

**HIGHWAY DIVISION  
PROJECT DELIVERY BUREAU  
OFFICE OF RIGHT OF WAY  
LOCAL PUBLIC AGENCY MANUAL**



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## **Introduction**

### **For Local Public Agency Federal/State-Aid Projects**

Local public agencies (LPAs) seek to act as a partner to acquiring agencies as they proceed through the portion of their project involving right of way.

This instructional manual has been prepared to help LPAs in the development of their right of way programs. The Iowa Department of Transportation (Iowa DOT) wishes to develop partnerships with LPAs with a goal of providing assistance that enables right of way to be acquired in a manner that does not jeopardize federal funding for projects.

The work flow chart of the right of way process on the following page shows the major steps involved.

Ideally, processes would be improved, work would be made easier, and goals would be accomplished more quickly. Unfortunately, there are no shortcuts to accomplish the right of way portion of a project. Even if there is no federal or state funding in the acquisition of right of way, these procedures must be followed if any Federal-aid is used in the project; additionally, state law applies to all projects regardless of sources of funding.

### **State and Federal Laws**

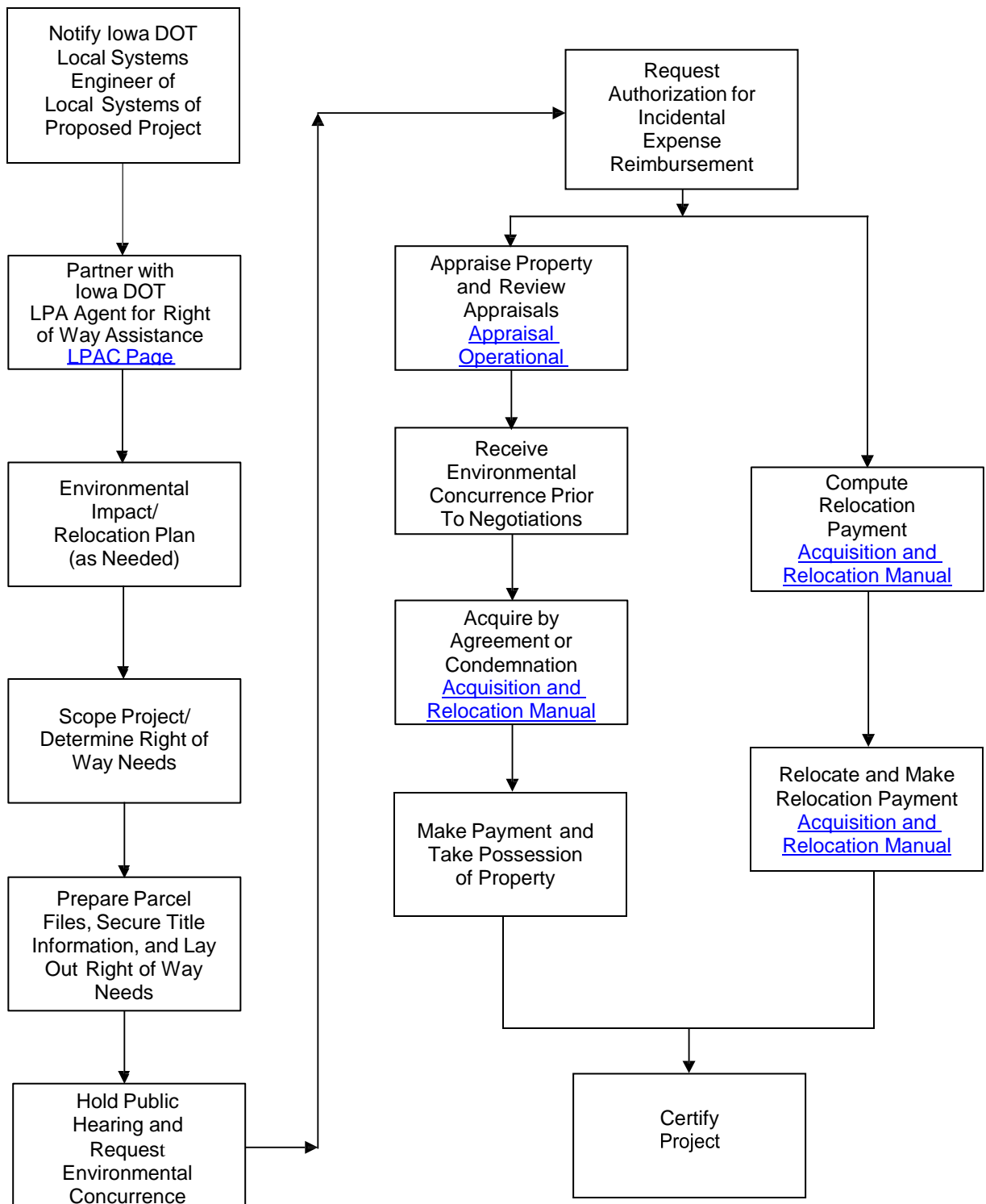
Iowa laws relating to highways and acquisition are addressed in Iowa Code (IC) 6A, IC 6B, IC 28E, IC 306, IC 306A, IC 306B, IC 306C, IC 313, and IC 316. They are also addressed in 761 Iowa Administrative Code (IAC) 111.

Federal statutory requirements for right of way programs are contained in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (referred to as the Uniform Act). Regulations implementing the requirements of the Uniform Act are contained in 49 Code of Federal Regulations (CFR) 24, entitled "Uniform Relocation Assistance and Real Property Acquisition Regulations for Federal and Federally Assisted Programs."

Title 23 of the United States Code (USC) pertains to highways and covers other regulations from the Federal Highway Administration (FHWA).

State law and implementing regulations do not distinguish between Federal-aid and non-Federal-aid right of way projects. The Uniform Act applies if there is federal funding—or if the use of federal funds is anticipated—in any phase of project costs. The Iowa DOT and LPAs acquiring property or causing displacements from real property must comply with the Uniform Act and implementing regulations to receive funds from a federal grant, contract, or agreement. Compliance by LPAs is found as a stipulation of the funding agreement for each project.

## Right of Way Process Work Flow Chart





## **Chapter 1 General Guidelines**

### **1.1 Purpose**

The purpose of this chapter is to provide general guidelines to consider when planning right of way activities for Federal- and State-aid projects. This chapter discusses the roles of various partners in right of way projects and provides a detailed description of all the elements of project procedure, including who must oversee and authorize the steps of the process.

### **1.2 Roles and Responsibilities**

The Iowa DOT has a stake in right of way projects, so it is necessary to explore everyone's roles and responsibilities.

#### **1.2.1 Involving a Federal Partner**

Acquiring right of way for a public project often requires several partners. A project may require a cooperative effort involving the LPA at the local level, the Iowa DOT at the state level, and the FHWA at the federal level. The Iowa DOT has already developed a partnership with the FHWA for the benefit of all parties. This partnership has evolved to the point where the FHWA holds the Iowa DOT responsible for ensuring that the right of way on all federally funded street and road projects in Iowa is acquired in accordance with federal guidelines.

The FHWA has reviewed the Iowa DOT right of way processes to ensure compliance with federal laws and regulations. Therefore, if right of way processes are developed in compliance with Iowa DOT policies, compliance with state and federal requirements is automatic.

#### **1.2.2 Guidance**

In order for a project to receive state and federal funding, there are a multitude of laws and regulations that necessitate compliance. One of the Iowa DOT's primary functions is to help ensure that federal funding is not jeopardized as a result of right of way activities. In other words, the Iowa DOT explains not only what should be done, but also what should not be done. For example, the following procedures from any of the Iowa DOT right of way manuals provides correct direction and limits future problems. Should an LPA elect to develop its own manual, please be aware that it is subject to Iowa DOT and FHWA review and acceptance prior to use on a Federal-aid project.

The exchange of information is vital to the success of any partnership. A project's success depends on frequent communication between the Iowa DOT and an LPA. A given project determines the extent of communication necessary, but when in doubt, it is best to contact an LPA coordinator.

An LPA coordinator may request a face-to-face meeting with the LPA. This type of meeting may be used as a brainstorming session where new ideas can be discussed. Both parties may learn new ways of doing things through this effort. There is a critical need to have these meetings early in the progression of a project to avoid problems in the future.

### 1.2.3 Monitoring

The primary objective of monitoring is to ensure that requested federal funding is not jeopardized. It is important that monitoring does not develop into an adversarial relationship; this can be avoided through cooperation.

The areas to be monitored include management, design, appraisal, acquisition, relocation assistance, title and closing, condemnation, and property management. Not all projects include all of these disciplines.

An early monitoring concern involves ensuring that the necessary resources are available to adequately address the right of way issues associated with the project. The Iowa DOT would like to assist agencies in reviewing resources and providing ideas for accommodating any shortfalls. Also, the Iowa DOT is available early in a given project to help with assessing lead time and project scoping issues. These topics are covered in greater detail later in this manual.

Should monitoring discover areas that require attention, these potential problems are identified and alternative solutions offered. The LPA may use suggestions provided by the Iowa DOT or develop their own resolutions, provided all partners agree.

### 1.2.4 The Responsibilities of an LPA

An LPA is responsible for acquiring the necessary right of way for the construction and maintenance of the proposed facility in accordance with all applicable federal and state laws and regulations. It must consider not only right of way acquired in fee simple, but also permanent easements (slopes, drainage, etc.); temporary easements (construction, borrow, etc.); licenses; and any other agreements required for entering onto or using land or property rights for construction and maintenance activities.

An LPA may or may not choose to involve federal funds in their right of way efforts. In case federal funds are used in any portion of the project, all requirements of the Uniform Act apply. The LPA coordinator is available to provide assistance with compliance; however, remember that ultimately this is the LPA's project, and compliance is the agency's responsibility. The agency is expected to certify compliance with all applicable laws and regulations. Failure to comply jeopardizes funding requests.

## 1.3 Planning and Lead Time

To compound time management concerns, one of the most significant challenges in acquiring right of way is ultimately depending on factors over which the LPA has no control. Delays may be encountered from property owners, title companies, or the court system, for example. If an LPA or LPA staff has other duties in addition to project right of way assignments, time management becomes an even larger problem. The only reasonable answer to these time management problems is to acquire enough lead time to succeed.

The following is an estimate of right of way activities for an average project, such as a widening job containing approximately ten parcels. Time frames for functions may overlap, and complex projects require more time. Estimates for relocation assistance have not been provided, as these types of parcels can only be estimated on a case-by-case basis. Relocation assistance requires significant time, and an LPA coordinator is available to help estimate the time needed.

### 1.3.1 Estimated Time Frames for an Average Project

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Layout and legal: Preparation of the right of way plans, plats, legal descriptions, and title reports.....4 Months

Appraisal and appraisal review: Time to prepare and review appraisals.....4 Months

Negotiations: Notice of proposed public improvement and to acquire (per IC § 6B.2A). Negotiator makes contact, secures signatures on contract, and closes transaction.....7 Months

Condemnation: Prepare condemnation notice, request selection of commissioners, serve notices as required, and make payments. File necessary notices, required publications, and send property owner mailings.....6 Months

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Total .....21 Months

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## 1.4 Map-21

Although not yet formally adopted into Iowa's administrative rules, the Iowa DOT recognizes the October 1, 2014 effective date for amendments to the Uniform Act pursuant to Section 1521 of the Moving Ahead for Progress in the 21st Century Act (MAP-21). This manual has been updated to reflect this most recent federal guidance.

## 1.5 Federal Funding Guidelines

23 USC requires costs for appraisal, negotiation, and condemnation that are not eligible for federal funding without prior authorization from the FHWA to proceed with the activity. This authorization request is made through the Iowa DOT's Administering Office. Costs incurred prior to the appraisal phase, such as right of way estimates, title work, preliminary survey and plat, and description preparation may be eligible for federal participation and reimbursement as a preliminary engineering activity—or as an incidental right of way expense—only if the authorization to proceed is received from the FHWA prior to commencing work.

Costs eligible for reimbursement include, but are not limited to, real property acquisition, incidental costs of the acquisition, pro rata taxes and/or special assessments, permanent and temporary easements, damages to remainder of real property, court awards and costs of tenant-owned improvements, uneconomic remnants, and construction in exchange for donation. All documents relating to acquisition of the right of way must be available for inspection. Plans, contracts, deeds, appraisals, options, vouchers, correspondence, and all other documents must carry the Federal-aid project number for identification.

## 1.6 Environmental and Public Involvement Requirements

Federal-aid projects require securing applicable environmental approvals. State and federal funding requires public involvement when right of way acquisition is necessary. Details, outlines, flow charts, and step-by-step procedures involving environmental and public involvement are available in the *Office of Local Systems Project Development Information Packet*. For example,

IC § 6B.2A prescribes public involvement requirements for agricultural land as described in IC § 6A.21.

