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 Managers. There are four regional row field offices geographically located to address statewide needs. A Regional ROW Manager 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 that is unique to state highway agencies such as: *fiscal management*, *contract administration of appraisal and acquisition*, and *relocation*, *cost estimates of right-of-way* , *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 for displaced persons*, *property management*, *excess land disposal*, *preparation of contracts* and *working with the Attorney General's office to settle court cases*.

The four Regional ROW Managers report to the Headquarters ROW Director. Subordinate personnel have continuous contacts with the Right of Way Division Headquarters Office Personnel. The four row field offices generate much of the headquarters office work.

There is a constant dialog with a high volume of correspondence and reports between the Division Headquarters personnel and the 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 to meet the deadlines for a fast-paced 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 employees, 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

This page intentionally blank

Table of Contents

Original Issue: April 1997
Revised: April 2020

June 2025

This page intentionally blank

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, to inform the Federal Highway Administration of our policies and procedures, and to ensure compliance with 49 CFR Part 24 and 23 CFR Part 710. 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. Together with the Right-of-Way User's Guide, it provides a detailed discussion of the process by which all major right-of-way functions are to be accomplished. Its requirements provide for full compliance with applicable laws and their 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 1, 2, and 3 of the Manual include discussions on several 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 1 deals with the organization of the office depicted with tables of organization for each office. Chapter 2 incorporates many of the administrative tasks of the Division and in addition, describes its financial responsibilities. Chapter 3 incorporates the general requirements for all contracts administered by the Division of Right-of-Way.

Chapter 4, 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 4 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 will merely supersede the provisions of some portion of the manual and will not incorporate a formal revision (see Chapter 2 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.

This page intentionally blank

CHAPTER 1

ORGANIZATION

1.1. GENERAL

The Right-of-Way Division reports to the Executive Director Engineer. The Division consists of the Right-of-Way Office and the Utilities Office. The Headquarters Office oversees administration of policy and procedures and some acquisition, relocation assistance and surplus land activities. 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 4 and 5 of this Chapter. There may be some minor deviation from the charts by the various offices.

1.2. 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.

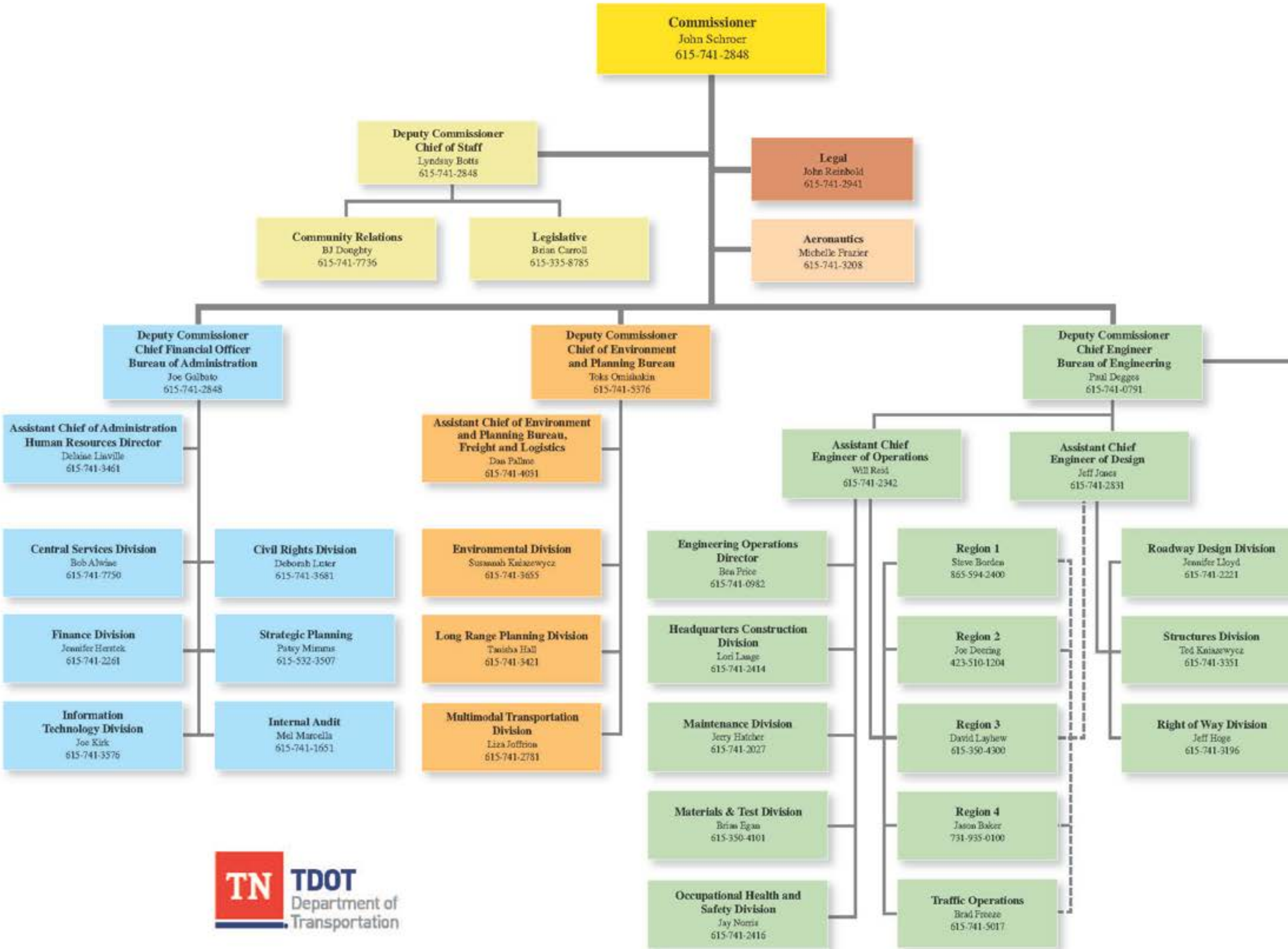
The field offices are the operational arms of the Division. The regional personnel are directly responsible for the expeditious acquisition of rights-of-way, relocation assistance for displaced persons, utility adjustments, property management and excess lands monitoring/reporting in accordance with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

The headquarters 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.

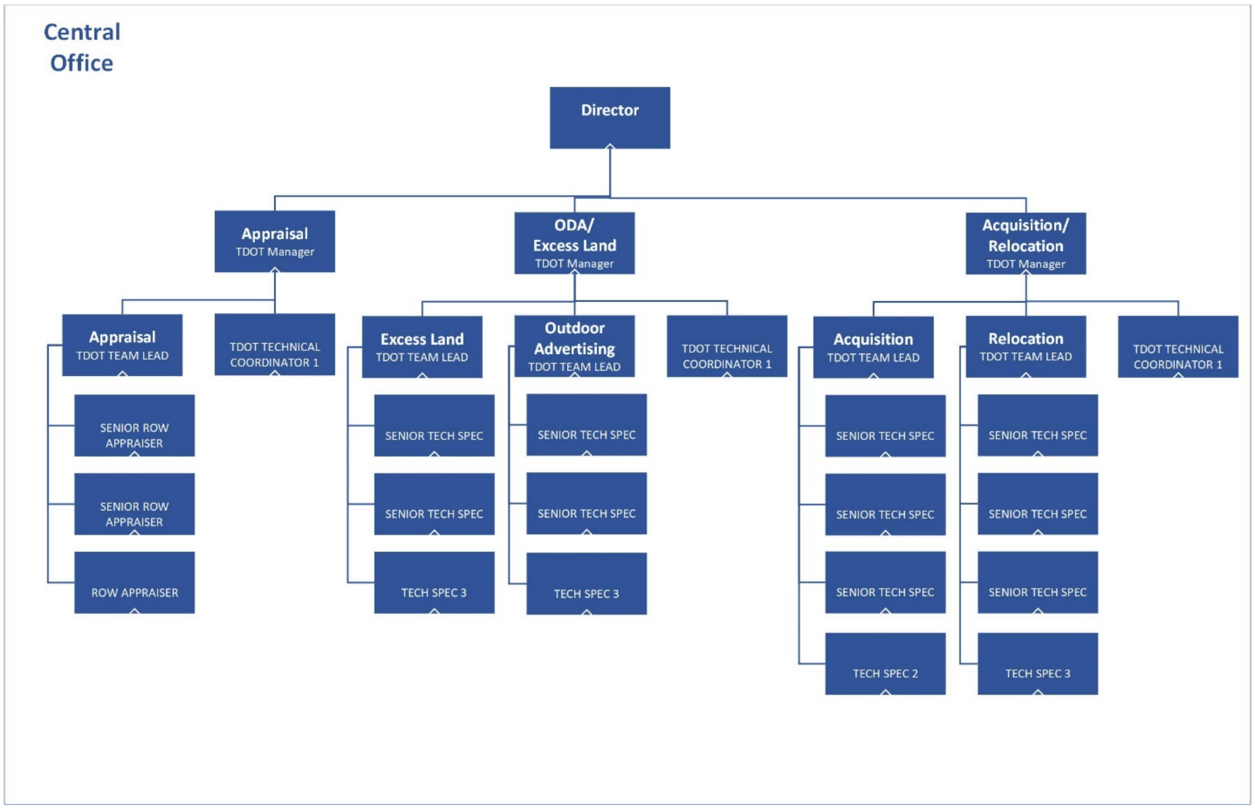
The detailed duties and responsibilities of each office and of the personnel within the Offices are outlined throughout the remaining chapters of this manual.

ORGANIZATIONAL CHARTS

1.3. DEPARTMENT OF TRANSPORTATION TABLE OF ORGANIZATION

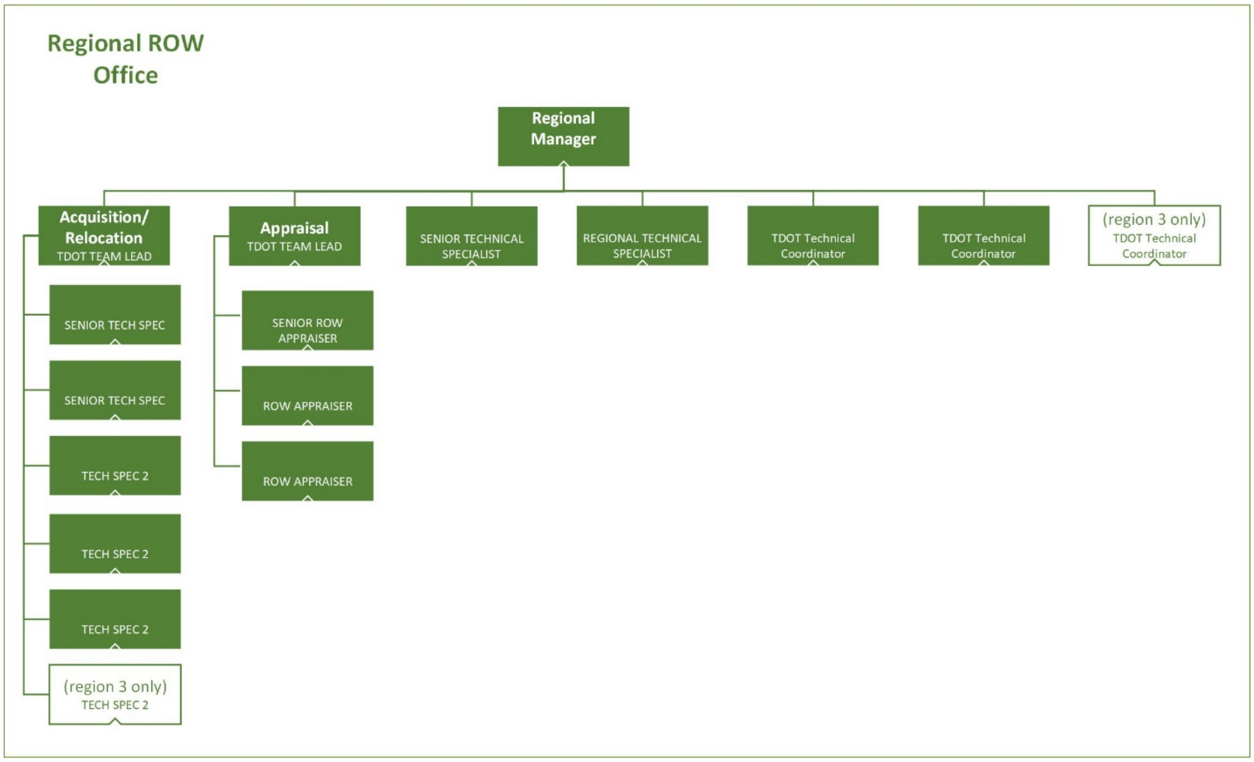


1.3. CENTRAL OFFICE RIGHT-OF-WAY DIVISION TABLE OF ORGANIZATION



1.5. UNIFORM REGIONAL RIGHT-OF-WAY FIELD OFFICE

TABLE OF ORGANIZATION



CHAPTER 2

ADMINISTRATIVE AND FINANCIAL PROCEDURES

CHAPTER 2

ADMINISTRATIVE AND FINANCIAL PROCEDURES

2.1 REPORTS & REPORTING REQUIREMENTS

2.1.1. GENERAL

In the Division of Right-Of-Way, several 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 most reports and/or reporting requirements that are generated on a regular basis.

2.1.2. MULTI-PROJECT SCHEDULING REPORTS

The Department uses TDOT 360 system to plan, schedule and monitor the progress of highway projects. This is a computer-generated system containing all proposed highway projects for a ten-year period. The system is based on predetermined job standards for all major functions. Several management reports are generated from the schedule. The schedule is maintained and updated by responsible personnel, and the individual section in each of the field offices is responsible for recording the items that come under their responsibility. It is important that these updates be complete and as accurate as possible and that it is noted that the central office staff completes certain activities.

The report 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.

2.1.3. 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.

2.2. RECORD KEEPING

2.2.1. 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 Technical Coordinator. At the discretion of the Regional Manager, responsibility for any or all the official files may be delegated to one or more sections . The files are to be made available for inspection at reasonable times by authorized State or Federal Representatives. The records system must contain, at a minimum, project files, multi-project records, general files for pre-project activity, and a voucher control system. The requirements for the voucher control system are described elsewhere in this chapter. The requirements for the remaining items are as described below.

2.2.2. Project Files

2.2.2.1. General

While it is a common and advisable practice for the several operational employees 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 as well as being entered in the ROW database. It is suggested that duplicates be made of all pertinent material and that one copy be transferred to the official file immediately. Each field office must establish a system 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.

2.2.2.2. File Maintenance

To establish a degree of uniformity among the field offices, all project files should be maintained as described in the User's Guide.

In addition to the general folders, a separate folder should be established for each acquisition and for each relocation on the project.

2.2.2.3. File Identification

For control purposes all file folders must be adequately labeled.

Refer to the User's Guide for the suggested method for labeling and identifying folders.

2.2.3. 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. the Integrated Right-of-Way Information System (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.

2.2.4. 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.

2.2.5. 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 from project closeout. 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 and reasons for the charge or credit. The central office will advise the field office as to how the charge or credit will be handled.

2.3. MANUAL CHANGES

2.3.1. CENTRAL OFFICE PROCEDURES

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 when a significant change in Departmental Policy requires the revision of an operating procedure. 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, as well as the procedural differences and their impact. All C.O.P.'s must be reviewed and approved by FHWA.

2.3.2. ANNUAL EVALUATION

By 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 because of either internal or external investigations, suggestions or recommendations 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 the 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.

2.4 RIGHT-OF-WAY AUTHORIZATIONS

2.4.1. 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:

Phase 1: Authorization For Incidentals--Includes all preliminary right-of-way activities such as title reports, row cost estimates and other pre acquisition activities as determined.

This authorization will normally occur soon after the Design Public Hearing. After changes resulting from the hearing are made, Functional Plans for Incidentals are printed and issued. These plans initiate the incidental authorization process.

Phase 2: Authorization To Appraise--Includes all preliminary right-of-way activities, including property appraisals.

This authorization will normally be issued only after the Functional Plans have been completed and approved. This will occur in most cases shortly after the field review .

Phase 3: Authorization To Acquire--Includes all right-of-way activities through the acquisition of rights-of-way.

In the majority of cases both Phase 2 and 3 are issued at the same time in one authorization.

Refer to the User's Guide for additional information about right-of-way authorizations.

2.4.2. THE AUTHORIZATION PROCESS

Federal-Aid and State Funded Projects are handled alike for authorization purposes. 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 e-mailed to the central office and the ROW field office will be the authorization for initiation of incidental work. The acquisition/appraisal authorization on projects is made by approval of the funding form from the Program Development and Administration Division. The Program Development and Administration Division will transmit the acquisition/appraisal authorization to the Right-of-Way Division Director and appropriate regional Right-of-Way Office.

2.4.3. SPECIAL CASES

2.4.3.1. 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 funding form which is sent to the field office. It is incumbent on the Regional ROW Manager to ensure that only those activities authorized are initiated.

2.4.3.2. Hardship Acquisition/Protective Buying

In extraordinary cases or emergency situations, the Right-of-Way Division Director or designee and/or the Regional ROW Manager 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:

A. 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.

B. Hardship Acquisitions: The Department must accept and concur with a request for a hardship acquisition based on a property owner's written submission that:

1. 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

2. 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.

Obtaining Federal-Aid participation requires full compliance with the following conditions. 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:

a. The project is included in the currently approved Statewide Transportation Improvement Plan (STIP);
b. The Department has complied with applicable public involvement requirements in 23 CFR parts 450 and 771;
c. Determination has been completed for any property subject to the provisions of 23 U.S.C. 138; and

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

2.4.3.3. Environmental Decisions

Acquisition of property under this section is subject to review under 23 CFR 771 and shall not influence the environmental review of a project, including the decision relative to the need to construct the project or the selection of a specific alternative.

