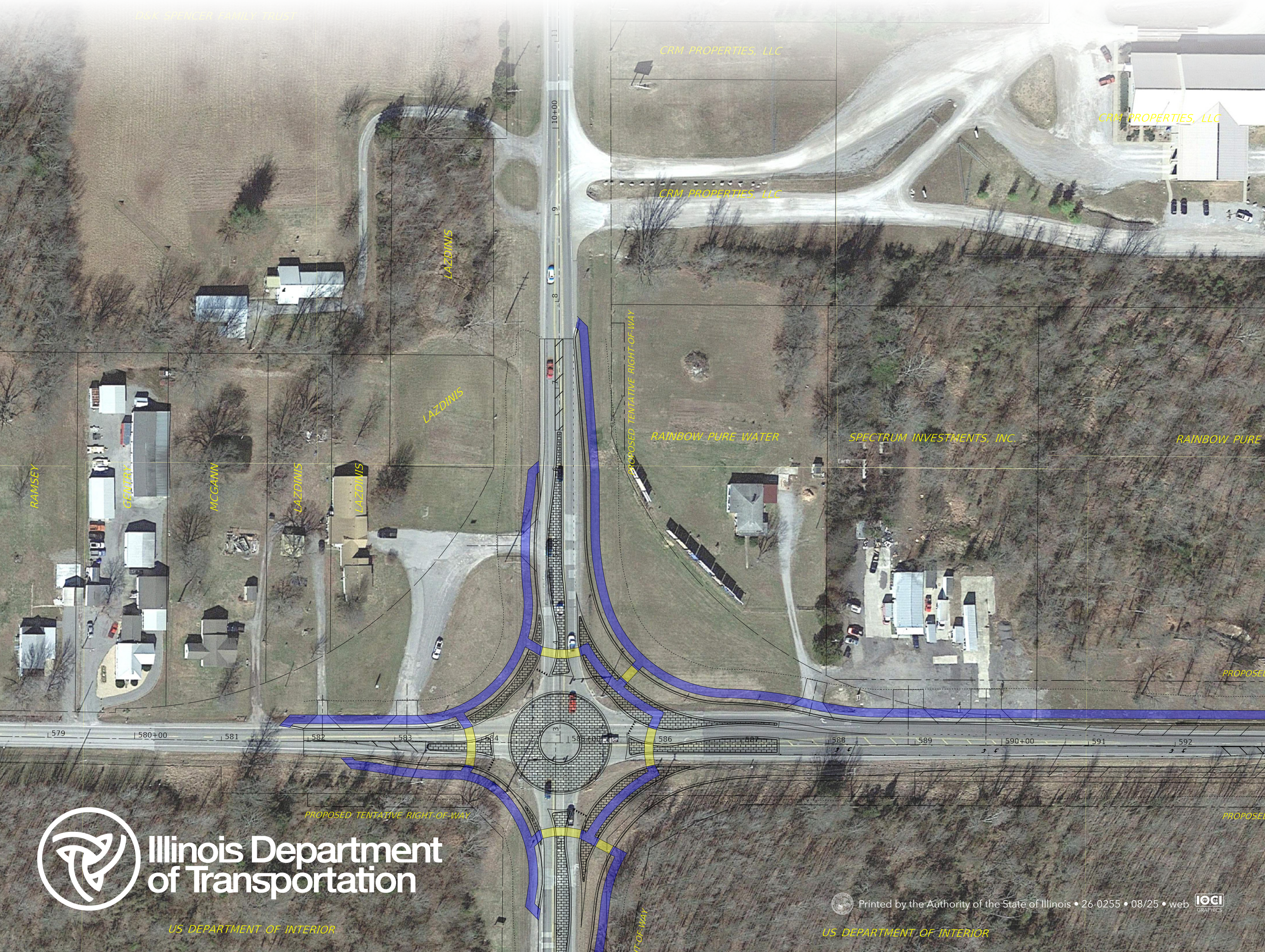
2025

Land Acquisition Policies and Procedures Manual



Illinois Department of Transportation

Printed by the Authority of the State of Illinois • 26-0255 • 08/25 • web

Land Acquisition
Policies and Procedures Manual

Illinois Department of Transportation

Gia Biagi
Secretary of Transportation
and
Bureau of Land Acquisition
Springfield, Illinois

November 7, 2025

Table of Contents

DOCUMENT CONTROL

The Illinois Department of Transportation Land Acquisition Policies and Procedures Manual is owned by the Office of Highways Project Implementation, Bureau of Land Acquisition. The guide is reviewed during use for adequacy and updated by the Bureau of Land Acquisition as necessary to reflect current policy.

DISTRIBUTION

This guide is intended to be used electronically as it includes hyperlinks within and resources external to the document. Portable Document Format (PDF) has been selected as the primary distribution format, and the official version of the manual is available on the Policy and Publications Center site at https://powerdms.com/home.

The information contained in this guide is current as the date of issuance. Employees are responsible for ensuring use of the most current version of any document. All current policy documents are available on the Policy and Publications Center site at https://powerdms.com/home.

REVISION HISTORY

This content in this guide supersedes all previous guidance.

Description	Approval
Land Acquisition manual rewrite. Outdated information updated or removed.	Lora Rensing - November 7, 2025

Preface

The Land Acquisition Policies and Procedures Manual has been prepared to provide uniform guidance for the acquisition and management of property required for highway improvement projects, and the relocation assistance and payments which must be provided to those displaced by such projects. The Manual presents the procedures normally required for a highway improvement project and all criteria must be met and performed by either qualified department staff or approved specialty agents (i.e., consultant personnel).

The policies and procedures contained in the Manual are compliant with the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 et seq.) (Uniform Act); the federal regulations titled Right of Way and Real Estate (23 CFR Part 710); the federal regulations titled Uniform Relocation Assistance and Real Property Acquisition for Federally Assisted Programs (49 CFR Part 24); applicable Illinois statutes; as well as federal and Illinois case law.

The Land Acquisition Policies and Procedures Manual is maintained and interpreted by staff within the Central Bureau of Land Acquisition (CBLA).

Table of Contents

1 OVERVIEW, FEDERAL PROGRAMMING AND QUALIFICATIONS

1.1 *GENERAL*

The purpose of this manual is to establish policies and procedures for implementation of the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 et seq.) (Uniform Act); the federal regulations titled Right of Way and Real Estate (23 CFR Part 710); the federal regulations titled Uniform Relocation Assistance and Real Property Acquisition for Federally Assisted Programs (49 CFR Part 24); applicable Illinois statutes; as well as federal and Illinois case law.

The federal regulations published in 49 CFR Part 24 state the following objectives.

- To ensure that owners of real property to be acquired for federal and federally assisted projects are treated fairly and consistently, to encourage and expedite acquisition by agreements with such owners, to minimize litigation and relieve congestion in the courts, and to promote public confidence in federal and federally assisted land acquisition programs.
- To ensure that persons displaced as a direct result of federal or federally assisted projects are treated fairly, consistently, and equitably so that such displaced persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole.
- To ensure that agencies implement these regulations in a manner that is efficient and cost effective.

Uniformity in the application of these policies and procedures, under the guidance of the Central Bureau of Land Acquisition (CBLA), will support these objectives, ensure projects remain eligible for federal reimbursement, and maintain integrity and professionalism in the acquisition of private property for public use.

The National Environmental Policy Act (NEPA) requires federal agencies to assess, with meaningful input from the public, the environmental and related social and economic impacts of their proposed actions. Consequently, only “preliminary” acquisition activities can be advanced prior to the completion of NEPA, while other activities involving contact with affected property owners for negotiations and relocation assistance must be deferred until after NEPA approval, except as provided in Section 1.1.6 (Acquisition Alternatives) (23 CFR 710.203). Preliminary acquisition activities include title work, plans, plats, legal descriptions, appraisals, appraisal reviews, waiver valuations and relocation planning activities, limited to searching for comparable properties, identifying replacement neighborhoods, and identifying available public services.

As federal funds may be used in any or all phases of a project, the acquisition of property is subject to federal oversight and approval. As a result, these policies and procedures shall be used for all state highway projects regardless of the funding type.

Counties, municipalities, or other local public agencies may acquire right of way on the state highway system provided such acquisition conforms to the department’s policies and procedures and the process has the prior approval of the department.

1.1.1 Recordkeeping and Reports

The regulations published in 23 CFR Part 710 and 49 CFR Part 24 require the department to maintain adequate records of its acquisition and displacement activities in sufficient detail to demonstrate compliance with the regulations. These records shall be retained for at least 3 years after each owner of a property and each person displaced from the property receives the final payment to which they are entitled under the regulations, or in accordance with the applicable regulations of the federal funding Agency, whichever is later. The department's Records Management Program which satisfies this requirement is described in Chapter 8.

Records maintained by the department are confidential regarding their use as public information unless applicable law provides otherwise.

The department shall submit an annual report to the FHWA of its real property acquisition and displacement activities under the regulations. The report shall be prepared and submitted using the format prescribed in appendix B of 49 CFR Part 24.

1.1.2 Manner of Notices to Property Owners/Tenants

Each notice which the department is required to provide to a property owner or occupant under the regulations published in 49 CFR Part 24 shall be personally served or sent by certified first-class mail, return receipt requested (or by companies other than the United States Postal Service that provide the same function as certified mail with return receipt requested), and documented in the files.

Each notice shall be written in plain, understandable language. Persons who are unable to read and understand the notice must be provided with appropriate translation and counseling. Each notice shall indicate the name and telephone number of a person who may be contacted for answers to questions or other needed help.

1.1.3 Administration of Jointly-Funded Projects

Whenever two or more federal agencies provide financial assistance to a department project to carry out functionally or geographically related activities, which will result in the acquisition of property or the displacement of a person, the federal agencies may by agreement designate one such agency as the cognizant federal agency. In the unlikely event that agreement among the agencies cannot be reached as to which agency shall be the cognizant federal agency, then the lead agency shall designate one of such agencies to assume the cognizant role. At a minimum, the agreement shall set forth the federally assisted activities that are subject to its terms and cite any policies and procedures, in addition to the regulations published in 49 CFR Part 24, that are applicable to the activities under the agreement. Under the agreement, the cognizant federal agency shall assure the project is in compliance with the provisions of the Uniform Act and the regulations. All federally assisted activities under the agreement shall be deemed a project for the purposes of the regulations.

1.1.4 Federal Agency Waiver of Regulations

The federal agency funding the project may waive any requirement in 49 CFR Part 24 not required by law if it determines that the waiver does not reduce any assistance or protection provided to an owner or displaced person under the regulations. Any request for a waiver shall be justified on a case-by-case basis and submitted to the Central Bureau of Land Acquisition (CBLA) for approval. Requests for waivers on federally assisted projects will be forwarded to the FHWA for further approval.

1.1.5 Programming/Authorizing Federal-Aid Right of Way Projects

When right of way is to be acquired using federal funds, a right of way project must be programmed, and a project agreement set up with and authorized by the FHWA as required by 23 CFR Part 710 (Sections 710.301 and 710.303). The programming of federal-aid funds for any phase of a project is to be considered a definite initial commitment on the part of the state and the FHWA to undertake and complete such work within a reasonable length of time. The major steps involved in programming/authorizing a project are described below.

1.1.5.1 *Programming*

Programming a right of way project involves the following:

- Job/Project Number. Create a state job number for the right of way project (the R#) using the State Job Number Generator (SJNG) system. When planning to use federal funds to acquire the right of way, check the “job is FHWA funded” box in the SJNG system and a federal project number will also be generated. This federal project number will be included in the authorization request later submitted for approval to the FHWA.
- Land Acquisition Management System (LAMS). Establish the project in LAMS, ensuring all parcels necessary for the project are identified.
- Program Planning System (PPS). Enter the right of way project in the PPS, ensuring the fiscal year, budget, cost and funding source for the project are accurate.
- Multi-Year Highway Improvement Program (MYP). Ensure the project data has been “pulled from PPS” and published in the MYP. If the current program has already been published, a program addition/revision must be processed.
- TIP/STIP Publication. If the project is within the boundary of a metropolitan planning organization (MPO), coordinate with the MPO to get the project published in their Transportation Improvement Program (TIP). Otherwise, ensure the project is published in the department’s State Transportation Improvement Program (STIP).

Consider the following when establishing and managing right of way projects:

- Establishing Projects. It is highly recommended to establish an R-number (i.e., a right of way project) for each associated construction contract. This allows for better monitoring of the right of way clearances necessary for award of the construction contract and allows for the right of way project to be closed out in a reasonable length of time (e.g., 2 - 5 years).
- Project Management. Close projects progressing past the final voucher stage and do not reopen for program additions. When additional right of way is required within the limits of a closed-out project, establish a new project and program in the usual manner.

1.1.5.2 *Authorization/Project Agreement (APA)*

After the right of way project has been programmed, and NEPA/design approval of the Phase I engineering has been obtained, a project agreement can be submitted to the FHWA. Once the FHWA accepts the agreement, the department is authorized to obligate federal funds for the project and to proceed with land acquisition activities involving contact with affected property owners for negotiations and relocation assistance.

To initiate the APA process, DLA will need to submit the following information to CBLA who will then coordinate with the FHWA via the Federal Project Management (FPM) system. See Exhibit LA 10105 for instruction.

- Right of Way Plats/Plans
- Right of Way Cost Estimate
  (specify which right of way function(s) will need federal authorization)
- Number of Parcels
  (specify Business/Residential and Fee, P.E., T.E.)
- Relocation Plan with Anticipated Number of Relocations
- PPS#
- Letting Date
- Design Approval Date
- Environmental Clearance Date (i.e., NEPA)

Consider the following additional information related to funding authorization:

- Parcels will not generally qualify for federal participation where negotiations or relocation assistance are initiated prior to authorization except as provided in Section 1.1.6 (Acquisition Alternatives).
- Federal participation may also be requested for preliminary right of way activities (e.g., title work, preparation of plans, plats and legal descriptions, appraisals, appraisal reviews, waiver valuations and relocation planning). For projects on new alignment, authorization of federal funds may be requested for preliminary activities after corridor approval. For projects using an existing corridor, authorization of federal funds for preliminary activities may be requested once the public involvement process has been completed.

1.1.5.3 *Modified Project Agreement (MPA)*

A Modified Project Agreement may be executed on a project any time it is necessary to increase the amounts of federal funds to cover approved changes. This condition arises when either of the following occurs:

- The right of way costs exceed the amount of the agreement, or
- The right of way acquisitions and costs are increased to the point where this addition exceeds the contingency amount.

If the right of way plans have changed, revised plans must be completed and made available to the FHWA upon request.

If the right of way plans are unchanged but the cost is in excess of the agreement amount, a project agreement can be modified by submitting an MPA. The MPA is submitted electronically to FHWA by CBLA in the same manner as the original APA.

It is the responsibility of CBLA in cooperation with the Project Control Manager of the Bureau of Programming to initiate the modification of the project agreement any time the right of way cost substantially exceeds the agreement amount and the final voucher will not be submitted within a reasonable length of time, usually six months.

1.1.5.4 *Federal-Aid Project without Participation in Right of Way*

The provisions of the Uniform Act (42 U.S.C. 4601 et seq.) must be complied with if there is federal-aid in any phase of a project regardless of whether or not the right of way portion is programmed for federal-aid. To document this compliance, construction authorization requests submitted to FHWA must contain a certification if right of way acquisition and relocation assistance are involved on a project. On projects where the right of way was acquired by the state without federal participation, CBLA provides a memorandum to BDE's Project Development Unit during the letting process indicating the requirements have been met.

1.1.6 Acquisition Alternatives

Normally, acquisition activities involving contact with affected property owners for negotiations and relocation assistance cannot proceed until the NEPA decision for the project has been made. However, if there is a need to acquire property earlier, federal regulations provide a few acquisition alternatives, which if followed correctly, allow the project to remain Uniform Act compliant and eligible for federal financial assistance.

1.1.6.1 *Early Acquisition*

Federal regulations found at 23 CFR 710.501 allow the department to acquire property early, prior to the final environmental approval of the proposed transportation project. The requirements for using early acquisition vary depending upon how the right of way and the project are funded. A table which summarizes the various options and requirements is available on the FHWA's website: (Early Acquisition Alternatives & Requirements).

The department's policy is to carry out early acquisition entirely at its own expense but maintain eligibility for future federal assistance for other parts of the project (e.g., construction); and to early acquire properties through negotiations without the threat of eminent domain. The requirements for this form of early acquisition are as follows:

- Property must be lawfully acquired.
- Property must not be a Section 4(f) property.
- Acquisitions and relocations must comply with the Uniform Act.
- The department must comply with Title VI of the Civil Rights Act.

- The FHWA must concur with the department that the early acquisition did not influence the NEPA decision for the proposed transportation project including:
  - The need to construct,
  - The consideration of alternatives, or
  - The selection of design or location.

Note: Early acquisition is uncommon and requires coordination with, and approval from, CBLA and FHWA prior to its use. See Section 4.8.2 for more information on acquiring via early acquisition.

1.1.6.2 *Protective Buying and Hardship Acquisition (Advanced Acquisition)*

Federal regulations found at 23 CFR 710.503 allow the department, prior to the final environmental approval of a transportation project, to request FHWA agreement to provide reimbursement for advance acquisition of a particular parcel or a limited number of parcels, to prevent imminent development and increased costs on the preferred location (Protective Buying), or to alleviate hardship to a property owner on the preferred location (Hardship Acquisition), provided the following conditions are met:

- The transportation project is included in the department's State Transportation Improvement Program (STIP);
- Official notice has been given to the public that a preferred corridor or recommended alignment has been selected for the project, or a public hearing has been held or an opportunity for such hearings has been afforded; and
- NEPA and Section 4(f) clearances have been made for the advanced acquisition parcels.

Protective Buying. As part of the request to the FHWA, the department must clearly demonstrate that development of the property is imminent and such development would limit future transportation choices. A significant increase in cost may be considered as an element of the justification.

Hardship Acquisitions. As part of the request to the FHWA, the department must accept and concur in a property owner's request for a hardship acquisition based on the property owner's written submission which shows: (1) remaining in the property poses an undue hardship compared to other property owners because of health, safety, or financial reasons, and (2) the owner has been unable to sell the property at fair market value because of the impending transportation project, within a time period that is typical for properties not impacted by the impending transportation project.

NEPA and Section 4(f). Prior to approving advanced acquisition, NEPA and Section 4(f) clearances are necessary for the advanced acquisition parcels. Since advanced acquisition usually occurs during the NEPA phase of the transportation project, this requires the advanced acquisition parcels to be carved out from the overall transportation project to do NEPA and 4(f) review on those parcels. The NEPA class of action for the parcels is typically a categorical exclusion (CE). The reviews and decisions are for the advanced acquisition, and the parcels acquired in advance are still included in the NEPA and section 4(f) evaluations for the transportation project. Further, the advanced acquisitions shall not influence the environmental review of the transportation project which would use the property, including decisions about the need to construct the transportation project or the selection of an alternative.

See Section 4.8.3 for more information on acquiring via advanced acquisition.

1.2 *LAND ACQUISITION PROCESS-OVERVIEW*

The first step in planning for the acquisition of the land is estimating the cost of the purchase. Land acquisition estimates are prepared five or more years in advance. These are rough estimates in the early stages of programming. As the letting date approaches the estimate is updated. Historically, estimates plus 20% should cover project changes, unanticipated court costs, and land value escalations. The estimates should be reevaluated at least once per year and possibly more often if the project is in a rapidly expanding market.

In order to purchase property, a land survey must be performed. Upon receipt of final construction limits, proposed right of way lines are laid out (see Chapter 2). The criteria and standards for the preparation of right of way plans for federal-aid projects and non-federal-aid projects are the same. Deciding the amount of new right of way needed is critical. If too much is obtained, a court presiding over an eminent domain case could interpret the taking as excessive. The Plats and Plans Unit Chief should closely coordinate with the designer to minimize revisions. A plat change in the later stages of acquisition can add months to the schedule and jeopardize a project's letting date. Depending on the district's program workload, land surveys should be completed two to four years in advance of the project letting date.

Title commitments are used to determine property ownership and generally consume large amounts of time to prepare (see Chapter 4).

The district's Land Acquisition staff will participate at public meetings, internal project reviews, and district coordination meetings to assess environmental impacts involving any parcels to be acquired. Any change in Right of Way from the limits documented in the Phase I report must be coordinated with appropriate Phase I design staff, whether the changes are within or beyond the Environmental Survey Request limits. Any environmental commitments and constraints made during Phase I should be documented and implemented appropriately throughout the completion of the project.

Appraisers are an integral part of the land acquisition team. The appraiser and review appraiser should be given the same scope and walk through the property at the same time to assure consistency (see Chapter 3).

Negotiators are the department's front-line personnel for the property owners. They represent the face and image of the department. Allow as much time as possible to answer property owners' questions. If a railroad or utility is involved, allow an extra three to four months to go through the statutory Illinois Commerce Commission proceedings (see Chapter 4).

The condemnation process becomes necessary when negotiations are unsuccessful or a property owner is otherwise unable to provide clear title. Careful planning and timely referral of parcels for condemnation is critical in meeting the target letting date (see Chapter 5).

Relocation activities can be one of the lengthiest processes. Each relocation unit is different and some may be complicated, especially if a displaced person is not cooperative.

Nothing is more disturbing for a property owner than being told that they might have to relocate (see Chapter 6).

Appraisers, Review Appraisers, Negotiators and Relocation Agents all form a team with which the property owner will interact. A best practice is for the entire team to walk the project and meet with a property owner to discuss all components of the land acquisition process at one time in order to minimize disruptions to the property owner. This maintains consistency for the land owner.

The Land Acquisition Management System (LAMS) shall be maintained to reflect a current record of all relocation assistance activities offered and accomplished and data entry must be commenced on/or before the start of right of way negotiations on a project. Each event must be entered as executed and kept up to date in order to reflect current status. Status reports on various aspects of the relocation assistance activities can be developed from this information.

This information is very important. It is the basis for various department reports, the annual report to the FHWA and, more importantly, it provides the status of parcel clearances for service bulletins and construction contract lettings. Therefore, it is essential that LAMS reflect accurate and current status at all times, including the target letting date for the project.

In summary, the land acquisition process is a complicated and detailed process that affects many aspects of a project as well as the personal lives of Illinois citizens. It can determine project design due to high land values and it can delay the timely start of a critical part of the total highway improvement project.

1.3 *DISTRICT BUREAU OF LAND ACQUISITION*

The district bureaus/sections of land acquisition (DLA) are responsible for the various activities required to acquire and clear right of way for state highway construction. The following are the major responsibilities of DLA:

- Input into the Land Acquisition Management System (LAMS)
- Plats and Legal Descriptions
- Right of Way Plans
- Appraisals
- Negotiations
- Condemnation
- Relocation
- Property Management

1.4 *CENTRAL BUREAU OF LAND ACQUISITION*

The Central Bureau of Land Acquisition (CBLA) is responsible for developing, evaluating and interpreting the policies and procedures for the statewide land acquisition program. CBLA is also responsible for administering the Highway Advertising Control Act and the Junkyard and Scrap Processing Facilities Act.

CBLA works closely with the department's Office of Chief Counsel and the Illinois Attorney General's Office to coordinate and plan activities relative to assignments, settlements, trials, appeals, title approval, opinions, legislative actions, and other legal matters.

CBLA is also responsible for developing and administering standards of review of operational performance and for reviewing and processing all right of way expenditures.

The following are the major responsibilities of CBLA:

- Advise and assist districts in resolving acquisition problems.
- Review title and closing documents for negotiated parcels.
- Review condemnation referrals and parcel data packages.
- Coordinate the disposal of excess land or rights in land.
- Coordinate land acquisition training programs.
- Control outdoor advertising and junkyards.
- Maintain the land acquisition forms and templates.
- Coordinate and monitor the annual land acquisition program.
- Maintain the Land Acquisition Management System (LAMS).
- Produce monitoring reports, as required.

1.5 *LAND ACQUISITION FLOW CHART*

The Land Acquisition Flow Chart shows the major activities and events of the land acquisition process from the inception of a project to its construction. Activities in green boxes, bounded by solid lines, are performed / controlled by land acquisition. Activities indicated in boxes bound by dashed lines are performed / controlled by others. The numbers in the boxes relate to the following numbered list of activities:

1. **Project Scoping & Initiation:** A review of available data and transportation needs to determine the initial scope, schedule, and budget for a proposed highway improvement project; followed by the initiation of a Phase I Engineering Study which is scaled to the complexity of the project.
2. **Corridor Study/Hearing:** A study of the feasible, alternative corridors for a proposed highway improvement and the social, economic, and environmental effects of the proposed improvement within each corridor. As part of the study, a public hearing is held to inform the public and to receive comments from those concerned with, or affected by, the alternative corridors.
3. **Right of Way Cost Estimate (Corridor Stage):** A preliminary estimate of the total right of way costs for a proposed project based on a study of the project area. This estimate is normally very general, such as cost per mile, per block, etc.
4. **Relocation Cost Estimate (Corridor Stage):** An estimate of expenditures to be made for reimbursement of moving expenses and replacement housing payments.

5. **Corridor Report Approval:** Approval by the department and the FHWA of the corridor recommended as a result of a corridor study and public hearing.
6. **Establish Corridor Protection**: 605 ILCS 5/4-510 provides the department may designate a specific area of land, as a "protected corridor". The aim being to prevent conflicting development within the corridor, ensuring that land remains available for the future transportation project without excessive costs or property impacts.
7. **Program Project for Preliminary Right of Way Activities**: When federal funds will be utilized for preliminary right of way activities, a right of way project must be programmed.
8. **FHWA Authorization of Federal Funds:** Authorization granted by the FHWA to the department for use of federal funds in the performance of preliminary right of way activities.
9. **Start of Preliminary Right of Way Activities**: Per 23 CFR 710.203, certain right of way activities (e.g., title searches, plats, plans, legal descriptions, appraisals, appraisal reviews, waiver valuations, and relocation planning) can be advanced prior to completion of the National Environmental Policy Act (NEPA) review, while other work involving contact with affected property owners for purposes of negotiation and relocation assistance must normally be deferred until after NEPA approval.
10. **Ownership Reports:** Record of last known owner and any easements of record.
11. **Preliminary Right of Way Plans:** Right of way plans that have not been completed and/or approved but can be used by the Phase I study team to discern the impact of the design.
12. **Phase I Design Study/Hearing:** An engineering and environmental study which determines the major design features of the proposed project and their potential environmental, social, and economic impact(s). A public hearing is held for “major projects” to present to the public the results of a design study and to receive comments from those concerned or affected by the improvement.
13. **Preliminary Relocation Plan:** An estimate of housing needs and resources made to determine the probable availability of decent, safe, and sanitary housing available to the displaced persons of a highway project.
14. **Replacement Housing Data:** The collection of information regarding housing needs and resources within a particular corridor or study area.
15. **Relocation Plan:** An approved plan, tailored to the scope/complexity of the project, which identifies the number and type of displacements caused by the project, the availability of replacement housing and business sites, and the type(s) of relocation advisory services that may be necessary.
16. **Right of Way Cost Estimate (Phase I Stage):** A more detailed cost estimate (acquisition and relocation) for the approximate number of parcels needed for the highway improvement project.
17. **Title Reports:** Reports from a title company indicating ownership, encumbrances on property that must be satisfied prior to the acquisition of the property and the instruments necessary to transfer the required interests to the state.
18. **Plats, Plans and Legal Descriptions:** Development of drawings and legal descriptions that indicate the proposed improvement and its effect on each property to be acquired.
19. **Appraisal Market Data/Research:** The gathering and verification of all data pertaining to market value or costs in the project area.

20. **Appraisals & Appraisal Reviews:** The selection and assignment of qualified appraisers to prepare appraisal reports on all parcels to be acquired; and the review and approval of these appraisals by qualified personnel designated as reviewing appraisers. process of opining the fair market value of the acquisition. Includes appraisals and waive valuations.

21. **Protective Buying or Hardship Acquisition:** Alternative types of acquisition completed for specific parcels, in advance of final environmental approval of the proposed project, to prevent imminent development and increased costs within the project corridor (Protective Buying), or to alleviate a documented hardship to a property owner within the project corridor (Hardship Acquisition).

22. **Early Acquisition:** An alternative type of acquisition which allows the department to acquire property early, prior to the final environmental approval of the proposed transportation project. The department's policy is to early acquire properties through negotiations only, without the threat of eminent domain, and entirely at its own expense but maintain eligibility for future federal assistance for other parts of the project (e.g., construction).

23. **NEPA and Phase I Design Approval:** Approval of the Environmental Report and Phase I Engineering Report by the department and the FHWA as a result of a design study, environmental studies (i.e., NEPA approval) and a public hearing (when required).

24. **Central Bureau of Land Acquisition Approval:** Central office concurrence to move forward with land acquisition based on a determination of adherence to and compliance with established departmental policies and procedures.

25. **Program Project for Right of Way Acquisition**: When federal funds will be used for acquisition activites, a right of way project must be programmed.

26. **FHWA Authorization of Federal Funds:** Authorization granted by the FHWA to the department for use of federal funds for right of way acquisition.

27. **Owner Retention, Public Sale and Rental Values:** For parcels with buildings or other improvements in the area to be acquired, values are allocated for the improvements that may be retained and removed by the owner, sold at public sale, or rented until the property is required for construction purposes.

28. **Compute Relocation Payments:** Determine and establish the maximum payment that may be claimed by an individual as a supplemental housing payment.

29. **Negotiations, Initial Offer (with or without 60-Day Notice):** Beginning of negotiations by presenting and explaining the department's offer to the owner via the Acquisition Notice and Purchase Offer which may or may not include the 60-Day condemnation notice.

30. **Relocation Assistance with 90-Day Notice:** Initiation of relocation assistance and advisory services, along with the 90-Day Notice of Displacement which establishes the minimum amount of time an individual occupying the real property to be acquired has before they can be required to move from their home, farm, or business.

31. **Approval for Public Sale of Improvements:** Approval by CBLA of the Order and Approval to Dispose of Excess Buildings/Improvements form (LA 70602) and supporting data with subsequent approval by the Governor in accordance with 605 ILCS 5/4-508.

32. **Restatement of Offer:** A letter sent to the property owner in the later stages of negotiations that restates the department's final approved offer. If the 60-Day condemnation notice was not already sent with the initial offer, it would be sent with the restatement of offer.

33. **Successful Negotiations and Clear Title:** A negotiated settlement has been reached with the property owner and the necessary conveyance documents have been executed to

eliminate any encumbrances, liens, judgments, or objections to title that would affect the conveyance of merchantable title to the state.

34. **Condemnation Referral:** The submittal of a condemnation referral packet for review and approval by CBLA and OCC when it becomes necessary to acquire a parcel by eminent domain proceedings.

35. **Condemnation:**
    - **SPAAG Assignment, Preparation of Complaint:** The assignment of a trial attorney by the Attorney General to prepare and file a complaint for condemnation and to represent the department in the eminent domain proceedings.
    - **File Complaint - Quick Take:** The filing, by the Special Assistant Attorney General, of the fully executed complaint for condemnation together with a motion for the setting of a quick take hearing and immediate vesting of title to the property to be acquired.
    - **Quick Take Hearing - Preliminary Just Compensation:** By statute a hearing held no sooner than five days following the filing of the complaint for condemnation. Following the quick take hearing and based on the testimony presented, the amount determined as preliminary just compensation is ordered by the court to be deposited with the county treasurer.
    - **File Complaint - Jury Trial:** Filing of the fully executed complaint for condemnation, together with a motion for setting a jury trial, by the Special Assistant Attorney General in the court having jurisdiction over the matter.
    - **Jury Trial - Just Compensation:** Trial by jury held no sooner than 30 days following the filing of a complaint for condemnation. Following the trial and based on the jury verdict, the amount to be paid as just compensation is ordered by the court to be deposited with the county treasurer.