Sometimes, projects must affect environmentally or historically protected properties. In those cases, mitigation may be required, including acquiring replacement lands. The acquisition of mitigation properties requires long-term management plans. An LPA agency may be required to acquire, manage, or transfer these properties to another agency.

If federal dollars and/or a federal action are involved, compliance with the National Environmental Protection Act (NEPA) is necessary. For example, if there are no federal funds involved in a project and a US Army Corps of Engineers 404 permit is required, then compliance with NEPA requirements is mandatory.

## 1.7 Contracting Work and Intergovernmental Agreements

When an LPA is ready to proceed with a project, the agency may or may not have the internal resources available to complete the necessary right of way functions. The Iowa DOT often finds itself in a situation where it needs additional resources. Two options available to all parties include contracting with private contractors or contracting with other governmental agencies. If contracting with outside resources, do not forget to allow additional coordination time in the overall schedule.

### 1.7.1 Contracting Work

If private consultants are hired to perform a right of way function, these services should be contracted in compliance with the applicable requirements for contracting with private contractors, fee appraisers, or other specialists. The Iowa DOT provides lists of consultants for informational purposes only, but do not warrant the services supplied by consultants. An LPA should ensure that the consultant it selects can deliver the necessary services in a satisfactory manner.

### 1.7.2 Intergovernmental Agreements

IC 28E permits state and local governments to make efficient use of their powers by enabling them to provide joint services and facilities with other agencies and to cooperate in other ways to mutual advantage.

The assistance an LPA needs may be found at neighboring agencies, such as the staff at a city or county facility. An LPA coordinator can help to develop creative solutions for LPAs seeking additional resources.

It may be possible that the Iowa DOT has sufficient staff available to assist with a project. Assistance may be provided in the form of an appraisal, appraisal review, acquisition, relocation, condemnation, property management, or miscellaneous tasks, such as preparing right of way plans, estimates, and title documents. Unfortunately, the Iowa DOT can only offer these services when the workload permits. As a result, contracting with the Iowa DOT may or may not be a viable option.

If an LPA decides to hire Iowa DOT staff, it must submit a written request to the Office of Right of Way specifying the function for which it is requesting help. The Iowa DOT also asks for information pertinent to the scope of the requested function, as well as the projected completion schedule.

If there is staff available to complete the assignment within the stated time frames, the Iowa DOT prepares a cost estimate for the agency. It then prepares an intergovernmental agreement outlining the functions it will perform for the agency. But, should the ultimate costs be greater than estimated, the agency is still responsible for the actual costs incurred. Sample copies of intergovernmental agreements may be obtained from an LPA coordinator.

## 1.8 Qualifications of Right of Way Personnel

The Iowa DOT has provided what it believes to be minimum qualifications for persons performing right of way program functions. There are right of way functions for which no qualifications have been provided, including property management, land plat and description preparation, and condemnation and project management. If any of these or other services are required, an LPA coordinator can be consulted for assistance in determining the necessary qualifications.

An LPA coordinator maintains a list of firms offering appraisal, appraisal review, negotiation, and relocation assistance services. This list may not include all other qualified consultants that may be available.

Provided is a brief overview of minimum qualifications for staffing state- or federally funded projects.

Appraisers must:

- Have successfully completed technical appraisal training and have experience in appraising the type of property to be appraised. When in doubt, a sample appraisal should be requested;
- Have previous experience in preparing appraisals for eminent domain right of way acquisition; and
- If a detailed appraisal is required and a consultant is used, the consultant must be an Iowa-certified appraiser if the project is federally funded or if the land is to be acquired in the name of the state of Iowa.

Review appraisers must:

- At a minimum, have the qualifications listed above for appraisers;
- Possess the ability to logically analyze the appraiser's approach to value and recognize deficiencies in the appraisal report; and
- Be certified, if a certified appraiser is required.

Please note that should the services of a fee review appraiser be used, the agency retains the responsibility to approve the amount believed to be just compensation.

Negotiators must:

- Possess a current Iowa real estate license, be a full-time employee of the LPA or the Iowa DOT, or otherwise be excepted from the requirements of IAC 543B;
- Be familiar with federal and/or state acquisition requirements;
- Demonstrate the ability to understand appraisals and appraisal reviews;
- Know how to research courthouse records and understand legal title;
- Demonstrate the ability to interpret right of way plans; and

- Possess effective communication skills.

Relocation assistance agents must:

- Have documented experience in performing relocation assistance that complies with the applicable state and/or federal requirements; and
- Have sufficient right of way knowledge in other disciplines to work within a team.

### 1.9 Authorization for Right of Way Activities

The acquisition of right of way may not begin before a written notice of FHWA environmental concurrence is issued. This approval is provided by the Iowa DOT's Office of Location and Environment (OLE). In some instances, preliminary right of way work may begin prior to the receipt of this approval. It is possible that future changes may create revisions, causing additional work and expense for an agency.

Preliminary appraisal work may begin as long as there are no owner contacts made by the appraiser prior to public notice and involvement. After public involvement begins, an Initial Right of Way Contact Letter is sent to the owner explaining that an appraiser will be contacting them soon. No actual negotiations with property owners may begin before environmental concurrence is received. The only exception to this is in the case of advanced acquisitions. Please see the discussion of advanced acquisitions in Chapter 2, "Overview."

## Chapter 2 Overview

### 2.1 Purpose

The purpose of this chapter is to provide an overview of items, issues, and processes that may be helpful to consider while planning the right of way activities for a project. This chapter examines advanced acquisitions, donations, easements, and minimal value purchases, and describes procedural guidelines and documentation required in a right of way project.

### 2.2 Advanced Acquisitions

An advanced acquisition is the acquisition of right of way before the final environmental document is approved or before the environmental concurrence for a project has been approved. There are two main types of advanced acquisitions: hardship acquisitions and protective buying. The *Office of Local Systems Project Development Informational Packet* provides several flow charts describing the entire process in detail.

If federal funds are used in the acquisition of right of way, the Iowa DOT and FHWA must approve both hardship and protective buying acquisitions. Neither hardship nor protective buying acquisitions may be approved before:

- Public notice has been given of the preferred location of the facility; or
- Public involvement and notification requirements have been met.

Prior approval is needed for advanced acquisitions, even if there is no federal funding in the right of way. When federal funds are involved in any part of the project, all applicable federal and state regulations must be followed during the acquisition of the parcels.

### 2.3 Hardship Acquisitions

Hardship acquisitions usually occur when a property owner makes a written request to the LPA for acquisition of the property in advance of the normal time scheduled for acquisition due to some hardship. The hardship acquisition request made to the Iowa DOT by the LPA must include the estimated cost of the acquisition, relocation and incidental costs, and supporting documentation.

Justifications must include reasons why the project causes a condition for the owner that is different from or disproportionate to the inconvenience suffered by the majority of those in the project area. Also, a statement is necessary indicating that reasonable alternatives are not open to the property owner that would relieve the situation without acquiring the property at this time.

Once an agency initiates the acquisition process, a serious commitment has been given to the property owner. The agency has accepted an obligation, and federal participation is dependent upon the agency's commitment to seeing the acquisition through to its conclusion. Several activities must be accomplished prior to the agency receiving the ability to condemn. Many of these activities cannot be accomplished in the early stages of the project when hardship acquisitions are necessary. Therefore, requests from owners for hardship acquisitions should contain a waiver of all impediments to a condemnation and an agreement to be condemned should negotiations prove unsuccessful.

## 2.4 Protective Buying

Protective buying is purchasing property in advance of the project to preserve a preferred or essential location for the proposed project. Requests to the Iowa DOT for protective buying must include the estimated cost of the acquisition. An agency must give reasons why the request should be considered: for example, the costly development or physical alteration of a property is impending; a zoning change is occurring which adds substantial costs to the parcel acquisition; or a reconstruction of improvements damaged by fire or natural disaster is imminent.

Care must be taken to ensure that the final project design is not changed or influenced as the result of an advanced acquisition. If the early acquisition of a parcel is approved but the right of way is ultimately not needed for the project, the agency is responsible for the total cost of the acquisition.

Please note that if the property is acquired prior to receiving federal authorization, the costs incurred are not eligible for federal participation. However, the value of the property may still be eligible for use in match purposes. Please consult an administering office or LPA coordinator for further details.

## 2.5 Donations

There are occasions when property owners have expressed a willingness to donate land or rights to land, especially when the project provides a benefit to the property and the community in general. An owner's offer to donate the right of way may also be accepted in exchange for services that are rendered which benefit the owner.

In either event, the owner must be fully informed of the right to be paid just compensation for the acquisition as determined by an appraisal. If agreeable to the donation, the owner can waive the right to an appraisal. This must be in writing, and the waiver, or a copy of it, must be kept in the parcel file.

## 2.6 Easements

Easements are interests in real property that permit the use—not ownership—of land. Easements are rights to perform specific acts on land. They may be temporary or permanent in nature. Temporary easements may be held for a specific or indefinite time period.

The purposes of easements are as varied as there are uses for real estate. In some cases, they may not cause damage or reduction in the value of property. For example, a permanent sewer easement may cause temporary damage to a property, but after the sewer is constructed and the area resodded, the value of the property may be equal to its value before construction. Conversely, a temporary easement for borrow purposes may substantially reduce the value of a property. Each easement must be examined to determine the reduction in value to the property and estimate the fair and just compensation due to the owner.

All easements, whether temporary or permanent, must be considered a land right which is necessary to acquire. All necessary easements, including temporary easements—such as small shaping easements—must be acquired and certified prior to construction of the project.



## 2.7 Minimal Value Purchases

When the cost of securing right of way for a parcel approaches or exceeds the value of the acquisition itself, the procedure for acquiring right of way may become disproportionate and cumbersome. Processes such as minimum value purchase procedures have been developed in an effort to reduce cost and time necessary for uncomplicated, low-value acquisitions.

Minimal value purchases are uncomplicated acquisitions that are estimated to not exceed \$10,000 in value, excluding fence and crops. Procedures have been developed for cost-effective acquisitions of minimal value purchases, which include waiving the requirement for an appraisal to determine just compensation. The Iowa DOT's waiver valuation has been approved by FHWA; therefore, proper use of the Iowa DOT's waiver valuation ensures compliance with state and federal guidelines.

A minimal value payment offer may be made to a property owner without the necessity of an appraisal. An Administrative Estimate, called a Compensation Estimate, is used to establish the amount to be offered as just compensation.

## 2.8 Procedural Guidelines

Title III of the Uniform Act states that its goal is to encourage and expedite the acquisition of real property by agreement with the owner, avoid litigation and relieve congestion in the courts, ensure fair and equal treatment for all owners, and promote the confidence of the public in land acquisition for public use.

A thumbnail sketch has been provided of what needs to be done to avoid jeopardizing state and federal funding. The activities are listed in the approximate order in which they should be performed.

- Contact the Iowa DOT's administering office to inform and perform preliminary startup procedures and to determine the scope of the project, including what, if any, additional right of way is needed.
- Prepare the parcel files, secure title information, plot existing and proposed right of way lines on construction plans, calculate the acquisition areas, and review access control needs. Estimate the acquisition amount for each parcel to determine the complexity of the valuation and appropriate valuation procedure. One item to be wary of is the presence of hazardous waste and contaminated properties. (See the discussion of "Hazardous Waste and Contaminated Properties" in Chapter 9.)
- Complete the public notification and involvement requirements and apply for environmental concurrence.
- Request authorization for reimbursement of right of way and/or incidental expenses (including appraisals) from the Iowa DOT and FHWA if participation in expenses is sought.
- Comply with notification requirements per IC § 6B.2A.
- Determine the amount to be offered as just compensation by an appropriate method (i.e., via appraisal or through the waiver valuation).
- Acquire the right of way and close each transaction.
- If relocation is involved, ensure that all displaced persons are assisted. Please note that per IC § 6B.42 and IC § 316, all acquiring agencies are required to provide relocation assistance on all projects.
- If necessary, complete condemnation proceedings.

- Certify the project.

At any time in this process, if right of way-related issues need to be discussed, contact an LPA coordinator or Administering Office.

## 2.9 Title Search

There must be an examination of the county records and title report requested for each parcel to determine the owner of the property, including mortgage holders and other interested parties. This title report is used to determine the status of title in order for merchantable title for the required land to be obtained. The report is also used as an information source for describing land and identifying all persons or entities with an interest in and/or authority to contract for deed and/or release real estate interests. These records are maintained as part of the parcel file.

## 2.10 Legal Descriptions/Plats

Legal descriptions and plats are to be prepared and certified by an Iowa-licensed land surveyor. Minimum standards for descriptions may be found in IC § 6A.20.

## 2.11 Records/Parcel Files

An agency needs to maintain a separate parcel file for each acquisition of real property and all people displaced. There must be records that sufficiently demonstrate compliance with applicable laws and requirements and that are available for inspection by the Iowa DOT, FHWA, and possibly other divisions of state and federal government. Records need to be retained for at least three years after the final payment of any phase of the project.