The Regional ROW Manager, 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 Acquisition/Relocation Manager 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 Federal Highway Administration for review and approval. Upon receipt of FHWA approval it will be submitted 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.

2.4.3.4. 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.

2.4.3.5. Early Acquisition

The Department may initiate acquisition of real property interests for a proposed transportation project at any time it has the legal authority to do so. Early Acquisition Projects may be undertaken before the completion of the environmental review process for the proposed transportation project for corridor preservation, access management, or other purposes. Subject to the requirements in this section, the Department may fund Early Acquisition Project costs entirely with State funds with no Federal participation; use State funds initially but seek Federal credit or reimbursement when the acquired property is incorporated into a transportation project eligible for Federal surface transportation program funds; or use the normal Federal-aid project agreement and reimbursement process to fund an Early Acquisition Project pursuant to paragraph D. of this section. The early acquisition of a real property interest under this section shall be carried out in compliance with all requirements applicable to the acquisition of real property interests for federally assisted transportation projects.

A. State-funded/No Federal credit or reimbursement:

The Department may carry out early acquisition entirely with State funds and later incorporate the acquired real property into a transportation project or program for which the Department receives Federal financial assistance or other Federal approval under title 23 for other transportation project activities. In order to maintain eligibility for future Federal assistance on the project, early acquisition activities funded entirely without Federal participation must comply with the requirements of paragraph B.1.- 5., below.

B. State-funded; Eligible for future credit:

Subject to § 710.203(b) (direct eligible costs), § 710.505(b), and § 710.507 (State and local contributions), Early Acquisition Project costs incurred by the Department at its own expense prior to completion of the environmental review process for a proposed transportation project are eligible for use as a credit toward the non-Federal share of the total project costs if the project receives Federal surface transportation program funds, and if the following conditions are met:

1. The property was lawfully obtained by the Department agency;
2. The property was not land described in 23 U.S.C. 138, (4f properties);
3. The property was acquired, and any relocations were carried out, in accordance with the provisions of the Uniform Act and regulations in 49 CFR part 24;
4. The State agency complied with the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4);
5. The State agency determined, and FHWA concurred, the early acquisition did not influence the environmental review process for the proposed transportation project, including:
    a. The decision on need to construct the proposed transportation project;

b. The consideration of any alternatives for the proposed transportation project required by applicable law; and

c. The selection of the design or location for the proposed transportation project; and

6. The property will be incorporated into the project for which surface transportation program funds are received and to which the credit will be applied.

C. State-funded; Eligible for future reimbursement:

Early Acquisition Project costs incurred by the Department prior to completion of the environmental review process for the transportation project are eligible for reimbursement from Title 23 funds apportioned to the State once the real property interests are incorporated into a project eligible for surface transportation program funds if the State agency demonstrates, and FHWA concurs, that the terms and conditions specified in the requirements of paragraph B.1.- 5., above, and the requirements of § 710.203(b) (direct eligible costs) have been met. The State agency must demonstrate that it has met the following requirements, as set forth in 23 U.S.C. 108(c)(3):

1. Any land acquired, and relocation assistance provided, complied with the Uniform Act;

2. The requirements of Title VI of the Civil Rights Act of 1964 have been complied with;

3. The State has a mandatory comprehensive and coordinated land use, environment, and transportation planning process under State law and the acquisition is certified by the Governor as consistent with the State plans before the acquisition;

4. The acquisition is determined in advance by the Governor to be consistent with the State transportation planning process pursuant to 23 U.S.C. 135;

5. The alternative for which the real property interest is acquired is selected by the State pursuant to regulations issued by the Secretary which provide for the consideration of the environmental impacts of various alternatives;

6. Before the time that the cost incurred by a State is approved for Federal participation, environmental compliance pursuant to the National Environmental Policy Act (NEPA) has been completed for the project for which the real property interest was acquired by the State, and the acquisition has been approved by the Secretary under this Act, and in compliance with section 303 of Title 49, section 7 of the Endangered Species Act, and all other applicable environmental laws that shall be identified by the Secretary in regulations; and

7. Before the time that the cost incurred by a State is approved for Federal participation, the Secretary has determined that the property acquired in advance of Federal approval or authorization did not influence the environmental assessment of the project, the decision relative to the need to construct the project, or the selection of the project design or location.

D. Federally Funded Early Acquisition

The FHWA may authorize the use of funds apportioned to the Department under Title 23 for an Early Acquisition Project if the Department certifies, and FHWA concurs, that all of the following conditions have been met:

1. The Department has authority to acquire the real property interest under State law; and

2. The acquisition of the real property interest:

    a. Is for a transportation project or program eligible for funding under Title 23 that will not require FHWA approval under 23 CFR 774.3;

    b. Will not cause any significant adverse environmental impacts either as a result of the Early Acquisition Project or from cumulative effects of multiple Early Acquisition Projects carried out under this section in connection with a proposed transportation project;

    c. Will not limit the choice of reasonable alternatives for a proposed transportation project or otherwise influence the decision of FHWA on any approval required for a proposed transportation project;

    d. Will not prevent the Department from making an impartial decision as to whether to accept an alternative that is being considered in the environmental review process for a proposed transportation project;

    e. Is consistent with the Department's transportation planning process under 23 U.S.C. 135;

    f. Complies with other applicable Federal laws (including regulations);

    g. Will be acquired through negotiation, without the threat of, or use of, condemnation; and

    h. Will not result in a reduction or elimination of benefits or assistance to a displaced person required by the Uniform Act and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).

3. The Early Acquisition Project is included as a project in an applicable transportation improvement program under 23 U.S.C. 134 and 135 and 49 U.S.C. 5303 and 5304.

4. The environmental review process for the Early Acquisition Project is complete and FHWA has approved the Early Acquisition Project. Pursuant to 23 U.S.C. 108(d)(4)(B), the Early Acquisition Project is deemed to have independent utility for purposes of the environmental review process under NEPA. When the Early Acquisition Project may result in a change to the use or character of the real property interest prior to the completion of the environmental review process for the proposed transportation project, the NEPA evaluation for the Early Acquisition Project must consider whether the change has the potential to cause a significant environmental impact as defined in 40 CFR 1508.27, including a significant adverse impact within the meaning of paragraph (e)(2)(ii) of this section. The Early Acquisition Project must comply with all applicable environmental laws.

E. Prohibited Activities

Except as provided in this paragraph, real property interests acquired under paragraph C. of this section and pursuant to 23 U.S.C. 108(d) cannot be developed in anticipation of a transportation project until all required environmental reviews for the transportation project have been completed. For the purpose of this paragraph, "development in anticipation of a transportation project" means any activity related to demolition, site preparation, or construction that is not necessary to protect public health or safety. With prior FHWA approval, the Department may carry out limited activities necessary for securing real property interests acquired as part of an Early Acquisition Project, such as limited clearing and demolition activity, if the activities are necessary to protect the public health or safety and are considered during the environmental review of the Early Acquisition Project.

F. Reimbursement

If Federal-aid reimbursement is made for real property interests acquired early under this section and the real property interests are not subsequently incorporated into a project eligible for surface transportation funds within the time allowed by 23 U.S.C. 108 (a)(2), FHWA must offset the amount reimbursed against funds apportioned to the State.

G. Relocation assistance eligibility

In the case of an Early Acquisition Project, a person is considered to be displaced when required to move from the real property as a direct result of a binding written agreement for the purchase of the real property interest(s) between the acquiring agency and the property owner. Options to purchase and similar agreements used for Early Acquisition Projects that give the acquiring agency a right to prevent new development or to decide in the future whether to acquire the real property interest(s), but do not create an immediate commitment by the acquiring agency to acquire and do not require an owner or tenant to relocate, do not create relocation eligibility until the acquiring agency legally commits itself to acquiring the real property interest(s).

2.5 RIGHT-OF-WAY PAYROLL CHARGES

Refer to the User's Guide for information and instructions for completing time sheets as well as the review and approval process.

2.6 RIGHT-OF-WAY EXPENDITURES

Refer to the User's Guide for information and instructions about right-of-way expenditures, completing Form DT-1606, completing vouchers within the Edison system, and Federal-Aid Pre Audit Ineligibility Notification.

CHAPTER 3

CONTRACTS

CHAPTER 3

CONTRACTS

3.1 CONTRACTS

3.1.1. GENERAL

This chapter of the manual describes 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.

The Department's policy is that the procurement of services will be conducted in a manner that provides maximum free and open competition without regard to the dollar value. The procedures discussed in the remainder of this chapter, elsewhere in the manual, and the Right-of-Way User's Guide have been designed with this policy in mind.

3.1.2. CONTRACTING WITH DBE or WBE FIRMS

The Department's policy is to award a fair share of contracts to DBE or WBE businesses. Accordingly, the procedures have been written to ensure that DBE or WBE 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:

3.1.2.1. Include minority and female businesses on solicitation lists.

3.1.2.2. Ensure that minority and female businesses are solicited whenever they are potential sources.

3.1.2.3. When economically feasible, divide total requirements into smaller tasks or quantities to permit minority and female participation.

3.1.2.4. Where requirements permit, establish delivery schedules which will encourage participation by minority and female businesses.

3.1.3. 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, Headquarters office will be 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 Team Lead for appropriate action concerning inclusion on the solicitation list.

3.1.4 CONTRACTING PROCEDURES

3.1.4.1. General

All procurement transactions, without regard to the 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.

A. Small Purchase Procedures

These procedures are to be utilized for the procurement of services that are estimated to cost $100,000.00 or less in the aggregate.

A. 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 where the details of that function are discussed.

b. From the solicitation list for the applicable 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:

   i. Location of the potential supplier.
   ii. Availability of the supplier for work in the locale.
   iii. Minority or female status of the potential supplier.
   iv. Recent or current work under contract with the potential supplier.

c. IF THERE ARE QUALIFIED DBE or WBE FIRMS NOT CURRENTLY UNDER CONTRACT, AT LEAST ONE MUST BE SELECTED FOR WRITTEN SOLICITATION OF A BID PROPOSAL.

   i. The proposal will be submitted to the selected potential suppliers.
   ii. On the date established in the proposal, all bids will be opened and evaluated.
   iii. The contract will be awarded to the lowest bid. All other bidders will be promptly notified.

d. ANY OR ALL BIDS MAY BE REJECTED FOR GOOD CAUSE. IF, HOWEVER, BIDS 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.

B. Competitive Negotiations

This procedure may be followed for the procurement of services costing $25,000.00 or less in the aggregate, when written solicitation is not feasible.

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

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

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

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

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

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

2. Formal Advertising

This procedure is to be followed for the procurement of services estimated to cost more than $100,000.00 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 ROW Manager or a designee.

3.1.5. 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 a contract with the individual.

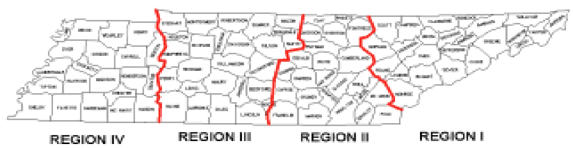
The prohibition against employment and contracting does not apply to previous employees that retired from State employment through the Employees Retirement Program and draws an annuity. Former employees may check with the Personnel Specialist relative to contracting after retirement.

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 Regional Right of Way Manager where consideration for employment is desired. 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: https://www.tn.gov/tdot/civil-rights/small-business-development-program.html

If you have any questions about this notice, please contact the Right-of-Way Manager at the applicable region office:

REGION I
Ms. Sheena Foster
Right-of-Way Manager
7345 Region Lane
Knoxville, TN 37901

REGION III
Mr. Houston Greer
Right-of-Way Manager
6601 Centennial Blvd.
Nashville, TN 37243-0360

REGION II
Mr. Brad Scott
Right-of-Way Manager
P.O. Box 22368
Chattanooga, TN 37422-2368

REGION IV
Ms. Sara Norville
Right-of-Way Manager
300 Benchmark Place
Jackson, TN 38301

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

3.2. RIGHT-OF-WAY CONSULTANTS

3.2.1. PURPOSE

Negotiated contracts for right-of-way services are covered by the Federal Brooks Act and allowed under the Tennessee Code Annotated 12-4-109. When the need arises to employ a consultant, the appropriate Headquarters Manager (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."

3.2.2. 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."

3.2.2.1. Application

A. 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 (301-01) can be found at:

https://www.tn.gov/tdot/business-redirect/consultantinfo.html

The Design Office distributes a copy of the DOT-CS-100 to the appropriate Headquarters ROW Manager in the Right-of-Way Division's Headquarter 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. 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 criteria considered in the procurement process, see TDOT's policy for STANDARD PROCUREMENT OF ENGINEERING AND TECHNICAL SERVICES." Said "Policy" can be found at:

https://www.tn.gov/tdot/business-redirect/consultantinfo.html

The Design Office distributes a copy of the DT-1742 to the appropriate Headquarter's ROW Manager in the Right-of-Way Division's Headquarter 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.

C. Approval

The proper Headquarter 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. <u>No notice of expiration of pre-qualification will be given by TDOT</u>.

D. 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 Headquarter office and do not require a new DOT-CS-100.

E. 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 Headquarter Office and do not require a new DT-1742.

3.2.3. CONSULTANT SELECTION

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

3.2.3.1. 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.

3.2.3.2. 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.

A. 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.

B. Appraisal

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

3.2.4. CONTINUING CONTRACTS

By utilizing the Tennessee Department of Transportation (TDOT) policy for "Standard Procurement of Engineering and Technical Services," the Headquarter 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.

3.2.5. 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.

3.2.6. ADMINISTRATIVE SETTLEMENTS FOR ROW SERVICES CONTRACTS

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

3.2.6.1. 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 Headquarter l Right-of-Way Office in writing, and each time extension may not exceed two (2) months without being re-approved by the Headquarter Right-of-Way Office.

3.2.6.2. Authorization to Make Administrative Settlements

The Headquarter Right-of-Way Office designee will discuss the consultant's final invoice with the Regional ROW Manager 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 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 it to the Finance Office requesting payment for the approved amount.

3.2.6.3. 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:

A. 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.

B. Written approval from the Headquarter l 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.

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

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

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

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

CHAPTER 4

PROJECT DEVELOPMENT

CHAPTER 4

PROJECT DEVELOPMENT

4.1 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 the operating element in the Department that is 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.

4.2 PRE-ACQUISITION

4.2.1. 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 regional 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 households 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.

4.2.2. Design & Corridor Public Meeting

The Community Relations Division schedules this activity. Notices are posted to the TDOT website, in newspapers local to the project, and on social media. The regional Right-of-Way office is copied on the notification and will normally have a representative attend this meeting. It is especially important to have a ROW representative in attendance if project displacements are anticipated.

4.2.3. Functional Plans Field Review

Notification of this activity is by memorandum from the Design Division issued concurrently to both the Headquarter office and the regional office. It is the responsibility of the Regional ROW Manager 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.

4.2.4. Right-of-Way Cost Estimate

The same memorandum that schedules the Line and Grade Plans or the Functional Plans Field Review initiates this activity. The regional 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.

4.2.5. Authorization for Incidentals

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

4.2.6. Title Work

This activity is initiated by the Regional ROW Manager immediately after receipt of functional 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.

4.2.7. Proposal to Local Government

It is the responsibility of the Regional TDOT Team Lead to generate Right-of-Way proposals and resolutions as needed. The regional TDOT Team Lead will ensure that all documents are executed by the appropriate local officials and forwarded to the Headquarters ROW Office. The Headquarters Technical Coordinator will circulate the documents to the Legal office for approval and the Commissioner’s office for signatures.

4.2.8. Utility Service Connection Determination

This activity is the responsibility of the regional office project team. 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. This process shall begin with Authorization of Incidental Funding and continue as outlined in Chapter 10, Pre-Acquisition Activities.

4.3. ACQUISITION STAGE

4.3.1. Right-of-Way Plans (Functional Plans) Issued

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

4.3.2. Authorization To Appraise and Acquire

The Regional ROW Manager 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 the funding authorization form.

4.3.3. Preliminary Group Inspection (PGI)

The Regional Appraisal Team Lead 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.

4.3.4. Stake Right-of-Way

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

4.3.5. Deed Preparation

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

4.3.6. Right-of-Way Public Meeting

It is the responsibility of the regional office TDOT Team Lead 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.

4.3.7. Appraisal Work

The Headquarter Appraisal Manager of the Headquarter l 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.

4.3.8. Salvage Appraisal

This is the responsibility of the regional row Headquarter Appraisal Manager 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.

4.3.9. Appraisal Review

The activity is the joint responsibility of the regional appraisal 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.

4.3.10. Negotiations

The regional row 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.

4.3.11. 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 at any time after incidental authorization. For example, contacts may be made with potential displaced persons after the initial survey to obtain information for the relocation plan. Much of the preliminary activity, however, is initiated by receipt of the Functional 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 displaced person in finding suitable replacement property. Actual payments are only made after the displaced person becomes eligible.

4.3.12. Closing

The Regional ROW Manager or 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.

4.3.13. Condemnation

Condemnation activity is initiated by the project team. The Regional ROW Manager 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 ROW Manager or designee. After approval, the voucher request is sent to the accounts section. The Regional ROW Manager or designee is responsible for notifying the property owner that condemnation is eminent. He/she 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.

4.3.14. Property Inventory and Clearance

This activity is the responsibility of the Regional field office project team and Regional ROW Acquisition/Relocation Team Lead and is initiated to inventory and inspect the vacated property and arrange for clearance of the improvements.

4.3.15. Right-of-Way Certification

The Headquarters l 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 is 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 with 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 with 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 displaced persons adequate replacement housing.