36. **Warrant Request:** A request, submitted via the Land Acquisition Management System, for a state warrant to be issued to pay the property owner the agreed amount, or the amount ordered by a court in condemnation proceedings.

37. **Title Review and Approval:** Review and approval of title to property being conveyed to the state by the Central Bureau of Land Acquisition, Office of Chief Counsel, and for acquisitions greater than $25,000 the Office of the Attorney General.

38. **Warrant Issued:** Issuance of a state warrant by the Comptroller's Office with countersignature by the State Treasurer.

39. **Warrant Delivered:** Delivery of the state warrant(s) to the owner(s) of the property acquired after a final check of the records has confirmed that no changes in interest or other matters have occurred that may affect clear title.

40. **Warrant Deposited:** Deposit of the state warrant with the county treasurer as required by the court in condemnation proceedings.

41. **Order Vesting Title:** A court order vesting title to the property being acquired in the state after the deposit of the preliminary just compensation as previously ordered by the Court at a quick take hearing. In the case of a stipulated settlement or jury award without the use of quick take procedures, the court vests title in the state by a final judgment order.

42. **30-Day Notice to Vacate:** The minimum amount of time an individual must be given if required to vacate the property being acquired by a specific date.

43. **Vacated Improvements:** Improvement devoid of occupants, owners or tenants, and all personal property.

44. **Relocation Payments.** Reimbursement payments made to displaced persons, businesses, farm operations, or non-profit organizations for costs incurred in moving, securing replacement housing, business re-establishment, and other related expenses.

45. **Owner-Retained Improvements:** Building improvements retained and removed by the property owner, from land acquired as right of way.

46. **Public Sale of Improvements:** Disposal of improvements at public sale, by sealed bids or auction, subject to the Governor's approval. The successful bidder must remove the improvements.

47. **Removal by Demolition Contract:** Removal of building improvements from the right of way by a separate demolition contract when the public sale and removal is not economically feasible and the letting of a highway construction contract is not imminent.

48. **Building Removed by Roadway Contract:** Building improvements removed from the right of way as a part of a highway construction contract when such contract is imminent, and it is not economically feasible to dispose of the buildings by public sale.

49. **Improvements Removed:** Removal of improvements and debris from the right of way in accordance with the building removal agreement or demolition contract.

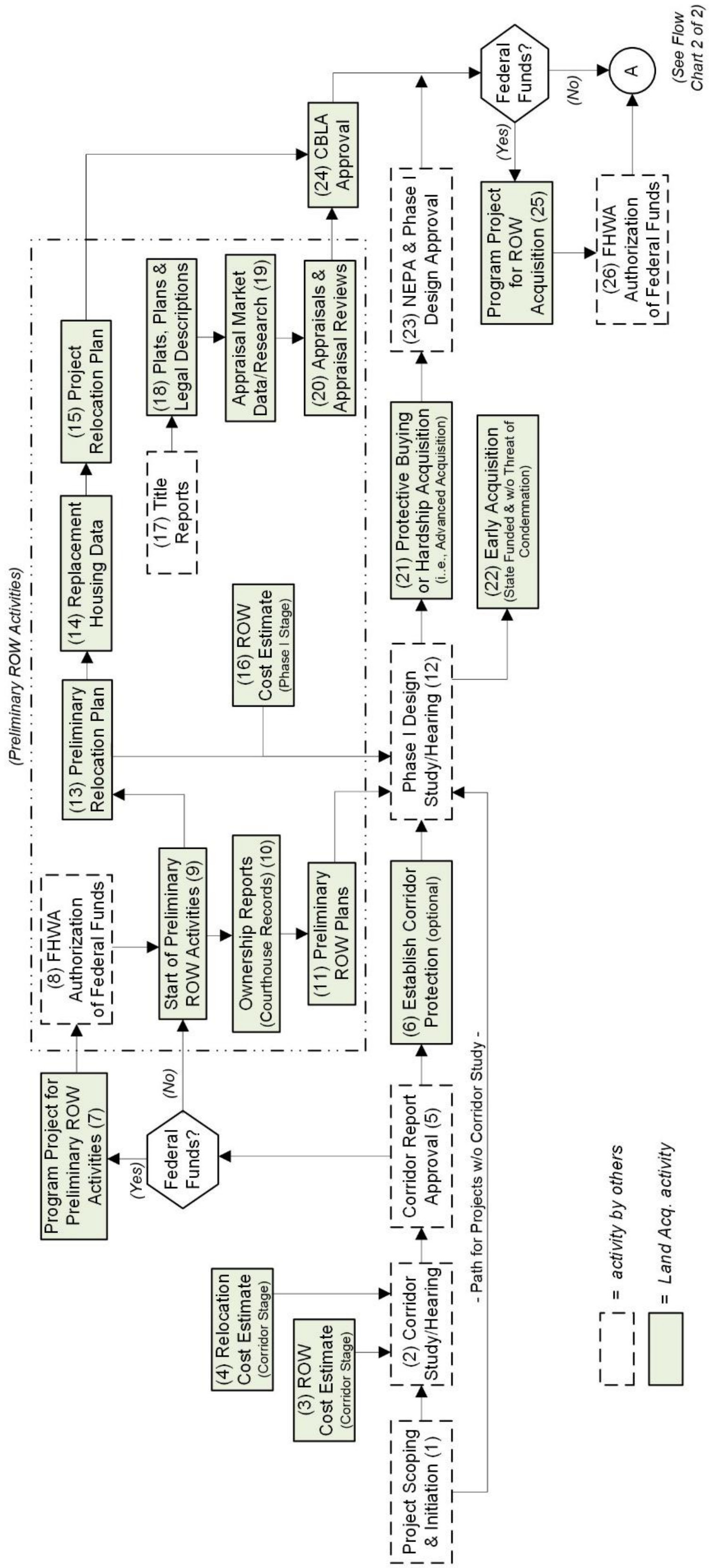
50. **Property Vacated / Right of Way Clear:** Confirmation the previous owners/tenants have vacated the acquired property (including removal of their personal property) and the right of way is clear for construction.

51. **FHWA Authorization of Letting / Federal Funds:** Authorization for the department, granted by the FHWA, to advertise the project for construction bids and to use federal funds in the construction phase of the project.

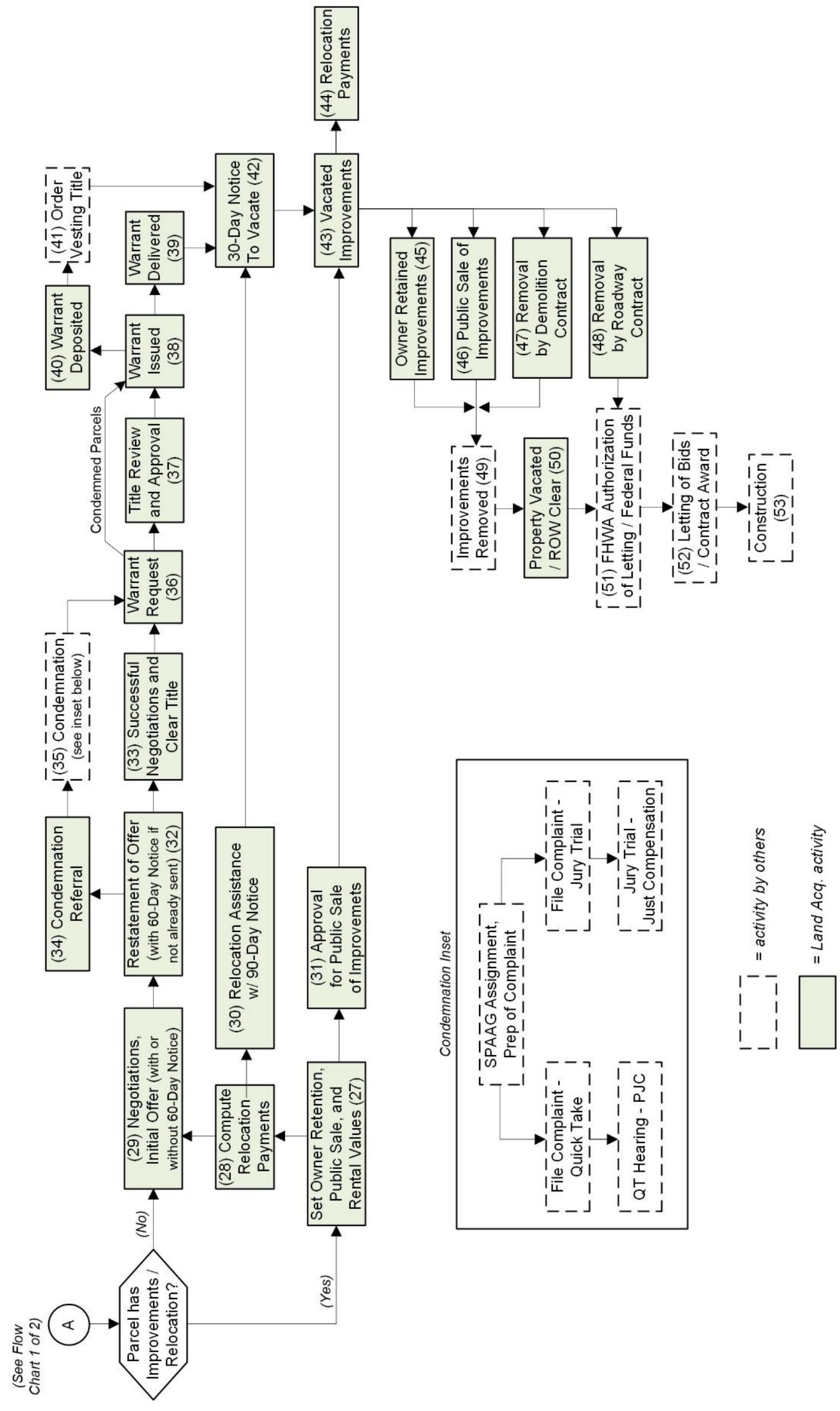
52. **Advertising for Bids:** Publication of the construction plans and specifications in the department's Transportation Bulletin requesting submittal of bids by qualified bidders.

53. **Letting of Bids / Contract Award:** Acceptance by the department of bid proposals until the time of bid opening designated in the Transportation Bulletin with award of the highway construction contract to the lowest, responsive and responsible bidder.

54. **Construction:** The actual use of personnel and materials by the contractor to perform the work agreed to in the construction contract awarded by the department.



Land Acquisition Flow Chart
(1 of 2)



Land Acquisition Flow Chart
(2 of 2)

1.6 *QUALIFICATIONS TO PERFORM LAND ACQUISITION WORK*

1.6.1 General

Appraisers, Review Appraisers, Negotiators and Relocation Agents must have the necessary background, experience, and ability to demonstrate good judgment in the area of eminent domain acquisition and relocation. The appropriate state and federal regulations must be followed explicitly to secure the rights of the property owners and tenants guaranteed under the Fifth Amendment, while assuring the taxpayers of Illinois only pay a fair and equitable price for the property.

Individuals performing land acquisition work for the department must be either qualified department staff (i.e., a realty specialist) or an approved specialty agent listed on one of the Approved Specialty Agent Lists (i.e., a consultant). The lists and the qualification requirements are maintained by CBLA.

To become approved, specialty agents must complete the standard application in the Engineering Prequalification and Agreement System (EPAS) and furnish the required evidence. Due to the change to EPAS, all specialty agents must apply and obtain approval no later than October 01, 2025. Prior approved specialty agents may not meet current requirements and should thoroughly review current requirements for approval. Each applicant will receive an approval or denial letter (with reason for denial) after their application is reviewed. A specialty agent must be on an approved list prior to receiving assignments.

A specialty agent is subject to removal from an approved list based on performance and updated qualification requirements. Anytime a specialty agent is given an unsatisfactory evaluation, they are removed from the list and not reapproved until reapplication is made and satisfactory corrective actions taken by the specialty agent. Specialty agents are evaluated once per contract, or as needed. Specialty agents must reapply every third year to maintain approved status.

The requirements of this section are not applicable to the selection of specialty agents as witnesses by a Special Assistant Attorney General (SPAAG) for the department in condemnation proceedings.

1.6.2 Appraisers

Appraisers interpret highway plans and determine the effect of a proposed improvement on the properties being appraised. Appraisers demonstrate good judgment in forming opinions of fair market values based on experience and training.

The minimum requirement for prequalification in this category is a full or part-time appraiser licensed as a Certified Residential Real Estate Appraiser or a Certified General Real Estate Appraiser by the Illinois Department of Professional Regulation (IDFPR), along with submitting:

- At least two (2) years of eminent domain experience appraising properties with a minimum of two and up to five completed and signed appraisals provided as examples for department review. USPAP Confidentiality requirements require reports not for IDOT to either be redacted or provide letter of release from their client.

- A current copy of their Illinois appraisal license. Must be current, in good standing and no discipline issues.
- Evidence of the successful completion of the International Right of Way Association (IRWA) Course 421, "The Valuation of Partial Acquisitions" and an additional 24 hours of eminent domain classes, including at least one additional (QEU) eminent domain appraisal class with exam*, sponsored by either the National Highway Institute (NHI), the Appraisal Institute, the IRWA, or the American Society of Farm Managers & Rural Appraisers (ASFMRA).

Previously approved appraisers, currently on IDOT's Specialty Agent list, are temporarily exempted from the required IRWA 421 class until their next EPAS renewal period. This will satisfy the continuing education requirement for that EPAS renewal period. They also must provide evidence of the successful completion of an eminent domain appraisal class sponsored by either the National Highway Institute (NHI), the Appraisal Institute, the IRWA, or the American Society of Farm Managers & Rural Appraisers (ASFMRA).

Former land acquisition work experience as a direct employee (RS III, RS IV or RS V Appraisers) of the Illinois Department of Transportation may be considered in lieu of some requirements. Evaluated on a case-by-case basis.

* Examples of additional eminent domain (QEU) classes that would require a final exam, typically exams being 1 to 2 hours or longer, which will fulfill the requirement for a 2nd class in addition to the IRWA Course 421 cited above, are listed below. Other eminent domain classes from the cited providers above will be considered on a case-by-case basis. In lieu of the 2nd class consisting of 24 hours, a combination of QEU and CEU classes, cumulatively of 24 hours will also be considered at the Appraiser level. Additionally, in keeping with USPAP competency requirements, if the department presents or sponsors one or more eminent domain QEU or CEU class of 7 hours or more during an EPAS renewal cycle, appraisers are required to take a minimum of one class for **each EPAS Renewal period**. As per USPAP Standards Rule 1-1 (a) "Each Appraiser must continuously improve his or her skills to remain proficient in real property appraisal."

Appraisal Institute (AI)

- Condemnation Appraising: Principles and Applications 21 hours QEU
- Eminent Domain and Condemnation 7 hours CEU Only
- Fundamentals of the Uniform Appraisal Standards for Federal Land Acquisitions 4 hours CEU Only
- Litigation Appraising: Specialized Topics and Applications 22 hours QEU

American Society of Farm Managers & Rural Appraisers (ASFMRA)

- Eminent Domain (A430) - Hybrid 22 QEU
- Uniform Appraisal Standards for Federal Land Acquisitions (Yellow Book) - Hybrid 23 QEU
- Valuation of Conservation Easements and Other Partial Interests in Real Estate (A420)-Hybrid 24 QEU
- Appraisal of Water Rights Seminar 8 CEU only
- Understanding Conservation Easement Valuation 8 CEU Only

Federal Highway Administration (FHWA) National Highway Institute (NHI)

- Appraisal Review for Federal-Aid Highway Programs FHWA-NHI-141044 6 CEU only
- Foundations of Federal-Aid Highway Program Appraisals FHWA-NHI-141053 7 CEU only
- Introduction to Federal-Aid Right of Way Requirements for Local Public Agencies FHWA-NHI-141050 12 CEU only

International Right of Way Association (IRWA)

- Easement Valuation (403) 8 QEU
- Reviewing Appraisals in Eminent Domain (410) 8 QEU

- Uniform Appraisal Standards for Federal Land Acquisitions (Yellow Book) 24 CEU only
- USPAP and the Yellow Book: A Guide to Understanding their Relationship (415) 8 CEU only.
- The Valuation of Partial Acquisitions (421) 32 QEU REQUIRED CLASS
- Problems in the Valuation of Partial Interests (431) 8 QEU
- Legal Aspects of Easements (802) 8 QEU
- Eminent Domain Law Basics for the Right-of-Way Professionals (803) 16 QEU

Note the above AI, ASFMRA, IRWA, NHI classes may NOT be approved by IDFPR for licensure credit and/or the credit hours may differentiate.

1.6.3 Review Appraisers

A review appraiser is responsible for the administrative approval of the appraised value of real property or assures that appraisal reports conform to the requirements of law and policy, or that the value of real property opined by appraisers represents adequate security, fair market value, or other defined value.

The minimum requirement for prequalification in this category is a full or part-time appraiser licensed as a Certified Residential Real Estate Appraiser or a Certified General Real Estate Appraiser by the IDFPR along with submitting:

- At least two (2) years of eminent domain experience appraising properties with a minimum of two and up to five completed and signed appraisals provided as examples for department review. USPAP Confidentiality requirements require reports not for IDOT to either be redacted or provide letter of release from their client.
- A current copy of their Illinois appraisal license. Must be current, in good standing and no discipline issues.
- Evidence of the successful completion of the International Right of Way Association (IRWA) Course 421, “The Valuation of Partial Acquisitions” and at least one 24 hours with exam additional (QEU) eminent domain appraisal class* sponsored by either the National Highway Institute (NHI), the Appraisal Institute, the IRWA, or the American Society of Farm Managers & Rural Appraisers (ASFMRA).

Previously approved appraisers, currently on IDOT’s Specialty Agent list, are temporarily exempted from the required IRWA 421 class until their next EPAS renewal period. This will satisfy the continuing education requirement for that EPAS renewal period. They also must provide evidence of the successful completion of an eminent domain appraisal class sponsored by either the National Highway Institute (NHI), the Appraisal Institute, the IRWA, or the American Society of Farm Managers & Rural Appraisers (ASFMRA).

Former land acquisition work experience as a direct employee (RS III, RS IV or RS V Review Appraisers) of the Illinois Department of Transportation may be considered in lieu of some requirements. Evaluated on a case-by-case basis.

* Examples of additional eminent domain and other (QEU) classes of at least 24 hours (that are shown below) and require a final exam, typically exams being 1 to 2 hours or longer, will fulfill the requirement for a 2nd class in addition to the IRWA Course 421 cited above. Other eminent domain classes from the cited providers above will be considered on a case-by-case basis. At the review appraiser level, the 2nd class must be a QEU of 24 hours or greater, there is no in-lieu of option at this level. Additionally, in keeping with USPAP competency

requirements, if IDOT presents or sponsors one or more eminent domain QEU or CEU class of 7 hours or more during an EPAS renewal cycle, review appraisers are required to take a minimum of one class for **each EPAS Renewal period.** As per USPAP Standards Rule 1-1 (a) “Each Appraiser must continuously improve his or her skills to remain proficient in real property appraisal.”

Appraisal Institute (AI)

- Condemnation Appraising: Principles and Applications 21 hours QEU
- Eminent Domain and Condemnation 7 hours CEU Only
- Fundamentals of the Uniform Appraisal Standards for Federal Land Acquisitions 4 hours CEU Only
- Litigation Appraising: Specialized Topics and Applications 22 hours QEU
- Review Theory – General 33 hours QEU
- Quantitative Analysis 33 hours QEU
- Advanced Market Analysis and Highest and Best Use 33 hours QEU
- General Appraiser Market Analysis and Highest and Best Use 30 hours QEU

American Society of Farm Managers & Rural Appraisers (ASFMRA)

- Eminent Domain (A430) - Hybrid 22 Hours QEU
- Uniform Appraisal Standards for Federal Land Acquisitions (Yellow Book) - Hybrid 23 Hours QEU
- Valuation of Conservation Easements and Other Partial Interests in Real Estate (A420) - Hybrid 24 Hours QEU
- Appraisal of Water Rights Seminar 8 Hours CEU only
- Understanding Conservation Easement Valuation 8 Hours CEU Only
- General Market Analysis and Highest and Best Use (A340) 30 Hours QEU
- Business Valuation and Going Concern 8 hours CEU Only

Federal Highway Administration (FHWA) National Highway Institute (NHI)

- Appraisal Review for Federal-Aid Highway Programs FHWA-NHI-141044 6 CEU only
- Foundations of Federal-Aid Highway Program Appraisals FHWA-NHI-141053 7 CEU only
- Introduction to Federal-Aid Right of Way Requirements for Local Public Agencies FHWA-NHI-141050 12 CEU only

International Right of Way Association (IRWA)

- Easement Valuation (403) 8QEU
- Reviewing Appraisals in Eminent Domain (410) 8 QEU
- Uniform Appraisal Standards for Federal Land Acquisitions (Yellow Book) 24 CEU only
- USPAP and the Yellow Book: A Guide to Understanding their Relationship (415) 8 CEU only.
- The Valuation of Partial Acquisitions (421) 32 QEU REQUIRED CLASS
- Problems in the Valuation of Partial Interests (431) 8 QEU
- Legal Aspects of Easements (802) 8 QEU
- Eminent Domain Law Basics for the Right-of-Way Professionals (803) 16 QEU

Note the above AI, ASFMRA, IRWA, NHI classes may NOT be approved by IDFPR for licensure credit and/or the credit hours may differentiate.

1.6.4 Waiver Valuations

A waiver valuation is not an appraisal and may not be represented to be an appraisal. Therefore, an appraisal license is not required to perform a waiver valuation and waiver valuations are not considered to be experience towards an appraisal license.

Licensed appraisers should not complete waiver valuations. Instead, IDOT’s policy is that a waiver valuation can only be completed by 1) an IDOT employee, 2) a county engineer, 3) an employee of a municipality, or 4) a municipal engineer. Waiver Valuations Criterion is also found in 225 ILCS 458/5-5 (e-5) Real Estate Licensing Act of 2002. The following additional conditions must be met by personnel performing waiver valuations:

1. IDOT Employee

- An IDOT employee performing a waiver valuation must have completed a minimum of 45 hours of coursework in real estate appraisal, including principals of real estate appraisals, appraisal of partial acquisitions, easement valuation, reviewing appraisals in eminent domain, appraisal for federal-aid highway programs, and appraisal review for federal-aid highway programs.
- An IDOT employee performing a waiver evaluation must have completed IRWA Course 421, "The Valuation of Partial Acquisitions" and at least one eminent domain appraisal class sponsored by the:
  - National Highway Institute (NHI);
  - Appraisal Institute;
  - International Right of Way Association (IRWA); or
  - American Society of Farm Manager & Rural Appraiser (ASFMRA).
- An IDOT employee performing the waiver valuation must have at least two years of experience in a field closely related to real estate.
- A waiver valuation prepared by an IDOT employee must be co-signed by another IDOT employee who is a licensed professional engineer under the Professional Engineering Practice Act of 1989, and the engineer's license number must be affixed to the waiver valuation.
- An IDOT employee performing the waiver valuation should have completed either:

  a) IDOT's waiver valuation class that was offered in June 2024 or other approved IDOT waiver valuation class by CBLA in Springfield, or

  b) IDOT's Waiver Valuation E-Learning Course. Open enrollment for the Waiver Valuation E-Learning Course is available on IDOT's Learning Management System website: http://www.ildottraining.org

     The Waiver Valuation E-Learning Course can be taken online at no cost in approximately six hours or less, and is administered by IDOT's Central Bureau of Land Acquisition (CBLA). Upon successful completion of the course, the participant will receive a completion certificate for their files. Contact CBLA at (217) 782-3982 with any questions pertaining to this course.
- The qualifications of the waiver valuation preparer shall be readily available for review by IDOT and/or FHWA.

2. County Engineer

- A county engineer performing a waiver valuation is required to be a licensed professional engineer under the Professional Engineering Practice Act of 1989, and must affix his or her engineering license number to the waiver valuation.
- A county engineer performing the waiver valuation must have completed either:

  a) IDOT's waiver valuation class that was offered in December 2011 in Springfield, or

b) IDOT's Waiver Valuation E-Learning Course. Open enrollment for the Waiver Valuation E-Learning Course is available on IDOT's Learning Management System website: http://www.ildottraining.org

The Waiver Valuation E-Learning Course can be taken online at no cost in approximately six hours or less, and is administered by IDOT's Central Bureau of Land Acquisition (CBLA). Upon successful completion of the course, the participant will receive a completion certificate for their files. Contact CBLA at (217) 782-3982 with any questions pertaining to this course.

- The qualifications of the waiver valuation preparer shall be readily available for review by IDOT and/or FHWA.

3. <u>Employee of a Municipality</u>

- A municipal employee performing a waiver valuation must have completed a minimum of 45 hours of coursework in real estate appraisal, including principals of real estate appraisals, appraisal of partial acquisitions, easement valuation, reviewing appraisals in eminent domain, appraisal for federal-aid highway programs, and appraisal review for federal-aid highway programs.
- In addition to the base coursework requirement, a municipal employee performing the waiver valuation must also have either:

  a) At least two years of experience in a field closely related to real estate, or

  b) If the municipal employee does not have two years of real estate experience, an additional 20 hours of coursework in real estate appraisal is required.
- A waiver valuation prepared by a municipal employee must be co-signed by a municipal or county engineer who is a licensed professional engineer under the Professional Engineering Practice Act of 1989, and the engineer's license number must be affixed to the waiver valuation.
- A municipal employee performing the waiver valuation must have completed either:

  a) IDOT's waiver valuation class that was offered in December 2011 in Springfield, or

  b) IDOT's Waiver Valuation E-Learning Course. Open enrollment for the Waiver Valuation E-Learning Course is available on IDOT's Learning Management System website: http://www.ildottraining.org

  The Waiver Valuation E-Learning Course can be taken online at no cost, in approximately six hours or less, and is administered by IDOT's Central Bureau of Land Acquisition (CBLA). Upon successful completion of the course, the participant will receive a completion certificate for their files. Contact CBLA at (217) 782-3982 with any questions pertaining to this course.
- The qualifications of the waiver valuation preparer shall be readily available for review by IDOT and/or FHWA.

4. Municipal Engineer

- A municipal engineer performing a waiver valuation is required to be a licensed professional engineer under the Professional Engineering Practice Act of 1989, and must affix his or her engineering license number to the waiver valuation.
- A municipal engineer performing the waiver valuation must have completed either:
  a) IDOT's waiver valuation class that was offered in December 2011 in Springfield, or
  b) IDOT's Waiver Valuation E-Learning Course. Open enrollment for the Waiver Valuation E-Learning Course is available on IDOT's Learning Management System website: http://www.ildottraining.org

     The Waiver Valuation E-Learning Course can be taken online at no cost in approximately six hours or less and is administered by IDOT's Central Bureau of Land Acquisition (CBLA). Upon successful completion of the course, the participant will receive a completion certificate for their files. Contact CBLA at (217) 782-3982 with any questions pertaining to this course.
- The qualifications of the waiver valuation preparer shall be readily available for review by IDOT and/or FHWA.

1.6.5 Negotiators

All negotiators (fee and staff) must have the necessary background, experience, ability and enterprise to acquire real estate. A background in one of the following is preferred: title searching and clearance; handling real estate transactions; property management or training in a field relative to real estate. These abilities would include interpreting highway plats or plans, explaining the effect of the proposed highway improvement to the landowners(s) of the property being acquired and presenting in a forthright and thorough manner all of the facts regarding each acquisition. An approved negotiator should be willing to testify in condemnation proceedings.

Provide highest level of education – high school graduate; years of post-high school education; or a degree from an accredited college, university or technical school. Include degree and major courses especially noting those courses pertaining to subject application.

List any courses completed and attach a copy of the certificate of completion. Two of the following classes are required: IRWA class 104 "Standards of Practice for the Right of Way Professional"; IRWA class 200 "Principles of Real Estate Negotiation"; IRWA 203 "Alternative Dispute Resolution" or NHI Class 141045 "Real Estate Acquisition under the Uniform Act". These classes are available online through International Right of Way Association and National Highway Institute websites. Other comparable real estate and/or degree courses may be substituted at the discretion of the approving agency.

List professional licenses/designations and attach a copy of the licenses or certificate.

Applicants applying for Negotiator status must attach 2 samples of completed negotiator's notes. They may be from previous negotiation experience or 2 samples that are completed with and cosigned by a negotiator from CBLA approved negotiator list.

Former land acquisition work experience as a direct employee of the Illinois Department of Transportation may be considered in lieu of some requirements.

Once a negotiator is placed on the approved list it is the regional engineer's responsibility to initiate action to have the negotiator's name removed from the approved list if satisfactory work cannot be obtained.

1.6.6 Relocation Agents

All relocation agents (fee and staff) must have the necessary background, experience, ability, and enterprise to acquire real estate. A background in one of the following is preferred: residential relocations; business relocations; farm and/or non-profit organization relocations. These abilities would include interpreting highway plats or plans, explaining the effect of the proposed highway improvement to the landowner(s) of the property being acquired and presenting in a forthright and thorough manner all of the facts regarding each acquisition. An approved relocation agent should be willing to testify in condemnation proceedings.

Provide highest level of education – high school graduate; years of post-high school education; or a degree from an accredited college, university or technical school. Include degree and major courses especially noting those courses pertaining to subject application.

List any courses completed and attach a copy of the certificate of completion. Two of the following courses are required: IRWA course 501 "Residential Relocation Assistance", 502 "Business Relocation", 503 "Mobile Home Relocation", 504 "Computing Replacement Housing Payments", 505 "Advanced Residential Relocation Assistance", 506 "Advanced Business Relocation Assistance". Other comparable real estate relocation and/or degree courses may be substituted at the discretion of the approving agency.

List professional licenses/designations and attach a copy of the licenses or certificate.

Applicants applying for relocation agent status must attach 2 samples of completed Relocation Assistance Unit Records. They may be from previous relocation experience or 2 samples that are completed with and cosigned by a relocation agent from the CBLA approved relocation agent list.

Former land acquisition work experience as a direct employee of the Illinois Department of Transportation may be considered in lieu of some requirements.

Once a relocation agent is placed on the approved list it is the regional engineer's responsibility to initiate action to have the relocation agent's name removed from the approved list if satisfactory work cannot be obtained.

Table of Contents

2 RIGHT OF WAY ENGINEERING

2.1 *GENERAL*

This chapter will address right of way engineering, land surveying, right of way plats and plans, and legal descriptions.

2.2 *RIGHT OF WAY PLANS*

Right of way plans are developed to define areas necessary to construct and maintain the highway improvement. It is the responsibility of district land acquisition (DLA) to prepare the right of way plans or to direct their preparation if such work is performed by engineering consultants.

When deemed appropriate or necessary by the DLA Engineer/Manager, right of way plans are to be prepared for projects on which right of way is to be acquired regardless of type or method of funding.

Right of way plans shall meet the requirements of this manual. The right of way plans are to be drawn in a manner and to a scale to provide clear legibility with sufficient dimensions for area computation of any whole or partial acquisition in addition to other required plan features.

The right of way plans are the basic engineering documents for the acquisition of right of way. The criteria and standards for the preparation of right of way plans for federal-aid projects and non-federal-aid projects are the same.

2.2.1 Parcel Definition and Numbering System

A parcel is comprised of one or more definable tracts of land under a single ownership of contiguous property from which any interests, or any combination of interests in the individual tracts is acquired.