Below is a list of the minimum records to be retained.

- All correspondence
- Title documents
- Design summary information and plat
- Appraisals and review appraisals
- Negotiator's notes
- Administrative Settlement (if used)
- Copies of signed contracts
- Title opinion
- Conveyance and closing documents
- Relocation forms
- Relocation agent's notes
- Condemnation documents (if used)
- Right of way record checklist
- Written offer and "Statement of Owners' Rights"
- Proof of payment before possession
- Properly supported donation

## **Chapter 3 The Valuation Process**

### **3.1 Purpose**

This chapter serves as a brief description of the valuation process. When an LPA receives authorization from FHWA to acquire right of way for a project, the valuation process is the next step. The foundation of any right of way acquisition and the fundamental responsibility of every acquiring agency is to ensure just compensation has been offered for all interests in the property rights to be acquired. The valuation process provides documented assurance that just compensation has been considered. Valuation is described in five basic categories: whether or not appraisal is required, the waiver valuation, the appraisal process, the appraisal review, and the approved offer by the acquiring agency.

### **3.2 To Appraise or Not to Appraise**

Before the initiation of negotiations, the property must be appraised. There are two general exceptions: 1) if a donation is indicated and the owner(s) waive their right to an appraisal; or 2) if the magnitude and complexity of the acquisition indicate that an appraisal is not necessary. When the property owner receives notice indicating that an appraiser will be contacting them (or even earlier), that owner may indicate a willingness to donate the land without the requirement of an appraisal. An additional discussion of donations is located in Chapter 2.

This chapter provides detailed information concerning the appropriate use of both the appraisal and waiver valuation. The following information provides the basis for determining which is the appropriate valuation process to use for specific parcels. If it is unclear which process to use, please contact an LPA coordinator for assistance.

### **3.3 Donations**

IC § 6B.54(9) and 23 USC § 323 provide that a person whose real property is acquired in connection with a Federal-aid highway project may offer a gift or donation of such property, or any part thereof, or of all or part of the just compensation paid for the property, to a federal agency, a state or a state agency, or to a political subdivision of a state, as determined by that person. Such donation may only occur after the person has been fully informed of their right to receive just compensation for acquisition of the property.

When property is acquired by donation, no appraisal is required. However, owners must also be fully informed that they are entitled to an appraisal of the property along with an offer of just compensation. It is not unusual for an owner to request to receive an appraisal, even though the property is ultimately to be donated, for accounting and tax reasons.

Even if an owner wishes to donate land, the acquiring agency is still obligated to appraise and offer just compensation for the acquisition of property unless the owner(s) waive their rights to an appraisal and/or compensation.

Please remember, the property may still require valuation should an LPA wish to use the value of the donated land for project match purposes. Depending upon the specific valuation problem, the property may be valued for match purposes through the appraisal process or the waiver valuation. Consult with an LPA coordinator regarding individual situations.

### 3.4 The Waiver Valuation

The first decision an agency needs to make during the valuation process is whether to obtain an appraisal or use the waiver valuation. This chapter discusses both types of valuations, but an agency may need help. An LPA coordinator is available to aid in making this determination. There is no charge for this service. Agency staff or a hired consultant may also provide assistance in making this determination. Care should be taken to ensure the decisions are made in compliance with all state and federal criteria on this subject to avoid conflicts that may adversely affect federal funding eligibility for the project.

The waiver valuation is used to determine just compensation and has also been referred to as a "Compensation Estimate." Federal rules authorize the use of a waiver valuation on federally funded projects in 49 CFR § 24.102.

The use of a waiver valuation is authorized in IC § 6B.54(2). The implementation process is provided in 761 IAC 111.102(3)(b)(c). The Compensation Estimate is not an appraisal and is used only with uncomplicated, minimal value purchases.

The purpose of the waiver valuation is to provide a technique to avoid the costs and time delay associated with appraisal requirements for low-value, uncomplicated acquisitions.

In order to determine whether to use the waiver valuation, the person making the decision must have enough of an understanding of appraisal principles to answer the following:

- Is estimating value difficult due to a lack of sufficient market data (comparable sales)?
- Is the anticipated value of the proposed acquisition over \$10,000?
- Is the anticipated value of the proposed acquisition anything more than a strip acquisition?
- Are buildings, wells, signs, etc., affected?
- Is the anticipated value of the proposed acquisition severing any buildings from the remainder?
- Are trees, shrubs, or any other landscaping involved?
- Does moving the proposed right of way line require analysis of possible proximity damages?
- Is access to the property changed or limited?
- Is the current highest and best use of the property going to be changed as a result of the proposed acquisition?
- Does a significant amount of the total compensation involve items other than land value?
- Are there any borrow areas?
- Is there reason to believe this parcel will proceed to condemnation?
- Is more land than actually needed being acquired?
- Does the proposed acquisition impact the sewage disposal system or property drainage?
- Are there any other considerations that complicate the valuing of this parcel?

If the answer to one of these questions is "yes," the acquisition could still be considered an uncomplicated acquisition, but further analysis is needed.

Multiple "yes" answers would indicate that the proposed acquisition is not considered to be uncomplicated, and an appraisal is required.

Things to remember:

- The Compensation Estimate is not an appraisal and, as such, the Uniform Act appraisal requirements and USPAP standards relating to appraisals do not apply.
- The intent is that persons other than appraisers should prepare Compensation Estimates, freeing appraisers to do more sophisticated work.
- The Compensation Estimate must be prepared by a knowledgeable person who is aware of the general market values in the project area.
- Since the Compensation Estimate is not an appraisal, the appraiser is not required to offer the owner the opportunity to accompany the inspection; however, extending this offer is still strongly encouraged.
- An appraisal review is not required.
- There must be a process to ensure the basis for not preparing an appraisal is appropriate and that the Compensation Estimate is used to determine what is believed to be just compensation.

The Compensation Estimate is a one-page form to report an estimate of compensation that does not exceed \$10,000 to the property owner. This amount is exclusive of payments for cost of tillage, fertilizer, growing crops, agricultural right of way fence, and the legislated twenty dollars per lineal foot of lengthened residential driveway. Although this is not an appraisal, and it is therefore not a requirement that the estimator offer the property owner or the owner's representative an opportunity to be present during the property inspection, it is strongly recommended.

Please note that the selection of parcels for which the need for an appraisal is being waived is made before any parcels are assigned to specific appraisers.

This list of questions is not intended to be all-inclusive. The key to the use of this method of determining compensation is that impacts of the acquisition are minimal or can be easily measured by their cost to cure and that the value of the land acquired plus any damages to the remaining property does not exceed \$10,000.

All items of acquisition are to be listed, including those for which compensation is zero. Access control, when acquired, should be listed as "access rights" under "Other Considerations."

The basis for land value estimates is any one of the following, in descending order of acceptability.

- Identification of at least one specific sale of a similar property in the general community. This sale must be identified so that the property can be located by a reader. Sales price per comparable unit must also be stated.
- Reference to at least one specific sale or a value analysis indicated in a project data book that has been recently prepared on any project in the general community. If a data book is used on a different project than the subject, that project number must be listed.
- Compensation for items easily measured or estimated on the basis of the cost to cure. The source of the estimates should be noted.

The estimator also acquires the necessary right of way upon completion of the estimate. However, administrative approval must be obtained before payment is made to the property owner. Administrative approval must be provided by someone who is an employee or official of the acquiring agency but who is not the person creating the Compensation Estimate.

To maximize resources, the estimator is encouraged to also serve as the acquisition agent. An administrative approval must be obtained at some point. The administrative approval must be provided by an official of the agency other than the person making the Compensation Estimate. If the agency maintains a right of way staff, it might be assigned to a qualified appraiser to approve these estimates. Although it is not required, it may be helpful to maintain a listing of approved Compensation Estimates along with who approved the estimates.

The approved waiver valuation has been developed to be very fluid to accommodate a wide range of needs. Please consult with an LPA coordinator to ensure the process implemented by the LPA does not jeopardize state or federal funding for the project.

### 3.5 The Appraisal Process

The format and level of documentation in an appraisal depends on the complexity of the appraisal problem. For a detailed discussion and further information, please see the Iowa DOT's *Appraisal Operational Manual*. There are three appraisal report formats that satisfy Iowa DOT and FHWA standards: value finding, residential, and detailed narrative. The appraiser is expected to use the most appropriate format. The format to be used should generally be specified in the appraisal assignment.

#### 3.5.1 Value Finding Appraisal Report

This format does not provide a before and after value. This report format is to be used for simple, partial acquisitions when damages to the remainder are nonexistent or relatively minor, are easily measured or explained, or are measurable by cost to cure.

An example of a simple, partial acquisition would be a strip acquisition from a large property that is not close enough to any improvements to cause possible proximity damages. Any partial acquisition that necessitates reconfiguration of improvements or reduces value of the improvements could not use this format. Any partial acquisition which changes the highest and best use of remaining property could not be appraised using this format.

There is no limit to the total value of land and damages when using this format. Use of this format is limited only by the complexity of the acquisition or the property being appraised. This type of report does not express before and after values, but only indicates compensation due to the property owner and/or lessee. Value of the acquired land and/or improvements must be supported by applicable data. Any large cost-to-cure items must also be appropriately supported.

A brief narrative discussion must be included covering the overall property, acquisition, and the acquisition's effect on the remainder. The extent of documentation is to be commensurate with the significance of the appraisal and values involved. In the event of condemnation, the appraiser may be asked to provide before and after values of the property.

The determination of just compensation arrived at in a value finding appraisal report reflects the appraiser's opinion of the difference between the before and after values. It is assumed that the appraiser would not have a different estimate of just compensation if doing a before and after appraisal.

The standard three approaches should be considered, but often only the sales comparison approach is developed. The land valuation requires a minimum of two sales that are documented,

identified, and confirmed in the same manner as comparable sales for a detailed appraisal report.

All items of the acquisition are listed, even those with a compensation value of zero. Access control, when acquired, should be listed as "access rights" under "Damage to the Remaining Property" on this form.

### 3.5.2 Residential Appraisal Report

The Uniform Residential Appraisal Report (URAR), with certain additions, may be used for appraising residential properties when a total acquisition is involved or when a before value must be developed for a partial acquisition. Photographs of the interior and exterior, as well as a floor plan sketch with approximate dimensions, are recommended for any building to be acquired, along with comparable sales sheets with photographs and a sales location map.

All or part of this format may be used to value a residential portion, as defined, of a multiuse property, which may then be incorporated into a broader report covering the entire property.

### 3.5.3 Detailed Appraisal Report

Detailed appraisal reports are required on either total or partial acquisitions of properties when other, less-detailed formats are not applicable. In the case of partial acquisitions, this report is referred to as a before and after appraisal.

This type of report should include all applicable approaches to value. Reasons for omitting any traditional approach to value should be clearly stated in the report.

The appraiser may be instructed to limit appraisal analysis to a specific valuation approach or approaches. This may occur when inclusion of additional approaches to value would not significantly add to the reliability and support of final value estimates or when recommended by legal counsel or the acquiring agency.

It is not acceptable to produce an after acquisition value by subtracting the estimated value of acquisition and damages from the before acquisition value conclusion.

### 3.5.4 Opportunity to Accompany the Appraiser

Regardless of the format used, the appraiser must offer the property owner or their designated representative a reasonable opportunity to be present during the inspection of the property. All appraisals are prepared according to the Uniform Standards of Professional Appraisal Practice (USPAP) as promulgated by the Appraisal Foundation, except when they conflict with the state and federal requirements for eminent domain, in which case the jurisdictional exception provision and/or supplemental standards of USPAP are applicable.

Provided below are some items for consideration when determining fair market value, including appraiser selection and qualifications, some general requirements, number of appraisals, and appraisal updates.

### 3.5.5 Appraiser Selection and Qualifications

Prior to the selection of an appraiser, each parcel to be acquired must be reviewed to determine

the complexity of the valuation problem and the desired appraisal format. This type of determination must be provided by someone with sufficient expertise and knowledge to make this type of decision. The appraiser who is selected should be a qualified member of the agency's staff, one of the Iowa DOT appraisers, or a qualified private consulting appraiser (fee appraiser). A qualified appraiser must have demonstrated real estate experience, successful completion of real estate appraisal training, experience in eminent domain appraisals, and experience in appraising the type of property being acquired.

For federally funded projects, or if land is to be acquired in the name of the state of Iowa, the appraiser employed to perform the appraisal assignment must be state of Iowa certified in accordance with IC 543D.

When the services of a fee appraiser are being used, the LPA should enter into a written agreement for the purchased services. If a fee appraiser is hired, the agreement should contain a schedule of the fees, itemized by parcel, which will be paid. The fee appraiser's proposal for services should be based on the LPA's determination of what type of value report is required. It is advisable that the agreement also contain a completion date and payment schedule for possible court testimony.