OR

6. Relocation advisory assistance was not required.

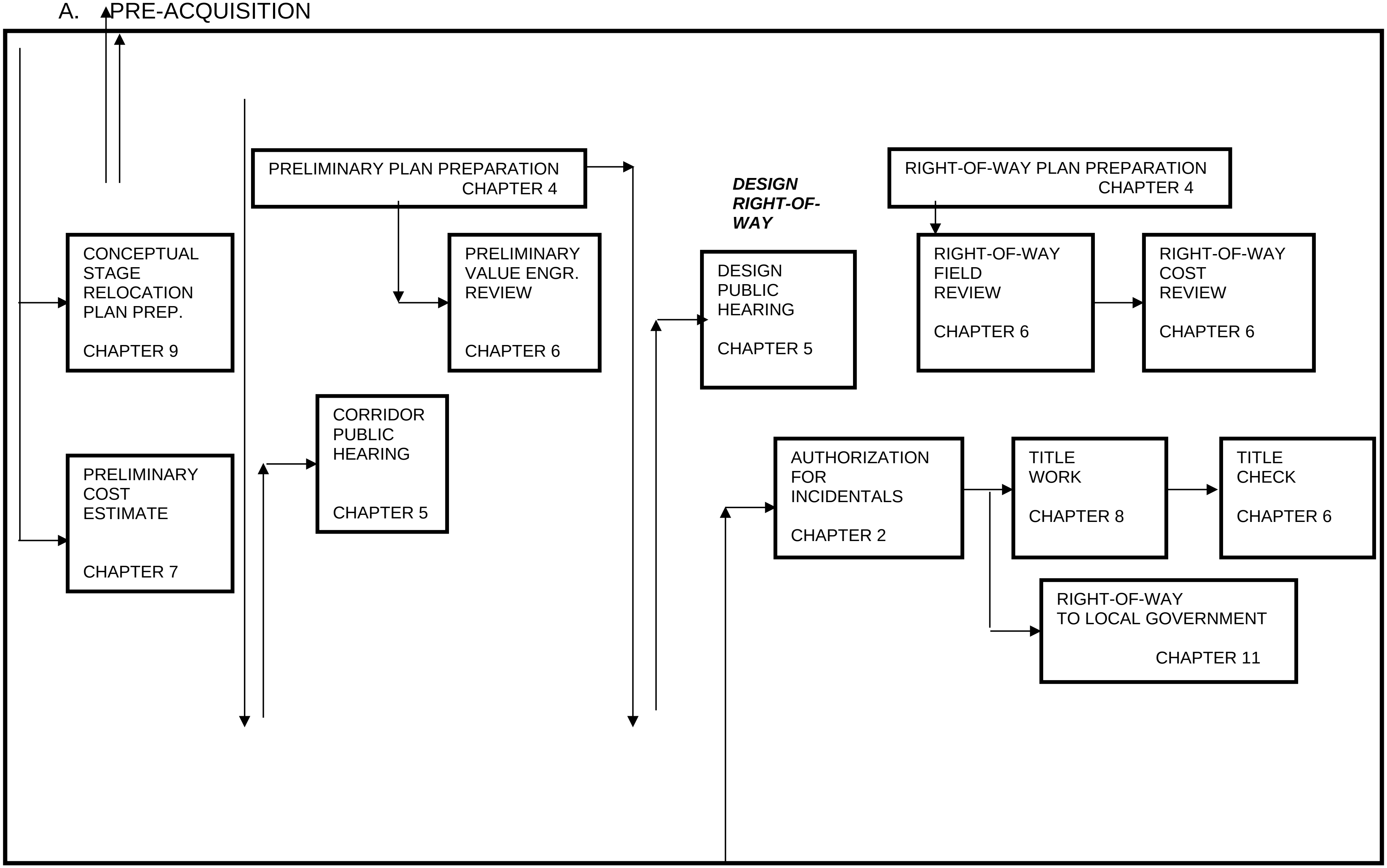
If certification is made without rights to occupy and use of all necessary rights-of-way, a letter will be prepared outlining why moving forward with the project is in the best interest of the public. This public interest justification (PIJ) will also include anticipated availability dates for all rights-of-way 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.

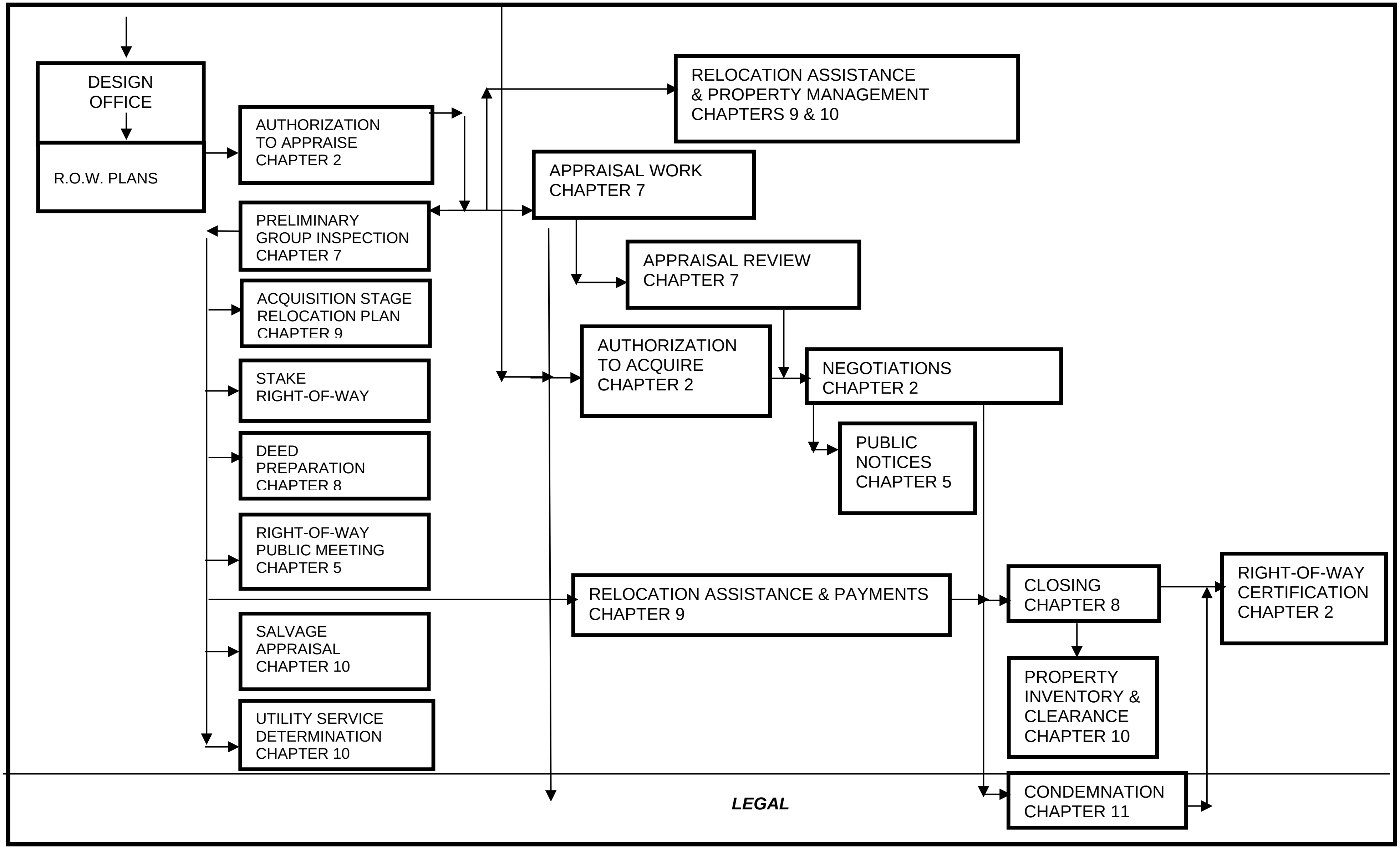
All other PIJ's will be reviewed and approved by the Directors of TDOT's Right-of-Way and Construction divisions prior to submission to TDOT's Chief Engineer for final approval.

4.4. FLOW CHARTS

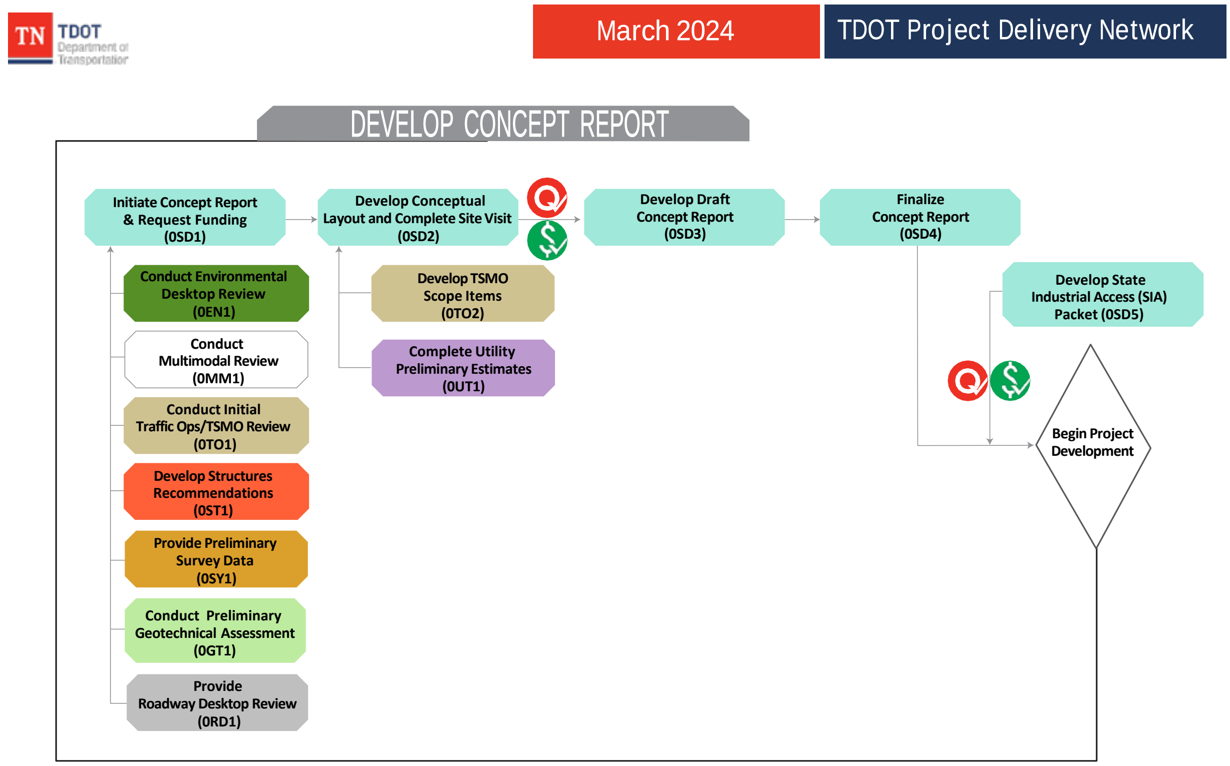
A. PRE-ACQUISITION



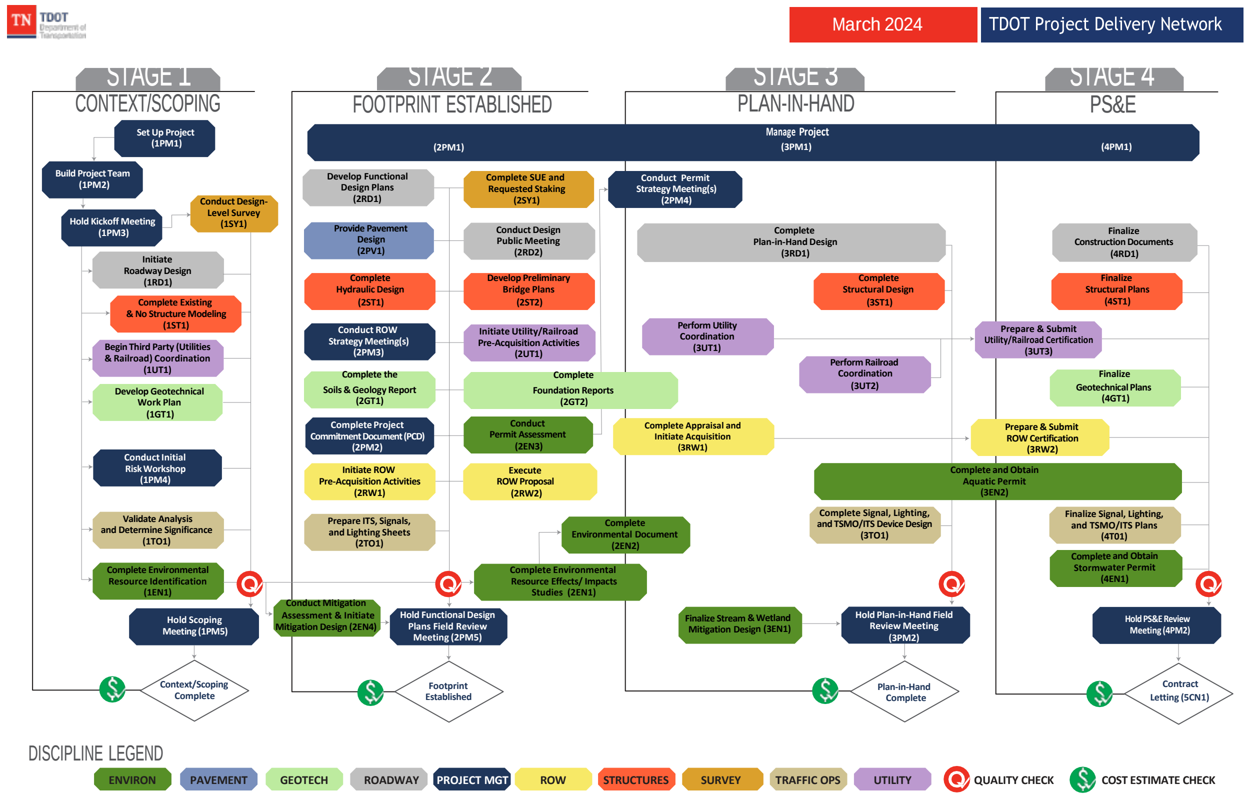
B. ACQUISITION STAGE



C. TDOT PROJECT DELIVERY NETWORK -- DEVELOP CONCEPT REPORT



D. TDOT PROJECT DELIVERY NETWORK – STAGING



CHAPTER 5

PUBLIC INFORMATION

CHAPTER 5

PUBLIC INFORMATION

5.1 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.

5.2 PUBLIC MEETINGS

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 more than one public meeting, a NEPA public meeting and a design public hearing, or hold a 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 11, the Headquarter office is provided advance notification of public hearings by the Legal Office. The Regional ROW Manager 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/she will ensure that adequate quantities of the acquisition and relocation brochures are available for distribution to all interested parties. He/she will also be prepared to respond to questions on the acquisition process and/or the relocation program.

5.3 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 Regional Acquisition/Relocation Team Lead.

The meeting should 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 Regional Acquisition/Relocation Team Lead, and any other representatives deemed appropriate by the Regional Acquisition/Relocation Team Lead .

The Regional Acquisition/Relocation Team Lead 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 Plan in Hand Plans, but it may be advanced or delayed as necessary.

5.4 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 Plan in Hand Plans the Regional Acquisition/Relocation Team Lead 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 9. Form-101 will be issued to all displaced persons in accordance with the procedures outlined in Chapter 9.

5.5 BROCHURES

5.5.1 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.

5.5.2 Acquisition Brochure

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

5.5.3 Relocation Brochure

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

CHAPTER 6

FUNCTIONAL DESIGN (RIGHT-OF-WAY) PLANS

CHAPTER 6

FUNCTIONAL DESIGN (RIGHT-OF-WAY) PLANS

6.1 PURPOSE

The purpose of the Functional Design Plan (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.

6.2 PLAN REQUIREMENTS

6.2.1. General

Departmental requirements for details that should be shown in a satisfactory set of Functional Design Plan include, but are not limited by, Federal requirements for Federal-aid projects. Requirements set forth below are considered appropriate for all Functional Design Plan

Functional Design 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.

Refer to the User's Guide for the information that the plans should show for each tract to be acquired.

The size, form, and arrangement of Functional Design 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 Functional Design 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 Functional Design Plans.

6.2.2. Composition of the Functional Design Plan

Refer to the User's Guide for the general standards for the makeup of the Acquisition Stage Right-of-Way Plan.

6.3 ISSUANCE OF PLANS

6.3.1. 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 2, Right-of-Way Authorizations, Special Cases, where the normal development process is not followed.

6.3.2. Functional Design Field Review

Usually before the design hearing, the Design Division will schedule a field review of the functional plans. Both the Headquarters Office and Field Office will be notified of the inspection by memo and a copy of the plans. It is the responsibility of the Regional ROW Manager to ensure that right-of-way is represented at the review.

6.3.3. Functional Design Plans

Sometime after the Design Hearing, Functional Design Plans should be issued by the Design Division. Copies of the plan will be distributed to both the Headquarter office and the appropriate field office. Functional Design plans may be used in the accomplishment of a number of incidental activities including the following:

6.3.3.1. Authorization to proceed with incidentals.

6.3.3.2. Proposal to local government.

6.3.3.3. Title Reports.

6.3.4 Functional Design Plan Field Review

After the design public hearing the Design Division will schedule a field review of the Functional Design Plan. Both the Headquarter l 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 Regional ROW Manager to ensure that Right-of-Way is represented at this review. It is important that these plans be reviewed from a right-of-way standpoint 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 significant items that should be included in the Functional Design Plan. Any of these items not included should be noted and presented in the field review.

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

6.3.4.2. Station and offset distance for each break including access control, points of curvature, and points of tangent, etc., in the proposed right-of-way line and permanent easement.

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

6.3.4.4. 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.