A tract is a clearly defined area of land within a parcel, regardless of size, where the interest or interests to be acquired are the same for the entire area. For instance, if from a total holding a portion is to be acquired as a fee interest and another portion as a temporary easement, then the acquisition shall be considered as one parcel of land consisting of two tracts. Typical types of tract designations and their symbols are as follows:

Typical Tract Designations				
Item	Symbol		Item	Symbol
Tract One (1st Fee Interest)	T-1		Channel Change Agreement	CC
Tract Two (2nd Fee Interest)	T-2		Scenic Easement	SE
Permanent Easement	PE		Rest Area	RA
Temporary Easement	TE		Excess Land	X

Right of way acquisitions from non-contiguous properties under the same ownership are to be considered as separate parcels for engineering purposes. However, the decision as to the "larger parcel" (for appraisal and acquisition purposes) will ultimately be an appraisal and/or legal decision. For the sake of accountability, it is necessary that each acquisition be assigned an individual parcel number.

Parcel numbers are automatically generated by the Land Acquisition Management System (LAMS) based upon the right of way job information. As an example, the first parcel for a project with Job No. R-94-008-19 would be given the Parcel No. 40819001 based upon the following:

- 4 = District number.
- 08 = Last 2 digits from the middle part of the job number.
- 19 = Last 2 digits from the job number.
- 001 = Next number available for the job number.

2.2.2 Right of Way Plans Preparation

The following sections provide the standards and guidelines for the preparation of right of way plans. For examples of a cover sheet and plan sheet for right of way plans, refer to Exhibit LA 20202A.

2.2.2.1 *Cover Sheet*

In the preparation of a cover sheet, it is necessary to show the designated route number, the construction section and county and the project number if federal-aid funds are involved. A vicinity map of the immediate area is to be shown and the proposed route indicated on this map with the beginning and ending stations. The length of the project is to be shown in lineal feet to two decimal places and length in miles to three decimal places. Should the project include a station equation along the main line, the station back and the station ahead is to be shown on the cover sheet as well as on the detailed plan sheet. If more than one county is involved, the station between the counties shall be shown along with the breakdown of the mileage.

2.2.2.2 *Scale*

Use the appropriate scale ratio to show all detail clearly and legibly. Normally, rural areas are drawn to a horizontal scale ratio of 1" = 100' and urban areas a scale ratio of 1" = 50'. There are areas where it might be preferable to use a scale ratio of 1" = 50' such as rural areas where a large amount of detail is required. In urban areas, the scale ratio of 1" = 50' may not show all the detail required, and it may be necessary to use a scale ratio of 1" = 20'.

From the standpoint of practicality, plans drawn at the scale ratio of 1" = 100' in rural areas are most desirable. Such plans are not only less bulky but also offer broader views of the highway layout and the relationship of the acquisitions in reference to each other. This becomes especially critical for acquisitions around interchanges. Special care should be taken to avoid splitting an interchange area between two or more sheets. The scale ratio of 1" = 50' is often useful for plans covering urban areas and should be considered if no intricate configurations of right of way acquisitions are involved. There may be situations in order to be cost effective and time saving to prepare right of way drawings on a scale compatible with design plans.

2.2.2.3 *Centerline or Survey Line and Stationing*

The centerline or survey line of the route is shown and designated with an arrow pointing to it on the plans, and the stationing is to be shown along the route. Stationing is also shown along the side roads if right of way is acquired with a station equation at the point of intersection with the main route. Reference Chapter 63 – “Plan Preparation” of the Bureau of Design and Environment (BDE) Manual for additional information.

2.2.2.4 *Beginning and Ending of Project*

The beginning and ending of the project are to be prominently labeled with an arrow indicating the beginning station and the ending station, respectively.

2.2.2.5 *Right of Way Lines*

The right of way lines are shown and marked to denote proposed or existing. The width of the proposed right of way is indicated by normal or radial stations and offsets. The width of the existing right of way is indicated by a normal or radial distance shown from the centerline or survey line.

2.2.2.6 *Property Lines*

All property lines are shown and marked with a "PL" designation. The station of the point where the property line intersects the centerline or survey line of the route is indicated along the property line. In addition, the station and normal or radial distance from the centerline or survey line is shown at the point where the property line intersects the proposed right of way line. Where property lines intersect within the proposed right of way area, the point of intersection shall be stationed and the normal or radial distance from the centerline or survey line of the route shall be shown. When the property being acquired is located on a crossroad, the station and dimension requirements are applied along the crossroad. In addition, a station and a normal or radial dimension is required at the point where the proposed right of way line along the main line meets the proposed right of way line along the side road. Preferably, the station and normal or radial dimension is given from both the centerline or survey line of the main line and the centerline or survey line of the side road. In platted areas, the property and lot lines are shown for each lot and the "PL" designation shall be shown on the property line. However, in lieu of the stationing requirements referred to previously, the dimension of each lot is shown and, if only a portion of the lot is to be acquired, the dimension of the part taken is indicated. The lot number, block number and name of subdivision is shown as referred to in the legal description. Also, recorded information (bearings and distances) as shown on the recorded plat of survey and stated in the legal description is shown. Land hooks are used to designate an owner's land in more than one land subdivision or several lots.

2.2.2.7 *Construction Limits*

The proposed construction limits are shown as a dotted line and labeled with an arrow pointing to the dotted line.

2.2.2.8 *Access Control Lines*

On projects involving access controlled highways, where the access rights of abutting property owners have been or are to be extinguished by purchase or condemnation, the access control lines are shown and designated on the right of way plans using the “AC” symbol.

In most cases, the access control line will coincide with the highway right of way line as it is simply access to the highway and its right of way that is being controlled. However, when the access control line is not coincident with the right of way line (e.g., to provide access to frontage roads along a fully access controlled freeway), further designate and dimension the access control line from the centerline or survey line of the route with normal or radial offsets and stations.

On projects involving partially access controlled highways (expressways), the approved points of access to and from the highway are also shown on the right of way plans. Each point of access is designated at the station where access is to be allowed, and the purpose of the access should be noted (e.g., farming, single-family, etc.).

When access control extends down a crossroad, particularly at an interchange, the point along the crossroad where the access control ends is designated, and the station and offset shown.

Examples of access control lines for freeways passing over/under crossroads and railroads are provided on Exhibit LA 20202B. The access control line is dotted under the overhead structures. Examples of access control lines for freeway bridges and culverts are provided on Exhibit LA 20202C. Access is allowed through culverts with 6 feet or more clearance in height.

For more information on access control, refer to Chapter 35 of the Bureau of Design and Environment (BDE) Manual.

2.2.2.9 *Parcel Information*

For each parcel to be acquired, show a parcel identification number, the name of the owner, the area to be acquired, the existing area in the public road, and each remainder of a partial acquisition. Preferably, this information is shown in block form near the parcel involved for a parcel with a single remainder.

If it is not possible to locate the parcel information in such a manner easily related to the parcel, the parcel number is also indicated within the area of to be acquired. If the area to be acquired from one property owner results in the acquisition of more than one tract, each tract is identified and the area of each tract is shown with the total acquisition indicated. This is also true of easement areas.

2.2.2.10 *Proposed Width of Right of Way*

The widths of right of way to be acquired are shown and each change in width shall be dimensioned and shall show the station at the point of change. These dimensions are normal or radial distances and are to be shown from the centerline or survey line of the route to the proposed right of way line.

2.2.2.11 *Remnants and Remainders*

Remnants and remainders from partial acquisitions are shown on the right of way plans to aid in appraising and reviewing, and when applicable, they are also marked as being “inaccessible” or “landlocked”. Remnants or remainders which are small in size, or have little economic value, can often be included in the proposed highway right of way. Remnants or remainders which are large in size, or have high economic value, are distinguished from the proposed highway right of way by crosshatching or shading, designated as "Property of the State of Illinois", and assigned a non-operating right of way (NORWAY) number. For examples refer to Exhibit LA 20202D.

2.2.2.12 *Easement Areas*

Areas required for easements are clearly shown and the purpose indicated. Sufficient dimensional data indicating the extent of the easement, or stationing and normal or radial offsets from the centerline or survey line are shown. The easements are further designated as either temporary or permanent.

2.2.2.13 *Frontage Roads*

The centerline of any proposed access road or frontage road is shown with the same designation as the construction plans.

2.2.2.14 *Structures and Improvements*

All pertinent data, which affect the cost of the right of way such as structures, access roads, driveways, utilities, land improvements, buildings, and fences, is shown. Distances to buildings from the right of way line are shown when there are potential effects (e.g., possible proximity damages) to the buildings.

2.2.2.15 *Distances, Bearings and Angles*

Provide sufficient dimensional and angular data to permit ready identification and correlation with the legal description of all parcels and easements. Therefore, if the legal description is a metes and bounds description, it may be necessary to show distances, bearings and angles contained in the description on the right of way plans.

2.2.2.16 *Drafting Procedures*

Right of way plan sheets are to be drafted according to the department’s Computer Aided Design, Drafting, Modeling & Deliverables Manual.

Right of way plans prepared by consultants are to be delivered in the form and manner prescribed by the district.

2.2.3 Right of Way Plans Review

Right of way plans are reviewed as to form, content, and accuracy by the district Chief of Plats and Plans. The Right of Way Plans Review Check Sheet (Exhibit LA 20203) is intended to facilitate the review, and to document the fact such a review was performed.

2.3 *LAND SURVEYING*

2.3.1 General

Land surveying involves the “laying off” or the measurement of lengths and directions of lines forming the boundaries of land or real property. Land surveys are made for one or more of the following purposes.

- To secure the necessary data for writing legal descriptions and for finding the area of designated tracts of land.
- To reestablish the boundaries of a tract for which a survey has previously been made and for which the description is known.
- To subdivide a tract into two or more smaller units in accordance with a definite plan which determines the size, shape, and location of the units.

Whenever real estate is conveyed from one owner to another, it is necessary to know and identify the location and boundaries of the land conveyed within acceptable limits of certainty. Land acquired for highway improvements changes ownership from private owners to the state of Illinois. Private property owners become the neighbors of the newly constructed highway facilities. The maintenance of good relationships with these neighbors is a prime concern of the department. Well-founded boundary practices are, therefore, the basic philosophies on which this section is based.

It is the policy of the department that no right of way acquisition or relinquishment result in boundary dispute and that, as the consequence of the construction of a highway project, no pre-existing legal landmarks be destroyed or obliterated. In case of inadvertent or neglectful destruction or obliteration of public or private survey monuments, steps are taken by the department to make corrections without undue delay.

2.3.2 Responsibility of Surveyor

The practice of land surveying is founded in the Illinois Compiled Statutes (225 ILCS 330/1, et seq.; 55 ILCS 125/0.01, et seq.). Surveyors must be aware of their duties and responsibilities. Surveyors have no judicial authority to resolve boundary disputes. They do have the legal authority to locate, on the ground, the limits of property ownership according to their interpretation of a valid written description and to gather and evaluate evidence relative to boundary locations, and testify as to their judgment based on their data findings. The land surveyors have no authority to subdivide land. This authority is with the property owners who may portion off their property in accordance with statutory requirements and local zoning ordinances. The land surveyors act as agents of the owners, make their surveys, prepare the plats and legal descriptions and certify to the conditions under which their work was completed.

In retracing the old and established lines, the land surveyors are obligated to follow the footsteps of the original surveyors. It is therefore essential that they know the historical background of land surveys in the area of their work.

Right of way surveys are performed with the same degree of care and with the same principles, equipment, and procedures and under the same statutory and common laws as are utilized for the performance of land surveys by private surveying practitioners for the general public.

2.3.3 Surveying Service Limitations

During right of way negotiations, property owners occasionally request that their property be surveyed in its entirety showing the area being acquired as well as that of the remainder. The policy of the department is to **only** survey and monument the area being acquired. No land surveying services will be provided to any private owner. To survey a property in its entirety would only be justified if it is in the interest of the department, that is, if the remainder must be established with certainty for appraising purposes. In such instances, no monuments shall be set by the surveyor and no certified plat recorded.

At times, it is required that the right of way lines be staked either to satisfy the property owners during the negotiation process or to delineate the acquisition for jury viewing in a condemnation proceeding. This work, because of its preliminary nature, does not require setting of permanent monuments and is not considered a bona fide survey.

When a right of way acquisition causes the loss of physical monuments marking the apparent corners of property, new monuments of equal or better quality shall be set at the intersection of the property line and the right of way by or under the direction of an Illinois Professional Land Surveyor. A right of way plat shall be prepared, in all such instances, and recorded with the Recorder of Deeds or Registrar of Titles in the county in which the property is located.

2.3.4 Perpetuation of U.S. Public Land Survey Monuments

2.3.4.1 *Illinois*

The Land Survey Monuments Act (765 ILCS 220/0.01 to 11, et seq) provides for the perpetuation of land survey monuments.

Based on these statutes, an Illinois Professional Land Surveyor is required to file monument records with the County Recorder of Deeds or Registrar of Titles in the county in which the survey is made, using public land survey monuments as control corners. It also requires the filing of monument records after establishing, re-establishing, restoring, or rehabilitating a public land survey monument, except when a monument record is already on file with the Recorder of Deeds or Registrar of Titles and the monument is found at the location described.

2.3.4.2 *The Land Survey Monument Act*

The Land Survey Monument Act makes any person, including the responsible official of any agency of state, county or local government who willfully and knowingly violates any of its provisions guilty of a "Class A" misdemeanor. It is, therefore, the position of the department that all work performed in regard to land surveying and preparation of statutory plats (i.e., Right of Way Plats) be in full compliance with the Land Survey Monument Act. In order to clarify ambiguities, to assure uniformity of interpretation and to provide for acceptable standards of practice and professional ethics for land surveyors in state employment and those retained on a contractual basis, the following guidelines are applicable:

- No survey shall be completed, and no plat shall be acceptable, which uses a section corner or quarter corner as a control corner for which no monument record is on file with the Recorder of Deeds or Registrar of Titles or for which such a monument record has not been satisfactorily prepared and submitted together with the plat ready for filing.

- If a survey is controlled by a reestablished monument placed by the surveyor at the location of a lost corner in accordance with lawfully prescribed methods, it shall be mandatory that location ties to all monuments used in reestablishing the lost corner be provided as part of the monument record. In certain instances, this will require preparation and filing of more than one monument record document.

- If it is required that a survey show the direction of a section line or the angle subtended between a section line and the centerline or survey line, it is necessary that two monuments be utilized to establish the section line with certainty. The ties to both monuments shall be noted on the monument record and placed on file according to the Land Survey Monument Act.

- Restoration of lost or obliterated corners must be by or under the direct supervision of an Illinois Professional Land Surveyor.

- A corner is not declared lost until every means has been exercised that might aid in identifying its original position.

- In no event may a non-registered surveyor declare a monument lost, nor may unsupervised field searches for corners be made that would possibly destroy the corner accessories and original marks that would have provided evidence for the position of a corner.

Every section corner and quarter section corner or their positions are public land survey monuments subject to the Land Survey Monument Act. The recordation of other points resulting from the subdivision of sections (aliquot corners) is not required. It is, however, encouraged by this department to do so whenever possible in order to facilitate the maintenance of a tight network of monument records.

2.3.4.3 *Professional Regulation*

Special instructions for the implementation of this Act issued by the Department of Financial and Professional Regulation are adopted by this department:

- The monument record is recorded at the time of recording the survey if the survey is placed on record but no later than 40 days after the survey is completed.

- The document consists of one or more individual sheets measuring 8.5 x 11 inches, not permanently bound, and not a continuous form (see Exhibit LA 20304).

- The document is printed in black ink, typewritten or computer generated, in at least 10-point type and shall have clarity suitable for microfilming and reproducing.

- The document is on white paper of not less than 20 pound weight, and shall have a clean margin of at least one half inch on the top, the bottom, and each side.

- The first page of the document contains a blank space, measuring at least 3 x 5 inches, in the upper right-hand corner.

- The document shall not have any attachment stapled or otherwise affixed to any page.

- There shall be no more than four monuments shown on each record and all monuments must be for a common section.

- The surveyor may show geodetic position or other information at their option providing it does not detract from the clarity of the requirements of the monument record.

- The drawing shall be oriented with North toward the top of form (see Exhibit LA 20304).

2.3.5 Preservation of Monuments

Section 9-104 of the Highway Code (605 ILCS 5/9-104) provides that:

> "In grading highways, cornerstones marking sectional or other corners shall not be disturbed, except to lower such stones so that they will not rise above the surface of the highway. If a corner stone is covered to a depth greater than 12 inches or is covered with a highway surface material other than road oil, the location of the corner stone shall be preserved by setting a suitable monument over the stone which shall be level with the highway surface or by setting at least 3 offset monuments in locations where they will not be disturbed. When any corner stone is lowered or when a monument is set over a stone or when offset monuments are set, it shall be done in the presence of and under the supervision of an Illinois Professional Land Surveyor who shall record the type and location of the reference monuments with respect to the corner stone in the Office of the Recorder in the County in which such a stone is located."

Pursuant to the Land Surveying Monuments Act (765 ILCS 220/0.01 et seq.), surveyors have a duty to preserve and restore monuments. Refer to Highway Standard 667101 as an option for permanent survey markers.

To comply with the provisions of this Act, it is the policy of the department that if, in the design of a highway improvement, it is determined that a U.S. Public Land Survey Monument will be affected by construction operations, the designer shall ensure the construction and payment for all such monuments and markers is included in the contract. Article 107.20 and Section 668 of the Standard Specifications for Road and Bridge Construction address this requirement and clearly stipulate that setting of the monuments and markers is to be done under the supervision of an Illinois Professional Land Surveyor and also require that the attendant monument records be prepared and filed in accordance with 765 ILCS 220/7.

2.3.6 Survey Ties to Existing Monuments

765 ILCS 205/9, in part, states that when a new highway is laid out or widened (does not mean widening of pavement), and when an existing highway is deemed non-operating, a plat must be prepared by or under the direction of an Illinois Professional Land Surveyor which must be filed with the Office of the County Recorder or Registrar of Titles. The plat must show reference ties to legal subdivisions of the land known by established corners or adequate existing records.

In rural areas, known and established corners are those of the existing public land survey system. In urban areas, this system is normally further subdivided into city blocks and lots, into commercial and industrial tracts, into residential subdivisions, streets, roads, and highways.

The surveyor must take great care to reference their survey lines to the existing survey schemes. Found monuments are noted, obliterated corners are recovered and lost corners are reestablished to provide adequate reference for control of the boundary lines involved.

It is, therefore, incumbent upon the district Chief of Plats and Plans, the Illinois Professional Land Surveyor for the department, to make an extensive study of a project prior to the beginning of the survey work. It should be determined which monuments will be used as control corners of the survey, which monuments are existing, obliterated or lost. It should also be decided which corners are to be reestablished and steps should be taken to do so with the assistance of the survey party prior to establishing the survey line. If the locations of the control monuments are resolved prior to the commencement of the route survey, time will be saved in later efforts to establish their positions.

The district Chief of Plats and Plans must also take whatever action is necessary to insure that the basic survey lines and centerlines are established with expected accuracy and that boundary lines are measured and referenced to the survey line with the same degree of certainty. The success of this phase of work is based entirely upon the lead-time available to the land surveyor in preparing the preliminary studies, the diligence used in this preparation and finally upon the cooperation between the route surveyors and the professional land surveyors in the districts.

In the search for existing control monuments, the district Chief of Plats and Plans has access to copies of the original U.S. Public Land Survey field notes and the plats of record from the State Archives. Photocopies will be provided upon request. In addition, the Monumentation Recordation Act (765 ILCS 220/1 et. seq.) provides for a good source of information at the County Recorder of Deeds or Registrar of Titles Office. There are also vendors available offering subscription services to Monument Record information. Contact CBLA for more information.

The most fruitful source of information in matters of survey monuments and control corners, whether relative to the Public Land Survey System or private subdivision, is the office of a private land surveyor who has worked in the area or who has prepared and filed subdivision plats which are affected by the right of way acquisition. Professional land surveyors are required by law "to cooperate in matters of maps, field notes and other pertinent records" (765 ILCS 205/9) with their fellow professional surveyors. The district Chief of Plats and Plans in searching for survey control monuments must take positive steps to contact local surveying practitioners to gather needed data. Requests for this information must be made in writing.

The letter may be submitted in person or may be mailed after a telephone contact. Non-cooperation by private practitioners in regard to this matter must be brought to the attention of CBLA for proper action.

The department is likewise committed to cooperate in providing data to private surveying practitioners.

2.3.7 Accuracy of Field Work

Field work must be performed with sufficient accuracy, as required by the Minimum Standards of Practice. Reference the department's Survey Manual, Chapter 4-IV-C and Chapter 7-IX.

2.3.8 Entry on Lands to Make a Survey and Damage Claims

Section 4-503 of the Highway Code (605 ILCS 5/4-503) provides for entry on land to make a survey as follows:

> "For the purpose of making subsurface soil surveys, preliminary surveys and determinations of the amount and extent of such land, rights or other property required, the department, or any county, by its offices, agents or employees, after written notice to the known owners and occupants, if any, may enter upon the lands or waters of any person, but subject to responsibility for all damages which shall be occasioned thereby".

Members of a survey party are usually the first representatives of this department who have contact with property owners or tenants along the route of a proposed improvement. The impressions they leave will reflect on this department and enhance or jeopardize the right of way acquisition activities that follow.

Prior to entering any private property, the surveyor in charge shall give written notice to the known owners and occupants requesting permission to enter and briefly explain the purpose, nature and approximate duration of the proposed work (see Exhibit LA 20308A for an Entry Upon Lands sample letter). The surveyor however refrains from discussing any plans or policies that might be misconstrued. All personal contacts are carefully and accurately recorded for future reference. As a minimum, the record includes the names of persons contacted, identifying them as owners or occupants, the date and time of conversation and a brief synopsis of the conversation. During such contacts, the surveyor never displays an impolite attitude nor is an indication made to the owner that in fact the surveyor has a lawful right to enter.

While surveyors have a right to enter, such entry is subject to liability for all damages caused. The written notification includes assurance that the department guarantees reimbursement for any actual damages to the property or crops that are caused by the entry on and work of surveying personnel on the property. The department believes that its statutory powers to conduct surveys and subsoil testing include the right to collect information on the environmental condition of future right of way, i.e., hazardous substances.

In order to restore obliterated or lost corners of the U.S. Public Land Survey System, it is sometimes necessary that surveyors enter upon land that may be several miles from the proposed highway improvements. Even though no right of way acquisitions are involved in connection with such entries the owners are nevertheless to be treated with the same courtesy as stated above.

Statutory provisions for general entry upon property by surveyors are also contained in the Illinois Professional Surveyor Act of 1989 (225 ILCS 330/45) as follows:

> "A Professional Land Surveyor, or persons under his direct supervision, together with his survey party, who, in the course of making a survey, finds it necessary to go upon the land of a party or parties other than the one for whom the survey is being made is not liable as a trespasser and is liable only for any actual damage done to the land or property."

The surveyor or a member of the survey party shall maintain a record of all damages incurred to be given to the DLA engineer/manager upon completion of the survey. The record comments on the following as applicable, crop damage – kind, extent estimated amount and damage to improvements, fences, fence posts, gates, trees, shrubs, etc.

Any claim for Crop Damage must be documented using form LA 20308B. This form serves as evidence that the amount being claimed is reasonable, and that the claim has been verified and approved by the district. All damage claims and supporting documentation are submitted to CBLA for payment and must be accompanied by an executed Damage Release form (LA 20308C) or Crop Damage Release form (LA 20308D), as applicable.

See the department's Survey Manual, Chapter 1-VI-B and Chapter 7-X for additional information.

2.3.9 Right of Way Markers

Right of way markers are used to delineate the extent of state highway right of way for operational purposes such as mowing, landscaping and general highway maintenance. In accordance with Highway Standard 666001, they are placed at discontinuities in the right of way line.

Right of way markers are not survey markers and their location is not to be construed to mark the property lines. They are part of the structural facility of a highway and have no more or less bearing on the property lines than the pavement or fence lines in place.

To avoid ambiguity and property line disputes, right of way markers are not placed at the points where property lines or property fences between adjacent owners intersect the right of way lines. Right of way markers at such locations could mistakenly be interpreted to mark the property lines between adjoining properties. When discontinuities in the right of way line are placed at the points where property lines intersect the right of way lines, permanent type property markers are used.

2.3.10 Permanent Survey Markers and Permanent Survey Ties

Permanent survey markers are used to delineate the centerline or survey line of a project and to establish state-owned permanent land survey control monuments on the ground. Such markers are set at all points that geometrically define the survey line or the centerline of a highway location, i.e., points of intersection (PI), if accessible and within the right of way, points of tangency (PT), points on curve (POC), points of curvature (PC) and points on tangent (POT).

The spacing of the markers are close enough that at least two are visible from any one monument (back sight and foresight) thus providing for location and directional control of the survey line.

On certain types of projects or under certain conditions of the terrain of a project, the placement of permanent survey markers at the location of the control points may not be practical. In these situations, reference markers are set near the right of way lines to perpetuate the location of the control points.

Refer to Chapter 58 of the Bureau of Design and Environment (BDE) Manual for more information regarding the placement of permanent survey markers and reference markers.

The location of the control points is established at the time of the original survey. The markers are set during construction of the improvement.

2.4 *RIGHT OF WAY PLATS*

2.4.1 General

The term, plat, commonly refers to a scale drawing showing all essential data pertaining to the boundaries and subdivisions of a tract of land, as determined by survey or protraction. A plat shows all data required for a complete and accurate description of the land that it delineates, including the bearings and lengths of the boundaries. The term, right of way plats, encompasses the various types of plats required in connection with land acquisition activities.

A statutory plat is a plat that is prepared in accordance with present statutory requirements in contrast to a common law plat. For instance, the right of way plat and plat of highways are statutory plats.

A plat that is not a statutory plat (i.e., a plat that does not conform to the Plat Act) is called a common law plat. With a common law plat, the public obtains only a dedication or an easement interest. Title to the right of way remains in the adjoining owner. Examples might be a Township, County or Municipal roadway.

2.4.2 Right of Way Conveyances Exempt from Plat Act

The Plat Act (765 ILCS 205/1) provides for the subdivision of land into parts of less than five acres, etc. Paragraph 1(b) 6 states that no subdivision plat is required for:

> "The conveyance of land for highway or other public purposes or grants or conveyances relating to the dedication of land for public use or instruments relating to the vacation of land impressed with a public use."

The significance of this exemption from the Plat Act is there is no legal requirement that a subdivision plat be prepared for right of way acquisitions or the relinquishment of excess right of way.

However, as stated in Chapter 605 ILCS 5/4-214:

> "Whenever any highway is laid out, widened or altered in accordance with this Article, the department shall cause a plat thereof to be made and recorded in the office of the recorder of the county (or in the office of the registrar of titles for the county if appropriate) in accordance with the provisions of Section 9 of 'An Act to revise the law in relation to plats' [765 ILCS 205/9], approved March 21, 1874, as amended."

It is therefore, the policy of the department that all right of way acquisitions are platted and recorded within 6 months after such highway, road, street, alley, public ground, toll-road, railroad, reservoir or canal is laid out, located, opened, widened, or extended, or the location thereof altered per 765 ILCS 205/9.

Relinquishment of a portion of the interest originally acquired from a property owner deemed excess right of way is platted and recorded. Relinquishment of the exact interest originally acquired from the property owner need not be platted provided the original plat is available. In situations where the location of the right of way lines change, it is good policy to plat and record all relinquishments to protect the rights of the department and the property owners.

A right of way plat should conform with Section 1270.56 "Minimum Standards of Practice" for a boundary survey under the "Rules for the Administration of the Illinois Professional Land Surveyor's Act of 1989" as set forth by the Illinois Department of Financial and Professional Regulation, effective November 20, 2000 (Amended at 39 Ill. Reg. 14826, effective November 13, 2015).

2.4.3 Right of Way Plat

A right of way plat is a drawing showing land boundaries of an individual right of way acquisition. The essential purpose of a right of way plat is to represent the correct size and shape of a property to scale, define by dimensions the correct size and shape of the part to be acquired, specify physical monuments, and show title identity. Most right of way plats prepared for right of way acquisitions are original plats because they are made prior to conveyance of a tract of land that was part of a larger tract. Right of way plats act as instructions as to how future surveyors or property owners are to identify particular right of way acquisitions. Authenticity is given to the right of way plat by showing date, surveyor's name, seal and certificate.

Right of way plats are recorded at the Office of the County Recorder of Deeds or Registrar of Titles in the county of the acquisition to provide constructive notice to the general public for reestablishing and maintaining the lines and corners of title ownerships.

The statutory requirements for the preparation of plats are contained in 765 ILCS 205/9 and are paraphrased as follows:

- Whenever any highway, road, street, alley, public ground, toll road, railroad, reservoir or canal is laid out, located, opened, widened or extended and when an existing highway is vacated, the provisions of this Act are applicable. A plat must be prepared by or under the direction of an Illinois Professional Land Surveyor (IPLS) and the plat must be filed with the Office of County Recorder.

- The plat must show width, courses and extent of the highway layout (major features of the plat).
- The plat must contain references to known and established corners or monuments.
- The plat must show reference ties to subdivision, lots, parcels, tracts, highways, roads, streets, alleys, public grounds, toll roads, railroads, reservoirs and canals known by established corners or adequate existing records.
- The monuments must be located and referenced by or under the direction of an IPLS.
- Permanent monuments must be reset in the surface of new construction or witness monuments must be set to perpetuate their location that is to be certified as correct by an IPLS.
- Sufficient control monuments must be retained, reset, etc. to enable land lines, property corners or tract boundaries to be re-established.
- Every land surveyor is under duty to cooperate and provide maps, field notes and records they may have in possession.
- This act does not change or affect any law specifically providing for the recording or filing of any plat.
- Filing of a plat may not be required sooner than so specifically provided.
- Filing in any other place (other county for instance) does not constitute compliance.
- Any party who refuses or neglects to comply shall be guilty of a petty offense for every month they continue in such refusal or neglect after conviction, to be recorded by action in the Circuit Court of the County in the name of the County, one half to the use of the county and the other half to the use of the person complaining.

The above provisions shall not apply to a railroad subject to the jurisdiction of the Interstate Commerce Commission or any abandonment of all or a portion of such railroad, except that the above provisions apply to the construction of a new line of railroad.

In addition to the statutory requirements noted above and the minimum standards for a boundary plat, right of way plats have the following elements and are prepared to specifications indicated:

- Title of Plat, Route, Construction Section, County.
- Subdivision description such as Township, Range and Principal Meridian, or Lot, Block and Name of Subdivision.
- Owner's Name and Parcel Number.
- North Arrow.
- Convenient scale expressed in non-dimensional ratios, graphic bar scale, and plotted as follows:
    - 1” = 200’ on rural projects and large land ownerships.
    - 1” = 100’ on rural projects and small acreage ownerships.
    - 1” = 50’ on suburban projects and small acreage tracts.
    - 1” = 20’ on urban projects.