### 3.5.6 Conflict of Interest

No appraiser or review appraiser may have any interest, direct or indirect, in the real property being appraised for an agency that would in any way conflict with the preparation or review of the appraisal. Compensation for making an appraisal cannot be based on the amount of the valuation (a percentage of or on a charted basis, for example), and an appraiser cannot act as a negotiator for a property they have appraised.

LPAs must establish an appeal procedure for all contractors who feel they have not been treated fairly during the selection process or administration of a contract.

### 3.5.7 Required Number of Appraisals

In general, only one appraisal is required for each parcel. In the event that there is an extremely controversial or complex appraisal, a change in highest and best use occurs, or a high dollar purchase is contemplated, the LPA may determine that a second appraisal or review appraisal is necessary. If federal funds are used in the appraisal costs, the LPA needs to obtain prior approval from the Iowa DOT before obtaining the second appraisal if it plans to request reimbursement.

### 3.5.8 Appraisal Update

An appraisal should be updated or a new appraisal obtained if: 1) additional value information is presented by the owner; 2) a material change in the property or proposed acquisition indicates the need to modify the appraisal; or 3) a significant delay (depending on market conditions) has occurred since the date of the original appraisal.

## 3.6 The Appraisal Review Process

If an agency does not have a qualified review appraiser on staff, it needs to secure the services of a review appraiser. The review appraiser's responsibility is to ensure consistency of property values on a project, adequately investigate the local market to support the appraisal, and ensure



that the appraisal conforms to applicable eminent domain appraisal standards. If an agency uses an independent fee reviewer, they need to designate a local official to subsequently approve the amount to be offered as just compensation.

All appraisals require review by a qualified review appraiser. The person performing the appraisal review function must be thoroughly familiar with the eminent domain requirements under the law. No appraisal review may be performed by the appraiser who made the appraisal of market value. The review appraiser examines the appraisal to determine that it:

- Has been completed in accordance with the approved appraisal specifications;
- Follows accepted appraisal principles and techniques in valuation of real property in accordance with the USPAP and state law for eminent domain acquisitions;
- Contains information necessary to explain and substantiate the conclusion and estimate of market value;
- Includes consideration of compensable items and damages (if any), but does not include compensation for items that are not compensable under state law;
- Contains an identification of the buildings, structures, and improvements on the land, as well as fixtures which were considered to be part of the real property (see Chapter 9, "Tenant-Owned Improvements and Leasehold Interests"); and
- Contains an estimate of market value for the acquisition, and, where appropriate in the case of a partial acquisition, an allocation of the estimate between the real property and damages to the remaining property.

Upon completion of the review and any corrections or modifications that are necessary to make the appraisal conform to these guidelines, the review appraiser includes in the parcel file a signed and dated statement setting forth the following:

- The approved amount recommended to be offered as just compensation;
- The understanding that the determination is to be used in connection with a Federal-aid highway project;
- The extent of the visual inspection of the parcel to be acquired and applicable comparable sales;
- That no direct, indirect, present, or contemplated future personal interest in the property exists, nor that any benefit from the acquisition of the property appraised will occur;
- That this determination has been reached independently—based on appraisals and other factual data of record—without collaboration or direction; and
- Documentation of the determination to show its basis.

### 3.7 Agency Establishment of Approved Offer

The acquiring agency must determine the amount of the approved offer of just compensation. This responsibility cannot be transferred to a consultant or contractor. Each file should be documented by a determination of the approved offer that is signed by an official of the acquiring agency.

IC § 6B.54(3) requires the acquiring agency to establish an opinion of just compensation and offer the full amount believed to represent just compensation.

IC § 6B.45 also requires that the acquiring agency mail to all owners of the property the approved appraisal in its entirety no less than 10 days prior to being contacted by the agency.

### 3.8 Summary of Valuation Process

The following steps have been provided as a quick guide to help move through the valuation process.

- Determine the appropriate type of valuation needed.
  - Consult with an LPA coordinator.
  - Rely on staff expertise.
  - Obtain advice from other sources.
- Assign the work to the appropriate people.
  - Appraisers with expertise in addressing the type of appraisal problem may be used.
  - Acquisition agents with sufficient expertise to develop Compensation Estimates may be used.
  - If an appraiser completes the Compensation Estimate, they should also serve as the acquisition agent.
- Complete the necessary review.
  - Use a qualified review appraiser for the appraisal review.
  - Use qualified staff for administrative review of Compensation Estimates.
- Establish the agency's approved estimate of fair and just compensation.
  - The estimate must be performed by an official of the acquiring agency.
  - The amount must be, at a minimum, the lowest appraisal received.
  - The amount should be written and documented in the parcel file.
- Mail approved appraisal to owners.
  - Mail at least 10 days before initiation of negotiations.
  - See IC § 6B.45.

## Chapter 4 The Acquisition Process

### 4.1 Purpose

The purpose of this chapter is to describe the acquisition process. This process is very different from a typical negotiation process. Every acquiring agency must ensure that all persons with an interest in the property are offered all the rights and benefits to which they are entitled. In the open market, each party protects their own interests, but this approach is not appropriate in the public acquisition process. This chapter discusses the start of the process; the offers and notices as well as the contracts and agreements that may be provided to interested parties; required documentation; and Administrative Settlements.

### 4.2 Title Information

Prior to the initiation of the acquisition process, adequate title information must be obtained. All interests to be acquired need to be recognized early in the process, including owners, lien holders, tenants, easement holders, and taxing authorities, to name a few.

### 4.3 Good Faith Negotiations

IC § 6B.2A(1)(f) requires that the acquiring agency negotiate in good faith and present each owner with a statement of rights prepared by the Iowa attorney general. Included in the Iowa DOT pamphlet *Highways and Your Land* is the “Landowners’ Statement of Rights.” The “Landowners’ Statement of Rights” should be a part of a packet that is always provided to every property owner.

Negotiating in good faith is not the same as bartering. Negotiating in good faith involves providing all parties the opportunity to discuss their views, opinions, and concerns. All parties should also have the opportunity to have their thoughts seriously considered and their questions answered. All parties must be provided adequate time to consider the information and seek counsel if they wish. At the end of good faith negotiations, all parties need to determine what they believe to be an appropriate resolution.

Any knowledgeable and qualified staff member may be the negotiator. If a consultant is used, that person must be a real estate salesperson or broker licensed by the Iowa Real Estate Commission. It is also helpful if the negotiator is a notary public so they may notarize documents signed by property owners.

The negotiator must personally contact the property owner or tenant of each property on the project. The initial contact with the owner(s) as part of the acquisition process depends on which form of the valuation process has been selected. Remember, the valuation process is completed either by an appraisal or a waiver valuation.

Prior to this initial contact, the entire approved appraisal—unless a Compensation Estimate is being used—must be sent by standard mail to the owner(s) with a description of the 10-day waiting period. After the 10-day waiting period, or if the waiting period is waived, the negotiator contacts the owner. If the owner lives out of state or is not available for personal contact, phone or mail contacts may be used.

If the waiver valuation is used for valuation purposes, the initial contact may occur when the acquisition agent completes the Compensation Estimate Form with the owner. Compensation

Estimates do not need to be completed by one representative and delivered by another. Remember, the goal of the waiver valuation is to reduce the time and expense for the owner and acquiring agency.

After reasonable efforts have been made and an agreement still cannot be reached, the agency may be forced to pursue eminent domain (condemnation) proceedings to acquire the property. The negotiator cannot do or say anything that may be construed as being coercive in nature to obtain the owner's agreement. However, a brief explanation of the eminent domain procedure may help the owner.

#### 4.4 Miscellaneous Acquisition Expenses

State and federal regulations require all acquiring agencies to reimburse expenses incidental to and necessary for the transfer of property. A partial list of these expenses includes: recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the real property, penalty costs, and other charges for prepayment of any preexisting recorded mortgage encumbering the real property entered into in good faith. These and other eligible expenses may be reimbursed to the owner or, preferably, paid directly to the person(s) entitled to payment.

An LPA should establish an administrative review process to settle disputes in the event that a disagreement arises over whether or not an expense or the amount of an expense is reimbursable.

#### 4.5 Items to Take Along

The negotiator should be prepared to explain the project plans and the impact of the project on the owner's property. As required by Iowa law, the following must also be presented and explained:

- The written offer for not less than the full amount of the reviewed and approved appraisal, with the amounts for land, improvements, fence, and damages separately listed. If a displacement is involved, a statement should be provided informing the displacee that they are not required to move earlier than 90 days from the date of the notice, nor earlier than 30 days from the date compensation has been made available.
- An informational brochure, such as the Iowa DOT's *Highways and Your Land* or an approved alternative, as well as the documents to be signed by the owner in accepting the agency's offer

#### 4.6 Offers and Notices

Owners and tenants are entitled to written offers reflecting the agency's approved estimate of fair and just compensation. Owners and tenants are also entitled to notices informing them of when they are required to move from the property.

Should an agency subsequently approve a different amount estimating fair and just compensation, a revised offer must be provided to the owner and/or tenant.

The date of the offer must reflect the date the offer was made and notice provided. Hopefully, the offer is acceptable and the owner or tenant signs the documents necessary to

transfer the title to the LPA. The agency must pay the agreed-upon purchase price before requiring surrender of possession of the property.

#### 4.7 Contracts and Agreements

The goal of the acquisition process is to reach a mutually agreeable resolution. The contract becomes the vehicle for the agreement. What the agreement looks like is a decision for the agency to make. The only concern of the Iowa DOT's partnership with the LPA is that the agreement acquires the property rights necessary for the construction and maintenance of the project.

As a reference tool, samples of contracts and contract clauses are provided. These samples are for reference use only and are not meant to direct how an agreement should look. Consulting with legal counsel regarding specific contract and conveyance needs is recommended.

#### 4.8 Notes and Documentation

It is important that after each call, negotiators complete a negotiator's contact report (sometimes called negotiator's notes) summarizing the interview with the property owner. Each report should contain, at a minimum:

- A project number
- A parcel number
- The date of contact
- The type of contact (phone or in person)
- The name, address, and telephone number of the person contacted
- Special instructions, if necessary, for locating that person
- The names of all other persons present
- The names, addresses, and phone numbers of attorneys or other representatives
- The main points discussed and the commitments made by the agent
- The principal objections to the offer or taking
- An acceptance or rejection of the offer
- Any requests made by owners
- Any other feature of the contact, including special instructions for closing, relocation, or property management
- The negotiator's signature and date

In order to use these reports, they need to remain in the parcel file. These reports eventually become available for inspection by the public.

#### 4.9 Administrative Settlements

The Uniform Act requires that "The head of a federal agency shall make every reasonable effort to acquire expeditiously real property by negotiation." Negotiation implies an honest effort by the acquiring agency to resolve differences with property owners. There is no requirement that Offers to Purchase should reflect a "take it or leave it" position. The inexact nature of the process by which just compensation is estimated should be recognized. Further, the law requires that agencies must attempt to expedite the acquisition of real property by coming to agreements with owners to avoid litigation and relieve congestion in the courts.

An agency may determine that it is in the public's best interest to make a negotiated settlement with the owner for more than the approved appraisal amount if new valuation or the extent of damage information is presented. A revised offer must be made and presented to the owner in writing for consideration. So that the agency's files may include proper documentation, a written report called an Administrative Settlement needs to present documentation pertaining to why this settlement is in the public's best interest.

Administrative Settlements should describe the acquisition, state the offer of just compensation and proposed negotiated settlement, introduce information which supports the settlement, and request approval from the proper authority. The settlement may also include information concerning recent court awards for similar types of property, the property owner's appraisal data, an estimate of trial cost, or an opinion of legal counsel. The settlement must be approved by an officer of the agency (but not the negotiator) who has responsibility for the right of way acquisition. The person approving the settlement must be able to judge the risk/benefit issues of a potential court action.

#### 4.10 Summary of Acquisition Process

The following steps have been provided as a quick guide to moving through the acquisition process.

- Overview and getting started:
  - Obtain title information that ensures everyone that has an interest in the property is considered.
  - Pursue good faith negotiations that provide the opportunity, time, and consideration to attempt to come to an agreeable resolution.
  - Reimburse miscellaneous acquisition expenses or costs incurred by the owners as a result of the acquisition.
  - Take along the materials necessary to provide good faith negotiations.
- Offers and notices
  - Provide written offers in the amount of the agency's approved estimate of fair and just compensation.
  - Provide written notices of when the property must be vacated.
- Contracts and agreements
  - Contracts or agreements are written instruments that secure the property rights needed for the project.
  - Samples are available upon request.
- Notes and documentation
  - Provide documentation for future inquiries.
  - Act as a future problem solving resource.
- Administrative Settlements

- Describe acquisition.
- Describe reasons for settlement.
- Provide documentation for state and federal participation.

