquisition of tenant owned improvements will be by separate instrument. The contract will be treated as a deed but will not normally be recorded. ROW Form-30BR will be used as the instrument in such cases. (See Part Three of this Chapter for more details.)

VI. OWNER RETENTION OF IMPROVEMENTS

Owner retention of improvements will be handled by separate contract and it will not be incorporated in the instrument of conveyance. The consideration to be shown in the deed will be the net amount of the offer after deducting the retention value. ROW Form-32A will be used as the instrument for owner retention.

VII. MINERAL RIGHTS

Mineral rights may be excluded from the acquisition where it is evident that these rights have a value which can be separated from the value of the acquisition. In such cases, the landowner will be permitted to retain the mineral rights. The following is a standard statement for inclusion in the instrument of conveyance when the landowner retains the mineral rights:

> "The foregoing or hereinafter described right-of-way property is granted to the State of Tennessee, subject to the rights of the grantor, his successors and assigns to the enjoyment of all rights to deposits of minerals, gas or oil below the surface of the ground or the subgrade elevation of the proposed highway, whichever is lower, further provided that use of lands by the State of Tennessee for highway purposes shall be paramount. The grantor's use or enjoyment of rights to minerals, gas or oil below the surface of the ground or subgrade elevation of the proposed highway, whichever is lower, may not interfere in any way with uses for highway purposes, including the construction and maintenance of, and the free flow of traffic on, the highway."

VIII. DEEDS

A. General

All deeds, easements or other instruments of conveyance shall meet the requirements of Tennessee Law. They are to be reviewed by the field office staff attorney or other authorized person before conveyance is accepted. In most cases deeds used for right-of-way acquisition will require the seller to warrant and defend the title. Exceptions to this procedure may be approved by the Regional Transportation Manager 2. Under normal circumstances, the Department's standard one page or two page warranty deed will be used.

B. Consideration Stated in Deed

The instrument of conveyance shall not contain a breakdown as to amounts included in the consideration paid. The consideration shall be the total amount paid to the grantor for the taking and any and all damages to his remaining property.

C. Covenants Not Allowed

Deeds and easements or agreements to sell are not to include any wording which could act to bind the Department to perform any particular construction nor to set out limits of construction. The instrument is to perform only the conveyance function. Any covenant which is proper for agreement by the State should be contained in a contract separate from the instrument of conveyance.

D. Descriptions of Acquisitions

All land and/or permanent easements acquired must be described by a metes and bounds description. The area acquired shall also be stated. The engineering description and the area to be acquired must agree with the approved right-of-way plan. Temporary construction easements will be described as completely as is practical. The area of the easement must be stated.

IX. THE WARRANTY DEED

A. General

Except as may be noted to the contrary, the information outlined below should be included, as applicable, in the warranty deed. Instructions cannot be written to cover every condition of taking; however, the conditions outlined below are commonly encountered. In the usual case, language similar to that given should be used, but it may be altered as conditions require.

B. General Statement

1. The following statement, or equivalent statement should be included in all warranty deeds:

   The grantors acquired title to said land under deed of record in Deed Book_____, Page_____, in the Register's Office of _____County, Tennessee.

2. The following statement should be included for all partial acquisitions:

   "The consideration mentioned herein includes payment for the property taken, also payment for any and all incidental damages to the remainder compensable under eminent domain."

C. Acquisition With No Access Control:

The above described property is hereby conveyed in fee simple.

D. Where Full Access Control is Acquired:

The above described property is hereby conveyed in fee simple, and all right of ingress and egress to, from and across the same and to and from abutting lands is conveyed.

E. Where Partial Access Control Is Acquired:

When it is desired to acquire a part of a fee simple taking as controlled access and part as uncontrolled access, the description of the land shall clearly indicate the portion(s) where access is controlled and the portion(s) that is uncontrolled. The total area may be broken into separately described parcels. Controlled access parcel descriptions would then contain the statement shown in Item D, above, whereas descriptions of uncontrolled parcels would be conveyed as outlined in Item C. If the entire taking is described as one parcel, the language used to convey the land must clearly set out which parts are controlled and which are uncontrolled.

F. Where A Permanent Easement is Required

By this instrument the grantors hereby convey a permanent easement for construction and maintenance of (description of easement). The land on which the (project designation) is to be constructed is to remain the property of the undersigned and may be used for any purpose desired, provided such use does not interfere with the use or maintenance of said facility.

G. Where A Construction Easement is Required (Channel improvement, detours, working area for retaining wall, etc.)

By this instrument the grantors hereby convey an easement for the construction of _____ outside the proposed right-of-way line. The title to the above described land remains vested in the grantor and is to be used by the State of Tennessee, its contractors or assigns for a period of_____ years from and after the commencement of construction.

H. Where a Slope Easement is Required

The above described property is hereby conveyed as a permanent easement for construction and maintenance of slopes outside the proposed right-of-way line. The land described above, on which the slopes are to be constructed, is to remain the property of the Grantor(s) and may be used for any purpose desired, provided such use does not interfere with the use or maintenance of said slopes.

I. Acquisition of Improvements Located Partially Within The Right-of-Way

1. Where the consideration includes full payment for an improvement located only partially within the right-of-way and the Department wishes to remove the entire improvement the following statement should be included:

   "The State of Tennessee, or its duly authorized agents and assigns is hereby given the right to enter upon grantors remaining land solely for the purpose of removing each improvement and/or encroachment located partially on the land granted to said State of Tennessee and partially on the remaining land of the grantor. The consideration herein recited includes payment in full for such improvements."

2. The following statement is for use where the State's appraisals show that it is economically feasible to reface and/or repair the part remaining, and where an amount has been approved by the Review Appraiser to cover the owner's cost of refacing and/or repairing the improvement himself:

   "The State of Tennessee or its duly authorized agents or assigns is hereby given the right to enter upon grantors' remaining land for the purpose of severing those parts of improvements located on the land granted to said State of Tennessee from those parts of improvement

located on the remaining land of the grantor. It is further understood and agreed that the consideration mentioned herein includes any and all damages, both actual and incidental to the remainder of the property including such actual and incidental damages to the remainder of the property as a consequence of said severance."

J. Underground Storage Tank Liability Clause

Owner/operator of underground storage tanks agrees to be responsible for all costs direct and indirect for the clean-up of this site and to assure the state by means of proper documentation that the referenced site has had a site check to show that contamination is nonexistent. Owner/operator further agrees that contamination, if any, will be removed in accordance with Chapter 1200-1-15, Underground Storage Tank Program, of the Tennessee Department of Environment and Conservation. In addition to being responsible for the subject site cleanup, the owner will be responsible for third party liability and clean up on any other area which is contaminated by contaminates emanating from the subject property.

This clause will be used on Right-of-Way Form 30A, 30B, and 30BR as well as inserted into the Right-of-Way deed on projects where underground storage tanks are to be removed by the owner/operator of the tanks.

K. Where An Uneconomic Remnant is Acquired

When the owner elects to sell an uneconomic remnant, the legal description shall clearly and separately describe the required acquisition area and the uneconomic remnant. The deed shall reference both the parent tract and the 8000 series tract number established by plans revision (see Ch. VIII, Part III, VI, C, 2).

X. SPECIAL PROJECTS

A. Foothills Parkway and Natchez Trace Parkway

Rights-Of-Way for the Foothills Parkway and Natchez Trace Parkway are acquired by the State. Title to this right-of-way is taken in the name of the State of Tennessee and a master deed is then used to convey the right-of-way to the United States of America.

B. Local Interstate Connectors

Usually, right-of-way for Local Interstate Connecting Routes is acquired by the State with title being vested in the local sponsoring authority since maintenance will be done by the city or county. In special cases, the State may participate in the cost of rights-of-way procured by the sponsoring authority after execution of an appropriate agreement between the Department and the sponsoring authority.

PART III:
NEGOTIATIONS

I. GENERAL

Negotiation is defined, for the purposes of this manual, as the process by which the Right-of-Way Division makes every reasonable effort to acquire expeditiously, real property at a previously established fair market value.

One of the most important obligations of the Right-of-Way Division is to maintain an honest, straightforward and helpful relationship with the property owner in negotiations and throughout the entire acquisition process. The negotiator probably has a better opportunity than any other employee of the Division to create and maintain good public relations for the Department. His/her personal conduct during negotiations may be considered by the public, in many instances, as indicative of the attitude of the Department.

In the performance of his/her duties, the negotiator shall conduct themselves in an ethical and competent manner with poise and self-restraint. He shall be an impartial agent in that he shall inform the owner of all benefits due him under Tennessee law while protecting the interests of the Department under the same law. It is the desire of the Department to acquire Rights-of-Way at fair prices under amicable conditions.

II. WHO MAY NEGOTIATE

A. Staff Employees

Normally, a ROW Agent assigned to the appropriate project team will conduct negotiations. However the TDOT ROW Supervisor, at his discretion, may designate other qualified right-of-way agents to negotiate certain tracts. It is, in fact, recommended that the relocation section be assigned responsibility for negotiations involving the acquisition of owner occupied residential improvements. There may also be instances where the Right-of-Way Division Director or a designee, from the central office will be called upon to negotiate certain complex tracts. In any event the term negotiator, as it is used in this manual, includes all persons assigned to negotiate, regardless of title.

B. Fee Negotiators

Normally, the Right-Of-Way Division will not utilize negotiators other than staff employees. However, fee negotiators may be employed for circumstances, such as short term excess workload or the need for expert services not available within the Department.

Should the need for fee negotiators arise, a request will be prepared by the Regional Transportation Manager 2 and sent to the Right-of-Way Division Director for approval. A statement outlining the reasons for the need to employ fee negotiators must accompany the request. Once the request has been

approved, the Right-of-Way Division Director or a designee will, in accordance with the procedures outlined in Chapter III, obtain proposals and award a contract for negotiation services.

C. Negotiations By Other Public Agencies

In certain circumstances, Local Public Agencies (LPA) with qualified staffs and/or consultants may negotiate projects within their jurisdiction. In such cases the duties and responsibilities of the agency will be defined by written agreement from the Program Development and Administration Division.

Local Public Agencies will receive assistance by contacting the Regional TDOT LPA Coordinator. The TDOT LPA Coordinator is required to follow the LPA process as follows:.

1. After receipt of final right of way plans the TDOT LPA Coordinator will meet with the LPA Officials and:
    a) Deliver and explain plans
    b) Deliver and explain the Real Estate Acquisition Guide for Local Public Agencies and the Uniform Act
    c) Provide an overview of the title report, donation, appraisal, appraisal review, negotiation, administrative settlements, relocation (if applicable) and the closing/condemnation processes
    d) Provide generic forms as needed
2. The TDOT LPA Coordinator will monitor the project and audit the LPA files at the phases listed below and request copies of critical forms and papers for State records. Deficiencies shall be corrected before proceeding to the next phase.
    a) Title Reports
    b) Donation process
    c) Appraisal, Appraisal Review and Appraisal Waiver process
    d) Negotiation and Relocation (if applicable) process
    e) Administrative Settlement process
    f) Closing and Condemnation process (check the deeds against the Plans)
3. TDOT LPA Coordinator will secure a LPA certification for the project from the local government official.

III. SEPARATION OF FUNCTIONS

A. Negotiation

A person involved in establishing fair market value on a tract shall not negotiate on the same tract.

B. Supervision

The person functioning as the negotiator cannot supervise or formally evaluate appraisers, review appraisers, or persons performing waiver valuations. (NPP's).

C. Delivery of Payment

A person who negotiates a tract shall not deliver the payment, in person, on the tract.

IV. ASSIGNMENT OF NEGOTIATIONS

A. Standard Procedures

The Regional Transportation Manager 2 after receiving ROW Form-2 and the "Reviewing Appraiser's Review Report" will forward them to the administrative staff for appropriate recording. The documents will then be forwarded to the TDOT ROW Supervisor who will ensure that negotiations have been authorized on the project. If negotiations have been authorized, the TDOT ROW Supervisor will forward the Forms-2 to the agent assigned to the tract with instructions that negotiations be started. In all probability, individual negotiation assignments will have been made by the TDOT ROW Supervisor upon receipt of the authorization letter. If not, the TDOT ROW Supervisor will make the assignment at this time. The TDOT Right of Way Supervisor should also advise the assigned agent that negotiations be started as soon as feasible. Under normal circumstances the negotiator should initiate negotiations no later than 10 working days after receipt of the assignment. If this time period is exceeded, the reason for the delay should be documented in the negotiator's log. In no instance will an offer be made later than 60 days after the date of Review Approval. (The date the Form-2 is signed by the Review Appraiser).

If the 60 days passes without an offer being made, the review section will be requested by memorandum to reevaluate the approved value. If a revised offer is warranted, a revised Form-2 will be issued. If not, the reviewer may reconfirm the value(s) by memorandum.

B. Selecting the Negotiator

In most instances the TDOT ROW Supervisor will make assignments based on the current and projected workload of his staff. As much as possible, negotiators should be assigned work on a project basis and not as individual tracts come in. There will be situations; however, where the nature of the assignment will require the expertise of a particular individual. This may be a single complex business acquisition or an entire project that due to its nature might be suited to the talents of a particular individual. For example, a certain individual might have demonstrated an unusual ability to deal with rural landowners and projects of this type should be assigned to him when practical.

The same negotiator should be responsible for negotiating all tracts on the project under the same or similar ownership.

V. PREPARATION FOR NEGOTIATION

Preparation is the key to successful negotiation. The agent, after being assigned a tract or group of tracts on a project, should proceed to systematically prepare himself to negotiate effectively with the affected property owners.

The negotiator should first inform himself on a project basis. He should study the project plans to gain a knowledge of the overall effects of the project. He should also be aware of the future benefits of the project. If there are aspects of the plans that he does not understand, he should consult with engineers in the field office for explanations.

Before devoting his attention to a single tract, the negotiator should make a general review of all appraisals available to him to gain a better understanding of the effects of the project and of property values in general.

In preparing to negotiate the purchase of an individual tract, a detailed study of the plan as affecting the tract, including a study of the roadway cross sections is necessary. A general review of the appraisal(s) should be made to determine the property right or rights to be acquired and the values assigned respective items. The negotiator should also ensure that the review appraiser has not overlooked any uneconomic remnants. Information shown on the title report is also essential. If any aspect of the acquisition is not clearly understood, the negotiator should consult with his supervisor before making a contact.

VI. MAKING THE OFFER

A. Fair Market Value Offer

No offer shall be made until the Review Appraiser has established an estimate of Fair Market Value. The minimum offer will be $300.00. The negotiator will present a written offer for the full amount of Fair Market Value at the first contact where price is discussed. This contact is defined as the Initiation of Negotiations.

Except in a very unusual case where circumstances may demand a departure from the use of standard forms, the written offer to purchase will be presented on ROW Form-17B "Offer to Acquire Real Property. "At the same time, an Seller’s Acknowledgement of Sale Price and Conditions will be presented. Under normal circumstances ROW Form-30A "Seller’s Acknowledgement of Sale Price and Conditions" will be used.

ROW Form-17B as presented with ROW Form-30A constitutes a formal offer and furnishes the property owner a written itemization of, and statement of the basis for, the amount established as Fair Market Value. Where applicable, the

value for the real property to be acquired and for damages to the remaining real property shall be separately stated.

B. Retention of Improvements by the Owner

1. General

Except in areas where the relocation of buildings would not be consistent with planned urban development, the owner of improvements or appurtenances on lands being acquired as right-of-way shall be allowed the option of retaining his improvements or appurtenances at a retention value determined by the Department through the comparative process with improvements sold at public sale. In the case of special use improvements, an estimate of salvage value may be obtained from a specialist with knowledge of value in place and salvage value of such special use improvements. In instances where improvements are being acquired, the owner shall be informed at the Initiation of Negotiations of his right to retain improvements and of certain necessary conditions which must be met to retain improvements. The retention value of the improvements or appurtenances will normally be offered in writing at that time.

2. Notice to Owner of Conditions Regarding Owner Retention

When the owner is presented with the written offer of retention value on ROW Form-17B, ROW Form-32A "Owner Retention of Improvements" will be properly completed and made an attachment to ROW FORM-30A. This is both a notice to the owner of conditions necessary for his retention and removal of improvements located on land to be acquired and an agreement to remove the improvements in a particular manner. This notice specifically informs the owner (among other things) that he will be required to deposit a specified sum at the time of closing to ensure removal of the improvements in accordance with the conditions set forth therein. It also sets a specific time limit by which the owner must remove the improvements.

C. Offer to Purchase an Uneconomic Remnant

1. General

If the acquisition of only part of a property would leave its owner with an uneconomic remnant, it is the Department's policy to offer to acquire the uneconomic remnant. Reference is made to Chapter VII, Section VIII, Part D of the Right-of-Way Manual, which contains a discussion of what constitutes an uneconomic remnant. The Review Appraiser will determine when a partial acquisition will create an uneconomic remnant. This determination will be based upon a study of the appraisals and other information available to the Review Appraiser. The Department will not offer to purchase remnants that are not classified as uneconomic remnants by

the review appraiser, but will offer to purchase any or all uneconomic remnants created by a partial acquisition.

In such cases, a separate offer including the value of the uneconomic remnant(s) will be made in writing at the Initiation of Negotiations. This offer will be made based on an alternate ROW Form-2.

2. Final Plans

A tract number separate and distinct from that of a parent tract will be assigned on each uneconomic remnant through a plan change request initiated by the field office. It will be handled as any other plan change request.

All uneconomic remnant tracts added to plans are to be designated by the use of an 8000 series tract number. The uneconomic remnant tract should be linked to the parent tract. For example, if the State acquires an uneconomic remnant from Tract No. 5A, the new tract should bear the number 8005A and the area will be cross hatched on the plans. The original tract number will continue to be shown on the plans.

The tract will normally be described in the acquisition table of the project plans by the notation "Uneconomic Remnant". This plan change request must be done immediately after closing.

3. Condemnation Policy

If condemnation is required, the State will not condemn and acquire an uneconomic remnant.

VII. CONTACTING THE OWNER

A. General

It is the policy of the Department, to the greatest extent possible, to present the written offer in person to the owner or his designated representative. It is important to note that when contact is made with the owner's representative, the negotiator must state in his log that the person contacted was designated by the owner as his representative. The procedures to be followed under the various situations that may occur are outlined in the following paragraphs.

B. Property Owner Resides in Region

When an owner or his designated representative resides within the State Region served by the local field office, the negotiator will contact the property owner to arrange for an appointment to present the written offer. The appointment should be made at a time and site reasonably convenient to the owner.

C. Property Owner Resides in the State, but Outside the Region

If the negotiator is unable to arrange for an appointment at the site of the property to be acquired and a personal contact at another location is not practical, the negotiator's TDOT Right of Way Agent Senior will notify the TDOT ROW Supervisor. The TDOT ROW Supervisor will then transmit all pertinent documents to his counterpart in the field office serving the State Region in which the owner resides, with a request that negotiations be handled by that office. Upon receipt of the request, the tract will be assigned to a negotiator who will proceed under normal operating procedures to negotiate the tract. At the conclusion of negotiations regardless of the outcome, the completed tract file will be returned to the originating field office. The originating office will then take appropriate steps to obtain possession of the tract. An out of Region property owner may be contacted by certified mail provided the letter embodies substantially the same considerations that a personal meeting requires.

D. Out-of-State Property Owner

An out of State property owner may be contacted by certified mail provided:

1. The letter embodies substantially the same considerations that a personal meeting requires; (or)

2. An offer is made to at the owner on site or at a mutually convenient location within a reasonable length of time.

E. Multiple Ownership

The ideal procedure where multiple ownership is involved, would be for the negotiator to arrange for all part owners to be present for the presentation of the written offer. Where this procedure is not possible, the negotiator should arrange to meet with the principal owner and/or as many part owners as possible at which time he would present the written offer. He may enlist the aid of the owners present to assist in presenting the offer to those owners not present. However, it is the responsibility of the negotiator to ensure whenever possible that each part owner is informed of the offer and the basis for the offer. The negotiator's log must document the methods used to inform the absentee part owners of the offer.

F. Problem Cases

1. General

Where problems are encountered in establishing ownership of a parcel to be acquired, the TDOT ROW Supervisor should obtain the advice and assistance of the staff attorney to obtain good title to the parcel.

2. Unknown Owner

Where a complete title search fails to identify the owner of a parcel of land required for a project and the adjoining owner(s) does not lay claim to ownership of same, title to such parcel must be obtained through court procedures.

3. Disputed Ownership

   It is not possible to outline exact procedures to be followed in every case of disputed ownership that may arise. Claims to ownership or other real property rights that are not of record may be uncovered during negotiations. The advice of legal counsel shall be obtained in a case of disputed ownership. The property shall then be appraised in accordance with the legal advice given. Though recourse must be made to the courts to obtain clear title, before condemnation proceedings are instituted the TDOT ROW Supervisor or a designee shall furnish each alleged owner a written explanation covering amounts to be deposited with the court and the basis used by the State in determining such amounts.

4. When Ownership Cannot Be Located

   When a diligent search for the owner of a tract as shown by the title report fails to locate said owner, title to the parcel must be obtained through court procedures. The negotiator assigned to the tract shall submit a written report through his supervisor, to the TDOT ROW Supervisor showing the extent of the search made to locate the owner. The report may be made on the negotiator's log or may be in letter form. The TDOT ROW Supervisor may direct that a further search be made or may initiate condemnation. The negotiator's report on the search shall be placed in the project tract file.

VIII. COMPLETING THE STANDARD FORMS

A. ROW Form-17B "Offer to Acquire Real Property"

1. The Heading--Completion of this section is, for the most part, self-explanatory. The name is the name of the property owner. The tenant box should only be checked when making an offer for tenant owned improvements.

2. Breakdown of Values--Column A will contain the breakdown of values as established by the review appraiser on ROW Form-2.Column B shows the alternate negotiation price where salvageable improvements are involved. The improvement value will be reduced by the amount of the salvage value estimate. In most cases, damages to the reminder will be the same as column A. However, in certain cases where only part of the improvement is within the right-of-way and the offer contains an amount to reface the

improvement the damage amount would be reduced. Both the Fair Market Value Estimate and the Grand Total will be reduced appropriately.

3. Moving Expenses--The appropriate box must be checked.

4. Improvements--All improvements being acquired should be listed in general, but descriptive terms. For example, "one 6 room brick residence, one concrete block storage building, and one 2 car frame garage." In the event that an offer is to be made for a tenant owned improvement, that improvement should be specifically excluded from the itemization to the owner and included in the space provided for tenant owned improvements.

B. ROW Form-30A "Seller's Acknowledgement of Sale Price and Conditions"

ROW Form-30A will be completed in all cases, except for the offer of tenant owned improvements when ROW Form--30B will be prepared and presented. The purchase price will be the Grand Total shown on the 17B under either column A or B as applicable. It is also important to remember that if either item C or D does not apply, it must be so designated. If a utility adjustment is involved it must be described in Item D.

C. ROW Form 32A "Owner Retention of Improvements"

Any time improvements are being retained by the seller, ROW Form-32A must be completed and made a part of the "Seller's Acknowledgement of Sale Price and Conditions". The negotiator, in consultation with the TDOT Right of Way Agent Senior, must make a determination as to the length of time the owner will be given to remove the improvements. In most cases 60 days will be allowed. There may be exceptions, depending on project circumstances, when a shorter removal period will be necessary and the Form-32A should reflect this shorter period.

D. Uneconomic Remnants

A separate Row Form -17B must be completed based on values established in the alternate ROW Form-2. This offer will also be presented at the Initiation of Negotiations. Form-30A, which is signed by the owner, must reflect the decision of the property owner.

IX. INITIATION OF NEGOTIATIONS

A. Information to be Presented

At the Initiation of Negotiations for the tract, the negotiator will, in all cases, present the following information:

1. The Written Offer--In most cases ROW Form-17B

2. The Seller’s Acknowledgement of Sale Price and Conditions--ROW Form-30A, including the legal description.

3. The Acquisition Brochure--If they don't already have one.

4. A copy of the plan sheet showing the tract. The area to be acquired should be outlined or shaded, all easements should be appropriately marked and any affected improvements shown.
5. A copy of the appraisal(s) or any other document used to determine the fair market value. The Right-of-Way Form-2 and portion of the brochure used to determine the fair market value would be included.

In addition the negotiator should be fully knowledgeable of and give a detailed explanation of the following:

1. How the value was determined.

2. In the case of a partial acquisition, a description of the acquisition and its effect on the reminder lands.

3. That before the State takes physical possession of the property the owner has a right to receive, subject to outstanding encumbrances, the established Fair market Value.

4. The options and responsibilities involved with owner retention.

5. The Department's position on uneconomic remnants, if applicable.

6. The steps available to the owner if the Department's offer is rejected.

7. The owner's right to receive reimbursement for incidental expenses upon the transfer of his property to the State.

B. Instructions

The first contact is the most important one the negotiator will make with an owner. First impressions are of great importance; therefore, the negotiator must present a neat, business-like and friendly appearance to gain the confidence of the property owner. Use should be made of maps and plans in explaining the effect of the proposed construction on the owner's property. If a question arises that the negotiator cannot answer, he should freely admit that he does not have the desired information, but should advise the owner that he will obtain the information and will advise the owner of his findings. If the first contact is made on site, the negotiator will make a general inspection of the property to ensure that changes have not been made to the real property which would require revision of the appraisals.

If during this contact the negotiator discovers an item not covered by the appraisal or uncover information that would cause him to believe the offer

made to the property owner should be revised, he shall advise the TDOT Right of Way Agent Senior of his findings and record them on the negotiator's log. The TDOT Right of Way Agent Senior will bring the matter to the attention of the TDOT ROW Supervisor who will take whatever steps are necessary to correct the situation.

The negotiator must be willing to listen to the owner and should make note of all claims of the owner and of any counter offers made.

At the conclusion of this contact the negotiator will record the contact on ROW Form-17A "Negotiator's Report of Call," making sure that all details of the contact are included.

X. SUBSEQUENT CONTACTS

The property owner shall be afforded the opportunity to consider the offer for a reasonable period of time regardless of whether the property to be acquired is occupied or unoccupied. At least two contacts, and under most conditions a minimum of three personal contacts should be made unless the property owner elects to sell on the first contact or unless good reasons exist for not making additional contacts. These are the minimum conditions only and additional contacts should be made whenever there is a reasonable expectation that agreement can be reached.

The negotiator, when preparing for subsequent contacts, should resolve all claims of the owner by whatever means are appropriate. The negotiator should also report all counter offers to the TDOT Right of Way Agent Senior for consideration and appropriate resolution.

The owner is to be advised of all findings at the next contact. All contacts regardless of their nature are to be recorded on ROW Form-17A immediately after the contact is made. If additional sheets are necessary, ROW Form-17A continuation sheet shall be used. All pertinent items of discussion and documents presented must be recorded.

XI. REVISED APPRAISAL

Whenever a revised ROW Form-2 is received in the field office, the status of negotiations on the tract must be determined. If condemnation has not been filed, the Form-2 will be forwarded to that section responsible for negotiations on the tract. The TDOT Right of Way Supervisor, upon receipt of revised Form-2, will immediately forward it to the negotiator assigned to the tract. The negotiator will prepare a revised ROW Form-17B and ROW Form-30A and make arrangements with the property owner to present the revised offer. This contact will be handled and recorded as any other follow up contact. If condemnation has been filed, the procedures outlined in Chapter XI will be followed. (A revised Form-2 is not appropriate if a deed has been obtained since an S tract would have to be created.)

XII. ADMINISTRATIVE SETTLEMENT

A. Definition

An administrative settlement is any settlement made prior to the filing of condemnation, which is in excess of the approved estimate of fair market value. These settlements require authorization of an appropriate official of the Department and if applicable, additional approval by the Commissioner of Finance and Administration and the Comptroller of the Treasury. It is possible that settlement could be made for less than the approved value, in which case the settlement would be approved by the central office.

B. Persons Authorized to Make Administrative Settlements

The Regional Transportation Manager 2 or designee in each field office is authorized to approve administrative settlements for all tracts on which the increase does not exceed $10,000.00 or 10 percent, whichever is greater. All other administrative settlements must be approved by the Right-of-Way Division Director or a designee. Additional approval from the Commissioner of Finance and Administration and the Comptroller of the Treasury will be required when the following criteria for the property that is being acquired are met:

IF:

The appraised value (Form-2 amount) of a parcel of land along such right-of-way exceeds one-hundred thousand dollars ($100,000);

OR

The appraised value (Form 2 amount) of all parcels of land owned by any one person, family or entity, along such right-of-way exceeds one-hundred thousand dollars ($100,000);

AND

The Department proposes to pay more than ten percent (10%) above the current appraised value.

See Section E. for the process to follow if the above requirements are met.

The justification for settlement for an increase of up to $5,000.00 can be the administrative costs involved in preparing for and conducting the trial. Further justification is required for all other settlements with the amount of documentation rising as the requested increase rises.

C. Basis For Making Administrative Settlements

An administrative settlement may be made when it is determined that such action is reasonable, prudent and in the public interest. In arriving at a determination to approve an administrative settlement, consideration is to be given to all pertinent information including the following:

1. All available appraisals, including the owner's.

2. The approved estimate of Fair Market Value.

3. Recent court awards for similar type properties.

4. The negotiator's recorded information.

5. The range of probable testimony as to Fair Market Value should condemnation be filed.

6. The estimate of trial costs.

7. The opinion of legal counsel, when appropriate.

Judicial resolution of a value question is time consuming and expensive for both the property owner and the Department. It should be reserved for matters of substance and importance, such as when dollar differences are substantial or an important principle or precedent is involved.

D. Written Justification For Administrative Settlements

The approving official must prepare a written justification outlining the dollar amount of the increase and including a discussion of the available information that supports such an increase. He must also provide a breakdown of values. In the case of an owner occupied tract involving a residential displacement the approving official will also provide the new base for the replacement housing computation.

E. Procedures

Anytime that a negotiator feels that an administrative settlement should be considered because of a counter offer from the property owner or other pertinent and valid reasons, the TDOT Right of Way Agent Senior will be advised of the pertinent facts and his recommendation. If the TDOT Right of Way Agent Senior feels that settlement might be warranted, the settlement offer will be reviewed with the TDOT ROW Supervisor. If the settlement is determined to be warranted, the TDOT ROW Supervisor or a designee shall prepare a memorandum setting out the full particulars of the case in support of his recommendation for settlement. This memorandum will be forwarded to either the Regional Transportation Manager 2 or designee or to the Right-of-Way Division Director or designee, depending on the amount of the increase.

Upon completion of his review the approving official will either approve or disapprove the settlement. The settlement request will be forwarded to the section, which originated the request, and the negotiator will be informed of the outcome.

Those requests which require approval of the Central office and the Commissioner of Finance and Administration and the Comptroller of the Treasury will be sent to the Right-of-Way Division Director or designee for initiation of the approval process. The process will be as follows.

A single letter requesting approval will be prepared and sent to the Commissioner of Finance and Administration and the Comptroller of the Treasury for their approval. This letter will be sent under the signature of our Commissioner and will include justification for the settlement. Additionally, a copy of the appraisal, the Form-2 and the approval letter from Central office will be transmitted. The Regional office will be informed of the outcome.

Once an administrative settlement is approved, the negotiator will prepare revised Forms 17B and 30A and present the revised offer to the property owner.

In the event that the administrative settlement involves an owner occupied residence, the relocation section unit must be advised in order that the replacement housing payment offer can be revised. The revised settlement offer should not be presented to the owner until the replacement housing payment offer has been revised.

XIII. CONCLUDING NEGOTIATIONS

A. Settlement Reached

After obtaining a signed "Seller's Acknowledgement of Sale Price and Conditions", the negotiator will complete ROW Form-17 "Report on Acquisition". The negotiator will then prepare a payment package and forward it in accordance with the procedures outlined in Chapter II.

ROW Form-2 and ROW Form-30A must accompany the payment package. In the case of administrative settlements, the approval letter will also be sent. The completed ROW Form-17 will be routed through the TDOT Right of Way Agent Senior to the project files. Also if not previously done, the negotiator will ensure that all documents are transferred to the project file.

B. Negotiations Unsuccessful

When the negotiator is satisfied that all reasonable efforts to obtain a settlement have failed and further contacts with the property owner would be fruitless, he will complete Row Form-17 "Report on Acquisition" and attach a copy of all ROW Forms-17A for the tract. He will then prepare a payment package for forwarding in accordance with the procedures outlined in Chapter II. ROW Form-2 must accompany the payment package. If moving costs are included in the condemnation, either RA Form-109 or RA Form-116 will be attached. The payment package along with the original Form-17 and attachments with one copy of Form-17 will then be forwarded for approval in accordance with Paragraph C following.

C. Condemnation Approval

In all cases where negotiations are unsuccessful the request initiating condemnation will be signed by the TDOT Right of Way Agent Senior and forwarded to the Regional Transportation Manager 2 or designee for his review and approval. After approval, the signed copy of the Form-17 will be placed in the project file and the payment package will be forwarded to Transportation Accounts. A copy of the Form-17 and a copy of the negotiator's log will be sent to the Central Office files.

The Form-17 provides a space for comments by the TDOT Right of Way Agent Senior where additional clarification or information is needed to substantiate or justify the request for condemnation.

It is important to remember that throughout this process, the person reviewing the claim should be satisfied that further attempts to settle the claim amicably would be fruitless and that condemnation is the only feasible alternative.

XIV. SPECIAL CASES

A. Tenant Owned Improvements

During the appraisal process, if it is determined that there are tenant owned improvements a separate offer must be made to the tenant for those improvements. In all such cases a value for the tenant owned improvements, including damages, will be separately stated on ROW Form-2 and explained in the Review Comments.

ROW Form-17B will be used to make the offer and ROW Form-30B will be used as the "Seller's Acknowledgement of Sale Price and Conditions." Also, the tenant has the option of retaining the improvements in which event, ROW Form-32A must be completed.

Negotiations will be handled as previously described. It would be preferable to have both the landowner and tenant-owner together at the Initiation of

Negotiations, and to make both offers at this time. However, this may not be practical in all cases and is not a requirement. One item of extreme importance that must be remembered is that the value of the tenant owned improvements must be deducted from the value of improvements as shown on ROW Form-2 before it is transcribed to the Form-17B to be presented to the landowner. The review Appraiser does not make this deduction.

In certain cases, the value of tenant owned improvements may include damages. In such cases, the negotiator must make an appropriate deduction from the damage amount shown on the Form-2. The Reviewer should provide an explanation of this in his review comments. However, the negotiator is cautioned that the reviewer might omit this explanation and should examine the appraisal to determine if damages have been applied to any tenant owned improvement not actually acquired.

If the tenant-owner agrees to the State's offer, before concluding negotiations the landowner must sign ROW Form-30B indicating that he will disclaim all rights and interest in and to the improvements to be purchased from the tenant-owner. ROW Form-30BR, "Purchase of Tenant Owned Improvements," contains this disclaimer and it must be signed by the landowner prior to closing with the tenant. If the landowner refuses to sign the release, the tract must be condemned in order that the courts can determine the respective property interests involved.

In the event the offer includes a payment for damages to a tenant owned improvement not taken, a statement similar to the following must be included on both ROW Form-30B and 30BR in the blank provided for description of improvements:

The consideration mentioned herein also includes payment for damages to (describe improvements).

B. Leasehold Interests

In this Chapter, the term "leasehold interest" refers to the interest a lessee has in the real property of another by reason of his being granted the right to the use and enjoyment of the property under conditions agreed to between the lessee and the landowner. The term "leasehold interest" does not refer to any interest that the tenant owns in improvements or other real property located on land belonging to another.

No separate interest will be set out in an appraisal; therefore, no negotiations are undertaken with a lessee to acquire a "leasehold interest". In all acquisitions, other than residential, where a tenant holds more than a month to month tenure on a tract by reason of a valid lease, a suitable release must be obtained from the lessee before a deed is accepted from the owner of the tract. Generally, a residential leasehold interest will have little or no cash value and when this is apparent a release by the tenant is not required.

Before concluding negotiations, the negotiator is responsible for obtaining assurances from the landowner that agreement has been reached with all lessees.

ROW Form-51, "Release" is to be provided to all landowners whose property is encumbered by a leasehold interest. It is the responsibility of the landowner to obtain the required release from his lessee on either ROW Form-51 or other suitable document. Whenever possible, the negotiator will assist the landowner in obtaining the release if the owner requests him to do so. If all leasehold interests are not released, the State must resort to condemnation to ensure acquisition of all interests.