- Date of completion of field work.
- Where bearing, azimuth or coordinate systems are used, the basis or proper names of the system shall be noted on the plat.
- Sufficient angles, bearings or azimuths, linear dimensions and curve data must be shown on the plat to provide a mathematically closed figure for the exterior of the parcel. Where record angular dimensions, bearings or azimuths, linear dimensions or curve data exist, such data shall be shown on the plat and distinguished from measured dimensions or data. The area of the parcel is to be shown on the face of the plat.
  - Distance expressed to the nearest 0.01 foot.
  - Angular values consistent with distance measurements.
  - Areas to the nearest square foot or thousandths of an acre.
- Legal description of the property (see Metes and Bounds Descriptions below for direction).
- Point of Beginning/Commencement for legal description designated.
- Main survey line(s) and centerline(s) with stationing, bearings, station equations and horizontal curve data - auxiliary survey lines and centerlines of subordinate roadways, if pertinent to acquisition.
- Proposed and existing right of way lines designated.
- Legend for all symbols and abbreviations used on plat.
- Existing property lines and corners within and near the acquisition area with appropriate ties to highway survey lines or centerline.
- Visible physical evidence of possession or occupation either way from the exterior lines of the survey shall be shown and dimensioned.
- Show visible evidence of improvements, rights of way, easements, or use when requested by the client.
- Right of way lines and all distances and bearings used in the legal description.
- If the survey is a parcel in a recorded subdivision, any adjacent rights of way or easements and setback lines shown on the recorded plat that affect the subject parcel are to be shown and dimensioned.
- Centerline right angle offset distances to breaks in the right of way line and at the point where the property line intersects the proposed right of way line.
- Area of acquisition (may also include area of estimated remainder if so desired).
- Access control lines and/or points of approved access.
- All U.S. Public Land Survey Monuments used to control this plat are properly identified and designated as "Monument Found" or "Monument Restored".
- A sufficient number of section corners or quarter section corners, if not found, are restored to control all section lines bisected by the centerline of the highway.
- No section is uncontrolled and no control corner is more than one mile distant from the centerline of the highway.

- The center of the sections was not established by the U.S. Government surveyors and therefore, not used as control corners, unless it has a monument record recorded.
- All U.S. Public Land Survey Monuments found or restored are recorded in accordance with 765 ILCS 220/9.
- Control monuments (U.S. Public Land Survey) located in Section of subject parcel tied to Point of Beginning.
- Monuments or witness corners, whether set or found, intended to represent or reference corners of the survey, shall be shown and described as to size, shape and material, and their positions noted in relation to the survey corners.
- Exculpatory statements that attempt to restrict the uses of boundary surveys shall not be affixed to any plat.
- Firm name, address, and registration number.
- Professional land surveyor seal, signature, date of signing, and license expiration date. The licensee may provide, at his or her sole discretion, an original signature in the licensee's handwriting, a scanned copy of the document bearing an original signature, or a signature generated by a computer.
- The following statement shall be placed near the professional land surveyor seal and signature: "This professional service conforms to the current Illinois minimum standards for a boundary survey."
- Plats shall be CADD generated, plotted at not less than 8 ½ inches by 11 inches, and submitted in digital format.
- Revised plats are submitted for filing together with the surveyor's Affidavit of Correction in case changes are made to the original plat subsequent to filing.

To assist in the preparation and review of right of way plats, refer to the Right of Way Plat Checklist (Exhibit LA 20403).

Temporary easement plats, permanent easement plats, channel change agreement plats, and the like, are right of way plats and are bearing such designations only to indicate the type of acquisition for which they are made. Right of way plats without such special designations are assumed to depict the acquisitions of fee interest.

2.4.4 Centerline Survey Plat

The centerline survey plat is a surveyor's plat showing the centerline of a proposed highway improvement referenced to the U.S. Public Land Survey System and other title control. It is not to be used for acquisition of right of way.

2.4.5 Corridor Protection Map

Section 4-510 of the Illinois Highway Code (605 ILCS 5/4-510) provides a means of protecting the right of way for future additions to state highways from future development through the preparation and filing of a map showing the location and approximate widths of the rights of way needed for future additions. Under this statute, "The department may establish presently the approximate locations and widths of rights of way for future additions to the state highway system, to inform the public and prevent costly and conflicting development of the land involved." Likewise, under this statute, if the "department in its discretion determines that construction of the roadway is no longer feasible, the department shall abolish the protected corridor." This statute applies to either new construction on realignment and/or to additions or widening of the existing system under the reconstruction category. (Legal opinion, Chief Counsel, November 19, 1991)

Prior to initiating corridor protection on a project, the scope, schedule, and budget of the project should be reviewed and kept in mind while determining if there may be potential for development on the needed land within the proposed corridor. Corridor protection, in most cases, should be considered a tool the department can use and should only be used after much review and analysis. Before proceeding with corridor protection, the department should evaluate the future availability of funding and how quickly the department would be able to respond and acquire a parcel in a timely manner after receiving a notification of pending development. Early coordination with CBLA is recommended to discuss the possible use of corridor protection before much work is started. Refer to Chapter 12 of the Bureau of Design and Environment (BDE) Manual for further guidance on determining the use of corridor protection and at what stage during the design phase it should be considered.

The district should estimate the land acquisition costs and associated engineering costs that should be programmed to cover any items of work that may be needed over the course of the project, especially items that may be needed for advance acquisition(s), such as title work, and land surveys of the properties involved, so that plats can be finalized quickly to be used in the acquisitions within the prescribed time limits.

After review, and if the district determines that corridor preservation is appropriate, the corridor protection plan for the project shall be submitted to CBLA to be reviewed by both CBLA and BDE. The corridor protection plan shall include a brief summary of the analysis and steps taken by the district to conclude the use of corridor protection, a timeline of tentative dates for the major milestones of the project (PE I - 30%?, PE II - 60%?, route location decision?, freeway order?, design approval?, etc.), including proposed funding by fiscal year(s) of any items needed, such as engineering and land acquisition, an exhibit showing the proposed corridor map, and anticipated tentative dates for the public hearing and its notice for publication. After the review of both bureaus, CBLA will forward the plan for approval to the Director of Highways Project Implementation. After receiving approval from the director through CBLA, the district can then proceed and schedule the public hearing.

The Corridor Protection Map is typically prepared as part of the location/design study for a new or reconstructed highway. The map is usually prepared as a half-tone positive of aerial photography or an aerial mosaic photograph. This medium allows information to be drawn on the original exhibit and paper prints can then be made for filing. The statute (605 ILCS 5/4-510) requires that "the department shall make a survey and prepare a map showing the location and approximate widths of the rights of way needed for future additions to the highway system. The map shall show existing highways in the area involved and the property lines and owners of record of all land that will be needed that will be needed for the future additions and all other pertinent information." Following preparation of the map, the department must hold a public hearing after advertising such hearing in local newspapers. Usually this is the public hearing held in conjunction with the Phase I engineering, location and environmental studies for the project; however, the department could hold a separate hearing just to receive testimony on the map. Again, please confer with CBLA and BDE when discussing project scope, timeline, etc. The corridor protection map is to be prepared and submitted to CBLA prior to the public hearing allowing sufficient time for review.

A series of steps are specified within the statute, including holding a public hearing, recording a Corridor Protection Map and serving a registered mail notice on the affected landowners. After these notices are given, the property owners are not to build improvements or start developments without giving the department 60 days advance notice. After receiving an advance 60-day notice from a property owner, the department has 45 days to decide to purchase the right of way and an additional 120 days to complete the purchase or start condemnation. If the property owner builds an improvement without giving such notice, the department does not have to pay for the improvement when the right of way is acquired. The statute also authorizes the department to acquire at any time, by purchase or condemnation, the right of way needed for realignments or the widening of the existing highway system.

After evaluating comments received at the public meeting and making any resulting changes in the map, the corridor protection map is submitted to CBLA for forwarding to the Secretary of Transportation for approval. This approval and a copy of the map are to be filed in the Office of the Recorder in all counties in which the needed land is located. Notice of the approval and the filing of the map are published as legal notice in the local newspapers and all current owners of record of the needed land are served by registered mail within 60 days of the filing.

Recording a Corridor Protection Map is the only means the department has of positively protecting the alignment of a future highway. Protection is only gained by a commitment of sufficient resources to purchase the right of way when notified of a pending development.

Not more than ten years after a protected corridor is established, and not later than the expiration of each succeeding ten-year period, the department shall hold public hearings to discuss the viability and feasibility of the protected corridor. The department shall retain the discretion to maintain any protected corridor but shall give due consideration to the information obtained at the public hearing. If the department in its discretion determines that the construction of the roadway is no longer feasible, the department shall abolish the protected corridor. See section below for steps on abolishing a corridor.

The processes of establishing and abolishing corridor protection are summarized in the following two sections:

2.4.5.1 *Establishment of Corridor Protection*

- The Regional Engineer recommends a project should utilize corridor protection.
- The district prepares a corridor protection plan, which will include a brief summary of the analysis and steps taken by the district to recommend the use of corridor protection, a timeline of tentative dates for the major milestones of the project (PE I - 30%?, PE II - 60%?, route location decision?, freeway order?, design approval?, etc.), including proposed funding by fiscal year(s) of any items needed, such as engineering and land acquisition, an exhibit showing the proposed corridor map, and anticipated tentative dates for the public hearing and its notice for publication.
- The corridor protection plan is submitted to CBLA for review by CBLA and BDE.

- CBLA forwards the corridor protection plan for approval by the Director of Highways Project Implementation.
- Once approved by the director, the district can proceed with scheduling the public hearing.
- Notice of the public hearing is published in a newspaper.
- Public Hearing is held with corridor protection map on display for comments.
- Changes, if any, to the corridor protection map resulting from the public hearing are made.
- The final corridor protection map is submitted to CBLA for review and is forwarded to the Secretary of Transportation for approval and signature.
- The notice of approval and the corridor protection map will be recorded in the appropriate County Recorder's Office, thus establishing the protected corridor.
- Notice of the establishment of the protected corridor and recorded document number(s) will be published in the local newspapers.
- Letters notifying affected property owners of the established protected corridor will reference the public hearing held, published notice in the newspaper and recorded document number(s) and will be sent by the district via certified mail.
- The department may approve changes in the corridor protection map from time to time. The changes shall be filed, and notice given in the same manner provided and outlined above for the original corridor protection map.
- Not more than 10 years after a protected corridor is established, and not later than the expiration of each succeeding 10-year period, the department shall hold public hearings to discuss the viability and feasibility of the protected corridor.

2.4.5.2 *Abolishment of Corridor Protection*

- The department shall retain the discretion to maintain any protected corridor but shall give due consideration to the information obtained at a public hearing typically held not more than 10 years after a protected corridor is established, and not later than the expiration of each succeeding 10-year period.
- If the department has concerns regarding the protected corridor at any time, it is recommended that the district hold a public hearing showing the corridor protection map, and any recommendations or changes that is proposed for comment.
- The department may approve changes in the corridor protection map from time to time. The changes shall be filed, and notice given in the same manner provided and outlined above in the Establishment of Corridor Protection, for the original corridor protection map.
- After a public hearing on a project is held, and the department in its discretion determines that the construction of the roadway is no longer feasible or proposes to unprotect the corridor previously protected, the department shall abolish the protected corridor.
- The Regional Engineer will recommend the abolishment of a protected corridor.
- The recommendation is submitted to CBLA for review by CBLA and BDE.

- CBLA then forwards the recommendation for abolishment for approval by the Director of Highways Project Implementation.
- After the approval of the director, an order to abolish the existing corridor protection is prepared and submitted to CBLA for review and is then forwarded for approval and signature by the Secretary of Transportation.
- The notice of abolition and the order of abolishment of protected corridor will be recorded in the appropriate County Recorder's Office, thus abolishing the protected corridor.
- Notice of the abolishment of the protected corridor and recorded document number(s) will be published in the local newspapers.
- Letters notifying affected property owners of the abolishment of the protected corridor will reference the public hearing held, published notice in the newspaper and recorded document number(s) and will be sent by the district via certified mail.

For examples, see Exhibit LA 20405.

2.4.6 Surveyor's Affidavit of Corrections

If after a right of way plat or monument record has been recorded it is discovered that such a document contains an error, a Surveyor's Affidavit of Correction is filed with the Recorder of Deeds or Registrar of Titles at the location of the original filing. If there are numerous errors contained in the original document and if such errors are not clearly defined on the Surveyor's Affidavit of Correction, then a revised right of way plat or monument record is prepared and filed with the affidavit. Corrective plats shall clearly state the reason for the revision indicated on the plat.

The affidavit is completed and executed by the original surveyor, if possible, and notarized prior to filing. See Exhibit LA 20406 for a suggested format of Surveyor's Affidavit of Correction.

2.4.7 Surveyor's Certificate

All right of way plats prepared by or for the department are given authenticity by the use of the Surveyor's Certificate. The certificate is placed near the title block when possible. Its main elements are the surveyor's signature, seal, and the date. The statement's portion of the certificate may vary from plat to plat. Per minimum standards, the certificate must contain: "This professional service conforms to the current Illinois minimum standards for a boundary survey."

In no event shall licensed department employees or consultants be required to sign a Surveyor's Certificate on plats they were not in responsible charge in performing or directing the field work or the office computations. Licensed department employees and consultants should verify field work and computations per Minimum Standards for a boundary survey prior to certification.

2.5 *LEGAL DESCRIPTIONS*

2.5.1 General

Legal descriptions are used on a conveyance document to identify the tract(s) of land to be acquired. All legal descriptions are prepared by or under the direction of the district Chief of Plats and Plans. Descriptions prepared by consultants are not accepted as sufficient unless reviewed and approved by the district Chief of Plats and Plans.

Exhibit LA 20501 provides a checklist for preparing legal descriptions.

2.5.2 Sufficiency of Descriptions

The courts have held that a description is sufficient if it can be laid out on the ground by land surveying techniques. Conversely, if a description cannot be laid out on the ground, it is insufficient and may not serve as the basis for a legal description on a document of conveyance. The description should be so clear that the land covered is unmistakable.

All right of way transactions are based on legal descriptions that are sufficient and that can be laid out on the ground within accuracies specified in the Minimum Standards of Practice.

2.5.3 Form of Descriptions

There are many ways a parcel may be described. Generally speaking, the proper form for describing parcels of right of way is the one which most concisely describes a tract of land, is simple in construction, provides little or no chance for errors or ambiguities and makes adequate reference to existing survey schemes (section corners, subdivision corners, survey lines, or centerlines).

Unacceptable forms of descriptions are the Centerline Survey Plat Reference Descriptions and for most purposes the Station Offset Description.

Describing right of way acquisitions in reference to a recorded Centerline Survey Plat is incompatible with sound surveying practices since it does not tie such acquisitions directly to the existing survey. Station Offset Descriptions use the surveyed centerline and offset distances only as a means of describing a parcel of land. Descriptions of this type are unacceptable for describing fee interest acquisitions. Temporary easements, however, may be described by this method if desired.

2.5.4 Metes and Bounds Descriptions

The metes and bounds description is the most commonly used form for right of way acquisitions since it lends itself for describing irregular shapes of land. It is therefore of great importance that proper construction of this type of description be understood by those writing for land acquisition activities. The major parts of the metes and bounds descriptions are the caption, body, qualifying clauses, and the Point of Commencement and Point of Beginning.

The caption or the preamble of the description is a general statement that identifies the location of the land described in relation to a preexisting survey scheme. It may also contain statements as to the location, purpose, and intent of the description or conveyance. See the four examples below:

"A part of the Southwest Quarter of the Southwest Quarter of Section 5, Township 23 North, Range 3 West of the Third Principal Meridian, Tazewell County, state of Illinois, described as follows: …"

"A part of Lot 7 of the subdivision of the Southeast Quarter of the Southeast Quarter of 16, Township 16 North, Range 2 East of the Third Principal Meridian as recorded in Plat Book 22 on Page 38, in the Macon County Recorder's Office, described as follows: …"

"A part of the North 58.0 feet of Lot 8 in Block 42, a part of Lots 8 and 9 in Block 41, a part of a 10 foot wide vacated alley in Block 41 and a part of vacated Susannah Street, all in the Original Town, now city of Pekin, in Section 34, Township 25 North, Range 5 West of the Third Principal Meridian, said Original Town being recorded in Plat Book 10 on page 5 in the Tazewell County Recorder's Office, state of Illinois, described as follows: …"

"A part of the Northwest Quarter of Section 29, Township 26 North, Range 4 West of the Third Principal Meridian, Tazewell County, Illinois, lying between the centerline thread of the Illinois River and the Government Harbor Line along the southeasterly side of the Illinois River, described as follows: …"

The body of the description identifies in detail a particular tract as generally defined in the caption. The specific distances and directions around a tract are recited in a clockwise sequence, monuments are identified and points of commencement, of beginning, and of termination are established. Other instructions and information are included to provide clarity and completeness. See the following five examples:

“Commencing at a stone at the northeast corner of the Northwest Quarter of said Section 28; thence South 00 degrees 38 minutes 02 seconds West, 1359.93 feet (Bearings based on the Illinois State Plane Coordinate System, West Zone) along the east line of the Northwest Quarter of said Section 28 to a point on the existing northerly right of way line of FAP Route 685 (Illinois Marked Route 9), said point being 34.72 feet radially distant northerly from the centerline of pavement in place of said FAP Route 685 and the Point of Beginning.

From the Point of Beginning continuing South 00 degrees 38 minutes 02 seconds West, 59.54 feet along the said east line to a point on the existing southerly right of way line of said FAP Route 685, said point being 24.78 feet radially distant southerly from the said centerline; thence . . . to the Point of Beginning.”

"Commencing at an iron pipe at the southwest corner of the Southwest Quarter of the Southwest Quarter of said Section 5; thence North 89 degrees 08 minutes 05 seconds East, 367.61 feet (Bearings based on the Illinois State Plane Coordinate System, West Zone) along the south line of the Southwest Quarter of the Southwest Quarter of said Section 5 to a point on the existing easterly right of way line of FAP Route 406, said point being 99.00 feet normally distant southeasterly from the Survey Line of said FAP Route 406 and the Point of Beginning.

From the Point of Beginning thence North 6 degrees 57 minutes 04 seconds East, 190.94 feet parallel with the said Survey Line; thence northerly 1018.65 feet along a curve to the left having a radius of 7,222.03 feet and being concentric with the said Survey Line, the chord of said curve bears North 2 degrees 54 minutes 37 seconds East, 1017.80 feet; thence North 1 degree 07 minutes 49 seconds West, 23.22 feet parallel with the said Survey Line; thence . . . . to the Point of Beginning."

"Commencing at the northeast corner of said Lot 2, said corner being 33.00 feet normally distant westerly from the centerline of existing pavement in place of FAP Route 63 (U.S. Marked Route 24) (McKinley Street); thence South 89 degrees 44 minutes 11 seconds West, 7.00 feet (Bearings based on the Illinois State Plane Coordinate System, West Zone) along the northerly line of said Lot 2 to a point on the existing westerly right of way line of said FAP Route 63, said point being 40.00 feet normally distant westerly from the said centerline and the Point of Beginning.

From the Point of Beginning thence South 0 degrees 00 minutes 00 seconds West, 80.00 feet along the said existing westerly right of way line parallel with the said centerline to the southerly line of said Lot 2; thence . . . . to the Point of Beginning."

"Beginning at the most easterly corner of said Lot 1, said corner being at the intersection of the southwesterly line of Jackson Street and the northwesterly line of Main Street at a point 40.97 feet normally distant southwesterly from the centerline of pavement in place of FAU Route 6757 (U.S. Marked Route 150) (formerly Morton Bridge Road); thence South 58 degrees 02 minutes 41 seconds West, 40.48 feet (38'-3" recorded distance) (Bearings based on the Illinois State Plane Coordinate System, West Zone) along a southeasterly line of said Lot 1 to a point 81.41 feet normally distant southwesterly from the said centerline; thence . . . . to the Point of Beginning."

"Beginning at a stone at the northwest corner of the Southwest Quarter of said Section 15, thence South 89 degrees 48 minutes 09 seconds East, 2694.42 feet (Bearings based on the Illinois State Plane Coordinate System, West Zone) along the north line of the Southwest Quarter of said Section 15, said north line being also the proposed centerline of County Highway 25 (Cedar Hills Drive) to a railroad spike at the center of said Section 15; thence South 0 degrees 06 minutes 31 seconds East 115.96 feet along the east line of the Southwest Quarter of said Section 15 to a point 35.354 meters [115.99 feet] normally distant southerly from said proposed centerline; thence . . . . to the Point of Beginning."

Qualifying clauses are statements placed at the end and separated from the main body of the description. Such clauses are to state the area described, exclude or take something away from the area described and add other explanatory notes and information. See the following seven examples:

"The said Real Estate containing 8570 square feet, more or less, or 0.197 acre, more or less."

"EXCEPTING THEREFROM the area of the existing public road right of way, the said Real Estate containing 20,650 square feet, more or less, or 0.474 acre, more or less."

"The said Real Estate containing 75,138 square feet, more or less, or 1.725 acres, more or less, of which 43,094 square feet, more or less, or 0.989 acre, more or less, is in existing public road right of way."

“Except that portion described as follows:”

“Except therein, mineral interests previously conveyed.”

“Except therein, mineral interests previously reserved.”

"Subject to a Permanent Easement for a roadway over and across the above described parcel of land, said Permanent Easement described as follows:"

To provide the real estate described with title identity it is necessary to tie it to an existing survey scheme. If one of the corners of the tract to be described is of sufficient reputation and quality, it may serve as the Point of Beginning without further title reference. When a point outside the tract described must be called for to control the location of the tract, such point is termed as Point of Commencement. In either case the Point of Beginning or the Point of Commencement shall be of the following qualities.

- Must be actual – Only physical monuments actually recovered or established shall be utilized.
- Must be direct – A theoretical point such as "the intersection of the south line of the Southwest Quarter of the Southwest Quarter of said Section 5 and the existing southeasterly right of way line of FAP Route 406" is not directly established and shall not be utilized.
- Must be recoverable – A point in a lake, river or other inaccessible location is not recoverable and is not utilized.
- Must have simplicity – A stone, concrete monument, iron pipe, or a drilled hole in rock can simply be described and recovered and shall be utilized.
- The terms "True Point of Commencement" and "True Point of Beginning" are not used.

2.5.5 Guidelines for Metes and Bounds Descriptions

The following guidelines for metes and bounds descriptions have been adopted by the department to provide for simplicity and uniformity for composition of descriptions. While these guidelines have been developed for use in writing metes and bounds descriptions, they pertain equally to other less common forms of descriptions, to the extent of their applicability.

Exhibit LA 20505 provides additional guidelines and examples for right of way plats and writing legal descriptions.

2.5.5.1 *Spelling, Punctuation, and Grammar*

- Commas are used within paragraphs to separate units of subdivision. For examples:

  "A part of the Southwest Quarter of the Southwest Quarter of Section 5, Township 23 North, Range 3 West of the Third Principal Meridian . . ."

  "A part of Outlot A of "David Baer's Assessment Plat" being part of Lot 4 of U.S. Survey No. 129, Claim 501 in the Cahokia Common fields of St. Clair County, Illinois, as shown on a plat recorded in the St. Clair County Recorder's Office, in Plat Book 54, Pages 30 and 31, being a part of Section 33, Township 2 North, Range 9 West and Section 4, Township 1 North, Range 9 West of the Third Principal Meridian, St. Clair County, state of Illinois, described as follows: "

- Semicolons are used at the end of each course. For example:

  ". . . thence North 6 degrees 57 minutes 04 seconds East, 190.94 feet parallel with the said Survey Line; thence North . . ."

- A colon is used to end the caption. For example:

  “. . . described as follows:
  Commencing at the . . ."

- Periods are used to end a complete description. For example:

  ". . . to the Point of Beginning, containing 6,728 square feet, more or less, or 0.154 acre, more or less."

- Numbers are not written out. For example:

  "A part of Lot 1 of Block 1 in Francis Webb's Second Addition to the Village of Morton situated in the Southeast Quarter of Section 17, Township 25 North, Range 3 West . . .”

- A general directional call is not capitalized. For examples:

  ". . . thence southerly 1028.66 feet along a curve to the right having a radius of 7293.03 feet and being concentric with the said Survey Line . . .“

  ". . . thence in a northerly direction along the centerline of Big Muddy Creek the following meanders: North 10 degrees East, 98.43 feet, North 20 degrees West, 131.23 feet, North 25 degrees East 82.02 feet . . ."

- Bearings are capitalized and spelled out with no punctuation between bearing directions. For example:

  ". . . thence North 61 degrees 54 minutes 06 seconds West . . ."

- An adjective describing a line is not capitalized. For example:

  ". . . to a point on the south line of the Southwest Quarter of the Southwest Quarter of said Section 5, said point being . . ."

- Bearings for cardinal directions are single words. For example:

  "North, East, South, West"

- Standard rules of American grammar are to be observed.

  - Sentences and phrases are not to be written all in capital letters.
  - Phrases may not stand alone.
  - All descriptions must consist of complete sentences.
  - Avoid placing a period before a thought is completed.

- "Said" is an adjective used to prevent the unnecessary repetition of words previously used in the description. The word "said" refers to a preceding matter of the same subject, never to a subsequent matter. For example:

  ". . . thence South 0 degrees 00 minutes 00 seconds West, 80.00 feet along the said existing westerly right of way line parallel with the said centerline to the southerly line of said Lot 2; thence South 89 degrees 44 minutes 11 seconds West, 5.00 feet along the said southerly line to a point 45.00 feet normally distant westerly from the said centerline; thence . . ."

- "Aforesaid" is nearly synonymous with "said" although it may cover a little broader scope. Its use is not as common nor is it recommended.

2.5.5.2 *General Format*

- Abbreviations are not used in original descriptions.

- Symbols for degrees (º) minutes (') and seconds (") are not used in original descriptions.

- “Thence” is used in descriptions and imparts the meaning that the following course is continuous with the preceding course. For example:

  ". . . parallel with the said Survey Line; thence North 44 degrees 18 minutes 50 seconds East, 72.98 feet . . ."

  The phrase "A distance of" is extra words and can almost always be avoided.

- "Commencing at" is a phrase that allows the initial call of a description to be for a known part on a plat of record but is not on the boundary of the tract described. When using this phrase, it is necessary later to identify the point of beginning.

- The description shall go in a clockwise direction and return to the point of beginning.

- Distance calls are in the same units, expressed to the same number of decimals and consistent with the degree of accuracy of the direction calls.

- The appropriate number of significant figures shall be indicated for distances and directions.

- The description must close mathematically.

- Paragraphs are spaced at twice the line spacing.

- "More or less" is usually an unnecessary phrase to be avoided but may be used to express intent whenever both distance and area appear, and one is to prevail over the other.

- One of the following statements shall be placed at the end of legal descriptions:

  "The said Real Estate being also shown by the plat hereto attached and made a part hereof."

  "The said Real Estate being also shown on sheet __ of the right of way plat for ___ Route _____, Section _____________, recorded as Document Number __________ in the ___________ County Recorder's Office."

2.5.5.3 *Direction*

- The basis of bearings or azimuths must be recited. For example:

  ". . . thence North 18 degrees 14 minutes 42 seconds West, 28.00 feet (Bearings assumed for description purposes only) along a southwesterly line of said Lot A . . ."

- In an azimuth or bearing description it is necessary to recite the basis of the azimuth or bearing for the first course.

- Directional reference must be the same throughout description.

- Bearings must progress in the same manner around the tract described.

- Azimuth reference must be from the north.

- The terms "true north" and "due north" shall not be used.

2.5.5.4 *Straight Lines*

Straight lines will satisfy the four necessary conditions for a metes and bounds description in the following order:

- Direction.

- Distance.

- Qualifying calls to natural or physical monuments if any exist.

- Physical terminus, if necessary. For examples:

  "thence North 61 degrees 54 minutes 06 seconds West, 32.00 feet to a point 26.00 feet normally distant northwesterly from the proposed centerline of FAP Route 656;"

  "thence North 27 degrees 36 minutes 30 seconds East, 102.76 feet parallel with the said proposed centerline;"

  "thence South 0 degrees 38 minutes 02 seconds West, 59.54 feet along the east line of the Northwest Quarter of said Section 28 to a point on the existing southerly right of way line of FAP Route 685, said point being 24.78 feet radially distant southerly from the centerline of said FAP Route 685;"

  "thence South 84 degrees 15 minutes 47 seconds East, 77.90 feet along said existing southerly right of way line to a point 30.00 feet normally distant southerly from the said centerline;"

  "... to a point 170.60 feet radially distant southeasterly from the survey line of FAP Route 406; thence South 7 degrees 56 minutes 55 seconds West, 181.66 feet to a point on the south line of the Southwest Quarter of the Southwest Quarter of Said Section 5, said point being 166.84 feet normally distant southeasterly from the said Survey Line."

2.5.5.5 *Curves*

All curved lines described in legal descriptions are simple curves. Curved lines will satisfy the eight necessary conditions for a metes and bounds description in the following order:

- General direction of the curve.

- Length of the curve.

- Qualifying calls to natural or physical monuments if any exist.

- Direction of curvature to the left or right.

- Length of the radius of the curved line.

- Bearing of the long chord which subtends the curve.

- Length of the long chord.

- Physical terminus, if necessary.

Technical terms such as Point of Curvature (PC), Point of Tangent (PT), Point of Intersection (PI), etc., are not used. For examples:

> "thence northerly 60.89 feet along an easterly line of said Lot 1 on a curve to the left having a radius of 55.00 feet, the chord of said curve bears North 2 degrees 03 minutes 02 seconds East, 57.83 feet, to a point 44.00 feet normally distant southwesterly from the centerline of pavement in place of FAU Route 6757 (U.S. Marked Route 150);"

> "... to a point 170.00 feet normally distant easterly from the Survey Line of FAP Route 406; thence southerly 1028.66 feet along a curve to the right having a radius of 7293.03 feet and being concentric with the said Survey Line, the chord of said curve bears South 2 degrees 54 minutes 37 seconds West, 1027.81 feet; to the south line of the Southwest Quarter of the Southwest Quarter of said Section 5;"

> "thence northwesterly 325.35 feet along the said centerline of County Highway 64 on curve to the right having a radius of 3819.72 feet, the chord of said curve bears North 60 degrees 29 minutes 38 seconds West, 325.10 feet;"

> "... to a point 99.00 feet normally distant southeasterly from the Survey Line of FAP Route 406; thence northerly 1018.65 feet along the said existing easterly right of way line on a curve to the left having a radius of 7,222.03 feet and being concentric with the said Survey Line, the chord of said curve bears North 2 degrees 54 minutes 37 seconds East, 1017.80 feet;"

> "From the point of beginning thence northeasterly 480.39 feet along a curve to the right having a radius of 3039.79 feet and being concentric with the said Survey Line, the chord of said curve bears North 34 degrees 52 minutes 55 seconds East, 479.89 feet to a point on the westerly right of way line of the Chicago and North Western Transportation Company, said point being 75.00 feet normally distant northwesterly from the centerline of the main track of said Transportation Company;"

2.6 *GUIDELINES FOR DESIGNING RIGHT OF WAY*

2.6.1 General

Right of way is one of the most enduring features of any transportation system and its design must be carefully planned to ensure the facility can be safely and efficiently constructed, operated, and maintained.

During Phase I, the project study group determines the preliminary right of way needs and limits. The group also identifies any specific right of way issues that could significantly affect the alignment, cost, or timeline of the project. Examples of such issues would be billboards, cell towers, railroads, mobile home parks, cemeteries, low income properties, and hazardous/special waste within property to be acquired. However, the final location of the proposed right of way should be the responsibility of the district Chief of Plats and Plans after environmental commitments, construction limits, safety, and maintenance requirements have been determined.

2.6.2 Establishment of Proposed Right of Way Lines and Widths

Proposed right of way lines shall be dimensioned from a centerline or survey line, and typically set parallel to, or concentric with, said centerline or survey line. However, on curves it may be advantageous to establish the right of way using a series of straight lines (chords).

Centerlines may be centerline of existing right of way, centerline of pavement to remain in place, proposed centerline of pavement, centerline of median, or centerline of platted street. Survey lines may be survey line of proposed improvement and relocated survey line. The right of way should not be dimensioned from a centerline of pavement in place, existing right of way line or any other line that is to be removed. Dimensions must be from a line that can be located in the field from monumentation, physical objects and/or ties.