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

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

6.3.4.7. 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).

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

6.3.4.9. 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/she should also ensure that the table of acquisition shows the appropriate units for all areas. There may be times when the standard described in the User's Guide for the composition of the Right-of-Way Plan referenced in Section 6.2.3 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.

6.3.5. Right-of-Way Plan Check

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

6.3.6. Functional Design Plans

After receipt of the above noted "plan check letter," the regional Design office will ensure that all appropriate changes are made.

" These plans will not, except in extreme cases, be issued until after the plan check letter has been submitted. 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 Functional Design 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.

6.3.7. Hardship Acquisition/Protective Buying or Total Take Authorizations

While the normal plan development process is under way, special circumstances as outlined in Chapter 2, Section 2.4.3. may necessitate that a special right-of-way plan incorporating only certain tracts be developed. These special plans will normally be issued as Functional Design 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 Functional Design Plans.

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

6.4 PLANS REVISIONS

6.4.1 Departmental Coordination

6.4.1.1. 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. 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 the field offices must, 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 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.

6.4.1.2. Plan Revisions Prior to the Functional Design Plans

Prior to the issuance of Functional Design 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 ROW Manager or designee.

6.4.1.3. Plan Revisions Prior to Construction Letting

Before the project is let to construction contract, all Plan Revision Requests must be submitted to the Regional ROW Manager who will review the request. Review responsibility may be delegated to the Regional Acquisition/Relocation Team Lead . 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/she 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/she might suggest to the originator that he/she consider the modification in the proposed plan revision.

6.4.1.4. 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 ROW Manager 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.

6.4.1.5 Plan Revisions for Tract Mitigation

The Tennessee Department of Environment and Conservation (TDEC) 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 ROW Manager. 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 Functional Design 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 Functional Design 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 Resources, 11th Floor, Tennessee Tower, 312 Rosa L. Parks Ave, 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 Section 6.5 of this Chapter. The copy of the original permit will remain on file in the Environmental Planning and Permitting Division.

Refer to the User's Guide for Central Office and Field Office Procedures related to plans revisions.

6.5 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 ROW Manager shall cause the Functional Design 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 ROW Manager 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.

CHAPTER 7

APPRAISAL & APPRAISAL REVIEW

CHAPTER 7

APPRAISAL & APPRAISAL REVIEW

7.1.COST ESTIMATES

7.1.1. 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 should be made 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. This is called the Right-of-Way Cost Estimate. 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 cost estimates will, under most conditions, be developed by the regional office appraisal staff.

7.1.2. Estimate of Right-of-Way Costs

7.1.2.1. 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.”

7.1.2.2. Developing the Estimate of Right-Of-Way Costs

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 realistic values 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 and potential uneconomic remnants anticipated. The separate estimates should then be appropriately combined for use with ROW Form-44.

Refer to the User’s Guide for form instructions.

7.1.3. Special Estimates (Impact of Design Alternatives)

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 Right-Of-Way Manager. Upon receipt of the request, the Regional Right-Of-Way Manager will forward the request and all particulars to the Regional Team Lead Appraiser, who will conduct the necessary research and develop the estimate or assign the project to a member of the appraisal staff.

Refer to the User's Guide for additional information about cost estimates.

7.2. PRELIMINARY GROUP INSPECTION

7.2.1. General

Upon receipt of final ROW plans, the Regional Appraiser Team Lead will schedule a Preliminary Group Inspection (P.G.I.). The Regional Appraiser Team Lead, 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 is permissible to conduct P.G.I.'s using "Preliminary Plans," however, when a P.G.I. is made using Preliminary Plans, the P.G.I. report will need to be updated upon receiving Final Plans.

7.2.2. Purpose of the P.G.I.

The main purpose of the P.G.I. is to determine the appraisal requirements for the project. It is the basis for developing all contract proposals.

Refer to the User's Guide for detailed information about conducting the inspection and what points the P.G.I. team should address and decide.

7.2.3. Special Appraisal Considerations (Special Emphasis)

The P.G.I. Group, while conducting their inspection, should be aware of the following situations. When encountered, each situation should be discussed and resolved.

7.2.3.1. 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.

7.2.3.2. Requirement For Two Appraisals

There are no specific requirements for two appraisals for any tract. However, there may be instances where the P.G.I. Group feels that two appraisals should be obtained because of anticipated appraisal problems.

7.2.3.3. 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.

7.2.3.4. 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.

7.2.3.5. T.V.A., U.S. Army Corps of Engineers, Departments of State Government, Postal Service, and Railroad Land Acquisitions

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

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

An appraisal is not initially required if TDOT determines the valuation problem is uncomplicated and the fair market value of the proposed acquisition is believed to be $15,000.00 or less. The P.G.I. team-report will identify such tracts to the State Appraisal Manager and recommend the use of the appraisal waiver provision.

If negotiations for an NPP are unsuccessful, an appraisal must be made, reviewed, and another offer made before a tract is eligible for condemnation. Refer to the User's Guide for more information.

7.2.3.7. Total Acquisition

Identify the tax parcels for total acquisition and/or parcels in which an alternate offer may likely be determined for a tax parcel's entire acquisition. Add notation in the P.G.I. report for the appraiser to perform a comparative analysis of the entire tax parcel's concluded market value to its current taxed assessed value and, if the market value is less, to explain any changes in the parcel occurring since its last tax valuation was completed.

7.2.3.8. Tracts with Relocations and Structures

Special consideration should be given to tracts that contain relocations and structures. This should be noted in the PGI and work orders with dues dates for these tracts will be issued first.

7.2.4. Inspection (P.G.I.) 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 Headquarters Appraisal Manager will be notified by the Regional Appraiser Team Lead (notification must include an e-mail transmission) that the project P.G.I. has been loaded. Refer to the User's Guide for more information about the Inspection Report.

7.2.5. Assignment of Nominal Payment Parcels (NPPs)

The Regional ROW Manager will assign tracts identified and designated as NPPs in the Inspection (P.G.I.) Report to a right-of-way appraiser or agent to develop 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 $500.00.

7.3.STAFF APPRAISERS

With Headquarters Office concurrence, if it is determined by the Regional ROW Manager that staff appraisers are to be used on a project to prepare appraisals and reviews, the assignment will be made by the Regional Appraiser Team Lead.

7.4. APPRAISAL CONTRACTS

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 3 of this Right-of-Way Procedures Manual.

Refer to the User's Guide for information about developing the work order attachments and scheduling appraisals for improved tracts.

7.5.APPRAISER QUALIFICATIONS

7.5.1. Staff Appraisers

7.5.1.1. The staff appraisal position (listed below) requires a Bachelor's Degree.

Right-Of-Way Appraiser 1.

7.5.1.2. The staff appraisal position (listed below) requires an active State Certified Residential Appraiser License.

Right-Of-Way Appraiser 2.

7.5.1.3. The staff appraisal position (listed below) requires an active State Certified General Appraiser License.

Right-Of-Way Appraiser 3.

7.5.2. Private-Sector Appraisal Consultants

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 Headquarters Office Consultant Evaluation/Approval Committee.

Refer to the User's Guide for more information about Pre-Qualification Recruitment and processing applications for pre-qualification.

7.6.APPRAISER EVALUATION

7.6.1. 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.

7.6.2. Annual Performance Evaluation

On an annual basis, early in the calendar year, each consultant appraiser will be evaluated on his/her performance during the preceding calendar year. The State Appraisal Manager responsible for appraisal service contracting shall provide an "Annual Consultant-Appraiser Evaluation" form, via e-mail, in the later part of the year to be evaluated.

Refer to the User's Guide for appraiser evaluations and related forms.

7.7. PROCESSING THE APPRAISAL PRODUCT

7.7.1 General

The Right-Of-Way Division is structured into four regional offices and a Headquarters office. The Headquarters Office has the sole responsibility for and authority over contracting for appraisal service activity performed by approved private-sector appraisal consultants. The Headquarters 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 Appraiser Team Lead and the State Appraisal Manager. Agreement lacking, the Right-of-Way Division Director shall be the final authority.

In the total process of "approved offer" development, no person shall attempt to unduly influence or coerce an appraiser, a review appraiser, or a 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 unless FHWA has waived this requirement.

7.7.2. Headquarters Office Responsibilities

All contracting for appraisal services will be conducted in accordance with TDOT procurement policy as outlined in Chapter 3 of this manual. As previously discussed, it is the responsibility of the Headquarters Appraisal Manager, but with regional input, to develop the requests for proposals and select/approve those appraisers to whom the proposal requests will be transmitted. The Headquarters 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.

7.7.3. Regional Office Responsibilities

It is the responsibility of the Regional Appraiser Team Lead to ensure that title reports, plans and cross-sections are provided to the appraisal consultants who will be developing proposals. Once negotiations between the Headquarters Appraisal Manager and the appraisal consultant have been finalized, the Headquarters Appraisal Manager shall notify the Regional Appraiser Team Lead

Refer to the User's Guide for additional information about processing the appraisal product in the Regional Office.

7.8. APPRAISAL REVIEW

7.8.1. 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 Standards of Professional Appraisal Practice (USPAP), The Department's TDOT Guidelines for

Appraisers and TDOT Guidelines for Review Appraisers, and 49 CFR Part 24 regulations . 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, since the appraisal report will be provided to the property owner along with the statement of approved offer. The minimum offer will be $500.00.

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.

7.8.2. 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.

Refer to the User's Guide for additional information about an appraisal documentation request.

7.8.3. Reviewing Appraiser's Review Report

7.8.3.1. 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 Forms-2.1, 2.2 (Certificate of Review) and Assumptions and Limiting Conditions.

7.8.3.2. 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. The Form-2 is a basic accounting of the approved offer, itemizing payments for all acquisitions. The approved offer will not be less than the approved appraisal when considering the appropriate application of real vs personal property concepts and due consideration of damages and special benefits. The minimum approved offer will be $500.00.

7.8.4. Uneconomic Remnants--Alternate Approved Offers

If the acquisition of only a portion of property would leave the owner with an uneconomic remnant, TDOT shall offer to acquire the uneconomic remnant along with the portion of the property needed for the project. While TDOT is required to make an offer for the remnant, the property owner is under no obligation to sell the remnant to the acquiring agency. (See 49 CFR 24.102(k))

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.” (See 49 CFR 24.2(a).)

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, utility and value to the present owner must be severely limited to classify a remainder parcel as an uneconomic remnant. Generally speaking, an uneconomic remnant will not have a readily identifiable independent developmental capacity but may only have value for assemblage.

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.

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

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

In accordance with the provisions of Chapter 6, all right-of-way plans revisions will be distributed to the appropriate review appraiser who is responsible for determining if the revisions will have an impact on the amounts due to owners.

Refer to the User's Guide for information regarding the appropriate review appraiser and what actions must be taken if the plan revision affects one or more specific tracts or creates a new tract or tracts.

7.8.6. Total Acquisitions

If the acquisition of an entire tax parcel is required, or an alternate offer determined for a remnant that results in a total acquisition of a tax parcel, TDOT shall approve an offer based on the application of Tennessee Code §29-16-203(a)(2), which reads in part, "When title to an entire tax parcel is condemned in fee, the total amount of damages for the condemnation of the parcel shall be not less than the last valuation used by the assessor of property just prior to the date of taking, less any decrease in value for any changes in the parcel occurring since the valuation was made, such as the removal or destruction of a building, flooding, waste, or removal of trees."

As required in Section 7.2.3.7, per the P.G.I., the appraisal report for an entire tax parcel being acquired should include a comparative analysis of the entire tax parcel's concluded market value to its current taxed assessed value. If the market value is less, the report should include an explanation of any changes in the parcel occurring since its last tax valuation was completed. Provided no significant physical changes in the tax parcel occurred since the last tax valuation was completed, the approved minimum offer shall be the greater of the two values, either on the entire tax parcel's estimated market value or its respective tax assessed value.

Reasonable application of the statute shall apply to both NPP and appraised market valuations. The application of this policy is not an appraisal function, nor part of the appraisal report or appraisal review report. This application shall be an administrative function performed on a Form-2 with the explanation of TDOT policy in respect to state statute. In the case of a partial acquisition when an alternate offer for a tax parcel's entire acquisition has been determined, the Form-2's Original Approved Offer will remain based on the tract's appraised value for the part being acquired, and the Alternate Approved Offer for the entire parcel will be the greater of the two values, either on the entire tax parcel's estimated market value or its respective tax assessed value.

7.9. 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 Regional Appraiser Team Lead of the region in which the assignment is located).

7.10. 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, a request for an appraisal update or second opinion may be made.

Refer to the User's Guide for information about transmitting the request and the process for updating the appraisal or obtaining a second opinion appraisal.

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

7.11. INVOICING & PAYMENT FOR APPRAISAL SERVICES RENDERED

Refer to the User's Guide for information about invoicing and payment for appraisal services rendered.

CHAPTER 8

ACQUISTION

8.1. *ACQUISITION TITLE EVIDENCE AND TITLE REPORT*

8.2. *INSTRUMENTS OF CONVEYANCE* ..

8.3. *NEGOTIATIONS*

CHAPTER 8

ACQUISITION

8.1. ACQUISITION TITLE EVIDENCE AND TITLE REPORT

8.1.1. GENERAL

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.

8.1.2. TITLE REPORTS

For most 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 (fee providers). In all such cases, the title report will be completed on ROW Form-49. When it is determined that title services will be obtained from fee providers, the contracts for title reports will be made in compliance with the general contracting procedures outlined in Chapter 3 of this manual.

It is the responsibility of the Regional ROW Manager 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 ROW Manager will submit a request to the Regional ROW Acquisition/Relocation Team Lead If it is determined that the activity will be accomplished by fee personnel, the procedures of Section 8.1.3. below will be followed.

Upon receipt of title reports, the Regional ROW Acquisition/Relocation Team Lead or a designee will check the adequacy of the reports and if acceptable distribute them to the project file and project team.

8.1.3. PLAN CHANGES

Any time a plan change adds additional tracts to the project, a title report must be obtained. The Regional ROW Manager must decide who will obtain the title report. If the project is under fee contract, the Regional ROW Manager may elect to have the fee provider prepare the title report. In such cases, the Regional ROW Manager 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.

A plan change may also be required in situations where a tract on the right-of-way plan has been sold into more than one tract between the date the plans were made and the date the title search is made. Although the plans will indicate that there should only be one tract in these cases, more than one title report is needed. When title information is received indicating that such a situation exists, a request for a plans change should be initiated as outlined in the above paragraph to conform to the title information.

8.2. INSTRUMENTS OF CONVEYANCE

8.2.1. PURPOSE

The purpose of this Section 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.

8.2.2. RIGHTS TO BE ACQUIRED

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. Army 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.

8.2.3. LIMITS OF TAKING

Generally, acquisition is limited to property within the limits shown on the approved fundamental design plans. 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.

8.2.4. 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.

8.2.5. 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.

8.2.6. 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.

8.2.7. 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.

Refer to the User’s Guide for a statement to be included in the instrument of conveyance when the landowner retains the mineral rights.

8.2.8. DEEDS

8.2.8.1. 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. Under normal circumstances, the Department's standard one page or two page warranty deed will be used.

8.2.8.2. Consideration Stated in the 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 as well as any and all damages to the remaining property.

8.2.8.3. 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.

8.2.8.4. Descriptions of Acquisitions

All fee simple land and permanent drainage easements acquired must be described by a metes and bounds description. Permanent slope easements and construction easements will be described as completely as is practical. The area acquired must also be stated and along with the engineering description, agree with the approved right of way plan.

8.2.8.5. The Warranty Deed

The Warranty Deed may require the inclusion of certain information or clauses depending on the circumstances of the acquisition. Refer to the User's Guide for suggested language to be used in the Warranty Deed to address various conditions of the acquisition.

8.2.9. SPECIAL ACQUISITIONS

8.2.9.1. 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.

8.2.9.2. 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.

8.2.9.3. Federal Land Transfers and Direct Acquisition

Acquisitions involving a land transfer or a direct acquisition from a federal agency are administered in the headquarters' Right of Way office under the requirements set forth in 23 CFR parts 710.601 & 710.603.

8.2.9.4. State Land Transfers and Direct Acquisition

Acquisitions involving a land transfer or a direct acquisition from a state agency are administered in the headquarters' Right-of-Way office.

8.2.9.5. Local Governmental Agency Acquisitions

Acquisitions involving a land transfer or a direct acquisition from a local agency are administered in the Regional Right-of-Way office where the project exists.

8.2.9.6. Airports

Since airport acquisitions typically involve the Federal Aviation Administration (FAA), they are administered in the headquarters' Right-of-Way office.

8.2.9.7. Railroads

Acquisitions involving railroads, both Class 1 and Short Line railroads, are administered in the Headquarters Right of Way office.

8.2.9.8. Stream/Wetland Mitigation

Administration of acquisitions for the purpose of mitigating stream or wetland impacts will be determined by the specific nature of the acquisition.

A. Project Specific Mitigation – acquisitions of land for stream or wetland mitigation directly located on a project (the mitigation site runs adjacent and parallel to the proposed or existing right-of-way) are administered in the Regional Right-of-Way office where the project exists in coordination with TDOT's environmental division. Mitigation areas must be specifically identified on the right-of-way plans.

B. General Mitigation – acquisitions of land for stream or wetland mitigation that is not part of a right of way project (stand-alone mitigation project) will be administered in the headquarters' Right of Way office in coordination with TDOT's environmental division. These mitigation projects must be associated with a specific construction project.

8.3. NEGOTIATIONS

8.3.1. GENERAL

The Right-of-Way Division will make every reasonable effort to expeditiously acquire real property at a previously established amount of just compensation and to treat property owners fairly and consistently throughout the entire acquisition process. Negotiators shall conduct themselves in an ethical and competent manner with poise and self-restraint and shall not act in a coercive or threatening manner. The Technical Specialist/Sr. shall be impartial in that he/she shall inform the owner of all benefits due them 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.