C. Donations

Nothing in this Chapter shall be construed to prevent a person whose real property interest is being acquired for a highway project from making a gift or donation of such property or any part thereof, or of any compensation paid therefore, after such person has been fully informed of his right to receive just compensation for the acquisition of his property.

The negotiator may accept a donation from the property owner at any time. However, prior to acceptance of the deed, the negotiator must obtain a signed statement from the property owner to the effect that the property owner has been informed of his right to receive just compensation and is waiving such right. The use of ROW Form-64 "Initial Contact" is suggested.

The Internal Revenue Service will not accept a claim for a donation of $5,000.00 or more if the valuation is based on a staff appraisal. Therefore, if a donation is obtained for a property valued at $5,000.00 or more by a staff appraiser, the owner will be informed that the Department will obtain a fee appraisal, which they will receive a copy of, and in addition, the owner will be provided a summary statement based on that appraisal. The owner may refuse this service, and if so, the file will be appropriately documented and no appraisal will be made.

D. Right-of-Entry

A property owner may be asked to voluntarily give up possession of his property before payment, provided he has been informed of his rights to such payment prior to vacation and executes an instrument giving the State an earlier right-of-entry.

Rights-of-entry are most appropriate where the project itself is of an emergency nature and time requirements preclude making an appraisal and offer first. Other exceptional situations may also warrant the use of a right-of-entry. Such exceptions include a plan change late in the project development process, or the acquisition from a corporation where acceptance of the State's offer often takes a great deal of time.

However, except for the above mentioned emergency projects, a right-of-entry will not normally be requested until after the Initiation of Negotiations. Rights-of-entry may be procured prior to the Initiation of Negotiations only with the prior written approval of the Right-of-Way Division Director or designee. Exceptions to the above practice can only be by approval of the Right-Of-Way Division Director . ROW Form-6, properly completed and executed, will be used as the instrument by which the owner grants entry to the State prior to payment.

When a right-of-entry is granted by an owner, it is extremely important that the tract be acquired without delay. Serious legal problems which could arise make it imperative that the State have legal possession of such tract before one year from the date of the right-of-entry. The Regional Transportation Manager 2 in each field office shall maintain a system which will ensure that this time limit is met.

E. Improvements Located Partly Within the Right-of-Way

1. General

It is important where only part of an improvement lies within the right-of-way that it be clearly understood between the owner and the State as to what the offer covers; the responsibilities of each party regarding removal of the part within the right-of-way; whether the offer covers purchase of the entire building by the State; whether the part outside the right-of-way is to remain on the owner's remaining land; etc. Such generally encountered situations are discussed below.

2. Improvement Substantially Within the Right-of-Way and Consideration Covers Entire Improvement.

a. Owner Retains Improvement

Where an improvement(s) is substantially within the right-of-way and the approved price covers payment for the entire improvement and the owner wishes to retain and remove the entire improvement, he shall be allowed to do so as previously outlined.

ROW Form-30A "Seller’s Acknowledgement of Sale Price and Conditions " and the instrument of conveyance must contain a clause allowing the Department or its agents or assigns to enter on the remaining property to remove that part of the improvement outside the right-of-way should the owner default in his agreement to remove the entire improvement.

b. Owner Does Not Retain Improvement

Where an improvement(s) is substantially within the right-of-way and the approved price covers payment for the entire improvement, if the Department desires to remove the entire improvement, a clause to allow the Department or its duly authorized agents or assigns to enter on the remaining land for this purpose must be made a part of the "Agreement to Sell" and instrument of conveyance. A case may be encountered as above except that either the owner will not agree to allow the Department to remove the part of the improvement remaining or the part remaining could be so extensive that the Department would not desire to remove same. In the first instance, the case would probably require litigation. However, either instance could be handled by purchase and deed after a suitable agreement is reached.

3. Improvement Substantially Outside the Right-of-Way.

a. Consideration Includes Payment for Part of the Improvement Within the Right-of-Way and Cost to Cure Remaining Portion--Owner to Clear the Right-of-Way Refer to the section of Chapter VII of this Manual treating valuation of the captioned case. Where an amount is included in the offer to the owner to reface and/or repair the remaining portion of an improvement and part of such amount is to pay the owner to clear the right-of-way of the section of the improvement to be removed, it will be necessary to require the owner at the time of closing to make deposit of a specified amount to ensure removal of that part of the improvement within the right-of-way.

ROW Form-32A shall be used to cover the removal of the part as though it were an entire improvement in itself. Form-32A and the instrument of conveyance must contain a clause allowing the Department or its assigns to enter on the remaining property to sever the improvement should the owner default on his agreement.

b. Consideration Includes Payment for Part of Improvement Within the Right-of-Way and Cost to Cure Remaining Portion--State to Clear the Right-of-Way.

Where negotiations are unsuccessful in a case as outlined in Paragraph (a) above, that part of the amount offered the owner representing an estimate of cost to pay him for clearing the right-of-way shall be deducted from the total amount of the approved price when the condemnation deposit is made with the court. The Department will then clear the right-of- way. However, condemnation is not necessary if the only obstacle to the owner's agreeing to the offer is that he does not wish to clear the right-of-way but will otherwise accept the offer and reface and/or repair the remaining portion of the improvement himself. In this case, the offer and the agreement to Sell should be revised to

exclude payment for his clearing the right-of-way and should show that the Department or its agents or assigns will perform that operation. The Department must reserve the right to enter on the remainder land to sever the building and clear the right-of-way. Both Form-30A and the deed must reflect this reservation.

Another case may arise where cost to cure is included in the offer to the owner, but the original offer to the owner is made on the basis that the Department will remove that part of the improvement within the right-of-way. These cases will usually be determined on the Preliminary Group Inspection for appraisal consideration and would usually be where it is estimated to be advantageous to the State that the Department clear or have the right-of-way cleared of the part of an improvement within the right-of-way. This would probably be in the case of a large improvement where the remaining part could be feasibly repaired and retain value, yet the part acquired was extensive in size and required extensive demolition and removal work which could be more economically handled by the Department than by paying the owner to perform the work.

PART IV:
CLOSINGS

I. GENERAL

The State becomes legally obligated to pay for right-of-way purchased when it accepts conveyance. The full amount of the agreed to purchase price shall be paid to the owner at the time of conveyance or payment may be made jointly to the property owner and lien holder or mortgage insurer and for real estate taxes, etc. chargeable to the owner in accordance with encumbrances outstanding at the time of conveyance. This conveyance and payment process is called closing.

This closing function may be accomplished by either staff personnel or through the services of a title company or fee attorney. It is the responsibility of the Regional Transportation Manager 2 to determine whether the closing function will be accomplished by staff or fee personnel. When it is determined that the activity will be accomplished in house, the appropriate section chief will be notified. If it is determined that the activity will be accomplished by fee personnel, the procedures of Section II below will be followed.

II. CONTRACTING FOR THE CLOSING FUNCTION

The closing function will may be included in the contract for title services but can be contracted separately. The Regional Transportation Manager 2 will provide instructions on the closing services at the same time the instructions are issued for Title Reports.

Where it becomes necessary to procure a contract for closing services separate from a contract for title work. In such cases, a proposal and an invitation to bid on closing services must be prepared. The award of contract will be handled in the same manner as a contract for title services.

Closing Agent Controls as listed here shall be followed. Where the contractor is involved, the Regional Transportation Manager 2 will have the work monitored to assure compliance by the contractor:

A. Closing Agents Will Submit Receipts For Payments.

The closing statement submitted by the closing agents will include receipts for payments to mortgage companies and lien holders and for disbursements made at the closing. The Department will not pay closing agents' fees until the receipts are received.

B. Complete All Closings Within 45 Days.

The contract for title work and closings will require the closing agents, upon receipt of funds, to complete all closings within 45 days if possible. If an extension is necessary, closing agents will be required to make a written request for extension.

C. Errors And Omissions Insurance Coverage Required.

The application for title companies and title attorneys will be implemented requiring applicants to provide information about their background and work experience. Also, the title company will be required to provide assurance that the company has errors and omissions insurance coverage.

D. Property Title Update At Time Of Closing Required.

The closing agent will revise Right-of-Way title reports that the property title was updated at the time of closing.

E. Adequate And Timely Monitoring The Status Of Right-Of-Way Projects.

Each of the four regions will be required to use their existing computer programs in order to monitor the status of right-of-way projects in an adequate and timely manner.

III. THE CLOSING TRANSACTION

A. Preparation for Closing

The closing agent shall be furnished copies of all written instruments used or obtained in the negotiating process containing information needed by the agent for proper closing. Copies of executed ROW Forms 30A, 32A and 51 or equivalent releases are essential. The proposed deeds shall also be furnished. Reference is made to Part Two of this Chapter concerning instruments of conveyance. It is the responsibility of the Regional Transportation Manager 2 to procure a correct and proper deed. The Regional Transportation Manager 2 shall provide a check system to ensure that the deed agrees with the plans and the Form-2 and/or the Administrative Settlement and includes all appropriate clauses. The closing agent must be provided, or have available the title report on the tract. Where encumbrances are to be outstanding at closing, arrangements must be made for payment and release of such at the time of closing. In general, it is the Department's policy to obtain a release or partial release in which fee acquisitions or easements are conveyed. A subrogation or consent of lien holder is acceptable in lieu of a release if easements only are conveyed. In certain instances, a release, partial release, subrogation, and/or consent of lien holder may not be obtained when closing a tract. A right-of-way employee closing a transaction should consult with the staff attorney as necessary to ensure fitness of releases prepared before closing and to ensure that the State's interest is protected in the transaction. There are no probate fees or taxes on property conveyed to the Department. If taxes for the taxable year in which the transaction is closed have not been paid by the Seller by the time of closing, taxes should be prorated. The Seller will be charged his pro-rata share and that amount shall be paid to the proper tax collector. In certain instances where the taxes are nominal the closing agent may waive the proration of taxes. If the taxes have been paid by the Seller before closing, no

charge for taxes will be made to the Seller in Part I of ROW Form-24. However, any amount paid by the seller for taxes which are allocable to a period after the date of closing must be returned to the Seller as outlined in Part III of ROW Form-24. The closing agent shall be responsible for properly completing Part III of ROW Form-24, which is essentially a claim to be signed by the Seller for reimbursement of any incidental expenses due him.

Insofar as is reasonable and practical, the time and place of closing shall be made convenient to the Seller.

B. Closing

1) Deed

Reference is made to Part Two of this Chapter. Except in condemnation cases, where real property or property rights are acquired a deed shall normally be obtained. The consideration shown shall be the purchase price as shown on ROW Form-30A including the amount, if any, for damages to the remainder. Immediately after closing the deed shall be recorded. Should an unusual case arise where a deed is not recorded, an explanation shall be given when it is forwarded to the central office and it shall be retained as part of the permanent record. The title transfer document shall meet the requirements of Tennessee law.

2) Closing Statement

Where a deed is obtained as outlined in the preceding paragraph, a closing statement is required. The closing statement shall show the full purchase price as shown on ROW Form-30A, itemize all deductions, if any, and show the net amount due the owner. The person handling the closing transaction must certify the closing statement as true and correct. A copy of the closing statement shall be furnished to the property owner. ROW Form-24 is furnished and shall normally be used by both staff and fee closing agents. Instructions for the proper use of ROW Form-24 are printed on the back of the form. If the closing statement must be in other form, it shall contain all the information required and provisions shall be made for proper payment of incidental expenses as outlined in Part III of ROW FORM-24.

An original and two copies of the closing statement shall be executed at closing. One copy shall be given to the grantor. The original and one copy shall be delivered to the Regional Transportation Manager 2 and the copy shall be retained in the project tract file. The original will be used to support a voucher request for the amount, if any, due the grantor for reimbursement of incidental expenses.

3) Owner Retention of Improvements (Landowner)

Where the grantor is to retain and remove improvements, the closing agent is to obtain from the grantor a deposit to insure removal of the improvement and clearance of the right-of-way by the grantor. The Regional Transportation Manager 2 will furnish to the closing agent ROW Form-32A which sets out the conditions of owner retention and removal of improvements. The closing agent will collect the grantor's performance deposit at the time of closing.

4) Purchase of Real Property and/or Property Rights From a Tenant Owner

Where real property is purchased from a lessee or he is allowed to retain the improvements at salvage value in lieu of purchase, ROW Form-30BR shall be properly completed, signed and notarized in lieu of taking a deed since there will be no transfer of title to land involved in the transaction. It is important that no payment be made to a lessee in such transaction until the owner of the land has agreed and has signed ROW Form-30BR. An original and three copies of the agreement should be completed. The original shall be retained by the Department's closing agent and handled in all respects as per instructions for the handling of deeds except that the agreement need not be recorded. The copies are for the landowner and the lessee if they desire copies. When the lessee-owner of the improvements retains them and is to remove them from the right-of-way, ROW Form-32A shall be made a part of the agreement and a deposit to ensure performance shall be required as in the case where improvements are retained by a landowner as outlined in Paragraph B-3 above.

C. Payment of Incidental Expenses

Upon receipt of ROW Form-24, the Regional Transportation Manager 2 or his designee will check to see if incidental expenses have been claimed by the Seller. If so, the claim for payment will be reviewed and if acceptable a voucher will be requested in accordance with the procedures outlined in Chapter II. The original ROW Form-24 must accompany the voucher request. In the event any part of a claim for payment of incidental expenses is disapproved, the Seller will be informed in writing of the determination and the reason why the payment was not approved. He will also be informed of his right to appeal the determination. In the unlikely event that a payment is not approved and the determination is appealed the appeal procedures outlined in Chapter IX will be utilized.

D. Transmittal of Closing Instruments

ROW Form-29 shall be used as a cover letter under which the recorded deed or executed ROW Form-30BR is transmitted. The upper section of the form is addressed to the Regional Transportation Manager 2 and shall be signed by the person who delivers or disburses payment. The lower section of the same form shall be completed and forwarded to the central office attached to the instrument.

E. "Roll Back" Taxes

The Agricultural, Forest and Open Space Land Act of 1976 is a measure designed to preserve agricultural, forest and open space land by giving relief from the economic pressure to sell such land for premature development because of property taxation based on highest and best use. To carry out this purpose, the Act employs a "present use value" as the basis for taxation of such land. While the property is taxed based on present use value, the tax assessor also maintains a base for taxation under the highest and best use of the property. Whenever the property is sold the property owner becomes liable for the difference in taxes that would have been due under the more intensive use for a specified period of time. These are called "roll back" taxes. "Roll back" taxes go back 3 years for agricultural and forest land and 5 years for open space land.

The law also provides that if any of these lands are acquired by eminent domain, the acquiring agency shall be liable for the "roll back" taxes. The Department is therefore responsible for paying the "roll back" taxes on lands covered by this Act which we acquire. All bills for "roll back" taxes will be processed in accordance with standard operating procedures.

PART V:
ACQUISITION OF CONTAMINATED RIGHT-OF-WAY PARCELS

Purpose:

The purpose of this issuance is to establish procedures for the acquisition of contaminated properties and outline the requirements for the investigation and, if appropriate, the remediation of hazardous waste and petroleum products encountered on highway projects.

General:

This section addresses the procedures to be followed in determining whether to acquire right-of-way parcels which are or are suspected to be contaminated. When practical, the Tennessee Department of Transportation will avoid the acquisition of parcels contaminated with petroleum or hazardous waste contaminants.

I. Definitions:

A. Contamination: The presence of any hazardous waste or petroleum products on the land or in the water of the State in quantities which are, or may be, potentially harmful or injurious to human health or the environment.

B. Non-Petroleum Contamination: The presence of any non-petroleum waste or hazardous wastes in the soil or ground water in quantities which are, or may be, potentially harmful or injurious to human health or the environment (40 CFR 260- 299). Contamination will be considered to be non-petroleum if such contaminants are present, even though petroleum contaminants may also be present.

C. Non-Petroleum Contaminated Parcel: A parcel which has non-petroleum contamination existing in the soil or ground water in quantities which are dangerous or which exceed Federal or State action levels. If both petroleum and non-petroleum contamination exist on a site it will be treated as a non-petroleum parcel.

D. Hazardous Waste: Non-petroleum waste, as identified by 40 CFR 260-299 or a combination of wastes which because of its quantity, concentration, or physical, chemical, or infectious characteristics may: Cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness or pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed Tenn. Code Ann. 68-212-104(9).

E. Owner: The individual or legal entity holding title to parcels in which the Department is negotiating to acquire or from whom the Department has acquired title.

F. Operator: The individual or legal entity who has the temporary lawful use and occupancy of the real property in which the Department is negotiating to acquire from the owner, and who has performed activities at the site for personal or commercial reasons that may have contaminated the soil and or ground water at the site.

G. Parcel: A tract of land identified by the Department for acquisition as a portion of the right-of-way for a highway project.

H. Division Environmental Coordinator (DEC):The individual in the Central Right-Of-Way Office assigned responsibility for coordinating with Regional Right-Of-Way staff the testing and resolution of contamination issues.

I. Petroleum Contaminant: Any petroleum or petroleum product (as defined in Tennessee Code Annotated 68-215-103(12), which exists in the soil or ground water in quantities exceeding established state action levels.

J. Petroleum Contaminated Parcel: A parcel which has only petroleum contaminants in the soil or ground water in potentially dangerous quantities or in excess of state action levels.

K. Remediation: The activities necessary to remove or otherwise reduce contamination to a level acceptable to the regulatory agency having jurisdiction.

L. Tank Closure: Permanent abandonment of a tank by excavation and disposal, or by cleaning and filling it in place with inert material.

II. Hazardous Waste/Petroleum Procedures:

A. Identifying Contaminated Sites (Petroleum and Non-Petroleum):

1. APR Stage (Phase I Preliminary Assessment):

The Regional Right-Of-Way Staff preparing the Right of Way and Utility Adjustment Cost Estimates should be cognizant of possible hazardous waste/petroleum sites and the effect such a site may have on the project. The purpose is to identify those properties that have a potential for being contaminated. Any parcel which is suspected to be a hazardous waste/petroleum site should be listed on Right-Of-Way Form 44 A under the "Remarks" section. Some sites of concern are:

a) NPL sites (Federal Superfund Sites), 13 in Tennessee.
b) State propagated sites (State Superfund Sites).
c) Landfills (closed and open) (legal and illegal).
d) Underground storage tanks and above ground storage tank sites.
e) Business type sites; examples - nursery, plating shops, dry cleaners (any business that is a Registered Hazardous Material Generator).

2. Phase II Preliminary Site Investigation:

After the issuance of final right-of-way plans, a decision will be made for each project as to whether to conduct a Phase II Preliminary Site Investigation. Environmental Regulations may require earlier testing of sites. The Investigation should be conducted on all properties where there is reasonable potential for contamination. Sufficient work must be done to determine whether contamination is present and to ascertain whether such contamination is by petroleum or non-petroleum contaminants. (The Regional Transportation Manager 2 or his designee should coordinate with the DEC, those upcoming right-of-way projects which will need to be tested.)

3. Phase III Hazardous Waste Management Plan:

A Phase III Hazardous Waste Management Plan may be necessary when contamination is extensive in terms of materials or area The plan may consist of the following elements:

a) Detailed project/site investigation.
b) Environmental risk analysis
c) Feasibility study of the alternatives for remedial action.
d) Recommended remedial plan.

4. Phase IV Remediation:

A Phase IV Remediation Study should be conducted on all sites where the Phase II Preliminary Site Investigation indicated contamination within the proposed right-of-way acquisition. This investigation should be completed prior to letting the construction contract.

B. Coordination of Contamination Information

1. The DEC in conjunction with the Regional Transportation Manager 2 or his designee are responsible for coordinating the environmental testing on highway projects. Once the Phase II Site Investigation is completed and received from the environmental Planning Office, the DEC should forward the report to the Regional Transportation Manager 2 or his designee within ten (10) working days. In addition, the Regional Transportation Manager 2or his designee should coordinate with the DEC and the Right-of-Way Division Director to provide suggestions for dealing with contaminated sites.

2. Right-of-Way limits should be established for each project to avoid acquisition of contaminated parcels to the fullest extent possible. This may include coordination with the designer or project manager regarding possible changes in design to avoid such contaminated parcels.

3. All sections of the Regional Right-Of-Way Staff are responsible for notifying the Regional Transportation Manager 2 or his designee of potentially contaminated sites. The Regional Transportation Manager 2 or his designee is responsible for notifying the DEC as soon as possible from the date of the discovery. The DEC will coordinate with all appropriate functional areas to determine the necessary action to be taken. Any required tests will then be conducted on the newly Identified site.

4. Upon receipt of the Phase II Preliminary Site Investigation, the DEC should contact the appropriate Division (Underground Storage Tank, Water Supply, Solid/Hazardous Waste Management) within the Tennessee Department of Environment and Conservation (TDEC) to ensure they have received a copy of the Phase II report. The Central Office Transportation Manager 1 or his designee should make follow-up contacts with the appropriate TDEC Division to monitor the clean-up process.

III. Acquisition of Hazardous Waste/Petroleum. Contaminated Parcels

A. Valuation of Hazardous Waste/Petroleum Contaminated Parcels.

Any stigma or other impact, excluding the cost of assessment and remediation, which the market would attach to such property must be accounted for in the appraisal. If the determination is made by the Department to acquire the property in its contaminated condition and undertake remediation, the appraiser must not diminish the value of the property based on the cost of remediation. This is also the case, when the Department is requiring the responsible party to remediate the site. The Regional ROW Appraiser 4 must ensure that the appraiser is properly instructed concerning the handling of assessment and remediation costs. If questions or special problem situations arise, the Regional ROW Appraiser 4 should coordinate with the Chief Review Appraiser in the Central Right-Of-Way Office for instructions on handling the valuation.

B. Acquisition:

1) Acquisition may proceed on all sites where a Phase II Preliminary Site Investigation has been conducted and the sites are not contaminated.

2) Acquisition may proceed on sites where a Phase II Preliminary Site Investigation has been conducted and the sites are contaminated if any of the following criteria are met:

a) If the contamination is not required to be remediated in order for the owner to continue the current use or market the property at its highest and best use as if clean, or

b) If TDEC is unaware of the site being contaminated prior to the Department testing the site, or

c) If TDEC is unable to determine the potentially responsible party for the contamination.

3) Written verification must be obtained from TDEC relating to the above listed criteria (a, b or c). If the Region is to acquire a contaminated site, written authority must be secured from the Right-of-Way Division Director or his designee.

4) If TDEC is aware of contamination on the site prior to the Department testing, or if the site is currently under remediation at that time, then the Department will <u>only</u> participate in those clean-up costs above what the owner would have incurred had there been no highway project (clean-up cost would be higher to meet a project deadline as compared to the cost an owner would incur using a slower remediation process). If underground storage tanks are involved and located within the proposed right-of-way, then removal cost for the tanks will be considered a part of the project cost.

5) Acquisition may proceed on a contaminated tract when the responsible party agrees to be liable for all remediation costs direct and indirect. For tracts with underground storage tanks which are acquired by negotiation, the Warranty Deed must include language stated previously in this chapter VIII. Care must be taken to ensure the language is included in the conveyance document for tenants as well. For tracts acquired through condemnation, the language must be included in the Order of Possession and the Final Judgment.

6) If the Review Appraiser determines that an uneconomic remnant exists on a contaminated parcel, the offer to acquire the uneconomic remnant must be conditioned on the owner completing remediation of the contamination prior to closing or agreeing to bear the cost of such remediation.

IV. Remediation of Contaminated Sites:

A. Remediation by the Department:

1) If the site is contaminated and meets any of the criteria in Section III-B-2 (a, b, & c), the remediation cost will be considered a part of the project cost. Any underground storage tanks that are within the proposed right-of-way will be removed and the cost considered a part of the project cost as well. It should be noted that the Department will only remediate the contamination which is located within the proposed right-of-way.

2) The Department must not undertake any remedial action until after title has been vested in the Department or a specific legal right to conduct such activities has been obtained. When the Department has obtained possession of the tract either by Warranty Deed, Right of Entry or through condemnation proceedings, the Regional Transportation Manager 2 or his

designee must send a written request for the removal of the underground storage tanks and/or the remediation of the contaminated site to the DEC. The DEC will coordinate with the Environmental Planning Office, and one of the Environmental Consultants under contract with the Department will be utilized to remediate the site.

3) When the Region determines that it is necessary to proceed with condemnation proceedings on a contaminated parcel, the following must be complied with. This is applicable for parcels where the Department will remediate and consider it as part of the project cost and where the Department considers the responsible party liable for the remediation costs.

   a) The Regional Transportation Manager 2 or his designee must ensure a copy of ROW Form 17 is sent to the DEC.
   b) The DEC will coordinate with the Regional Transportation Manager 2 or his designee to ensure all documents and reports prepared during the environmental Investigations are available to the assigned attorney.
   c) When applicable, pleadings prepared for such condemnation proceedings must specify the Tennessee Department of Transportation is not waiving its right to seek recovery for costs of remediating of existing contamination.
   d) When applicable, at the Petition of Condemnation, the Department must present its Good Faith Estimate of value considering the contaminated condition of the property. Where necessary to support the Good Faith Estimate, the assigned attorney shall be prepared to present evidence regarding the best estimate of the remediation costs. Should the court require deposit of the value of the property without regard to remediation costs, the Department must request the court to hold back an amount equal to the estimated costs pending a final determination of the actual costs.
   e) A motion must be made to the court that the property be vacated within ninety (90) days of the granting of the Order of Possession by the court if the occupant is engaged in activities that may cause additional contamination, or if the Department will remediate the site, and further occupancy will conflict with the Department's letting schedule.
   f) on tracts where the Department will not participate in the remediation costs, any settlement reached after the Order of Possession should take into account the remediation cost.

B. Remediation by the Owner:

If an Owner has agreed to take remedial action the Regional Transportation Manager 2 or his designee must monitor the progress of the remediation activities. Such remediation activities must be completed prior to construction.

C. Federal Participation in Site Testing and Remediation Cost:

The reasonable documented costs incurred to test sites for contamination, remove underground storage tanks and remediate contamination are eligible for Federal participation. Request for participation would be submitted to the Federal Highway Administration Division Office with supporting data for a decision on eligibility costs incurred on a specific project.

PART VI:
STATEWIDE STORM WATER MANAGEMENT PLAN REQUIREMENTS

Purpose:

The purpose of this issuance is to incorporate the requirements of the Tennessee Department of Environment and Conservation's Statewide Storm Water Management Plan into the Right-of-Way Procedures Manual.

I. GENERAL

The Department is required to comply with the Statewide Storm Water Management Plan (SSWMP). This section will identify policy and procedures to be followed during the acquisition process to ensure department compliance with SSWMP.

II. POLICY

In compliance with the SSWMP, it is the policy of the Right-of-Way Division to identify potential erosion problems in areas to be acquired and to inform property owners of the potential consequence of performing land disturbing activities in acquired areas.

III. PROCEDURE

A. Identification of Potential Erosion Problems

During the Preliminary Group Inspection (PGI), staff will document any areas to be acquired which are denuded, unstable, or highly eroded. Staff will take special notice of areas that appear to have been disturbed and have not been stabilized, and any areas which appear to be contributing sediment-laden runoff to steams. This does not apply to areas which are between stream banks that are naturally occurring or in agricultural fields.

Staff will report any areas so documented to the Right-of-Way Regional Transportation Manager 2 who then will notify the regional environmental coordinator.

B. Notification of Property Owners

During the acquisition process, the negotiator will inform the property owner that the Department does not negotiate for the harvesting of timber, removal of topsoil, performance of grading operations or any other land disturbing activity and that should any such activity occur, property owners will be required to complete such activities and return affected areas to a stable condition prior to closing. The negotiator will inform property owners that should they choose to carry out any land disturbing activities and fail to stabilize the affected area, the closing may be delayed and their compensation may be decreased by the cost to the Department for stabilizing the areas.

The negotiator will also inform property owners that they will not be allowed to perform any land disturbing activities in acquired areas after closing and that any such activities that occur after closing will be reported to the State Attorney General's Office/Local District Attorney's Office for appropriate action.

C. Discovery of Land Disturbing Activity After Closing

Unauthorized land disturbing activities being carried out in acquired areas should be reported to the appropriate Regional Transportation Manager 2 who will notify the State Attorney General's Office.

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Chapter IX
RELOCATION

Table Of Contents ..... Page

PART ONE: GENERAL PROVISIONS 5

I. PURPOSE 5

II. APPLICABILITY 5

III. ADMINISTRATIVE INFORMATION AND SPECIAL REQUIREMENTS 5

A. Providing of Services 5

B. Direct Payment of Relocation Claim 6

C. Civil Rights 6

IV. DEFINITIONS 7

A. Business 7

B. Comparable Replacement Dwelling 7

C. Contributes Materially 8

D. Decent, Safe and Sanitary Dwelling 8

E. Displaced Person 9

F. Dwelling 10

G. Farm Operation 11

H. Initiation of Negotiations 11

I. Mortgage 11

J. Non-Profit Organization 11

K. Owner 11

L. Person 12

M. Salvage Value 12

N. Small Business 12

O. Tenant 12

P. Unlawful Occupancy 12

Q. Utility Costs 12

V. COST ESTIMATES 12
VI. RELOCATION PLANS 13
A. General 13
B. Conceptual Stage Relocation Plan 13
C. Acquisition Stage Relocation Plan 16
PART TWO: RELOCATION ADVISORY SERVICES 19
I. GENERAL 19
II. TO WHOM PROVIDED 19
A. Any Displaced Person Defined 19
B. Substantial Economic Injury 19
III. SERVICES TO BE PROVIDED 19
A. Personally Interview 19
B. Provide Information 19
C. Inform of Specific Replacement Dwelling 19
D. Current and Continuing Information 19
E. Offer to Assist 20
F. Minimize Hardship 20
G. Information Concerning Housing and Loan 20
IV. COORDINATION OF ACTIVITIES 20
V. WRITTEN NOTICES 20
A. General 20
B. Relocation Information Notice (RA Form 101) 20
C. Notice of Relocation Eligibility and Vacation Date 20
D. Notice to Vacate 21
E. Relocation Brochure 22
VI. APPEALS 22
A. General 22
B. Procedures 22
C. The Appeals Board 23

VII. RESIDENTIAL RELOCATION CONTACTS 24
A. General 24
B. Interview 24
C. Written Offer of Relocation Payments 24
D. Decent, Safe and Sanitary Inspection 25
E. Completing Claim For Relocation Payments 26
F. Relocation Agents Log 26
VIII. LOCAL RELOCATION OFFICE *26*
PART THREE: RELOCATION PAYMENTS 27
I. GENERAL *27*
A. Documentation 27
B. Expeditious Payment 27
C. Time For Filing 27
D. Multiple Occupants of One Displacement Dwelling 27
E. Notice of Denial of Claim 27
F. Relocation Payments Not Considered As Income 28
G. No Duplication of Payments 28
H. Eviction For Cause 28
I. Delivery of Payment 28
II. MOVING PAYMENTS *29*
A. Legal Considerations 29
B. Residential Moves 29
C. Non Residential Moves 32
D. Move Cost Estimates 43
E. Ineligible Moving Expenses 45

III. REPLACEMENT HOUSING PAYMENTS 46

A. Payments for 90-day Owner Occupants.....46

B. Replacement Housing Payments for 90-Day Tenant Occupants 51

C. Additional Rules Governing Replacement Housing Payments 54

D. Procedures 58

IV. MOBILE HOMES 63

A. General 63

B. Moving and Related Expenses.....63

C. RHP 90-Day for Mobile Home Owner Occupants 64

D. RHP to 90-Day Mobile Home Tenant Occupants.....65

E. Additional Rules Governing Relocation Payments to MH Occupants 65

V. LAST RESORT HOUSING.....66

A. Basic Determination to Provide Last Resort Housing.....66

B. Basic Rights of the Person to be Displaced 66

C. Methods of Providing Last Resort Housing 66

D. Special Circumstances.....68

E. Procedures.....69

ATTACHMENT A.....7

PART ONE:
GENERAL PROVISIONS

I. PURPOSE

The purpose of this issuance is to set forth the rules, regulations and procedures by which State Agencies will affect the prompt and equitable relocation of persons, businesses, farms and non-profit organizations displaced as a result of State or State-aid projects.

The provisions of these rules are intended to establish a means of providing services and of making moving cost payments, replacement housing payments and other expense payments so that a few individuals do not suffer disproportionate injuries as a result of projects designed to benefit the public as a whole.

II. APPLICABILITY

These procedures are issued by authority of the Uniform Relocation Assistance Act of 1972 (TCA 13-11-101 through 119) enacted by the General Assembly of the State of Tennessee and are designed to conform with the Federal Uniform Relocation Assistance and Land Acquisition Policies Act of 1970 as Amended, (42 USC Chapter 61).

TCA 13-11-101 through 119, requires any "State Agency" or "Local Agency" to follow the rules, policies and procedures set forth herein so that every person displaced because of a State, State-aid or Federal-aid program will have, or will have been offered, a comparable decent, safe and sanitary dwelling to move into upon being required to vacate the dwelling acquired. It also requires that payments be made to those who are required to relocate to compensate for, in whole or in part, costs incurred for moving, replacement housing and certain other expenses. In addition it provides for hearing and appeal procedures to encourage amicable resolution of controversies that may arise.

III. ADMINISTRATIVE INFORMATION AND SPECIAL REQUIREMENTS

A. Providing of Services

The functions of the Relocation Assistance Program will be performed as far as possible by employees of the Department as outlined in Chapter I of this manual. Should it become necessary because of special circumstances, the Department may secure the services of private or public agencies or specialists to perform selected functions. These services will be procured by contract agreements. All such agreements will be made in compliance with the provisions contained in Chapter III of this manual.

B. Direct Payment of Relocation Claim

No part of a relocation payment to a displacee will be withheld to satisfy an obligation to any other creditor.

C. Civil Rights

It is State policy that only open housing available to all races and sexes, without discrimination, will be used as replacement housing resources.

It is further our policy to ensure that no person be excluded from participation in or be denied any benefits of, or be subjected to discrimination under any program or activity of the State because of race, creed, color, religion, sex, or national origin, and to take affirmative action to promote the full implementation of this policy throughout the State.

The full particulars of fair housing are discussed in the relocation brochure, and are to be explained as appropriate at the initial interview and at the time the offer of replacement housing is made.

Upon receipt of a fair housing discrimination complaint the agent, will instruct the displacee to write to the U.S. Department of Housing and Urban Development at the following address:

Fair Housing and Equal Opportunity Compliance Division Department of Housing and Urban Development:

Atlanta Regional Office of FHEO
U.S. Dept. of Housing and Urban Development
Five Points Plaza
40 Marietta Street. 16th Floor
Atlanta, Georgia 30303-2806

Alternately, a complaint may be filed online at:

http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/online-complaint

The complaint should contain a statement that the person believes he has been the, victim of housing discrimination and a request for appropriate complaint forms. The agent is expected to assist in completing the forms and in having the complaint notarized.

IV. DEFINITIONS

For the purposes of these rules, the following terms are defined:

A. Business

The term "business" means any lawful activity, except a farm operation, that is:

1. Conducted primarily for the purchase, sale, lease and/or rental of personal and/or real property and/or for the manufacturing, processing and/or marketing of products, commodities and/or any other personal property; or

2. Conducted primarily for the sale of services to the public; or

3. Conducted for outdoor advertising display purposes, when the display must be moved as a result of this project; or

4. Conducted by a non-profit organization that has established its non-profit status under applicable State or Federal Statute.

B. Comparable Replacement Dwelling

The term ”comparable replacement dwelling” means a dwelling that is:

1. Decent, Safe and Sanitary as described in Item D. below.

2. Functionally equivalent dwelling. The term *functionally equivalent* means that it performs the same function and provides the same utility. While a comparable replacement dwelling need not possess every feature of the displacement dwelling, the principal features must be present. Generally functional equivalency is an objective standard, reflecting the range of purposes for which the various physical features of a dwelling may be used. However, in determining whether a replacement dwelling is functionally equivalent to the displacement dwelling, the Agent may consider reasonable trade-offs for specific features when the replacement unit is “equal to or better than” the displacement dwelling.