Proposed right of way widths are typically based on multiples of five (5) feet (e.g., 60 feet, 65 feet, 70 feet, etc.). In cases where there is existing development close to the highway, the width may be set to the nearest one (1) foot. Use of decimals of a foot should be avoided unless the proposed right of way is tied to an existing property line.

Additional criteria for establishing the proposed right of way, based upon the classification of the roadway and the scope of the project, are as follows.

2.6.2.1 *Principal Arterials – Interstates, Other Freeways, and Expressways (New Construction and Reconstruction)*

- Design Criteria – Rural. The proposed right of way should provide a minimum clear width of 10 feet beyond the construction limits for cut or fill sections less than or equal to 30 feet. For cuts or fills over 30 feet, provide an additional clear width of 1 foot for each 2 feet of cut or fill over 30 feet, up to a maximum clear width of 25 feet. These widths allow enough area to build a berm should there be a slide in the cut or a failure in the fill and also provide easy access to the top or bottom for maintenance purposes and for slope rounding. A clear width greater than 25 feet may be necessary in cut or fill areas where soil conditions are unstable. Give the greater than 25 feet cases careful consideration, based on the benefits compared to the additional acquisition costs, any environmental impacts, and additional maintenance costs.

  Avoid abrupt changes in the right of way lines when possible. The maximum desirable rate of change is 5 feet laterally for every 100 feet along the centerline or survey line. This gradual rate of change may not be practical in rough terrain or in areas where improvements dictate a more feasible design. Right of way break points are at a minimum distance of 300 feet. To maintain this distance, the minimum clear width at some cross sections may be as close as 5 feet.

- Design Criteria – Urban. The design criteria state above for rural areas also apply to urban areas, except the minimum clear width is two (2) feet with a maximum of five (5) feet. This width range is recommended to reduce the cost of improvements and to minimize severance damages.

- Design Criteria – Frontage Roads. For frontage roads, follow the design criteria in Section 2.6.2.3 or Section 2.6.2.4 based on the average daily traffic of the frontage road.

2.6.2.2 *Other Principal Arterials and Minor Arterials (New Construction and Reconstruction)*

- Design Criteria – Rural. The proposed right of way should provide a minimum clear width of 10 feet beyond the construction limits for cut or fill sections less than or equal to 30 feet. For cuts or fills over 30 feet, provide an additional clear width of 1 foot for each 2 feet of cut or fill over 30 feet. The maximum clear width is 20 feet. These widths will allow enough area to build a berm should there be a slide in the cut or a failure in the fill and this will also provide easy access to the top or bottom of slopes for maintenance purposes and slope rounding. A clear width greater than 20 feet may be necessary in cut or fill areas where soil conditions are unstable. Give the greater than 20 feet cases careful consideration, based on the benefits compared to the additional acquisition costs, any environmental impacts, and additional maintenance costs.

  Avoid abrupt changes in the right of way. The maximum desirable rate of change is 5 feet laterally for every 100 feet along the centerline or survey line. However, this rate of change may not be practical in rough terrain or in areas where proposed improvements dictate a more feasible design. Right of way break points are at a minimum distance of 200 feet. To maintain this distance, the minimum clear width at some cross sections may be as close as 3 feet.

- Design Criteria – Urban. The design criteria stated above for rural areas would also apply to urban areas where a rural-type cross section is proposed, except where the cost of right of way is prohibitive. Where the cost of right of way is prohibitive, or an urban-type cross section is proposed (i.e., curb and gutter, sidewalks, etc.), narrower right of way widths are used to reduce costs, minimize severance damages, and reduce proximity damages.

2.6.2.3 *Collectors and Local (Land Access) Roads*

The minimum width of right of way for collectors and land access roads shall be sufficient to contain all elements of the cross section and to provide for reasonable border areas.

2.6.2.4 *Rehabilitation Projects*

Right of way for rehabilitation projects should be in accordance with the latest 3R guidelines issued by BDE. Ditch cleaning and slope flattening may be desirable on such projects, and therefore strips of minimum width right of way or easements may be a part of these projects.

2.6.3 Other Factors Controlling Right of way Lines and Width

In addition to the minimum clear width between construction limits and the right of way line, allowances may be necessary for the provision of frontage roads, special drainage facilities, roadside obstacle clear zones, and future expansion of the highway, including bike paths and sidewalks.

2.6.3.1 *Border Areas*

Border areas are required for maintenance operations, the retention of natural growth for scenic and ecological purposes, erosion control purposes, and in some cases, for accommodating public utilities (see Section 2.6.3.8 below for more discussion on utilities).

The border area also serves as a "buffer" between the limits of construction and abutting private development.

2.6.3.2 *Intersection Sight Distance*

Adequate right of way should be acquired to provide intersection sight distance as described in Chapters 36 and 49 of the Bureau of Design & Environment (BDE) Manual.

2.6.3.3 *Minimize the Number of Break Points*

Minimize the number of right of way break points. Doing so will reduce the number of right of way markers and corner post requirements for fences and will simplify staking of the right of way. Identify each "break point" in the right of way line by a station and offset distance from the centerline or survey line of construction.

2.6.3.4 *Right of Way Breaks on Property Lines*

Avoid a change in the distance from the centerline to the right of way line on a property line if there is an acquisition from two adjacent properties. If break points are placed at the points where property lines intersect the right of way lines, use permanent type property markers to mark their location instead of right of way markers.

2.6.3.5 *Avoid Abrupt Changes in the Right of Way Line*

Avoid abrupt changes in the right of way lines and minimize the rate of change. Avoid right of way breaks where the break points cannot be staked. For example, avoid a right of way break point in a stream or in a driveway. Right of way breaks should be at least 20 feet from the edge of any body of water such as lakes or streams.

2.6.3.6 *Where Abrupt Changes are Permitted*

Consider additional right of way break points and short distances between breaks only when a parcel can be eliminated or to avoid leaving a small uneconomical remnant. In rural areas, small irregular and triangular shaped remainders less than 50 feet in width shall be included as part of the right of way. In order to avoid relocating a building in an urban area, the right of way may be adjusted.

2.6.3.7 *Acquiring Fee to Dedicated Right of Way*

In the early development of the state highway system, landowners would often donate or dedicate the surface rights from a portion of their property to the State. This "dedication of surface rights for highway purposes" (i.e., dedication) gave the State the ability to construct, operate, and maintain the highway; yet the landowner retained the fee interest. This practice was discontinued many decades ago in favor of acquiring the fee interest, but many dedications still exist.

In situations where additional right of way will be acquired from an owner still holding a fee interest to existing dedicated right of way, acquire that fee interest as part of acquiring the additional right of way. This procedure will unify the department's interest in the right of way and eliminate the owner from having to pay taxes on the dedicated right of way.

2.6.3.8 *Utility Considerations*

The department does not acquire right of way specifically for the accommodation of utilities; however, problems can occur with utility adjustments when the right of way lines are irregular or placed too close to the outer limits of construction. When a line of utility poles must be relocated along an irregular or "tight" right of way line, the following problems may be encountered:

- Numerous guy wires to stabilize poles not able to be placed in a straight line.
- Poles or guy wires on private property that require easements and which may cause delays.
- A request to provide cross sections in order that the utility company may know where it may or may not place the poles.

Similar problems may be encountered with relocated water and gas mains. Although these matters do not often cause direct and tangible cost to the department, they may create unnecessary expense to the utility and indirectly may create delays to construction of a project.

2.6.3.9 *The End of Right of Way Acquisition – Terminal Parcel*

When a construction project ends within the limits of a particular property, it is desirable to continue the right of way across the property if additional right of way will be required for a future project. If the proposed project ends within the property, the proposed right of way line is tapered into the existing right of way line.

2.6.3.10 *Variable Median*

Describe right of way from one survey line or centerline for variable width median roadways wherever possible. For wide medians (200 feet or more) it may be necessary to describe the right of way from two survey lines or centerlines.

2.6.3.11 *Sidewalk*

If a sidewalk is to be constructed on a project, the right of way line should be located a minimum of 1 to 2 feet from the back edge of the sidewalk. In an urban setting, the right of way line may be at the back edge of the sidewalk due to existing abutting development. Sufficient right of way shall be obtained to ensure ADA compliance.

Grading for sidewalk construction, which lies outside of the existing or proposed right of way, requires a temporary easement.

2.6.3.12 *Acquiring Fee Interest Versus Temporary Easement*

Where it is necessary to work outside the existing right of way lines for grading of roadside ditches, channel changes, slope rounding, or construction of temporary access roads at bridges and/or other locations, acquire the additional working area in fee interest in lieu of a temporary easement on construction projects. This will allow for future access for maintenance of the bridge and for work on channels such as realignment, placement of riprap, and jetties.

Table of Contents

Section **Page**

3 APPRAISAL AND APPRAISAL REVIEW

3.1 GENERAL

Private property shall not be taken or damaged for public use without payment of just compensation as provided by law (U.S. Constitution, Fifth Amendment and Illinois Constitution, Art. 1, Sec. 15). Appraisals and waiver valuations are used to establish a basis for determining just compensation. The department is only released from the obligation of obtaining an appraisal or waiver valuation when an owner has been informed in writing of the right to receive just compensation, and the owner chooses to waive their right to just compensation and/or to have their property appraised.

When an appraisal is prepared, the owner or owner's designated representative <u>must</u> be given an opportunity to accompany the appraiser during inspection of the property (this is a federal requirement under the Uniform Act). Refer to Section 3.2.1 and Section 3.2.2 below for more information.

NOTE: "Fair Market Value" and "Market Value" were considered synonymous and used interchangeably throughout prior versions of this manual. The definition utilized by the department in this version is specific and where possible, all references have been revised herein to reflect "Fair Market Value."

<u>Definition of Fair Market Value</u>: The fair cash market value of a property in an eminent domain proceeding is that price which a willing buyer would pay in cash, and a willing seller would accept, when the buyer is not compelled to buy, and the seller is not compelled to sell. In the condemnation of a property for a public improvement, any appreciation or depreciation in value caused by the contemplated improvement shall be excluded from the consideration of the fair cash market value of the whole property and the value of the part taken (Illinois Pattern Jury instructions). In the event of a partial acquisition where there is remainder property, any appreciation or depreciation caused by the contemplated improvement shall be considered when opining the fair cash market value of the remainder. Any increase or decrease in fair market value caused by the actual acquisition of a part of the property must be considered in opining the fair market value of the remainder after taking.

Appraisers are cautioned to identify the exact definition of "Fair Market Value," and its authority, applicable in each appraisal completed. While reports are often using Fair Market Value and Market Value synonymously, this leads to ambiguity. Other definitions include a requirement for exposure time, whereas the definition of Fair Market Value given above does not have such a requirement. USPAP Standards Rule 1-2(c)(iv) requires that when exposure time is a component of the definition for the value opinion being developed, the appraiser must also develop an opinion of reasonable exposure time linked to that value opinion. Since the definition of fair market value in this manual does not include exposure time as a component, the appraiser is not required to develop and report an opinion of exposure time linked to the fair market value opinion. This situation is considered to be an assignment condition for the purposes of appraisals completed using this definition.

There are a number of excellent textbooks and classes that concern themselves with every facet of the appraisal field; therefore, this portion of the Land Acquisition Manual does not attempt to cover material more adequately covered by other sources. The department adheres to the appraisal standards found in the Uniform Standards of Professional Appraisal Practice, 49 CFR Part 24.

3.2 APPLICABLE APPRAISAL STANDARDS, REGULATIONS, AND POLICIES

The department requires all appraisal and appraisal review assignments to comply with the following standards, regulations, and policies:

- State and federal law,
- the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act) and its implementing regulation 49 CFR Part 24,
- the Land Acquisition Policies and Procedures Manual (this manual), and
- the Uniform Standards of Professional Appraisal Practice (USPAP).

Compliance with the uniform appraisal standards for federal land acquisitions (yellow book) is only required for agencies who have adopted the yellow book standards as part of their policies and procedures. The department has not adopted the yellow book standards, therefore they do not apply to appraisal assignments performed for the department.

In order to comply with the requirements of both 49 CFR Part 24 and USPAP, some items may require additional explanation in the appraisal report. The department's Appraisal Report template (see Section 3.7) includes standard appraisal assignment conditions that address these topics. It is the department's opinion that no jurisdictional exceptions are required in order for an appraiser to comply with both 49 CFR Part 24 and USPAP.

The appraisal and appraisal review assignments do not have the same scope of work. While an appraisal may warrant special assignment conditions, it does not automatically follow that the same assignment conditions apply to the development and reporting of the appraisal review certification; however, any special assignment conditions should be noted in the appraisal review certification.

3.2.1 Minimum Level of Observation of Subject Property

The appraiser shall inspect (observe) all relevant physical characteristics of the subject property to the greatest extent possible, including the part to be acquired. However, there are circumstances that influence the extent of the appraiser's property observation. For example, the appraiser may be denied access to the property by the owner, for legal, personal safety, or other reasons. In such cases, the appraiser must use other means to gather information about the relevant characteristics of the subject property in order to provide credible assignment results. The appraiser must also inform the district when access for observation of the subject property is denied, discussing an appropriate course of action, which is then included in the scope of work. Photos of the subject property from the adjoining roadway must be included in the appraisal. **The use of an extraordinary assumption will be needed to assume the existence and condition of improvements not personally inspected by the appraiser and that the use of the extraordinary assumption may have impacted assignment results and/or the opined fair market value contained herein.**

NOTE: For an appraisal of a property that is 1 to 4 residential units prepared by a licensed real estate appraiser, Illinois law requires the following statement be included in the appraisal report:

"The comments by the licensed real estate appraiser contained within this appraisal report on the condition of the property do not address "standards of practice" as defined in the Home Inspector License Act (225 ILCS 441) and 68 IL Admin. Code 1410 and are not to be considered a home inspection or home inspection report."

3.2.2 Effort to Contact Owner of Record for Accompaniment

When an appraisal is prepared, the owner or owner's designated representative must be given an opportunity to accompany the appraiser during inspection (observation) of the property. This is a federal (Uniform Act) requirement. The appraiser must attempt to make contact with the owner of record by a minimum of two different methods. Methods may be such as mail (could be certified or registered as needed), email, phone, text, social media, or other forms of communication. **If contact is unsuccessful, the appraiser is required to attempt an on-site contact to interview the property owner.** Upon unsuccessful completion of these efforts, the appraiser should annotate the appraisal with the information related to each attempt. Note, if the subject property is leased, gather tenant contact information for the appraisal and attempt to obtain contact information for the owner of record. Do not discuss the acquisition in detail with the tenant.

3.2.3 Unit Rule (Undivided Fee Simple Rule)

The Dictionary of Real Estate Appraisal 6th Edition, published by the Appraisal Institute, defines the unit rule as: In condemnation appraisal, a valuation rule with two aspects, the first dealing with ownership interests and the second dealing with the physical components. The first aspect of the rule, also referred to as the undivided fee simple rule, requires that property be valued as a whole rather than by the sum of the values of the various interests into which it may have been carved (such as lessor and lessee, life tenant and remainderman, mortgagor and mortgagee, etc.). This is an application of the principle that it is the property, not the interests or various titles to it, which is being acquired. The second aspect of the rule is that different physical elements or components of a tract of land (such as the value of timber and the value of minerals on the same land) are not to be separately valued and added together.

Before the concept of the unit rule can be applied to a parcel being appraised, a larger parcel analysis must take place to determine what the property being appraised is. A parcel, as established, may consist of a single larger parcel, or multiple larger parcels, depending on the appraiser's larger parcel analysis. The unit rule does not play a part in the larger parcel analysis, but the larger parcel analysis does define the property being appraised for the application of the unit rule. Once the property being appraised is defined by the larger parcel analysis, the unit rule will apply to the larger parcel(s) identified.

The first aspect of the unit rule, as defined above, requires that when an appraisal is being performed on a property with multiple ownership interests, the property is to be appraised as if all property rights are held by a single owner (undivided fee simple rule). The fair market value of the whole can then be apportioned among the various ownership interests. In this way, the interests are valued as a portion of the whole, rather than valuing them independently and adding them together. This valuation principle is consistent with the intended use of the appraisal, as a tool in opining just compensation, which is compensation for the property itself, not for the various ownership interests. Typically, in Illinois, apportionment is typically left to the parties involved, or it is left to the courts to decide.

The second aspect of the unit rule, as defined above, concerns itself with the physical elements of the property being appraised. The unit rule does not permit separate physical components of a property, such as the timber located on the site; the mineral deposits located beneath the site; or the site improvements and the remainder of the property to be valued individually and then added together to opine a fair market a value for the property being appraised (a cumulative appraisal). The property must be valued as a whole with the individual components considered only to the extent (contributory value) that they enhance or diminish that fair market value.

Example: Any improvements, whether building or site improvements, must be considered with regard to their contribution to the whole property. A proposed acquisition with trees, driveway and fencing must consider how these contribute to the entire property and not individually added together component by component. A proposed acquisition of 6,000 sq. ft. of land, 200 sq. ft. of concrete paving, three evergreen trees and 200 linear feet of fencing must consider the contribution of the acquisition area to the whole property and not each individual item as a separate component of the property. The fencing could be considered as a cost to cure. Separating each component in the valuation process would violate the unit rule.

A typical IDOT appraisal is based upon a partial acquisition from a larger parcel; a valuation problem that will require that the appraiser opine the fair market value of the part taken, which may include land, site improvements and vegetation. On the surface, the solution to this appraisal problem may appear to depart from the unit rule; however, addressing the individual components of an acquisition based upon their contributory fair market value will allow the appraiser to adhere to the unit rule while identifying the fair market value of the individual parts taken.

All appraisals involving the acquisition of right of way must comply with the “unit rule” as a practice as determined by Illinois courts. The “unit rule” requires the appraiser to value a property as a whole property embracing the rights, estates, and interests of all who may claim, and as if one ownership. The different property components cannot be valued separately and added together to opine the fair market value of the whole property, the fair market value of the part taken, and the fair market value of the remainder. This includes ownership by various estates / interests must be valued as if the title were held by a single entity and cannot be valued by the sum of values of the various interests into which it may be carved such as lessor and lessee, life tenant and remainderman, etc. The property components should only be considered in the light of how they enhance or diminish the above fair market values. The part taken must be valued as part of the whole property and not a separate tract unrelated to the whole property. Improvements included in the part taken have to be valued as part of the part taken as it contributes to the whole property and not separately.

3.2.4 Influence of Proposed Highway Improvement on Value (Project Influence)

In opining the fair market value of the property before acquisition, the appraiser shall disregard any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner. However, any decrease or increase in fair market value caused by the actual acquisition of a part of the property must be considered in opining the fair market value of the remainder after acquisition. Such changes in fair market value are parcel specific. This situation is considered to be a hypothetical condition for the purposes of the appraisal. Reference 49 CFR Part 24.103(b).

An appraiser may encounter sales of properties along the project. The appraiser must use care and diligence to determine if these sales have been influenced by the project. Disregard these sales if determined to be influenced by the project either in a positive or negative way.

Changes in fair market value as a direct result of an acquisition are compensable, provided they are parcel-specific damages. Illinois Pattern Jury Instructions, Civil, No. 300.50, titled, "Measure of Damages to Remainder-Only "Special" Detriments and Benefits to be Considered", partially states the following: "The real issue in these cases seems to be the type of damage claimed--whether it is remote or speculative, or a necessary consequence of a proper exercise of the police power--rather than whether it is sustained by a particular property owner in greater or lesser degree than the public generally. Clearly, the fact that the same damage is suffered by other property owners similarly situated does not make the damages non-compensable. (Consider, for example, the typical case involving the partial taking of many tracts for a road with each owner claiming--and recovering for--the identical type of damage to the part not taken.)" Refer to the Illinois Pattern Jury Instructions for the complete discussion.

If the appraiser is of the opinion that the project increases the fair market value of the remainder after acquisition, Illinois case law has established the rule that benefits to the remainder may be set off against damages to the remainder but not against the award for the part taken (See Section 3.6).

3.2.5 Farmland Preservation Act Requirements

The Farmland Preservation Act (FPA) requires the department to compile reports on the number of acres of agricultural land converted to highway use. Conversions are reported for all agricultural areas located outside city and village corporate limits. When acquisitions are within city or village limits or from non-agriculture properties, this line should be marked "not applicable" at the appropriate location on the appraisal. Report fee simple and permanent easements separately by classification of land converted. The sum of acreage in all classifications is equal to the total (net) acres acquired. Do NOT include previous dedications in FPA figures.

Farmland classifications:

- Cropland (CL). Land utilized for the production of cultivated, close growing row, fruit or nut crops for harvest including, but not limited to the following:
  - Horticulture. Crops such as fruit, nuts, vineyards, bush fruit, berries, flowers, and other horticulture.
  - Row and Close Grown. Crops such as corn, soybeans, wheat, oats, sorghum, barley, rye, vegetables, and sunflowers.
- Other Cropland (OC). Cropland that is idle or placed in set-aside or other similar programs.
- Hayland (HL). Land managed for the production of forage crops that are machine harvested. Forages are classified as:
  - Forages. All browse and herbaceous food that is available to livestock or game animals, used for grazing or harvested for feeding.

  - Legumes. One of the major groups of forage plants utilized as food for animals. This classification includes principally alfalfa, clovers, trefoil, lespedezas, vetches, and kudzu. Soybeans, peas, and beans are also contained within this broad grouping; however, for the purpose of annually reporting the amount of farmland converted to non-agricultural uses as a result of state agency action, these crops shall be categorized under the cropland designation.

- Pastureland (PL). Land utilized for the production of adopted, introduced or native forage plants for livestock grazing.
- Forestland (FL). Land utilized for growing trees of any species whether or not managed for timber products. Such lands minimally contain sixty (60) trees per acre when average diameter at breast height (DBH) of the stand is less than five (5) inches, or twenty (20) trees per acre when DBH average for the stand is five (5) inches and larger.
- Other Land in Farms (OL). Areas of farms not classified as cropland, pastureland, hayland or forestland. Other land in farms includes field windbreaks, ponds, commercial feedlots, confinements, greenhouses, nurseries, and broiler facilities. Field lanes and field landing strips are also included within this classification.

3.2.6 Conflicts of Interest

In accordance with federal and state regulations, the department has adopted the following conflict of interest requirements related to valuation:

- The appraiser, review appraiser, or person performing a waiver valuation shall not have any interest, direct or indirect, in the real property being valued for the department.
- Compensation for developing an appraisal or waiver valuation shall not be based on the reported opinion of value.
- No person shall attempt to unduly influence or coerce an appraiser, review appraiser, or waiver valuation preparer regarding any valuation aspect of an appraisal, waiver valuation, or review of appraisals or waiver valuations.
- Negotiators may not supervise or formally evaluate the performance of any person performing waiver valuation, appraisal, or review appraisal duties unless the negotiator is functioning only as an administrator or project manager, not a negotiator. However, if this requirement creates a hardship, a waiver may be requested through CBLA who will forward the request to the FHWA for approval or denial.
- A review appraiser may not review the work of an appraiser employed at the same firm. This does not preclude the use of consultants employing separate appraisal firms to work under the same contract.
- No appraiser, review appraiser or waiver valuation preparer may accept anything of value upon an agreement or understanding that such benefit will influence their performance of any valuation aspect of an appraisal, waiver valuation, or review of appraisals or waiver valuations. State employees must report any attempted bribery to the Illinois State Police.

- An appraiser must disclose if they paid a fee or commission, or gave a thing of value, in connection with the procurement of an assignment. The disclosure must appear in the certification and in any transmittal letter in which conclusions are stated; however, disclosure of the amount paid is not required.
- The appraiser must not be an advocate for either the department or the property owner, regardless of whether the appraiser is an employee of the department or hired under contract. The appraiser is, however, to comprehensively analyze and address to the appropriate extent, all impacts of a project on an owner's property.
- The appraiser must not attempt to steer the appraisal process in an effort to influence the possibility or absence of litigation. The appraiser must employ sound appraisal practices and methodology necessary to produce a credible, reliable, and unbiased opinion of fair market value as defined within the report and to produce an appraisal that meets the requirements stated in this manual.
- The appraiser, to the best of their ability, is to provide services in a timely manner to avoid delays that may impact the department's ability to meet project deadlines. However, the appraiser's opinion(s) of fair market value should not be influenced by the department's project deadlines.
- The appraiser must comply with the ethics and confidentiality requirements set forth by USPAP.

3.3 SELECTING AN APPRAISER

Department staff appraisers and fee appraisers must have an active Certified General Real Estate Appraisers license, or Certified Residential Real Estate Appraisers license, issued by the Illinois Department of Financial and Professional Regulation without any appraisal related disciplines, and meet the other qualifications listed in Section 1.6.2 (Appraisers) or Section 1.6.3 (Review Appraisers) as applicable. Only fee appraisers on the "Approved Specialty Agent List" are eligible for assignments. Before making an appraisal assignment and issuing a work order for appraisal services, the district should consider the following:

- The appraiser's qualifications.
- The type of property to be appraised; and
- The complexity of the appraisal problem.

Negotiators may not supervise or formally evaluate the performance of any person performing waiver valuation, appraisal, or review appraisal duties unless the negotiator is functioning only as an administrator or project manager, not a negotiator. A waiver may be requested through CBLA when this requirement creates a hardship. CBLA forwards the request to FHWA for approval or denial.

3.4 INFORMATION FURNISHED APPRAISERS

When making an assignment, the department should furnish to the appraiser, or otherwise make available, as much of the following information as is pertinent:

- Location of the department's standard report template for non-complex/complex appraisals (see Section 3.7).

- Right of Way plats and/or Right of Way plans.
- Plats / parcel sketches showing entire property with location of improvements; legal descriptions with areas of acquisition and remainder; property dimensions on small holdings; any significant topographic features; access control limits. If the area of the whole property is not shown on the plat / parcel sketch, note in the appraisal the source of the area of the whole (i.e., assessor records).
- Plan and profile and cross section sheets, when available.
- Information as to how the particular properties will be affected by the proposed improvement, including any owner conversations regarding commitments or concerns, and construction improvements that may help to mitigate damages.
- Information pertaining to generally non-compensable items of damage under Illinois law.
- Information pertaining to benefits to the remainder.
- All available title information.
- Comparable sales the district may have.
- Completion schedule/deadlines for appraisals.
- The property rights to be appraised; and
- Any other information that may be necessary or beneficial to the appraiser.

3.5 APPRAISAL DEVELOPMENT

3.5.1 Minimum Appraisal Requirements

The following are minimum requirements for all appraisal reports:

- Prepared in accordance with the Uniform Act and its implementing regulation 49 CFR 24, USPAP, and departmental policies and procedures.
- Contains a developed scope of work (see Section 3.5.4).
- Contains an independent opinion of fair market value and advocates for that opinion.
- Prepared on the department's standard appraisal report template in accordance with its instructions, except in cases when the standard template does not fit the appraisal problem (see Section 3.7). When the standard template does not fit the appraisal problem, use narrative reports or other templates, supported and documented to a degree compatible with the instructions for the standard template or with the appraisal problem. Deviation from the department's standard appraisal report template must be approved in advance by CBLA.
- Adheres to the $300 minimum compensation threshold for a parcel. This amount applies to each type of interest acquired on a parcel (e.g., fee simple, permanent easement, or temporary easement); however, it is not cumulative for like interests acquired on a parcel (e.g., two temporary easements). Examples:
    - Minimum compensation for a fee simple acquisition and a permanent easement on a parcel: $300 +$300 = $600.

- Minimum compensation for a permanent easement and a temporary easement on a parcel: $300 + $300 = $600.
- Minimum compensation for two temporary easements on a parcel: $300.

See Section 3.8.3 for the minimum payment requirements for the acquisition of easements on railroad and utility operating right of way.

- Gives no consideration for, or allowance for, relocation assistance.
- Be typewritten or computer-generated and independently prepared.
- Determines the date of valuation for the appraisal. If the effective date is prior to the date of inspection (date of appraisal), the appraisal is retrospective and the extraordinary assumption must be employed as per USPAP as to the presumption of its physical condition.
- Contains the 5-year sales history of the property required under the Uniform Act, and the 3-year transfer history required by USPAP (not all transfers are sales). Standards Rule 1-5,(b) analyze all sales and other transfers of the subject property that occurred within the three (3) years prior to the effective date of the appraisal (USPAP 2024 Edition page 21).
- Disregards, when opining the fair market value of the property before the acquisition, any decrease or increase in the fair market value of the real property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner. However, any decrease or increase in the fair market value caused by the actual acquisition of a part of the property must be considered in opining the fair market value of the remainder after acquisition. Such changes in fair market value are parcel specific.

  Parcel specific damages as a direct result of an acquisition are compensated for changes in value. Damages as a result of the project which are suffered in common by all property owners such as inconvenience are not compensable (see Non-Compensable Damages in Section 3.5.19); and
- Complies with the Prevailing Wage Act (include prevailing wage scale for labor costs for improvements by the property owner as a consequence of the proposed acquisition for highway construction). The Illinois Attorney General has determined the Prevailing Wage Act (820 ILCS 130/0.01 et. seq.) is applicable to any work paid for with public funds involving highway construction. Anyone providing the department with cost estimates needs to use the prevailing wage in determining labor costs.

While preparing the report, the appraiser shall:

- Not be coerced or influenced by others when establishing their opinion of fair market value.
- Give the owner or designated representative an opportunity to accompany the appraiser when inspecting the property (See Section 3.2.1 and Section 3.2.2).

3.5.2 Market Reconsideration

Despite the department's best efforts, situations occur where an offer to purchase, based upon a completed appraisal, cannot be made in a timely manner. Between the effective date of an opinion of fair market value and initiation of negotiations, values in the real estate market may have increased or decreased, affecting the accuracy of the opinion of fair market value, which necessitates reconsideration. A maximum of six months interim period requires market reconsideration to determine if the original opinion of fair market value is still appropriate and relevant, or it needs to be adjusted.

Presenting the property owner with an appraisal that appears to already be out of date is not the basis for good faith negotiations, and the department must invest the additional time and resources in market reconsideration. The district will task the appraiser and review appraiser to review the market data and determine if a new appraisal and/or review is required. If the appraiser and review appraiser agree that revisions to the fair market value are necessary, the district Land Acquisition Engineer will decide how to proceed, based on the examples discussed below. If fee appraisers are involved, the district will also need to negotiate prices for the changes based on whether it requires a new appraisal or an update to the original appraisal report.

It is important to note that USPAP considers an appraiser providing an opinion that the fair market value of a property has not changed to be an appraisal (i.e., a new assignment), and thus must comply with the reporting requirements. While an update may not require re-writing an entire appraisal, any update or revision does create a "new appraisal". For any revision made, the appraiser should provide notes within the workfile as to what was changed, when it was changed and why. No matter how small the change, it requires comment within the appraisers workfile and is technically a new appraisal per USPAP. The appraiser must keep a "true copy" of each version of the appraisal that they may have submitted to their client, along with adequate clear notes as to what changed in each true copy, in their workfile. A true copy can be kept on any kind of media whether electronic or written. Each successive copy will have a new date of report/signature date.

The following are examples of circumstances that would necessitate market reconsideration, and potentially a new appraisal:

- Ownership changes due to sale of the subject property.
- Ownership changes in status (i.e., deceased, etc.).
- Highest and Best Use Change (i.e., vacant land – subject of the original appraisal – now property has been developed. Note: Appraiser must analyze the effects of the acquisition on the remainder for any damages).
- Revision in the acquisition which results in a change from damages to specific benefits to a parcel, or from no damages to damages to the remainder (i.e., original acquisition is revised with the new right of way line substantially closer to a residence).
- Either the original appraiser or reviewer upon a field visit observes multiple differences from the original appraisal in the market area (i.e., trends, external obsolescence, etc.) or in the subject property (i.e., change in condition, construction, or removal of improvements, etc.). Reviewer must convey the observations and

concerns for potential revisions necessary to make the appraisal acceptable for approval.