## Chapter 5 Relocation Assistance

### 5.1 Purpose

The purpose of this chapter is to outline all the rights and benefits entitled to those who are displaced by right of way projects and who require assistance in relocating. These rights are clearly laid forth in relevant sections of the IAC and CFR. This chapter discusses the difference between personal property moves, residential moves, and nonresidential moves, as well as the types of expenses that may be incurred leading up to or following a relocation and which expenses relocatees are eligible to obtain for reimbursement.

### 5.2 Rights and Benefits

IC § 6B.42 requires all acquiring agencies to provide relocation assistance benefits to all eligible persons on all projects. Whenever displacements requiring relocation assistance are anticipated, please let an LPA coordinator know so that these issues may begin to be resolved immediately.

Rights and entitlements of individuals, families, businesses, farms, and nonprofit organizations displaced by Federal-aid projects are defined by and discussed in 49 CFR 24. State relocation requirements for all other projects acquired under the threat of eminent domain are provided in IC 316. Acquiring agencies must comply with 761 IAC 111 and the *Uniform Manual—Real Property Acquisition and Relocation Assistance* (copies of which are available from LPA coordinators).

Generally, all persons who are required to move as a result of occupying property to be acquired are eligible, on the date that negotiations begin, for relocation assistance and payments to reimburse the costs of moving personal property to locations off the right of way. In addition, residential displacees who meet minimum occupancy requirements may qualify for replacement housing payments (RHPs) to offset increased costs of obtaining RHPs.

Remember, no person lawfully occupying real property is required to move from a dwelling, business, or farm operation without at least a 90-day written notice of the date by which the move is required from the acquiring agency (see IC § 6B.54(4)). When the landowner's residence, dwelling house, outbuildings (if the residence or dwelling house is also acquired), orchard, or garden are condemned and the owner appeals the condemnation to district court, they may not be required to move until the compensation has been finally determined and paid (see IC § 6B.26). Since time for right of way acquisition is a major concern for a project, relocatees must be dealt with as early as possible.

Acquiring agencies are required to provide an appeal process for displaced persons that disagree with the acquiring agencies actions, as described in 761 IAC 111.6.

Relocation assistance requires an in-depth discussion to adequately cover the material. The Iowa DOT Office of Right of Way maintains a policies and procedures manual approved by the FHWA. It is recommended that agencies work closely with LPA coordinators on relocation assistance matters, retain a consultant with the necessary experience, and/or download the Iowa DOT *Acquisition and Relocation Manual*.

Relocation assistance has been described as a reimbursement program. The program has been developed with the goal of reimbursing the costs incurred by people displaced as a result of a



public project. The term “displaced person” applies to owners and anyone else lawfully occupying the property.

### 5.3 Personal Property Moves

If personal property is located on the land being acquired, the owner of the personal property is entitled to relocation assistance and payment of the actual and reasonable costs to move the personal property. The owners of personal property may or may not be the owners of the real estate.

Items that need to be moved in a personal property move may be as uncomplicated as a few bales of hay to as complex as the inventory and equipment of a manufacturing storage yard. The personal property may be simply moved back on remaining land, or it may have to be moved to a new location. Typically, the move may be reimbursed through itemized bills and receipts paid to a contractor for the move. Alternatively, a self-move may be reimbursed based on an agreed-upon amount considered reasonable.

### 5.4 Residential Moves

The Residential Relocation Program is intended to leave the displaced person(s) in a similar living situation after their displacement. Eligibility is determined by occupancy, not ownership. The owner of the property may or may not be the displaced person. Only displaced persons are eligible for the payments to be discussed.

This manual provides only a brief discussion of this topic and is not intended to provide all the necessary information pertaining to residential moves. Please refer to the Iowa DOT *Acquisition and Relocation Manual* or contact an LPA coordinator to obtain more specific information: <http://www.iowadot.gov/rightofway/rowrelocation.html>.

#### 5.4.1 Replacement Housing Requirements

Comparable replacement housing must be made available before a displaced person can be required to move from their home. Comparable replacement housing must be functionally similar, in as good or better condition as the displacement housing, and in a similar area to the house being acquired. The replacement housing must also meet decent, safe, and sanitary (DSS) criteria.

#### 5.4.2 Replacement Housing Payments

The purpose of this payment is to provide funds if a disparity exists between the fair market value and the cost of replacement housing. RHPs may be calculated as supplemental purchase payments or supplemental rental payments.

Supplemental purchase payments are developed for owner occupants by studying the local market to determine what is available at the time of displacement. The cost of replacement is compared to the amount paid for the house by the acquiring agency, and the difference represents the RHPs.

Information pertaining to specific criteria for developing payments, establishing limits, and describing requirements are available through LPA coordinators.

Supplemental rental payments are available for displaced, nonowner occupants and owner occupants that elect not to purchase replacement housing. The present market rent of the acquired property is compared to adequate replacement housing present for lease in the local market. The present lease value is then compared to the replacement lease value, and the difference represents the supplemental rental payment.

Displaced tenants may, in certain situations, apply their supplemental rental payments to a down payment for the purchase of replacement housing. Information regarding specific criteria used for developing payments, establishing limits, and describing requirements are available through LPA coordinators.

Please note that the purpose of the replacement dwelling considered by the relocation agent is only for establishing the amount of payment the eligible displacee is entitled to. The displacee always chooses the replacement housing they will occupy. Reimbursement is made based upon the amount actually spent by the displacee, not to exceed the relocation agent's study.

#### 5.4.3 Increased Mortgage Payments

This payment is calculated when displaced owner occupants must refinance a property at a higher mortgage rate than that of the mortgage on the property being acquired. The payment is limited to the amount owed and the remaining life of the original mortgage.

#### 5.4.4 Normal and Customary Closing Costs

These are costs that are normal and customary for real estate transactions in the local market. Qualifying expenses may include abstracting costs, recording fees, and credit reports. Certain other expenses may be excluded, such as "points" or prepaid interest. Ask an LPA coordinator about specific expenses.

#### 5.4.5 Moving Expenses

In addition to other payments, displaced persons are entitled to reasonable moving expenses. These payments may be based upon reimbursement of itemized bills and receipts from qualified movers, or they may be based on a scheduled payment system. Contact an LPA coordinator for current, federally approved payment schedules and criteria.

### 5.5 Nonresidential Moves

Displaced farms, businesses, and nonprofit organizations are also eligible for relocation assistance benefits, but the benefits are different from those associated with residential moves. The basic concepts related to the major benefits are provided in this manual. Obtain further information from an LPA coordinator before attempting to provide all the appropriate benefits to a displaced farm or business.

#### 5.5.1 Reestablishment Expenses

These payments are designed to reimburse the actual expenses incurred to reestablish the concern in the new location. Offering and providing these services requires specific knowledge and experience. It is recommended to seek additional assistance from an LPA coordinator or

other qualified relocation resource.

#### 5.5.2 Searching Expenses

In some cases, the displacee is entitled to be reimbursed for searching expenses as they search for a new location for their farm, business, or nonprofit organization. Offering and providing these services requires specific knowledge and experience. Requesting additional assistance from an LPA coordinator or other qualified relocation resource is recommended.

#### 5.5.3 Incidental Expenses

Other costs incurred in the move may also be eligible for reimbursement. For example, these would include the reprinting of stationery presently on hand with the new address; loss of personal property as a result of the move or discontinuance of the operation; or the purchase of subsequent personal property required as part of the move.

Implementing and offering of these services requires specific knowledge and experience. It is recommended to request additional assistance from an LPA coordinator or other qualified relocation resource.

#### 5.5.4 Moving Expenses

A displaced, nonresidential occupant is entitled to actual and reasonable moving expenses. The payments may be based upon itemized bills and receipts from a qualified mover, or payments may be made to the displacee as reimbursement for a self-move. In order to ensure eligibility and federal participation, consult with an LPA coordinator before establishing the amount of the payment for a self-move.

#### 5.5.5 Fixed Payment

This type of payment is in lieu of all other payments and is only available to nonresidential displacements. The minimum payment is presently \$1,000, with a maximum payment of \$40,000. The amount of the payment is based upon the average net income of the displacee over the previous two years. There are instances where exceptions may be applicable. Offering and providing these services requires specific knowledge and experience. It is recommended to seek additional assistance from an LPA coordinator or other qualified relocation resource.

### 5.6 Summary of the Relocation Process

- Types of moves
  - Personal property move
  - Residential move
  - Nonresidential move

The displacee may be eligible for all three types of reimbursable moves from the same property, and more than one displacee may be eligible for reimbursable moves from the same property.

- Personal property move

- Costs incur to remove personal property from land being acquired.
  - A fixed payment may be issued, or reimbursement can be made to a qualified mover.
- Residential move
  - DSS replacement housing must be available.
  - RHPs may be made.
  - Replacement rental payments may be made.
  - There are customary and usual closing costs.
  - There are moving expenses.
- Nonresidential move
  - Reestablishment expenses may be incurred.
  - Searching expenses may be incurred.
  - Incidental expenses may be incurred.
  - Moving expenses may be incurred.
  - A fixed payment is made in lieu of other payments.

## **Chapter 6 Fiscal and Title**

### **6.1 Purpose**

The purpose of this chapter is to discuss the title and closing and the condemnation processes. Both may be described as the act of converting possession and/or ownership of property. Title and closing concentrates on transactions where there is a mutual agreement between the owner and acquiring agency, whereas condemnation addresses those situations where an agreement is not achieved.

### **6.2 Title and Closing**

Title and closing involves examining the legal title to property, determining what actions must be taken to obtain clear title to the right of way, and working with the owner to complete the transaction. The desired outcome is to secure all the documents necessary to ensure that clear title of the land is conveyed to the LPA.

A city or county attorney may handle this work. Some LPA offices may have real estate specialists who are experienced in this area of the right of way process. Still others may hire this work done by a local attorney or professional Title and Closing agent. The closing agent should be someone other than the person who negotiated or drafted the agreement with the property owner.

The type of title to be acquired depends on property rights needed for each specific project. An agency's process for addressing all the interests in the property involves standard title procedures, but may also involve the application of risk management. Ultimately, the acquiring agency is responsible for ensuring that the necessary property rights for the construction and maintenance of the project have been secured.

The Iowa DOT shares information pertaining to how they might handle specific situations. An LPA coordinator obtains examples of how the Iowa DOT has handled similar situations in the past. However, defending title and responding to disputes is the responsibility of each acquiring agency's legal counsel. Therefore, each LPA should seek advice and approval from their agency's legal counsel in developing title criteria and a risk management program. Keeping an LPA coordinator involved and informed helps ensure continued funding eligibility for the project.

Providing payment to the owners is an integral part of the title and closing process. The timing of the payment must ensure that the title has been passed to the agency, but the owner of the property cannot be required to surrender possession until payment has been received.

IC § 427.2 requires acquiring agencies to assist in the collection of property taxes and assessments when the property is acquired for a public use. Applicable taxing authorities should be included during the title and closing process.

All conveyances should be recorded in the Office of the County Recorder. Further considerations involve payment to the owner along with Internal Revenue Service (IRS) reporting requirements.

Since 1991, all real estate transactions have been subject to reporting requirements of the IRS. The acquiring agency must provide appropriate 1099s to the IRS and all interests receiving payments. Even when state funds are used for payment (for example, farm-to-market road money), the 1099 reporting responsibility remains with the agency. IRS guidelines for these

reporting requirements are available from an LPA coordinator.

### 6.3 Summary of Title and Closing Process

- Examine title.
  - Secure qualified closing assistance.
  - Research county records.
  - If necessary, update abstract.
- Seek advice and approval from the city and county attorney.
  - Establish desired title criteria.
  - Develop risk management parameters.
- Ensure all interests are addressed.
  - Leaseholds
  - Lien holders
  - Mortgages
  - Easement holders
  - Taxing authorities
- Record applicable conveyances.
- Complete IRS notification and 1099s.
  - This is the responsibility of the acquiring agency.
  - The agency must provide all necessary information to the IRS.
  - The agency must provide 1099s to all parties receiving payments.

### 6.4 Condemnation

Condemnation is the term used when exercising the power of eminent domain. This power has been reserved to the state, municipalities, political subdivisions, and others by federal and state constitutions and law. Guidelines, authorities, and procedures are outlined in the Iowa DOT *Condemnation Manual*, which has been prepared by the Iowa DOT Office of Right of Way, Fiscal and Title Section.

Condemnation in Iowa begins as a quasi-judicial procedure. The amount of just compensation is determined or awarded by compensation commissioners at a compensation commission hearing. After this hearing, every party to the condemnation has the right to appeal the compensation commission award to a district court. If appealed, the parties may decide to settle out of court. If the agency intends to claim federal participation in the payment of any money over and above the originally approved offer, the parcel file must be adequately documented to justify all actions taken.