3. In an area that is not subject to unreasonable adverse environmental conditions;

4. In a location generally not less desirable than the location of the displaced person’s dwelling with respect to public utilities and commercial and public facilities, and is reasonably accessible to the person’s place of employment.

5. On a site typical in size for residential development with normal site improvements including customary landscaping. The site need not contain special improvements such as outbuildings, swimming pools, or green

houses. A special improvement is one that is not typical for the area or one that cannot be found in any comparable properties.

6. Currently available to the displaced person on the private market. However, a comparable replacement dwelling for a person receiving government housing assistance before displacement may reflect similar government housing assistance.

7. Within the financial means of the displaced person. A dwelling is considered to be within the person's financial means if he can obtain the dwelling without exceeding the benefits he is entitled to under Part Three, Section III.

C. Contributes Materially

The term "contributes materially" means that during the two taxable years prior to the taxable year in which displacement occurs or during such other period as the Department determines to be more equitable a business or farm operation:

1. Had average annual gross receipts of at least $5,000; or.

2. Had average annual net earnings of at least $1,000; or.

3. Contributed at least 33 1/3% of the owner's or operator's average annual gross income from all sources;

4. If the application of the above criteria creates an inequity or hardship in any given case, the Department may approve the use of other criteria as determined appropriate.

D. Decent, Safe and Sanitary Dwelling

The term "decent, safe and sanitary dwelling" means a dwelling which meets applicable housing and occupancy codes. However, if any of the following standards are not met by an applicable code, such following standard shall apply unless waived for good cause. On Federal-aid projects the waiver must be approved by the Federal Highway Administration. The dwelling shall:

1. Be structurally sound, weather tight and in good repair.

2. Contain a safe electrical wiring system adequate for lighting and other electrical devices.

3. Contain a heating system capable of sustaining a healthful temperature for a displaced person of approximately 70 degrees.

4. Be adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced person and include:

a. A separate, well lighted and ventilated bathroom that provides privacy to the user and contains a sink, bathtub or shower stall and a water closet, all in good working order and properly connected to an appropriate water source and sewage drainage system.

b. In the case of a housekeeping dwelling, a kitchen area that contains a fully usable sink connected to potable hot and cold water and a sewage drainage system and adequate space and utility service connections for a stove and refrigerator.

c. A sufficient number of bedrooms to ensure that 1.) no two unmarried blood relatives of the opposite sex over the age of six are required to share a bedroom or 2.) local occupancy codes are met, whichever is greater. The Transportation Manager 2 or a designated assistant must approve any exceptions to these bedroom requirements.

5. Contains unobstructed egress to safe open space at ground level.

6. For a displaced person who is handicapped, be free of any barriers which would preclude reasonable ingress, egress or use of the dwelling by the person.

E. Displaced Person

1. General

The term "displaced person" means any person, as defined in Item L below, who moves from the real property or moves his personal property from the real property:

a. As a direct result of a written notice to acquire, Initiation of Negotiations for or acquisition of such property in whole or in part for a project. This includes a person who does not meet the length of occupancy requirements.

b. As a direct result of rehabilitation or demolition for a project; or

c. As a direct result of a written notice of intent to acquire or the acquisition, rehabilitation or demolition of in whole or in part other real property on which the person conducts a business, or farm operation for a project. However, under this provision eligibility as a displaced person is limited to relocation assistance advisory services and moving expenses.

2. Persons Not Displaced

The following is a non-exclusive listing of persons who do not qualify as a displaced person under these regulations:

a. A person who moves before the Initiation of Negotiations unless the Department determines that the person was displaced as a direct result of the project; or

b. A person who initially enters into occupancy of the property after the date of its acquisition for the project; or

c. A person who, after receiving a notice of relocation eligibility is notified in writing that they will not be displaced for the project. Such notice will not be issued unless the person has not moved.

   The Department will reimburse the person for any expenses incurred to satisfy any binding contractual relocation obligations entered into after the Initiation of Negotiations for the real property.

d. A person who has occupied the property for the purpose of obtaining assistance under the Uniform Act.

e. A person who is determined to be of unlawful occupancy prior to the Initiation of Negotiations, or a person who has been evicted for cause under applicable law

f. A person whom the Agency determines is not displaced as a direct result of a partial acquisition.

g. An owner-occupant who moves as a result of a negotiated acquisition (where the acquiring agency will not acquire the property if negotiations fail to result in an agreement), or as a result of the rehabilitation or demolition of the real property. (However, the displacement of a tenant under these circumstances is subject to this part.)

h. An alien not lawfully present in the United States.

F. Dwelling

The term "dwelling" means the place of permanent or customary and usual residence of a person according to local custom or law, including a single family house, a single family unit in a two family, multi-family or multi-purpose property, a unit of a condominium or cooperative housing project, a non-housekeeping unit, a mobile home, or any other residential unit.

G. Farm Operation

The term "farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

H. Initiation of Negotiations

The term "Initiation of Negotiations" means the delivery of the initial written offer on a tract, by the Department, to the owner or the owner's representative to purchase real property for the project. However, in any case where a person moves after the Department issues a notice of its intent to acquire real property but before the initial written purchase offer, the "Initiation of Negotiations" is the date of the person's move from the property.

I. Mortgage

The term "mortgage", means such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, Real Property, together with the credit instruments, if any, secured thereby.

J. Non-Profit Organization

The term "Non-Profit Organization" means an organization that is incorporated under State law as a Nonprofit Organization, and exempt from paying Federal Income Taxes under Section 501 of the Internal Revenue Code (26 U.S.C.. 501).

K. Owner

A person is considered an owner if that person holds any of the following interests in real property:

1. Fee title; a life estate; a 99 year lease or a lease, including any options for extension, with at least 50 years to run from the date of acquisition.

2. An interest in a cooperative housing project which includes a right to occupy a dwelling.

3. A contract to purchase any of the interests or estates described above.

4. Any other interest which warrants consideration as ownership.

L. Person

The term "person" means any individual, family, partnership, corporation or association.

M. Salvage Value

The term "salvage value" means the probable selling price of an item, if offered for sale, on the condition that it be removed from the property at the buyer's expense, allowing a reasonable period of time to find a person buying with knowledge of the uses and purposes for which it is capable of being used, including separate use of serviceable components and scrap when there is no reasonable prospect of sale except on that basis.

N. Small Business

A small business is defined as a business having not more than 500 employees working at the site being acquired.

O. Tenant

The term "tenant" means a person who has the temporary lawful use and occupancy of real property owned by another.

P. Unlawful Occupancy

A person is considered to be in unlawful occupancy when such person has been ordered to move by a court of competent jurisdiction prior to the Initiation of Negotiation or is determined by the Department to be a squatter who is occupying the real property without the permission of the owner and otherwise has no legal right to occupy the property under state law. The Department may, at its discretion, consider such a squatter to be in lawful occupancy.

Q. Utility Costs

Utility costs include expenses for electricity, gas, other heating and cooking fuels, water and sewer.

V. COST ESTIMATES

As discussed in Chapter VII, the Right-of-Way Office is responsible for a number of cost estimates. The responsibility for the development of these estimates lies with the field office appraisal section. However, the relocation section is responsible for providing estimates on relocation costs and will do so at the request of the appraisal section.

VI. RELOCATION PLANS

A. General

The purpose of a relocation plan is to assist in the recognition and resolution of problems associated with the displacement of individuals, families and businesses in order to minimize adverse impacts on displaced persons and to expedite project advancement and completion.

Two relocation plans are normally prepared prior to the active acquisition stage on a project. The first of these plans is known as the "Conceptual Stage Plan" and the latter as the "Acquisition Stage Plan." Both plans are described in detail immediately below.

B. Conceptual Stage Relocation Plan

1. General

The Conceptual Stage Relocation Plan (CSRP) serves a twofold purpose. It is to be used for the purpose described above and it serves as the input document from which the social and economic impacts and the relocation of individuals and families are evaluated in the environmental documentation process. It is also the document from which the discussion of these impacts in the environmental document is derived.

2. Processing the "Conceptual Stage Relocation Plan"

On all State Highway Projects where relocations are anticipated, a request will be made by memorandum to the Right-of-Way Division Director or designee that this activity be accomplished. Accompanying the request will be maps and other available information concerning the contemplated location or locations. This data will be transmitted to the field office under a cover letter instructing that data be gathered for the preparation of the CSRP.

Upon receipt of the memorandum in the field office, the Regional Transportation Manager 2 or a designee will provide a copy of all applicable data to the chief of the relocation section, with instructions that RA Form 100 be developed and forwarded to the Transportation Manager 2 or designee in time to meet the due date established. (A copy of this information will also be given to the appraisal section at this time, for their use in completing the cost estimate.)

After completion of RA Form 100, it will be reviewed by the relocation TDOT Right of Way Agent Senior. On his concurrence, he will sign and date the "Plan" and forward it to the Regional Transportation Manager 2 or a designee for submittal to the central office. The Regional Transportation Manager 2 or a designee will, under cover letter, transmit the original RA Form 100 and the requested cost estimates to the Right-of-Way Division Director designee. One copy will be retained for the field office file. Upon receipt of the RA Form 100 the Right-of-Way Division Director or a designee will review the data and develop the CSRP. After approval copies of the plan will be transmitted to the originating Division. The original will be retained and placed in a central office file.

3. Development of the Conceptual Stage Relocation Plan

   a. Data Gathering

      A field investigation must be accomplished in order to arrive at a reasonable estimate or reach a reasonable conclusion concerning each of the following areas:

      (1) The estimated number of households to be displaced along each contemplated route.

      (2) The family characteristics of those persons subject to displacement (i.e., ethnic background, race, family size, tenure, age and income level, special needs and disabilities).

      (3) The impact of the project on established communities or neighborhoods when the project will divide the communities or separate them from their normal environs.

      (4) The estimated number of businesses to be displaced, including the approximate number of employees for each.

      (5) The number and type of replacement dwellings estimated to be available as replacement housing, including estimated rental and sale price ranges.

      (6) The number and type of commercial properties estimated to be available for displaced businesses, farms, and non-profit organizations.

      (7) It should be indicated in the report if there are any known hazardous waste or underground storage tank areas currently within the project area.

The investigative work shall include an actual physical survey along all contemplated routes and a physical inspection of communities and neighborhoods likely to be affected by the project.

It is important to note that all information should be obtained by either physical observation, or through secondary sources. There will be no direct contact with prospective dislocates at this time.

b. Plan Preparation

After analyzing the data a narrative report is to be prepared. All reports are to use the following format and sequence:

(1) Give a brief (one or two paragraph) description of the project. Description should include all alternatives as well as a statement of purpose and need.

(2) A table (from RA Form 100) indicating the potential number and type of displace for each section or alternate.

(3) Displacement impact analysis:

(i) Statement acknowledging availability of replacement property and the programs ability to provide for the timely and orderly relocation of those displaced.

(ii) Residential Relocations – An estimate of households to be displaced including general description and identification of special characteristics, needs, or problems. Potential adverse impacts to established communities or neighborhoods should be identified, if present. Analysis of real estate market relative to residential relocation needs shall be included.

(iii) Business Relocations – An estimate of businesses to be displaced including general description, estimated number of employees and identification of special characteristics, needs, or problems. Potential adverse impacts to establish communities or neighborhoods should be identified, if present. Analysis of real estate market relative to business relocation needs shall be included.

(iv) Non Profit Relocations – an estimate of non-profit organizations to be displaced including general description, estimated number of employees and identification of special characteristics, needs, or problems. Potential adverse impacts to established communities or neighborhoods should be identified, if present. Analysis of real estate market relative to non-profit relocation needs shall be included.

(v) Farm Relocations – An estimate of farms to be displaced including general description and identification of special characteristics, needs, or problems. Potential adverse impacts to established communities or neighborhoods should be identified, if present. Analysis of real estate market relative to farm relocation needs shall be included.

(4) An assurance statement stating the availability of the Relocation assistance program to all impacted persons and the statutes, rules, and policies under which the Relocation Assistance program will be administered.

At the same time the relocation section is working on the relocation plan the appraisal section will be completing an estimate of acquisition and relocation costs. After completing the estimate the appraisal section will transmit Right-of-Way Report for Location Study (ROW Form 44A) to the relocation section.

C. Acquisition Stage Relocation Plan

1. General

The Acquisition Stage Relocation Plan might be more appropriately called a relocation analysis. This analysis is to be developed to assist in the recognition and successful resolution of problems associated with residential and business displacements in order to minimize adverse impacts on displaced persons and to expedite project advancement and completion.

2. Processing the Plan

When relocations are expected, the Regional Transportation Manager 2, after receipt of the Right-of-Way Plans, will instruct the regional project team to develop the Acquisition Stage Relocation Plan.

After completion of the "Plan", it will be reviewed by the TDOT Right of Way Agent Senior. Upon his concurrence, the TDOT Right of Way Agent Senior will sign and date the "plan" and forward it to the Regional Transportation Manager 2 for submittal to the central office.

The Regional Transportation Manager 2 or a designee will transmit one copy of the report to the Right-of-Way Division Director or designee. The original will be retained for the field office file. Upon receipt of the "Plan" the Right-of-Way Division Director or a designee will review and, if acceptable, approve the plan. If the relocation plan so indicates, the approving official will, by memorandum to the Project Development and Administration Division request appropriate extension of the acquisition period. The memorandum should include a discussion of the reasons why an extension is being requested.

3. Developing the Acquisition Stage Relocation Plan

This relocation analysis requires a survey of all displacements both residential and non-residential. Development of the plan will take place subsequent to the completion of all relocation interviews at which attempts should be made to ascertain the particular characteristics of families and businesses to be displaced with particular emphasis on those characteristics that would often require special handling in order to minimize the relocation impacts on those involved (i.e., large families, the elderly, low income, minorities, specialized equipment, unique site requirements).

Also, any relocation needs that might require extended moving time or require special moving considerations should be investigated.

The analysis also requires that a survey of the local real estate market be made. Again, this does not mean that details of particular available properties be investigated, only that information concerning general types and sizes of properties, including price or rental ranges, be gathered. Attempts should be made to find if unique housing/business requirements of potential displacees can be met. For example, if one of the houses to be acquired contains 6 bedrooms an effort should be made to determine if a six bedroom house could be anticipated to be on the market at the time of acquisition.

After the data has been gathered it is to be analyzed to determine if comparable replacement property for all displacees can be expected, and to identify any problem areas.

Potential solutions to identified problems should be considered and an estimate of lead time proposed.

The report should then be prepared containing the following items:

a. Number of Relocations--The number and tenancy status of the potential displacements.

b. Family Characteristics--A general description of the family characteristics of the residential displacements with particular emphasis on any characteristics that might cause relocation problems.

c. Existing Housing--A general description of the housing occupied by the displacees with emphasis on any unique characteristics of individual residences.

d. Business Relocations--A brief description of the business relocations, including any potential moving problems.

e. Market Study--A general description, including number available, or the types and sizes of replacement properties, within price and rental ranges for the project area, along with a brief correlation with existing housing and business requirements to show whether comparable properties can be expected to be available for all displacees.

f. Relocation Solutions--A discussion of proposed Solutions to any identified relocation problems.

g. Lead Time--A brief discussion of the proposed lead time and the reasons for variance from the schedule, if any.

The extent of the survey and the detail required of the Report depend upon the number and complexity of relocations. If, for example, a project contains a limited number of residential relocations in an urban setting where housing is readily available, a very limited survey and brief report stating the same will suffice.

PART TWO:
RELOCATION ADVISORY SERVICES

I. GENERAL

The services discussed in this section are intended, as a minimum, to assist persons in relocating to decent, safe and sanitary dwellings that meet their needs. It is also intended to assist persons occupying property immediately adjacent to the real property acquired by the project when such persons are caused substantial economic injury because of the acquisition.

II. TO WHOM POVIDED

Relocation assistance advisory services shall be offered to:

A. Any "displaced person" as defined in Item IV-E of Part One.

B. Any person occupying property immediately adjacent to real property acquired where it is determined that such person or persons are caused substantial economic injury because of the acquisition.

III. SERVICES TO BE PROVIDED

A. Personally interview each person to be displaced, determine the person's relocation needs and preferences, and explain, the relocation payments and other assistance for which the person may be eligible, the related eligibility requirements and the procedures for obtaining such assistance.

B. Provide current and continuing information on the availability, purchase price and rental costs of comparable replacement dwellings. Explain that the person cannot be required to move unless at least one comparable replacement dwelling is made available.

C. Inform the person to be displaced of the specific comparable replacement dwelling and the price or rent used as the basis for establishing the upper limit of the replacement housing payment and the basis of those determinations.

   In addition to making comparable housing available, whenever possible, minority persons shall be given reasonable opportunities to relocate to decent, safe and sanitary replacement dwellings, not located in an area of minority concentration, that are within their financial means. This policy does not, however, require that a payment be computed that is larger than is necessary to enable the person to relocate to a comparable replacement dwelling.

D. Provide current and continuing-information on the availability, purchase prices and rental costs of comparable and suitable commercial and farm properties and locations. Assist any person displaced from a business or farm operation

to obtain and become established, if possible, in a suitable replacement location.

E. Offer to assist in providing transportation to inspect housing to which displacees are referred.

F. Minimize hardship to persons in adjusting to relocation by providing counseling, advice as to other sources of assistance that may be available and such other help as may be appropriate.

G. Supply persons to be displaced with appropriate information concerning Federal and State housing programs, loan and other management programs administered by the Small Business Administration, and other Federal and State programs offering assistance to persons to be displaced.

IV. COORDINATION OF ACTIVITIES

Relocation activities shall be coordinated with project work and other displacement causing activities to ensure that, to the extent feasible, persons displaced receive consistent treatment and duplication of functions is minimized.

V WRITTEN NOTICES

A. General

The project team will be responsible for disseminating certain information and notices not covered by this section. All right of way personnel are to be familiar with the contents of Chapter V, which discusses Public Involvement.

B. Relocation Information Notice (RA Form-101)

The "Relocation Information Notice", is a statement informing all displacees that they may be displaced by the project, and specifying that if displaced they will be eligible for relocation benefits as of the date of Initiation of Negotiations for the real property. The notice and the relocation brochure will be presented to the displacees at the initial interview, described below.

C. Notice of Relocation Eligibility and Earliest Vacation Date (RA Form 119)

This notice serves two distinct purposes, as described below:

1. It informs the displaced person that he will have no less than 90 days from the date the Department obtains legal possession in which to relocate and further informs him that he will receive notification of the specific vacate date at least 90 days in advance of the vacate date; and

2. It informs the displaced person that he is eligible for applicable relocation benefits.

This notice will be given to all owner occupants at the Initiation of Negotiations for the property and will be either hand delivered or sent by certified mail to all tenant occupants no later than 10 days after the Initiation of Negotiations for the property.

If a person after receiving a "Notice of Relocation Eligibility" moves from the real property, he is eligible for, all applicable relocation benefits regardless of whether the real property is ultimately acquired, unless prior to the move he is notified in writing that he will not be displaced by the project.

If this notice is given and it is later determined that there will be no displacement, the person must immediately be informed, in writing, that there will be no displacement. Any such person will be reimbursed for expenses incurred to satisfy any binding contractual relocation obligations entered into after the Initiation of Negotiations.

D. Notice to Vacate (RA Form 120)

The "Notice to Vacate" provides the displacee with a firm date by which the property must be vacated. This notice will not be given until after the Department has obtained legal possession of the real property. The vacate date must be at least 90 days after the date on which the displacee receives the "Notice to Vacate". The vacate date must be at least 90 days after the date on which the displacee received the "Notice of Earliest Vacation Date" or, if later, the date on which the displacee received the Notification of Relocation Payments (RA Form 109 or RA Form 116).

In those rare instances where the Notification of Residential Relocation Payments is given subsequent to the "Notice of Earliest Vacation Date", the field office must take special care to ensure that the vacate date is at least 90 days after the "Notification of Residential Relocation Payments" was received by the displacee.

This notice will either be delivered in person by the relocation agent, or sent by certified mail from the relocation section. If sent by certified mail, the vacate date must be at least 95 days from the date on which the "notice" is mailed. This additional 5 days is to allow for delays in the mail, to ensure that the displacee is provided the full 90 days to which he is entitled.

Before issuing the "Notice to Vacate", the agent must verify that comparable housing is available for the displaced person within the amount of the original replacement housing payment amount. Also, if requested by the displacee, the address of at least one comparable must be provided.

The “Notice to Vacate” must be issued on tracts involving relocation benefits.

E. Relocation Brochure

The relocation brochure has been developed to provide information concerning eligibility requirements and the monetary entitlements available to displaced persons, and their right to appeal any disagreements over payments. This brochure must be provided to all displaced persons, and will be made available, upon request, to any other interested parties.

VI. APPEALS

A. General

All displaced persons have a right to appeal if they believe that the Department has:

1. Failed to properly determine a person's eligibility for relocation benefits; or

2. Failed to properly determine the amount of a relocation payment.

The procedures for initiating an appeal are outlined in the relocation brochure, and when presenting the brochure the agent must explain that the appeal procedures are contained therein. Any appeal must be filed not later than 60 days after the time limit specified for filing a claim or 60 days after the final action on a claim whichever is later.

B. Procedures

Any time a displaced person expresses dissatisfaction and an intent to file an appeal, an administrative review of the case should be made to decide whether all applicable procedures and regulations have been appropriately and equitably applied.

This administrative review will be accomplished by the regional TDOT ROW Agent Senior, the TDOT ROW Supervisor for the appropriate project team and the central office Right of Way Agent Senior. If it is determined that the displaced person's dissatisfaction is justified, appropriate action will be taken to correct the situation in accordance with applicable procedures. If it is determined that no action is warranted, the displaced person will be so informed. He will also be reminded of his right to make a formal appeal and provided copies of RA Form-118, if requested. The agent will also offer to assist the displaced person in completing the appeal form.

Upon receipt of a written appeal, either on Appeal of Relocation Assistance Determination (RA Form-118) or in any other format, the regional TDOT ROW Agent Senior will determine if the appeal was submitted within the established time limit. If not submitted within the time limit the appellant will be so notified

in writing. If submitted within the time limit, the TDOT Right of Way Agent Senior will then determine if an administrative review has been accomplished. If not he will initiate this process. If an administrative review has been completed, the TDOT Right of Way Agent Senior will forward the appeal to the Regional Transportation Manager 2, for submission to the Central Office Transportation Manager 2. Upon receipt of an appeal the Transportation Manager 2 or a designee will notify the Appeals Advisory Board and a date for the hearing will be established. If the appellant requested an oral appeal, he will be informed in writing of the time and place of the hearing.

After an appeal has been heard by the Advisory Board, the Board will make a recommendation for decision to the Commissioner, who shall make the final decision. The Board will issue a report of the decision, setting out the reasons for same. The report will be made in an original and two copies. The original and one copy will be forwarded to the Central Office Transportation Manager 2. One copy will be retained by the board for its files. The Central Office Transportation Manager 2 will retain the copy for his files and will transmit the original to the Regional Transportation Manager 2. The Regional Transportation Manager 2 shall transmit to the appellant the decision and a full explanation concerning any amount claimed which was disallowed. If the full relief requested is not granted, the appellant will also be advised of his right to seek judicial review, as provided in the regulations governing the Relocation Assistance Program (Tennessee Department of Transportation Rule 1680-6-2-.16).

C. The Appeals Advisory Board

The Relocation Assistance Appeals Advisory Board is established to provide a forum for the review of relocation assistance appeals by persons outside of the Right-of-Way Division. The Board consists of three members appointed by the Commissioner of Transportation.

The Central Office Transportation Manager 2 or designee shall participate in the hearing of an appeal only as an advisor on matters relating to State and Federal relocation assistance directives, or other rights-of-way matters which may be involved. The Central Office Transportation Manager 2 or designee will make arrangements for bringing appeals before the Board and will be present at each hearing, but will have no voice in the recommendation for decision made on an appeal. The Board will give reasons for the recommended decision in each case in a written report, which shall be submitted to the Commissioner for the final decision. As previously outlined, an appellant will be informed in writing of the decision made on the appeal.

If an appellant has expressed a desire to be heard in person before the Board, the appellant shall have full opportunity to be heard; otherwise, his case will be considered by the Board on the facts presented in writing by the appellant and from the State's files on the case. If, after reasonable efforts have been made

to allow the appellant to appear before the Board to be heard, it appears to the Central Office Transportation Manager 2 or designee that the appellant is unduly delaying the hearing, the case will be set and the appellant notified of the time and place of the hearing. The appellant may appear if he or she wishes but the case will then be considered with or without the presence of the appellant. In such case, the Central Office Transportation Manager 2 will document the file with a record of the attempt(s) made to accommodate the appellant.

VII. RESIDENTIAL RELOCATION CONTACTS

A. General

The contacts described below are considered to be the minimum number of contacts to be made with any residential displacee. It is emphasized that these are the minimum requirements. The Agent is expected to make as many contacts as are necessary to ensure that the displacee is relocated with the least adverse impact. Please refer to Part Two, Section III preceding for a discussion of the kinds of services to be provided when necessary.

B. Interview

As soon as feasible, the Agent will make arrangements to conduct personal interviews with all displaced persons.

At the interview, the Agent will present the Relocation Information Notice (RA Form-101). The Agent will at this time explain the relocation program as it pertains to the particular displacee, and complete Residential Relocation Statistics (RA Form-102). It is emphasized that the Agent must do his best to ensure that the information obtained is accurate because much of the information will be used in making payment determinations.

Before concluding the interview, the Agent is instructed to caution the displacee not to move until after the Initiation of Negotiations for the property, nor to take any action concerning his relocation without first contacting the Agent. It should be emphasized to the occupant of the acquired property that premature moving may jeopardize their eligibility for relocation payments

C. Written Offer of Relocation Payments

1. Owner Occupants

Under normal circumstances, at the Initiation of Negotiations, the agent will present the Notification of Residential Relocation Payments (RA Form-109) and the Notice of Relocation Eligibility and Earliest Vacate Date (RA Form-119). The Agent will explain the relocation program, the particulars of all forms and what the displacee must do to obtain the maximum "benefits". He will also explain what kind of documentation will be necessary to support a claim for payment. The agent will offer the displacee, to the extent necessary, assistance in finding replacement housing. In addition, the

agent will make available as referrals a list of all properties used in the Replacement Housing Payment computation.

2. Tenant Occupants

   Under most conditions, within ten days after the Initiation of Negotiations for the tract, the agent will present the written notification to all tenants on the tract. The presentation will be the same as for owner occupants.

3. Exceptional Cases

   There may be times when for good reason the relocation payment notification cannot be made at the time negotiations are initiated. For example, there may be no comparable housing immediately available but housing is expected to come on the market within a reasonable period of time.

   In these instances the displacee will be contacted as described above and given the Notice of Relocation Eligibility and Earliest Vacate Date (RA Form-119). The relocation agent will explain that a replacement housing payment notification will be forthcoming, and further that the displacee will have at least 90 days from the date that the Department obtains legal possession in which to relocate.

D. Decent, Safe and Sanitary Inspection

All residential displacees are notified in the Relocation Information Notice (RA Form-101), not to purchase or rent replacement housing without first contacting the Agent. The Agent should also emphasize this point at every relocation contact.

As soon as the agent is contacted by the displacee, arrangements should be made to inspect the proposed replacement dwelling. This inspection should be made, whenever possible, in the company of the displacee and the owner/agent of the property. The relocation agent is not expected to perform the services of a housing inspector. The agent is, however, required to know the criteria for Decent, Safe and Sanitary Housing, as defined in Section IV of Part One. It is expected that the agent, with these criteria in mind and to the best of his ability, will make a thorough and diligent inspection of the dwelling unit. The purpose of this inspection is solely for the purposes of determining eligibility for replacement housing payments and is not a representation for any other purpose.

At the conclusion of the inspection, the Agent will complete the Report on Inspection of Replacement Housing (R.A. Form-111), in duplicate, and provide a copy to the dislocatee. In those instances where the dwelling is not Decent, Safe & Sanitary, the Agent will explain why it does not meet requirements and discuss what, if anything, can be done to bring the dwelling into compliance.

E. Completing Claim For Relocation Payments (RA Form 110)

The Agent should impress upon the displacee the need to contact him before submitting a claim for payment. The Agent, when contacted, is expected to assist the displacee in completing all claims for payment. This assistance is necessary to ensure that the claim form is properly completed, that all needed inspections are accomplished and that all necessary supporting documentation is obtained. This will avoid, for the most part, unnecessary delays in the payment of the claim.

F. Relocation Agent's Log

Immediately after each relocation contact, be it personal, by mail or by telephone, the agent will prepare a log of that contact. The log will include an itemization of any documents presented, all services offered or provided and all important items of discussion. Also, in some instances, impressions of perceived problem areas, tentative solutions to problem areas, unusual circumstances, unusual personality traits of the displacee, etc. might appropriately be included in the agent's log.

VIII. LOCAL RELOCATION OFFICE

On every project a determination must be made as to whether the volume of work or the needs of the displaced persons would justify the establishment of a local relocation office. If it is determined that a local office is necessary it will be open during hours convenient to the persons to be relocated and will be staffed by a qualified relocation agent.

PART THREE: RELOCATION PAYMENTS

I. GENERAL

A. Documentation

Any claim for a relocation payment must be accompanied by sufficient documentation to adequately support and demonstrate expenses incurred. A displaced person must be provided whatever assistance is necessary to complete and file any required claim for payment. Specific documentation requirements are incorporated as appropriate throughout these rules.

B. Expeditious Payment

The review of claims for payment will be a priority item. The claimant will be promptly notified as to any additional documentation necessary to support a claim. Payment will be made as soon as feasible following receipt of sufficient documentation to support the claim.

C. Time For Filing

All claims for relocation payments shall be filed with the Department within 18 months after the date of displacement, for tenants, and for owners, the date of displacement or the date of final payment, whichever is later. This time period may be waived by the Department for good cause. Requests for waiver are to be submitted by the TDOT ROW Agent Senior to the Central Office for approval by the Right-of-Way Division Director or designee. Requests should be documented to justify the waiver of this time period.

D. Multiple Occupants of One Displacement Dwelling

If two or more occupants of the displacement dwelling relocate to separate replacement dwellings, each occupant is entitled to a reasonable prorated share of any relocation payments that would have been made if the occupants moved together to a comparable replacement dwelling. Each individuals pro rata share will be determined by the TDOT Right of Way Agent Senior on a case by case basis. If however, it is determined that two or more persons maintain separate households within the same dwelling, such occupants have separate entitlements to relocation payments.

E. Notice of Denial of Claim

If all or part of a payment claim is disapproved or is refused on its merits because of untimely filing or other grounds, the claimant will be promptly notified in writing of the determination, the basis of the determination and the procedures for appealing the determination.

F. Relocation Payments Not Considered As Income

No relocation payment received by a displaced person under these procedures shall be considered as income for tax purposes or for determining the eligibility or extent of eligibility of any person for assistance under the Social Security Act or any other State or Federal law, except for Federal Law providing low-income housing assistance. All displacees must be informed of this provision.

G. No Duplication of Payment

No person shall receive any payment under this part if that person receives a payment under Federal, State or Local Law, which is determined by the Department to have the same purpose and effect as such payment under relocation payments.

H. Eviction for Cause

Any person who has lawfully occupied the real property but who is later evicted for cause on or after the date of the Initiation of Negotiations, retains the right to the relocation payments and other assistance set forth in this part. For purposes of determining eligibility for relocation payments, the date of displacement is the date the person moves or the date a comparable replacement dwelling is made available, whichever is later. This section applies only if the Department had intended to displace the person.

I. Delivery of Payment

No payment of relocation benefits may be made in person to the displacees by either the person who computed or the person who approved the payment.

II. MOVING PAYMENTS

A. Legal Considerations

The payment for the reasonable expense of moving personal property is provided under Chapter 16 of Title 29 TCA, which provides these moving expenses to be considered an element of damages in the acquisition of real property. In addition the Uniform Relocation Assistance Act of 1972 (TCA 13-11-101 through 119) provides for payment for moving costs as a relocation assistance provision which is not subject to the eminent domain laws of Tennessee. In all cases where it is possible, moving expenses shall be handled as part of the relocation assistance program. In condemnation cases, every effort should be made to obtain an agreement with the condemned through means and methods outlined in these rules, in which case moving expenses should not be included as an element of damages by the court. In such case, the TDOT ROW Supervisor, or a designee, shall take such steps as necessary to inform the trial attorney of the facts in order that the petition clearly set out that moving expenses have been, or will be, claimed and paid outside of court. The TDOT ROW Supervisor, or a designee, shall also ensure that no money is deposited with the court for moving expenses.

Where the condemned will not agree to settlement as above, and where moving costs are included in the State's petition and deposited into court, and where evidence of moving expenses has been introduced in the court testimony, it shall be the responsibility of the trial attorney to request the court to set out the moving costs separately in the decree. The trial attorney should make a statement in the trial resume as to whether or not the request was denied if the decree does not set out the amount separately. (See Chapter XI for further details.

B. Residential Moves

1. General

Any residential occupant who qualifies as a displaced person is entitled to reimbursement for actual and reasonable moving and related expenses, including the following:

a. The expenses of moving personal property within a 50 mile radius.

b. Transportation of the displaced person to the new location is limited to a 50 mile radius. Such costs may be on a mileage basis not to exceed the current Standard Mileage Rate established by the Tennessee Department of Finance and Administration in the Comprehensive Travel Regulations, General Reimbursement Rate Schedule, or reasonable actual fees if commercial transport is used. This may include special services such as the cost of an ambulance to transport invalid displacees. The actual reasonable costs of meals

and lodging when pre-approved by the agent are also eligible. An example of the necessity for temporary lodging is the relocation of a mobile home where the move and reestablishment requires “out of pocket” expenses.

c. Packing, crating, unpacking and uncrating of the personal property.

d. Disconnecting, dismantling, removing, reassembling and reinstalling relocated household appliances and other personal property, including such items as telephone and other utility installation charges.

e. When pre-approved by the field office TDOT ROW Supervisor, or a designee, storage of personal property not on property owned by the displacee for a reasonable period not to exceed 12 months.

f. Insurance for the replacement value of personal property in connection with the move and necessary storage.

g. The reasonable replacement value of personal property lost, stolen or damaged (not caused by the fault or negligence of the displaced person, his or her agent or employee) where insurance covering such loss, theft or damages is not reasonably available.

2. The Self Move Option

If the displaced person elects to take full responsibility for the move the displacee may be paid an amount not to exceed the Department's determination, without submission of any additional documentation of moving expenses actually incurred in the move.

The amount to be paid for a self-move will be determined by the move cost schedule (Attachment A of these rules). The expense of moving persons in a dormitory style room with minimal property will be limited to $100.00.

Under unusual circumstances, at the expressed desire of the displacee, the opportunity will be afforded to complete an actual cost self-move, with payment based on actual receipted bills or other evidence of costs incurred.

3. Procedures

At the time of the relocation interview the agent, after explaining the move cost options, will ascertain the dislocatee's preference for either commercial move or self-move. The agent will also, at this time, do a room count in order to determine the number of rooms to be paid for under the move cost schedule. The room count will be based on the number of furnished rooms in the dwelling unit plus basements, attics, garages and out buildings if such spaces contain sufficient personality to constitute a room. The agent's findings will be noted on RA Form-102.

At approximately the time the replacement housing payment is computed, move cost estimates will be obtained in accordance with the provisions outlined. A move cost determination, based on the request of the displacee as indicated on Residential Relocation Statistics (RA Form-102), will be approved and incorporated on Notification of Residential Relocation Payments (RA Form-109).

When making the relocation payment notification the agent will again explain the options available to the displacee:

a. Reimbursement for actual expenses incurred for a move by a licensed commercial mover, not to exceed the Department's approved amount; or

b. Payment of the amount approved for a self-move after all personal property has been removed from the property.

If the displacee elects to be reimbursed for actual costs incurred in a self-move, the agent must explain to the displacee the type of documentation that will be necessary to support the claim for payment.

Upon completion of the move the agent will inspect the vacated dwelling to determine if all personal property was moved. Once it has been verified that all personal property has been moved the agent will assist the displacee in completing his claim, making sure that all documentation is included. On commercial moves, the agent should ensure that all legitimate costs are being claimed. In particular the agent should check to see if transportation costs and utility reinstallation costs, such as telephone transfer charges, are included in the claim.