- Acquisition is revised (i.e., type of interest and/or area to be acquired).
- A non-complex appraisal now is a complex appraisal problem.
- During negotiations the property owner points out information that was not considered during the appraisal. This may also be in conjunction with a counteroffer.

The following must be performed as part of a market reconsideration to determine whether the situation warrants a new appraisal:

- Contact the property owner to schedule an inspection to opine what changes (if any) have occurred since the last appraisal date.
- Field visit to the subject property and required contact with the owner to reverify the status and condition of the property. If potential changes affecting fair market value have **only** occurred in the market area / trends, only an exterior observation inspection is required. If potential changes affecting market value have occurred due to changes in the condition of the improvements, a new interior observation inspection is required.
- Review the data in the appraisal to verify it remains accurate and is the most current information (i.e., ownership, zoning, acquisition data, highest and best use, etc.).
- Review and analyze any new applicable market data and trends in the valuation analysis since the original date of observation.

The following examples illustrate the importance and benefits of conducting a market reconsideration and an appraiser’s due diligence in adhering to the steps above:

Example: An appraisal of a commercial property was completed three months ago, but the property has recently been sold. If after reconsideration the appraiser does not believe the sale necessitates an adjustment of the fair market value, the offer could be made based on the original appraisal. The negotiator however must explain to the new owner that the appraisal was completed before the sale was made public and that the appraiser believes that no adjustment to the offer is necessary, as well as documenting this in the file. However, if the appraiser determines the sale of the property does affect the opinion of fair market value, an update would be required.

Example: An appraisal of an improved residential property completed six months ago was reconsidered and the market continues to be relatively similar. However, the appraiser does not, or was not able to, make contact with the owner to verify the status and condition of the property. Furthermore, the appraiser should have completed a second field visit to the subject property but didn’t. The second field visit would have shown that the residential improvements had been damaged and/or destroyed by a fire, and the appraisal will now require significant revisions.

Example: An appraisal of a vacant commercial site was completed nearly six months ago in an active market and negotiations with the previous owner were delayed. The property has since been purchased to improve with a commercial retail business four months ago. The new owner was not informed of the proposed acquisition and is currently in the construction phase, nor was the appraiser or reviewer aware of a change in ownership. The appraiser must complete sufficient research and analysis to become aware of changes to the subject property and in this case, contact with the new owner and a new field visit is required.

Example: An appraisal of an improved residential property was completed five months ago, and the market has been active with houses selling very quickly and often above their listing price. The appraiser must reconsider the data and adjustments in an effort to reflect current trends as applicable and at a minimum will evaluate and/or supplement the market sales.

3.5.3 Number of Appraisal Reports

Except for donations (Section 3.1) and waiver valuations, at least one appraisal is required for all parcels. When the appraisal problem is complex, an additional appraisal may be obtained. When two appraisals have been obtained and there is a wide divergence in the appraisals, or the review appraiser feels the compensation is substantially outside the range of appraisals received, the Appraisal Unit Chief of CBLA will determine if a third appraisal is required. Concurrence shall be received before they are requested from the appraiser. A memorandum that summarizes CBLA’s concurrence must be in the district files, with a copy sent to CBLA.

3.5.4 Scope of Work

The purpose of the scope of work is to assist in establishing the appraisal assignment. 49 CFR 24.103(a)(1) requires that the scope of work and defining the appraisal problem be determined by both the appraiser and the department. The scope of work and development of an appraisal under these requirements depends on the complexity of the appraisal problem. The scope of work must include the research and analyses that are necessary to develop credible assignment results. The scope of work must meet the following criteria:

- Be a written statement.
- Be developed by the appraiser and review appraiser.
- Define general parameters of work.
- Address the purpose/function of the appraisal.
- Define the estate to be appraised.
- Determine the date of valuation for the appraisal. If the effective date is prior to the date of inspection (date of appraisal), the appraisal is retrospective, and the extraordinary assumption must be employed per USPAP as to the presumption of its physical condition.
- Include the appropriate definition(s) of “fair market value”.
- Include the assumptions and limiting conditions.
- Disclose which approach(s) to fair market value to use, discuss the selected approach(s), and the reason(s) for the other approaches not used.
- Prepared prior to the appraisal assignment.
- Included in the appraisal report.

- Maintained in the review appraiser's file.
- Be updated as needed; and
- Address the appraisal's compliance with the following requirements of the Uniform Act (49 CFR 24.103(a)(2)(i) through (v):
  - An adequate description of the physical characteristics of the property being appraised (and, in the case of a partial acquisition, an adequate description of the remaining property), including items of personal property.
  - A statement of the known and observed encumbrances, if any, title information, location, zoning, present use, and analysis of highest and best use and at least a five-year sales history of the property. Additionally, a three-year transfer history as per USPAP requirement (not all transfers are sales). Standards Rule 1-5,(b) analyze all sales and other transfers of the subject property that occurred within the three (3) years prior to the effective date of the appraisal. USPAP 2024 Edition page 21.
  - All relevant and reliable approaches to fair market value consistent with federal and federally assisted program appraisal practices. If the appraiser uses more than one approach, there shall be an analysis and reconciliation of the approaches to fair market value used sufficient to support the appraiser's opinion of fair market value. As a general rule, the cost and income approaches are used as a check on the sales comparison approach, but the appraiser cannot rely on either one exclusively.
  - A description of comparable sales, including a description of all relevant physical, legal, and economic factors such as parties to the transaction, source and method of financing and verification by a party involved in the transaction.
  - An opinion of fair market value of the real property to be acquired. For a partial acquisition, a statement explaining the damages and benefits, if any, to the remainder property. The report must include the effective date of valuation, date of appraisal, signature, and USPAP Certification Statement by the appraiser. The "report date" is the date the report is delivered to the client (the department).

The length and complexity of the scope of work is contingent upon the nature of the appraisal assignment. It is a tool that can be used to determine what type of report is needed and which appraiser and/or review appraiser will get the assignment.

3.5.5 Approaches to Fair Market Value

49 CFR 24.103 (a)(2)(ii) states that an appraisal can include "all relevant and reliable approaches to value consistent with established federal and federally-assisted program appraisal practices." Where the sales comparison approach yields credible assignment results, the agency should enter into appraisal assignments for the sales comparison approach only. However, the appraiser must consider each of the approaches to fair market value before making the discernment as to which approach(es) are or are not necessary for a credible opinion of fair market value.

The appraisal assignment is based on the type of property being appraised and the availability of sufficient market sales data to support the conclusions arrived at by the appraiser. When the sales used in the sales comparison approach require large individual or overall adjustments, the cost and/or income approaches may also be included in the appraisal, if applicable. The cost approach is appropriate when the property is improved with newer improvements and the highest and best use is as improved. The income approach is appropriate when the property is subject to a valid arms-length lease. As a general rule, the cost and income approaches are used as support to sales comparison approach and are not relied on exclusively.

Special use properties may not have to be valued by the sales comparison approach. Based on the use of the property, a market may not exist; however, care must be given that the fair market value of the property is appraised. Value in use to a particular user does not necessarily equal fair market value. If a property is considered a special use property, the appraiser notifies the department for concurrence on the use of an approach other than the sales comparison approach. Contact CBLA when unsure whether the property is special use. It may be necessary for CBLA to contact the Office of Chief Counsel for a legal opinion.

3.5.6 Comparable Sales

Attach the comparable sales to the appraisal report and the information required on all sales must, at a minimum, include all of the data shown in the comparable sales data section of the appraisal template as well as any other data pertinent to the analysis and evaluation of the sale. Allocation of the sale price to land and improvements is optional. Include photographs taken from the street on all sales personally taken by the inspecting appraiser and all principal above ground improvements or unusual features affecting the price of the sale and attach to the comparable sale form. Include a map depicting the locations of the comparable sales.

Comparable sales should be verified by a party involved in the transaction, consistent with the provisions of 49 CFR 24.103 (a)(2)(iii). A party to the transaction can include a buyer, seller, broker, auctioneer, attorney, or anyone who has first-hand knowledge of the details of the transaction. The name of the individual who the appraiser spoke with should be listed in the write up of the comparable sale (for example: “John Doe, Agent” or “Jane Doe, Buyer”). If a party to the transaction cannot be reached to verify the sale, and the appraiser believes the sale data is still reliable, the appraiser should include the sale in the analysis, explain what steps were taken to attempt to verify the sale (for example: “The appraiser called and left messages with the buyer, seller, and agent and did not receive a return call”), and explain why it is relevant, reliable, and appropriate to include in the analysis. Sales that could not be verified directly with a party to the transaction should be used infrequently, and only when needed to produce credible assignment results. A copy of the signed Real Estate Transfer Declaration is recommended to have in the work file.

If confirmation of the sale with a direct party to the transaction is not possible and the appraiser relies upon either an indirect party or a secondary source (e.g., published data, etc.) to confirm and/or analyze the transaction, the appraiser is required to evaluate and comment on the reliability of the data source and ensure that the data is reasonable, accurate and reflects actions of typical market participants. Statements similar to "The sale was used based upon the appraiser’s experience in the marketplace." are not sufficient. Contact information required for indirect parties is the same as that required for direct parties to a transaction. If a secondary source is used (i.e., published source), then specific information (name, date, page number, etc.) must be provided.

Once a comparable sale is approved for use in the appraisal process, other appraisers may use the comparable sale. However, they must be satisfied with the sale confirmation and/or analysis. Each appraiser is responsible for the integrity of the comparable data used in their appraisal. All comparable sales used by an appraiser must be personally inspected by the appraiser.

The real estate market is not static, and the use of comparable sales must reflect current and competitive trends as observed by the actions of buyers and sellers in the market. The appraiser must utilize market data that is the most current and comparable to the subject property as of the effective date, which is available to the appraiser in the normal course of business. Unless performing a desk review, the review appraiser is always required to view the subject property and the comparable sales. Sources of comparable sale information such as the Assessor's office, Recorder's office, PTAX-203 Illinois Real Estate Transfer Declarations (green sheets), deeds, Multiple Listing Service, Midwest Real Estate Data, CoStar, LoopNet, and other such databases contain useful information and should be utilized as secondary data sources, but do not fulfill the regulatory requirement of verification by a party to the transaction.

The review appraiser should not accept an appraisal report that includes a comparable sale that the appraiser did not attempt to verify with a party to the transaction. If any comparable sales in the appraisal report were unable to be verified, the review appraiser should address the issue in the review appraisal and explain why the inclusion of the unverified comparable sale was necessary to produce credible assignment results.

Verification of the sale price and other factual data concerning the sale and property may be accepted from other appraisers who have verified such data; however, the appraiser is cautioned that they take complete responsibility for doing so and at a minimum should employ the extraordinary assumption as this may have impacted assignment results. Factual data includes such items as sale price, date of sale, grantee and grantor, sales concessions if any, property identification, size, number of rooms, access, income data, and financing of the sales comparables. Each appraiser must, however, inspect the comparable sale, listing or rental property and provide their own photographs taken from the street. In the case the appraiser is not able to include a photo that includes the improvement of the comparable property, a photo of a mailbox or other positively identifying verifiable component of the comparable property must be included in the appraisal report along with a photo of the improvement available from other sources (such as MLS, Assessor, Google, or other service). The reason for doing the aforementioned must be discussed within the appraisal report. All photos of the subject and comparables must be taken by the inspecting appraiser and cannot be assigned to a third party to perform. Photos from prior assignments are not acceptable.

In condemnation cases, the appraisers and review appraisers should personally verify the sales with a party involved in the transaction. When the valuation witnesses are unable to verify the pertinent facts of sales and this information is crucial to the appraisal, contact the SPAAG assigned to the project for an opinion regarding use of the sales. The SPAAG may also be able to take action not available to the appraiser to obtain the pertinent facts of the sale. This procedure may be helpful when a transaction involved contracts or trades.

Upon request and at the discretion of the district, a comparable sales booklet shall be prepared for the project. The district will work closely with the appraiser and identify the various types of properties to provide a range of sales that represent the properties along the project. The appraiser will continue to attach the specific sales used in the analysis of each appraisal. (See Section 3.5.5 - reference Comparable Sales)

Attach the comparable sales to the appraisal report or bind the information in a market data sales booklet with the sales numbered. When several parcels are assigned, the latter method is preferred based on district preference. The sales in the booklet are plotted and numbered on a map, and the map is made a part of the booklet.

3.5.7 Larger Parcel

Three tests have been upheld in the determination of a larger parcel: unity of title, contiguity, and unity of use. If a property's highest and best use requires it to be part of a larger parcel, and if this highest and best use of the larger parcel is legally permissible, physically possible, financially feasible, and maximally productive, then the fair market value of the land to be acquired is a function of the fair market value of this larger parcel.

The larger parcel determination guides the analysis of highest and best use, consideration of severance damages, and selection of comparable sales; and different opinions as to the larger parcel can lead to completely different fair market value opinions. Appraisers use three tests in determining the larger parcel—unity of title, contiguity, and unity of use.

Unity of title is a legal question and contiguity is an engineering question. But unity of use, the most powerful of the three tests, is an economic question to consider carefully. Unity of title generally requires that the title be under the control of a single individual or entity, and that the quality of the title be the same for all owners. Eaton (see reference below) advises appraisers to seek counsel when they are dealing with multiple parcels lacking identical title but with an integrated use. The key element is who controls the property rather than any rigid definitions of ownership. The contiguity test simply requires that the property be physically contiguous although some determinations have been made for contiguity even with a street separating the parcels. The unity of use test is the most important condition to consider. In the strictest terms, it requires that the entire property be devoted to a common use. However, the law generally only requires that the property have an integrated highest and best use. In other words, as Eaton points out, whether or not the property is actually dedicated to a common use on the date of valuation, it constitutes a single larger parcel if it has a common highest and best use. The appraiser should discuss this issue with the review appraiser and the district for each occurrence. Because the unity of use test is inseverable from the highest and best use analysis, the larger parcel is a matter of fact and not law. The jury or trier of fact, not the court, must ultimately answer the larger parcel question. See ILLINOIS EMINENT DOMAIN PRACTICE (IICLE) for further information or Eaton, James D., Real Estate Valuation in Litigation, 2nd edition, Appraisal Institute, 1995; ORELL ANDERSON, MAI, JACK WILLIAMSON, PH.D. AND ALEXANDER WOHL, Addressing the Larger Parcel, IRWA Right of Way Magazine, March/April 2016.

The analysis often requires the part acquired to be part of a larger parcel. If this highest and best use of the larger parcel is legally permissible, physically possible, financially feasible, and maximally productive, then the fair market value of the acquired land is a function of the fair market value of this larger parcel. When the highest and best use analysis leads to the conclusion that two or more vacant, legally separate parcels should be assembled together, then this assemblage of parcels becomes the larger parcel.

Example: A restaurant property operates and functions on two parcels separated by a street with the building and parking lot on separate parcels. Ownership is similar and unity of use is considered similar; however, there is no physical contiguity of the parcels. The larger parcel, although all three tests of the larger parcel are not met would be considered both parcels since the restaurant cannot function independently of the parking area and is an integrated use. An exception to this example may be properties located near a Central Business District (CBD) with on-street and / or public parking. A review of applicable market data should also be considered for support.

Example: A property includes multiple parcels with several buildings and several unimproved parcels of land. The market for this type of property typically functions with several buildings and one parcel of land for potential expansion based upon comparable sales evidence. The second parcel of land is sufficient utility for an independent use based upon market evidence. The larger parcel is likely determined to be the improved parcels with sufficient site area for potential expansion as supported by market evidence and a second independent parcel for the unimproved additional tract that has potential for independent development. Therefore, an analysis of land and improved parcels must be analyzed for support.

Example: An assignment involves two detached single-family residences in an area of owner-occupied homes which are contiguous, under common ownership, and have the same highest and best use. The properties meet the test of common ownership and common highest and best use but there is no integrated use. The highest and best use is to sell the homes to different buyers and the larger parcel would be each parcel independent of the other.

Example: An appraiser follows the definition of fair market value in the land acquisition manual which reflects the actions of a willing buyer and a willing seller. The appraiser may appraise a property with several areas of the property indicating defined different uses. For purposes of this example, assume the most probable use of the property is “as-is” and the area is not in transition. The assignment involves a commercial property fronting a highway which includes a residence with acreage behind the commercial use. The proposed acquisition acquires and potentially impacts land and site improvements from the commercial portion of the property fronting the highway. None of the residential site improvements or buildings are impacted. Land prices researched in the area suggest a higher per unit fair market value for commercial land than residential land with acreage. If the appraiser were to value the entire property as a whole, a lower unit fair market value (price per acre or sq. ft.) would result due to the contribution of the lesser valued residential land and acreage. The acquisition area from the commercial portion of the property would then be reduced as a result if this unit value of the whole is utilized. Again, this scenario assumes the residential use and acreage is not impacted; otherwise, value the whole property. Further items to be considered in this example:

- If the residential use is not separable, then the other question becomes: “Can the property remain (rebuilt) with a residential use under current zoning should it be destroyed in fire, etc.?” They are different uses if it is allowed to be rebuilt. If residential portion cannot be rebuilt, then it simply reverts to a commercial use if destroyed and becomes one whole commercial use and is valued accordingly.
- Zoning represents the better part of legal permissibility, and the courts have long held that fair market value is the standard for just compensation, and “what will this property sell for as either separable or in whole”, is the answer.
- Under the larger parcel, the unity of use test would suggest an appraiser could hypothetically consider as the whole property only the portion of the whole property utilized for commercial use, thus giving the owner the benefit for the commercial use affected by the acquisition. Questions / thoughts that should be asked include:

- Is there market evidence where properties similar to the subject have been subdivided?
- If the property were listed on the market, would it be necessary for the entire property to be sold together or is there potential for separate uses?
- A good example is often seen with farm homesteads and farm ground when the agricultural land is sold separately from the homestead.
- Unity of use would suggest the appraiser consider the area utilized for commercial purposes to become a hypothetical area of the whole property.

A review of assessment records, GIS mapping resources and other information should be utilized for the hypothetical area of the whole. In addition, a survey of the size of typical commercial sites in the area should be completed to ensure conformity. The process should be noted in the appraisal and a discussion with the district and review appraiser needs completed.

3.5.8 Highest and Best Use: Change in Use, Probability of Re-Zoning

The analysis of competitive market forces will shape the highest and best use of the land within the market where the property is located, creating fair market value. When the purpose of the appraisal is to determine an opinion of fair market value, the highest and best use process will identify the most profitable, competitive use to which the subject property can be put. The highest and best use is the foundation on which fair market value rests. Highest and best use provides the conclusion of the investigation of the competitive position of the property in the minds of the market participants.

Fundamentally, highest and best use as a concept applies to land alone because the fair market value of the improvements is considered to be the fair market value they contribute to the land. Highest and best use analysis of the land considers the potential uses of the land as though vacant. An opinion of fair market value of the property as improved considers the contribution to the fair market value of the existing improvements as of the date of observation. See the concept of Influence of Proposed Highway Improvement on (Fair Market) Value (Project Influence) in Section 3.2.4. Often, the market is significantly built up, and properties are being sold on the basis of their continued use; however, in an active market, properties may be in transition to other uses.

Property must be valued at its highest and best use. Often this is the actual and existing use of the property. Base all appraisals on the highest and best use of the land. In the development of an appraisal, the appraiser must distinguish between highest and best use of the land as though vacant and highest and best use of the property as improved. The property may have the highest and best use as a “stand-alone” parcel. While assemblage to an adjoining property may be likely, this is not a “highest and best use” opinion, as highest and best use requires the parcel to have its own highest and best use without assemblage and is otherwise “surplus land.” In opining the highest and best use, take into consideration whether the use is physically possible, legally permissible, financially feasible, and the most profitable. If multiple uses are possible, the use providing the greatest net return to the property owner is the highest and best use. An opinion of highest and best use before and after the acquisition is required, and if a change in highest and best use is opined as a result of the acquisition, the appraiser should support the highest and best use of the remainder with relevant market information such as different comparable sales than those utilized in the valuation of the whole property prior to the acquisition, if applicable.

Example: Consider a single-family residential property located in a commercial zoned area. If market demand for commercial use exists, the maximum productivity of the land as though vacant will most likely be based on a commercial use and in this case, the existing residential improvements may contribute little if any to the value of the property as a whole. If, however, the market value for residential use is greater than the market value of the permitted commercial use less demolition costs, then the highest and best use of the property will be for continued residential use.

In an analysis of the highest and best use of land as though vacant, the appraiser asks whether the land should be left vacant or developed. If it were to be developed, what type of improvement should be constructed? The analysis considers the highest and best use of the land as though vacant in relation to its existing and potential uses. In some cases, an appraiser may conclude the highest and best use of the land is to hold it for investment purposes until market demand justifies development. Depending on the timeframe, any existing improvements or use such as farming may be an interim use. Development may be in the foreseeable future; however, a change in zoning, improvements in infrastructure such as roads or the extension of utilities are needed for it to be realized.

Example: The possibility exists of removing existing improvements when buildings are present. An existing, older service station with no negative environmental issues is in an excellent location and the underlying land is a valuable commercial site. If a purchaser wants to develop the property, the existing service station improvements may contribute nothing to fair market value in excess of the land or may even negatively impact the final opined fair market value considering demolition expense. The potential use usually governs the price paid over the existing use if it is economically feasible.

An analysis of the highest and best use of the property as improved should consider the timing and intensity of use. The highest and best use may change in the foreseeable future especially if the property lies in the path of urban growth. The present use of the site may not be its highest and best use. The land may be suitable for a much higher, or an even more intense use. If development is not imminent the existing use may be an interim use which is covered later in this chapter.

The initial analysis of the market and land use regulations will tend to limit the available property uses to a few options. The appraiser should continue to ask if the use or uses are reasonably probable throughout the highest and best use analysis. Other available sites on the market may be equally or better suited for a specific use for the subject and competition from other properties should be considered. The test of legal permissibility helps the appraiser determine which use(s) is/are permitted by zoning and which use(s) could be permitted if a zoning change were approved. The uses may also be limited or prohibited by private or deed restrictions and / or long-term leases. Legal constraints can alter uses of the property. There are also many times deed restrictions will limit alternative uses (such as not being used as a banking facility in the future, etc.). Legal use also has to be compared to market demand which may deteriorate over time.

The physical characteristics of a site such as size, shape, topography, ingress/egress (access), utility, etc., might affect its highest and best use. Availability and capacity of utilities can affect potential uses of the property. Irregular shape or topographical variations such as flood hazard areas can reduce the utility of the site. Ease of access and the availability of access from adjoining roadways may enhance or detract from the highest and best use of a site.

The appraiser should consider the site characteristics affecting fair market value from the market in the before and after analysis.

Once an appraiser has considered the legally permissible and physically possible uses for a property as vacant, the financial feasibility of any use must be analyzed. Risk and external obsolescence related to a specific use should be incorporated in the analysis. The appraiser should analyze which uses are likely to create a fair market value greater than the amount needed to develop and market the property under those uses.

If the property is improved, and the appraiser concludes that its highest and best use as vacant is different from its current use, the appraiser should state if the existing improvements hold any interim contribution to the fair market value. If not, the cost to demolish the improvements and make the land available for development to its highest and best use should be reflected in the sales comparison approach for the land fair market value, and if applicable the improved fair market value of the property. The highest and best use of an improved property may or may not be the continuation of the existing use.

When a partial acquisition is being made, the appraiser must opine the highest and best use of the “remainder” property will change, when compared to its highest and best use before the acquisition. The appraiser must consider the impact of the proposed roadway improvements on the remainder as well as the impact that the acquisition will have on the physically possible, legally permissible, financially feasible and the maximally productive use of the remainder after the proposed acquisition is made. If the appraiser concludes that the highest and best use of the remainder property has changed as a result of the proposed partial acquisition and proposed roadway improvements, the appraiser must specify any enhancements and/or damages to the remainder property when the net effects of these enhancements and/or damages result in a loss in fair market value to the remainder.

Example: A partial acquisition acquires the fuel tanks, canopy and one of the pumps from a gas station on a small site. The site does not allow room to reconfigure, and the appraiser utilized gas station/convenience sales to value the whole property. After the acquisition, the highest and best use may have changed to a dairy store or local retail use requiring different comparables to be researched and utilized as indicated by the local market. A consideration of uneconomic remnant must also be reviewed.

The highest and best use may also be a use other than the existing use, provided the property is adaptable to the prospective use and provided the prospective use would be anticipated with such reasonable certainty that it would enhance the fair market value on that date. The prospective use cannot be so remote, speculative, or conjectural that it would not affect the fair market value on the date of valuation, and it is still what amount the property would sell for on this date. If market evidence tends to show a reasonable probability of a change in the near future in the zoning ordinance or other restriction, then the effect of such probability upon the minds of purchasers generally may be taken into consideration in opining present fair market value. Justify conclusions of rezoning and highest and best use that differ from present zoning or use by providing thorough explanations of factors considered. The following are some factors that may be considered when making decisions regarding rezoning and highest and best use:

- Physical characteristics of subject property,
- Available utilities to serve the proposed use, including cost of providing utilities,

- Location of subject property,
- Flood Plain: All properties participating in the National Flood Insurance Program are in a flood hazard area, those that are in a Special Flood Hazard Area may not be buildable and if improvements must be moved, may not be able to be re-built.
- Actual rezoning after the date of acquisition to demonstrate probability on the date of acquisition,
- Change in use patterns and the character of the neighborhood,
- Growth patterns in the area,
- Demand for certain uses in the area,
- Sales of similar properties at prices reflecting anticipated rezoning,
- Age of the zoning ordinance,
- Provisional nature of subject property's zoning classification,
- Rezoning of nearby properties to show the flexibility of the zoning ordinance,
- Comprehensive and master plans,
- Ordinances or deed restrictions affecting the property,
- Prior decisions by municipality to approve or disapprove applications to rezone property, and
- Length of time property has been zoned.

In investigating the reasonable probability of a zoning change, the appraiser must consider market trends in the area, zoning request history, and other documents such as a community’s comprehensive or master plan. Non-compatible uses with existing land uses in the area such as a gas station in the middle of an exclusive residential subdivision and uses where zoning changes have been denied previously such as industrial use where the zoning change requests have been turned down consistently over the past few years can usually be considered for elimination for potential higher and best uses. However, a zoning request change from residential to commercial may be reasonable based upon historic and recent zoning request approvals in the market area and also if the comprehensive or master plan designates other uses for a property than its current use. A site zoned residential in a transitional neighborhood for example may reflect commercial potential and a different highest and best use if other similar sites in the neighborhood have been recently changed to reflect commercial zoning. If the municipalities comprehensive or master plan also reflects the commercial zoning, an appraiser may consider this evidence that a potential rezoning from residential to commercial is reasonably probable.

Additional evidence of the possibility of new zoning includes demolition of existing structures and development, and land assemblage for development sites. Evidence used to support new zoning may include applications, hearings, actions by municipalities and interviews with zoning and planning officials. This information may be useful in evaluating the possibility of a zoning change even if there is presently no market evidence of a zoning change.

The probability of a zoning change may not be fully certain, and it may be challenging to opine if the potential market participants might even pay a premium as they anticipate a potential zoning change. Many sales never close because they were subject to a pending zoning change that was never obtained. Under no circumstances can a property be valued as if it were already rezoned for a higher use. The property must be valued only in light of the probability of obtaining a rezoning. Risk of being denied a rezoning, or that an exaction or other condition may be placed on the rezoning, always exists. The time delay and costs associated with the rezoning process must also be considered. If the probability of a rezoning is impacted, either positively or negatively, by the government project for which the property under appraisal is being acquired, such impact must be disregarded.

3.5.9 Highest and Best Use: Possibility of Assemblage

This issue of assemblage must be discussed with the review appraiser during the valuation process for concurrence. Certain parcels can achieve their highest and best use only as part of an assemblage of parcels and may have NO highest and best use unless assembled The appraiser must determine the feasibility and probability of assemblage or opine on the highest and best use and other decisions related to the appraisal on the assumption that such an assembly would be made. For example: A large-scale industrial plant may not have the potential for such a use without the assemblage of multiple smaller parcels. These smaller parcels individually would not have the potential or highest and best use without assemblage and may have a much lower fair market value for alternative uses. If a conclusion by the appraiser is that the highest and best use can be achieved through assemblage, the costs and timing must be considered. If timing to development through the assemblage process of multiple parcels would not be feasible, then this must be considered in the reasonable estimate of the assemblage. Assembled parcels are often purchased reflecting a premium price that may be higher than market, especially for properties acquired near the end of the final assemblage. These costs must be reflected in the resulting land fair market value opinion. Any extraordinary assumptions or hypothetical conditions must be identified as such and that the use thereof may have impacted assignment results and/or the opined fair market value contained herein.

Additional suggested material references for the subject of Highest and Best Use can be found in Pages 305-320, Appraisal of the Real Estate 12th Edition, Appraisal Institute and Page 271-271, Real Estate Valuation in Litigation, J.D. Eaton, MAI, SRA.

3.5.10 Consistent Use

An appraiser shall follow consistent use theory in the highest and best use analysis and subsequent property valuation. Consistent use theory states that land cannot be valued on one highest and best use while the improvements are valued based on another highest and best use. As an example, if a residence is located in a commercial area, the property cannot be appraised based on a residential use for the improvements plus commercial use for the underlying land. The fair market value shall be based upon its highest and best use, either as a residence with commercial potential based on sales of similar properties with similar potential, or as a commercial site giving little to no contributory value to the improvements. Improvements are to be valued to the extent they contribute to the highest and best use of the property or for their value for removal, whichever is greater. There may in fact be a deduction in fair market value because of the required demolition costs of the house which might have to be removed in order to develop the commercial site to its highest and best use.

Example: The appraiser is assigned a property located in an urban area. The property consists of a 2,600 sq. ft. home located on a 30,000 sq. ft. parcel of land. The property is currently zoned B-1, Business Service District, which requires a minimum of 25,000 sq. ft.

While researching sales, the appraiser identified several comparable vacant land sales that sold for $200,000. The appraiser also identified several sales improved with residential dwellings located on lots of similar size that sold for $175,000. Based upon market evidence, the appraiser determines that an immediate demand exists for commercial property in the subject property's market area. As a result, the appraiser determined that the highest and best use of the property, as if vacant, is for commercial development. The appraiser also determined that the highest and best use of the property, as improved, would be to demolish the improvements. In addition, upon verifying sales of properties with commercial potential, they learned that demolition costs are a consideration and that the cost to demolish the residential structure on the subject site would be approximately $15,000.

In this example, the dwelling and its supporting improvements have no contribution to the fair market value. If the acquisition is a total acquisition, compensation will be based upon the property's highest and best use as a commercial site. Consequently, no compensation for the residential improvements will be paid to the property owner. However, if the acquisition is a partial acquisition whereby the dwelling will remain after acquisition, no payment should be made for the supporting site improvements to the dwelling that may be acquired based upon the highest and best use determination. Most importantly, no damages should be assessed to the remaining dwelling and its supporting improvements since they have no contribution when opining the "before fair market value" of the property.

3.5.11 Interim Use

When appraising real property one of the most important factors the appraiser must opine is the highest and best use of the property. When the current highest and best use of a property is opined to be for a short time, before transitioning to a different highest and best use, the current use is considered to be its *interim use,* which is sometimes referred to as *transitional use*.