8.3.2. WHO MAY NEGOTIATE

Negotiations for the needed real property interests can be conducted by staff employees, fee negotiators or other public agencies. Refer to the User's Guide for detailed information about who may negotiate.

8.3.3. SEPARATION OF FUNCTIONS

8.3.3.1. Negotiation

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

8.3.3.2. Supervision

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

8.3.3.3. Delivery of Payment

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

8.3.4. THE FAIR MARKET VALUE OFFER

8.3.4.1. General

No offer shall be made until the Review Appraiser has established an estimate of Fair Market Value as indicated in the "Approved Offer Transmittal" (Form-2). The approved offer will not be less than the approved appraisal. The offer to purchase must be in writing and for the full amount of the Fair Market Value. The minimum offer will be $500.00.

Refer to the User's Guide for additional information about the preparations necessary for making the offer and conducting negotiations with the property owner.

8.3.4.2. Retention of Improvements by the Owner

In instances where improvements are being acquired, the owner shall be informed at the Initiation of Negotiations of the right to retain improvements and of certain necessary conditions which must be met to retain improvements.

See the User's Guide for additional information about making the offer that includes owner retention of improvements.

8.3.4.3. Offer to Purchase an Uneconomic Remnant

If the Review Appraiser determines that a partial acquisition will leave the owner with an uneconomic remnant, it is the Department's policy to offer to acquire the uneconomic remnant. A separate offer including the value of any uneconomic remnant will be made at the Initiation of Negotiations.

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

See the User's Guide for additional information about the offer to purchase an uneconomic remnant.

8.3.4.4. Initiation of Negotiations

The initial contact with the property owner wherein the negotiator presents a written offer for the full amount of Fair Market Value is defined as the Initiation of Negotiations. To the greatest extent possible, the negotiator will present the written offer in person to the owner or their designated representative. A designated representative is a person who can receive required notifications and documents from the Department. The owner or tenant must provide the Department a written notification stating the designated representative's name, contact information, and what, if any, notices or information the representative is not authorized to receive. Refer to the User's Guide about situations where the negotiator is unable to make the offer in person, i.e., the owner resides outside the Region or State or there are multiple owners of the property.

The written offer will provide the property owner with an itemization 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 any damages to the remaining real property shall be separately stated.

In addition to the written offer to purchase, the negotiator shall also present the Seller's Acknowledgement of Sale Price and Conditions, including the legal description, the Acquisition Brochure, a copy of the plan sheet showing the tract, and a copy of the appraisal(s) or any other document used to determine the Fair Market Value.

8.3.5. NEGOTIATIONS WITH THE PROPERTY OWNER

8.3.5.1. Reasonable Time to Consider the Offer

The property owner shall be afforded the opportunity to consider the offer for a reasonable period of time and to present information they believe is relevant to the valuation of their property. The Department will consider any information provided and promptly respond to the owner as appropriate.

8.3.5.2. Subsequent Contacts

The negotiator will make follow-up personal contacts with the property owner as appropriate to advise the owner of all findings and resolve any outstanding issues. The negotiator should continue to make additional contacts whenever there is a reasonable expectation that agreement can be reached.

8.3.5.3. No Coercive Actions

The Department will not engage in any coercive actions to achieve an agreement in negotiations. This includes deferring negotiations, advancing or deferring condemnation, or taking any other action that is coercive in nature.

8.3.5.4. Documentation of Negotiations

The negotiator must record all contacts related to the parcel to be acquired regardless of their nature immediately after making the contact. The record will document the property owner's issues, concerns, and counteroffers along with an explanation about how each item was addressed.

Refer to the User's Guide for additional information related to negotiations with the property owner and maintaining the required documentation.

8.3.5.5. Reimbursement of Expenses Incidental to Transfer of Title

The Department will reimburse the property owner for reasonable and necessary expenses they incur for transferring title to the real property acquired in accordance with 49 CFR 24.106.

8.3.6. ADMINISTRATIVE SETTLEMENTS

8.3.6.1. General

An administrative settlement is an offer made or authorized by the Department before initiating condemnation proceedings where the offer amount exceeds the approved estimate of fair market value and reasonable efforts to negotiate an agreement at that amount have failed. The Administrative Settlement program enhances the acquisition process by adding flexibility to settle reasonable differences in opinion of value and to negotiate the acquisition of required right-of-way, which would otherwise require judicial determinations of fair compensation.

8.3.6.2. Basis for Making an Administrative Settlement

The Department must provide a written justification which supports the determination that the administrative settlement is reasonable, prudent, and in the public interest. In arriving at a determination to approve an administrative settlement, the Department must consider all available pertinent information. The User's Guide provides additional guidance about information that may be pertinent to the decision to approve an administrative settlement.

8.3.6.3. Administrative Settlement Committee

The Administrative Settlement Committee will consist of the Right-of-Way Director, the Executive Director Engineering, and the Executive Director of Project Management. A representative from the Attorney General's Office may be requested to participate in Committee meetings in an advisory role. The negotiator for the parcel may be asked to provide details of the negotiations, and other Right-of-Way staff may be asked to provide information in an advisory role but will not participate in the decision of the Committee. Alternate Committee members may be chosen and substituted by the Right-of-Way Director, or the Assistant Chief of Engineering, based on individual availability and issues specific to the parcel. The User's Guide discusses the duties and responsibilities of the Administrative Settlement Committee.

8.3.6.4. Persons Authorized to Make Administrative Settlements

The Regional ROW Manager or designee in each ROW field office or the Headquarters Acquisition/Relocation Manager is authorized to approve administrative settlements for all tracts on which the increase does not exceed $10,000.00 or 10 percent of the approved offer amount, whichever is greater.

All other administrative settlements must be approved by the Administrative Settlement Committee. Additional approval from the Commissioner of the Department of Transportation, the Commissioner of Finance and Administration and the Comptroller of the Treasury will be required when the criteria specified in the User's Guide are met.

Procedures for responding to counteroffers, pursuing a settlement with the property owner, and recommending an administrative settlement are described in the User's Guide.

8.3.7. SPECIAL CASES

8.3.7.1. 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 the value for the tenant-owned improvements, including damages, will be separately stated on ROW Form-2 and explained in the Review Comments. The acquisition of tenant-owned improvements is further discussed in the User's Guide.

8.3.7.2. 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 being granted the right to the use and enjoyment of the property under conditions agreed to between the lessee and the landowner. No separate interest will be set out in an appraisal; therefore, no negotiations are undertaken with a lessee to acquire a "leasehold interest." The need for release of the leasehold interest is discussed in the User's Guide.

8.3.7.3. Donations

In all cases where necessary rights-of-way are donated or construction features or services are exchanged for property rights, activities will be conducted subject to the requirements set forth in 23 CFR 710.505 and 49 CFR 24.108.

The negotiator must inform the property owner that they have the right to receive just compensation and may also require the Department to obtain an appraisal of the property. Prior to acceptance of the deed, the negotiator must obtain a signed statement from the property owner acknowledging that they have been informed of their rights and are waiving such rights.

Refer to the User's Guide for additional information about donations from a property owner.

8.3.7.4. Right-of-Entry

A property owner may be asked to voluntarily give up possession of their property before payment, provided they have been informed of the rights to such payment prior to vacation and execute 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. Refer to the User's Guide for additional information regarding the use of a right-of-entry.

8.3.8. CONCLUDING NEGOTIATIONS

8.3.8.1. Settlement Reached

If a settlement is achieved during the negotiations process, the negotiator will ensure the file is complete and the proper documents are prepared to make payment. The payment to the property owner and conveyance to the State will be accomplished at a closing. Refer to the User's Guide for information about the closing transaction.

8.3.8.2. Negotiations Unsuccessful

When an agreement cannot be reached with the property owner and all reasonable efforts to obtain a settlement have failed, the Department will proceed with acquiring the property through condemnation.

8.3.9. PAYMENT BEFORE POSSESSION

The Department will make the agreed payment for the real property available to the property owner before requiring delivery of possession of the real property interests. In the event of condemnation, the payment will be deposited for the benefit of the owner with the court.

8.4. ACQUISITION OF CONTAMINATED RIGHT-OF-WAY PARCELS

When practical, the Tennessee Department of Transportation will avoid the acquisition of parcels contaminated with petroleum or hazardous waste contaminants. However, the Department may need to determine whether to acquire right-of-way parcels which are or are suspected to be contaminated.

Refer to the User's Guide which outlines the requirements for the investigation and, if appropriate, the remediation of hazardous waste and petroleum products encountered on highway projects.

8.5. STATEWIDE STORM WATER MANAGEMENT PLAN REQUIREMENTS

The Department is required to comply with the Statewide Storm Water Management Plan (SSWMP). 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.

Refer to the User's Guide for information about how the Department will comply with the requirements of the SSWMP.

CHAPTER 9

RELOCATION

9.1. GENERAL PROVISIONS

9.2. RELOCATION ADVISORY SERVICES

9.3. GENERAL RELOCATION REQUIREMENTS

CHAPTER 9

RELOCATION

9.1. GENERAL PROVISIONS

9.1.1. PURPOSE

The purpose of this chapter 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.

9.1.2. 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.

9.1.3. ADMINISTRATIVE INFORMATION AND SPECIAL REQUIREMENTS

9.1.3.1. Providing Services

The functions of the Relocation Assistance Program will be performed as far as possible by employees of the Department as outlined in Chapter 1 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 3 of this manual.

9.1.3.2. Direct Payment of Relocation Claim

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

9.1.3.3. Civil Rights

TDOT will carry out the relocation assistance advisory program in a manner that satisfies the requirements of Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, and Executive Order 11063. Only open housing available to all races, creeds, colors, religions, sexes, or national origins, without discrimination, will be used as replacement housing resources.

It is further our policy to ensure that no person is excluded from participation in or is denied any benefits of or is 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 details 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 displaced person 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/she 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.

9.1.4. DEFINITIONS

For the purposes of this Chapter, the following terms are defined:

9.1.4.1. *Business* means any lawful activity, except a farm operation, that is:

A. 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

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

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

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

9.1.4.2. *Certified Mail* means commercially available delivery methods that provide secure, trackable document delivery with delivery confirmation.

9.1.4.3. *Comparable Replacement Dwelling* means a dwelling that is:

A. Decent, Safe and Sanitary as described in paragraph 9.1.4.5. below.

B. Functionally equivalent to the displacement 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.

C. Adequate in size to accommodate the occupants.

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

E. 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 reasonably accessible to the person's place of employment.

F. 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.

G. Currently available to the displaced person on the private market, except as provided in paragraph (9) of this definition.

H. Within the financial means of the displaced person. A dwelling is considered to be within the person's financial means if he/she can obtain the dwelling without exceeding the benefits he/she is entitled to under Section 9.3. Refer to 49 CFR 24.2(a) under the definition of Comparable Replacement Dwelling. Paragraph (viii) provides additional details about the definition of "within the financial means of the displaced person."

I. For a person receiving Government housing assistance before displacement, a dwelling that may reflect similar Government housing assistance. In such cases, any requirements of the Government housing assistance program, including fair housing, civil rights, and those relating to the size of the replacement dwelling shall apply. However, nothing in this definition prohibits the Department or precludes a person from accepting assistance under a Government housing program even if the person did not receive similar assistance before displacement, subject to the eligibility requirements of the Government housing assistance program. Refer to 49 CFR 24.2(a), Comparable Replacement Dwelling part (ix) for the Department's obligation to inform the displaced person and determining housing comparability under the definition.

9.1.4.4. *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:

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

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

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

D. 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.

9.1.4.5. *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:

A. Be structurally sound, weather-tight and in good repair. The Department shall honor standards established by local housing and occupancy codes that require the abatement of deteriorating paint, including lead-based paint and lead-based paint dust, in protecting the public health and safety if they are more stringent than what the agency requires.

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

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

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

1. 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.

2. When required by local code standards for residential occupancy, there shall be a kitchen area that contains a fully usable sink properly connected to potable hot and cold water and to a sewage drainage system and adequate space and utility service connections for a stove and refrigerator.

3. 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.

Regional Right-of-Way Manager or a designated assistant must approve any exceptions to these bedroom requirements.

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

F. For a displaced person with a disability, be free of any barriers which would preclude reasonable ingress, egress or use of the dwelling by the person.

9.1.4.6. *Displaced Person* means:

A. Any person who permanently moves from the real property or moves personal property from the real property. (This includes a person who occupies the real property prior to its acquisition but does not meet the length of occupancy requirements as described at 9.4.1. and 9.4.2):

1. As a direct result of a written notice of intent to acquire, rehabilitate, and/or demolish, the Initiation of Negotiations for or acquisition of such real property in whole or in part for a project.

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

3. 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 for eligibility, as a displaced person is limited to relocation assistance, advisory services, and moving expenses.

B. Persons required to move temporarily

A person who is required to move or moves his or her personal property from the real property as a direct result of the project but is not required to move permanently. The Department will make this determination in accordance with any policy, requirement, or guidance established by the Federal agency funding the project.

C. Voluntary acquisitions

A tenant who moves as a direct result of a voluntary acquisition as described in 49 CFR 24.101(b)(1)-(3) is eligible for relocation assistance when the conditions set out in that subsection are met.

D. Persons Not Displaced

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

1. 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.

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

3. 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 be issued only if 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.

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

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

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

7. An owner-occupant who moves as a result of a negotiated acquisition (where the Department 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 these procedures.)

8. An owner-occupant who conveys his or her property as the result of a voluntary acquisition, after being informed in writing that if a mutually satisfactory agreement on terms of the conveyance cannot be reached, the Department will not acquire the property. The displacement of a tenant under these circumstances is subject to these procedures.

9. An alien not lawfully present in the United States and who has been determined to be ineligible for relocation in accordance with 49 CFR 24.208.

10. Temporary, daily, or emergency shelter occupants are in most cases not considered displaced persons. However, the Department may determine

that a person occupying a shelter is a displaced person due to factors that may include reasonable expectation of a prolonged stay, or other extenuating circumstances. At a minimum, the Department shall provide advisory assistance to all occupants at Initiation of Negotiations.

9.1.4.7. *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 mobile home, or any other residential unit.

9.1.4.8. *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.

9.1.4.9. *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.

9.1.4.10. *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.

9.1.4.11. *Nonprofit Organization* means an organization that is incorporated under State law as a Nonprofit Organization and is exempt from paying Federal Income Taxes under Section 501 of the Internal Revenue Code (26 U.S.C. 501).

9.1.4.12. *Owner* means a person who holds any of the following interests in real property:

A. 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.

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

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

D. Any other interest which warrants consideration as ownership.

9.1.4.13. *Owner's or tenant's designated representative* means a representative designated by a property owner or tenant to receive all required notifications and documents from the Department. The owner or tenant must provide the Department a written notification which states that they are designating a representative, provide that person's name and contact information and what, if any, notices or information the representative is not authorized to receive.

9.1.4.14. *Reverse Mortgage* (also known as a Home Equity Conversion Mortgage or HECM) means a first mortgage which provides for future payments to the homeowner based on accumulated equity and which a housing creditor is authorized to make under any Federal law or State constitution, law, or regulation. See 49 CFR 24.2(a) for additional information.

9.1.4.15. *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.

9.1.4.16. *Small Business* means a business having not more than 500 employees working at the site being acquired. Sites occupied solely by outdoor advertising signs, displays, or devices do not qualify as a business for purposes of Section 9.4.2.1 O-Q (49CFR § 24.303) or Section 9.4.3 (49CFRO § 24.304).

9.1.4.17. *Temporary, Daily, or Emergency Shelter (shelter)* means any facility, the primary purpose of which is to provide a person with a temporary overnight shelter which does not allow prolonged or guaranteed occupancy. A shelter typically requires the occupants to remove their personal property and themselves from the premises on a daily basis, offers no guarantee of reentry in the evening, and in most cases does not meet the definition of dwelling as used in Paragraph G. of this section.

9.1.4.18. *Tenant* means a person who has the temporary lawful use and occupancy of real property owned by another.

9.1.4.19. *Uneconomic remnant* means a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property, and which the agency has determined has little or no value or utility to the owner.

9.1.4.20. *Unlawful Occupant* means a person who has been ordered to move by a court of competent jurisdiction prior to the Initiation of Negotiations 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.

9.1.4.21. *Utility costs* means expenses for electricity, gas, other heating and cooking fuels, water and sewer.

9.1.5. COST ESTIMATES

As discussed in Chapter 7, the Right-of-Way Office is responsible for row cost estimates. The responsibility for the development of these estimates lies with the field office appraisal section and Headquarters sections. However, the relocation section is responsible for providing estimates on relocation costs.

9.1.6. RELOCATION PLANS

9.1.6.1. Conceptual Stage Relocation Plan (CSRP)

The purpose of the CSRP is to document the recognition and resolution of problems associated with the displacement of individuals, families and businesses. It is intended to minimize adverse impacts on displaced persons and to expedite project advancement and completion. The environmental division requests development of the CSRP which 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.

Refer to the User's Guide for information about developing the CSRP, including the data that must be gathered and analyzed along with the format and sequence for preparing the narrative report.

9.1.6.2. Acquisition Stage Relocation Plan

The Acquisition Stage Relocation Plan is developed after the completion of all relocation interviews. It provides a relocation analysis of problems associated with residential and business displacements that are identified during the interviews and proposed methods to successfully resolve them and assists in the recognition and successful resolution of problems. This plan is also intended to minimize adverse impacts on displaced persons and to expedite project advancement and completion.

Refer to the User's Guide for information about developing the Acquisition Stage Relocation Plan and what content must be included in the report.

9.2. RELOCATION ADVISORY SERVICES

9.2.1. 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 and to support nonresidential displaced persons in their relocation to suitable replacement sites.