After the claim for Residential Relocation Payments (RA Form-110) is submitted, the agent will review the claim to ensure that only eligible costs have been claimed. After completing his review the agent will sign the claim form and transmit it to the TDOT Right of Way Agent Senior for review and approval.

After approval by the TDOT Right of Way Agent Senior a payment package will be prepared and transmitted in accordance with procedures outlined in

Chapter II. In the case of commercial moves a copy of the claim for Residential Relocation Payments (RA Form-110) and a copy of all receipts will be attached to the claim form. In the case of a self-move a copy of Notification of Residential Relocation Payments (RA Form-109), and a copy of the claim for Residential Relocation Payments (RA Form-110) will be attached.

After the field office project team receives the warrant, it will either be hand delivered to the dislocatee by an agent or sent by certified mail. If hand delivered the displacee will acknowledge receipt by signing and dating a copy of Claim for Residential Relocation Payments (RA Form-110) and it will become the official file copy. If sent by certified mail the receipt will be attached to the file copy of Claim for Residential Relocation Payments (RA Form-110). .

4. Direct Payment to Moving Company

If requested by the displacee, payments for moving costs may be paid directly to a licensed commercial mover. If such a request is made, a mover willing to accomplish the move under a direct payment from the State will be selected. Once a moving company is found the displacee will sign a written statement assigning the relocation payment to the moving company. It will then be signed by an officer of the moving company and the TDOT Right of Way Agent Senior.

Upon completion of the move the moving company will bill the State directly. The payment package in this case will contain a copy of the displacee's assignment of payment, a copy of Claim for Residential Relocation Payments (RA Form-110) and a copy of the moving company bill.

It is important to remember that the displacee will most likely have a separate claim for related expenses, such as transportation costs and utility hook up charges. Standard procedures will be, followed when processing these claim items.

C. Non-Residential Moves

1. General

Any displaced business or, farm operation which qualifies as a displaced person is entitled to payment for actual reasonable moving and related expenses, as follows:

a. Transportation of personal property within a 50 mile radius. In exceptional cases, when justified, the field office TDOT ROW Supervisor may approve a written request by the displacee for payment of such costs beyond 50 miles. A request of this nature can only be approved if

no suitable relocation sites are available within a 50 mile radius. No approval will be made simply to accommodate the displacee.

b. Packing, crating, unpacking and uncrating of the personal property.

c. Disconnecting, dismantling, removing, reassembling and installing relocated machinery, equipment, and other personal property and substitute personal property as described in k. below. This includes connection to utilities available nearby. It also includes modifications to the personal property, including those mandated by Federal, State, or Local code, necessary to adapt the to the replacement structure or site or to the utilities or to adapt the utilities to the personal property. This does not include modifications to the building or property.

d. When pre-approved by the field office TDOT ROW Supervisor, or a designee, storage of personal property on property not owned by the displacee for a reasonable period, not to exceed 12 months.

e. Insurance for the replacement value of the personal property in connection with the move and necessary storage.

f. Any license, permit or certification required of the displacee at the replacement location. However, the payment will be based on the remaining life of any existing license, permit or certification. If, for example, an existing permit had 5 years remaining and the new permit was for 20 years, the payment would be limited to 25% of the cost of the new permit. Any costs associated with transferring existing licenses, permits or certifications are also eligible for reimbursement.

g. The reasonable replacement value of property lost, stolen or damaged in the process of moving (not caused by the fault or negligence of the displaced person, his or her agent or employees) when insurance covering such loss, theft or damage is not reasonably available.

h. Professional services necessary for:

   1) Planning the move of the personal property.

   2) Moving the personal property.

   3) Installing the relocated property at the replacement location.

   These services may include fees paid to architects, engineers and other consultants for such services as move supervision, plant layout for an existing replacement building and scheduling the move.

i. Re-lettering signs and replacing stationary on hand at the time of displacement if they are made obsolete as a result of the move. All obsolete material shall be inventoried by the agent before reimbursement can be made.

Also, the amount eligible for reimbursement is limited to the costs necessary to replace only the obsolete material turned over. For example, if a business had one ream of letterhead stationery on hand and it cost $30.00 per ream for replacement stationery with a minimum charge of $60.00, the displacee would be eligible to be reimbursed for only $30.00. Likewise, if a business had one ream of letterhead stationery with a replacement cost of $30.00, and elected to purchase 20 reams to obtain a quantity discount, and actually paid $20.00 per ream, reimbursement would be in the amount of $20.00.

j. Actual direct loss of tangible personal property incurred as a result of moving or discontinuing the business or farm operation.

The payment shall consist of the reasonable costs incurred in attempting to sell the item plus the lesser of:

1) The fair market value of the item for continued use at the displacement site less the proceeds from its sale. When payment for property loss is claimed for goods held for sale, the fair market value is to be based on the cost of goods purchased not the potential selling price.

2) The estimated cost of moving the item, but with no allowance for storage. If the business or farm operation is discontinued, the estimated cost shall be based on a distance of 50 miles. If possible, the estimate should be based, not on moving as a single item, but on what it would cost to move the item as a part of a total move.

If this option is elected, an appraisal of the item to determine its value for continued use in place will often be necessary. The procedure for obtaining such appraisal is discussed in Section 9 below. In lieu of an appraisal, when the information is available the following formula may be used. Straight line depreciation should be used for determining economic life.

$$\text{ORIGINAL COST} \times \frac{\text{REMAINING ECONOMIC LIFE}}{\text{ORIGINAL ECONOMIC LIFE-}} = \text{VALUE FOR CONTINUED USE IN PLACE}$$

k. Purchase of a substitute item of personal property to replace an item that is not moved, provided the substitute item performs a comparable function. The payment shall be the lesser of:

1) The cost of the substitute item including installation cost at the replacement site, minus the proceeds from the sale or trade in of the replaced item.

2) The estimated cost of moving and reinstalling the replaced item, with no allowance for storage. As with the direct loss provision, the estimate should, if possible, be based not on moving a single item, but on what it would cost to move the item as part of the total move.

l. Reimbursement for actual expenses incurred while searching for a replacement location not to exceed $2,500.00, including:

1) Transportation.

2) Meals and lodging away from home.

3) Time spent searching, based on reasonable salary or earnings.

4) Fees paid to a real estate agency or broker to locate a replacement site, exclusive of any fees or commissions related to the purchase of such sites.

5) Time spent in obtaining permits and attending zoning hearings, based on reasonable salary or earnings.

6) Time spent negotiating the purchase of a replacement site, based on reasonable salary or earnings.

m. If the agency determines that the personal property to be moved is of low value and high bulk (e.g. stockpiled sand, gravel, mulch, etc.), and the cost of moving the property would be disproportionate to its value, the allowable moving cost payment shall not exceed the lesser of: The amount which would be received if the property were sold at the site or the replacement cost of a comparable quantity delivered to the new business location.

n. Connection to available nearby utilities from the right-of-way to improvements at the replacement site.

o. Professional services performed prior to the purchase or lease of a replacement site to determine its suitability for the displaced person's business operation including but not limited to, soil testing , feasibility and marketing studies (excluding any fees or purchase or lease of such site).

p. Impact fees or one time assessments for anticipated heavy utility usage, as determined necessary by the agency.

[THE DEPARTMENT CONSIDERS OUTDOOR ADVERTISING DEVICES TO BE PERSONAL PROPERTY. COMPENSATION WILL BE THE LESSER OF THE RELOCATION COST OR THE REPLACEMENT COST OF THE DEVICE.]

2. Notification and Inspection

   In order to be reimbursed for moving expenses the dislocated business or farm operation must:

   a. Provide advance written notice of the appropriate date of the start of the move or disposition of the personal property. The Department may waive this requirement after documenting the file accordingly.

   b. Provide a certified list of the items of personal property to be moved (inventory).

   c. Permit the Department to make reasonable and timely inspections of the personal property at both the displacement and replacement sites and to monitor the move. The requirements of a. and c. are described in Notification of Non-Residential Relocation Payments (RA Form-116). The agent, when presenting the notification should emphasize these points. The procedures for obtaining estimates and a pre-move inventory ensure that the requirement of b. will be met.

3. Self-Move

   If the displaced person elects to take full responsibility for all or part of the move of the business or farm operation, the displacee may be paid an amount not to exceed the lowest acceptable bid or estimate obtained, without submission of any additional documentation of moving expense actually incurred in the move. However an "as moved" inventory is required and a substantial reduction in the amount of personal property moved would require an adjustment in the amount to be paid.

4. Fixed Payment for Moving Expenses

   a. Businesses

      Any displaced business is eligible for a fixed payment (in lieu of payment) for actual moving and related expenses and actual reasonable reestablishment expenses in an amount equal to its average annual net earnings, but not less than $1,000 nor more than $40,000 if it is determined that:

      1) The business owns or rents personal property which must be moved in connection with such displacement and for which an

expense would be incurred in such move and the business vacates or relocates from its displacement site.

2) The business cannot be relocated without a substantial loss of its existing patronage. The term existing patronage means either the actual specific clientele of the business or the average annual net income of the business. A business is presumed to meet this test and, except in unusual circumstances, the Department will accept this presumption. Eligibility for a fixed payment will not be denied unless the relocation section can show conclusively that the business will not suffer a substantial loss in existing patronage.

3) The business is not part of the commercial enterprise having more than three other entities which are not being acquired and which are under the same ownership and engaged in the same or similar business activities.

4) The business is not operated at the displacement dwelling solely for the purpose of renting such dwelling to others.

5) The business is not operated at the displacement site solely for the purpose of renting the site to others.

6) The business being acquired contributed materially to the income of the displaced person during the two taxable years prior to displacement. This provision is not applicable to nonprofit organizations.

b. Determining Number of Businesses Acquired

In determining whether two or more legal entities, all of which are being acquired, constitute a single business which is entitled to only one fixed payment all pertinent factors shall be considered, including the extent to which:

1) The same premises and equipment are shared.

2) Substantially identical or interrelated functions are carried out and business and financial affairs are commingled.

3) The entities are held out to the public and to those customarily dealing with them as one business.

4) The same person or closely related persons own, control or manage the affairs of the entities.

c. Farm Operations

Any displaced farm operation may choose a fixed payment in lieu of payment for actual moving and related expenses in an amount equal to its average annual net earnings, but not less than $1,000 nor more than $40,000. In the case of a partial acquisition the fixed payment shall be made only if it is determined that:

1) The acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land; or

2) The partial acquisition caused a substantial change in the nature of the farm operation.

d. Non-Profit Organization

A displaced nonprofit organization may choose a fixed payment of $1,000 to $40,000 in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expense, if the Department determines that it cannot be relocated without a substantial loss of existing patronage (membership or clientele). A nonprofit organization is presumed to meet this test, unless the Department demonstrates otherwise. Any payment in excess of $1,000 must be supported with financial statements for the two twelve month periods prior to the acquisition. The amount to be used for the payment is the average of two years annual gross revenues less administrative expenses. The same type of exception listed under paragraph below could be used for nonprofit organization as well.

Gross revenues may include membership fees, class fees, cash donations, tithes, receipts from sales or other forms of fund collection that allows the nonprofit organization to operate. Administrative expenses are those used for administrative support such as rent, utilities, salaries, advertising and so forth.

Operating expenses for carrying out the purpose of the organization are not included in administrative expenses.

e. Determining Average Annual Net Earnings

The average annual net earnings of a business or farm operation are one-half of its net earnings at the displacement site before income taxes during the two taxable years immediately prior to the taxable year in which it is displaced. If the business or farm was not operating at the displacement site for the full two taxable years prior to displacement, net earnings will be based on the actual period of operation on the displacement site projected to an annual rate.

Also, if it is determined that the two taxable years immediately prior to acquisition are not representative, two more representative years may be used. With the prior approval of the Right-of-Way Division Director, or a designee the field office may use a two year period beginning no earlier than two years prior to the Initiation of Negotiations for the project. However, if such a time period is selected as being more equitable, the reason(s) for doing so must be well documented.

Net earnings are to include any wages or salary paid to the owner, the owner's spouse and dependents.

To be eligible for a payment in excess of $1,000 the owner must furnish proof of earnings through either income tax returns or a certified financial statement. No other type of documentation is acceptable.

5. Reestablishment Expenses--Non-Residential.

A small business, farm or non-profit organization may be eligible to receive a reestablishment payment, not to exceed $25,000, for expenses actually incurred in relocating and reestablishing such small business, farm or nonprofit organization at a replacement site.

These expenses must be reasonable and necessary as determined by the Department and may include, but are not limited to, the following:

a. Eligible Expenses

1) Repairs or improvements to the replacement real property as required by Federal, State or Local Law, Code or Ordinance.

2) Replacement property modifications to accommodate the business operation or to make replacement structures suitable for conducting the business.

3) Construction and installation costs for exterior signing to advertise the business.

4) Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, paneling or carpeting.

5) Advertisement of replacement location.

6) Professional services in connection with the purchase or lease of a replacement site.

7) Estimated increased costs of operation during the first two years at the replacement site:

   a) Lease or rental charges.
   b) Personal or real property taxes.
   c) Insurance premiums and
   d) Utility charges, excluding impact fees.

8) In no case will the total costs under this section exceed the $25,000 statutory maximum.

b. Ineligible Expenditures

The following is a non-exclusive listing of reestablishment expenditures not considered to be reasonable, necessary or otherwise eligible.

1) The purchase of capital assets, such as office, office furniture, filing cabinets, machinery or trade fixtures.

2) The purchase of manufacturing materials, production supplies, product inventory or other items used in the normal course of the business operation.

3) Interest on money borrowed to make the move or purchase the replacement property.

4) Payment to a part time business in the home which does not contribute materially to the household income.

Re-Establishment Expenses Work Sheet (RA Form-107A) will be used to compute the reestablishment payment.

6. Procedures

At the same time that residential interviews are being conducted (See Part Two, Item VII-B) the Agent will conduct interviews with all non-residential displacees. The Relocation Information Notice (RA Form-101) and relocation brochure will be presented at this time. The agent will complete Non-Residential Relocation Statistics (RA Form-103), with particular emphasis placed on moving preference. The basic moving cost benefits will be thoroughly explained along with the three options for payment and the documentation requirements. The agent should explain in detail the displacee's eligibility to be reimbursed for reestablishment expenses, and for searching expenses and professional services in conjunction with planning and carrying out the move. The need to maintain good records and receipts should be emphasized. If the business or farm operator is able to make a preliminary determination as to intentions for moving it should be noted. Also, any anticipated special moving requirements such as a weekend move should be noted.

Sometime after the interview, but before the Initiation of Negotiations on the tract, arrangements will be made to inventory the personal property items to be moved and to prepare the estimate of moving costs. (See Item D below for details on the move cost estimates). The business owner or designated representative should be present while the inventory is taken. Whether present or not the business owner must sign and date the inventory certifying to its correctness. All move cost estimates are to be made, on the same inventory.

When making the inventory the agent should attempt to ascertain if the business intends to sell or replace any items under the direct loss or substitute item provisions, since special estimates or appraisal might be necessary. If an actual direct loss claim is likely, the inventory should identify those items that will not be moved. The estimates in this case should incorporate, as a separate item, the additional cost to move those items that will not be relocated. (See Section Nine for further details on obtaining appraisals).

Upon receipt of estimates the agent will complete (RA Form-107), Estimate for Moving Personal Property, attaching all appropriate documents, and submit the document to the TDOT ROW Agent Senior for approval. Once the Estimate for Moving Personal Property, (RA Form-107) is approved the agent will complete Notification of Non-Residential Relocation Payments (RA Form-116). This form is to be presented to the displacee either at the Initiation of Negotiations or immediately thereafter. At the time the notification is presented the agent will emphasize the importance of providing advance written notice of the date on which the displacee intends to begin the move. Also the owner should be asked whether he intends to use a commercial mover or move himself. He should also be asked whether he wants to consider the optional payment. The agent should also offer to assist in finding a replacement location.

If the business elects to be considered for the optional payment appropriate documentation (i.e., tax returns), if not already provided, should be requested. After obtaining the necessary documents, the optional payment will be calculated on Estimate for Moving Personal Property (RA Form-107) and a recomputed amount presented to the business.

Upon receipt of notification of the date on which the displacee intends to start the move, the relocation agent will visit the property to verify that the original inventory is still valid. If the agent finds that there is a significant change in the inventory, he will take appropriate action to have the move cost estimate and move cost determination amended as necessary.

In determining whether there is a significant change in inventory, the agent should be concerned that major items are the same but he need not be

concerned about minor items as long as approximately the same amount of bulk will be moved.

After verifying the inventory the agent will establish a surveillance schedule commensurate with the cost and complexity of the move. (See Section 7 for details).

On minor, non-complex moves with stable inventories, where detailed surveillance will not be necessary, the advance written notification provision may be waived. This will be done at the time the Notification of Non-Residential Relocation Payments (RA Form-116) are presented. Even on moves of this type the agent must inspect the replacement property after the move has been completed to verify that the inventoried items were in fact moved.

At the conclusion of the move the agent will obtain an as moved inventory and assist the displacee in completing the claim for Non-Residential Relocation Payments (RA Form-117), making sure that all legitimate items are included, and that all appropriate documents are provided. An as moved inventory must accompany the claim for payment. The agent should also ensure that the Department has possession of all unmoved items of personal property that were not sold. The agent will then submit the claim to the field office Relocation Chief for approval.

Once the claim is approved a payment package will be prepared and transmitted in accordance with procedures outlined in Chapter II. Copies of Claim for Non-Residential Relocation Payments (RA Form 117) and all receipts, if applicable, must be attached to the claim form.

After the project team receives the warrant, it will either be hand delivered to the dislocatee by an agent or sent by certified mail. If hand delivered, the displacee will acknowledge receipt by signing and dating a copy of Claim for Non-Residential Relocation Payments (RA Form-117), and it will become the official file copy. If sent by certified mail, the receipt will be attached to the file copy of the Claim for Non-Residential Relocation Payments (RA Form-117) Before incorporating Claim for Non-Residential Relocation Payments (RA Form-117) in the project file, it must be routed through the Office Supervisor 1.

7. Surveillance

It is required by State law that all moving expenses be actual and reasonable. To ensure this the field office relocation section will provide surveillance on all moves commensurate with the expected expenditures involved. Emphasis will be directed to those moves that are of a complicated nature and/or substantial expenditure to ensure all provisions

of the contract to move are adhered to by the displaced business and the moving contractor.

8. Miscellaneous Personal Property Items

There are many instances where the acquisition will not actually require the displacement of a business or farm operation but will necessitate that personal property items be moved. In such cases the owner of the personal property will be eligible to be reimbursed for the actual reasonable cost to move the personal property. The owner of the personal property will not, however, be eligible for other relocation benefits, such as search costs or the fixed payment in lieu of move costs.

It is suggested, whenever possible, that the move cost estimate be accomplished by a qualified State employee and that the owner be encouraged to select the self-move option.

The procedures to be followed will be the same as for any non-residential move. On moves of this type, the advance written notification provision should normally be waived by the agent when presenting the offer.

9. Obtaining Appraisals

If at any time an appraisal is required the TDOT ROW Supervisor will contact the ROW Appraiser 4. The appraisal problem will be discussed and a decision reached as to whether an appraisal is required. The requirements of Chapter III will be followed when contracting for the appraisal. It should be pointed out that in many cases appraisals of special machinery equipment items will require the services of a specialist and a sole source contract may be obtained.

D. Move Cost Estimates

1) General

As noted above, move cost estimates must be obtained for all non-residential moves. For moves not expected to exceed $5,000 this estimate may be done by a qualified State employee (see Section 3. for details). However, on any claim where the move-cost will exceed $5,000, two bids must be obtained from licensed commercial movers.

In obtaining the services of commercial movers the project team must comply with the provisions of Chapter III, Contracts. On major projects involving fifteen or more business and/or farm moves it is recommended that a proposal be developed and transmitted to a minimum of three qualified moving companies for bids. A contract would then be awarded to the two low bidders. When developing the proposal, the project team should be guided by Chapter III.

For most projects the contract can be awarded using competitive negotiation procedures as described in Chapter III. A written contract must be signed at the conclusion of negotiations. These procedures may be utilized to obtain a contract on an individual tract or for all business and farm moves on the project.

Prior to making the inventory, the agent should contact both moving companies and the displacee to arrange for a date on which to inspect and inventory the personal property to be moved. At the agreed date and time, all parties will make a combined survey and inventory of the personal property to be moved. The inventory should be completed using Inventory of Personal Property (RA Form-106). All parties should be aware of special items such as items to be sold rather than moved, or items to be sold and replaced at the new location. Special moving requirements should also be discussed at this time.

2) Developing the Cost Estimate

The moving companies will be instructed that detailed estimates must be provided. The estimate may be provided using Estimate for Moving Personal Property (RA Form-108) or a detailed estimate form of the company's choosing. The company should also be instructed to include replacement cost insurance and to base their estimates on the inventory obtained and the special move requirements determined during the inventory.

At the time the estimate is submitted, the moving company will also submit an invoice for payment of this fee. Upon acceptance of the estimate, the relocation section will prepare and forward a payment package in accordance with procedures outlined in Chapter II. A copy of the moving company invoice and the contract will accompany the payment package.

3) Move Cost Finding

As stated above, a qualified employee of the Department may provide a move cost finding for moves not expected to exceed $5,000.

The estimate will be prepared using Estimate for Moving Personal Property (RA Form-108) and is to be based on the most current cost information available. When a move cost finding is the basis for a move cost determination and the dislocatee elects to be reimbursed for actual costs incurred in a self-move or use a commercial mover, the field office may approve a payment, based on receipted bills or other evidence of costs incurred, which does not exceed the amount by more than 25%. If the payment would exceed the move cost determination by more than 25%, the bill must be submitted to the central office for approval by the central office relocation chief. If the payment is based on a negotiated self-move it will be

limited to the computed amount. In lieu of this procedure the field office may elect to obtain estimates from commercial movers and make a revised move cost determination based on the lower of the two estimates. In such cases, the amount of the low estimate would set the upper limit on reimbursement.

E. Ineligible Moving Expenses

A displaced person is not entitled to payment for:

1. The cost of moving any structure or other real property improvement in which the displaced person reserved ownership; or

2. Interest on a loan covering moving expenses; or

3. Loss of goodwill; or.

4. Loss of profits; or

5. Loss of trained employees; or

6. Any Additional operating expenses of a business or farm incurred because of operating in a new location; EXCEPT AS PROVIDED IN Part Three, II, C, 5, a, 7 (reestablishment expenses)

7. Personal injury; or

8. Any legal fee or other cost for preparing a claim for relocation payment or for representing the claimant before the Department; or

9. Expenses for searching for a replacement dwelling; or

10. Physical changes to the real property at the replacement location of a business, farm or nonprofit organization except as provided in Paragraphs II-C-1-c and II-C-5 above; or

11. Costs for storage of personal property on real property already owned or leased by the displaced person.

12. Refundable security and utility deposits

III. REPLACEMENT HOUSING PAYMENTS

A. Payments for 90-Day Owner Occupants

1. Eligibility

A displaced person is eligible for payments under this paragraph if the person meets the following criteria:

a. Has actually owned and physically occupied the displacement dwelling for not less than 90 days immediately prior to the Initiation of Negotiations.

b. Purchases and occupies a decent, safe and sanitary dwelling within one year after the later of:

1) The date the person moves from the displacement dwelling; or

2) The expiration of the Notice to Vacate.

3) The date the person receives final settlement for the displacement dwelling or in the case of condemnation, the date of court possession; or

4) This time period may be waived by the Department for good cause. Requests for waiver are to be submitted by the Regional Relocation Chief to the Central Office for approval by the Right-of-Way Division Director ,or a designee . Requests should be documented to justify the waiver of this time period.

c. If the displaced person purchases a replacement property prior to the date by which occupancy is required but for reasons beyond his control is unable to occupy the premises by that date, the occupancy requirement shall be considered to be satisfied.

2. Amount of Payment

The total replacement housing payment will be an amount not to exceed $31,000. The payment is limited to the amount necessary to relocate to a comparable replacement dwelling within one year from the date the displaced owner is paid for the displacement dwelling or the date such person is initially offered a comparable replacement dwelling whichever is later. The payment shall be the sum of:

a. The amount, if any, by which the cost of a replacement dwelling exceeds the acquisition price of the displacement dwelling. This price differential is the amount which must be added to the

acquisition price of the displacement dwelling to provide a total amount equal to the lesser of:

1) The reasonable cost of a replacement dwelling as determined in accordance with Section C-1: or

2) The purchase price of the decent, safe and sanitary dwelling actually purchased and occupied by the displaced person.

b. The amount, if any, necessary to compensate the displaced person for any increased interest costs and other debt service costs to be incurred in connection with the mortgage(s) on the replacement dwelling as determined in accordance with Section 5.

c. The amount of the reasonable expenses as determined in accordance with Section 6 that are incidental to the purchase of the replacement dwelling.

3. Rental Assistance Payment For a 90-Day Owner Who Rents

A 90-day owner eligible for relocation payments under this Item who elects to rent a replacement dwelling is eligible for a rent supplement payment calculated in accordance with the provisions of Section B following (Replacement Housing Payments for 90-Day Occupants – Chapter IX, Part Three, III, B). The calculated rental supplement may not exceed the amount the displacee is eligible for in the form of a price differential as calculated in Section 2 of this item (Amount of Payment – Chapter IX, Part Three, III, A, 2)

4. Determining Acquisition Price of the Acquired Dwelling

a. General

The acquisition price of the displacement dwelling is the value of the residential use portion of the property being acquired.

b. Mixed-Use and Multi-Family Properties

If the displacement dwelling is part of a property that contains another dwelling unit and/or space used for non-residential purposes, only that portion of the value which is actually attributable to the displacement dwelling is to be considered when computing the price differential.

c. Disaster Related Insurance

To the extent necessary to avoid duplication of payment, the amount of any insurance proceeds received by a person in connection with a

disaster related loss will be added to the value of the acquisition when computing the price differential.

d. Atypical Site or Site Improvements

When the displacement dwelling site contains a major attribute which is not typical for the area or is not found in the comparable dwelling (i.e., the site is significantly larger or contains a swimming pool) the value of such an attribute is to be subtracted from the value of the displacement dwelling before computing the payment offer. For example, consider the acquisition of a single family residence containing a swimming pool with the following breakdown of value:

Land----------	$ 5,000
House----------	$55,000
Pool ----------	$ 2,500
FMV ----------	$62,500

The pool is not typical for the area and a comparable property is available at an asking price of $65,000. The following would be the computation of the replacement housing payment offer:

FMV ----------	$ 62,500
ADJ for Pool----------	$ 2,500
Base for RHP ----------	$ 60,000
RHP Offer $ 65,000-$60,000= ---	$ 5,000

5. Increased Mortgage Interest Costs

a. General

The payment for increased mortgage interest shall be the amount which will reduce the mortgage balance on a new mortgage to an amount which could be amortized with the same monthly payment for principal and interest as that for the mortgages on the displacement dwelling. In addition, payments shall include other debt service costs, if not paid as incidental costs, and shall be based only on bona fide mortgages that were valid liens on the displacement dwelling for at least 180 days prior to the Initiation of Negotiations. The following paragraphs shall apply to the computation of the increased mortgage interest cost payment, which payment shall be contingent upon a mortgage being placed on the replacement dwelling.

1) The payment shall be based on the unpaid mortgage balance(s) on the displacement dwelling; however, in the event the person obtains a smaller mortgage than the mortgage balance(s) computed in the buy down determination, the payment will be prorated and reduced

accordingly. In the case of a home equity loan the unpaid balance shall be that balance which existed 180 days prior to the Initiation of Negotiations or the balance on the date of acquisition, whichever is less.

2) The payment shall be based on the remaining term of the mortgages on the displacement dwelling or the term of the new mortgage, whichever is shorter.

3) The interest rate on the new mortgage used in determining the amount of the payment shall not exceed the prevailing fixed interest rate for conventional mortgages currently charged by mortgage lending institutions in the area in which the replacement dwelling is located, unless there is justification for the excessive rate. (Justification may be the unavailability of the current prevailing fixed interest rate due to the amount of the new mortgage, credit difficulties, or other similar reasons)

4) Purchaser's points but not seller's points, shall be paid to the extent:

   a) They are not paid as incidental expenses;

   b) They do not exceed rates normal to similar real estate transactions in the area;

   c) The Department determines them to be necessary; and

   d) The computation of such points and fees shall be based on the unpaid mortgage balance on the displacement dwelling, less the amount determined for the reduction of such mortgage balance under this section.

5) The displaced person shall be advised of the approximate amount of this payment and the conditions that must be met to receive the payment as soon as the facts relative to the person's current mortgages are known and the payment shall be made available at or near the time of closing on the replacement dwelling in order to reduce the new mortgage as intended.

Increased Mortgage Interest Cost Calculation (RA Form-113) has been developed to facilitate the increased interest computation, and it will be used for all computations of this type.

b. Partial Acquisition

1) Where the dwelling is located on a tract normal for residential use in the area, the interest payment will be reduced to the percentage ratio that the acquisition price bears to the before value; except the reduction will not apply when the mortgagee requires the entire mortgage balance to be paid because of the acquisition and it is necessary to refinance.

2) Where a dwelling is located on a tract larger than normal for residential use in the area, the total mortgage balance shall be reduced to the percentage ratio that the value of the residential portion bears to the before value for computational purposes. This reduction shall apply whether or not it is required that the entire mortgage balance be paid.

c. Multi-Use Properties

The interest payment on multi-use properties shall be reduced to the percentage ratio that the residential value of the multi-use property bears to the before value.

d. Other Highest and Best Use

If a dwelling is located on a tract where the fair market value is established on a higher and better than residential use, and if the mortgage is based on residential value, the interest shall be computed as provided above. If the mortgage is based on the higher use, the interest payment shall be reduced to the percentage ratio that the estimated residential value of the parcel was to the before value.

6. Incidental Expenses

The incidental expenses to be paid are those necessary and reasonable costs actually incurred by the displacee incident to the purchase of a replacement dwelling, and customarily paid by the buyer, including the following:

a. Legal, closing and related costs including those for title search, title insurance, preparing surveys and plats, and recording fees.

b. Lender, FHA or VA application and appraisal fees.

c. Certification of structural soundness, and termite inspection when required.

d. Credit Report.

e. Owner's and mortgagee's evidence or assurance of title (not to exceed the costs for a comparable replacement dwelling).

f. Escrow Agent's fee.

g. Loan origination or assumption fees that do not represent prepaid interest.

h. Sales or transfer taxes (not to exceed the costs for a comparable replacement dwelling).

i. Mortgage default insurance (based on the unpaid mortgage balance at the displacement dwelling or the new mortgage amount whichever is less).

j. Housing inspection by a certified housing inspector.

k. Other costs which are normal for similar real estate transactions in the area.

The Worksheet for Incidental Costs (RA Form-112) provides a listing of these incidental expenses commonly encountered. This form will be used to compute the total amount due for incidental expenses. The form provides a breakdown between fixed costs (those costs that are not dependent on sale price or mortgage amount) and variable costs (those costs which are directly related to sale price or mortgage amount). The payment for those items listed as variable costs will be limited to the amount which would have been paid for the purchase of a comparable dwelling as determined by the replacement housing payment computation. This does not include recurring expenses such as, mortgage interest, hazard insurance premiums, property taxes, additional costs associated with a larger mortgage on the replacement dwelling or points when paid as part of the increased mortgage interest cost.

B. Replacement Housing Payments for 90-Day Tenant Occupants

1. Eligibility

A tenant or owner occupant displaced from a dwelling is entitled to a payment not to exceed $7,200 for rental assistance, as computed in accordance with Section 2 or down payment assistance as computed in accordance with Section 6 (except a 90 day owner occupant is not eligible for down payment supplement) if the displaced person:

a. Has lawfully and physically occupied the displacement dwelling for at least 90 days immediately prior to the initiation of negotiations; and

b. Has rented or purchased and occupied a decent, safe, and sanitary replacement dwelling within one year after the later of:

1) The date the person moves from the displacement dwelling; or

2) The expiration of the Notice to Vacate.

3) In the case of an owner occupant, the date the person receives final payment for the displacement dwelling, if later than the vacate date. In the case of condemnation, the date of court possession will be considered the date on which final payment is received.

4) This time period may be waived by the Department for good cause. Requests for waiver are to be submitted by the TDOT ROW Agent Senior to the Central Office for approval by the Right-of-Way Division Director ,or a designee . Requests should be documented to justify the waiver of this time period.

2. Computing the Rental Assistance Payment

The rental assistance payment will be 42 times the amount, if any, obtained by subtracting the base monthly rent for the displacement dwelling from the lesser of:

a. The monthly rent and estimated average monthly cost of utilities for a comparable replacement dwelling; or

b. The monthly rent and estimated average monthly costs of utilities for the decent, safe and sanitary dwelling actually occupied by the displaced person.

3. The Base Monthly Rent for Displacement Dwelling.

The average monthly rental for the displacement dwelling is the lesser of:

a. The average monthly cost for rent and utilities at the displacement dwelling for a reasonable period prior to displacement, as determined by the Department. For an owner occupant, use the fair market rent for the displacement dwelling. For a tenant who paid little or no rent, use the fair market rent, unless its use would create a hardship because of the person’s income or other circumstances.

b. Thirty (30) percent of the persons average gross household income if their income is classified as “low income” by the U.S Department of Housing and Urban Development’s Annual Survey of Income Limits for Public Housing and Section 8 Programs (http://www.fhwa.dot.gov/real_estate/uniform_act/policy_and_guidance/low_income_calculations/index.cfm). If the person refuses to provide appropriate evidence of income or is a dependent, the base monthly rental shall be established solely on the criteria in 3.a)

c. A full time student or resident of an institution may be assumed to be a dependent unless the person demonstrates otherwise.

d. The total of the amounts designated for shelter and utilities if receiving a welfare assistance payment from a program that designates the amount for shelter and utilities.

4. Determining Utility Costs

The following guidelines are to be followed when making determinations on utility costs.

Average utility costs for the displacement dwelling will be one-twelfth of the total utility charges incurred by the displaced person for the 12 months immediately preceding the initiation of negotiations. If the person occupied the displacement dwelling for less than 12 months, utility costs will be based on the monthly average modified as necessary for seasonal variations. The utility charges for the replacement dwelling will be based on one-twelfth of the estimated reasonable annual charges for utilities. When attempting to estimate annual utility charges at the replacement dwelling the agent should be guided by the displaced person's previous usage and the unit costs of utilities at the replacement location. Water and sewer usage, for example, should remain basically the same and would result in a cost difference only if rates were different. Another item to be considered is significant differences in dwelling size. If, for example, the comparable is significantly larger than the displacement dwelling the cost to heat and cool would normally increase at the replacement. Also to be considered are changes in type of utility. For example, if the comparable has gas heat and the displacement dwelling electric, heating costs would normally be lower at the replacement.

If the comparable selected is basically of similar size, uses the same type utilities, and is in the same utility district, it can be presumed that utility charges will be the same at both locations. However, even if this is the case, utility costs must be included as a replacement housing offer.

Certain items normally considered utilities are to be excluded. These include telephone and cable television. (See definitions)

5. Manner of Disbursement

   A rental assistance payment will be disbursed by the Department on a lump sum basis.

6. Computing the Down Payment Assistance Payment

   The down payment assistance payment will be the actual down payment and necessary incidental expenses, not to exceed $7,200. A 90 day owner is not eligible for this payment.

7. Application of Payment

   The full amount of the replacement housing payment for down payment assistance must be applied to the purchase price of the replacement dwelling and related incidental expenses.

C. Additional Rules Governing Replacement Housing Payments

1. Determining Cost of Comparable Replacement Dwelling

   The upper limit of a replacement housing payment will be based on the asking price of a representative comparable replacement dwelling which has actually been provided to the person to be displaced. If available, at least three comparable replacement dwellings shall be examined and the payment offer computed on the basis, of the most nearly comparable dwelling. Replacement Housing Computation (RA Form-105) will be used for making all replacement housing computations.

2. Inspection of Replacement Dwelling

   Before making a replacement housing payment, an inspection of the replacement dwelling must be made to determine whether it is a decent, safe and sanitary dwelling. (See Item VII. D. of Part Two)

3. Statement of Eligibility to Lending Agency

   If the displacee qualifies for a Replacement Housing Payment but has not yet purchased or occupied a replacement dwelling, the Department will, upon the request of the displacee, provide a written statement to any interested party, financial institution or lending agency, that the displacee will be eligible for the payment of a specific sum subject to the Department's requirements.