Interim Use is defined in the Real Estate Appraisal Terminology (revised edition, p.137) as "that existing and relatively temporary use where the transition to highest and best use is deferred". In essence, a property may have two highest and best uses, one for a relatively short period of time, or its current highest and best use, while another will become the highest and best use at some point in the future. This is usually the result of changing land use patterns often in combination with obsolescence in the improvements.

A building or other improvement may have an interim, use when the property's transition to its highest and best use is deferred. Using the example from the Consistent Use Section, the present market may not be suitable for immediate development of the property to its commercial highest and best use. The appraiser may find that the residence is suitable for deriving a short-term rental income that can act to offset taxes and other holding costs that may occur while the optimal time for commercial re-development approaches. Interim uses are by their nature short term. A long-term interim use exceeding five years raises a serious question as to whether the appraiser's highest and best use conclusion is remote and speculative.

The best method for opining whether the interim residence actually contributes to the fair market value of the property as a whole is to analyze comparable sales of properties in the same economic position. If adequate comparable sales are not available, the appraiser may utilize an appropriate method to find a present value for a temporary income stream from the residential use. This income stream shall be market based. The resulting present fair market value can be considered as it contributes to the commercial land fair market value only if the land fair market value recognizes the delay in development to a commercial site. It would be a violation of consistent use theory to simply add the present fair market value of the temporary residential use to a commercial land fair market value reflective of immediate development to its highest and best commercial use.

On occasion the appraiser will encounter situations where the land fair market value has exceeded the fair market value that can be generated by the improvements and yet the land is not ready for development. This could be due to impending but not yet present improvements in infrastructure like roads or utilities. It may also be due to market demand factors that have not yet matured. Whatever the cause, the appraiser is left with the dilemma of valuing the interim use improvements.

If income information is available and since the land is not yet ready for development, there is no income during the remaining holding period other than that contributed by the interim improvements. The fair market value of these improvements then is measured by discounting the projected net income stream for the time remaining and deducting the present cost of demolition at the termination of use. The appraiser should be careful to only include expenses attributable to the improvements alone, i.e., those that would not be incurred if the improvements were removed. Alternately, this fair market value may be supported by finding sales of other properties with interim uses and deducting land value to opining the contribution of the interim use improvements. The Cost Approach is not really relevant in this scenario since the improvements do not serve the highest and best use. However, if included, the appraiser should use the limited remaining economic life as a basis for depreciation as the actual condition of improvements is a relatively moot point.

Several factors must be taken into consideration when utilizing this methodology. First, it may be more difficult to attract or maintain tenants when they are aware the improvements have a limited remaining economic life. Secondly, some investors may prefer the liquidity of removing these improvements and may also be reluctant to endure the trouble and potential liability. These factors should be taken into consideration when choosing an appropriately risk-rated yield. Contact with the district and review appraiser should also be coordinated.

3.5.12 Speculative Use

Speculative use is defined as the purchase or sale of property motivated by the expectation of realizing a profit at some future point in time from a future highest and best use. As a general rule, the remote or speculative damages are not to be considered. If damages are considered, the appraiser should exercise caution that any premium concluded for land and/or improvement for a potential future highest and best use is clearly derived from market-based transactions. Uses considered must be reasonably probable or likely to have an effect on the present fair market value of the land and purely imaginary or speculative fair market value should not be considered. Qualitative adjustments are not acceptable support for deriving a premium paid for a speculative future use. The support must be quantifiable.

3.5.13 Excess Land vs. Surplus Land

Excess land is a portion of an existing parcel that is not necessary to support the site's highest and best use. Excess land can be developed either to expand the existing improvement and/or for independent development.

Surplus land, on the other hand, may allow the existing improvements to be expanded, but it does not allow for a subdivision to occur with a separate highest and best use. An example of surplus land is additional land adjacent to an office building that might be able to be used to expand the building but cannot be subdivided into a separate site. Surplus land might also be used for other uses (e.g., an employee volleyball court) and may have the potential for assemblage with contiguous parcel(s).

Note: Excess land always has a separate highest and best use, whereas surplus land does not have an independent highest and best use. Also, neither of these appraisal related terms should be confused with the term "excess property" as used in Chapter 7.

When valuing excess land, either vacant or improved, care should be taken to develop the highest and best use of the excess land. For example, a typical residential dwelling site in the subject's market area is 3 acres. The subject site is 6 acres. The additional 3 acres will physically and legally support the independent development of a second residence. Therefore, 3 acres of the site is considered excess land. The additional site must be considered in the sales comparison approach when compared to other properties that may not have excess land.

3.5.14 Excluding the Valuation of the Whole Property

As was discussed in Section 3.2.3 on the Unit Rule, to arrive at an opinion of fair market value of the property to be acquired, you should opine its fair market value considered as a part of the whole tract before the taking and not its value as a piece of property separate and disconnected from the rest of the tract. However, when the acquisition is minor (fee simple or easement) and a valuation of the whole property would involve more time and expense than the appraisal problem warrants, a determination may be made in the appraisal assignment to exclude the valuation of the whole property in the scope of work.

Valuing the whole as hypothetically unimproved may be allowed when the acquisition(s) is/are needed from a property where the major improvements contributing to the fair market value of the property are located or configured such that the acquisition does not impact their function, or where there is little or no unity of use between the major improvements and the area of the acquisition, with the exception of cost to cure damage considerations for items such as fencing, signs, driveway material, landscaping and other similar items. Hypothetical conditions must be labeled as such and that their use may have impacted assignment results and/or the opined market value. Some examples may include:

- an active railroad line which involves hundreds of miles of track, switching equipment, switching yards, etc.
- utility properties to include a generating station, pipeline, water plant, etc.
- tank farm, refinery, etc.
- a large hospital/medical campus, college campus, resort, military facility, etc.

For properties other than those examples as described above, an appraiser **must, at a minimum**, develop an opinion of the fair market value of the whole property as hypothetically vacant or unimproved, while only considering the contributory value of the site improvements in the part to be acquired. The appraiser is responsible for conducting an appropriate analysis to ensure the acquisition is sufficiently minimal in nature such that no compensatory damages to the contributory value of the improvements will result from the proposed acquisition, and that it is not necessary to include a detailed opinion of before and after valuation of the improved whole property in the appraisal report.

Example: A 5 ft. strip from a residential property with setback that is greater or similar to the market area and the remainder property remains in conformance with zoning requirements after the acquisition. The appraiser must value the entire residential property at a minimum as land only with the contributory fair market value of the site improvements, if any, that fall only within the part taken.

Example: A large agricultural property with multiple improvements that are not damaged as a result of a partial strip acquisition of several acres along a roadway. The appraiser must value the entire agricultural property at a minimum as land only with the contributory fair market value of the site improvements, if any, that fall only within the part taken.

In these instances, the acquisition will not impact the improvements either negatively or positively. It is the appraiser's responsibility to make the initial determination that any proposed appraisal assignment fits this situation and discuss this with the review appraiser and DLA for concurrence. DLA may also make the determination during the initial scoping of the assignment.

3.5.15 Valuation of the Whole Property Before the Project and Acquisition

A valuation of the whole property is always required before the project with the exception of those examples listed above in Section 3.5.14. Appraisal standards, regulations, and/or policies unique to eminent domain valuation must be followed in the valuation of the whole property, part taken, and remainder property. The following guidelines are not all inclusive but are applicable and must be considered:

- An appraiser **<u>must, at a minimum</u>, value the whole property before the project as hypothetically vacant or unimproved** with the contributory fair market value of the site improvements in the part taken for properties other than those examples as described above in Section 3.5.14 (Excluding the Valuation of the Whole Property).
- Section 3.2.3 (Unit Rule (Undivided Fee Rule)).
- Section 3.2.4 (Influence of Proposed Highway Improvement on Value).
- Section 3.5.7 (Larger Parcel Determination).

3.5.16 Contributory Value of the Part to be Acquired to Whole Property

The majority of the acquisitions undertaken by the department are partial acquisitions from a larger parcel. The fair market value of these partial acquisitions will be determined by the fair market value of the part to be acquired, which is based upon the contribution of the fair market value of the acquisition to the larger parcel, before the project.

The Dictionary of Real Estate Appraisal 6th Edition, published by the Appraisal Institute, defines contributory value as: A type of value that reflects the amount a property or a component of a property contributes to the value of another asset or to the property as a whole.

The term contributory fair market value does not refer to the value of a specific component of a property being analyzed, independent of the subject property. Instead, contributory fair market value refers to that portion of the market value of the subject property that is attributable to the specific component of the subject property (e.g., land, buildings, site improvements, timber, mineral rights, etc.) being analyzed.

For the appraisal purpose, the term site improvement will be used to refer to any improvement to the subject property, except for primary building structures (examples: residences, commercial or industrial buildings, barns, etc.). Examples of site improvements include, but are not limited to, landscaping, driveways, fencing, wells and septic systems, irrigation systems, hardscaping, walls, etc.

When site improvements are acquired, their valuation will be based upon their contributory fair market value to the larger parcel in the before condition. There may also be a potential for severance damages to the remainder of the larger parcel, resulting from the acquisition of the affected site improvements that will be addressed by the appraiser.

Trees are based upon their contribution to the fair market value of the property and each situation needs to be based upon how the market would view the contribution of the tree(s) to the entire property. One large, stand-alone tree in front of a house may be worth more than a cluster of trees. However, several trees together may provide more than just a pleasant view, they may provide a buffer from road noise and light, creating a more private and quieter homestead. Their removal could damage the overall appeal of the property. Conversely, a cluster of trees lying in the back of 40 acres may have little overall contribution to the fair market value of the whole.

During the field inspection of the subject property, the appraiser will note the specific items of landscaping that will be impacted by the proposed acquisitions and whether they are located within a fee simple acquisition, a permanent easement, or a temporary easement (items of landscaping that are encroaching on the existing right of way should also be noted but are not included in the compensation – See Section 3.5.18). An accurate inventory of the impacted items and their location within the proposed acquisition is essential in determining whether an item will be impacted, and compensation is appropriate. The appraisal report must contain the complete inventory of impacted landscape items, photos of the impacted items, and the acquisition area (Fee Simple, PE, or TE) they are located within.

Typically landscaping may only have a contributory fair market value to an improved property, in part because the act of improving a vacant site would likely involve the removal of any existing landscaping. The appraiser may encounter a situation where a vacant site has planned landscaping present that will be affected by the proposed acquisition. If it is the appraiser’s opinion that landscaping on a vacant site contributes fair market value, they are encouraged to discuss the valuation of the affected landscape items with the assigned review appraiser.

The type and quantity of landscaping installed on commercial property is typically dictated by zoning requirements, market norms, or both. As a result, the loss of a portion of a commercial property’s landscaping would have the potential to create a non-conforming status, based on zoning requirements, or the loss may place the subject property at a competitive disadvantage in the marketplace. Both of these possibilities have the potential to adversely affect the fair market value of a commercial type of property.

Therefore, a typical buyer of commercial property would be aware of the market or zoning requirements for landscaping and would factor corrective measures into their purchase price to deal with any potential deficiencies. For the above reasons, the contribution to the fair market value of any landscaping acquired under a partial acquisition from an improved commercial property should consider its replacement cost. As stated above, this method is consistent with the thought process of a typical commercial buyer. This method is also considered reasonable because commercial properties do not typically benefit from the existence of mature trees.

Landscaping is typically updated periodically to fit with market changes and expectations, so typical commercial landscaping is more easily replaced than mature residential landscaping that tends to include mature trees. Finally, by valuing commercial landscaping based upon its replacement cost, the potential for severance damages resulting from lost landscaping is reduced.

3.5.17 Underlying Fee Simple Rights to Existing Dedicated Right of Way

Occasionally it is determined to be appropriate for the department to acquire the underlying fee simple rights that were not acquired when the original roadway right of way was acquired by dedication (i.e., a highway easement) (see Section 4.3.3). In many cases, the property owners at the time were compensated for the fair market value of the highway rights that were acquired. The plat will typically show the acquisition of the underlying fee simple rights in the schedule of lands and interests as existing right of way acres required. What is being acquired is the underlying fee simple rights that remained after the acquisition of the original highway easement.

When valuing the underlying fee simple rights within an existing highway easement area, the appraiser must analyze the nature of the property rights that remain from the original highway easement acquisition. Some local zoning ordinances may permit the recognition of the area of underlying fee simple when calculating density or minimum site size requirements. This may suggest a higher fair market value for the underlying fee simple rights, or possibly even a potential for severance damages to the remainder of the larger parcel resulting from the acquisition. However, if this condition is found to exist the appraiser should consult with the review appraiser assigned to the parcel being appraised. Under most circumstances, unless the original highway easement specified something different, most highway easements are assumed to have acquired all rights except the right of reversion, and the underlying fee simple rights are assumed to have only a nominal contributory fair market value to the larger parcel.

Under no circumstance should the appraiser indicate that the underlying fee simple rights being acquired are non-compensable. This suggests that the state has the right to take the rights in question without compensation. This is inconsistent with the acquisition that is taking place and is completely different than saying the rights contribute a nominal fair market value.

3.5.18 Site Improvements Encroaching on Existing Right of Way

It is the department’s policy to award no compensation for improvements which are encroaching on existing right of way. Encroachment is a condition where a private site improvement, or land use activity extends into existing public roadway right of way. Once it has been determined that a site improvement, which is located within the area of the proposed acquisition is not encroaching on existing right of way, then it will be necessary to determine whether or not the affected improvement will be acquired. The appraiser should utilize the following guidance in determining whether a non-encroaching site improvement should be valued for acquisition:

- If the site improvements fall within a fee simple acquisition, then they will need to be acquired, even if they will not be removed as part of the current project for which the appraisal is being completed. This is because the improvements will fall within the new highway right of way and be under control of the acquiring agency such as IDOT. The acquiring agency will then have the right to remove the improvements at any time after their acquisition.
- If the site improvements fall within an easement acquisition, then it must be determined if the project activity within the easement will result in the removal of the improvements.
- If the activity will not result in the removal of the improvements, then they will not be acquired and not need to be valued but should be noted in the appraisal as such.
- If the improvements will be removed as a result of the construction activity within the easement and will not be replaced as part of the project, then the improvements will need to be acquired and the contributory fair market value must be valued in the appraisal report as it relates to the whole property.
- If the project engineer cannot specifically determine if a site improvement within an easement area will be impacted by the proposed construction project, then the improvements will need to be considered as to their contribution to fair market value in the appraisal report.

3.5.19 Valuation of the Remainder and Non-Compensable Items of Damage

Certain elements of damage that may adversely affect the fair market value of the remaining property are non-compensable under Illinois law. For information on non-compensable items of damage, see the most recent version of “Illinois Eminent Domain Practice” presented by the Illinois Institute for Continuing Legal Education and the IL Attorney General’s “Condemnation Manual”. This information can also be obtained from CBLA’s Appraisal Unit Manager. If legal advice is needed, the district should contact the Office of Chief Counsel for direction.

The following list is not all inclusive but gives some examples of non-compensable damages:

- Lost business or profits.
- Loss or frustration of business opportunity.
- Loss of goodwill.
- Loss of aesthetic or sentimental value to the owner of the property.
- Changed use of a public way (Converting a two-way roadway to a one-way or changing the route designation of a roadway).
- Loss arising from an owner’s inability to find an adequate substitute location.
- The temporary presence of noise, dirt, and fumes caused by an increase of traffic and disturbance from construction.

- Loss due to an annoyance and/or inconvenience suffered by the public in general.
- Loss as a result of a contractor performing construction work for the proposed roadway improvements.
- Loss resulting from circuitous travel caused by dividing a highway (creating a right-in-right-out situation).
- Loss resulting from re-routing or the diversion of traffic.
- Loss resulting from an increase or decrease in the amount of traffic volume.
- Danger from possible illegal acts that may result from a roadway improvement.
- Loss as a result of the reasonable exercise of police powers *(see Section 3.8.1.3).*
- Loss resulting from a change in access if the owner still retains reasonable access to the public road system.
- Loss that is speculative, uncertain, and remote or that is difficult to discern.
- Loss caused by the acquisition and construction on the land of others.

3.5.20 Valuation of the Remainder and Damages

Damages to the remainder are related to the diminution of the fair market value. The amount of damages or benefits is opined by subtracting the "fair market value of the remainder after acquisition" from the "fair market value of the remainder before acquisition" and must be related to the depreciation in the fair market value of the remainder." The valuation of the remainder after the acquisition involves a similar valuation process used to opine the fair market value of the whole property. After the highest and best use of the remainder has been opined, the appraiser should make a diligent search for the most comparable sales to support the valuation of the remainder after the acquisition. Sales used to support the fair market value of the whole before the acquisition can be used to value the remainder if they are the most comparable to the remainder. See the Sections for Non-Compensable Items of Damage (3.5.19) and Uneconomic Remnants (3.5.21).

Land Economic Studies can be taken into consideration when making adjustments to the sales used to opine the value of the remainder.

When the appraiser opines that the remainder will not be damaged or benefited, a thorough explanation of this finding is required, along with an opinion of the after fair market value as explained in the instructions for the Appraisal Report (LA 30700 Template), will be sufficient to meet requirements for an after fair market value for the complex appraisal format. If damages to the remainder include permanent and cost to cure on one property, a description of each type of damage may be discussed separately in the report; however, only show the total amount of damages to the remainder on the appraisal form (e.g., $28,350 damages including cost to cure).

3.5.20.1 *Severance Damages*

The Appraisal Institute's "Real Estate Valuation in Litigation, 2nd edition" defines severance damages as the diminution of the fair market value of the remainder area, in the case of a partial acquisition, which arises (a) by reason of the acquisition, and/or (b) the construction of the improvement in the manner proposed.

In partial acquisitions when only part of a larger parcel is acquired, the fair market value of the part acquired is not the sole measure of compensation; the injury (severance damage) or benefit to the part not taken is also to be considered. If the part not acquired, the landowner's remainder, is left in such shape or condition as to be in itself of less fair market value than before, the owner is entitled to additional damages on that account.

It is incorrect to think of severance damages as a separate and distinct item of just compensation apart from the difference between the fair market value of the remainder as part of the whole before the acquisition and the fair market value of the remainder after the acquisition as will be affected by contemplated improvements.

The fair market value of the property taken as part of the whole must be considered prior to consideration of severance damages. Compensable (severance damage) damages may reflect a decrease in the fair market value of the remainder arising from:

- the department's planned use of the part acquired, and/or
- the relation of the part acquired to the larger parcel.

As with any element affecting fair market value, damage to the remainder (i.e., diminution in value) can never be assumed but must always be fully supported by the facts of each situation.

The extent to which the utility of a property has been impacted by the acquisition must be established by factual information and analysis and must never be assumed or based on speculation.

The following subsections will assist the reader in identifying potential severance damages resulting from proposed takings and, or subsequent construction projects. They will also address the state's preferred methods for documenting and measuring any identified severance damages. The scenarios covered by the subsections are not limited to the only situations where severance damage can occur, and not all instances of the described scenarios will necessarily result in severance damages. This is a guide only, and the final opinion of the existence or absence of severance damages is the responsibility of the appraiser.

3.5.20.2 *Incurable Severance Damages*

In general, severance damages come in two basic categories: incurable and curable. An incurable severance damage is a loss in fair market value to the remainder of a larger parcel, resulting from a partial acquisition and/or a subsequent construction project, which cannot reasonably be physically or economically corrected.

Examples of incurable severance damages include the impacts to fair market value resulting from:

- An acquisition accompanied by a change in the grade of a roadway that eliminates a property's view of a lake.
- An acquisition and roadway modification that places the driving lanes of a highway significantly closer to a single-family residential structure.

- An acquisition of access rights that results in a building site losing all physical and, or legal access and becoming landlocked.
- An acquisition that results in a size reduction of a buildable site to a point where it is no longer buildable.
- An acquisition that results in the elimination of a use that has been grandfathered under the current zoning ordinances.

The key feature in all of these situations is a change to the remainder of a larger parcel that cannot reasonably be corrected. There may be no way to physically correct some of the changes; some impacts could potentially be corrected by modifications to the remainder's improvements, which are very expensive; or the corrections might take the form of acquiring an adjacent parcel of land or an easement, which is a speculative correction and should not be considered. If a potential correction exceeds the fair market value loss due to the acquisition and subsequent construction project, or is speculative in nature, then the severance damage is considered to be incurable. The only way to measure incurable severance damages is through the use of the before and after appraisal method after the fair market value of the part to be acquired is established. If the appraiser is unsure whether a potential severance damage to a specific parcel is curable or incurable, they should discuss the impacts and the nature of the potential severance damages with the review appraiser assigned to the parcel.

3.5.20.3 *Parking*

When appraising an acquisition that features parking, a description of the existing parking area must cover at a minimum the following attributes:

- Lot condition.
- The number of parking spaces and the number of ADA accessible spaces.
- A description of the traffic patterns and access to the lot.
- A statement of whether or not the parking conforms to local ordinances and zoning.
- An analysis of whether or not the existing parking is suitable for the highest and best use as improved (if applicable).
- An assessment of whether or not the number of parking spaces can be expanded at a future date.
- A description of the location of the parking area relative to the location of the improvements.

If a partial acquisition of the property is made, the appraiser must determine if the parking, after the acquisition, is impacted by the acquisition. If so, the same attributes outlined above are considered. When evaluating comparable sales, the appraiser must analyze the attributes outlined and compare them to the subject when opining the before and after fair market value. After doing so, a conclusion is reached as to whether or not damages, or cost-to-cure items, are present (e.g., re-striping costs to make better use of the remaining parking area).

3.5.20.4 *Measuring Setback – Residential Improvements*

The setback for a residential structure shall be from the existing right-of-way line to the closest point of Living Area. Open porches and/or covered porches or garages regardless of method of attachment to the associated structure are not considered gross living area as per the ANSI Standard.

Porches which have been enclosed in such a manner as to make them usable on a year-round basis are to be considered part of the gross living area provided the area is contiguous to the gross living area of the home, the quality of the finish equal thereto, heated by permanently installed heating system and accepted in the market as per ANSI Standard requirements.

3.5.20.5 *Severance Damages Resulting from Change in Proximity*

A change in proximity generally refers to a change in the distance between the highway right of way line and a building or improvement. This change may have impacts on the contributory fair market value of the existing improvements. A change in proximity affects improvements because they cannot be moved and the nearness of the right of way line to the improvement can impact the legal status, or marketability of the improvement. The impacts to the site will typically result from market impacts, or a change in highest and best use, based upon a change in size or shape.

When analyzing the impacts of a change in proximity, the following items must be considered and addressed in the appraisal report:

- What is the distance between the improvement and the right of way line (setback) in the before condition? This is factual data based upon available survey and plan data. If the available mapping does not provide this information, the appraiser may need to request it from the project engineer.
- Does the before condition setback meet minimum zoning requirements? Is the subject property in conformance with the minimum setback requirements? This is factual data based upon existing zoning ordinances.
- How does the before condition setback compare to similar properties in the subject's market area? This data will take the form of comparable sales data as well as a visual inspection of the neighborhood and an analysis of available aerial photography.
- What is the distance between the subject's improvement and the right of way line in the after condition? This is factual data based upon available survey and plan data. If the available mapping does not provide this information, the appraiser may need to request it from the project engineer.
- Does the change in proximity alter the zoning conformance of the subject property in the after condition? This is factual data based upon existing zoning ordinances.
- Does the change in the setback of the subject's improvement (proximity change) affect the subject property's ability to compete with the same properties that were considered similar to the subject property in the before condition? This data will take the form of comparable sales data as well as a visual inspection of the neighborhood and an analysis of available aerial photography.

The opinion of the possible existence of severance damage resulting from a change in proximity is most appropriately arrived at through a before and after analysis. The analysis of the before and after conditions of the subject property must be based upon the factual data identified above, not on a perceived loss to the owner of the subject property resulting from a physical change to the affected parcel. The owner will undoubtedly perceive the physical change to the subject property, resulting from the change in proximity, but will the market indicate a change in fair market value?

The following is a list of items to consider in the appraiser's analysis:

- If a house is closer to the right of way line (setback), in the before condition, than typical houses in the neighborhood then it will already be negatively impacted by the proximity of the right of way line, any further reduction in the setback will likely have less of an impact than a similar reduction would have on a house with setbacks more typical for the market.

- If a house is farther from the right of way line (setback), in the before condition, than typical houses in the neighborhood, then any fair market value loss resulting from a reduction in the setback will be limited to the amount of any fair market value premium attributable to the larger than normal setback. This should be true as long as the change in proximity does not create a situation where the after condition of the house becomes less than what is typical for the neighborhood.

- When the effects of a change of proximity are extreme in nature, the appraiser must recognize that each house has a minimum basic shelter value that will always exist. It is highly unlikely that a change in proximity, that does not involve the removal of a house, will ever be so severe that a house will have no fair market value in the after condition. Presuming that the house is otherwise marketable in the open and competitive market and contributes to the fair market value in excess of land only.

- There may be a temptation to tie a change in proximity to changes, or a lack of changes, in the centerline or edge of the driving lane resulting from the proposed construction project. This temptation must be avoided in performing the before and after analysis. The market analysis should be tied to changes in the location of the right of way, not the roadway. Even though the road location may not change substantially under the current project, a change in the location of the right of way line will permit future moves of the roadway that may not be compensable if there are no additional right of way acquisitions.

- Typically, if the highest and best use of the subject property is based upon the subject as improved, then any damages resulting from the impacts to the site will be included in the before and after opinion of severance damages. If the highest and best use of the subject property is as vacant, then severance damages resulting from a change in proximity will not be an issue.

3.5.20.6 *Multiple Remainders*

In some instances, the acquisition of a portion of a tract of land will cause the remaining property to be left in two or more parts. The remainder properties may be impacted either positively or negatively by the project and the appraiser must evaluate the highest and best use of the remainders and the diminution or enhancement to fair market value. This may be because of a special feature in the design of the highway or because the original tract was already divided into two or more parts by existing roads but is being used as one property.

If the property is already divided before the acquisition, this fact may indicate a highest and best use, both before and after the acquisition, as separate tracts indicating no loss in fair market value due to additional selling expenses. The fact the parts are being used together in the operation of one business does not mean that the parts have plottage value, unless the contributory fair market value of each part is greater when used with the other parts than its fair market value would be as a separate tract with no relationship to any other property.

Example: A new highway alignment severs an agricultural tract with a highest and best use before and after the project of continued crop production due to the high productivity of the soils and influences and trends in the market area. The severed remainder north of the alignment is large enough to support continued use for crop production. The severed remainder south of the alignment becomes smaller than can be utilized efficiently for farming and accompanied with irregular shape as a result of the alignment is considered damaged for future crop production. The analysis of the highest and best use of the remainder property must be completed and consideration given to any effects the acquisition has upon the remainder.

3.5.20.7 *Cost to Cure*

After a partial taking, an owner frequently must adapt the remaining property to the changed conditions caused by the acquisition. Analysis of cost to cure may be included in opining the fair market value of the remainder. The remainder property is appraised in its uncured condition. Cost to cure should not exceed what damages would be if cost to cure were not applied. Cost to cure should be considered in terms of how the market reacts (i.e., what a willing buyer and seller would consider a reasonable cost to a property in need of repair or other corrective action). Expenditures made and costs incurred in adapting the land to use after the acquisition are relevant, if reasonable and economical, as evidence of the depreciation in fair market value, but not a recoverable item in themselves. These costs must not only be economically reasonable but also must relate to the fair market value of the remainder. See Section 3.10 (Specialty Reports) for valuation of specialty items. The following are not all inclusive but demonstrate cost to cure examples of damages to the remainder.

Cost to Cure – Septic Field example: The proposed acquisition includes a section of septic drain field servicing a recently constructed home. This home has no access to a public sewer. Its fair market value prior to the proposed acquisition is opined at $200,000. A cost estimate of $10,000 was obtained by the appraiser from a local contractor to relocate the drain field out of the acquisition area. If the cure is not undertaken, the home's fair market value after the acquisition is opined at $50,000. Since the diminution in fair market value is $150,000 and the "cost to cure" (cost to re-establish a drain field) is only $10,000, the appraiser must conclude the damage is curable and give consideration of the estimate as an example of evidence how the market would take corrective action.

Cost to Cure – On-Premise Sign example: The proposed acquisition includes an on-premise sign that lies within the acquisition area. A cost estimate of $3,000 was obtained by the appraiser to move the sign onto the remainder property. The cost estimate is used as a guide for the appraiser in considering the relocation of the sign on the remainder and should not be used based upon a dollar for dollar basis. The cost to cure must consider whether relocating the sign versus damages to the remainder property without signage is lower. Consult DLA to verify if the relocation program will be used (See scope of work for details and Section 3.8.6).

Cost to Cure – Fencing example: In a partial acquisition of a larger parcel, if fencing is determined to be impacted by the proposed acquisition, or subsequent construction project, the potential impacts must be considered by the appraiser.

- If the fencing is located so far within the existing right of way that it is obvious the property owner did not attempt to place the fence on the right of way line, then the fencing is encroaching on the highway right of way and no compensation for the encroaching fence is warranted. The appraiser must verify the right of way location in relation to the affected fencing with the project engineer.

- If the fencing is located within the existing right of way, but sufficiently close to the right of way line to suggest that the owner attempted to recognize the line, then the impacts to the fencing should be considered and compensation opined. If this condition exists, then the appraiser should consult with the project engineer to verify the right of way location in relation to the affected fencing.

- If the fencing is located off existing right of way, then the impacts to the fencing should be considered and compensation estimated.

When the department acquires fencing that is serving a functional purpose (e.g., farm fence, security fence, etc.) and it is necessary for the continued use of the property, the appraiser will place an estimated cost to re-enclose the remainder with a similar fence (cost to cure). The estimated price to re-enclose the fencing considers the cost to install and replace similar fencing in the area.

For example: If the existing fence is three strand barbed wire, the appraiser considers replacement cost date by obtaining cost estimates from local fencing contractors to complete the work. If not possible, the appraiser should at a minimum consider costs from a valuation service manual such as Marshall and Swift Residential Cost Handbook or Marshall and Swift Valuation Manual (commercial cost handbook). The appraiser utilizes the estimates and cost data in consideration of the cost to cure damages; however, the appraiser shall not include the exact amount on a dollar-for-dollar basis but consider the cost to cure damage as it relates and contributes to the fair market value of the remainder.

If the linear feet of fencing to re-enclose the property is less than the amount being acquired by IDOT, the depreciated contribution to fair market value of the remaining original fencing prior to the acquisition shall be paid to the owner as it contributes to the acquisition area to the whole property.

For example: 500 linear feet of fencing is located within the acquisition area and 400 linear feet will be needed to re-enclose the remainder property as a cost to cure. The remaining 100 linear feet of fencing within the acquisition will be paid for based on the depreciated value of the fencing and included in the contributory fair market value of the site and site improvements to the whole property in the acquisition area.

The appraiser must determine the condition of the impacted fencing. This is necessary to establish the contribution toward the fair market value of the impacted fencing. If fencing does contribute toward fair market value, normally, it is considered based upon its contribution to the whole property less depreciation for condition and utility. Include adequate descriptions in the valuation of the acquisition area of the report and photos of the fencing.

3.5.21 Uneconomic Remnants

605 ILCS 5/4-501 authorizes the acquisition of remainders under certain conditions (see Chapter 4). When the department determines it should acquire the remainder as an uneconomic remnant, the review appraiser will prepare a file memorandum, with assistance from the original appraiser, that will document an allocation of the contributory fair market value of the remainder acquired that is not needed for the construction of the project. It is the negotiator's responsibility to notify the district Property Manager of such an uneconomic remnant/remainder acquisition so this information can be incorporated into the department's NORWAY inventory (see Section 7.9.1). This allocated fair market value is included in the NORWAY inventory for historical purposes and does not necessarily represent fair market value. It is for internal documentation purposes only.