The acquiring agency is responsible for ensuring that the necessary property rights for the construction and maintenance of the project have been secured. As in the case of the closing process, it is important that all interests in the property have been identified and addressed,

including those that may not have a market or compensable interest. The acquiring agency may elect to address all interests in the property in one hearing, or, alternatively, the acquiring agency may elect to address all interests through separate hearings, agreements, or risk management strategies.

The Iowa DOT shares information as to how they might handle specific situations. An LPA coordinator obtains examples of how the Iowa DOT has handled similar situations in the past. However, defending title and responding to disputes is the responsibility of each acquiring agency's legal counsel. Therefore, each LPA should seek advice and approval from their agency's legal counsel in developing the condemnation process to be implemented by the agency.

Providing payment to the owners is an integral part of the condemnation process. The compensation commission award must be deposited with the sheriff before the acquiring agency can require the owner to surrender possession of the property. The award must be deposited, regardless of any appeals to district court.

IC § 427.2 requires acquiring agencies to assist in the collection of property taxes and assessments when the property is acquired for public use. Applicable taxing authorities should be included in the condemnation hearing.

The condemnation process requires several documents to be recorded in the Office of the County Recorder.

As previously discussed, an acquiring agency cannot require surrender of possession of the property prior to providing payment to the owners. Once all concerns are satisfied, payment to the owner can be made and possession given.

Further considerations involve payment to the owner as well as IRS reporting requirements. Since 1991, all real estate transactions have been subject to reporting requirements of the IRS. The acquiring agency must provide appropriate 1099s to the IRS and all interests receiving payments. Even when state funds are used for payment (for example, farm-to-market road money), the 1099 reporting responsibility remains with the agency. IRS guidelines for these reporting requirements are available from an LPA coordinator.

## 6.5 Summary of Condemnation Process

- Identify all interests in the property.
  - Leaseholds
  - Lien holders
  - Mortgages
  - Easement holders
  - Taxing authorities
- Ensure all interests in the property are addressed.
  - Obtain releases before the hearing.
  - Acquire all interests in the property as part of the hearing.
  - Seek advice and approval of LPA counsel prior to implementation of condemnation process.

- Deposit money with the sheriff.
- Record applicable documents.
- Notify the IRS and complete 1099s.
  - This is the responsibility of the acquiring agency.
  - The agency must provide necessary information to the IRS.
  - Provide 1099s to all parties receiving payments.



## Chapter 7 Property Management

### 7.1 Purpose

The purpose of this chapter is to discuss the details of property management. A well-planned property management program can enhance the efficiency of a project by avoiding construction delays involving demolition work and maximizing the value of the agency's assets. When federal funds are used in the acquisition of real estate, a federal interest is created. Property management options involving a federal interest are found in 23 CFR 710(D): <http://www.fhwa.dot.gov/legregs/legislat.html>. Generally, acquiring agencies are required to receive market value for the sale and rental of public assets. The criteria and exceptions are also discussed in 23 CFR 710(D). Iowa law provides for the sales, leasing, and transfers of right of way in IC 306. Further discussion of sale and leasing of real estate is provided throughout this chapter.

An agency encounters three phases in managing property: preconstruction, postconstruction, and airspace management.

### 7.2 Preconstruction

#### 7.2.1 The Inventory

An inventory of land and buildings is developed as the right of way is laid out for the project. The inventory may then be used throughout the project to identify the assets the agency has acquired. The inventory should identify which improvements and what land, if any, becomes excess after completion of the project. The inventory should also include how improvements are disposed of and an account of management expenses, rental receipts, and payments received for the sale of improvements.

#### 7.2.2 Planning

Preconstruction planning involves the time period between property acquisition and the beginning of project construction. During this time, the agency is responsible for managing the property in a manner consistent with public safety and, in acting as a steward of the public's assets, defraying or reducing overall costs to the public. There are three basic approaches to property management.

##### 1. Leasing

Land and buildings may be leased prior to being needed for construction or ultimate disposal. Authority to lease may be found in 23 CFR 710(D) and in IC § 306.38. Residential buildings must conform to DSS criteria to be leased if federal funds are used in any part of the project.

IC § 6B.60 prohibits the leasing of land prior to issue of payment for the premises. IC § 6B.54(5) allows for lease payments after payment for the land has been made. The lease amounts do not exceed fair market value rental rates for short-term leases.

Leasing may reduce the agency's overall maintenance expenses, as the tenant assumes responsibility for mowing, snow removal, and other types of expenses associated with upkeep. Market rent should be received for the properties.

## 2. Sale of improvements to be moved

If leasing the acquired improvements is not desirable, selling the improvements to be moved is an alternative to consider.

## 3. Demolition

The other option is demolition. Incorporating a demolition design that allows for efficient, ongoing maintenance such as mowing and snow removal should be considered. Appropriate asbestos abatement, waste removal, and Iowa Department of Natural Resources (DNR) notifications must be scheduled prior to demolition activities.

## 7.3 Postconstruction

This phase covers the disposal of right of way no longer required for a Federal-aid highway project. Authority to sell land may be found in 23 CFR 710(D) and in IC § 306.22. The Iowa DOT and FHWA expect excess land to be disposed of upon completion of the project if a state and/or federal interest is associated with the property. Value is to be determined by an appraisal process or public sale. The IAC prescribes how unused right of way is to be disposed. Please see “Disposal Requirements” later in this chapter.

## 7.4 Management of Airspace

Regulations provide for use of airspace of the right of way for non-highway purposes as stated above, at, or below the highway's established grade line. Airspace can be put to both public and private uses, such as use for parks or parking. When an LPA contemplates use of airspace, specific approval from the Iowa DOT is required, and rates for leasing airspace are to be determined based upon fair market rental rates. Credits may or may not be required from funds derived from the leasing of airspace. For information concerning a specific situation, please refer to 23 CFR 710(D) or consult with an LPA coordinator.

## 7.5 Other Useful Information

### 7.5.1 Federal Credits

When federal money is used in the acquisition of property, a federal interest is created. The federal interest remains in the property unless specifically extinguished. The federal interest does not require an action unless the property is used for a purpose other than the direct project purpose. For example, if the land is acquired for highway, road, or street purposes, as long as the land is used for highway purposes, no action is required.

If the property is used for other purposes, a federal credit may be required. A nonproprietary use generally does not require federal credits, while proprietary uses generally do require a federal credit. A brief discussion of the two uses is as follows.

1. Nonproprietary: These are uses within the normal agency operations, such as city storage and vehicle parking, free parks, and agency material storage.
2. Proprietary: These are uses that involve commercial benefit or gain by the agency or third parties, such as paid parking lots, any commercial use, and economic development incentives.

If a federal interest exists in the right of way, the LPA is responsible for credits owed the federal government, regardless of the amount of money the LPA received for the property rights.

For information concerning a specific situation, please refer to 23 CFR 710(D) or consult with an LPA coordinator.

#### 7.5.2 Disposal Requirements

IC § 306.23 controls how unused right of way is disposed of. If property was condemned and not used for the purpose stated in condemnation, IC § 6B.56 controls the disposal process.

IC § 306.23 requires the agency in control of the land acquired for highway purposes to offer the owner(s) at the time of acquisition and the owner(s) of the remaining land from which the tract was acquired the first opportunity to buy the property. The agency is to establish market value for the property to be disposed of through an independent fee appraisal.

It is recommended that an agency seek assistance from its legal staff to ensure that applicable code provisions are implemented correctly. If an acceptable offer is not received from a party with purchase preference as stated in these code sections, the property may be sold to another public entity or private purchaser.

IC § 6B.59 details when additional payments must be made if land is sold by an agency for a higher price at the time of disposal than what was paid at the time of acquisition.

#### 7.5.3 Lead-Based Paint Requirements

Residential buildings constructed prior to 1978 are subject to Environmental Protection Agency (EPA) rules. If pre-1978 residential dwellings are sold or leased, the agency needs to comply with notification requirements.

All prospective purchasers or tenants must be informed of any knowledge the LPA has concerning the presence of lead-based paint. The LPA does not have to inspect the property to determine if lead-based paint is present.

The LPA must provide a brochure outlining the EPA rules. The pamphlet must be approved by EPA. These brochures may be obtained from an LPA coordinator.

Any prospective buyer or tenant must be provided an opportunity to have a pre-1978 residence inspected to determine if lead-based paint is present. The buyer or tenant is responsible for paying the monetary amount to cover the cost of the inspection. Forms documenting this offer are available from an LPA coordinator.

### 7.6 Summary of Property Management Process

- Preconstruction
  - Develop inventory
  - Lease
  - Sell improvements to be moved
  - Demolition

- Postconstruction
  - Disposal of excess right of way
  - Dispose of excess right of way within two years of project completion
- Managing airspace
  - Consider uses for right of way that must be held
  - Maximize the use of assets
- Federal credits
  - Document reasonable administrative expenses
  - Return applicable federal credits
- Land disposals
  - Ensure compliance with IC § 306.23 or IC § 6B.56
  - Dispose of land within two years after project completion
- Lead-based paint
  - Applies to pre-1978 residential housing
  - Provide known information
  - Provide opportunity to buyers or tenants to test for lead-based paint, at their expense

## Chapter 8 Project Development Certification

### 8.1 Purpose

This chapter explains the purpose of the Project Development Certification, what this form contains, and why it is essential to complete as part of the right of way project process.

### 8.2 Procedures

A Project Development Certification is required from an agency prior to advertising for construction bids to build a project. This certificate must be signed and received by the agency by the date specified in the “Critical Path for Project Development Memorandum” provided in the *Project Development Information Packet*.

This form is used by the Iowa DOT to verify that the project is ready to proceed to the letting process. Please note that it is the responsibility of the LPA to ensure that the information submitted on this form is accurate. If inaccurate information is submitted, serious consequences can result, including project delays and possible loss of federal funding. The LPA or their designated representative should review this form carefully before it is submitted.

Complete instructions for completing the Project Development Certification are available in the Project Development Certification instructions. These can be found in the *Project Development Information Packet*, the Iowa DOT Administering Office for the project, or can be obtained from an LPA coordinator.

## Chapter 9 Miscellaneous Topics

### 9.1 Purpose

The purpose of this portion of the manual is to discuss miscellaneous topics which require an expanded discussion. These topics include access control, hazardous waste and contaminated properties, the elements of a parcel, tenant-owned improvements and interests, frequently asked questions, and references for accessing further resources.

### 9.2 Access Control

Access rights are the rights of adjoining property owners to have unrestricted access to and from the highway. "Access control" is the term used when these rights are restricted or controlled. Controlled access highways are discussed in IC 306A.

Cities and highway authorities may establish controlled access facilities. When such facilities are established, property owners adjoining the road do not have the right to enter or leave by this road unless specifically granted permission by the highway authority at the time of, or subsequent to, the establishment of the controlled access facilities. For existing roadways that have not been previously designated as controlled access, the rights of the adjoining property owner(s) must be acquired. State law specifically states that these rights may not be acquired by prescription or adverse possession; they must be acquired.

In general, acquiring the rights of access to a property does not reduce its market value as long as reasonable access remains after the acquisition. Therefore, quite often there is no value or worth of restricting access across a property and allowing access at certain specific locations. There are some cases, though, where a change in potential property use and market value occurs, and the appraiser must determine the difference in the value before and after the acquisition due to the restriction of access.

The difference between exercising the right of police power versus acquiring the legal right to access should be considered. Police power deals with a city, county, or other government agency regulating activities of individuals without actually "taking" a legally compensable right or rights of those individuals. Either may be exercised when dealing with access rights. Police power is exercised in the construction of raised medians or curbs or in an acquisition of access rights. The question as to whether an action by a city or county represents an exercise of either police power or of eminent domain depends upon whether the law prescribes compensation to the public for that action. An attorney should be consulted when questions in this area arise.

A discussion of valuing access rights may be found in the Iowa DOT *Appraisal Operational Manual*: [http://www.iowadot.gov/rightofway/rowappraisal\\_manual.html](http://www.iowadot.gov/rightofway/rowappraisal_manual.html).

A copy of the Iowa DOT's access policy is available through the Administrating Office for these projects.

### 9.3 Hazardous Waste and Contaminated Properties

Contamination of property by hazardous materials has become an issue of great concern in the development of highway projects. Early detection of contamination of the right of way to be

acquired is extremely important in determining project cost, project timing, and potential agency liability. There must be a visual inspection of the possible contamination very early in project development.

Contaminants may be as common as petroleum products, battery waste, building material containing asbestos, certain paints and their residues, and many other very common materials.

Contamination may appear as soil which is oozing; an area of ground that is bare of vegetation; an area of ground which is sunken; the presence of junk containers or junk material; and other, less obvious signs of contamination. Signs of contamination or awareness of prior uses that could have contaminated the site (such as use as a gas station, manufacturing plant, dry cleaner, body shop, etc.) should prompt further study of the possibility of contamination.