4. Revisions to the Replacement Housing Payment

When replacement housing, similar in price and comparability to the dwelling used in the original replacement housing payment computation, is no longer available, the Department will revise the Replacement Housing Payment eligibility offer and make any necessary referrals to comparable housing currently available. The following guidelines also apply:

a. The revised computed amount may not be less than the initial determination because of the availability of a less expensive comparable.

b. A replacement housing payment will be revised and may be less than the original offer if:

1) The appraisal is updated and the fair market value is increased

2) In condemnation cases, the final award is greater than the acquisition offer

3) In the case of an administrative settlement, the initial acquisition offer is increased

c. Except in those cases where the acquisition offer is increased, the primary purpose of a revised Replacement Housing Payment is to provide to the displacee currently available replacement housing resources. Therefore, if dwellings similar in price and comparability to the dwelling used in the original payment computation are available, a revised computation is not necessary. However, current listings must be provided to the displacee, if requested.

5. Purchase of Replacement Dwelling

A displaced person is considered to have met the requirement to purchase a replacement dwelling if the person:

a. Purchases an existing decent, safe and sanitary dwelling.

b. Purchases and rehabilitates a substandard dwelling. In such case the person would be eligible for reimbursement of the purchase price plus the costs to correct any decent, safe and sanitary deficiencies not to exceed the amount offered as a replacement housing payment, but not to include costs to make the dwelling comparable.

In cases such as this, based on the Decent, Safe & Sanitary Inspection, the agent in consultation with the ROW Agent Senior will make a determination as to those items that are eligible for

reimbursement, and they will inform the displacee in writing of those items which are eligible. The displacee should be cautioned not to incur these expenses until this determination has been made since he will not be eligible to be reimbursed for any cost which has not been pre-approved.

c. Constructs or contracts for the construction of a Decent, Safe and Sanitary dwelling on a site which the displaced person owns or purchases.

   If the dwelling is constructed on remainder land, the cost will be the current fair market value.

d. Relocates a dwelling which the displacee owns or purchases. In this case the following costs would be considered in determining the displaced person's eligibility for a replacement housing payment. These costs must exceed the acquisition price of the acquired dwelling and are reimbursable up to the amount of the replacement housing payment offer:

   1) The retention value or current fair market value of the dwelling.

   2) The cost of moving and restoration of the dwelling to a condition comparable to that prior to the move.

   3) The costs, if any, incurred to make the unit a decent, safe and sanitary dwelling. As with the purchase of a substandard dwelling, the field office relocation section must pre-approve those items which will be eligible for reimbursement.

   4) The cost of the replacement site not to exceed the cost of an available suitable replacement site. If moved to remainder land or pre-owned land the cost will be the current fair market value.

e. Occupies a pre-owned Decent, Safe and Sanitary dwelling. In such case the purchase price will be the current fair market value.

   Determination of fair market value as discussed above does not require that an appraisal be made. In some cases the value estimate may be based on the appraisal of the taking. In other situations market value may be estimated using listings in the relocation brochure. If necessary, a staff appraiser may be asked to provide an estimate of value.

6. Advance Request for Payment

In all cases where replacement housing is being purchased, all reasonable attempts will be made to have the replacement housing supplement available at closing on the replacement property. All displaced persons will be informed of this policy and should be encouraged to obtain sales agreements that will allow for approximately six weeks delay for closing. This should provide ample time to process the payment voucher. When ordering a warrant for payment at closing, a copy of a sales agreement with a stipulated contract price will be attached to the voucher. Also, in unusual circumstances, if feasible, the estimated closing costs prepared by the attorney or mortgagee may be attached to the voucher.

7. Replacement Housing Payments on Condemned Properties

To be eligible to receive a replacement housing payment in advance of final settlement, an owner occupant whose residence has been condemned must first agree to an adjustment of the replacement housing payment based on the final court award. Stipulation in Case (RA Form-114) has been developed for this use. The agent must have this form signed by the property owner and his attorney at the time the claim for payment is made. It will then be forwarded to the State's attorney to be entered into court. If the owner or attorney for the owner refuses to sign the Stipulation in Case (RA Form-14), the Replacement Housing Payment cannot be made until after the final court award. In the case of multiple ownership, all owners and their attorneys must sign the Stipulation in Case (RA Form-114) before an advance payment can be made.

If an appraisal update or revision requires an additional court deposit, before a voucher is requested, the revised offer will be transmitted to the project team. The agent will be responsible for adjusting the amount of the revised offer. Any increase in the Fair Market Value offer attributable to the residential use portion of the property up to the amount of the replacement housing payment will be deducted from the revised offer, in determining the amount of the additional court deposit. This may, in many instances, result in no additional deposit. Once the adjustment is made the result will be transmitted as appropriate.

After a final court award is made, whether by trial or settlement, the agent will be responsible for adjusting the award to reflect the modification to the replacement housing payment. Re-computation of Replacement Housing Payment After Court Award (RA Form-115) has been designed for this purpose. After making the necessary modification Re-computation of Replacement Housing Payment After Court Award (RA Form 115) will be transmitted as appropriate. Re-computation of Replacement Housing Payment After Court Award (RA Form-115) shall be used to adjust the

replacement housing payment to reflect the court award if an advance payment is not made.

8. Amount of Payment to Occupant with Partial Ownership

   a. When a single family dwelling is owned by several persons, and occupied by only some of the owners, the replacement housing payment will be the lesser of:

      i. The difference between the owner occupants share of the acquisition cost of the acquired dwelling and the actual cost of the replacement dwelling; or

      ii. The difference between the total acquisition cost of the acquired dwelling and the amount determined by the Department as necessary to purchase a comparable dwelling.

   b. If, in the opinion of the agent, the application of this procedure, because of unusual circumstances, creates an undue hardship on the displacee, the full facts along with a recommended solution will be transmitted to the Transportation Manager 2 for approval.

9. Payment After Death

   A replacement housing payment is personal to the displaced person and upon his or her death the undisbursed portion of such payment shall not be paid to the heirs or assigns except:

   a. The amount attributable to the displaced persons period of actual occupancy of the replacement housing shall be paid.

   b. The full payment shall be disbursed in any case in which a member of the displaced family dies and the other family members continue to occupy a decent, safe and sanitary replacement dwelling.

   c. Any portion of a replacement housing payment necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by or on behalf of a deceased person shall be disbursed to the estate.

10. Occupancy requirements for displacement or replacement dwelling.

    No person shall be denied eligibility for a replacement housing payment solely because the person is unable to meet the occupancy requirements set forth in these regulations for a reason beyond his or her control, including:

    (1) A disaster, an emergency, or an imminent threat to the public health or welfare, as determined by the President, the Federal Agency funding the project, or the displacing Agency; or

(2) Another reason, such as a delay in the construction of the replacement dwelling, military duty, or hospital stay, as determined by the Agency.

D. Procedures

1. Market Study for Replacement Housing

At the time appraisals on the project are first submitted to the field office, a housing survey may be started. All available sources in the project area should be used to obtain a list of currently available sale and rental property (i.e., brokers, property managers, newspapers). Pertinent data on all housing should be obtained and all housing given at least an exterior inspection with an interior inspection if possible.

Also photos will be taken of each dwelling. RA Form-104 will be completed for each available property and a data brochure compiled.

The data brochure must be updated and revised on a regular basis in order to ensure that the comparables used in the replacement housing computation are available at the time of computation. Therefore, as a minimum the brochure will be updated immediately prior to the calculation of Replacement Housing Payments. Comparable Housing (RA Form-104) provides space for the date of re-verification of availability. This should be accomplished each time an update is done.

2. Computing the Replacement Housing Payment Offer

Immediately after Review Appraiser's Report (ROW Form-2) is received in the field office, the computation of the replacement housing payment will be accomplished. Because of the way appraisals are scheduled, occupied tracts will be appraised and subsequently approved in certain discreet increments; therefore several replacement housing payment computations will normally be accomplished at one time (see Chapter VII for further details on scheduling of occupied tracts).

When computing a Replacement Housing Payment, the agent should first review the appraisal to determine if any adjustments need be made to arrive at the base for the computation. A comparison should also be made between the dwelling description of the appraisal and that of Residential Relocation Statistics (RA Form-102). Any discrepancies should be rectified. Then, using the data from Residential Relocation Statistics (RA Form-102) a selection of comparable housing should be made. The agent should attempt to find at least three comparable dwellings. However, when three are not available, two or one may be used.

The agent, when selecting the properties, should give consideration to the following:

a. Neighborhood--The property selected should be located in a neighborhood where property values are similar to that of the displacement property. In other words, if the displacement property were located in a neighborhood of $60,000--$70,000 houses the agent would not want to select an over improved property in a neighborhood of $40,000 properties.

b. Rooms--The room count of the selected dwelling should be similar to that of the displaced dwelling and the rooms should provide all functions enjoyed by the displacement dwelling. For example, if the displacement dwelling had a dining room the selected property should have a dining room or an equivalent area that would serve the same function.

c. Size--The selected dwelling should be similar in size to the displacement dwelling. It is not necessary that the selected property contain the same number of square feet as the subject as long as it serves the same function. However, the selected property should not be significantly smaller than the displacement dwelling. For example an available property might contain 3 @ 10'x10' bedrooms and a 10’x15’ den, while the displacement dwelling contained 3 @ 15'x15’ bedrooms and a 20'x40', great room. When considered individually each of the rooms, could be considered to serve the same function, however, the size difference would be so significant that the available property could not be considered comparable.

d. Condition-The overall condition of the selected property should be similar to the condition of the displacement property. In most cases the, selected property should be of a similar age and demonstrate adequate maintenance. However an older property in which both short lived and long lived items had been properly maintained and replaced as necessary should not be precluded from consideration.

e. Other Features--The selected property should contain features that serve the same function as that of the displacement property. For example if the displacement had a basement storage area the selected property should have an equivalent storage area. This storage area need not be a basement.

This comparison would not normally include exterior items but would include, for example, an attached garage or carport.

Replacement Housing Computation (RA Form-105) should be used to accomplish the following:

a. To show any adjustments necessary.

b. To list the pertinent details of the subject and all comparables selected.

c. To list the best comparable.

d. To make the actual computation.

Upon of completion of R A Form-105, Replacement Housing Computation, it will be signed, dated and submitted to the field office TDOT Right of Way Agent Senior for approval. After approval it will be given to the agent assigned to that tract who will complete Notification of Residential Relocation Payments (RA Form-109). A copy of the Replacement Housing Computation (RA Form-105) will be transmitted to central office at this time. Concurrent with this the relocation TDOT Right of Way Agent Senior will inform the negotiation section that the computation has been completed and a Replacement Housing Payment offer is ready to be made. The negotiator can then schedule the Initiation of Negotiations.

For owner occupied tracts, arrangements will be made by the agent to contact the owner and present the Fair Market Value offer and the notification of relocation payments. In the case of tenant occupied tracts, the agent will make every effort to make the relocation offer to the tenant within 10 days.

3. Construction Cost New

In unusual circumstances where no comparable housing is available for displaced owner occupants, the replacement housing payment may be calculated by using a construction cost new estimate.

If such an estimate is used it must be a detailed estimate made by a licensed contractor who is willing and able to construct such a dwelling at his estimated cost. When a construction cost new estimate is to be used, it must be obtained in accordance with the contracting procedures outlined in Chapter III.

When a cost estimate is obtained, the asking price of an available site in a neighborhood equal to that of the displacement property must be added to the cost estimate. If no comparable site is available, this procedure may not be utilized.

A construction cost new estimate will meet the made available requirement; however, it must be at some time in the future since the replacement property is not available for immediate occupancy. A Notice to Vacate (RA Form-120) cannot be issued until such time as the replacement would be available for occupancy.

4. Computing Increased Mortgage Interest Costs

At the time the market study for replacement housing is conducted, the agent will obtain information on mortgage interest rates, purchaser's points, and fees from the major lending institutions in the area. Then using, the mode, the agent will establish an interest rate plus purchaser's points, if any. These figures should be updated regularly to reflect the most current rates, particularly at the time the increased interest payment is calculated.

At the time the Replacement Housing Payment computation is made, the agent will obtain the needed mortgage information for any 90 day owner with an existing mortgage (remaining mortgage balance, interest rate and remaining term of loan). The agent will then compute the estimate of, increased interest costs on Increased Mortgage Interest Cost Calculation (RA Form-113) based on the mortgage balance 180 days prior to the Initiation of Negotiation. This computed amount will be offered at the time the offer of replacement housing is made. Once the displacee has committed to a replacement property and has obtained mortgage financing, the actual mortgage terms will be compared to those used in the computation. If a re-computation is indicated, it will be done at this time. The increased interest payment, however, must be ordered as soon as feasible in order that it can be made available at or near closing. All displacees will be encouraged to "lock in" rates at the time the mortgage commitment is made. This will avoid problems of changing rates or points that occur between the time of loan commitment and the time of closing.

If money is ordered and it is later determined that the actual amount of the mortgage is less than that used in the computation, an adjustment will be made using Increased Mortgage Interest Cost Calculation (RA Form-113), Part B. A cashier's check for the difference will be obtained from the displacee at the time the displacee is paid his increased interest payment. This will avoid the problem of canceling the original warrant and will ensure that the necessary increased mortgage interest cost will be available at or near closing.

5. Payment Documentation

All payments must be supported by acceptable documentation. The following is a listing of the documentation that is considered to be acceptable.

1. Purchase of a Replacement Property

A copy of the recorded deed must always be provided. Whenever possible a copy of the closing statement on the purchase of the replacement property should be included. This is mandatory when the payment is for a down payment supplement or when an increased interest payment is involved. When a closing statement is not available actual receipted bills must be provided to support a

payment for residential expenses. When the payment is based on new construction a plan or detailed description of the replacement dwelling must be provided as well as receipted bills for all costs incurred, unless a closing statement is available. Also, when there will be an increased interest payment a statement from the lender on the displacement property must be obtained.

This statement must list the interest rate, the remaining loan balance and the number of periods remaining on the loan.

2. Rental of a Replacement Property

A rent receipt on the replacement property must always be provided.

IV. MOBILE HOMES

A. General

This section describes the requirements governing relocation payments to a person displaced from a mobile home or mobile home site who meets the basic eligibility requirements of this chapter. Except as modified by this section such a displaced person is entitled to a moving expense payment in accordance with Section II and a replacement housing payment in accordance with Section III, to the same extent and subject to the same requirements of persons displaced from conventional dwellings.

B. Moving and Related Expenses

1. Actual Reasonable Expenses

If a displaced mobile home owner elects to be reimbursed for actual moving expenses for moving the mobile home to a replacement site, the reasonable cost of disassembly, moving and reassembly of any attached appurtenances (such as porches, decks, awnings and skirting) which were not acquired, anchoring of the unit and utility hook up charges are reimbursable.

2. Mobile Home Not Acquired

If the mobile home is not acquired but the owner is displaced under one of the circumstances described in Section C-1.-b., the owner is not eligible for payment of moving expenses for moving the mobile home.

3. Mobile Home Park Entrance Fees

A displaced mobile home occupant who elects to obtain a moving expense payment on an actual cost basis is entitled to payment for the reasonable entrance fee that the person must pay in order to relocate to a mobile home park. However, no part of an entrance fee (such as a security deposit) which is returnable to the person will be paid. This provision applies only if it is determined that there are no comparable mobile home parks available which do not require entrance fees.

In order to be reimbursed for such fees the displacee must provide both a lease agreement on the replacement site and a receipted bill for the payment of the entrance fee.

4. Repairs or Modifications

If a mobile home requires repairs or modifications to enable it to be moved to a replacement site, and it is determined that it is practical to do so, payment shall be limited to the reasonable costs of moving the mobile home and making such repairs or modifications.

C. Replacement Housing Payment for 90-Day Mobile Home Owner Occupants

1. Eligibility

To be eligible for a Replacement Housing Payment as a 90 day owner occupant the following requirements must be met:

a. The person must have both owned the displacement mobile home and occupied it on the displacement site for at least 90 days immediately prior to the initiation of negotiations.

b. The mobile home must either be acquired as real property, or, if not acquired, the person must be displaced because the mobile home:

1) Is not and cannot economically be made decent, safe and sanitary; or

2) Cannot be moved without substantial damage or unreasonable cost; or

3) Cannot be moved because there is no available comparable replacement site; or

4) Cannot be moved because it does not meet mobile home park entrance requirements.

If the mobile home is not acquired the acquisition price of the displacement dwelling used for the purpose of computing the price differential amount of the replacement housing payment will include either the salvage value or trade-in value of the mobile home whichever is higher.

2. General Acquisition Policy for Mobile Homes

It is our general policy, whether a mobile home be considered real or personal property to relocate the mobile home in every case where it is legal and will not deprive the property owner of any benefits due him by law. Therefore, unless it is predetermined that the mobile home is permanently affixed to the land, the mobile home will not be acquired. If the mobile home is appraised and acquired as real property, it will be considered a

conventional dwelling for purposes of the relocation program, and all benefits and claims will be handled accordingly.

D. Replacement Housing Payments to 90 Day Mobile Home Tenant Occupants

To be eligible for a Replacement Housing Payment as a 90 day occupant the following requirements must be met:

1. The person must have physically and lawfully occupied the mobile home on the displacement site for at least 90 days immediately prior to the initiation of negotiations.
2. The mobile home must either be acquired as real property or, if not acquired, the person must be displaced from the mobile home for one of the reasons described in Section C-1-b above except that a tenant occupant will be considered to be a displaced person in all cases.

E. Additional Rules Governing Relocation Payments to Mobile Home Occupants

1. Persons with Both an Ownership and Tenant Interest

   A displaced mobile home occupant may have owned the mobile home and rented the site or have rented the mobile home and owned the site. Also a person may elect to purchase a replacement mobile home and rent a replacement site or rent a replacement mobile home and purchase a site. In such cases, the total replacement housing payment shall consist of a payment for dwelling and a payment for site, each computed under the applicable item of Section III, Replacement Housing Payments in this sub-part. However, the total replacement housing payment to a person cannot exceed the maximum payment either $ 31,000 or $7,200) permitted under the item that governs the computation for the dwelling. In other words, the occupancy and tenancy status as pertains to the mobile home, not the site, sets the payment limits.

2. Comparable Replacement Dwelling

   When computing the amount of a replacement housing payment for a person displaced from a mobile home, the cost of a replacement dwelling will be the reasonable cost of a comparable replacement mobile home. However, if a comparable mobile home or mobile home site is not available, the replacement housing, payment will be computed on the basis of the reasonable cost of a comparable conventional dwelling.

3. Initiation of Negotiations

   If the mobile home is not actually acquired, but the occupant is considered displaced under these procedures the Initiation of Negotiations will be the date of Initiation of Negotiations to acquire the land.

4. Person Moves Mobile Home

   If the owner is reimbursed for the cost of moving the mobile home under these procedures, he is not eligible to receive a replacement housing

payment to assist in purchasing or renting a mobile home. The person may, however, be eligible for assistance in purchasing or renting a replacement site.

5. Partial Acquisition of Mobile Home Park

   The acquisition of a portion of a mobile home park may leave a remaining part of the property that is not adequate to continue the operation of the park. Under these circumstances, after such a determination is made, any occupants of the remainder portion of the park will be considered displaced persons and entitled to relocation assistance and applicable relocation payments.

V. LAST RESORT HOUSING

A. Basic Determination to Provide Last Resort Housing

Whenever it is determined that there is a reasonable likelihood that a project will not be able to proceed to completion in a timely manner because no comparable replacement dwelling will be available on a timely basis to a displaced person, the provisions of this section are to be implemented to provide replacement housing. The obligation to provide comparable replacement housing will be met when either a dwelling or the assistance necessary to provide a dwelling is offered under the provisions of this section.

B. Basic Rights of the Person to be displaced

The provisions of this section do not deprive any displaced person of any rights the person may have under the Uniform Act or the implementation of procedures described in this Chapter. The Department will not require any displaced person, without that person's written consent to accept a dwelling under the procedures of this section in lieu of any acquisition or relocation payment for which the person may otherwise be eligible. A 90 day owner occupant who is eligible for a replacement housing payment under the provisions of this chapter is entitled to a reasonable opportunity to purchase a comparable replacement dwelling.

C. Methods of Providing Last Resort Housing

There is a wide latitude under which last resort housing may be implemented, but implementation must be on a reasonable cost basis. The methods of providing last resort housing include, but are not limited to:

1. Rehabilitation of and/or Addition to an Existing Replacement Dwelling

   If an existing available dwelling can be purchased and made comparable to the displacement dwelling at a reasonable cost such housing can be used. For example, if an existing dwelling had an enclosed porch that could be converted to a bedroom and this conversion would make the house comparable the dwelling could be used as a replacement.

   All costs should be obtained by itemized bid from a licensed contractor.

   If the displacee were to elect to use the property as his replacement any additional costs to purchase the replacement over the acquisition price should be paid directly to the displacee. The rehabilitation work should be paid directly to contractor.

2. The Construction of New Replacement Housing

   New housing can be constructed on a suitable site and used as a replacement. Bids on construction cost new should be obtained in accordance with the procedures of Part Three, Section III-D-3. This should set the upper limit on cost, and no alternative which would exceed this cost should be considered.

   If the displacee elects to use such a property as his replacement, the relocation section should make all payments in excess of the acquisition price directly to the contractor.

3. A Replacement Housing Payment in Excess of the Limits Established in Section III

   If there is available housing that meets the comparability criteria but exceeds the payment limits, such housing may be offered to the displacee if the cost is reasonable.

   If the displacee elects to use the property as his replacement, a direct payment may be made to the displacee. In the case of a tenant occupant the rental subsidy shall be paid in installments unless otherwise approved by the Central Office Transportation Manager 2 or a designee. At the discretion of the TDOT ROW Agent Senior, the rental payment may be paid directly to the landlord via written agreement and lease signed by the appropriate parties.

   A tenant occupant may also choose a down payment assistance payment. This payment will be the actual down payment and necessary incidental expenses, not to exceed the calculated rental subsidy.

   In certain cases, housing may be available to the owner occupant within the $31,000 limit, but increased interest and/or incidental expense payments will cause the total payment to exceed $31,000. In such instances before any part of the payment can be made a Last Resort Housing Plan must be approved. The plan itself can be a simple statement of the facts of the case.

Again, once the plan is approved all payments may be made directly to the displacee.

4. The Relocation of and, if Necessary, Rehabilitation of a Replacement Dwelling

   This should be handled as described in “1.” above. The use of other dwellings acquired for the project should be considered as potential replacement properties.

5. The Removal of Barriers to the Handicapped

   This, too, should be handled as discussed in “1.” above.

D. Special Circumstances

Under special circumstances, consistent with the definition of a comparable replacement housing, modified methods of providing replacement housing of last resort permit consideration of replacement housing based on space and physical characteristics different from those in the displacement dwelling including upgraded, but smaller replacement housing that is decent, safe and sanitary and adequate to accommodate individuals or families displaced from marginal or substandard housing with probable functional obsolescence. In no event, however, shall a displaced person be required to move into a dwelling that is not functionally equivalent in accordance with the meaning of functionally equivalent outlined in the definition of "comparable replacement dwelling".

This section, while permitting variations from the usual methods of obtaining comparability, should not result in a lowering of housing standards nor should it result in a lower quality of life style. The physical characteristics of the replacement dwelling may be dissimilar to those of the displacement dwelling but they may never be interior.

One example of the use of this method might be the use of a new mobile home to replace a substandard conventional dwelling in an area where comparable conventional dwellings are not available.

Another example could be the use of a superior, but smaller decent, safe and sanitary dwelling to replace a large old substandard dwelling, only a portion of which is being used as living quarters by the occupants and no other large comparable dwellings are available in the area.

It should be remembered that this method of housing is specific and can only be used with the expressed consent of the displacee. The relocation plan should reflect this concept.

E. Procedures

If it is determined that comparable housing will not be available in a timely manner for a displaced person, the following steps will be taken:

1. The regional project team, in consultation with the central office TDOT Right of Way Agent Senior, will analyze the problem and develop possible reasonable cost solutions to the problem.

2. The displacee will be contacted, at which time the possible housing solutions will be discussed. An attempt will be made to reach an agreement with the displacee as to a solution which will satisfy both the displacee and the Department. This may take several meetings with the displacee.

3. A plan will then be prepared which will:

   a. Outline the problem.

   b. Discuss the alternate solutions proposed, including their relative estimated costs.

   c. Discuss the contacts with the displacee, indicating whether agreement was reached.

   d. Outline the proposed solution to the problem

4. The plan will be signed by the TDOT ROW Agent Senior and forwarded, for concurrence to the Regional Transportation Manager 2. The Regional Transportation Manager 2 will then transmit the plan to the Central Office Transportation Manager 2 or a designee, for approval.

5. Once the plan is approved, the details of the solution along with the relocation offer will be presented to the displacee.

ATTACHMENT A: Residential Move Cost Schedule

A. UNFURNISHED UNITS

Number of rooms of furniture								
1	2	3	4	5	6	7	8	**Each add. Room**
$500.00	**$750.00**	**$1000.00**	**$1250.00**	**$1500.00**	**$1750.00**	**$2000.00**	**$2250.00**	**$250.00**

B. FURNISHED UNITS

First room	Each add. Room
$400.00	**$100.00**

EXCEPTIONS

1) Person whose residential move is performed by others, $100.00.

2) Move of a mobile home from site, actual cost. A reasonable amount may be added for packing and securing personal property for the move at agency discretion.

3) Occupant of dormitory style room with minimal property will be limited to $100.00.

Chapter X
PROPERTY MANAGEMENT

Table Of Contents ..... Page

PART ONE: PROJECT RELATED ACTIVITIES 3

I. INTRODUCTION 3

II. PRE-ACQUISITION ACTIVITIES 3

A. General 3

B. Utility Adjustment 3

C. Salvage Value Estimates 5

III. POST ACQUISITION ACTIVITIES 7

A. Notice of Possession 7

B. Inventory and Initiation of Property Record 7

C. Protection of Acquired Improvements 7

D. Maintenance and Protection of the Acquired Right-of-Way 8

E. Rental of Acquired Properties 9

F. Owner Retention of Improvements 12

IV. CLEARANCE OF RIGHT-OF-WAY 12

A. Removal of Improvements by Public Sale 12

B. Forfeiture of Bid Deposit or Performance Deposit 16

C. Clearance of Right-of-Way by Highway Contractor 16

V. ADVANCE ACQUISITION PROJECTS 17

A. General 17

B. Maintenance and Protection of the Acquired Right-of-Way 17

C. Disposal of Acquired Improvements 18

VI. THE PROPERTY RECORD 18

A. General 18

B. Format 18

C. Report on Disposal of Improvements (ROW Form-22) 19

PART TWO: POST PROJECT ACTIVITIES.....20
I. GENERAL.....20
II. DISPOSAL OF EXCESS RIGHT-OF-WAY.....20
A. General.....20
B. Standards For Declaring Right-of-Way As Excess.....20
C. Approval Authority.....21
D. Obtaining Appraisals.....21
E. The Sale Process.....23
F. Fiscal Procedures.....23
G. Restrictions on Future Use of the Property.....24
H. Operating Procedures.....25
I. Report Format.....26
J. Plan Revisions.....26
III. UNECONOMIC REMNANTS.....27
A. General.....27
B. Inventory.....27
C. Operating Procedures.....27
IV. EXCESS LANDS.....27
V. USE OF AIRSPACE FOR NON HIGHWAY PURPOSES.....28
A. General.....28
B. Application to the Department For Airspace Use.....28
C. Airspace Agreement.....29
D. Airspace Controls and Safety Provisions.....30
E. Records.....31
F. Operating Procedures.....31
ATTACHMENT “A”: Airspace Controls For Structures.....33

PROPERTY MANAGEMENT

PART ONE: PROJECT RELATED ACTIVITIES

I INTRODUCTION

Property management, as discussed in this Part, relates to the control and administration of lands and improvements acquired for right-of-way purposes from the time title vests in the State until the physical construction of the highway begins. This involves the maintenance and protection of the right-of-way acquired, including improvements; the responsibility for occupancy and rental of improved and unimproved lands; and the disposition of improvements by sale or demolition.

It is the intent of this Part to set out the fundamental conditions which must prevail for the Division of Right-Of-Way to maintain orderly, efficient and acceptable property management practices and to outline what is considered to constitute sound business like handling of this phase of the right-of-way operation.

II. PRE-ACQUISITION ACTIVITIES

A. General

The regional project team is responsible for two significant activities that must be accomplished before the acquisition of right-of-way on a project can begin. These activities, the utility adjustment and salvage value estimate, are discussed in detail in Items B and C following.

On the majority of projects, upon receipt of the acquisition stage relocation plan the TDOT ROW Agent Senior section will schedule and assign the utility adjustment and salvage value functions to a ROW Agent for completion.

B. Utility Adjustment

1. General

On all partial takings of properties where privately owned utilities are affected and the property owner will bear the cost of the adjustment, he will be offered a predetermined amount, to repair, adjust, or relocate the utility or utilities. This offer will be made in writing at the initiation of negotiations, based on the amount shown on ROW Form-2, "Review Appraiser's Review Report." The amount included in the Form-2 will be based on an estimate obtained by the property management section. The estimate must be provided to the review appraiser prior to the time appraisals are submitted for review approval.

2. The Estimate

The estimate of utility adjustment costs may be prepared either by a qualified staff employee or by a qualified independent contractor under an agreement with the Department.

The estimate itself, whether performed by staff or fee personnel, must contain as a minimum the following:

a. Description of the work to be performed, accompanied by a sketch or plan where appropriate, as determined by the property management TDOT Right of Way Agent Senior.

b. An itemization of the costs involved (i.e. cost per linear foot installed).

c. The total estimated cost.

ROW Form-14, "Utility Service Connections" has been designed for use in completing the estimates; however other appropriate formats may be used as long as all required information is included.

3. Contracting for Utility Adjustment Estimates

All contracts for utility adjustment estimates must be made in accordance with the procedures outlined in Chapter III of the Manual.

Under most circumstances, these contracts will be awarded through the use of competitive negotiations (see Chapter III paragraph IV-B-2). A contractor will be selected from the approved list and an attempt will be made to negotiate a contract for either a single tract or a group of tracts as appropriate. At the conclusion of negotiations, a contract will be prepared and transmitted to the contractor for his signature. The contractor will then submit the signed contract for approval by the Regional Transportation Manager 2 or a designee. After the contract is approved, the contractor will be so notified. It must be remembered when more than one tract is involved that the total contract amount will be negotiated but the contract must contain a breakdown on a per tract basis to facilitate the payment process. Also, to keep costs at a minimum, it is advisable to incorporate as many tracts as is feasible in the contract. While it is not always practical, the ideal situation would be to incorporate all tracts on the project for which a utility adjustment will be required.

4. Procedures

Upon receipt of the assignment, the ROW Agent will review the right-of-way plan to determine if a private utility installation will be affected by the acquisition. The right-of-way plan should show all private utility installations affected by the acquisition, however, they often do not, so the agent must investigate all partial acquisitions of improved properties. If the right-of-way plan does not locate private utilities on improved tracts where the improvement is not acquired, an interview must be conducted with the property owner to ascertain if any utilities will be affected.

After completing his evaluation of the project, the agent will prepare a list of all tracts on the project on which a utility adjustment is required, along with an itemization of the type and extent of work required. The agent will also complete ROW Form-14 for all tracts on the project for which no utility adjustment will be required. The entire package will then be submitted to the property management TDOT Right of Way Agent Senior. The TDOT Right of Way Agent Senior will immediately forward the negative utility adjustment form to the review appraiser, and at this time determine whether the estimates should be made in house or by fee contract.

If it is determined that the estimates are to be made in house, the TDOT Right of Way Agent Senior will normally assign them to project team for completion. In some instances, it may be determined that the expertise of another Office in the Department should be utilized. In such a case, the TDOT Right of Way Agent Senior will forward a request to the TDOT ROW Supervisor for further action in obtaining the necessary expertise. If it is determined that a fee contractor will be used, the agent will be instructed to begin contract negotiations. Once negotiations are concluded, the agent will prepare a contract in quadruplicate and transmit the proposed contract to the contractor. The contractor will sign and re-submit all four copies for signature by the TDOT Right of Way Agent Senior. Once approved, a copy will be returned to the contractor along with a letter authorizing him to begin work on the estimates. The remaining copies of the contract will be distributed as follows:

a. One copy to Transportation Accounts.
b. Original to project files.

Upon receipt of the completed estimates in the field office, they will be reviewed by the ROW Agent and submitted to the TDOT Right of Way Agent Senior for approval. Once approved, the estimate will be distributed as follows:

a. One copy to project files.
b. One copy to the review appraiser.

If the estimate was prepared by a fee contractor, a payment package will be prepared and transmitted in accordance with the procedures outlined in Chapter II. A copy of the contractor's invoice must be attached to the payment package.

C. Salvage Value Estimates

1. General

Except in very unusual circumstances, all property owners will be afforded the option of retaining all salvageable improvements at a predetermined retention value. However, this option is valid only if a tract is acquired by deed. The amount of the retention value will be based on the salvage value of the improvement as determined by the property management section. Judgment based on past experience is the best criteria for determining the amount of retention value.

2. Salvage Value Appraisal

ROW Form-50, "Salvage Appraisal" will be used in preparing the salvage appraisal. A description of the improvements being acquired must be provided. In the description, emphasis is to be placed on the major or significant improvement(s). For example:

> "A 10 year old one story brick residence, containing approximately 2000 sq. ft. in good condition. Structure is built over a crawl space on foundation. Also included are a small frame storage shed and a 1 car frame garage".

A photograph of all improvements must be provided. Several improvements can be shown in one photo for convenience. The salvage value can be based on a comparison with improvements sold at public sale in the area of the project. If no sales have been held, the agent should base the amount on bids received on other projects and the probability that vacant land is available in the case where moveable residences are involved.

The agent must also provide an amount as a performance bond. This amount should be based on the reasonable cost to remove the improvements should the owner fail to do so. Both the estimate of salvage value and the performance bond should be based on all of the improvements. The amount of performance bond could be offset by improvements that are desirable and for which a substantial salvage value has been determined. A higher performance bond should be considered when improvements have little or no salvage value as when many improvements are being acquired from a farm operation.

3. Procedures

Upon receipt of the assignment, the agent will determine which tracts will have improvements to be acquired. The agent will then inspect and photograph all major improvements being acquired and prepare salvage appraisals for all applicable tracts. The completed Form-50 will be sent to the TDOT Right of Way Agent Senior for review. After recommending the appraisals they will be forwarded to the TDOT ROW Supervisor for approval. The approved salvage appraisals will then be sent to the project files for later use by the negotiator. The above procedure will be followed on most projects; however, there may be instances where there is little likelihood that the owner will elect to retain the improvements. In such cases the actual salvage appraisal may be delayed. The negotiator, at the Initiation of Negotiations, will advise the owner of the retention option.

If the owner expresses an interest in retaining, the project team will be so advised and at that time will complete the salvage appraisal in accordance with the standard procedures.

III. POST ACQUISITION ACTIVITIES

A. Notice of Possession

The TDOT ROW Supervisor must ensure that a procedure is established whereby the ROW Agent assigned to that tract is notified promptly of the date on which possession of each tract is obtained. The TDOT ROW Supervisor must also ensure that the ROW Agent assigned to that tract has established a procedure whereby that section will monitor the project and be aware of the date on which all occupied tracts are vacated.

Upon receipt of the notice of possession, the TDOT Right of Way Agent Senior will notify the project team. As the TDOT Right of Way Agent Senior becomes responsible for each tract the ROW Agent assigned to that tract will inspect the acquired property and ensure that each of the functions described in Items B through D following are accomplished.

B. Inventory and Initiation of Property Record

At the time of inspection, the ROW Agent will take an inventory of all improvements and trade fixtures acquired by the State. The inventory should list all significant improvements, equipment and trade fixtures and must note the condition of all acquired improvements. Any significant missing items should also be listed. For example, the inventory of a residential property might read as, follows:

1. One story brick veneer ranch 2000 sq. ft. good condition

2. 200' of 6' chain link fence good condition

3. Frame 2 car garage 200 sq. ft. good condition

4. The commodes and all kitchen cabinets have been removed from the premises

At the conclusion of this inspection and inventory, the property manager will initiate the Property Record. See Section VI for a detailed discussion of the Property Record.