Relocation assistance advisory services shall be offered to:

9.2.1.1. Any “displaced person” as defined in 9.1.4.6.

9.2.1.2. 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.

9.2.2. SERVICES TO BE PROVIDED

The Department shall provide appropriate advisory services to all displaced persons, which include the following:

9.2.2.1. 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.

9.2.2.2. 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.

9.2.2.3. 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.

9.2.2.4. 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.

9.2.2.5. Offer to assist in providing transportation to inspect housing to which displaced persons are referred.

9.2.2.6. 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.

9.2.2.7. 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.

9.2.3. 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.

9.2.4. WRITTEN NOTICES

9.2.4.1. General

Relocation notices shall be in writing and personally served or sent by certified or registered first-class mail, return receipt requested, or by companies other than the United States Postal Service that provide the same function as certified mail with return receipts, i.e., secure, trackable document delivery with delivery confirmation.

The ROW 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 5, which discusses Public Information.

9.2.4.2. Relocation Information Notice (RA Form-101)

The "Relocation Information Notice" is a statement informing all displaced persons 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 displaced persons at the initial interview, described below.

RA Form-101 also includes a section requiring the displaced person to certify legal residency in the United States.

9.2.4.3. Notice of Relocation Eligibility and Earliest Vacation Date (RA Form-119)

This notice serves two distinct purposes:

A. It informs the displaced person that he/she will have no less than 90 days from the date the Department obtains legal possession in which to relocate and further informs him/her that a notification of the specific vacate date will be given at least 90 days in advance of the vacate date; and

B. It informs the displaced person that he/she 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.

Refer to the User's Guide for additional information about this notice.

9.2.4.4. Notice to Vacate (RA Form-120)

The "Notice to Vacate" provides the displaced person 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 displaced person receives the "Notice to Vacate." The vacate date must be at least 90 days after the date on which the displaced person received the "Notice of Earliest Vacation Date" or, if later, the date on which the displaced person received the Notification of Relocation Payments (RA Form-109 or RA Form-116).

The "Notice to Vacate" must be issued on tracts involving relocation benefits.

Refer to the User's Guide for additional information about the timing and delivery of the Notice to Vacate.

9.2.4.5. Notice of Intent to Acquire, Rehabilitate, and/or Demolish

A notice of intent to acquire, rehabilitate, and/or demolish is an agency's written communication that is provided to a person to be displaced, including persons required to temporarily move, which clearly sets forth that the agency intends to acquire, rehabilitate, and/or demolish the property. A notice of intent to acquire, rehabilitate, and/or demolish establishes eligibility for relocation assistance prior to the initiation of negotiations and/or prior to the commitment of Federal financial assistance to the activity.

9.2.4.6. 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.

9.2.5. APPEALS

All displaced persons have a right to appeal if they believe that the Department has:

9.2.5.1. Failed to properly determine a person’s eligibility for relocation benefits; or

9.2.5.2. Failed to properly determine the amount of a relocation payment.

Any appeal must be filed no later than 60 days after written notification of the final action on a claim.

Refer to the User’s Guide for detailed information about the Department’s relocation appeals process.

9.2.6. RELOCATION CONTACTS

9.2.6.1. General

The contacts necessary to carry out the relocation function as described in the User's Guide represent the minimum requirements for communicating with the displaced person. The Technical Specialist/Sr. is expected to make as many contacts as are necessary to ensure that the displaced person is relocated with the least adverse impact. Please refer to Section 9.2.2. for a discussion of the kinds of services to be provided when necessary.

Refer to the User's Guide for additional information about the required residential and nonresidential relocation contacts.

9.2.6.2. Relocation Agent's Log

Immediately after each relocation contact, be it personal, by mail or by telephone, the Technical Specialist/Sr. 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 displaced person, etc. might appropriately be included in the agent's log.

9.3 GENERAL RELOCATION REQUIREMENTS

9.3.1. 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 the Manual and the User's Guide.

9.3.2. 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.

9.3.3. Time For Filing

For tenants, all claims for relocation payments shall be filed with the Department within 18 months after the date of displacement. For owners, all such claims shall be filed with the Department within 18 months after 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 Regional Acquisition/Relocation Team Lead to the headquarters' ROW Office for approval by the Right-of-Way Division Director or designee. Requests should be documented to justify the waiver of this time period.

9.3.4. Multiple Occupants of One Displacement Dwelling

TDOT generally considers multiple occupants of a dwelling to be one household. For the purposes of this chapter, a household is defined as two or more people living together who are related or who live together by mutual consent. If two or more occupants of the displacement dwelling household 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 individual's pro rata share will be determined by the TDOT ROW Acquisition/Relocation Team Lead or Regional Technical Specialist on a case by case basis.

If TDOT determines that two or more persons maintain separate households within the same dwelling, such occupants have separate entitlements to relocation payments.

Refer to the User's Guide for more information about multiple occupants.

9.3.5. 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.

9.3.6. 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 displaced persons must be informed of this provision.

9.3.7. 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.

9.3.8. 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 intended to displace the person.

9.3.9. Delivery of Payment

No payment of relocation benefits may be made in person to the displaced persons by either the person who computed or the person who approved the payment.

9.3.10. Denial of Relocation Assistance for Persons Not Lawfully in the United States

No relocation payments or relocation advisory assistance shall be provided to a person who is not lawfully present in the United States, unless such person can demonstrate that the denial of relocation assistance will result in an exceptional and extremely unusual hardship to such person's spouse, parent, or child who is otherwise eligible.

Cases of hardship will be evaluated on their individual merits and under the requirements set forth in 49 CFR part 24.208. Payment of relocation benefits under the hardship exception requires the approval of the Right-of-Way Director and the Federal Highway Administration.

9.3.11. Moving Payments – 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. Refer to the User's Guide for more information about payment of moving expenses in condemnation.

9.4 PAYMENTS FOR MOVING AND RELATED EXPENSES

9.4.1. Residential Moves

A residential displaced person's actual, reasonable, and necessary moving expenses for moving personal property from a dwelling may be based on one, or a combination of the methods described in paragraphs 9.4.1.2. and 9.4.1.3.

9.4.1.1. Eligible expenses for moves from a dwelling include the following:

Transportation of the displaced person and personal property to the new location within a 50-mile radius. The Regional Team Lead for Relocation may approve a distance beyond 50 miles if justified. Refer to the User's Guide for more information.

A. Packing, crating, unpacking and uncrating of the personal property.

B. Disconnecting, dismantling, removing, reassembling and reinstalling relocated household appliances and other personal property, including such items as telephone and other utility installation charges.

C. Storage of personal property not on property owned by the displaced person for a reasonable period not to exceed 12 months. The Regional Team Lead for Relocation, or a designee, must pre-approve storage costs. TDOT provides a one-time payment for one move from the displacement dwelling to the replacement dwelling, or storage facility. Consequently, displaced persons must be fully informed that reimbursement of costs to move the personal property to storage and the cost of approved storage, if applicable, represent a full reimbursement of their eligibility for moving costs under this part.

D. Insurance for the replacement value of personal property in connection with the move and necessary storage.

E. 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.

F. A displaced tenant is entitled to reasonable reimbursement, as determined by the Regional Team Lead for Relocation, for actual expenses not to exceed $1,000, incurred for rental replacement dwelling application fees or credit reports required to lease a replacement dwelling.

G. Other moving-related expenses that are not listed as ineligible under paragraph 9.4.3. of this chapter, as TDOT determines to be reasonable and necessary.

9.4.1.2. Commercial Move

Moves performed by a licensed commercial mover. Reimbursement is based on the lower of two commercial estimates, except a qualified TDOT employee may prepare the estimate for moves not expected to exceed $5,000.

9.4.1.3. Self-Move Options

If the displaced person elects to take full responsibility for the move (self-move) the displaced person may be paid based on one or a combination of the following self-move options. Reimbursement will be an amount not to exceed the Department's determination, without submission of any additional documentation of moving expenses actually incurred in the move.

A. Fixed Residential Moving Cost Schedule

The amount to be paid for a self-move is determined by the move cost schedule (Attachment A of this chapter). The expense of moving persons in a dormitory style room with minimal property is limited to $100.00.

B. Actual Cost Move

Under unusual circumstances, at the expressed desire of the displaced person, the opportunity will be afforded to complete a self-move based on actual costs for labor and equipment, as evidenced by receipted bills or other documentation of costs incurred. Hourly labor rates should not exceed those paid by a commercial mover to employees performing the same activities as the displaced person. Any equipment rental costs should be based on the actual cost incurred not to exceed the cost paid by a commercial mover. The Department may limit the reimbursement amount to the lower of an estimate prepared by a licensed commercial mover.

C. Moving Cost Estimate

A qualified TDOT employee may develop a moving cost estimate after he/she thoroughly reviews the personal property to be moved and documents the cost for materials, equipment, and labor. Hourly labor rates should not exceed the cost paid by a commercial mover for moving staff. If the personal property requires special handling, the cost should not exceed the hourly rate for a commercial specialist. Equipment rental fees should be based on the actual cost of renting the equipment but not exceed the cost paid by a commercial mover. The cost of materials should equal those readily available locally.

D. Commercial Mover Estimate

Payment under this method will be the lower of two estimates from licensed commercial movers for moving the personal property.

9.4.2. Nonresidential Moves

The actual, reasonable, and necessary moving expenses for moving personal property from a business, farm, or nonprofit organization may be based on one, or a combination of the methods described in paragraphs 9.4.2.3. and 9.4.2.4.

9.4.2.1 Eligible expenses for moves from a business, farm, or nonprofit organization include the following:

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 displaced person 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 displaced person.

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 paragraph L. below. This includes connections 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 personal property 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. Storage of personal property on property not owned by the displaced person for a reasonable period, not to exceed 12 months. The Regional Acquisition/Relocation Team Lead, or a designee, must pre-approve storage costs. TDOT provides a one-time payment for one move from the displacement site to the replacement site, or storage facility. Consequently, displaced persons must be fully informed that reimbursement of costs to move the personal property to storage and the cost of approved storage, if applicable, represent a full reimbursement of their eligibility for moving costs under this part.

E. Insurance for the replacement value of the personal property in connection with the move and necessary storage.

F. 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.

G. Any license, permit or certification required of the displaced person at the replacement location. However, the payment will be based on the remaining life of any existing license, permit or certification. Refer to the User's Guide for more information.

H. 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.

I. 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.

J. Re-lettering signs and replacing stationery on hand at the time of displacement and making reasonable and necessary updates to other media that are made obsolete as a result of the move. Refer to the User's Guide for more information.

K. 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:

1. If the item is currently in use, payment is the lesser of:

   a. The estimated cost of moving the item up to 50 miles and reinstall; or

   b. The fair market value in place of the item, as is 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.

   The business or farm operation must make a good faith effort to sell the item, unless TDOT determines that such effort is not necessary (e.g., there is no market for the item or the cost to sell exceeds its value).

   The business or farm operation is eligible for the reasonable cost incurred in trying to sell the item.

2. If the item is not currently in use, payment is the estimated cost of moving the item 50 miles, as is.

L. 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; or

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.

M. Searching for a replacement location.

1. Reimbursement for actual expenses incurred while searching for a replacement location not to exceed $5,000.00, including:

   a. Transportation;

   b. Meals and lodging away from home;

   c. Time spent searching, based on reasonable salary or earnings;

d. 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;

e. Time spent obtaining permits and attending zoning hearings, based on reasonable salary or earnings;

f. Time spent negotiating the purchase of a replacement site, based on reasonable salary or earnings.

2. The Department may, on a program wide or project basis, allow a one-time payment of $1,000 for search expenses with minimal or no documentation as an alternative payment method to the above.

N. If the Department 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.

O. Connection to available nearby utilities from the replacement site's property line to improvements at the replacement site.

P. 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 and feasibility or marketing studies (excluding any fees or purchase or lease of such site).

Q. Impact fees and one time assessments for anticipated heavy utility usage, as determined necessary by TDOT.

R. Other moving and related expenses not listed as ineligible under paragraph 9.3.5. of this chapter, as TDOT determines to be reasonable and necessary.

[NOTE: 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.]

9.4.2.2. Notification and Inspection

To be reimbursed for moving expenses, the displaced 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.

Refer to the User's Guide for additional information about notification and inspection.

9.4.2.3. Commercial Move

For moves performed by a licensed commercial mover, reimbursement is based on the lower of two commercial estimates, except a qualified TDOT employee may prepare the estimate for moves not expected to exceed $5,000.

9.4.2.4. Self-Move Options

If the displaced person elects to take full responsibility for all or part of the move of the business, farm, or nonprofit organization, the displaced person 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.

A. Self-Move Based on Lower of Two Estimates

Under this self-move method, the nonresidential displaced person may be reimbursed for moving the personal property based on the lower of two bids from licensed commercial movers. The Department may make a payment for a low cost or uncomplicated move based on a single estimate, which may be prepared by a licensed commercial mover or a qualified TDOT employee.

B. Self-Move Based on Actual Costs Incurred

Under unusual circumstances, at the expressed desire of the displaced person, 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.

C. Self-Move Based on a Move Cost Finding

A qualified TDOT staff person may develop a move cost finding by estimating and determining the cost of a small uncomplicated nonresidential move of the personal property. The amount cannot exceed $5,000 and the displaced person must provide written consent for this self-move option. The estimate may only include the cost of moving personal property that does not require disconnect and reconnect and/or specialty moving services for the personal property, such as crating, lifting, transport, and setting the item in place at the replacement site.

9.4.2.4. Ineligible Moving and Related Expenses – Residential and Nonresidential

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;
2. Interest on a loan covering moving expenses;
3. Loss of goodwill;
4. Loss of profits;
5. Loss of trained employees;
6. Any additional operating expenses of a business or farm incurred because of operating in a new location; except as provided in paragraph A.6. of Section 9.4.4.6. (Reestablishment Expenses);
7. Personal injury;
8. Any legal fee or other cost for preparing a claim for relocation payment or for representing the claimant before the Department;
9. Expenses for searching for a replacement dwelling;
10. Physical changes to the real property at the replacement location of a business, farm or nonprofit organization except as provided in paragraph C. of Section 9.3.4.1. (Eligible Moving Expenses for a Business, Farm, or Nonprofit Organization) and paragraph A. of Section 9.4.4.6. (Reestablishment Expenses);
11. Costs for storage of personal property on real property already owned or leased by the displaced person;
12. Refundable security and utility deposit; and

13. Cosmetic changes to a replacement or temporary dwelling which are not required by State or local law, such as painting, draperies, or replacement carpeting and flooring.

9.4.3. Reestablishment Expenses--Nonresidential.

A small business, farm or nonprofit organization may be eligible to receive a reestablishment payment, not to exceed $33,200, 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 Reestablishment 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. 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 $33,200 statutory maximum.

B. Ineligible Reestablishment Expenses

The following is a non-exclusive listing of reestablishment expenses 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;
5. Construction costs for a new building at the business replacement site, or costs to construct, reconstruct or rehabilitate an existing building. Refer to 49 CFR appendix A 24.304(b)(5) for more information about a possible waiver when a business cannot relocate without construction, reconstruction, or rehabilitation of a replacement structure.

Re-Establishment Expenses Work Sheet (RA Form-107A) will be used to compute the reestablishment payment.

9.4.4. Fixed Payment for Moving Expenses – Nonresidential Moves

9.4.4.1. Business

A 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 or more than $53,200.00 if the Department determines that:

A. 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.

B. 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.

C. 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.

D. The business is not operated at the displacement dwelling solely for the purpose of renting such dwelling to others.

E. The business is not operated at the displacement site solely for the purpose of renting the site to others.

F. 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.

9.4.4.2. Determining the Number of Businesses

In determining whether two or more legal entities, all of which are being displaced, constitute a single business which is entitled to only one fixed payment, all pertinent factors shall be considered, including the extent to which:

A. The same premises and equipment are shared;

B. Substantially identical or interrelated functions are carried out and business and financial affairs are commingled;

C. The entities are held out to the public and to those customarily dealing with them as one business; and

D. The same person or closely related persons own, control or manage the affairs of the entities.

9.4.4.3. 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 $53,200.00. In the case of a partial acquisition the fixed payment shall be made only if it is determined that:

A. The acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land; or

B. The partial acquisition caused a substantial change in the nature of the farm operation.

9.4.4.4. Nonprofit Organization

A. A displaced nonprofit organization may choose a fixed payment of $1,000 to $53,200 in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses, 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 more than $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. If the nonprofit organization was not operating at the displacement site for the full two taxable years prior to acquisition, net earnings will be based on the actual period of operation at the displacement site projected to an annual rate.

B. Gross revenues may include membership fees, class fees, cash donations, tithes, receipts from sales or other forms of fund collection that allow the nonprofit organization to operate. Administrative expenses are those used for administrative support such as rent, utilities, salaries, advertising and so forth.

C. Operating expenses for carrying out the purpose of the organization are not included in administrative expenses.

9.4.4.5. Determining Average Annual Net Earnings for a Business or Farm Operation

A. 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 at the displacement site projected to an annual rate.

B. The Department may determine that it is more equitable to compute the average annual net earnings based on a two-year period that is more representative of the business or farm's earnings. With the prior approval of the Right-of-Way Division Director, or a designee, the Regional Acquisition/Relocation Team Lead or Relocation Technical Specialist may use a two-year period beginning no earlier than two years prior to the Initiation of Negotiations for the project. If the Department selects an alternate period as being more equitable, the reason(s) for doing so must be well documented in the official file.

C. Net earnings include any wages, salary, or other compensation obtained from the business or farm operation by the owner, the owner's spouse, and dependents.

D. To be eligible for a payment more than $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.

Refer to the User's Guide for more information about computing the nonresidential fixed payment.

9.4.5. 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.