In the event that there are signs of contamination or if there are underground storage tanks present on the property, good business practices require that the property be further tested and all necessary remediation be accomplished prior to proceeding with the acquisition of the property. In addition, state and federal laws administered through the Iowa DNR and the EPA may need to be considered. Should a property already be acquired at the time contamination is verified, former owners may be determined to be responsible for the cleanup costs, but recouping such costs may prove difficult.

If any indications of contamination are encountered at any necessary right of way, immediately contact an LPA coordinator for further advice and assistance concerning how to proceed. Discussion regarding the valuation and acquisition of real estate with environmental issues is available in the Iowa DOT *Appraisal Operational Manual*: [http://www.iowadot.gov/rightofway/rowappraisal\\_manual.html](http://www.iowadot.gov/rightofway/rowappraisal_manual.html) and in the *Acquisition and Relocation Manual*: [http://www.iowadot.gov/rightofway/rowdesign\\_manual.html](http://www.iowadot.gov/rightofway/rowdesign_manual.html).

#### 9.4 The Elements of a Parcel

A parcel may be described as a tract or tracts of land, an improvement, or a legal property right owned by a single entity or multiple entities and operated as a single unit. All or part of the larger unit may be required for highway right of way or may be damaged by highway construction or maintenance.

There are three tests used to determine what constitutes a parcel: unity of use, proximity, and unity of ownership. Unity of use is not limited to the existing use: it is also the highest and best use to which the property may be put. Proximity is not limited to tracts abutting each other, but extends to tracts within proximity of each other such that a larger parcel is still a practical economic unit. Unity of ownership may or may not prove indicative of what makes up a parcel. For further information, please see the Iowa DOT *Right of Way Design Manual*: [http://www.iowadot.gov/rightofway/rowdesign\\_manual.html](http://www.iowadot.gov/rightofway/rowdesign_manual.html).

#### 9.5 Tenant-Owned Improvements and Leasehold Interests

Tenants are owners of an interest in real property, and they must be considered. Their interests cannot be overlooked and should be identified as early as possible.

Leases are either oral or written. Leases transfer the rights to use land and/or improvements to the tenant for a specified rent and period of time. The first step in determining a leasehold interest

is to obtain a copy of the lease. Other things to look for and consider are sales tax permits (for commercial property) and asking who "owns" the crops on agricultural land or who resides on residential property.

Compensation for a tenant-owned improvement is the amount that the improvement contributes to either the fair market value of the whole property or its salvage value, whichever is greater (IC § 6B.55(2)). The appraiser should secure the signatures of both the owner and tenant of the land on a written agreement listing the improvements owned by each party. This agreement is included in the appraisal with a suggested allocation of the appropriate amounts of compensation for the improvements to be purchased. The tenant is entitled to accompany the appraiser during an inspection of tenant-owned improvements.

If the landowner and tenant do not agree on who owns what, then the names of all owners and tenants may be included together on the same contract and/or acquisition proceeds check, permitting the parties to divide the total amount themselves. The appraiser's suggested allocation of the estimate of just compensation for the tenant and landlord is just that—a suggestion only.

Where there is no dispute over who owns what, the tenant may sign a tenant contract that is separate from the owner's. This serves as a release of the tenant's interests in the lease. If there are tenant-owned improvements being acquired, these should be itemized on the contract, and a subsequent bill of sale should be signed by the tenant transferring ownership of the items to the agency.

It may be prudent to not accept contracts from an owner or tenant unless an agreement has been reached with both. If an agreement cannot be reached, both interests can be combined and acquired in a single condemnation proceeding, although either the tenant or owner are entitled to ask for separate awards at the condemnation hearing. Exceptions may include situations with a minimal financial interest, minor acquisitions, tenants with 30-day verbal leases, or farm year-to-year leases for either cash or crop share. In these cases, the acquisition may be accomplished by having the tenant sign a separate tenant contract.

A key issue involving the acquisition of land is possession. Without possession, a project cannot be constructed. When dealing with landowners and tenants separately, the surrender of possession from the various interest holders needs to be coordinated.

For example, a tenant may agree to relinquish their rights of possession on January 1, even though the landowner has not agreed to settle. On January 1, the owner is in a precarious position, since the tenant has left the property and rent is no longer being paid. The owner may decide to find a new tenant and collect rent until settlement is reached with the acquiring authority. Relocation payments made to tenants are not payments of just compensation. In the situation described above, a new tenant may be entitled to relocation payments. It is necessary to determine what relocation benefits are due the tenants.

## 9.6 Frequently Asked Questions (FAQs)

In this section of the manual, frequently asked questions and answers are provided. These questions are organized by category for easier reference.



### 9.6.1 General Questions

- If there is no federal funding in right of way acquisition, must these procedures be followed?

Answer: Yes, if there is federal funding in any phase of the project, state law now requires many of these procedures to be followed regardless of federal funding involvement. It is recommended that these procedures be followed in all projects.

- Does a temporary easement need to be acquired before the project can be let?

Answer: Yes, these interests must be acquired and certified prior to the construction of the project.

- When is possession of condemned property secured?

Answer: Possession is secured when the proceeds of the condemnation proceeding are deposited with the sheriff unless an owner-occupied house is condemned (see IC § 6B.25 and IC § 6B.26). In this event, possession occurs as soon as the final payment is made to the property owner. If an appeal occurs, possession does not occur until the appeal is finally resolved. Only when the Iowa DOT condemns the owner-occupied house can the 180-day limit on the retained possession by the property owner be imposed (see IC § 6B.26).

- Where can an appraiser, a relocation agent, or some other right of way professional be found?

Answer: An LPA coordinator can provide a list of right of way services consultants who perform and who are familiar with federal and state policies and guidelines. These agents provide several names from which one can select.

- Can the LPA use its own legal staff for condemnation in the name of the state?

Answer: Yes, it can use its legal counsel if an IC 28E agreement (see IC 28E) has previously been signed.

### 9.6.2 Valuation or Appraisal Questions

- Can a local appraiser be used?

Answer: If qualified to do eminent domain appraisals, a local appraiser can be used.

- Can an employee of the LPA do an appraisal?

Answer: It depends on the complexity of the appraisal problem and qualification of the employee. For more information, contact an LPA coordinator.

- How long does it take to do an appraisal?

Answer: Depending on the complexity of the parcel and the availability of appraisers,

the process may take from six to eight weeks or longer.

- How long does it take to review an appraisal?

Answer: Depending on the complexity of the appraisal, it can take three to four weeks.

### 9.6.3 Acquisition Questions

- Who can act as the agency's negotiator?

Answer: A qualified, full-time employee of the LPA or a fee negotiator can act as the agency's negotiator.

- Can the negotiator offer less than the approved appraisal?

Answer: No.

- Can the final, agreed-upon compensation exceed the approved appraisal?

Answer: Yes, provided written documentation in the form of an Administrative Settlement is furnished. It is recommended that the Iowa DOT be consulted prior to the LPA's commitment to the increased amount.

### 9.7 Resource References

A list of references and abstracts of what is contained in those resources has been provided. These references may be obtained from the Iowa DOT Office of Local Systems, Iowa DOT Office of Right Way, or the FHWA.

- Iowa DOT Office of Right of Way policies and procedures manuals: These manuals collectively cover all aspects of the right of way process. These include *Right of Way Design Manual*, *Appraisal Operational Manual*, *Acquisition and Relocation Manual*, *Condemnation Manual*, *Fiscal and Title Manual*, and *Property Management Manual*: <http://www.iowadot.gov/rightofway/default.htm>. Procedures directing advertising control may be found in 761 IAC 116, 761 IAC 117, 761 IAC 118, 761 IAC 119, and 761 IAC 120. Please request hard copies of those resources without links from an LPA coordinator.
- Iowa Code: The IC has many chapters and sections which apply to the purchase of right of way for highway purposes. The manner prescribed for most procedures are found in chapters IC 6A, IC 6B, IC 28E, IC 306, IC 306A, IC 306B, IC 306C, IC 313, and IC 316.
- Federal regulations: The primary ones are 23 CFR and 49 CFR 24, which may be found at: <http://www.fhwa.dot.gov/legregs/legislat.html>. 23 CFR deals with highways in general. 49 CFR 24 is the implementing regulation covering the Uniform Act, as amended.
- Iowa Administrative Code: The IAC is a set of rules which, similar to federal regulations, implement laws that are passed. In particular, 761 IAC 111 is the chapter of the IAC which implements the right of way processes in Iowa. Paper copies of the *Uniform Manual—Real Property Acquisition and Relocation* are available from an LPA coordinator upon request.
- Department of Treasury, Internal Revenue Sec. 1.6045-4: The IRS regulations describing the reporting of real estate transactions are found in this section.

## Chapter 10 Summary

The goal of this manual is to provide current information in an ever-changing world. Providing this manual in an electronic format allows updates and modifications to be added much more quickly than in paper manuals. Please consult the electronic version of this manual, rather than the paper version, for the most current information. Further information concerning this manual may be found at: [www.iowadot.gov/rightofway/propertymanage/lpacs.html](http://www.iowadot.gov/rightofway/propertymanage/lpacs.html). The Property Management Section may also be contacted at the Office of Right of Way, Iowa DOT, 800 Lincoln Way, Ames, Iowa 50010, or at 515-239-1216.

This manual has been developed for projects receiving state and/or federal highway funding in any portion of a right of way project. While the information contained within this manual may be applicable to other public improvement projects, it is recommended to contact the appropriate funding agency prior to initiating right of way processes to ensure that appropriate funding sources are not jeopardized.

All the aspects of right of way have are not discussed in this manual. The purpose of this manual is to provide a guide concerning the operations and functions which are frequently encountered and the priorities which must be followed in the right of way process.

The Iowa DOT Office of Right of Way maintains an LPA unit within the Property Management Section. The Property Management Section is currently staffed with full-time employees to provide guidance and monitor LPA activities. The Office of Right of Way also has other specialized sections available to assist in expediting right of way projects. For coordination and specific guidance, please contact the LPA coordinators in the Property Management Section at 515-239-1216.

Iowa DOT local public agency coordinators (LPACs) are assigned to areas covered by one or more Iowa DOT districts as shown on the map of Iowa that may be found via this website link: [www.iowadot.gov/rightofway/propertymanage/lpacs.html](http://www.iowadot.gov/rightofway/propertymanage/lpacs.html). For more information, contact the agent responsible for your area of the state.

Those who created this manual wish to extend appreciation to the FHWA and for the efforts of all those individuals from the private and public sectors that served on the manual team.

## **Glossary**

### **A**

#### **Abstract.**

A document which shows the condensed history of a property's title. It may include portions of prior conveyances and/or other pertinent instruments relating to the estate or interest in the property and all liens, charges, encumbrances, and releases.

#### **Access.**

This means to approach, to enter, and to exit property.

#### **Access control.**

Government's power to restrict or control a property owner's right to enter on and exit from a public road.

#### **Access rights.**

The right of ingress to and egress from one's property to a public road. The right may be actual or implied. Access is a private right as distinguished from the public's rights.

#### **Acquisition.**

The process of obtaining right of way by negotiation or eminent domain to construct or support a project.

#### **Advanced acquisition.**

The acquisition of rights of way in advance of normal acquisitions schedules in order to avoid higher costs later, to assist in hardship cases, or when there is property management potential or other advantage to the acquiring agency.

#### **Adverse possession.**

A claim made against the property of another by virtue of actual, continuous (for a time established by statute), exclusive, hostile, notorious (the other ownership claimant has notice of the possession and its extent), open, and under claim of title.

#### **Agreement.**

A word used to describe a common opinion of two or more people regarding each party's rights and obligations related to the agreement.

#### **Allocation.**

1. The process of separating value into its components. 2. A method to opine land value by which improved property sales are analyzed to develop a typical land value to property value ratio with the ratio multiplied by the property being appraised or the comparable sale being analyzed.

#### **Appeal.**

The complaint to an appellate court of an injustice done or error committed by a trial or lower court, whose judgment or decision the appellate court is called on to correct or reverse.

#### **Appraisal.**

The act or process of developing a value opinion.

#### **The Appraisal Foundation.**

A not-for-profit educational organization to advance the appraisal profession. TAF develops and promulgates professional appraisal standards and appraiser qualifications.

**Appraisal process.**

A systematic procedure to address the client's valuation issue.

**Appraisal report.**

Any communication, written or oral, of an appraisal, appraisal review, or appraisal consulting service that is transmitted to the client upon completion of an assignment.

**Appraisal review.**

The process of developing and communicating a credible opinion as to the quality of another's appraiser's work.

**Appraiser.**

A person who performs valuation services competently and in an independent, impartial, and unbiased manner.

**Approaches to value.**

The three approaches to developing a value opinion: the cost approach, the income capitalization approach, and the sales comparison report.

**Assessment.**

The valuation of property for tax purposes.