C. Protection of Acquired Improvements

When acquired properties are vacated, the ROW Agent shall provide protection against vandalism and fire by:

1. Ensuring that all utilities are disconnected.

2. Cleaning out fire hazards.

3. Posting notice of State ownership.

4. Alerting local law enforcement agencies.

The property manager is expected to take additional measures as necessary to protect valuable, sellable improvements. For example, certain improvements should be boarded up to protect their contents.

D. Maintenance and Protection of the Acquired Right-of-Way

1. Correction of Health or Safety Hazards

The property manager shall make continuous inspections of the acquired right-of-way to protect against the intrusion of health and/or safety hazards. The ROW Agent shall report any hazards to the TDOT Right of Way Agent Senior who will take immediate steps to have such hazards removed or corrected. On all urban projects and on those rural projects containing garbage dumps, landfills or a substantial number of improvements, the agent should pay particular attention to intrusion of rats or other similar rodents.

Any intrusion by rodents, illegal dumping or disposal of rubble, debris and garbage must be corrected as soon as possible.

A report of all inspections, including a statement of negative or positive findings and actions taken to rectify positive findings will be incorporated in the project file.

2. Maintenance and Protection by Private Contractor

On certain projects where the right-of-way must be maintained for an extended period of time prior to construction, the services of private individuals or firm may be procured to maintain the acquired right-of-way.

Any such contract must be obtained in accordance with the provisions of Chapter III, and only with the prior approval of the Regional Transportation Manager 2.

The successful bidder shall be required to sign a suitable agreement to perform the service(s) required. The agreement, formulated in the Field Office, to accommodate requirements entailed, shall include, but not be limited to special clauses which:

1) Will save the State harmless against all claims which may be brought as a result of performance of the service.

2) Prohibit burning to the extent described in ROW Form-33, "Agreement For The Removal Of Buildings Or Other Improvements".

3) Give Civil Rights assurances.

Where only one payment is to be made, the voucher request shall be supported by a copy of the executed agreement and a copy of an invoice approved for payment by the Regional Transportation Manager 2 or a designee. Where multiple payments are to be made under the terms of the agreement, a copy of the executed agreement should be forwarded immediately to Transportation Accounts. Each voucher request would then require only the support of an invoice approved for payment.

E. Rental of Acquired Properties

1. General

In most cases, the Department's need for property is such that prompt vacation of improvements is highly desirable to permit disposal of the improvements as soon after acquisition as possible. Therefore, on projects where the acquisition of rights-of-way is not on an advance acquisition basis, property acquired as part of the right-of-way will not normally be rented to other than the person in occupancy at the time the property is acquired.

2. Rental of Properties to Existing Occupants

All displaced persons will be allowed 90 days free occupancy from the date the Department obtains legal possession of the tract; however, in no event shall the free occupancy expire less than 90 days after the "Notice to Vacate" is delivered to the displacee.

At the end of this time, the occupant will be required to pay rent for the period of time that the property is occupied. The amount of rent required shall not exceed the fair rental value of the property to a short-term occupant.

Also, for ease of record keeping, field offices may at their option, elect to establish the first and fifteenth days of the month as starting points. For example, suppose a field office elected to use the 1st and 15th as starting points for the free occupancy period, and obtained possession of a tract on January 4. The displaces would be allowed to remain in occupancy rent free until April 15, at which time the Department would begin collecting rent. The policy that is established must be applied uniformly while that policy is in effect.

Two different rental agreement forms are provided for use in renting as outlined above, and either may be used in accordance with the existing relocation assistance situation and/or the desires or stated intentions of the prospective renter. ROW Form-31, "Rental Agreement Definite Period" is designed for renting a property for a specific period, with the renter vacating the property without further notice at the end of the specified period. The form is designed to accommodate one written agreement for extending the original date of termination. After on such extension, a revised ROW Form-31 must be executed to cover a further agreement for a specified period. On a tight construction schedule, proper use of this form could save a delay of 30 days which is automatically necessary when a month to month agreement is used as described in the following paragraph:

ROW Form-31A, "Rental Agreement Month To Month" is a month to month rental agreement and is designed for use in a situation where it is desirable to rent a property for a length of time not foreseeable, as may be dictated by non-availability of replacement housing or other such factors, and where an additional 30 day period of occupancy after a notice to vacate can be tolerated in meeting the project construction schedule. It is pointed out that a tenant may give notice of termination of an executed ROW Form-31A at any time. However, written notice must be given by the Department to the tenant who will have one additional rent-paying month to vacate after the end of the rent-paying month in which the notice is given.

All rental rates will be established on monthly basis. However, rent may be prorated and collected for lesser periods of time at the expressed wishes of the tenant. If for example the tenant expects to vacate 15 days into the rental period the rent charge may be prorated over that time. Also a 7 day grace period is permitted, both at the end of the free occupancy period and while the rental agreement is in effect. For example the displacee may be in the process of moving at the end of the rental period and may need several days to complete the move and vacate the premises. At the option of the field office, the rental payment for partial period may be waived. Any such waiver shall be properly documented (RA Form-121 may be used). It is pointed out that this grace period is meant to accommodate persons in the process of vacating only. If the tenant will occupancy beyond the grace period, he is to be charged rent for the full period of his occupancy.

3. Establishing The Rental Rate

As provided above, because the Department will be renting these properties for only a short time or for a period subject to termination on short notice, the amount of rent required will not exceed the fair rental value of the property to a short term occupant. This rental rate will be lower than the market rent for a long-term occupant.

To maintain uniformity among the field offices, it is suggested that the short term monthly rental rate be established by use of the following formula:

1/12 X .075 X FAIR MARKET VALUE =FAIR RENTAL VALUE

Fair Market Value in the formula is the before value of the rented portion of the property from the approved appraisal.

As an alternate, the rental rate may be established based on economic rent in the project area. To support this determination of fair rental value, the agent must prepare a report on RA Form-121 listing at least 2 comparable rentals and their rental rates.

In the case of tenant occupants, the rent to be charged will be either the actual rent being charged prior to acquisition or the determined fair rental value whichever is lesser. However, if the tenant paid little or no rent prior to the acquisition, the fair rental value shall be charged, unless the tenant would suffer an economic hardship. It would not be considered an

economic hardship unless the fair rental rate exceeded 30% of the gross income of the tenants.

4. Fiscal Procedures

   The ROW Agent shall keep an inventory of property rented on each project and shall collect rents as they come due. Monies received from rental properties shall be forwarded immediately to Transportation Accounts showing a credit to the proper tract and project. When a rental payment is forwarded to Transportation Accounts, information showing the rental period covered by the payment must be included.

5. Procedures

   The Property Record provides a space for the expiration of the free rental period. The ROW Agent must monitor this date carefully and must contact all occupants no later than fifteen days prior to the expiration of the free occupancy period.

   Prior to making this contact, the ROW Agent must establish the rental rate to be charged. He will also determine, in consultation with the TDOT Right of Way Agent Senior, when the property must be vacated and on that basis will determine which lease agreement is appropriate.

   When contacting the occupant, the ROW Agent will inform the occupant of the date on which free occupancy expires, and will inform the individual(s) of the monthly rental payment. The ROW Agent will also notify the occupant(s) that a lease must be signed and the first month's rent paid if the premises are not vacated by the expiration of the free occupancy period.

   If the premises have not been vacated by the end of the period noted above, the ROW Agent will contact the occupant to have the lease agreement signed and to collect the first rental payment. A copy of the lease will be forwarded to Transportation Accounts. In all subsequent months, if the premises are not vacant then the ROW Agent will ensure that a rental payment is received if necessary by contacting the occupant and obtaining the monthly rental payment.

   In any instance where ROW Form-31A is used, the ROW Agent must take steps to ensure that a vacate notice is given prior to the starting date of the final month of the lease. This vacate notice is not to be confused with RA Form-120, "Notice to Vacate Acquired Property". However, RA Form-120 must be given to all displacees before vacation can be required. It is important that the ROW Agent ensure that RA Form-120 has been given before giving this particular vacate notice. In some instances, it may be necessary to give both notices at the same time.

F. Owner Retention of Improvements

The agreement and the performance deposit will be forwarded to the project team if an owner elects to retain improvements. All pertinent information will be logged on the Property Record. The ROW Agent will handle the removal in accordance with the executed ROW Form-32A, "Owner Retention of Improvements" and applicable instructions related to clearance of right-of-way. See Item IV-B)

As an alternate, the fee closing agent may hold the performance deposit pending notification from the field office. The closing agent will be notified by the project team whether to release the deposit or turn it in to the field office.

IV. CLEARANCE OF RIGHT-OF-WAY

A. Removal of Improvements by Public Sale

1. General

The project team shall utilize this method of right-of-way clearance to the greatest extent possible and practical. Except in unusual circumstances, all sales will be public sales either by sealed bid or by public auction. In unusual situations (i.e. the improvement is an immediate and significant health or safety hazard), the project team may negotiate for the removal of an improvement.

2. Pre-Sale Arrangements

A public sale should include a sufficient number of structures to attract buyer interest, but not so many as to glut the market. As soon as a sufficient number of buildings are vacated on a project, the TDOT Right of Way Agent Senior, or a designee, will advertise and conduct public sales as appropriate to existing conditions. Adequate advertising, including conditions of sale, shall precede each sale.

Experience has shown that it is desirable to have all improvements on a single tract removed by the same contractor. However, there may be instances where departure from this may be desirable. In some cases, it may be more practical to group improvements on two or more tracts as one bidding unit; conversely, it may be more practical to request separate bids on individual buildings on the same tract. The TDOT Right of Way Agent Senior will determine the "bidding unit".

After this determination has been made, a bidding unit will be treated in the same manner whether it consists of only one improvement or more than one improvement. Each bidding unit will require a single bid deposit or bond and a single performance deposit or bond. A contractor who is the successful bidder on several bidding units must accept the contract on each unit or forfeit the bid bond on each unit that is not accepted, unless a letter was submitted with the bids stating that only a certain number of units will be accepted in the contract. If such a letter, as stated above, is submitted

with the bid and the bidder is successful on more units than indicated in the letter, the TDOT Right of Way Agent Senior shall select the units to be awarded to the next best bidder on each unit.

Care shall be taken when advertising the sale to ensure that bidders are fully informed as to all terms and conditions of the sale. If conditions to be met are not included in the advertisement, the advertisement must inform the reader as to where and from whom detailed information may be obtained. A record showing the advertising done will be maintained in the field office project file. State employees are not permitted to bid on the sale of improvements that are sold from either a sealed bid or negotiation and all advertising must so state. State Employees involved with the project or that may become involved with the project are not permitted to bid on the project when sold at a public auction and all advertising must so state.

3. Sale by Sealed Bid

a. Bid Procedures

Bids may be either plus or minus. Sealed bids must be accompanied by a certified or cashier's check in a minimum amount of $250.00 in lieu of a bidder's bond unless the bidder already has on deposit with the field office a general bidder's deposit of sufficient amount to protect the Department's interest. Bidding deposits tendered by all unsuccessful bidders may be returned immediately after opening of bids and award of contract to the successful bidder. Deposits will be returned to unsuccessful bidders not present at the opening of bids by certified mail. Written acknowledgment of return of deposit will be obtained from those present on return of the deposit.

At the discretion of the TDOT Right of Way Agent Senior, the requirement for a bid bond may be waived.

All bids must be in writing and shall be signed and dated. They may be made in letter form or on an appropriate form provided by the field office. All bids received shall be tabulated and retained in the field office project file. After successful bids have been determined on each unit for which bids were requested, they will not be offered again for bid as a group, unless all bids are rejected for just cause.

Should a bidder refuse to accept an award of sale and refuse to sign an agreement to remove the improvements and clear the right-of-way, the TDOT ROW Supervisor will declare his bid deposit forfeited. See Item C following for instructions on this matter. The sale will then be awarded to the contractor submitting the next best bid.

b. Procedures in Award of Sale

1) Agreement to Perform

The successful bidder will be required to execute ROW Form-33, "Agreement for the Removal of improvements". This form is a contract setting out the conditions to be met in removing

the bidding unit from the right-of-way. Each bid unit will be awarded by separate contract. Where payment for the improvement is due the Department, the purchaser shall make payment as soon as possible following the close of sale and on execution of ROW Form-33. In addition to payment of the amount bid, the purchaser must make a performance deposit in sufficient amount, or furnish an adequate bond, to ensure satisfactory performance in removal. The amount of the performance deposit or bond will be established by the TDOT Right of Way Agent Senior and must be stated in the advertisement or otherwise distributed to the bidders in writing before the sale. All payments for the sale of improvements and all performance deposits must be by cashiers or certified check. The performance deposit will be transmitted to Transportation Accounts. In those cases where a payment is received, said payment along with ROW Form-33 will be forwarded to Accounts.

In instances where the Department must pay for removal of improvements, no payment will be made until the removal is completed in accordance with the terms of the executed agreement. A performance deposit will be collected at the discretion of the Regional Transportation Manager 2 or designee. The need for a performance deposit should be evaluated on each bidding unit. Large or complicated improvements may merit the collection of a performance deposit. The performance deposit will be collected at the time ROW Form-33 is executed. The performance deposit will be handled as outlined above. The original of the executed ROW Form-33 will be retained in the field office project file and a copy forwarded to the successful bidder.

2) Surveillance Removal and Payment

The TDOT ROW Agent assigned to a project must maintain surveillance to insure satisfactory removal of improvements in accordance with the terms of the contract. Unsatisfactory or past due performance will be reported to the TDOT Right of Way Agent Senior who will take the necessary action to enforce satisfactory performance.

After a successful bidder has completed the removal in accordance with the terms of the contract, the bidder must complete and submit Row Form-36, "Statement of Completion of Removal of Improvements and Request For Return of Deposit and For Any Payment Due For Removal" to recover his performance deposit, and in the case of a minus bid to receive payment from the Department for the removal. Upon receipt of Form-36, the ROW Agent will inspect the property to ensure that the improvements were properly removed. If the claim is found to be acceptable, it will be approved by the TDOT Right of Way Agent Senior. A copy of the approved Form-36 will be used to return the performance deposit and, where applicable, the voucher request to pay for removal of

the improvement. The original of ROW Form-36 will be retained in the field office project file and a copy will be returned to the bidder.

3) Completing ROW Form-33

As previously stated, a separate Form-33 will be completed for each bid unit. The successful remover's name or names will be inserted in the opening paragraph. The remainder of the contract will be completed as described in the following:

a) Paragraph 1--The amount of the performance deposit will be inserted. This amount will normally agree with amounts shown on ROW Form-50. The type of deposit must also be inserted (i.e. surety bond, cashier's check).

b) Paragraph 2--This paragraph is to be completed based on the type of bid. If the State is to pay, the first item will be checked and the amount of the payment due the remover will be inserted. If the remover is to pay, the second item will be checked and the amount be inserted.

c) Paragraph 3--All improvements included in the bid unit are to be listed. This listing must include the tract number or numbers, the address of each tract and a description of all improvements included in the bid unit on a tract by tract basis. The description need only be sufficient to identify the improvements (i.e. house, barn, garage shed etc.).

d) Paragraph 4--The completion date must be inserted here.

All other portions of the agreement are self-explanatory.

4. Sale by Public Auction

The policy and procedures outlined under Paragraph 3 for sale by sealed bid will be followed for sale by public auction with the following exceptions. Since bids are verbal and known by all in attendance, a tabulation of bids is not required. The project team may tabulate the bids for their own purposes if they so desire. A bid deposit will not be required if the successful bidder provides a performance deposit at the time of sale and executes ROW Form-33.

However, if the bidder cannot satisfy fiscal requirements and fails to execute an agreement at the time of sale, the bidder will be required to post a bid deposit as outlined above for a sealed bid sale.

B. Forfeiture of Bid Deposit or Performance Deposit

If a successful bidder refuses to accept a contract for removal, except under the conditions outlined in Paragraph A-2 above, he will officially forfeit his bid deposit. If a successful bidder fails to complete the removal of improvements in compliance with the terms of the contract, the Regional Transportation Manager 2 or a designee must make a decision as to whether the performance bond should be forfeited. Except under very unusual circumstances, the term and conditions of the contract should be strictly enforced. However, unusual and extenuating circumstances may be considered before declaring a performance deposit forfeited. In such cases, justification must be placed in the project file.

Where a performance deposit or bond is forfeited, the depositor will be informed by certified mail. This will normally be accomplished by return of ROW Form-36. The TDOT ROW Supervisor or a designee will advise Transportation Accounts, by letter, to credit the amount of the deposit to the appropriate project and tract. Where a bond has been held in the field office, the property management section will take action to collect the money from the bonding company. The money will be forwarded to Transportation Accounts with an explanatory letter to credit the project and tract. After a depositor has been notified as above, the Department will not return the amount forfeited. The depositor's only recourse for return of a deposit would be through the courts.

C. Clearance of Right-of-Way By Highway Contractor

1. General

It is the responsibility of the TDOT ROW Supervisor to ensure that all improvements located within the right-of-way are cleared from the right-of-way by the time of receipt of construction bids, except for those improvements which are to be included in the construction contract for removal by the contractor. Only when other methods of disposal fail or are not feasible, should demolition of improvements be included as a part of the highway construction contract.

2. Procedures in Removal by Construction Contract

For improvements to be included in the construction contract for removal by the contractor, the TDOT ROW Supervisor or a designee must prepare a listing of all improvements to be removed along with the following information:

a. Tract Number.

b. Description of improvements.

c. Estimated salvage value.

d. Estimated cost to remove.

The list must be submitted at least two weeks prior to the date certification for advertising is required. The letter must also identify any improvement located only partially within the right-of-way, in order that provisions can be placed in the contract requiring removal within 90 days after a work order is issued to the contractor. The letter should request that this special provision be included in the plans and proposal.

After the list has been submitted and prior to advertisement for the construction contract, improvements may be withdrawn from the list by letter. Before submitting the letter of withdrawal, the project team should ensure that the request can be accommodated. If it cannot, the withdrawal should be made after the contract is awarded as outlined below.

Under the terms of the standard specifications, after a project is let to construction the Department reserves the right to dispose of any improvement provided no work or alteration has been performed by the contractor on the improvement. Where it is in the public interest to do so, the TDOT ROW Supervisor is permitted to sell an improvement or allow owner retention of an improvement, provided he makes suitable arrangements with the Regional Director in order that the contractor can be properly notified that the improvement is being withdrawn from the contract.

V. ADVANCE ACQUISITION PROJECTS

A. General

The term advance acquisition, for purposes of this discussion, means any right-of-way project that is acquired an appreciable length of time before it is needed for construction (i.e. the right-of-way phase is scheduled for completion at least 6 months in advance of the construction letting). This also includes individual parcels acquired under hardship or protective purchase procedures in advance of normal project acquisition. In these cases, the project team, in consultation with the Regional Transportation Manager 2, must make certain decisions concerning the acquired right-of-way. They must determine how to ensure that the acquired properties will be maintained and they must determine what action to take concerning acquired improvements. The particulars of each are discussed below.

B. Maintenance and Protection of the Acquired Right-of-Way

As discussed in Item III-D, the project team is responsible for the maintenance and protection of the acquired right-of-way. On the typical project, this presents no problem. However, on advance acquisition projects certain routine maintenance items must be accomplished on a regular basis. A decision must therefore be made as to whether to accomplish these activities in house or to contract for these services.

C. Disposal of Acquired Improvements

On the typical project where lead time is short, immediate disposal of acquired improvements is the only feasible solution. However, on advance acquisition projects, this is not the case. It may be practical in certain instances to rent some or all of the acquired improvements on a long term basis.

It is Department policy to promote the timely relocation of displaced persons in an orderly fashion regardless of the immediacy of construction and, with the possible exception of certain business displacements, long term rentals to displacees is discouraged. The decision to be made, is not whether to rent to the occupant at the time of acquisition but whether to attempt to rent to a third party or to dispose of the improvement immediately. All non-decent, safe and sanitary properties should be disposed of immediately, but certain improvements may be capable of generating a significant income stream. In such cases before disposing of the improvements, attempts should be made to rent the properties under a long term lease agreement at a fair market rent.

VI. THE PROPERTY RECORD

A. General

As previously discussed, an inventory and Property Record must be maintained for all improvements acquired as part of the right-of-way. It is also necessary to maintain records showing the disposal of such improvements and of rental income and income from the sale of improvements.

B. Format

Records of inventory and disposal must show each salvageable item acquired as part of the right-of-way on which a value has been placed in the appraisal and/or for which a value was included in the amount approved by the review appraiser for purchase of real property, excluding those items which were included in the value of the land. In a case where a salvageable item has been included in the land value and its value warrants salvaging, it shall also be included in the inventory. A costly chain link fence could be an example, whereas a farm fence, or fence of little value, could be ignored and not recorded if it were included in land value. Latitude is allowed the property manager in recording the disposal of minor items for which salvage value will not warrant the administrative costs involved in disposing of same by sale. Disposal of such should be noted by wording such as "No Salvage Value -left to construction as clearing and grubbing," or similar appropriate notation. The writing off of such items must be plausible and credible. Borderline cases should be brought to the attention of the TDOT Right of Way Agent Senior for a decision.

In making the inspection and inventory of improvements, appurtenances, or fixtures to be accounted for as shown by the appraisal records and his own inspection, special attention must also be given to the term of the acquisition. Where improvements are to be retained by the owner, such notation should show the final disposition. Special care must be exercised where the review appraiser has issued an alternate ROW Form 2 setting out uneconomic remnants which may be purchased. Improvements located on such uneconomic remnants approved for purchase and acquired by the Department will not be shown as "improvements taken" in the State's appraisals but will show as being part of the reminder. The alternate Review Report (ROW Form-2) issued by the Review Appraiser covers improvements located on one or more uneconomic remnants. Where uneconomic remnants are acquired, improvements on same will usually be cleared in the normal manner, but in very exceptional cases may be disposed of together with the land, if such treatment would be of more probable benefit to the State. The Regional Transportation Manager 2 should bring such cases to the attention of the Right–of-Way Division Director for a final decision.

C. Report on Disposal of Improvements

For each tract upon which salvageable improvements are located, a report shall be made to the Regional Transportation Manager 2 after final disposal has been made of the improvements. All improvements and their disposal as outlined and required by Item B, above, shall be included. This includes improvements written off as having no salvage value and those retained by the owner. Those improvements included as a construction item to be removed by the contractor as discussed in Section IV of this Chapter shall also be included on the report. In this case, the report will not be made until it is definitely established that the improvement is to be removed by the contractor.

PART TWO: POST PROJECT ACTIVITIES

I. GENERAL

For the most part, once a highway construction project is completed, the Right-of-Way Division has no further responsibility for the rights-of-way acquired. The Division is, however, responsible for the administration and disposal of right-of-way for non-highway purposes. These responsibilities are described in the remaining sections of this part.

The central office is responsible for administering these post project activities, and as such, an EXCESS LANDS Transportation Manager 1 has been assigned to coordinate and administer these property management functions.

II. DISPOSAL OF EXCESS RIGHT-OF-WAY

A. General

The provisions of this section will be followed when disposing of any excess right-of-way, subsequent to its acquisition.

On Federal-aid projects there is no need to obtain approval for the disposal of lands prior to the Federal Highway Administration's Final Construction Inspection Report on the project. Any changes or modifications to the right-of-way prior to this date will be handled by the FHWA in accordance with normal project procedures. It is the Department's responsibility to control the use of real property required for a project in which Federal funds participated in any phase of the project. Prior to allowing any changes in access control or other use or occupancy of acquired property along the Interstate, the Department shall secure an approval from the FHWA for such change or use. When determining when a real property interest is no longer needed, the Department will coordinate among relevant organizational units that may be interested in the proposed use or disposal of the real property.

FHWA approval is not required for disposals of federally funded surplus right-of-way at fair market value, including access control, unless the area of request lies within the right-of-way of an Interstate.

All disposals of federally funded surplus right-of-way, including access control, at less than fair market value require FHWA approval regardless of the location.

The following criteria will be used as guidelines for evaluating disposals at less than fair market value:

- Revenue shall not be generated on the property
- Property shall be free and open to the public

- Request shall be from a legal governing body

Any departure from these guidelines will be fully vetted by both the Excess Land Committee and FHWA.

A reversionary clause will be added to all conveyances at less than fair market value to ensure the public will receive the benefit from the less than fair market value disposal.

B. Standards For Declaring Right-of-Way as Excess

The following standards have been established to determine whether lands proposed for disposal are excess to the needs of the Department:

1. The land will not be needed for highway purposes in the foreseeable future.

2. The right-of-way being retained is adequate for the present day standards of the facility involved.

3. The release of the lands will not adversely affect the highway facility or the traffic thereon.

4. The lands to be disposed of are not suitable for retention in order to restore, preserve or improve the scenic beauty and/or environmental quality adjacent to the facility.

5. There are either no indications that the area should be considered as having potential use for parks, conservation, recreation, or related purposes; or if the potential exists, that the property was made available to appropriate agencies and no interest was generated. In instances where the Department of General Services has final approval authority, they will normally notify all State agencies of the availability of the land. When the Commissioner of Transportation has approval authority, he or his designee will make a determination as to whether the land has potential for park, conservation or recreation purposes. If so, the EXCESS LANDS Transportation Manager 1 will notify applicable agencies of the availability of the land.

C. Approval Authority

The Commissioner of Transportation is authorized to approve the disposal of excess lands by sale, lease, easements, licenses, or changes in access control under the following conditions:

1. The value of the land is $75,000 or less; and,

2. The land is to be sold to either the original landowner or any other adjoining property owner.

3. Negotiated sale or disposal to any legal governmental body for a public use purpose, subject to reversion to the Department of Transportation for failure to continue public ownership and use.

The Department of General Services has approval authority under all other conditions.

D. Obtaining Appraisals

All staff appraisals will be obtained by the Regional Appraisal Staff or the H.Q. Appraisal Staff, at the request of the EXCESS LANDS Transportation Manager 1. One appraisal is usually sufficient to determine the fair market value of the parcel to be sold. When the appraisal is being reviewed, if it is determined that a second appraisal is needed to substantiate the fair market value, a second appraisal is obtained. The EXCESS LANDS Transportation Manager 1 will coordinate all of the appraisal requests from the Central Right-of-Way Office.

1. The Department of Transportation shall make a preliminary planning estimate of the fair market value of the property in accordance with such procedures as the Department may establish;

2. If the Department of Transportation's preliminary planning estimate of the fair market value of the property is ten thousand dollars ($10,000) or less, the property shall be appraised by an appraiser on staff with the Department of Transportation at no cost to the prospective purchaser.

3. If the Department of Transportation's preliminary planning estimate or subsequent staff appraisal of the fair market value of the property is greater than ten thousand dollars ($10,000), the property shall be appraised by an independent appraiser whose services shall be procured by the Department of Transportation in accordance with state law. Such independent appraiser must be licensed and certified by the Tennessee Real Estate Appraiser Commission and shall be selected from a list of prequalified appraisers approved by the Department of Transportation. The excess lands Transportation Manager 1 will coordinate with the Appraisal Transportation Manager 1 to obtain a proposal fee. Once a proposal is received, the excess lands Transportation Manager 1 will request the Regional Coordinator to seek payment of the fee from the prospective purchaser. The prospective purchaser shall pay the Department of Transportation in advance for the cost of the independent appraisal and will be given a 30-day deadline from notification to submit fee payment; In addition, the requestor will be required to sign a Statement of Understanding acknowledging the fee payment is in addition to the fair market value

payment and the fee will not be returned if they fail to purchase the property.

4. The initial appraisal shall be subject to review and approval by the Department of Transportation in accordance with such procedures as the Department of Transportation may establish. The appraisal review shall be conducted, at the Department of Transportation's expense, by a review appraiser who is licensed and certified by the Tennessee Real Estate Appraiser Commission and who is either employed by or under contract with the Department of Transportation. The review appraiser shall either approve the initial appraisal or reject the initial appraisal and reappraise the property to determine the fair market value of the property, subject to the approval of the Right-of-Way Division Director of the Department of Transportation or the Right-of-Way Division Director's designee. Once the appraisal report has been reviewed and approved, the fair market value of the property will be presented to the prospective purchaser. If the prospective purchaser does not object to the appraised value, the reviewed appraisal will then be submitted to the Department of General Services for concurrence. If a prospective purchaser does not accept the appraised fair market value of the property as determined by the review appraiser, the prospective purchaser may request a final review and reconsideration by the Commissioner of Transportation or the Commissioner's designee. The Commissioner or the Commissioner's designee shall obtain a final review of the appraisal by a review appraiser who is licensed and certified by the Tennessee Real Estate Appraiser Commission and who is either employed by or under contract with the Department of Transportation; provided, however, that the final review appraiser shall not be the same person who previously reviewed the initial appraisal. The prospective purchaser shall be given the opportunity to present information concerning the value of the property for the consideration of the final review appraiser. The final review appraiser shall consider all relevant information, including any appraisal previously performed by or for the Department of Transportation, and shall have the authority to reappraise or make adjustments in the appraised fair market value, in accordance with generally accepted professional standards and guidelines. The final review appraiser's determination of the fair market value of the property shall be subject to the approval of the Commissioner or the Commissioner's designee; and

5. The Department's final determination of the fair market value of the property is subject to the concurrence of the Commissioner of General Services.

All appraisals will be reviewed and approved in accordance with the provisions of Chapter VII. Once the appraisal(s) is approved a copy will be forwarded to the EXCESS LANDS Transportation Manager 1.

E. The Sale Process

When the appraised value of the property is greater than $75,000, the Department of General Services will conduct the transaction under their operating procedures. If the sale is approved for negotiated sale to the party requesting the disposal, the property will be offered to the requesting party at the minimum acceptable price. If the value is $75,000 or less, the Department of Transportation will conduct the transaction and the minimum acceptable price is the approved fair market value of the property plus the incidental costs involved. After all approvals of the disposal are received, the Excess Lands Transportation Manager 1 will request the Regional Coordinator to seek fair market value payment from the requestor. The requestor will be given 60 days from notification to submit payment for the property. Upon receipt of payment in the form of a cashier's check, certified check or money order made payable to the State of Tennessee, the Regional Coordinator will request the Region Attorney to prepare the deed. The deed will then be sent to HQ for execution. The fair market value payment will be transmitted to the Finance Office and deposited in the appropriate Transportation Account. Once the deed is fully executed, the Excess Lands Transportation Manager 1 will submit the deed to the Regional Coordinator who will distribute it to the requestor. The requestor will be responsible for recording the deed and all transaction costs associated with the register of deeds, including taxes.

F. Fiscal Procedures

1. Deposit For Incidental Expenses

   All deposits must be made by certified check, cashier check or money order made payable to the State of Tennessee. After collection by the Region office, the deposit will be sent to the Finance Office for deposit in the appropriate Transportation Accounts. This deposit could be refunded if through no fault of the depositor the property is not sold to the depositor. It should be remembered that the deposit is only an estimate and the actual incidental costs will be determined immediately prior to the sale and reflected in the final payment and breakdown of funds.

2. Incidental Charges

   All incidental charges involved with the disposal, including time charges, appraisal fees and so forth will be charged to a 9800X-200X-0X project.

3. Purchase Credits

a. Open Projects.

If the right-of-way project has not been closed, all land credits will be made to the project.

b. Closed Projects

On all closed projects the land credit will be made to the appropriate 9800x-
200x-04 project.

c. Procedures

Upon receipt of payment from the Region office for the land purchase, the Region office will prepare a cover memo breaking down the funds between land and incidentals, if both are included in the payment. All incidentals will be credited to the 9800X-200X-04 project and the land payment credited as outlined above. The payment and cover memo will be transmitted to the Finance Office.

G. Restrictions on Future Use of the Property

No Junkyards as defined in Title 23, U.S. Code, Section 136 and State Law shall be established or maintained on land released as excess to highway needs; and no signs, billboards, outdoor advertising structures or advertisement of any kind shall be erected, displayed, placed or maintained on such lands, except that signs may be erected and maintained to advertise the sale or lease of the property or the principal activates conducted on the land upon which the signs are located. The instrument of conveyance shall contain such restrictions.

The instrument of conveyance for any land leased as excess to highway needs which is restricted under a permit (Aquatic Alteration Permit "ARAP" or a 401 Certification "§401"), shall contain a list of restrictive covenants that incorporate the restrictions and covenants set out in the permit. The following shall be incorporated in each document of conveyance:

A deed restriction shall be placed on … *description of area* … This area (wetlands, springs, etc.) and surrounding property will be restored, created, enhanced and preserved as described in the special conditions of ARAP/§401 Permit, NRS # _____, attached to this document. These restrictions are permanent and run with the land in order to protect the aesthetic, educational, or ecological values of certain real property. The covenants shall prohibit certain uses such as, but not limited to: removal, alteration, or destruction of any vegetation or natural habitat; any agricultural, commercial, or industrial activity; any filling, excavating, or dredging; any construction or placing of building or structures; any disruption of any free-flowing waters, or alteration of natural water courses, lakes, ponds, marshes, or wetlands. Any violation of

this permit and/or the restrictions contained within shall be subject to enforcement action as defined in T.C.A. §69-3-115."

H. Operating Procedures – see Excess Land Guidelines for detailed procedures.

All requests for disposal of surplus property will be forwarded to the Regional Excess Land Coordinator in the appropriate field office. The Coordinator will contact the requestor, provide them with a formal application, and clarify what information must be contained in the application. Upon receipt of a formal application, the Regional Excess Land Coordinator will contact the Regional Transportation Manager 2 and Regional Director to determine if there is any contemplated future use for the right-of-way in question and to determine if the property is excess to current needs. An onsite inspection will normally be conducted by appropriate personnel from right-of-way, field engineering and maintenance as necessary. The Regional Excess Land Coordinator will then forward to the Excess Land Transportation Manager 1 a report containing the field office recommendation along with all other pertinent information concerning the proposed disposal. The Excess Land Transportation Manager 1 will place all such requests on the agenda for the next meeting of the Department's excess land committee for consideration and recommendation.

Following the excess land committee meeting, the Excess Land Transportation Manager 1 will forward a report of the committee's recommendations to the Chief Engineer and the Commissioner of Transportation. On Federal aid projects, the Excess Land Transportation Manager 1 will request an environmental evaluation by the Environmental Division. The EXCESS LANDS Transportation Manager 1 will request a preliminary estimate of the value for the parcel. On those parcels requiring approval outside the Department (see Item II-C).

Upon receipt of the preliminary estimate, the EXCESS LANDS Transportation Manager 1 will coordinate the appraisal following the procedures established in Item II-D above. After the appraisal(s) has been reviewed, approved, and presented to the prospective purchaser, the appraisal(s) will be forwarded to the Department of General Services for their concurrence in the value determination. The Department of General Services must concur in the appraised value regardless of the amount. Therefore, even in those instances where the Commissioner of Transportation has approval authority, the appraisal must be forwarded for concurrence by General Services. If the property is approved for negotiated sale to the requester, the EXCESS LANDS Transportation Manager 1 will take the necessary steps to dispose of the property (see Item II-E).

After conclusion of the land sale, the payment will be transmitted to the Finance Office who will forward it to Transportation Accounts for appropriate disbursement (see Item II-F).

I. Report Format

The request report will include all of the pertinent documentation as noted in the Excess Land Guidelines.

J. Plan Revisions

After the sale is concluded, the field office will initiate a plan revision request. The plan revision process will be accomplished in accordance with the procedures outlined in Chapter VI, except on Federal aid projects no approval by the FHWA is necessary nor is it necessary to distribute the revision to their office.

III. UNECONOMIC REMNANTS

A. General

When disposing of an uneconomic remnant by sale or any conveyance of any interest or rights in said uneconomic remnant and the remnant is along the Interstate, the Department will obtain Federal concurrence. Federal concurrence is not required on uneconomic remnants purchased with State funds.

B. Inventory

The EXCESS LANDS Transportation Manager 1 will maintain an inventory of all uneconomic remnants/loss of access parcels and other identified excess lands. The inventory will contain as a minimum the following information:

1. County.
2. State Project
3. Federal Project Number, if applicable.
4. State Route Number.
5. Tract number.
6. Size of parcel.
7. Appraised value and valuation date.
8. Date parcel acquired or date parcel declared excess.
9. If applicable, notation that Federal funds participated in the acquisition of the property.
10. Deed recording information, if applicable.