9.4.6. Move Cost Estimates

Move cost estimates must be obtained for all nonresidential moves. For moves not expected to exceed $5,000, this estimate may be done by a qualified State employee. However, on any claim where the move-cost will exceed $5,000, two bids must be obtained from licensed commercial movers.

Refer to the User's Guide for additional information about obtaining move cost estimates.

9.5. REPLACEMENT HOUSING PAYMENTS

9.5.1 Replacement Housing Payments for 90-Day Owner Occupants

9.5.1.1. 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 expiration of the Notice to Vacate; or
2. The date the person receives final payment for the displacement dwelling or in the case of condemnation, the date of court possession; or
3. The date TDOT offers the displaced owner-occupant a comparable replacement dwelling as provided in Section 9.2.2.

This time period may be waived by the Department for good cause. Requests for waiver are to be submitted by the Regional Acquisition/Relocation Team Lead to the headquarters' Right-of-Way 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/her control, is unable to occupy the premises by that date, the occupancy requirement shall be satisfied. The reason for the delayed occupancy should be documented.

9.5.1.2. Amount of Payment

The total replacement housing payment will be an amount not to exceed $41,200. The payment is limited to the amount necessary to relocate to a comparable replacement dwelling within the time specified in Section 9.5.1.1. 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 as determined in Section 9.5.1.3.;

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 9.5.1.4 or 9.5.1.5., as applicable; and

C. The amount of the reasonable expenses as determined in accordance with Section 9.5.1.6. that are incidental to the purchase of the replacement dwelling.

9.5.1.3. Price Differential Payment

This payment is the amount which must be added to the acquisition cost of the displacement dwelling and site to provide a total amount equal to the lesser of:

1. The reasonable cost of a replacement dwelling as determined in accordance with Section 9.5.1.2.A.; or

2. The purchase price of the decent, safe and sanitary dwelling actually purchased and occupied by the displaced person.

9.5.1.4. Increased Mortgage Interest Costs

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 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.

Refer to the User’s Guide for additional information about computing the increased mortgage interest payment.

9.5.1.5. Reverse Mortgages

The payment for replacing a reverse mortgage shall be the difference between the existing reverse mortgage balance and the minimum dollar amount necessary to purchase a replacement reverse mortgage which will provide the same or similar terms as that for the reverse mortgage 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 reverse mortgages that were valid liens on the displacement dwelling for at least 180 days prior to the Initiation of Negotiations. The displaced person or their representative shall be advised of the approximate amount of this eligibility and the conditions that must be met to receive the reimbursement as soon as the facts relative to the person's current reverse mortgage are known and the payment shall be made available at or near the time of closing on the replacement dwelling in order to purchase the new reverse mortgage as intended.

Refer to the User’s Guide for additional information about computing the payment for a reverse mortgage. Also note that additional guidance for computing these payments may be found at 49 CFR Part 24, appendix A, section 24.401(e).

9.5.1.6. Incidental Expenses

The incidental expenses to be paid are those necessary and reasonable costs actually incurred by the displaced person incident to the purchase of a replacement dwelling, and customarily paid by the buyer.

Refer to the User’s Guide for a list of eligible expenses.

9.5.1.7. Rental Assistance Payment For a 90-Day Owner-Occupant Who Rents

A 90-day owner-occupant who could be eligible for a replacement housing payment under Section 9.4.1.1. but elects to rent a replacement dwelling is eligible for a rental assistance payment. The amount of the rental assistance payment is based on a determination of the market rent for the acquired dwelling compared to a comparable replacement dwelling available on the market. The difference, if any, is computed in accordance with Section 9.4.2.2., except that the limit of $9,570 does not apply. The payment is disbursed in accordance with Section 9.5.2.2.D. The calculated rental assistance payment may not exceed the amount the displaced person is eligible for in the form of a price differential as calculated in Section 9.4.1.3.

9.5.1.8. Determining the Acquisition Price of the Displacement Dwelling

The acquisition price of the displacement dwelling is the value of the residential use portion of the property being acquired. Refer to the User's Guide for information about determining the acquisition price of the replacement dwelling for purposes of computing the replacement housing payment.

9.5.2. Replacement Housing Payments for 90-Day Tenant Occupants

9.5.2.1 Eligibility

A tenant or owner occupant displaced from a dwelling is entitled to a payment not to exceed $9,570 for rental assistance, as computed in accordance with Section 9.5.2.2. or down payment assistance as computed in accordance with Section 9.5.2.3. (except a 90-day owner-occupant is not eligible for down payment supplement) if the displaced person:

A. Has actually and lawfully 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 Regional Acquisition/Relocation Team Lead to the headquarters' Right-of-Way 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.

9.5.2.2. Rental Assistance Payment

A. Amount of Payment

The rental assistance payment will be 42 times the amount, if any, obtained by subtracting the base monthly rental for the displacement dwelling from the lesser of:

1. The monthly rent and estimated average monthly cost of utilities for a comparable replacement dwelling; or

2. The monthly rent and estimated average monthly costs of utilities for the decent, safe and sanitary dwelling actually occupied by the displaced person.

B. Base Monthly Rental for Displacement Dwelling.

The base monthly rental for the displacement dwelling is the lesser of:

1. 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; or

2. Thirty (30) percent of the person's average gross household income if their income is classified as "low income" by the U.S Department of Housing and Urban Development's Uniform Relocation Act (URA) Income Limits (https://www.huduser.gov/portal/datasets/ura.html) The base monthly rental shall be established solely on the criteria in paragraph B.1 of this section for persons with income exceeding the Survey's "low income" limits, for persons refusing to provide appropriate evidence of income, and persons who are dependents.

   Note: A full time student or resident of an institution may be assumed to be a dependent unless the person demonstrates otherwise; or

3. 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.

Note to paragraph B.2.: The Survey's income limits are updated annually and are available by using the term HUD URA Income Limits in your search engine.

C. Determining Utility Costs

Refer to the User's Guide for the guidelines that are to be followed when making determinations on utility costs.

D. Manner of Disbursement

A rental assistance payment will be disbursed by the Department on a lump sum basis.

9.5.2.3. Down Payment Assistance Payment

A. Amount of Payment

An eligible displaced person under Section 9.4.2.1. who purchases a replacement dwelling is entitled to a down payment assistance payment. The amount will be the actual down payment and necessary incidental expenses, not to exceed $9,570. However, the amount shall not exceed the amount the owner-occupant would receive under Section 9.4.1.2. if they met the 90-day occupancy requirement.

A 90-day owner-occupant is not eligible for this payment.

B. 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.

9.5.3. Additional Rules and Procedures Governing Replacement Housing Payments

9.5.3.1. 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 the Department has provided for the displaced person. 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.

9.5.3.2. Conducting 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.

Refer to the User’s Guide for additional information about conducting the market study for replacement housing.

9.5.3.3. Computing the Replacement Housing Offer

Refer to the User’s Guide for information about computing the replacement housing offer.

9.5.3.4. 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 as defined in Section 9.1.4.5.

9.5.3.3. Statement of Eligibility to Lending Agency

If the displaced person qualifies for a Replacement Housing Payment but has not yet purchased or occupied a replacement dwelling, the Department will, upon the request of the displaced person, provide a written statement to any interested party, financial institution or lending agency, that the displaced person will be eligible for the payment of a specific sum subject to the Department's requirements.

9.5.3.4. 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.

Refer to the User’s Guide for applicable guidelines.

9.5.3.5. Purchase of Replacement Dwelling

Refer to the User’s Guide for acceptable methods for a displaced person to meet the requirement to purchase a replacement dwelling.

9.5.3.6. 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.

Refer to the User’s Guide for additional information about the advance request.

9.5.3.7. 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.

Refer to the User’s Guide for additional information.

9.5.3.8. 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:
   1. The difference between the owner-occupant's share of the acquisition cost of the acquired dwelling and the actual cost of the replacement dwelling; or

   2. 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 displaced person, the full facts along with a recommended solution will be transmitted to the Regional ROW Manager for approval.

9.5.3.9. 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 person's 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.

9.5.3.10. 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:

A. 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 Department; or
B. Another reason, such as a delay in the construction of the replacement dwelling, military duty, or hospital stay, as determined by the Department.

9.5.3.11. Payment Documentation

All payments must be supported by acceptable documentation.

Refer to the User's Guide for a listing of the documentation that is considered acceptable.

9.6. MOBILE HOMES

9.6.1. 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 9.3 and a replacement housing payment in accordance with Section 9., to the same extent and subject to the same requirements of persons displaced from conventional dwellings.

9.6.2. Moving and Related Expenses

9.6.2.1. Actual Reasonable Expenses

If a displaced mobile homeowner 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.

9.6.2.2. 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.

9.6.2.3. 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 displaced person must provide both a lease agreement on the replacement site and a receipted bill for the payment of the entrance fee.

9.6.2.4. 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.

9.6.3. Replacement Housing Payment for 90-Day Mobile Home Owner-Occupants

9.6.3.1. 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.

9.6.3.2. General Acquisition Policy for Mobile Homes

The Department's general policy is to acquire the mobile home as part of the appraised real property. Only in cases where it is predetermined that the mobile home is not permanently affixed to the land and can successfully be moved will the mobile home be relocations. 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.

9.6.3.3. Replacement Housing Payments to 90-Day Mobile Home Tenant-Occupant

To be eligible for a Replacement Housing Payment as a 90-day occupant the following requirements must be met:

A. 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.

B. 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 9.6.3.1. above except that a tenant-occupant will be considered to be a displaced person in all cases.

9.6.4. Additional Rules Governing Relocation Payments to Mobile Home Occupants

9.6.4.1. Persons with Both an Ownership and a 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 permitted under the item that governs the computation for the dwelling (either $41,200 or $9,570). In other words, the occupancy and tenancy status as pertains to the mobile home, not the site, sets the payment limits.

9.6.4.2. 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.

9.6.4.3. 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.

9.6.4.4. Person Moves Mobile Home

If the owner is reimbursed for the cost of moving the mobile home under these procedures, he/she 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.

9.6.4.5. 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.

9.7. LAST RESORT HOUSING

9.7.1. 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.

Refer to the User's Guide for information about procedures for Last Resort Housing.

9.7.2. 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.

9.7.3. 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:

9.7.3.1. Rehabilitation of and/or Addition to an Existing Replacement Dwelling;

9.7.3.2. The Construction of New Replacement Housing;

9.7.3.3. A Replacement Housing Payment in Excess of the Limits Established in Section 9.4.;

9.7.3.4. The Relocation of and, if Necessary, Rehabilitation of a Replacement Dwelling;

9.7.3.5. The Removal of Barriers to the Handicapped.

Refer to the User’s Guide for additional information about these methods of providing Last Resort Housing.

9.7.4. 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 lifestyle. The physical characteristics of the replacement dwelling may be dissimilar to those of the displacement dwelling but they may never be inferior.

This method of housing is specific and can only be used with the expressed consent of the displaced person. The relocation plan should reflect this concept.

Refer to the User's Guide for examples of special circumstances under housing of last resort.

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) A person whose residential move is performed by others, $100.00.

2) The 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) An occupant of dormitory style room with minimal property will be limited to $100.00.

CHAPTER 10

PROPERTY MANAGEMENT

CHAPTER 10

PROPERTY MANAGEMENT

10.1. PROJECT RELATED ACTIVITIES

10.1.1. INTRODUCTION

Property management, as discussed in this Chapter, 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.

TDOT will ensure that all real property interests within the approved ROW limits or other limits of a facility that has been funded with federal aid are devoted exclusively to the purposes of that facility and that the facility is preserved free of all other public or private alternative uses, unless such non-highway alternative uses are permitted by Federal law or the Federal Highway Administration (FHWA). Such alternative uses must be in the public interest.

It is the intent of this Chapter 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 practices while handling this phase of the right-of-way operation.

10.1.2. PRE-ACQUISITION ACTIVITIES

10.1.2.1. 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 Sections 10.1.2.2. and 10.1.2.3. following.

On the majority of projects, investigation of utility adjustments for private utilities can begin with preliminary Right-Of-Way authorization for incidentals. This task should be assigned promptly to avoid delays in the appraisal process.

Salvage value estimates should be conducted promptly upon issuance of the Form 2.

10.1.2.2. Utility Adjustment

A. General

On all partial takings of properties where privately owned utilities are affected and the property owner will bear the cost of the adjustment, a predetermined amount will be offered, 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.

B. Investigation

Upon receipt of the Authorization For Incidentals, a ROW Technical Specialist/ Sr. will be assigned to review the right-of-way plans 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 Technical Specialist/Sr. 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, additional research must be conducted to ascertain if any utilities will be affected.

Refer to the User's Guide for additional information about the utility adjustment investigation.

C. Estimate

When Authorization of Right-Of-Way Funding is received, estimates will be obtained for those tracts requiring utility estimates. 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 should be to repair or replace the impacted system in kind unless the only option available is connection to public sewer.

Refer to the User's Guide for additional information about utility adjustment estimates.

10.1.2.3. Salvage Value Estimates

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 regional row office. Judgment based on past experience is the best criteria for determining the amount of retention value.

Refer to the User's Guide for information about the salvage value appraisal.

10.1.3. POST ACQUISITION ACTIVITIES

10.1.3.1. Notice of Possession

The Regional Acquisition/Relocation Team Lead must ensure that a procedure is established whereby the Technical Specialist /Sr. assigned to that tract is notified promptly of the date on which possession of each tract is obtained. The Regional Acquisition/Relocation Team Lead must also ensure that the Technical Specialist/ Sr 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 Regional Acquisition/Relocation Team Lead will notify the Technical Specialist/ Sr. As the Regional Acquisition/Relocation Team Lead becomes responsible for each tract, the Technical Specialist/Sr. assigned to that tract will inspect the acquired property and ensure that each of the following functions is accomplished.

A. Inventory and Initiation of Property Record

B. Protection of Acquired Improvements

C. Maintenance and Protection of the Acquired Right-of-Way

Refer to the User's Guide for a description of these functions.

10.1.3.2. Rental of Acquired Properties

A. General

For projects other than advance acquisition, the Department needs the acquired property promptly, along with the vacation of any improvements, so it can dispose of the improvements as soon as possible after acquisition. Property acquired as part of the right-of-way will not normally be rented to anyone other than the person in occupancy at the time of acquisition.

B. 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 displaced person.

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.

Refer to the User's Guide for information about establishing possession dates and rental agreement forms.

C. 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.

10.1.3.6. 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.

10.1.4. CLEARANCE OF RIGHT-OF-WAY

10.1.4.1. Removal of Improvements by Public Sale

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.

For the purposes of these procedures, subsequent references to certified mail include commercially available delivery methods that provide secure, trackable document delivery with delivery confirmation.

Refer to the User's Guide for information about the following topics related to Removal of Improvements by Public Sale:

- Pre-Sale Arrangements
- Sale by Sealed Bid
- Bid procedures

- Procedures in Award of Sale
- Forfeiture of Bid Deposit or Performance Deposit
- Clearance of Right-of-Way By Highway Contractor

10.1.5. ADVANCE ACQUISITION PROJECTS

10.1.5.1. General

The term advance acquisition, for purposes of this subsection, 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). Advance acquisition 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 ROW Manager, must determine how to ensure that the acquired properties will be maintained, and what action to take concerning acquired improvements.

10.1.5.2. Maintenance and Protection of the Acquired Right-of-Way

As discussed in Section 10.1.3.1., the project team is responsible for the maintenance and protection of the acquired right-of-way. For advance acquisition projects, certain routine maintenance items must be accomplished on a regular basis, so the Department must decide whether to accomplish these activities in house or to contract for these services.

10.1.5.3. Disposal of Acquired Improvements

For advance acquisition projects, it may be practical in certain instances to rent some or all of the acquired improvements on a long-term basis.

The Department’s policy is to promote the timely relocation of displaced persons in an orderly fashion regardless of the immediacy of construction and long-term rental to displaced persons is discouraged, with the possible exception of certain business displacements. Rather than deciding whether to rent to the occupant at the time of acquisition, the Department must decide 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.

10.1.6. THE PROPERTY RECORD

10.1.6.1. General

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.

10.1.6.2. 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.

Refer to the User's Guide for more information about the property record.

10.1.6.3. Report on Disposal of Improvements

For each tract upon which salvageable improvements are located, a report shall be made to the Regional ROW Manager after final disposal has been made of the improvements.

Refer to the User's Guide for more information about the report on disposal of improvements.

10.2. POST PROJECT ACTIVITIES

10.2.1 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 Chapter.

The headquarters' Right-of-Way office is responsible for administering these post project activities, and as such, the Excess Land/ODA Manager has been assigned to coordinate and administer these property management functions.

10.2.2. <u>EXCESS LANDS</u>

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.

10.2.3. <u>DISPOSAL OF EXCESS RIGHT-OF-WAY</u>

10.2.3.1. General

The provisions of this section will be followed when disposing of any excess right-of-way, subsequent to its acquisition.

Any changes or modifications to the right-of-way 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. Disposal actions and ROW use agreements, including leasing actions, are subject to the environmental review requirements set forth in 23 C.F.R. 771.

The following criteria will be used as guidelines for evaluating disposals to a legal governmental body at less than fair market value:

- Revenue shall not be generated on the property
- Property shall be free and open to the public

The following criteria will be used as guidelines for evaluating disposals to non-governmental requestors at less than fair market value:

- The request includes a detailed description of the proposed use of the property

- The Department has determined that disposal for the proposed use at less than fair market value is in the public interest based on social, environmental, and/or economic benefits

- FHWA has approved disposal at less than fair market value in accordance with 23 CFR 710.403

- The Department of General Services has provided approval authority, where applicable

Any departure from these guidelines will be fully vetted by both the Excess Land Committee and the FHWA.

A reversionary or restrictive clause, as applicable, 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.