**Asset.**

Items that have value in use or exchange.

**Assignment.**

The method by which a right or contract or property is transferred from one person to another.

**Attorney.**

1. A person who is legally permitted to transact business on another's behalf. 2. A person who advises and represents clients as to legal rights and obligations.

**B**

**Before and after value.**

An appraisal method used in the valuation of partial acquisitions. The appraiser develops an opinion of value prior to the acquisition or take and another opinion of value after the value or take. The difference is the value of the acquisition.

**Borrow.**

Suitable material from sources outside the roadway prism, used primarily for embankments.

**Broker.**

A person licensed to engage in real estate business.

## **C**

### **Client.**

The party or parties who engage another by contract or employment.

### **Code of Federal Regulations.**

A document that codifies all rules of the executive departments and agencies of the federal government.

### **Comparables.**

Properties used as comparisons to opine the value of a specific property.

### **Compensable interest.**

A property right which, if acquired for public purposes, would entitle the owner to receive just compensation.

### **Complaint.**

1. The plaintiff's presentation in an action, setting forth the claim on which relief is sought.

### **Conformity.**

A real estate principle that holds that value is created and sustained when the property's characteristics conform to market demands.

### **Consideration.**

The inducement, generally monetary, that moves a party to enter into a contract.

### **Contamination.**

Introduction of microorganisms, chemicals, toxic substances, waters, or wastewater in water, air, soil, and structures in concentrations that make the medium unfit for its intended use.

### **Contract.**

A legally enforceable agreement between two or more people or parties.

### **Conveyance.**

A written instrument by which a title, estate, or interest in property is transferred.

### **Cost.**

The total dollar amount necessary to create an improvement.

### **Cost approach to value.**

1. One of the three approaches to value. 2. A set of procedures by which a value indication is obtained by estimating the reproduction or replacement cost new of a structure, deducting depreciation from all causes, and adding the land value opinion.

### **Cost to cure.**

The cost to restore an item of physical deterioration or functional obsolescence to near new or new condition.

## **D**

### **Damages.**

In condemnation, the loss in value to the remainder property as a result of a partial taking. Generally, it is the difference between the value of the property before the acquisition and the value of the property after the acquisition.

### **Deed.**

A written instrument, usually under seal, by which the ownership interests in real estate are transferred from one party to another.

### **Depreciation.**

1. A loss in value from any cause. 2. Physical deterioration, functional obsolescence, and external obsolescence.

### **Deterioration.**

Impairment of condition; one of the causes of depreciation and reflecting the loss in value brought about by wear and tear, disintegration, use in service, and the action of the elements.

### **Donation.**

The voluntary conveyance by the owner of private property to public ownership and use without compensation.

## **E**

### **Easement.**

A nonpossessory interest held by one person in property of another where the first person is accorded partial use of the property for a specific use. An easement restricts but does not abrogate the fee owner's rights to the use and enjoyment of the property.

### **Eminent domain.**

The right or power of public and quasi-public agencies to take private property for public purposes.

### **Encumber.**

A charge, claim, liability, or lien attached to real property.

### **Environment.**

The sum of all external conditions affecting the life, development, and survival of an organism.

### **Estate.**

A right or interest in property.

### **External obsolescence.**

An element of depreciation, usually incurable, caused by negative influences outside the property.

## **F**

### **Fair market value.**

The most probable price which a property should bring in a competitive and open market under conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably

and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. buyer and seller are typically motivated;
2. both parties are well informed or well advised, and acting in what they consider their best interests;
3. a reasonable time is allowed for exposure in the open market;
4. payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto; and
5. the price represents the normal consideration for the property sold, unaffected by special or creative financing or sales granted by anyone associated with the sale.

**Federal Highway Administration.**

A part of the federal Department of Transportation. The agency's mission is to create the world's best transportation system.

**Federal rule.**

An appraisal method used in the valuation of partial acquisitions. The appraiser develops an opinion of value prior to the acquisition or take and another opinion after the acquisition or take. The difference is the value of the acquisition.

**Fixture.**

An item that was once personal property but is now an integral part of the real estate.

**Functional obsolescence.**

Impairment of functional capacity or efficiency.

**G**

**Grade line.**

The slope in the longitudinal direction of a project, usually expressed as a percentage or relationship.

**Grant.**

A transfer of property or an interest in property.

**H**

**Hazardous waste.**

Any byproduct that can pose a substantial or potential hazard to human health or the environment when improperly managed. Possesses at least one of four characteristics (ignitability, corrosivity, reactivity, or toxicity), or appears on special Environmental Protection Agency lists.

**Highest and best use.**

The reasonably probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, and financially feasible, and that results in the highest value.

**I**

**Improvement.**



A building or other structure permanently attached to the land.

**Incidental expenses.**

Actual and reasonable expenses incurred by the displacee in the purchase of a replacement dwelling and customarily paid by the buyer.

**Income capitalization approach.**

1. One of the three approaches to value. 2. A set of procedures by which income is converted into value through the application of a rate.

**Instrument.**

Any legal document (e.g., deed, lease, mortgage, will).

**J**

**Judgment.**

1. A formal decision or determination on a matter or case by a court. 2. In a condemnation case, a decision as to damages suffered by the condemnee.

**Jurisdictional exception.**

An assignment condition that voids the force of a part or parts of USPAP, when compliance with a part or parts of USPAP is contrary to law or public policy applicable to the assignment.

**Just compensation.**

1. The compensation for property acquired under eminent domain that places a property owner in the same position as before the property is taken. It is usually the fair market value of the property acquired.

**L**

**Land.**

1. The earth's surface. 2. In an economic sense, one of the agents or factors in production. 3. In a legal sense, the solid part of the surface of the earth, as distinguished from water.

**Land surveyor.**

A person whose occupation is to establish property boundary lines.

**Larger parcel.**

In condemnation, the portion of a property that has unity of ownership, contiguity, and unity of use, the conditions that establish the larger parcel for valuation purposes. In many jurisdictions, contiguity is sometimes subordinated to unity of ownership and unity of use.

**Lease.**

A contract where the owner transfers the right of possession and use of the real estate for a specified time period and on payment of consideration, usually rent.

**Leasehold interest.**

1. The right to possess, use, and quietly enjoy the real estate for the lease term. 2. The present (discounted) value of the difference between market rent and contract rent.

**Legal description.**

A method, acceptable in court, that geographically locates property.

**Lessee.**

The party to who a lease is given in return for a consideration, usually rent.

**License.**

A personal privilege to do some act on the land of another.

**Lien.**

A hold or claim that one party has on the property of another (e.g., security for a debt or a charge, judgment, mortgage, tax, etc.).

**Local public agency.**

An organization (e.g., municipality, county) charged with the responsibility for proper administration, planning, and development of a public project.

**Location.**

1. Position with respect to human activities. Location is considered one of the basic elements contributing to the value of a property; and accessibility is the principal measure of the value of location. 2. The fixed position of the highway on the ground, including curves and tangents.

**M**

**Market.**

1. The place where people interact to sell and buy. 2. The area in which buyers and sellers of a commodity are in communication with each other.

**Market rent.**

The most probable rent a property should bring in a competitive and open market.

**Market value.**

The most probable price which a property should bring in a competitive and open market under conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. buyer and seller are typically motivated;
2. both parties are well informed or well advised, and acting in what they consider their best interests;
3. a reasonable time is allowed for exposure in the open market;
4. payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto; and
5. the price represents the normal consideration for the property sold, unaffected by special or creative financing or sales granted by anyone associated with the sale.

**Mitigation.**

Measures taken to reduce adverse impacts on the environment.

**Mortgage.**

1. A pledge of real property as security for the payment of a debt. 2. A written document by which property is given as security for a debt with the right of redemption.

## **N**

### **Negotiation.**

The primary method used to acquire property. 2. The process by which two or more people resolve differences to reach a mutually acceptable agreement.

### **Negotiator.**

A person who arranges or settles transactions by discussion and mutual agreement.

### **Notary public.**

A legal officer with specific judicial authority to attest to legal documents, usually with an official seal.

## **O**

### **Offer.**

An explicit proposal to contract which, if accepted, completes the contract and binds both the party that made the offer and the party accepting the offer to the terms of the contract.

## **P**

### **Parcel.**

A piece of land of any size in one ownership.

### **Partial taking.**

The acquisition of a part of a real estate parcel or a real property interest for public or quasi-public use under eminent domain.

### **Permanent easement.**

1. An easement conveyed in perpetuity. 2. An easement that lasts forever.

### **Personal property.**

1. Property that is movable. 2. Property that is not permanently attached to, or part of, the real estate. 3. Identifiable, tangible objects that are considered by the general public as being "personal"; for example, furnishings, artworks, antiques, gems and jewelry, collectibles, machinery, and equipment. 4. All tangible property that is not classified as real estate.

### **Plat.**

An individual property map that shows property lines and other features (e.g., buildings and topographic elements).

### **Police power.**

The right of government to restrict property rights to public health, safety, and welfare.

### **Prescription.**

The right to use the property of another, which is established by exercising this right over a period of time.

### **Price.**

The amount asked, offered, or paid for a property.

**Property.**

Anything, real or personal, that is owned.

**Property line.**

The division between two parcels of land, or between a parcel of land and the street.

**Property management.**

Administration of property with the objective being to maintain, enhance, or maximize its productivity and value.

**Proximity damage.**

1. Damage to property arising as a consequence of the nearness or proximity of a project (e.g., highway) to the property. 2. The diminution in property value as a result of the proximity of a highway or other construction project to a property.

**Public use.**

A use benefitting the entire community.

**Q****Quasi.**

Having some resemblance, usually by possession of certain attributes.

**R****Real estate.**

1. An identified parcel or tract of land, including improvements, if any. 2. The physical land and attachments (e.g., buildings).

**Real property.**

1. The interests, benefits, and rights inherent in the ownership of real estate. 2. The bundle of rights.

**Relocation agent.**

A person who provides relocation advisory services and benefit determinations to people and businesses displaced by a public program or project under the Uniform Act.

**Relocation assistance.**

Advisory and financial aid assistance to residential occupants, businesses, farms, and nonprofit organizations displaced by a public program or project under the Uniform Act.

**Remediation.**

1. Cleanup or other methods used to remove or contain a toxic spill or hazardous materials. 2. Abatement methods including evaluation, repair, enclosure, encapsulation, or removal of hazardous materials.

**Remnant.**

A remainder property of little value or use.

**Rent.**

The consideration paid for use of the property.

**Restriction.**

The restrictions and prohibitions placed on the property owner from doing certain things relating to the property.

**Right of way.**

1. The right to pass across the lands of another. 2. Land or property, or an interest in land or property for transportation purposes (e.g., roads, public transport, utilities, etc.).

**S****Sales comparison approach.**

1. One of the three approaches to value. 2. A set of procedures by which a value indication is obtained by comparing properties that have sold recently to the property being appraised.

**Salvage value.**

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

**Site.**

Land that is ready to be used for a specific purpose.

**Specifications.**

A general term covering all directions, provisions, and requirements contained within a specifications manual.

**Supplemental standards.**

Appraisal requirements issued by governmental agencies, government-sponsored enterprises, or other entities that establish public policy which adds to the purpose, intent, and content of the requirements in USPAP and that have a material effect on the development and reporting of assignment results.

**T****Take.**

The acquisition of property.

**Taking.**

The process of obtaining right of way by negotiation or through eminent domain to construct or support a project.

**Temporary easement.**

An easement granted for a specific use for a limited time.

**Tenant.**

One who holds possession of the real estate of another.

**Title.**

1. The evidence of a person's right to own or possess property. 2. The quality of ownership as determined by a body of facts and events.

**Title opinion.**

An analysis and interpretation of a title search concerning present ownership, encumbrances, clouds on title, and other infirmities.

**Title report.**

A report showing the condition of the title before a sale or loan transaction.

**Title search.**

An investigation of public records and documents to ascertain the history and present status of title to a property, including ownership, liens, charges, encumbrances, and other interests.

**Township.**

A territorial subdivision six miles square and containing 36 sections.

**U****Uneconomic remnant.**

A remainder property of little value or use.

**Uniform Standards of Professional Appraisal Practice.**

The standards of the appraisal profession, developed for appraisers and users of appraisal services by the Appraisal Standards Board of the Appraisal Foundation.

**US Army Corps of Engineers**

A federal agency with the mission to provide engineering services related to the nation's water resources, army and air force military facilities, and other defense and federal agencies.

**V****Valuation.**

The process of developing a value opinion.

**Valuation process.**

A systematic procedure to address the client's valuation issue.

**Valuation services.**

Services pertaining to aspects of property value.

**Value.**

1. The monetary relationship between properties and those who buy, use, or sell those properties.
2. The monetary worth of the property, good, or service to buyers and sellers at a given time.

**Z****Zoning.**

Public regulations that control, through police power, the use of real estate.