C. Operating Procedures

The field office will maintain a record of all tracts on which uneconomic remnants/loss of access are acquired and on the first of each month will submit to the EXCESS LANDS Transportation Manager 1 a report of all remnants acquired during the preceding month. The report will contain all information needed to complete the inventory (see paragraph B above).

Upon receipt of the report the EXCESS LANDS Transportation Manager 1 will add all new tracts to the IRIS inventory making sure that all remnants acquired with Federal funds are appropriately noted.

IV. EXCESS LANDS

For the purpose of this Chapter, excess lands are defined as lands outside the right-of-way limits, other than uneconomic remnants/loss of access, that are acquired by the Department as part of the project acquisition process. These lands will be treated in the same manner as uneconomic remnants acquired without Federal participation.

V. ROW USE OF AGREEMENTS FOR NON HIGHWAY PURPOSES

A. General

It is Department policy to permit the use of ROW for non-highway purposes when such ROW is not required presently or in the foreseeable future for the safe and proper operation and maintenance of the highway facility. FHWA must approve of all use of ROW for non-highway purposes if the requested area lies within the right-of-way of an Interstate. All other requests for ROW use shall be approved by the Department.

The provisions of this Section will be followed whenever the Department acts on a request or permits the use of certain ROW for non-highway purposes, unless the use is incorporated in the development and design of the highway project.

B. Application to the Department for ROW Use

Any individual, company, organization or public agency desiring to use ROW for non-highway purposes must submit an application to the Regional Excess Land Coordinator. The following shall be included with the application:

1. An exact statement of the nature of the proposed use.

2. Plans showing the general design for the use of the space including the construction of facilities.

3. The vehicular access proposed (if applicable)

4. The nature of any material to be stored in the space (if applicable)

5. A three dimensional description of the ROW proposed to be used or a metes and bounds description of the surface area as applicable (see Paragraph C-4 following).

6. A parking layout if the area is to be used for parking.

C. ROW Use Agreement

All non-highway use of ROW shall be covered by a properly executed ROW use agreement and shall contain the following:

1. The party responsible for developing and operating the ROW use.

2. The term of the agreement.

3. A general statement of the proposed use.

4. The general design for the use of the space, including any facilities to be constructed and such maps, plans or sketches as are necessary to set out pertinent features in relation to the highway facility.

5. A detailed three dimensional description of the space to be used, except when the space is to be used for leisure activities, beautification, parking of motor vehicles, public mass transit facilities and other similar uses.

   In such cases, a metes and bounds description of the surface area, together with appropriate plans or cross sections, clearly defining the vertical use limits, may be furnished in lieu of a three-dimensional description.

6. Provision that any change in the authorized use of the airspace is subject to prior approval of the State.

7. Provision that any significant revision in the design or construction of the described facility must receive prior approval of the State.

8. Provision that such use shall not be transferred, assigned or conveyed to another party without prior approval of the State.

9. Provision that the agreement will be revocable in the event that the airspace facility ceases to be used or is abandoned.

10. Provision for the agreement to be revoked if the agreement is violated and such violation is not corrected within a reasonable length of time after written notice of noncompliance given. Further that in the event the agreement is revoked and the State deems it necessary to request the removal of the facility occupying the airspace, the removal shall be accomplished by the responsible party in a manner prescribed by the State at no cost to the State.

11. Provision for adequate insurance by the responsible party for the payment of any damages which may occur during or after construction of the airspace facility and which would hold the State harmless. Exception to this requirement may be made where the airspace is for use by a public or quasi-public agency when such agency is assigned responsibility for payment of any related damages occurring to the highway facility and to the public for personal injury, loss of life and property damage.

12. Provision for the State and, when applicable, authorized representatives of the Federal Highway Administration to enter the airspace facility for the purpose of inspection, maintenance or construction of the highway facility when necessary.

13. Provision that the facility to occupy the airspace will be maintained so as to ensure that the structures and the area within the highway right-of-way boundaries will be kept in good condition, both as to safety and appearance, and that such maintenance will be accomplished in a manner so as to cause no unreasonable interference with highway use. In the event that the responsible party fails in its maintenance obligations, there will be provision for the State to enter the premises to perform such work at no cost to the State.

14. Appropriate provisions of Appendix "C" of the State's Civil Rights Assurances with respect to Title VI of the Civil Rights Act of 1964 and Title 49 CFR 21.

15. Provision prohibiting the storage of flammable, explosive or hazardous material within the right-of-way boundary.

D. Airspace Controls and Safety provisions

The design of all non-highway use of ROW must be in accordance with the following provisions:

1. Use of ROW beneath the established grade line of the highway shall provide sufficient vertical and horizontal clearances for the construction operations, maintenance ventilation and safety of the highway facility.

2. The use of ROW shall not result in either highway or non-highway users being unduly exposed to hazardous conditions because of highway location, design, maintenance and operation.

3. The use of ROW must permit access to the highway facility for the purpose of inspection, maintenance and reconstruction when necessary.

4. The use of ROW must conform with the provisions of current Federal Aviation Administration regulations.

5. Use of ROW for the parking of motor vehicles must give proper consideration to the need of the following:

   a. Parking design or arrangement to insure orderly and functional parking.

   b. Plantings or other screening measures to improve the esthetics and appearance of the area.

c. Surfacing, lighting, fencing, striping, curbs, wheel stops, pier protection devices, etc.

d. Access for fire protection and firefighting equipment.

6. Any proposed structures must be designed and constructed in accordance with the criteria discussed in Attachment A of this chapter entitled "Airspace Controls for Structures."

E. Records

The EXCESS LANDS Transportation Manager 1 will maintain a record of all authorized uses of ROW. The record will include as a minimum the following items for each authorized use of ROW:

1. Location of the ROW by project, survey station or other appropriate method.

2. Identification of the authorized user of the ROW.

3. A three-dimensional, or metes and bounds description.

4. Pertinent construction plans of the facility authorized to occupy the ROW, if applicable.

5. A copy of the executed agreement.

F. Operating Procedures - see Excess Land Guidelines for detailed procedures.

When the Department receives a request for the use of ROW, the request will be forwarded to the Regional Excess Land Coordinator in the appropriate field office. The Coordinator will contact the requestor, provide them with a formal application, and clarify what information must be contained in the application.

Upon receipt of formal application, the Regional Excess Land Coordinator will follow the steps outlined above in II-H.

Upon receipt of a request from the field office, the EXCESS LANDS Transportation Manager 1 will place it on the agenda for the next meeting of the Excess Lands Committee for consideration and recommendation.

If the use is approved by the Committee, the Excess Lands Transportation Manager 1 will forward a report to the Chief Engineer, and Commissioner of Transportation with the Committee's recommendation. On Federal-aid projects, the excess land request and any supplemental information will be submitted to the FHWA for their approval of the use of ROW if the requested area lies within the Interstate right-of-way. All other non-highway uses of ROW within State route rights-of-way do not need FHWA approval. The EXCESS LANDS Transportation Manager 1 will coordinate the appraisal of lease agreements.

For all license agreements, an administrative fee will be charged unless the license is with a governmental body for a public use purpose.

Appraisals will be obtained in accordance with the provisions of Item II-D of this Part. Once the appraisal is completed and approved it will be forwarded to the Department of General Services for their concurrence. If the Department of General Services determines that the lease should be awarded by sealed bids, they will do so in accordance with their operating procedures.

Upon receipt of notification from HQ that all necessary approvals have been obtained, the Regional Excess Land Coordinator will seek payment of the first year's rent or administrative fee along with proof of insurance. The Coordinator will request the region attorney to prepare the agreement and submit it for signatures.

ATTACHMENT "A"

AIRSPACE CONTROLS FOR STRUCTURES

The following controls and safety provisions shall govern the use of ROW for non-highway purposes on All State highways:

1. Use of ROW beneath the established grade line of the highway shall provide sufficient vertical and horizontal clearance for the construction, operation, maintenance, ventilation and safety of the highway facility.

2. Use of ROW above the established grade line of the highway shall not, at any point between two points established 15 feet beyond the two outer edges of the geometric section of the highway, below a horizontal plane which is at least 16'4" above the grade line of the highway, except as necessary for columns, foundations or other support structures. Exceptions to these lateral limits may be considered on an individual case basis.

3. Piers, columns, or any other portion of the airspace structure shall not be erected in a location which would interfere with visibility or reduce sight distance or in any other way interfere materially with the safety and free flow of traffic on the highway facility.

4. The structural supports for the airspace facility shall be located to clear all horizontal and vertical dimensions established by the Department. Supports shall be clear of the shoulder or safety walks of the outer roadways. However, supports may be located in the median or outer separation when the Department determines that such medians and outer separations are of sufficient width. All supports are to be back of or flush with the face of any wall at the same location. Supports shall be adequately protected by means acceptable to the Department. No supports shall be located in the ramp gores, or in a position so as to interfere with the signing necessary for the proper use of the ramps.

5. Appropriate safety precautions and features necessary to minimize the possibility of injury to users of either the highway facility or ROW due to traffic accidents occurring on the highway or accidents resulting from non-highway uses shall be provided. Such precautions will include:

   Consideration of protective barriers or continuous guardrail with impact attenuation proper to prevent penetration by heavy vehicles; installation of fire hydrants; drainage arrangements adequate to safely handle accidentally released hazardous liquids; warning signs, reflectors, and lights; speed controls; and where necessary, limitations on the use of the highway facility by vehicles carrying hazardous materials. Non-highway use facilities shall not be approved for construction over or under the highway unless the plans contain adequate provisions for evacuating the structures or facilities in case of major accident endangering the occupants of such structures or facilities.

6. Any non-highway use facility shall be fire resistant in accordance with the provisions of the local applicable building codes. No non-highway facility shall be used to be a hazard to highway or non-highway users. Proposals involving construction of improvements will be approved by the State Fire Marshall.

7. No structure or structures built over a highway facility shall occupy more length of the highway than will permit adequate natural ventilation of the enclosed section of the highway for the conditions at the location, assuming a volume of traffic equal to capacity. Each such covered length shall be preceded and followed by uncovered lengths of highway that will safely effect natural ventilation. Exceptions may be considered when complete tunnel ventilation is provided. To facilitate natural ventilation, the underside and any supports for such structures shall have smooth and easily cleanable surfaces and supports for such structures shall leave as much open space on the sides of the highway as feasible.

8. The design, occupancy and use of any structure over or under a highway facility shall be such that neither the use, safety, appearance nor the enjoyment of the highway will be adversely affected by fuses, vapors, odors, drippings, or discharges of any kind there from.

9. On-premise signs, displays or devices may be erected on structures occupying highway airspace, but shall be restricted to those indications and shall be subject to regulation by the Department with respect to number, size, location and design.

Chapter XI
LEGAL

Table Of Contents ..... Page

I. LEGAL SERVICES 3

A. General 3

B. Proposals to Local Governments 3

C. Public Hearings 3

II. INITIATING CONDEMNATION PROCEEDINGS 3

A. Obtaining Attorneys 3

B. Approving Condemnation 4

C. Notice to Property Owner 4

D. Information to the Condemnation Attorney 4

E. Appraisers Approved for Court Testimony 5

F. Petitions and Notices 5

G. Notice of Possession 6

H. Moving Costs 6

III. CONDEMNATION ACTIVITIES 6

A. General 6

B. Revised Reviews 6

C. Updating Appraisals 7

D. Plan Revisions 8

E. Revising Appraisals 8

F. No Approved Appraiser 8

G. Obtaining Additional Appraisals 9

H. Employment of Additional Value Witnesses 9

I. Testimony above the Approved Amount 11

J. Services to be Provided by the Department 11

K. Notification of Witnesses 12

L. Court Judgment and Trial Resume 12
M. Compromise Settlements 14
IV. PAYMENTS 17
A. Payment of Balance Due on Judgment.....17
B. Payment of Witnesses and Specialists 17
C. Court Costs.....18
V. CONTROL OF CONDEMNATION CASES 18
VI. INVERSE CONDEMNATIONS.....19
A. Prevention of Suit Where Possible.....19
B. Investigation and Report 19
C. Tract Numbers and Plan Changes 20
D. Central Office Procedures 20
E. Payment of Plaintiffs Reasonable Costs 20
F. Federal-aid Projects 21

I. LEGAL SERVICES

A. General

The Department Attorney supervises the Legal Office of the Department. He/she and members of his/her staff in Department Headquarters furnish a number of legal services to the Division of Right-of-Way concerning proposals, contracts, title investigations and other legal matters as may be required.

Many of these services are provided on an as needed basis upon request. The below described activities, however; are ongoing responsibilities of either the Central Legal Office or the Field Legal Office and, as such, formal operating procedures have been established.

B. Proposals to Local Governments

On all state highway projects on the state system, an agreement will be pursued with all local governmental bodies having jurisdiction over the land through which the highway project will pass. This agreement will normally be obtained prior to the acquisition phase of the right-of-way project; however, this is a preferred condition and not a requirement.

It is the responsibility of the regional TDOT ROW Supervisor to generate Right of Way proposals and resolutions as needed. The regional TDOT ROW Supervisor will insure that all documents are executed by the appropriate local officials and forwarded to the Headquarters ROW Office. The Headquarters TDOT ROW Supervisor will circulate the documents to the Legal office for approval and the Commissioner's office for signatures.

C. Public Hearings

The Legal Office is responsible for scheduling and advertising all public hearings. The Legal Office or designee will by memorandum notify the central office and applicable regional office whenever a public hearing is scheduled. See Chapter V for a discussion of the duties and responsibilities of the regional Right-of-Way office regarding the conduct of public hearings.

II. INITIATING CONDEMNATION PROCEEDINGS

A. Obtaining Attorneys

The Office of the Attorney General is responsible for the representation of the Department in condemnation litigation. A Deputy Attorney General leads the Real Land and Property Division. There are also Assistant Attorney Generals in each of the four State Regions who represent the Office of the Attorney General in condemnation actions for the Department.

B. Approving Condemnation

As discussed in Chapter VIII, once negotiations are concluded the negotiator will complete the applicable sections of ROW Form-17, "Report on Acquisition". In all cases where negotiations are unsuccessful the claim will be reviewed by the TDOT Right of Way Agent Senior before it is forwarded to the Regional Transportation Manager 2 or designee for approval.

When the review appraiser is unable to approve the appraisal or when the approved offer is substantially lower than the approved appraisal amount, the review appraiser may become the appraiser of record and may be requested to provide expert testimony.

C. Notice to Property Owner

The property owner or his designated representative shall be notified in writing that the Department is planning to acquire his property by condemnation before an eminent domain suit is actually filed.

After approving the condemnation on right of way Form-17, the Regional Transportation Manager 2 or designee is responsible for preparing a notification letter The original will be mailed to the property owner and the copy will be retained for the project file. The property owner will be given approximately 10 days to respond to the notice.

D. Information to the Condemnation Attorney

Upon receipt of the warrant for the Initial Court Deposit, the Regional Transportation Manager 2 or a designee will have a package prepared for transmittal to the condemnation attorney. The information to be transmitted should include as a minimum:

1. Copies of appraisals and ROW Form-2.

2. The names of those appraisers approved for court testimony (see Item E below).

3. A copy of the title report.

4. An engineering description of the taking which is in agreement with the plans, as well as the proper clauses as set out in Part Two of Chapter VIII.

5. Negotiation Records, including Form-17, 17A and 17B.

6. Copies of leases, affidavits, etc., which have been procured in preparation for or during negotiation.

7. Information on payments made to either the owner or a tenant for moving personal property and information on any such offers which were made but rejected.

8. Information as to replacement housing payments or offers.

9. The warrant

The Regional Transportation Manager 2 or a designee will also ensure that the attorney has a copy of the right-of-way plans. Transmittal of Condemnation Information form will be used to refer the case to the condemnation attorney. The payment warrant will be forwarded to the Attorney General upon receipt in the field office. A copy of this form and a copy of ROW Form-2 will be forwarded to the Office of the Attorney General.

Also, according to the complexities of the case, such as a need for cutting off a building, it may be necessary that a representative of the field office discuss the needs of the Department with the condemnation attorney to arrive at a mutual understanding of these needs.

Upon receipt of the warrant for condemnation the Regional Transportation Manager 2 or a designee will forward same to the appropriate Attorney General for his deposit in the appropriate Circuit Court.

E. Appraisers Approved For Court Testimony

The Department may approve the use of an appraiser for court testimony whose appraisal report has been approved by the review appraiser. This approval applies to the original appraisal, the updated appraisal, and any second opinion appraisals.

F. Petitions and Notices

Petitions and notices will be drawn and filed by the condemnation attorney immediately upon receipt of files from the field office. After filing, copies of petitions and notices will be distributed as follows:

1. 1 copy to the field office

2. 1 copy to the central office

3. 2 copies to the Office of the Attorney General

When a copy of a petition is received in the field office, it will be reviewed for discrepancies. If any discrepancies in either the engineering description or needs of the Department in relation to the acquisition are found, the condemnation attorney will be promptly notified in order that he can amend the petition. Copies of amended petitions will be distributed as shown above.

G. Notice of Possession

Immediately upon the court's granting possession of a property the condemnation attorney will notify the TDOT ROW Supervisor of the date possession is effective. The field office may furnish the attorney a standard form letter for this purpose.

In any event an order of possession must be submitted. Distribution will be the same as for the petition (see Item F above).

H. Moving Costs

As provided in Chapter IX, moving costs shall be handled as part of the relocation assistance program in all cases where possible. If handled in this manner, moving expenses should not be handled as an element of damages by the court. The trial attorney will be so advised in order for the petition to clearly state that the moving expenses have been or will be paid outside the court.

When a condemnee will not agree to settlement for moving costs, the voucher for the initial court deposit must contain the amount of the estimate of moving costs. The trial attorney should be instructed to include the payment of moving costs in the State's petition. It shall be the responsibility of the trial attorney to request that the court set out the moving costs separately in the decree.

III. CONDEMNATION ACTIVITIES

A. General

There are a number of activities that may take place as the case progresses to final award. In some instances the activity is initiated by the trial attorney and in others by the Department. These activities and the procedures to be followed are described in the following Items.

B. Revised Reviews

1. General

If a revised review is issued, the court deposit must be increased to reflect this revised review. In the event of a prior stipulation and payment of a supplemental housing payment, the additional court deposit will be computed with that factor in mind so the revised court deposit could be less than the revised review.

Once a revised review is issued, a new base for negotiation is established and settlement for a lesser amount cannot be pursued. However, in the event a written settlement offer is received by the trial attorney prior to the date of the revised review and said offer is less than the revised review, settlement for the lesser value is acceptable if it can be shown to be in the best overall interest of the Department.

2. Procedures

When a revised Form-2 is issued, the responsible person in the field office will determine if the claim involves a relocation. If so, the Form-2 will be sent to the relocation section for their review in accordance with procedures outlined in Chapter IX.

The Form-2 and, if applicable, an explanation of why the court deposit will be less than the revised review will be transmitted to the trial attorney as soon as feasible. The attorney will be advised that settlement for an amount less than the revised Form-2 cannot be pursued. A copy of the Form-2 and transmittal letter will be forwarded to the Office of the Attorney General. At this same time, a payment package will be prepared in accordance with procedures outlined in Chapter II. The amount of the increase must reflect any adjustment due to a replacement housing payment. A copy of the revised Form-2 must accompany the payment package.

Upon receipt of the payment warrant in the field office, it will be transmitted to the trial attorney with instructions that the increase must be deposited with the court in a timely fashion. A copy of the transmittal will be forwarded to the Office of the Attorney General.

C. Updating Appraisals

When the Attorney General's Office determines that an update is needed, the following guidelines shall be followed:

1. The original type of appraisal shall be obtained for the update unless requested otherwise by the Attorney General's Office.

2. Updated Appraisals require a review but may not require a revised Form-2.

   The results of the review will be forwarded to the trial attorney for his/her information in trial preparation or settlement. Should the attorney desire to make an additional court deposit or an official revised offer to the landowner, it will be necessary for him/her to submit a written request through the field office for a revised Form-2.

3. When the updated appraisal is received in the field office, it shall be processed as follows:

   a. If the updated appraisal merely reflects an increase because of the inflation in the overall real estate market, it shall be forwarded directly to the trial attorney by the field office with the transmittal letter ROW Form-40A. Additionally a copy of the ROW Form-40A and updated appraisal will be forwarded to the central office.

   b. If the update is based on new or better comparable sales that cause an increase greater than the inflation in the overall real estate market, the update will be checked by the field office and forwarded to the Attorney General's Office with the transmittal letter ROW Form-40A in accordance with existing procedures for field office

processing of appraisals. The transmittal shall indicate the reason the appraisal is being forwarded to the central office.

c. If the update reflects a change in the approach to valuation, it will be forwarded to the central office as in b, above. This is applicable even if the change in approach does not result in a change in the appraiser's estimate of value.

4. If a revised Form-2 is issued for an increase, the field office will take action in accordance with the provisions of Paragraph B-2 above.

D. Plan Revisions

Except for very inconsequential revisions or revisions due to name changes, a revised Form-2 shall be issued. Any additional court deposit necessitated by this issuance will be handled in accordance with Paragraph B-2 above.

E. Revising Appraisals

As stated in Item C. above, appraisals are routinely updated to the date of taking without changing the type of appraisal. If the attorney feels that the court will require a formal before and after appraisal and the original appraisal was made on some other basis (i.e. Formal Part Acquired), the attorney will by letter to the TDOT ROW Supervisor, request that a formal appraisal be obtained from the appraiser or appraisers approved for testimony. The request should give the reasons for a formal appraisal and indicate the date by which the appraisal is needed. Upon receipt of the request, the appraisal TDOT Right of Way Agent Senior will negotiate a contract with the appraiser(s) involved to prepare a formal appraisal. The Central Office Appraisal Transportation Manager 1 is to be consulted as needed when attempting to arrive at an equitable fee for the appraisal.

F. No Approved Appraiser

In some instances, the Review Appraiser will establish Fair Market Value at an amount substantially less than the lowest acceptable appraisal. In such cases, at the time condemnation is approved, the Regional Transportation Manager 2 will notify the Central Office Appraisal Transportation Manager 1 that the Review Appraiser may be required to testify if the tract proceeds to trial unless another appraisal is obtained to support the present approved price or a future revised approved price.

Upon receipt of this notification, the Central Office Appraisal Transportation Manager 1 must decide whether to obtain an additional appraisal or to proceed under the premise that the Review Appraiser will be the Department's witness. The Central Office Appraisal Transportation Manager 1 will contact the trial attorney for assistance in this decision.

If the trial attorney determines the necessity of obtaining an additional appraiser, a written request will be made to the Regional Transportation Manager 2 and the field office ROW Appraiser 4.

If it is determined that an additional appraisal will be obtained, an appraiser will be hired under the contracting procedures outlined in Chapter III.

All appraisals will be processed in accordance with the procedures outlined in Chapter VII. If the Review Appraiser concludes that the additional appraisal is acceptable the appraiser is approved to testify. The field office will then transmit a copy of the appraisal with a letter informing the trial attorney that the appraiser is approved to testify and that the Review Appraiser is no longer available for pretrial or court testimony.

If the additional appraiser's value conclusion does not support the Review Appraiser's value determination the Field office ROW Appraiser 4 will examine all pertinent value information including all prior appraisals and consult with the trial attorney to determine what further action to take. The trial attorney may request a revised Form-2.

G. Obtaining Additional Appraisals

In some instances circumstances may dictate that additional appraisals are necessary before proceeding to trial. For example, the attorney may find that the approved appraisal contains significant legal deficiencies that the appraiser is unwilling to change or the approved appraiser may be deceased or for some other reason unavailable for testimony.

When circumstances require that an additional appraisal be made, the trial attorney will make a written request to the Regional Transportation Manager 2. The request must provide full justification of the need for an additional appraisal. The attorney should request a specific appraiser whenever possible.

If the Regional Transportation Manager 2 concurs that the additional appraisal is justified, a contract will be obtained with the specified appraiser or an appraiser deemed qualified by the contracting official. The appraisal will be processed and reviewed in accordance with the provisions of Chapter VII above.

Should the Regional Transportation Manager 2 not concur in the need for an additional appraisal, he will refer the matter to the central office.

H. Employment of Additional Value Witnesses

Additional witnesses for trial testimony may be obtained on a case by case basis at the request of the condemnation attorney when there is a showing of legitimate need. To ensure that proper controls are maintained, the following procedure will be employed:

If the services of an additional witness are desired by the attorney, he will notify the field office, in writing, giving the name of the proposed witness and the tract number or numbers for which a report is needed. It is the responsibility of the Regional Transportation Manager 2 to determine whether, an additional witness is justified. If in the judgment of the Regional Transportation Manager 2, employment of the additional witness is not justified, the matter will be referred to the central office. If the use of the witness is approved, the central office will refer the matter back to the field office for a contract. If not, the Right-of-Way Division Director or a designee will consult with the Deputy Attorney General to reach a decision on the matter, and the field office will be so advised.

The Department has adopted the following policy concerning the use of witness reports because of trial strategy. Except for tracts with low approved prices, the trial attorney should have the option of requesting a second witness if he feels it would be helpful. Even for those tracts with a low approved price, if the trial attorney sets out a special need other than a general desire to have a second witness, his request should generally be approved.

The employment of value witnesses should initially be limited to a few tracts in order to determine whether the witness reports will generally be for amounts that substantially exceed the value determination of the approved appraiser. If the initial reports are substantially in excess of the values of the approved appraisers, the witness should not be approved for further use since the Department would not approve the witness for court testimony. Even if the witness is not approved, there is still the danger that his values could be used by deposition or subpoena.

When a prospective witness has been employed and the report is received in the field office, the following procedures are to be implemented:

1. Report is Not Substantially in Excess of Approved Amount.

   If the estimate of value does not substantially exceed the approved estimate of Fair Market Value, the field office may accept the report and transmit it to the attorney, notifying him that the witness may be used to testify. At the same time, one copy of the report will be transmitted to the central office along with a copy of the letter to the attorney.

   If for some reason the field office cannot accept a report which does not substantially exceed the approved estimate of fair market value, 2 copies of the report will be submitted to the central office along with a copy of the letter outlining why it cannot be accepted.

   If the Central Office accepts the report, the field office will be notified. They in turn will notify the condemnation attorney that the witness may be used.

   If the Central Office cannot accept the report, the Right-of-Way Director, or his designee, will forward one copy of the report to the Office of the Attorney General advising why the report is considered unacceptable. The Attorney General's Office will then advise the attorney, by letter, whether the witness may be used, sending copies of the letter to both the field office and the

central office. If the witness is used, the trial resume must fully support such use.

2. Report Is Substantially in Excess of the Approved Amount

   If the estimate of value substantially exceeds the approved estimate of Fair Market Value, the field office will, after reviewing the report, transmit 2 copies of the report to the central office for review along with their comments and recommendation. After completing the review, the central office will forward one copy of the report together with the field and central office review comments and recommendations to the Attorney General's Office. The Attorney General's Office will then advise the attorney, by letter, as to whether or not he may use the witness. Copies of the letter will be sent to both the field office and the central office. If the witness is used, the trial resume must fully support such use.

I. Testimony Above The Approved Amount

There may be times when the trial attorney feels that it is in the best interest of the State to use an appraiser whose testimony was not approved by the Department. In such cases, the trial attorney must fully support the use of the appraiser in his trial resume. Normally, the trial attorney will obtain prior approval to use the appraiser from the Office of the Attorney General.

J. Services to be Provided By the Department

1. Engineering Testimony

   The regional office may provide for engineering testimony as required by the attorney. The attorney should contact the field office at least one month in advance to allow for appropriate preparation and arrangements.

2. Court Exhibits

   Exhibits (models if necessary) and/or overlays may be prepared by the regional upon the request of the attorney.

3. Other Expert Witnesses

   At the request of the trial attorney, the regional office and/or the Attorney General's Office will procure the necessary services of other expert witnesses. If the expertise is available within the Department, that individual's services will be made available to attorney. If the service is not available within the Department, a contract will be negotiated with a qualified individual.

   NOTE: THE PROVISIONS OF CHAPTER III DO NOT APPLY TO CONTRACTS MADE BY OR FOR THE OFFICE OF THE ATTORNEY GENERAL

K. Notification of Witnesses

The attorney should furnish the field office with trial schedules. However, the responsibility for making arrangements with witnesses for depositions, pre-trail conferences and court testimony lies with the attorney. Arrangements must be made sufficiently in advance to allow the witness to schedule the work without conflict with his other activities.

L. Court Judgment and Trial Resume

1. Action by the Trial Attorney

Immediately after the trial, the attorney will prepare a proposed final judgment based on the verdict of the court. The information contained in the judgment should include the total amount recovered by the land owner, the amount of the State's deposit and the rate of interest on the unpaid amount from the date of possession. Where moving costs have been stipulated or where evidence of moving costs have been introduced into testimony, the moving costs should be set out separately in the judgment.

At this time, the attorney will prepare a Trial Resume signed by him containing, but not limited to, the following information:

a. Caption of the case.

b. Approved estimate of value and date.

c. All appraisal estimates of value and dates.

d. Date, place and length of trial.

e. A brief factual report of the trial, including range of value testimony of the parties, etc.

f. A statement of the development of major issues involved.

g. The major differences in approaches to value among the State's witnesses and those of the property owner.

h. If the attorney uses an appraiser or witness who has not been approved for testimony by the Department, he must fully justify the use of that appraiser or witness.

i. Comments on possible legal error in the record, explanation of the State's action regarding motions, objections, etc. and the Court's rulings relative thereto.

j. Recommendations regarding motions for new trial, remittitur or appeal, and the reasons therefore.

The attorney is to submit the original and 3 copies of the Trial Resume along with two copies of the proposed judgment to the Office of the Attorney General, and one copy of each to the field office.

Since the time for making an appeal is limited, it is essential that the aforementioned information be transmitted to the Office of the Attorney General promptly.

2. Action by the Right-of-Way Division.

   After receiving the Trial Resume, the Office of the Attorney General will forward the original and one copy to the central office for review. If the documentation is considered adequate, the Right-of-Way Division Director, or a designee, will initial both resumes, returning the original to the Attorney General's Office and routing the copy through the Central Office Appraisal Transportation Manager 1 to the project file.

   If the Right-of-Way Division Director or a designee determines that the documentation is weak or lacking, he will by letter to the Deputy Attorney General request that the attorney provide documentation commensurate with the needs of the Department. He may also comment on the results of the trial and provide his comments concerning the position of the Right-of-Way Division on the advisability of an appeal.

3. Decision By the Deputy Attorney General.

   After reviewing the Trial Resume and, when necessary consulting with the Right-of-Way Division, the Office of Attorney General will advise the attorney by letter whether or not an appeal will be taken. If an appeal will be taken, all further instructions to the attorney with regard to the lawsuit will come from the Office of the Attorney General. If no appeal will be taken, the trial attorney will have the judgment recorded in accordance with the procedures outlined in Paragraph 4 below. Copies of the letter to the attorney will be sent to both the field office and the central office.

4. Verifying, Entering and Recording the Judgment

   Immediately upon receipt of the proposed judgment in the field office, the description of the proposed judgment will be checked against the latest right-of-way plan and it will be checked to ascertain that its provisions meet the needs of the Department in the taking.

   Upon receipt of the letter from the field office advising that the judgment has been verified and the letter from the Attorney General's Office, the attorney will enter the judgment and have it certified and recorded. He will then transmit a copy of the recorded judgment to the field office. After the recorded judgment is reviewed and accepted by the field office, it will be forwarded to the central office for filing.

M. Compromise Settlements

1. General

The Office of the Attorney General may make a settlement, in whole or in part, when it is determined that such action is in the public interest. Settlement may take place any time after condemnation is filed and before final conclusion of the case by trial. It is the responsibility of the Attorney General's Office to advise the condemnation attorney of factors to be considered in making recommendations on an offer to settle for an amount in excess of the Review Appraiser's determination of Fair Market Value. The following are guideline which the attorney should consider when deciding to recommend settlement rather than trial:

a. Legal deficiencies in appraisals approved by the reviewing appraiser. An appraiser may not have had the benefit of legal advice as to the compensability of certain elements of value or damage, the offsetting of damages by benefits, the identification of fixtures, the determination of what constitutes the remaining property for assessment of damages or any number of other pertinent legal considerations.

b. Inadequacy of data upon which the appraisals are based, or improper application of legal principles to the appraisal processes.

c. The competency and effectiveness of an appraiser as a witness, to include his:

1. Ability and experience as an appraiser.

2. Reputation in the area.

3. Ability to persuasively and clearly explain his opinion of value and the reasons therefore to a court or jury.

4. Ability to stand up under cross-examination.

d. Adjustments of appraisals to conform to the date of valuation under law.

e. All available appraisals, including landowners' appraisals.

f. Interest or delayed damage payments to which an owner may be entitled under State law.

g. Serious doubt as to the highest and best use of a property before the taking and, in appropriate instances, after the taking.

h. Extremely complex severance damage or other valuation problems that necessarily produce uncertainties as to value.

i. Uncertainty of State law relative to the measure or compensability of particular elements of value or damage, or the admissibility or adequacy of evidence necessary to prove facts in issue, where the

circumstances or the evidence make it inadvisable to test the question in the case under consideration.

j. Awards of commissioners or other administrative or quasi-judicial bodies, especially where the amount of the award or the testimony of individual commissioners is admissible in evidence at a subsequent trial.

k. Recent court awards for eminent domain takings in the area.

In addition, the following items may be considered in conjunction with the items in the above paragraph as justification for settlements, however, they would not suffice as the sole justification:

a. Costs to the acquiring agency and its counsel for preparing and presenting the case at trial or in an appeal.

b. Costs to the public for impaneling a jury, maintaining the court, etc.

c. Alleged impossibility of obtaining an unbiased jury.

d. Likelihood of sympathy for the owner.

l. Features, added as part of the roadway construction project, that can serve to reduce or eliminate incidental damages or provide a basis for settlement.

2. Procedures

a. General

Whenever a settlement in excess of the amount established as Fair Market Value is made by the Office of the Attorney General, it is required the rationale for the settlement be set out in writing and be placed in the tract file. In normal cases, this will consist of the letter from the Condemnation Attorney to the Attorney General's Office recommending settlement. The letter shall give an explanation as to why the case should be settled rather than proceeding to trial. The guidelines noted in Part 1 of this section are to be adhered to when recommending settlement. Approval by the Attorney General's Office shall indicate that it has been determined such action will be in the public interest. These documents shall constitute the written justification which is required to be placed in the tract file.

b. Recommendation for Settlement by the Condemnation Attorney

If the condemnation attorney is able to obtain from the landowner a firm offer to settle for an amount in excess of the approved amount, which in his opinion warrants a settlement, he shall recommend it in writing to the Attorney General's Office. The letter signed by the attorney shall describe his reasons for the recommendation and shall support his recommendation in accordance with the guidelines noted

in Part 1 of this section. Where time is of the essence, he may verbally recommend the settlement to the office of the Attorney General, which will consult with the Right-of-Way Division Director or a designee on the matter if the settlement amount is substantially in excess of the latest value estimate.

In any case, the settlement must be requested in writing and approved in writing in advance of payment. The condemnation attorney's recommendation for settlement shall be addressed to the Office of the Attorney General, with copies to the field office and the central office.

c. Consultation and Exchange of Views Between the Office of the Attorney General and Right-of-Way Division.

The Office of the Attorney General will under normal circumstances direct a letter to the Right-of-Way Division Director or a designee requesting comments and recommendations on the disposition of the case as recommended by the condemnation attorney. The Right-of-Way Division Director, or a designee, will examine the file and consider all aspects of the case and will furnish recommendations or opinions to the office of the Attorney General by return letter. The final decision on whether to settle or proceed to trial will be made by the Attorney General's Office.