10.2.3.2. 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:

A. The land will not be needed for highway purposes in the foreseeable future.

B. The right-of-way being retained is adequate for the present day standards of the facility involved.

C. The release of the lands will not adversely affect the highway facility or the traffic thereon.

D. 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.

E. 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, the Commissioner or the

Commissioner's designee will make a determination as to whether the land has potential for park, conservation or recreation purposes. If so, the Headquarters Excess Land/ODA Manager will notify applicable agencies of the availability of the land.

10.2.3.3. 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:

A. The value of the land is $250,000 or less; and,

B. The land is to be sold to either the original landowner or any other adjoining property owner.

C. 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.

10.2.3.4. Obtaining Appraisals

All staff appraisals will be obtained by the Regional Appraisal Staff or the H.Q. Appraisal Staff, at the request of the Headquarters Excess Land/ODA Manager.

Refer to the User's Guide for detailed information about obtaining appraisals.

All appraisals will be reviewed and approved in accordance with the provisions of Chapter 7. Once the appraisal(s) is approved, a copy will be forwarded to the Headquarters Excess Land/ODA Manager.

10.2.3.5. The Sale Process

When the appraised value of the property is greater than $250,000, 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 $250,000 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.

Refer to the User's Guide for the sale process after all approvals of the disposal are received.

10.2.3.6. Fiscal Procedures

Refer to the User's Guide for information about the following:

Deposit for Incidental Expenses

Incidental Charges

Purchase Credits

10.2.3.7. Restrictions on Future Use of the Property

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.

Refer to the User's Guide for language that shall be incorporated in each document of conveyance.

10.2.3.8. Operating Procedures – see Excess Land Guidelines for detailed procedures.

All requests for disposal of surplus property will be forwarded to the Regional Excess Land Technical Specialist Sr. in the appropriate field office. The Regional Excess Land Technical Specialist Sr. 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 Technical Specialist Sr. will contact the Regional ROW Manager 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 Technical Specialist Sr. will then forward to the Headquarters Excess Land/ODA Manager a report containing the field office recommendation along with all other pertinent information concerning the proposed disposal. The Headquarters Excess Land/ODA Manager 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 Headquarters Excess Land/ODA Manager will forward a report of the committee's recommendations to the Chief Engineer and the Commissioner of Transportation. On Federal aid projects, the Headquarters Excess Land/ODA Manager will request an environmental evaluation by the Environmental Division. The Headquarters Excess Land/ODA Manager will request a preliminary estimate of the value for the parcel on those parcels requiring approval outside the Department (see Section 10.2.3.3.).

Upon receipt of the preliminary estimate, the Headquarters Excess Land/ODA Manager will coordinate the appraisal following the procedures established in Section 10.2.3.4. 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 Headquarters Excess Land/ODA Manager will take the necessary steps to dispose of the property (see Section 10.2.3.5.).

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 Section 10.2.3.6.).

10.2.3.9. Report Format

The request report will include all the pertinent documentation as noted in the Excess Land Guidelines.

10.2.3.10. 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 6; except on federal aid projects no approval by the FHWA is necessary nor is it necessary to distribute the revision to their office.

10.2.4. UNECONOMIC REMNANTS

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.

The Headquarters Excess Land/ODA Manager will maintain an Integrated Right-of-Way Information System (IRIS) inventory of all uneconomic remnants/loss of access parcels and other identified excess lands. Refer to the User's Guide for the minimum information the inventory must contain.

Refer to the User's Guide for operating procedures related to uneconomic remnants.

10.2.5. ROW USE OF AGREEMENTS FOR NON-HIGHWAY PURPOSES

10.2.5.1. 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 or as required under Section 10.2.3.1. 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.

10.2.5.2. Application to the Department for ROW Use

Any individual, company, organization or legal governmental body desiring to use ROW for non-highway purposes must submit an application to the Regional Excess Land Technical Specialist Sr.

Refer to the User's Guide for information that shall be included in the application.

10.2.5.3. ROW Use Agreement

All non-highway use of ROW shall be covered by a properly executed ROW use agreement and shall contain the following provisions:

A. The party responsible for developing and operating the ROW use.

B. The term of the agreement.

C. A general statement of the proposed use.

D. 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.

E. 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.

F. Provision that any change in the authorized use of the ROW is subject to prior approval of the State.

G. Provision that any significant revision in the design or construction of the described facility must receive prior approval of the State.

H. Provision that such use shall not be transferred, assigned or conveyed to another party without prior approval of the State.

I. Provision that the agreement will be revocable in the event that the facility ceases to be used or is abandoned.

J. 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 ROW, the removal shall be accomplished by the responsible party in a manner prescribed by the State at no cost to the State.

K. Provision for adequate insurance by the responsible party for the payment of any damages which may occur during or after construction of the facility and which would hold the State harmless. Exception to this requirement may be made where the ROW is for use by a legal governmental body that 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.

L. Provision for the State and, when applicable, authorized representatives of the Federal Highway Administration to enter the facility for the purpose of inspection, maintenance or construction of the highway facility when necessary.

M. Provision that the facility to occupy the ROW 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.

N. 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 C.F.R. 21.

O. Provision prohibiting the storage of flammable, explosive or hazardous material within the right-of-way boundary.

Fair market value rent shall be charged for leases unless an exception applies. Follow the provisions of Section 10.2.3.1 with respect to proposed leases at less than fair market value.

Where desired by the State, provisions allowing for transfer of ownership of the facilities to be constructed to the State upon expiration or termination of the agreement may be included in the ROW use agreement.

10.2.5.4. Airspace Controls and Safety provisions

The airspace use of all non-highway use of ROW shall be covered by a properly executed ROW use agreement containing the following provisions:

A. The party responsible for developing and operating the ROW use.

B. The term of the agreement.

C. A general statement of the proposed use.

D. 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.

E. 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.

F. Provision that any change in the authorized use of the ROW is subject to prior approval of the State.

G. Provision that any significant revision in the design or construction of the described facility must receive prior approval of the State.

H. Provision that such use shall not be transferred, assigned or conveyed to another party without prior approval of the State.

I. Provision that the agreement will be revocable in the event that the airspace facility ceases to be used or is abandoned.

J. 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 ROW, the removal shall be accomplished by the responsible party in a manner prescribed by the State at no cost to the State.

K. 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 ROW 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.

L. 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.

M. Provision that the facility to occupy the ROW 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.

N. 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.

O. Provision prohibiting the storage of flammable, explosive or hazardous material within the right-of-way boundary.

Where desired by the State, provisions allowing for transfer of ownership of the facilities to be constructed to the State upon expiration or termination of the agreement may be included in the ROW use agreement.

10.2.5.5. Records

The Headquarters Excess Land/ODA Manager 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:

A. Location of the ROW by project, survey station or other appropriate method.

B. Identification of the authorized user of the ROW.

C. A three-dimensional or metes and bounds description.

D. Pertinent construction plans of the facility authorized to occupy the ROW, if applicable.

E. A copy of the executed agreement.

10.2.5.6. Operating Procedures - see Excess Lands 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 Technical Specialist Sr. in the appropriate field office. The Regional Excess Land Technical Specialist Sr. 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 Technical Specialist Sr. will follow the steps outlined above in Section 10.2.3.8.

Upon receipt of a request from the field office, the Headquarters Excess Land/ODA Manager 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 Headquarters Excess Land/ODA Manager 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, including the environmental document, 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 or as required under Section 10.2.3.1. All other non-highway uses of ROW within State route rights-of-way do not need FHWA approval. The Headquarters Excess Land/ODA Manager 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 Section 10.2.3.4. Once the appraisal is completed and approved it will be forwarded to the Department of General Services for their concurrence. If a lease is requested by a non-adjoining landowner and 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 Technical Specialist SR. will seek payment of the first year’s rent or administrative fee along with proof of insurance. The Regional Excess Land Technical Specialist Sr. will request the region attorney to prepare the agreement and submit it for signatures.

10.2.5.7. Renewals of Expired/Expiring ROW Use Agreements at No Cost for Public Use

Upon expiration of an existing no cost for public use license/lease agreement with a legal governmental body, the Headquarters Excess Land/ODA Manager will send a request to the Regional Excess Land Technical Specialist Sr. to perform a cursory review of the licensed/leased premises. The Regional Excess Land Technical Specialist Sr. will coordinate an inspection of the premises to confirm that its current use is still in compliance with the terms of the expired/expiring agreement. The Regional Excess Land Technical Specialist Sr. will ensure that the use and physical activity at the premises is not changing from what was originally permitted through the previous agreement. If the use and physical activity on the premises is not changing, there should be no environmental impacts and no additional NEPA study is warranted beyond the original PCE/CE, as required by 23 CFR §710.403(d).

Upon confirmation that the existing use complies with the terms of the original agreement, the Regional Excess Land Technical Specialist Sr. will notify the Headquarters Excess Land/ODA Manager.

The Regional Excess Land/ODA Manager will send a request to the Regional Excess Land Technical Specialist Sr. to prepare a new license/lease agreement and send it to the legal governmental body 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 affect 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-premises 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 11

LEGAL

11.6. INVERSE CONDEMNATIONS

CHAPTER 11

LEGAL

11.1 LEGAL SERVICES

11.1.1. 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.

11.1.2. 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 ROW Manager to generate Right-of-Way proposals and resolutions as needed. The Regional ROW Manager will ensure that all documents are executed by the appropriate local officials and forwarded to the Headquarters ROW Office. The Headquarters Technical Coordinator will circulate the documents to the Legal office for approval and the Commissioner's office for signatures.

11.1.3. ROW Public Meeting

The ROW Public Meeting is set up by the Regional ROW Office. A notice for the ROW Public Meeting is sent out to all affected property owners on the project. The Region ROW Office will secure the location for the meeting and have all pertinent information available.

11.2 INITIATING CONDEMNATION PROCEEDINGS

11.2.1 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.

11.2.2. Approving Condemnation

As discussed in Chapter 8, 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 Regional ROW Acquisition/Relocation Team Lead before it is forwarded to the Regional Right-Of-Way Manager 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.

11.2.3. Notice to Property Owner

The property owner or designated representative shall be notified in writing that the Department is planning to acquire the property by condemnation before an eminent domain suit is filed.

After approving the condemnation on Right-of-Way Form-17, the Regional ROW Manager 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 business days to respond to the notice.

11.2.4. Information to the Condemnation Attorney

Upon receipt of the warrant for the Initial Court Deposit, the Regional ROW Manager or a designee will have a package prepared for transmittal to the condemnation attorney. The information to be transmitted should include as a minimum:

11.2.4.1. Copies of appraisals and ROW Form-2.

11.2.4.2. Copy of the title report.

11.2.4.3. An engineering description of the taking, which is in agreement with the plans, as well as the proper clauses as set out in Chapter 8.

11.2.4.4. Negotiation Records, including Form-17, 17A and 17B.

11.2.4.5. Copies of leases, affidavits, etc., which have been procured in preparation for or during negotiation.

11.2.4.6. 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.

11.2.4.7. Information as to replacement housing payments or offers.

11.2.4.8. The warrant.

The Regional ROW Manager 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 the 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 ROW Manager or a designee will forward same to the appropriate Attorney General for deposit in the appropriate Circuit Court.

11.2.5. 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.

11.2.6. Petitions and Notices

11.2.6.1. 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:

A. 1 copy to the field office

B. 1 copy to the central office

11.2.6.2. 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/she can amend the petition. Copies of amended petitions will be distributed as shown above.

11.2.7. Notice of Possession

Immediately upon the court's granting possession of a property, the condemnation attorney will notify the TDOT ROW Acquisition/Relocation Team Lead and/or the Reginal Technical Specialist of the date possession is effective.

In any event, an order of possession must be submitted. Distribution will be the same as for the petition (see 11.2.6. above).

11.2.8. Moving Costs

As provided in Chapter 9, 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.

11.3 CONDEMNATION ACTIVITIES

11.3.1. 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.

11.3.2. Revised Reviews

11.3.2.1 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.

11.3.2.2. Procedures

When a revised Form-2 is issued, the person responsible 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 9.

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 2. 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.

11.3.3. Updating Appraisals

When the Attorney General’s Office determines that an update is needed, the following guidelines shall be followed:

11.3.3.1. The original type of appraisal shall be obtained for the update unless requested otherwise by the Attorney General’s Office.

11.3.3.2. 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.

11.3.3.3. 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. Additionally, a copy of the 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 in accordance with existing procedures for field office processing of appraisals. The transmittal shall indicate the reason the appraisal is being forwarded to the Headquarters office.

C. If the update reflects a change in the approach to valuation, it will be forwarded to the Headquarters 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.

11.3.3.4. If a revised Form-2 is issued for an increase, the field office will take action in accordance with the provisions of 11.3.3.3.B. above.

11.3.4. 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 11.3.3.3.B. above.

11.3.5. Revising Appraisals

As stated in 11.3.3. 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 Regional ROW Manager, 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 Regional Appraisal Team Lead will forward the request to the Headquarters Office ROW Manager Appraisal or the Headquarters Office Appraisal Team Lead will negotiate a contract with the appraiser(s) involved to prepare a formal appraisal.

11.3.6. 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 ROW Manager will notify the Headquarters Office ROW Appraisal Manager or the Headquarters Office Appraisal Team Lead 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 Headquarters Office ROW Appraisal Manager or the Headquarters Office Appraisal Team Lead 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 Headquarters Office ROW Appraisal Manager 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 ROW Manager and the Regional office Appraisal Team Lead

If it is determined that an additional appraisal will be obtained, an appraiser will be hired under the contracting procedures.

All appraisals will be processed in accordance with the procedures outlined in Chapter 7. 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 Regional office Appraiser Team Lead 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.

11.3.7. 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 ROW Manager. 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 ROW Manager 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 7 above.

Should the Regional ROW Manager not concur in the need for an additional appraisal, he/she will refer the matter to the Headquarters office.

11.3.8. 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/she 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 ROW Manager to determine whether an additional witness is justified. If in the judgment of the Regional ROW Manager, employment of the additional witness is not justified, the matter will be referred to the Headquarters office. If the use of the witness is approved, the Headquarters office will initiate contact. 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/she 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, the 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/her 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:

11.3.8.1. 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 Headquarters 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 Headquarters Office cannot accept the report, the Right-of-Way Director, or 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 Headquarters office. If the witness is used, the trial resume must fully support such use.

11.3.8.2. 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 Headquarters office for review along with their comments and recommendation. After completing the review, the Headquarters 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 he/she 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.

11.3.9. 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 the trial resume. Normally, the trial attorney will obtain prior approval to use the appraiser from the Office of the Attorney General.

11.3.10. Services to be Provided By the Department

11.3.10.1. 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.

11.3.10.2. Court Exhibits

Exhibits (models if necessary) and/or overlays may be prepared by the region upon the request of the attorney.

11.3.10.3. 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 3 DO NOT APPLY TO CONTRACTS MADE BY OR FOR THE OFFICE OF THE ATTORNEY GENERAL

11.3.11. 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 other activities.

11.3.12. Court Judgment and Trial Resume

11.3.12.1. 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 landowner, 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/her 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 a 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/she 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 therefor.

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.

11.3.12.2. 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 Headquarters 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/she will by letter to the Deputy Attorney General request that the attorney provide documentation commensurate with the needs of the Department. He/she may also comment on the results of the trial and provide comments concerning the position of the Right-of-Way Division on the advisability of an appeal.

11.3.12.3. 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 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 11.3.12.4. below. Copies of the letter to the attorney will be sent to both the field office and the central office.

11.3.12.4. 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/she 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 Headquarters office for filing.

11.3.13. Compromise Settlements

11.3.13.1. General

The Office of the Attorney General may make a settlement, in whole or in part, when it is determined that such action is reasonable, prudent, and 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:

   1. Ability and experience as an appraiser.

   2. Reputation in the area.

   3. Ability to persuasively and clearly explain his/her 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:

1. Costs to the acquiring agency and its counsel for preparing and presenting the case at trial or in an appeal.

2. Costs to the public for impaneling a jury, maintaining the court, etc.

3. Alleged impossibility of obtaining an unbiased jury.

4. 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.

11.3.13.2. 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 that 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 11.3.13.1. 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 reasonable, prudent, and 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/her opinion warrants a settlement, he/she shall recommend it in writing to the Attorney General's Office. The letter signed by the attorney shall describe the reasons for the recommendation and shall support the recommendation in accordance with the guidelines noted in 11.3.13.1. of this section. Where time is of the essence, he/she 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 Headquarters 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 or 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 over the fair market deposit. 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. It will then be forwarded to the field office for ultimate transmittal to the central office.

11.4 PAYMENTS

11.4.1. 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 ROW Manager or assigned to any appropriate person under his/her 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 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 2. 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 90-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 9 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.

11.4.2. 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/her 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.

The Office of the Attorney General may permit the attorney to employ witnesses and specialists and include the cost of such in his/her fee.

11.4.3. 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.

11.5 CONTROL OF CONDEMNATION CASES

The Regional ROW Manager 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:

11.5.1. State Project Number.

11.5.2. Tract Number.

11.5.3. Date Condemnation Authorized.

11.5.4. Amount of Initial Deposit.

11.5.5. Date of Possession.

11.5.6. Date and Amount of Additional Deposit.

11.5.7. Date of Judgment.

11.5.8. Amount of Judgment.

The main purpose of the control record is to monitor the progress of condemnation cases.

11.6 INVERSE CONDEMNATIONS

11.6.1. 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.

11.6.2. 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 ROW Manager requesting that the complaint be investigated and that a full written report of the investigation be submitted.

In consultation with the Regional Director or 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 ROW Manager. 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.

11.6.3. 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 11.6.2. 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 using 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).

11.6.4. Headquarters 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 ROW Manager 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.

11.6.5. 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 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.

11.6.6. 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.