In certain cases, it may be impractical for the Office of the Attorney General to obtain comments from the Division of Right-of-Way before approving a settlement. The Right-of-Way Division Director a designee will be advised that a settlement has been approved. A letter furnishing the details and reasons for the settlement will follow.

d. Approval of Compromise Settlement

Approval of a compromise settlement is issued in the form of a document entitled "Approval of Compromise Settlement". Written approval of the attorney general, the comptroller of the treasury and governor shall be required for any compromise and settlement greater than $25,000.00. Settlements not in excess of this amount will only require written approval of the attorney general. The attorney general and reporter shall submit a report quarterly to the comptroller and governor of all compromises and settlements made without the written approval of the comptroller and governor.

e. Consent Judgment

On receipt of the "Approval of Compromise Settlement", the condemnation attorney will Prepare a proposed consent judgment and submit copies to the Office of the Attorney General and the field office. The information contained in the judgment should include the total amount of the award, the amount of the deposit and the balance due, if any. It should also set out that the balance due is interest free. The field office will verify the correctness of the engineering description and ascertain that the judgment correctly sets out the needs of the Department in the taking.

After completing the review the field office will notify the condemnation attorney that the judgment has been verified. The attorney will then enter the judgment and have it certified and recorded. He will then forward it to the field office for ultimate transmittal to the central office.

IV. PAYMENTS

A. Payment of Balance Due on Judgment

Interest due on a judgment after a contested trial runs from the date of possession to the date of payment. The rate of interest to be used in the calculation will be taken from the judgment. Interest calculations are the responsibility of the Regional Transportation Manager 2 or assigned to any appropriate person under his direction. When making the calculations, sufficient time must be allowed for processing and delivering the voucher. Also to be considered are any court deposits made subsequent to the date of possession. All such deposits are considered to be partial payments and interest will accrue on amounts deposited from the date of possession to the date of deposit.

After the proposed judgment has been verified, the field office will submit a voucher to satisfy the balance due, plus interest, in accordance with the procedures outlined in Chapter II. In the case of a trial, a copy of the proposed judgment, the interest calculation and when applicable (see below) a copy of RA Form-115 must accompany the payment package. In the case of a compromise settlement, a copy of the request letter from the Office of the Attorney General must accompany the payment package.

In the case of a legal settlement, there will be no interest calculation or payment.

If a replacement housing payment has been made to a 180 day owner occupant, before submitting a voucher for the balance of payment the judgment will be sent to the project team for appropriate adjustment. See Chapter IX for procedures to be followed. In these cases a copy of RA Form-115 must accompany the payment package.

Administrative staff will normally be responsible for payment of all balances of judgment.

B. Payment of Witnesses and Specialists

Witnesses and specialists under contract with the Department must submit their invoices to the trial attorney for approval by him in accordance with the service actually performed. The trial attorney will approve the invoice by appropriate notation on the invoice. Approved invoices will then be sent to the field office where they will be processed for payment under standard

procedures. The approved invoice and the contract must accompany the payment package.

In an exceptional case, the Office of the Attorney General may permit the attorney to employ witnesses and specialists and include the cost of such in his fee.

C. Court Costs

In accordance with TCA 29-17-912, if the amount of compensation awarded in the trial exceeds the amount assessed by the condemnor (the Department), the condemnor shall pay all costs of the case, but if the amount of compensation awarded in the trial is not in excess of the amount assessed by the condemnor and deposited with the clerk of the court, the defendant shall pay all costs incident to the trial.

Where a case is settled without trial for the amount of the deposit, the Department will pay court costs as part of the settlement. Where a case is settled without trial for an amount in excess of the deposit, court costs will be paid as set out in the judgment, or if not so set out, court costs will be paid by the Department as part of the settlement.

Where the proceeding is abandoned by the Department, or where the final judgment is that the Department cannot acquire the real property by condemnation, the Department will pay the property owner's reasonable costs, disbursements and expenses, including reasonable attorney, appraisal and engineering fees actually incurred because of condemnation proceedings as set out in the judgment.

Upon receipt of a statement from the Court approved by the trial attorney, the field office will prepare a payment package in accordance with standard procedures. The statement will accompany the payment package.

V. CONTROL OF CONDEMNATION CASES

The Regional Transportation Manager 2 or a designee is responsible for maintaining a record of all condemnation activities and for monitoring the progress of all condemnations. The control record to be maintained must contain, as a minimum, the following information:

A. State Project Number.

B. Tract Number.

C. Date Condemnation Authorized.

D. Amount of Initial Deposit.

E. Date of Possession.

F. Date and Amount of Additional Deposit.

G. Date of Judgment.

H. Amount of Judgment.

The main purpose of the control record is to monitor the progress of condemnation cases.

VI. INVERSE CONDEMNATIONS

A. Prevention Of Suit Where Possible

Promptness in investigating complaints of property owners by regional personnel during and immediately after construction of a project, and satisfying the owner prior to the filing of a suit when such is possible and feasible, will serve to prevent the filing of many inverse condemnation suits. It is the responsibility of the Regional Director to ensure that, to the greatest extent possible and practical, complaints are promptly investigated and the cause of complaint removed by Regional action where such is feasible. Close collaboration between the Regional Director and the field office right-of-way section can serve to develop plan changes which may be needed to correct unsatisfactory situations during construction which could eventually be causes of inverse condemnation suits if not corrected when they first become apparent. In some cases, complaints to the Regional Office are caused by acts of the contractor in construction of a project. The Regional Director through Construction personnel shall attempt settlement between the contractor and the property owner in those cases where the facts of the case indicate the contractor to be liable. In a similar manner, complaints caused by maintenance action shall be resolved by the Regional Director through Maintenance personnel. Some types of claims made by owners should be handled through the State Board of Claims rather than through inverse condemnation. If the Regional Director cannot satisfy a complaint and an inverse condemnation suit is filed or if a suit is filed without prior knowledge of the compliant, the procedures set out below shall apply.

B. Investigation and Report

Immediately upon notification of an inverse condemnation from the Attorney General, the Right-of-Way Division Director or a designee will forward a letter to the Regional Transportation Manager 2 requesting that the complaint be investigated and that a full written report of the investigation be submitted.

In consultation with the Regional Director or his designee, an investigation into the claim will be accomplished. All offices involved will document the results of their investigations and submit those results in writing to the right-of-way field office.

A summary report will then be prepared for the signature of the Regional Transportation Manager 2. This report, compiled from the results of all investigations, must clearly show the cause of the complaint, if in fact there is a cause, and a description of observed damages, if any. Any action already taken to alleviate any real cause of damage or any proposed further actions should be reported. Right-of-Way Project numbers, both State and Federal, tract numbers, if any, name of plaintiff, etc. should be included. If there has not been a taking from the plaintiff the exact location of the land and/or improvements to which damages are alleged must be shown. If the investigations indicate that responsibility for any damages should rest partially or wholly on others, such as the local government, the project contractor, etc. the report should so state and explain. In summary, the report should include all findings and recommendations on the entire matter. The original and one copy of the report will be transmitted to the Right-of-Way Division Director.

C. Tract Numbers and Plan Changes

A tract number separate and distinct from that of a parent tract will be assigned on each inverse condemnation through a plan change request initiated by the field office. It will be handled as any other plan change request, except that it should be submitted with the report discussed in Item B above. There is no need for FHWA approval on plan revisions of this nature.

All inverse condemnation tracts added to plans are to be designated by the use of a 9000 series tract number. Where the inverse is by the owner of a tract on which there has been a taking, the inverse tract should be linked to the parent tract. For example if the owner of tract 5A files an inverse, the new tract should bear the number 9005A. The tract will normally be described in the acquisition table of the project plans by the notation "Inverse Condemnation". If there is no parent tract the 9000 number followed by an alphabetic suffix will be used. (i.e. 9000-A)

D. Central Office Procedures

Upon receipt of the report from the field office, the Right-of-Way Division Director or a designee will review the report and consult with other offices in the Department in order to ascertain the position of the Department on the matter. When appropriate, reports and recommendations from all involved offices will be requested. Further consultation with the Office of the Attorney General may also be advisable at this time. A report will then be prepared, outlining the position and recommendations of the Department. The report will then be sent to the Office of the Attorney General. All further action by the Department will be in accordance with advice from the Office of the Attorney General. On receipt of advice from the Attorney General's Office, the Right-of-Way Division Director or designee will advise the Regional Transportation Manager 2 of the course of action to be followed. By copy of this letter the field office will be authorized to obtain appraisals and other specialty reports, as necessary.

E. Payment of Plaintiffs Reasonable Costs

Where, pursuant to Tennessee law, a court sets out in the judgment that the Department shall reimburse the plaintiff for his reasonable costs, disbursements and expenses, including reasonable attorney, appraisal and engineering fees actually incurred because of such proceeding, payment shall be made as set out in the judgment.

F. Federal-aid Projects

Upon final resolution of the claim, the Department will forward a report to the FHWA outlining the circumstances of the case and requesting Federal participation. The report should incorporate all pertinent information including copies of all reports, the judgment and attorney's trial resume. Any request for reimbursement must indicate that the damages resulted from the taking of real property and must contain a statement that the Department has determined that the costs incurred are in fact directly related to "project costs".

Upon receipt of the response from FHWA, all costs will be coded either participating or non-participating as appropriate. Code 1 will be shown in the CB column for non-participating costs.

On closed Federal-aid projects, prior to incurring costs, the regional ROW office will obtain a Federal-aid project to be used. The project will be obtained through consultation with the Project Development and Administration Division and Transportation Accounts. In the letter requesting Federal participation, the Federal project used will be listed. If the Project is not acceptable, the response from the FHWA will so state, and they will provide the project number to which the charges should be made.

Federal funds may participate in an award only if it has been determined that there was an actual taking from the property in question. All other damage claims are the responsibility of the Department and are not eligible for Federal reimbursement.

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Chapter XII
MODIFIED ACQUISITION PROCEDURES

Table Of Contents ..... Page

I. GENERAL 2

II. RECORDS 2

III. PROJECT COORDINATOR 2

IV. RIGHT-OF-WAY INCIDENTALS AUTHORIZATION 2

V. TITLE REPORT 3

VI. NOTICE OF PROPOSED ACQUISITION 3

VII. INITIAL CONTACT 3

VIII. PROPOSAL TO LOCAL AGENCY 4

IX. APPRAISAL AND ACQUISITION AUTHORIZATION 4

X. APPRAISAL AND APPRAISAL REVIEW 4

XI. NEGOTIATION PROCESS 5

XII. LEGAL 6

XIII. CLOSINGS 6

XIV OUT-OF-STATE OWNERS 6

MODIFIED ACQUISITION PROCEDURES

I. GENERAL

The procedures outlined in this Chapter have been developed to expedite the right-of-way process and to effect both cost savings and savings in manpower utilization.

These procedures may be utilized on any Federal-aid project which has been granted a Categorical Exclusion.

The procedures may also be utilized on any State or State-aid project meeting the general criteria for use on a Federal-aid project (i.e. minor strip takings with 2 or fewer displacements). The Top Management-1 Report lists the projects that have been granted a categorical exclusion.

It is recommended that these procedures be utilized to the greatest extent feasible. There may be times, however, when the use of these procedures may not be in the best interest of the Department. In such cases, the Regional Transportation Manager 2 will arrive at a final decision as to whether the modified procedures should be followed.

Any activity not specifically discussed in this Chapter will be accomplished in accordance with standard operating procedures. Further, any activity which is not specifically excluded or waived by this Chapter must be accomplished.

II. RECORDS

All records are to be maintained in the same manner as a normal project. This includes transmittal of all appropriate documentation to the Central Office.

III. PROJECT COORDINATOR

It is recommended that the TDOT Right of Way Supervisor in the appropriate project team be designated as the Project Coordinator. The Project Coordinator is responsible all right of way activities on these projects.

IV. RIGHT-OF-WAY INCIDENTALS AUTHORIZATION

Right-of-Way Incidentals under this program are authorized at the time right-of-way field review plans are received. The project number might not at this point be a right-of-way number; it might be a 1XXX or 5XXX job series.

Upon receipt of the right-of-way field review plans, the Project Coordinator will be notified in order that all appropriate activities can be scheduled or initiated.

V. TITLE REPORT

Title Reports, to the greatest extent practical, are to be accomplished by staff personnel. Title reports will be completed using ROW Form-49A. Only the actual title report and associated documents will be required. A five year sales history is necessary. If, for any reason, it becomes necessary to utilize fee personnel, contracts must be obtained in accordance with the provisions of Part One, Section III of Chapter VIII.

Upon receipt of incidental authorization on a project, the Project Coordinator will assign the Title Reports to a right-of-way agent. If for some reason the Project Coordinator has no one available to complete the assignment, he will notify the TDOT ROW Supervisor, who will determine what action to take.

VI. NOTICE OF PROPOSED ACQUISITION

See Chapter V Section IV.

VII. INITIAL CONTACT

After receiving the Right-of-Way field review plans, the Project Coordinator will arrange for assignment of the project to an agent. The agent assigned will arrange for a personal contact with all in-state property owners. (See Chapter XIII Part III Section VII D for a discussion on out of state owners) In very unusual circumstances, where the owner resides in-state but outside the Region, this contact may be made by mail.

At this contact, the agent will provide the acquisition brochure and copies from the plan sheets. He will explain the reason for the project and the effect of the project on the subject property. In addition, after fully apprising the owner of his right to receive just compensation, the agent shall ask for a donation. If the owner agrees to donate, the deed shall be signed. If not, the acquisition process is to be briefly explained. ROW Form-64 (Initial Contact) is to be completed and signed by both the property owner(s) and the agent. Also, at this time, the agent should ask the owner if he is aware of any unrecorded liens on the property and if there are any affected utilities not shown on the plans. He should also, if applicable, examine any minor improvements to be acquired such as barns or sheds. If the improvements contain personal property to be moved, it should be inventoried at this time using RA Form-106. The inventory is to be signed by the property owner.

After this contact, the agent will provide a copy of ROW Form-64 to the Project Coordinator. If a utility adjustment, salvage appraisal or move cost finding is necessary, the agent will inform the Project Coordinator who will take steps to have the necessary documents prepared. On these projects, the same person may make the estimate and the offer.

VIII. PROPOSAL TO LOCAL AGENCY

A standard proposal may be used for all projects of this type. It will originate in the field office and should be hand-carried to the appropriate local official along with a copy of the right-of-way field review plans. The importance of a timely acceptance by the local agency must be emphasized.

Upon receipt of the acceptance document from the local agency it will be forwarded to the Headquarters ROW Office. The Headquarters TDOT ROW Supervisor will circulate the documents to the Legal office for approval and the Commissioner's office for signatures.

The proposals will, of course, be necessary only for projects on the State system.

IX. APPRAISAL AND ACQUISITION AUTHORIZATION

Authorization for appraisals and acquisition will be issued simultaneously on projects of this type. The Regional Transportation Manager 2 will be notified of authorization by receipt of the CA-5. This authorization will carry a right-of-way project number. Once this number is received, all future activities are to be charged to it. On projects that are on the state system, an approved acceptance of the proposal is preferred but not required for authorization of acquisition.

X. APPRAISAL AND APPRAISAL REVIEW

When an appraisal is unnecessary, Appraisal Waiver Procedures shall be utilized if the valuation (appraisal) problem is uncomplicated and the fair market value is estimated at $10,000.00 or less. Staff Appraisers should be used to obtain appraisals to the greatest extent practical. For the most, part acquisitions, under these procedures will be non-complex. The use of staff appraisers will therefore be cost effective. Also, the use of staff appraisers will greatly reduce the time involved in obtaining appraisals. Whenever it becomes necessary to contract for a fee appraiser, the contract must be obtained in compliance with established procedures. The field office has review authority for all modified acquisition projects acquired under the provisions of this Chapter.

Upon receipt of final plans, the appraisal section chief will enter a P.G.I. into the computer database. There is no need for a formal P.G.I. as with regular or large projects, but it is necessary to have information entered into the computer database in order to proceed with the acquisition process. The Regional Transportation Manager 2 or designee will notify the appraisal section chief to proceed with submitting a request to Central Office for contracting with a fee appraiser.

Appraisals will be reviewed by the field office in accordance with the provisions of Chapter VII. Personal inspection of the property by the reviewer is waived for all tracts with an appraised value (amount due owner) of under $10,000. After the reviews are completed, the ROW Forms-2 will be transmitted in accordance with item II above.

XI. NEGOTIATION PROCESS

After receiving the right-of-way plans, the ROW Appraiser 4 and/or agent will determine the tracts eligible for the Appraisal Waiver Provision (NPP). (The valuation (appraisal) problem is uncomplicated and the fair market value is estimated at $10,000.00 or less). ROW Form-2NPP will be prepared in accordance with the provisions of Chapter VII for each tract that applies. The minimum offer will be $300.00.

The agent who made the initial contact will normally be responsible for negotiations. Upon receipt of ROW Form-2 or ROW Form-2NPP, the agent will prepare for negotiations. Where practical, the initial offer will be mailed to the property owner. The package to be mailed will include the offer letter and ROW Form-30A "Seller's Acknowledgement of Sale Price and Conditions".

In certain cases the agent, may arrange to initiate negotiations in person:

1. If, based on the initial contact, the agent feels he would have better success with a personal contact; or
2. If a structure is to be acquired and either owner retention or move cost offers must be presented.

When the offer is made in person, ROW Form-17B is to be used. This would be an appropriate time to present ROW Form-6 "Right-of-Way Entry" for the owner's signature if agreeable.
If a follow up contact is necessary, an initial phone call is suggested. If agreement cannot be reached the agent should solicit a counter offer which, if obtained, will be presented to the TDOT ROW Supervisor for consideration.

If the counter offer is not acceptable or some lower amount is considered more reasonable, the agent should make at least one final contact with the property owner. If the differences cannot be resolved, the agent should inform the owner that condemnation proceedings may have to be initiated.

However, it may be the determination of the ROW Appraiser 4 and the Regional Transportation Manager 2, that the negotiation process would be more successful if an appraisal is prepared. Then, the appraisal section chief will be requested to obtain an appraisal. The appraisal will be used for further negotiations or condemnation if necessary.

If negotiations are successful, the agent will follow the standard operating procedures outlined in Chapter VIII.

If negotiations are unsuccessful, and the agent is confident that condemnation proceedings should be initiated, he will complete the applicable sections of ROW Form-17, attach all Forms-17A, and prepare a payment package in accordance with the procedures outlined in Chapter II.

ROW Form-2 or ROW Form-2NPP must be attached to the payment package. If moving costs are included either RA Form-109 or RA Form-116 must be attached. The Form-17 and the payment package will be sent to the TDOT ROW Supervisor

for his review and signature. The TDOT ROW Supervisor will then transmit the entire package to the Regional Transportation Manager 2 for approval. Once approved, the payment package will be sent to Transportation Accounts and the Form-17 and Form-17A will be sent to the project files.

Administrative Settlements will be handled in accordance with the procedures outlined in Chapter VIII except that the justification for the administrative settlement may be made on the negotiator's log and approved by signature of the Regional Transportation Manager 2 when the increase does not exceed $5,000.00.

XII. LEGAL

An agreement has been reached with the Deputy Attorney General whereby the Assistant Attorney General in each Region will be responsible for prosecuting condemnation cases on all projects of this type. The Regional Transportation Manager 2 or his designee will coordinate with the Assistant Attorney General handling condemnations for the Region.

Authority to approve condemnation requests for these projects is delegated to the Regional Transportation Manager 2 in each of the field offices. Authority to obtain witness reports is delegated to the Regional Transportation Manager 2.

XIII. CLOSINGS

As with title searches, to the greatest extent possible, closings are to be accomplished by the field office staff. If, for some reason, it becomes necessary to utilize the services of fee personnel, they must be hired in accordance with provisions of Chapter III. Tracts will be closed in accordance with normal operating procedures.

XIV. OUT-OF-STATE OWNERS

When an out-of-state owner is involved, the standard forms developed for this modified procedure will not suffice. In these instances, it is incumbent upon the agent to personalize a letter for the initial contact. That letter should incorporate all items that are required to be covered by this procedure including:

1. A discussion of the reason for the project
2. The effects of the project on the property
3. A description of the acquisition process and establishment of just compensation.
4. A request for donation with waiver of right to just compensation.
5. The offer of owner accompaniment at the time of the appraiser's inspection, if applicable.

Copies of appropriate plan sheets, the acquisition brochure and the deed should be enclosed with the letter.

If an offer is to be made, the standard offer letter should be modified as necessary to the circumstances of the case.

INDEX

Advertisement, VII-12, IX-39, X-13, X-14, X-17, X-24
Appraisal, 1, I-2, II-5, II-8, III-7, IV-1, IV-2, IV-3, IV-5, IV-6, VI-8, VII-1, VII-2, VII-3, VII-4, VII-6, VII-7, VII-8, VII-9, VII-10, VII-11, VII-12, VII-13, VII-14, VII-15, VII-16, VII-17, VII-18, VII-19, VII-20, VII-21, VII-22, VII-23, VII-24, VIII-14, VIII-16, VIII-22, VIII-26, VIII-27, VIII-28, VIII-29, VIII-32, VIII-41, IX-12, IX-13, IX-16, IX-34, IX-41, IX-43, IX-50, IX-55, IX-56, IX-57, IX-59, X-6, X-10, X-18, X-19, X-21, X-23, X-24, X-32, XI-4, XI-5, XI-7, XI-8, XI-9, XI-12, XI-13, XI-14, XI-18, XI-20, 3, 4
APR, VII-1, VII-4
Archives, II-6
C.O.P., 5, II-7
Central Office, 1, 5, I-2, II-3, II-6, II-7, II-9, II-17, III-2, III-7, III-8, III-9, III-10, IV-3, IV-4, IV-5, IV-7, V-2, VI-1, VI-6, VI-8, VI-9, VI-11, VI-12, VII-2, VII-3, VII-4, VII-5, VII-6, VII-7, VII-9, VII-10, VII-11, VII-12, VII-13, VII-14, VII-15, VII-16, VII-17, VII-18, VII-19, VII-21, VII-22, VII-24, VIII-13, VIII-24, VIII-26, VIII-27, VIII-35, VIII-36, VIII-39, VIII-41, IX-14, IX-16, IX-22, IX-23, IX-24, IX-27, IX-44, IX-61, IX-67, IX-69, X-20, XI-2, XI-3, XI-5, XI-7, XI-8, XI-9, XI-10, XI-11, XI-13, XI-16, XI-17, XI-20, 4
Claim, II-13, II-17, VIII-19, VIII-27, VIII-29, VIII-35, VIII-36, IX-1, IX-6, IX-22, IX-24, IX-26, IX-27, IX-31, IX-32, IX-41, IX-42, IX-43, IX-45, IX-57, X-14, XI-4, XI-7, XI-19, XI-21
Clause, VIII-2, VIII-12, VIII-30, VIII-31
Closing, III-4, III-11, IV-1, IV-6, VIII-3, VIII-5, VIII-6, VIII-14, VIII-17, VIII-18, VIII-28, VIII-31, VIII-33, VIII-34, VIII-35, VIII-36, VIII-42, IX-49, IX-50, IX-57, IX-62, X-12
Comparables, IX-59, IX-60
compensation, VIII-10
Compensation, XI-14
Condemn, VIII-18, XI-6, XI-18
Condemnation, IV-1, IV-7, VII-8, VII-10, VII-22, VIII-3, VIII-14, VIII-18, VIII-20, VIII-23, VIII-24, VIII-25, VIII-27, VIII-29, VIII-31, VIII-35, VIII-42, VIII-43, IX-29, IX-46, IX-55, XI-1, XI-3, XI-4, XI-5, XI-6, XI-8, XI-9, XI-10, XI-14, XI-15, XI-16, XI-18, XI-19, XI-20, 5, 6
Consultant, III-7, III-8, III-9, III-10, III-11, VII-6, VII-9, VII-11, VII-12, VII-13, VII-14, VII-15, VII-16, VII-17, VII-19, VII-21, VII-22
Contaminated, VII-5, VIII-4, VIII-12, VIII-38, VIII-39, VIII-40, VIII-41, VIII-42, VIII-43
Contract, 1, III-3, III-4, III-5, III-9, III-10, III-11, IV-4, IV-5, VI-10, VII-7, VII-8, VII-10, VII-11, VII-14, VII-17, VII-18, VII-21, VII-22, VII-23, VII-24, VIII-5, VIII-6, VIII-7, VIII-8, VIII-9, VIII-14, VIII-33, VIII-40, VIII-43, IX-5, IX-11, IX-43, IX-44, IX-57, X-4, X-5, X-8, X-12, X-13, X-14, X-15, X-16, X-17, XI-8, XI-9, XI-10, XI-11, XI-17, 4
Covenant, VIII-9
DEC, VIII-39, VIII-40, VIII-41, VIII-43
Deed, IV-1, IV-5, IV-6, VI-7, VIII-1, VIII-7, VIII-8, VIII-9, VIII-10, VIII-12, VIII-23, VIII-28, VIII-29, VIII-31, VIII-32, VIII-34, VIII-35, VIII-36, VIII-42, IX-62, X-5, X-25, X-27, 3, 6
Deposits, VIII-8, X-13, X-14, X-24, XI-17
Design, II-8, III-7, III-8, IV-2, IV-3, IV-4, IV-5, VI-3, VI-6, VI-8, VI-9, VI-12, VII-4, VII-5, VII-6, VII-10
designee, X-22
Designee, 5, II-9, II-10, II-13, II-17, III-5, III-10, IV-6, IV-7, V-3, VI-10, VI-12, VII-3, VII-4, VII-9, VII-21, VII-22, VIII-5, VIII-6, VIII-7, VIII-13, VIII-14, VIII-20, VIII-24, VIII-25, VIII-26, VIII-27, VIII-36, VIII-40, VIII-41, VIII-42, VIII-43, IX-13, IX-14, IX-16, IX-23, IX-24, IX-27, IX-29, IX-30, IX-33, IX-39, IX-46, IX-52, IX-67, IX-69, X-4, X-9, X-12, X-14, X-16, XI-4, XI-5, XI-10, XI-13, XI-16, XI-18, XI-19, XI-20, 4, 6
Director, 1, 5, II-3, II-7, II-9, II-10, II-12, II-17, II-18, III-7, III-9, III-10, IV-2, IV-4, VI-3, VI-10, VI-11, VI-12, VII-3, VII-4, VII-12, VII-15, VIII-7, VIII-13, VIII-24, VIII-25, VIII-26, VIII-30, VIII-40, VIII-42, IX-13, IX-14, IX-16, IX-27, IX-39, IX-46, IX-52, X-17, X-19, X-22, XI-10, XI-13, XI-15, XI-16, XI-19, XI-20
Dislocatee, IV-6, IX-25, IX-31, IX-32, IX-42, IX-44
Displacee, IX-6, IX-21, IX-24, IX-25, IX-30, IX-31, IX-32, IX-33, IX-36, IX-40, IX-41, IX-42, IX-44, IX-47, IX-50, IX-54, IX-55, IX-56, IX-58, IX-62, IX-63, IX-67, IX-68, IX-69, X-9, X-10
Environmental, II-10, IV-2, VI-7, VI-11, VII-7, VIII-39, VIII-40, VIII-43, IX-13
Estimate, II-10, III-9, IV-1, IV-2, IV-3, IV-5, VII-1, VII-3, VII-4, VII-5, VII-6, VIII-16, VIII-17, VIII-20, VIII-24, VIII-25, VIII-31, VIII-43, IX-13, IX-14, IX-16, IX-17, IX-34, IX-35, IX-36, IX-41, IX-43, IX-44, IX-53, IX-56, IX-61, X-3, X-4, X-5, X-6, X-24, XI-6, XI-8, XI-10, XI-11, XI-12, XI-16, 3
Field Office, 1, I-2, II-3, II-4, II-6, II-7, II-8, II-9, II-10, II-17, III-2, III-10, IV-2, IV-3, IV-4, IV-5, IV-6, IV-7, VI-1, VI-6, VI-9, VI-10, VI-12, VIII-5, VIII-9, VIII-16, VIII-18, VIII-19, VIII-23, VIII-24, VIII-30, IX-12, IX-13, IX-14, IX-16, IX-21, IX-30, IX-32, IX-33, IX-39, IX-42, IX-44, IX-56, IX-58, IX-59, IX-60, X-5, X-8, X-9, X-10, X-12, X-13, X-14, X-15, X-16, X-24, X-25, X-26, X-27, X-31, XI-3, XI-5, XI-6, XI-7, XI-8, XI-9, XI-10, XI-11, XI-12, XI-13, XI-16, XI-17, XI-18, XI-19, XI-20, 2, 4, 6
Field Office Transportation Manager, VII-3, VII-6, VII-9
Grade line, X-28, X-30, X-33
Landfills, X-8
Legal office, IV-3, V-2, XI-3
Lien holder, VIII-33
LPA, VIII-14
Minority, III-2, III-3, IX-19
Move, IX-3, IX-5, IX-11, IX-12, IX-19, IX-21, IX-24, IX-30, IX-31, IX-32, IX-33, IX-34, IX-35, IX-36, IX-37, IX-40, IX-41, IX-42, IX-43, IX-44, IX-56, IX-68, IX-70, X-10, 3, 5
Negotiations, III-1, III-4, III-5, III-9, III-10, III-11, IV-1, IV-6, IV-7, VII-10, VII-16, VIII-2, VIII-5, VIII-13, VIII-14, VIII-15, VIII-16, VIII-17, VIII-18, VIII-19, VIII-20, VIII-21, VIII-23, VIII-27, VIII-28, VIII-29, VIII-30, VIII-

31, IX-1, IX-9, IX-10, IX-11, IX-20, IX-21, IX-24, IX-25, IX-28, IX-39, IX-41, IX-44, IX-46, IX-48, IX-49, IX-52, IX-53, IX-61, IX-64, IX-65, X-3, X-4, X-5, X-6, XI-4, 5
Out-of-state, 6
Parcel, II-4, II-9, II-10, VII-5, VII-7, VII-20, VIII-4, VIII-10, VIII-19, VIII-20, VIII-24, VIII-38, VIII-39, VIII-40, VIII-41, VIII-42, VIII-43, IX-50, X-17, X-21, X-27
Permit, III-2, III-5, VI-2, VI-11, VI-12, IX-33, IX-36, IX-68, X-9, X-25, X-28, X-30, X-34, XI-18
PGI, IV-5, VII-7, VII-8, VII-10, VII-15
Planning, VI-11, VII-3, VII-4, VIII-40, VIII-43, IX-33, IX-40, XI-4
Proration, VIII-35
Refacing, VIII-11
Regional Transportation Manager 1, II-17, VIII-5, VIII-7, VIII-15, VIII-24, VIII-25, VIII-33, VIII-34, VIII-35, VIII-36, VIII-40
Relocatee, II-5, IX-24, IX-26, IX-31, IX-32, IX-34, IX-41, IX-42
Relocation, 1, I-2, II-5, III-7, III-10, IV-1, IV-2, IV-3, IV-6, V-1, V-2, V-3, V-4, VII-3, VII-4, VII-5, VII-7, VII-8, VII-11, VIII-13, VIII-14, VIII-15, VIII-17, VIII-26, IX-1, IX-5, IX-6, IX-9, IX-10, IX-12, IX-13, IX-14, IX-15, IX-16, IX-17, IX-18, IX-19, IX-20, IX-21, IX-22, IX-23, IX-24, IX-25, IX-26, IX-27, IX-28, IX-29, IX-30, IX-31, IX-32, IX-33, IX-36, IX-37, IX-41, IX-42, IX-43, IX-44, IX-45, IX-47, IX-56, IX-63, IX-65, IX-66, IX-67, IX-68, X-9, X-18, XI-6, XI-7
Remediate, VIII-4, VIII-38, VIII-39, VIII-40, VIII-41, VIII-42, VIII-43
Remittitur, XI-12
Rental, IX-7, IX-17, IX-18, IX-19, IX-40, IX-47, IX-51, IX-52, IX-53, IX-54, IX-58, IX-63, IX-67, X-1, X-3, X-9, X-10, X-11, X-18
Replacement housing, V-4, VIII-25, VIII-26, IX-5, IX-6, IX-19, IX-21, IX-24, IX-25, IX-31, IX-46, IX-48, IX-51, IX-53, IX-54, IX-55, IX-56, IX-57, IX-58, IX-59, IX-61, IX-62, IX-63, IX-64, IX-65, IX-66, IX-68, X-10, XI-5, XI-7, XI-17
Residence, VIII-20, VIII-26, IX-1, IX-5, IX-8, IX-9, IX-10, IX-11, IX-19, IX-25, IX-27, IX-28, IX-31, IX-37, IX-45, IX-46, IX-47, IX-48, IX-49, IX-50, IX-51, IX-52, IX-53, IX-54, IX-55, IX-56, IX-57, IX-58, IX-59, IX-60, IX-61, IX-62, IX-64, IX-65, IX-66, IX-67, IX-68, X-6
Review, 1, I-2, II-7, II-8, II-10, II-12, II-13, II-18, III-7, III-10, IV-1, IV-3, IV-5, IV-6, VI-1, VI-6, VI-7, VI-8, VI-10, VI-12, VII-2, VII-4, VII-6, VII-7, VII-8, VII-10, VII-13, VII-14, VII-15, VII-16, VII-17, VII-18, VII-19, VII-20, VII-21, VII-22, VIII-7, VIII-11, VIII-14, VIII-15, VIII-16, VIII-18, VIII-20, VIII-26, VIII-27, VIII-28, VIII-41, VIII-42, IX-14, IX-16, IX-22, IX-23, IX-27, IX-31, IX-59, X-3, X-4, X-6, X-18, X-19, XI-4, XI-5, XI-6, XI-7, XI-8, XI-9, XI-11, XI-13, XI-14, XI-16, XI-20, 2, 3, 4, 6
Section chief, II-3, II-4, II-5, II-17, III-2, VII-5, VIII-18, VIII-21, VIII-22, VIII-23, VIII-25, VIII-26, VIII-27, VIII-33, IX-14, IX-16, IX-23, IX-27, IX-31, IX-32, IX-60, IX-69, X-4, X-5, X-6, X-7, X-8, X-11, X-12, X-13, X-14, X-18, XI-4, XI-8, 2, 4, 5
Sell Offs, VI-12, VIII-5
Seller, VIII-9, VIII-21, VIII-34, VIII-35, VIII-36, IX-49
Subgrade, VIII-8
Superfund, VIII-39
TDEC, VI-11, VIII-41, VIII-42
Tithes, IX-38
Title, II-8, IV-1, IV-4, VI-3, VI-6, VI-7, VII-9, VII-16, VIII-4, VIII-5, VIII-6, VIII-7, VIII-9, VIII-10, VIII-11, VIII-12, VIII-13, VIII-14, VIII-16, VIII-19, VIII-20, VIII-33, VIII-34, VIII-35, VIII-36, VIII-38, VIII-42, IX-11, IX-29, IX-50, IX-51, X-3, X-24, X-30, XI-3, XI-4, 3, 6
TPR, VII-3
Transportation Manager, II-10, VI-12, VII-6, VII-9, VII-10, VII-11, VII-13, VII-14, VII-15, VII-16, VII-17, VII-18, VII-19, VII-21, IX-13, IX-14, IX-23, XI-19
Transportation Manager 1, II-4, II-5, II-9, III-2, IV-3, IV-4, IV-5, IV-6, VI-7, VI-10, VI-12, VII-3, VII-10, VIII-5, VIII-7, VIII-9, VIII-15, VIII-24, VIII-25, VIII-30, VIII-33, VIII-34, VIII-35, VIII-36, VIII-40, VIII-41, VIII-42, IX-16, IX-23, IX-69, XI-4, XI-5, XI-8, XI-9, XI-10, XI-17, XI-18, 4, 5, 6
Director, VIII-14
Transportation Manager 1I, IX-16
Transportation Manager 2, III-5, IV-4, IV-7, VI-10, VIII-25, IX-23, IX-24, IX-69, XI-4
Director, IX-16
Transportation Manager I, VII-6, VII-7, VII-9, VII-13, VII-14, VII-15, VII-18, VII-21, X-8, X-9, X-16, X-19, X-25, X-28, X-31, XI-19, 2, 6
Transportation Manager II, X-4
Undisbursed, IX-58
Uneconomic, VII-2, VII-18, VII-20, VIII-2, VIII-7, VIII-16, VIII-17, VIII-18, VIII-21, VIII-22, VIII-42, X-19, X-27, X-28
Urban, VIII-17, IX-6, IX-18, IX-53, X-8
Voucher, II-4, II-5, II-18, IV-7, VIII-6, VIII-35, VIII-36, IX-57, X-9, X-14, XI-6, XI-17
Witness reports, XI-10, 6