Uneconomic remnants are remnants that, because of a loss or difficulty of access, changed highest and best use, remoteness, or any other reason, will burden the affected property owner with responsibilities or expenses not commensurate with the fair market value of retaining the remnant. A remnant becomes uneconomic when it's size, shape or condition has substantially impaired its economic viability or will render it of little fair market value to the owner after the acquisition. The department will not condemn for an uneconomic remnant.

Indicators of uneconomic remnants include significant damages to the remainder; a change in highest and best use or a change in the intensity of the highest and best use; land-locking; or other significant impacts to the remainder property. The appraiser must discuss the limited utility or fair market value to the owner of the real property after the acquisition and it is recommended the appraiser discuss this situation with the review appraiser.

In consultation with the district Plats and Plans Chief and the Land Acquisition Manager, the Review Appraiser/Appraisal Manager should identify remainders they consider uneconomic in a review documentation, which should be attached to the Review Certification, or when practical they may identify uneconomic remnants by a note on the certification itself. The appraiser shall document the support for opining an uneconomic remnant in the appraisal. District approval and concurrence is needed for the uneconomic remnant.

Example: A farm parcel after the proposed acquisition results in a small, very irregular, nearly non-tillable area due to the size of modern equipment. While some production may be possible, the labor and cost involved do not justify maintaining this area in production; therefore, the appraiser should consider this as a potential uneconomic remnant.

Example: A highway project severs land from an improved commercial property and the remainder is insufficient size for development and the owner can no longer utilize the property in connection with the present use of the original parcel. The appraiser should consider this severed area as a potential uneconomic remnant.

Example: A project severs an improved property, and the new right of way line runs partially through a building. A sizeable portion of that building will remain on the remainder parcel and a cost to cure was considered as an option. The construction estimates to reconstruct the building wall and/or components for the building in an effort for the property to continue functioning economically is found to be no longer feasible. Therefore, the remainder parcel including any remaining building contribution should be considered as a potential uneconomic remnant.

3.5.22 Valuation of Easements

Permanent and temporary easements are valued after the acquisition (fee simple or dedication). Value multiple easements of the same type together.

Space is provided on the appraisal template for the valuation of three easements of the same type (permanent or temporary). This section of the template may be duplicated when more than three of the same type of easement, or both permanent and temporary easements are being acquired.

When valuing permanent or temporary easements, the fair market value of the whole property is the fair market value of the remainder after the acquisition (fee simple or dedication) as affected by the contemplated improvement. A permanent easement is valued as the fair market value before the temporary easement. The fair market value of the whole remainder property before the imposition of the temporary easement is the fair market value of the remainder property after the imposition of the permanent easement, if applicable.

Complete the easement portions of the appraisal when valuing permanent and/or temporary easements. A “before and after” valuation of the remainder property after the acquisition is required except for waiver valuations. The degree of support for the “before and after” fair market values, depends on the requirements of the appraisal assignment. When appraising permanent easements, take into consideration any damages or benefits created by the easement, both inside and outside the easement area.

When appraising temporary easements, take into consideration the temporary nature of the easement (loss of use of the area imposed by the easement, and the term of the easement) and any damages or benefits created by the easement, both inside and outside the easement area. It is important to understand the construction limits and the extent of work to be done within the easement area.

Benefits created by a permanent or temporary easement can offset damages caused by that easement type but not offset compensation due for the rights being acquired by the easement (i.e., the difference between damages minus benefits is never less than $0).

The compensation shown for the proposed easement(s) will include the contribution of any site improvements or building improvements to the whole property which will be permanently removed as a result of the easement. Typically, paving improvements will be replaced in kind and are not included. A cost to cure for replacing an item that is impacted by the easement will be included in the total compensation and explained in the analysis.

Valuation of Easement(s) Example:

A	FMV of the Whole Remainder Property before Imposition of the Easement(s)	$ 100,000
B	FMV of the Easement Area(s) as it Contributes to the Remainder Property before Imposition of the Easement(s)	$ 5,000
C	FMV of the Easement Area(s) as it Contributes to the Remainder Property after Imposition of the Easement(s)	$ 4,000
D	Diminution or Change in FMV of the Easement Area(s): (Line B – Line C)	$ 1,000
E	FMV of the Remainder Property Outside the Easement Area(s) before Imposition of the Easement(s): (Line A - Line B)	$ 95,000
F	FMV of the Remainder Property Outside the Easement Area(s) after Imposition of the Easement(s)	$ 87,000
G	Diminution or Change in FMV of the Remainder Property Outside the Easement Area(s) due to Imposition of the Easement(s): (Line E - Line F)	$ 8,000
	Total Compensation for Easement(s): (Line D and, if applicable, Line G)	$ 9,000

3.6 SPECIFIC BENEFITS VS. GENERAL BENEFITS AS A RESULT OF THE PROJECT

Illinois is not a true "before and after" state because the property owner must always receive compensation for the acquisition. Specific benefits may be used to offset damages to the remainder. These types of benefits can be considered if they are real and substantial, capable of measurement and computation, and not conjectural or speculative. General benefits cannot be used to offset damages to the remainder. For more information on benefits, see the most recent version of "Illinois Eminent Domain Practice" presented by the Illinois Institute for Continuing Legal Education and the IL Attorney General's "Condemnation Manual". If legal advice is needed, DLA contacts CBLA for direction from the Office of Chief Counsel.

3.7 APPRAISAL AND VALUATION REPORTING – IDOT VALUATION FORMATS

Appraisals for department acquisitions are prepared using the Appraisal Report (LA 30700 Template). The template works for both non-complex and complex assignments as described below and per the instructions included with the template.

3.7.1 Non-Complex Appraisal Format NC-A

The non-complex appraisal format NC-A may be used when the following apply:

- A complex specialty report is not required.
- Property is appraised as "Land only, no buildings" or "buildings not affected" and/or minimal improvements (i.e., trees, landscaping, driveway / parking pavement).
- Damages are $100,000 or less and limited to non-complex cost to cure (see Section 3.5.20.7). Permanent damages are excluded or other formats must be used.
- The valuation assignment does not involve the acquisition of a principal building.
- The highest and best use is the same as present use or zoning.
- Market data is adequate and cost and/or income approaches need not be considered.
- No complex valuation problem is involved.

Select NC-A on Line 1 of the appraisal template. Non-complex appraisals do not have a limit on the total compensation. Damages for the NC-A reporting format are limited to non-complex cost to cure. At a minimum, complete all items identified in USPAP Standard One – Appraisal Development table in the report template. Reference to specific sales can support fair market values. It is not intended that a “direct comparison” be made. The sales data section should be included and attached in the report, or as a separate sales data book and supporting document in the appraiser’s work file (see Section 3.5.6 - Comparable Sales and its portion related to the Comparable Sales Booklet). If requested by DLA, a sales data book shall be provided. After-fair market values are supported by a narrative explanation of the effect of the acquisition on the remainder property.

The appraisal must contain a brief description of the following:

- The Neighborhood. The neighborhood description can be given by reference to other parcels on the project or by including a brief description in the appraisal.

- The Whole Property. A brief description of the use and type of improvements must be given. A detailed description and listing are not required.

- The acquisition area. The description of the acquisition area shall be given by listing items included in the acquisition area and by attaching a copy of the right of way parcel plat.

- The Remainder. The remainder description may be given by reference to the description of the whole property before the acquisition, when the remainder is essentially the same except for the acquisition area. An explanation of the items of minor damage as a cost to cure required above will describe any changes on the remainder as compared to the before description. If there are no cost to cure damages to the remainder, the appraiser should so state, which will indicate that the remainder description is essentially the same as the before description. Any substantial change of the remainder (i.e., permanent damages to the remainder) caused by the acquisition would involve a more complex appraisal problem and the procedures below should be followed.

3.7.2 Non-Complex Appraisal Format NC-B

The non-complex appraisal format NC-B may be used when the following apply:

- A complex specialty report is not required.
- Damages, excluding non-complex cost to cure, are $100,000 or less.
- The valuation assignment does not involve the acquisition of a principal building unless it is included as part of the whole acquisition area.
- The highest and best use is the same as present use or zoning.
- Market data is adequate and cost and/or income approaches need not be considered.
- No complex valuation problem is involved.

Select NC-B on Line 1 of the appraisal template. Non-complex appraisals do not have a limit on the total compensation. Damages may include non-complex cost to cure and permanent damages to the remainder for the NC-B format. At a minimum, complete all items identified in USPAP Standard One – Appraisal Development table in the report template. Reference to specific sales can support fair market values. It is not intended that a “direct comparison” be made. The sales data section should be included in the report, as a separate sales data book with supporting documents in the appraiser’s work file (see Section 3.5.6 - Comparable Sales and its portion related to Comparable Sales Booklet). If requested by DLA, a sales data book shall be provided. After-fair market values are supported by a narrative explanation of the effect of the acquisition on the remainder property.

The appraisal must contain a brief description of the following:

- The Neighborhood. The neighborhood description can be given by reference to other parcels on the project or by including a brief description in the appraisal.
- The Whole Property. A brief description of the use and type of improvements must be given. A detailed description and listing are not required.
- The acquisition area. The description of the acquisition area shall be given by listing items included in the acquisition area and by attaching a copy of the right of way parcel plat.
- The Remainder. The remainder description may be given by reference to the description of the whole property before the acquisition, when the remainder is essentially the same except for the acquisition area. An explanation of the items of minor damage as required above will describe any changes on the remainder as compared to the before description. If there are no damages to the remainder, the appraiser should so state, which will indicate that the remainder description is essentially the same as the before description. Any substantial change of the remainder caused by the acquisition would involve a more complex appraisal problem and the procedures below should be followed.

3.7.3 Complex Appraisal Format

A detailed appraisal is defined as a complex appraisal problem that requires thorough documentation to support the fair market values and conclusions contained in the report. An appraisal is considered detailed if one of the following circumstances exists:

- A complex specialty report is required.
- Damages, excluding non-complex cost to cure, exceed $100,000.
- The valuation assignment involves the acquisition of a principal building unless it is an acquisition of the whole.
- The current highest and best use is different than present use or zoning.
- Market data is inadequate, and consideration must be given to the cost and/or income approaches as appropriate.
- A complex valuation problem is involved.

Complete all items identified in USPAP Standard One – Appraisal Development table in the report template. The minimum criteria for a detailed appraisal are:

- A stated purpose of the appraisal.
- A stated intended use of the appraisal.
- A description of the scope of work.
- A definition of the estate being appraised.
- A statement of the assumptions and limiting conditions affecting the analyses, opinions, and conclusions in the appraisal (typical assumptions and limiting conditions can be grouped together). Extraordinary Assumptions are defined in USPAP as an assignment-specific assumption as of the effective date regarding uncertain information used in an analysis which, if found to be false, could alter the appraiser's opinions or conclusions. These types of assumptions presume as fact otherwise uncertain information about physical, legal, or economic characteristics of the subject property or about conditions external to the property, such as market conditions or trends, or the integrity of data used in an analysis.
- Hypothetical conditions are defined in USPAP as a condition directly related to a specific assignment, which is contrary to what is known by the appraiser to exist on the effective date of the assignment results but is used for the purpose of analysis. These types of conditions are contrary to known facts about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis.
- An extraordinary assumption or hypothetical condition may be used in an assignment only if the following are met:
    - It is required to properly develop credible opinions and conclusions;
    - The appraiser has a reasonable basis for the Extraordinary Assumption or Hypothetical Condition;
    - Use of the Extraordinary Assumption or Hypothetical Condition results in a credible analysis; and
    - The assumption or condition is disclosed in conjunction with each affected opinion or conclusion.
- A thorough description of the physical characteristics of the property being appraised. In the case of a partial acquisition, a thorough description of the remaining property is also required.
- The appraiser must describe the property as it exists before the acquisition and without considering the impact of any proposed roadway improvements. In a partial acquisition, the appraiser must also provide a detailed description of land and the improvements located within the acquisition area. In addition, the land and improvements located in the remainder must also be described. The level of detail required for a description of the improvements located within the remainder depends on whether or not a change in fair market value has taken place to the fair market value of the remainder after the acquisition (i.e., damages or benefits). If a change in fair market value has occurred, the level of detail required for the property description

is the same as when preparing a description of land and improvements located within the acquisition area.

- Land description(s) must address topographical features, road frontage, elevation of the roadway (existing and proposed), drainage, land features (e.g., wooded, pasture, cropland, etc.), existing easements, and floodplain. Also, the zoning, zoning requirements, and deed restrictions that affect the property must be included. Building and site improvement descriptions must address improvements above and below ground (as observed and known). Buildings, landscaping, fencing, sidewalks, walls, driveways, water supply (e.g., well type and depth), septic systems, and all other miscellaneous site improvements must be addressed.
- The description of the building improvements that are appraised must include the type of building (e.g., a butler building), the opined and/or actual age, and the quality of materials/construction and foundation type. Also, a general description of the walls, siding, flooring, roofing, interior trim, plumbing, heating/cooling systems, electrical, and built-in appliances/equipment must be given. The appraiser must reach a stated conclusion about the condition of the improvements.
- Complete a description of the real and personal property observed for relocation purposes if applicable.
- A statement of the known and observed encumbrances.
- A highest and best use analysis of the property being appraised and any remaining property after the acquisition. The analysis must include consideration of any easements, leases, or other title encumbrances. If the present use is not the highest and best use, the basis for deciding that the property is legally, physically, and economically available and adaptable for a use other than the present use and that there is a demand must be shown.
- A five-year sales history of the property and also as per USPAP a three-year transfer history. (Not all transfers are sales.)
- 49 CFR 24.103 (a)(2)(ii) states that an appraisal can include "all relevant and reliable approaches to fair market value consistent with established federal and federally-assisted program appraisal practices". The regulations recognize that the department may enter into appraisal assignments for the sales comparison approach only, providing that this approach will be adequate by itself to yield credible valuation results. The appraisal assignment should be based on the type of property being appraised and the availability of sufficient market sales data to support the conclusions arrived at by the appraiser. When the sales used in the sales comparison approach require large individual or overall adjustments, the cost and/or income approaches may also be included in the appraisal, if applicable. The cost approach is appropriate when the property is improved with newer improvements and the highest and best use is as improved. The income approach is appropriate when the property is subject to a valid arms-length lease and when sufficient income and expense data can be derived from readily available data in the normal course of business from which to derive a credible opinion thereof. Note that Fair Market Rent is that amount of rent which a tenant willing to rent would pay and an owner willing to lease would accept, when the tenant is not compelled to rent and the owner is not compelled to lease. As a general rule, the cost and income approaches are used as a check in support of the sales comparison approach. Special use properties do not have to be valued by the sales comparison approach. This is on a case by case

basis where the specifics of the market may indicate equal or greater credibility from any one of the three approaches to fair market value. Based on the use of the property, a market may not exist; however, care must be given that the fair market value of the property is appraised as value in exchange. Value in use is not necessarily equal to fair market value. The appraiser must notify the district for concurrence on the use of an approach other than the sales comparison approach if a property is considered a special use property. If the district is unsure whether the property is special use, the district should contact the CBLA appraisal unit for advice. It may be necessary for CBLA to contact the Office of Chief Counsel for a legal opinion; and

- When improvements are affected by the acquisition, a detailed description and valuation of the improvements are required.

3.7.4 Excess Property Appraisal Format (for Appraisers)

The Appraisal Report for Disposal of Excess Property (LA 31401 Template) is used for appraisals of excess property. The format generally follows the Non-Complex Appraisal format; however, should the conclusions of the appraiser exceed $100,000, the appraiser shall use the Land Only – Sales Comparison grid. The form should only be used for excess property to be appraised for release and not for right of way acquisitions. The minimum criteria for the appraisal report are as follows:

- Attach an Excess Parcel plat.
- Attach or include a sales location map.
- Adequate visual examples and descriptions of the part to be released and any improvements. The form includes a photo page, and additional photo pages may be inserted, to provide an adequate visual description of the part to be released/disposed.
- Appraiser must discuss the topic of whether the excess property has a highest and best use as assemblage with an adjoining property or is a stand-alone parcel.
- Describe the current highest and best use of the parcel prior to release, influence of zoning and physical factors. If highest and best use is assemblage, the appraiser shall discuss and analyze the assemblage to opine if there is increased functional utility as assembled. (See Section 3.14 Valuation of Excess Property.)
- A field visit to the site and/or access rights to be released including any comparable sales utilized in the appraisal is required.
- There is no dollar limit for the fair market value of the excess property.

3.7.5 Waiver Valuation

Waiver valuations for department acquisitions are prepared using Template LA 30705A. The criteria for using a waiver valuation and its content requirements are as follows.

3.7.5.1 *Criteria*

The district may determine that the requirement to appraise the property to be acquired may be waived when the valuation problem is uncomplicated, and the anticipated fair market value of the proposed acquisition is estimated at $15,000 or less based upon review of available data (49 CFR 24.102(c)(2)(ii)). When the district determines these criteria are met, a waiver valuation may be used to determine just compensation. Waiver valuations are not appraisals by statute and may not be represented as an appraisal. Since a waiver valuation is not an appraisal, an appraisal review is not required; and the waiver valuator is precluded from complying with Standards Rules 1 – 4 of USPAP. Further, the person preparing the waiver valuation may act as the negotiator and make the offer to the property owner(s) in accordance with Section 4.2.3, after the district approves the amount of just compensation.

With the recent amendments to 49 CFR 24, the FHWA implemented a second tier of waivers for parcels exceeding the $15,000 threshold, up to an amount of $35,000, provided the department offers the property owner the option of having their property appraised. However, Illinois law currently limits the use of waiver valuations for values up to $20,000, so the districts can only request to use "second tier waivers" on parcels with an estimated value of $15,001 to $20,000. To demonstrate compliance with federal regulations, the district will need to document property owners being given the option for a full appraisal using the Tier II Waiver Valuation Notification (LA 30705B Template) when these second tier waivers are utilized. CBLA will do "spot checks" to ensure compliance and for quality assurance on second tier waivers.

Waivers valuations <u>cannot</u> be used when:

- The parcel includes tenant-owned improvements, including buildings, structures or other improvements which would be considered to be real estate if owned by the owner of the real property on which they are located.
- The acquisition creates a land-locked remainder or uneconomic remnant and proximity damages to a structure.
- The acquisition changes the highest and best use of the property.
- Minor, non-complex damages exceed $5,000, excluding non-complex cost to cure damages; or
- The parcel will be involved in condemnation proceedings. When an offer to purchase based on a waiver valuation is rejected and the parcel is referred for condemnation, an appraisal must be written and reviewed. The effective date of the appraisal is the date the condemnation complaint is filed.

3.7.5.2 *Procedures*

Waiver valuations may only be prepared by individuals who meet the applicable qualifications included in Section 1.6.4 of this manual. However, the individual making the determination to use the waiver valuation option can be from DLA staff or a consultant. This person must have enough understanding of appraisal principles, techniques, and use of appraisals to be able to determine whether the proposed acquisition is uncomplicated and that the fair market value will not exceed $20,000. A licensed appraiser can discern complexity issues related to the parcel, but they cannot give an opinion of the dollar value of the parcel without doing an appraisal.

After eliminating parcels with the above criteria, further screening considerations can be applied to identify potential waiver valuation candidates, such as:

- Temporary Easements.
- Uncomplicated, fee simple acquisitions of an acre or less.
- Access to the property is unchanged.
- Commercial signs will not need to be relocated and parking places, wells, septic systems or other similar improvements are not affected.
- Parcels not involving cost to cure items which the district is unfamiliar with estimating the cost of replacement.

The waiver valuation preparer should maintain a work file containing pertinent information about the parcel and the development of the waiver valuation, such as proposed plan sheets, plat, legal description, last deed of record and property tax information from the county website. Sales data should not be attached to the waiver valuation, it should be kept in the file.

Once you have a file created, conduct a field check of the parcel. It is helpful to visit the site when the ROW is staked. Take pictures of the affected area, making sure to include any items which may be damaged by the taking. If you have any questions, clarify what will be happening with the designer. It is possible that you will find something on your visit which will disqualify the parcel from having a waiver valuation performed.

Comparable sales data can be found in online databases which the district has access to, such as the Land Sales Bulletin. If the parcel is part of a larger right of way project which is having appraisals done for it, talk to the appraiser(s) on the job about which sales you should use to ensure consistency in values on the project. It is also possible that there are other recent projects in the area where you can find comparable sales. In some cases, it may be appropriate to have a consultant find comparable sales for a job under a Land Acquisition Services contract.

The comparable sales can be used to determine a price per acre of the land to be acquired. Examples of valuing fee takings and easements can be found in the class materials from the appraisal training hours taken.

Once complete, the report should be checked by another member of DLA staff who is familiar with waiver valuations. Once checked, the report can be printed and signed.

3.7.5.3 *Content*

The content of a waiver valuation is as follows:

- The minimum compensation threshold for a parcel is $300. This amount applies to each type of interest acquired on a parcel (e.g., fee simple, permanent easement, or temporary easement); however, it is not cumulative for like interests acquired on a parcel (e.g., two temporary easements). Examples:
  - Minimum compensation for a fee simple acquisition and a permanent easement on a parcel: $300 +$300 = $600.
  - Minimum compensation for a permanent easement and a temporary easement on a parcel: $300 + $300 = $600.
  - Minimum compensation for two temporary easements on a parcel: $300.

- The waiver valuation must contain the following statement: "Based on a review of available data, appraisals are not required because the valuation problem is not complex."
- Specific sales data are not required; however, include general information regarding sales of similar property in the project files. Reference may be made to sales data in other project files that are similar to the subject project. No discussion or analysis of the comparable sales are included with the waiver.
- Farmland preservation information, when applicable, must be provided (see Section 3.2.5).
- The waiver valuator is not required to meet with the property owner(s) or enter the property.
- Use detail to describe the improvements and type of land being affected by the acquisition. This should be done for the damages considered and the non-complex cost to cure items as well. The pictures used in the report should show these items that were described.
- Include a copy of the approved plat and legal description with the waiver valuation.
- During the preparation of the waiver valuation, if the waiver valuator discovers information that indicates the total compensation will be more than $15,000, the property owner must be offered the chance to have a full appraisal done. If total compensation will be more than the $20,000, the parcel is not eligible for a waiver.
- Additional information affecting the total compensation may become available during negotiations. If the revised compensation is more than the tier one limit of $15,000, an appraisal must be offered to the property owner. An appraisal would be required if the revised compensation exceeds the $20,000 waiver valuation threshold. The revised offer for the property is made to the owner once an appraisal and review are completed.

3.8 SPECIALIZED TOPICS IN APPRAISAL DEVELOPMENT

3.8.1 Access Rights

3.8.1.1 *Acquiring Access Rights*

When access rights exist and are to be acquired (see Section 4.3.4), they are valued on a before and after basis, with the difference being a damage to the remainder.

Defining "reasonable" access is often a problem, and each case is considered on its own merits. Questions concerning access rights should be discussed with CBLA.

3.8.1.2 *Moving or Closing Entrances*

A private property owner has a right of access from their property to adjacent streets or highways subject to reasonable restrictions. If the property is adjacent to more than one street or highway, the property owner has the right of reasonable access to each street or highway. The department negotiates with the property owner to acquire access. A highway must be designated as a freeway before complete access to the abutting state highway is acquired.

Only when a proven safety issue exists may access rights be acquired by condemnation without the necessity of a freeway order. The right of access cannot be acquired without compensation. See Section 3.5.19 on non-compensable items of damage relating to access and Section 3.8.1.3 on police powers.

Do not include the moving of the entrance or closing of entrances for safety reasons in the appraisal as long as the current use of the property is feasible, and a reasonable access still exists to each street or highway adjoining the property. When an acquisition is involved with the moving or closing of entrances, the appraiser can take into consideration the effects, if any, of the acquisition on the remaining property.

3.8.1.3 *Police Powers*

Because private property rights do not include fair market value attributable to government-related activity, the government should not be required to compensate an owner for elements of fair market value that the government created, and that the government can take away. Thus, the government should not be required to compensate an owner for any diminished property value caused by the exercise of police power. Since the police power includes such activities as traffic control, it then follows that an individual has no property right in the flow of traffic past their property, and therefore, a modification of that flow is a valid exercise of the police power and does not result in compensable damages.

Closing one or more entrances to a property where multiple entrances exist is not compensable. The property owner retains a means of access to the abutting highway that does not change the property's existing use. Closing of these entrances for safety reasons is an exercise of the department's police power and not compensable unless the closing of the entrance causes a material impairment of the existing legal access, and the current use of the property is no longer feasible.

A loss in fair market value to the subject property is non-compensable if, by the proper exercise of police powers, it is caused by:

- Zoning regulations.
- Changes in traffic patterns, such as the creation of one-way streets; installing median barriers; establishing traffic lanes and restricting on-street parking; increasing or decreasing traffic volumes and regulating speeds; limiting left-turns, U-turns and crossovers; temporary and permanent diversions and rerouting of traffic, including the inconveniences resulting from circuitry of travel.
- Access restrictions. A loss in fair market value due to restriction of access is non-compensable if it is caused by or relates to:
  - Disallowing access directly to a newly located limited access highway.
  - Not having access to a widened highway if there was no prior access.
  - Access restrictions if access to the highway is reasonable, including if access is provided by means of a frontage road.
  - A loss of access if access is not allowed at each and every point along the highway, so long as reasonable access is provided.

3.8.2 Valuation of Contaminated Property

The appraiser will note any contamination in the appraisal and appraise the property as remediated under the following circumstances:

- The project is “risk-managed”, and a Preliminary Site Investigation (PSI) was not conducted since the levels of contamination or amount of soil management is insignificant compared to the value of information gained from performing a PSI.
- The PSI does not contain any remediation costs since the property is not contaminated with regulated substances in excess of allowable limits for Tier 1 residential.
- A No Further Remediation (NFR) letter has been issued by the Illinois Environmental Protection Agency (IEPA) and the part to be acquired appears to be in compliance with the NFR letter after a visual inspection by the appraiser. The appraiser will take into consideration any limitations on the use of the property contained in the NFR letter. The NFR letter is usually recorded in the chain of title.
- IEPA has inspected and determined the property is in compliance with the NFR letter. When the appraiser inspection indicates the area is not in compliance, DLA shall contact the Bureau of Design and Environment’s Geologic and Waste Assessment Unit and request an IEPA inspection.

The appraiser is furnished a copy of the PSI and the appraiser will take into consideration remediation costs under the following circumstances:

- The PSI indicates the property is contaminated with regulated substances in excess of the allowable limits for Tier 1 residential. If the IEPA file contains assessment and/or remediation data, but the NFR letter has not yet been obtained, BDE will evaluate the IEPA file and prepare separate remediation cost estimates based on the present land use level for the whole property and the part taken.
- If the IEPA file contains no assessment and/or remediation data at the time the PSI is prepared, DLA will file a Freedom of Information Act request with IEPA before the appraisal is prepared. When there is assessment and/or remediation data in the IEPA file, a copy of the information will be forwarded to CBLA. CBLA and BDE will review the material to determine if it is cost effective for the district to hire a professional engineer to prepare remediation estimates. If it is determined to be cost effective, the professional engineer would evaluate the information and provide a description and location of the contamination and separate estimates of remediation for the whole property and the part taken based on the property’s present land use level. The professional engineer can be hired as a specialty agent. The information and costs in a Specialty Report are then given to the appraiser for consideration in the appraisal. If it is determined not to be cost effective to hire a professional engineer, the remediation cost for the part taken in the PSI and other pertinent information concerning the contamination will be provided to the appraiser. The appraiser will take the information into consideration in valuing the whole property and the part taken. The area of the property outside the part taken will be considered remediated via an extraordinary assumption which may have impacted the assignment results and/or the opined fair market value.

- When there is no assessment and/or remediation data in the IEPA file, the remediation cost for the part taken in the PSI and other pertinent information concerning the contamination will be provided to the appraiser. The appraiser will take this information into consideration in valuing the whole property and the part taken. The area of the property outside the part taken will be considered remediated.
- When the department's acquisition negatively impacts the property's conditional status, a professional engineer will prepare a Specialty Report (see Section 3.10) for placing the property back into conditional status. The estimate will be provided to the appraiser for consideration in opining the fair market value of the remainder.

3.8.3 Compensation for Acquiring Railroad and Utility Operating Right of Way

With few exceptions, operating right of way is that property used in the operation of a railroad or a utility line. It includes mainlines, branch lines, yards, depots, control towers, sidings, substations, and other facilities presently being used in the operation of a railroad or a utility line. Minimum payment of $300.

A methodology for valuing a railroad corridor has been to utilize the "*Across the Fence (ATF) Approach"* with the appraiser assuming that the fair market value of the unused railroad property would be similar to the price of the adjacent land located outside the corridor, regardless of the incremental benefit that the railroad land might have. This is a somewhat straightforward approach, and one that most appraisers would be comfortable in utilizing, as market data would generally be available. The level of reliability of fair market values obtained would probably be the most supportable of the four approaches. As an example, if the railroad ROW was situated adjacent to agricultural lands selling for a unit price of $15,000/acre, it can be inferred that the railroad ROW also has a fair market value of $15,000/acre. On the other hand, if the corridor was passing through industrial lands selling for a price of $2.00/square foot, it can be inferred that the railroad ROW is also worth the same unit price. This valuation approach would ultimately be as complicated or as simple as the variety of lands adjacent to the railroad-owned property and the availability of market data to analyze. (source, Valuation of Railroad Right of Way, Federal Transit Authority, Rev. January 2018.)

Spur tracks and sidings into places of business are not operating right of way regardless of who owns the land and trackage, neither are hookups from a utility line to a home or place of business. These are necessary for the operation of the home or business rather than the operation of a railroad or a utility line.

3.8.3.1 *Acquiring Operating Property from a Utility Company*

- Land Owned in Fee Simple. When a utility company owns the fee simple title to its operating right of way, the utility company is compensated for the right of way needed.
- Easement owned. When a utility company owns an easement for its operating right of way and can continue to operate its facilities either in, above, below, or adjacent to the highway use, no compensation is paid to cross or longitudinally utilize any part of the right of way. An easement is a legal right to use another person's property and thus the owner of the land still owns the property.

- Work of a Temporary Nature. Permission to do temporary work on utility operating right of way is included in the utility agreement created by the Bureau of Design and Environment (BDE). When there is no utility agreement, permission to do temporary work on the utility's operating property will be obtained.
- Additional Compensation. Adjustments to existing utility facilities located in the area involved and the reimbursement to the utility companies for any reimbursable costs are the responsibility of BDE. There may be cases, however, when a proposed highway improvement takes part of improved or unimproved operating right of way of a utility for which the company is preparing detailed plans or has plans completed for the construction of additional or expansion of existing operating facilities.

  When the highway improvement interferes with such planned facilities, pertinent information is obtained from the utility whether the property is owned in fee simple or there is an easement for specified use thereof, reviewed by the regional engineer, and forwarded to CBLA with a finding the proposed construction is imminent and not speculative. Include a certification by the utility company outlining, in detail, the planned facilities together with evidence showing the construction follows some tangible planning scheme and is in accordance with good engineering practices. Upon review and concurrence by the BDE and CBLA that the proposed construction is imminent and not speculative, the district requests the utility company furnish the following in order to establish the amount of compensation.

  - An estimate of the cost to construct the proposed facility or expansion as planned through the proposed right of way.
  - An estimate of the cost to construct the proposed facility or expansion made necessary by the acquisition of the proposed right of way for the improvement. (This would include salvage but not betterments or increased maintenance costs.)
  - The difference in cost between these two estimates:

When the necessary estimates have been obtained and reviewed by the district, they are forwarded with district recommendations to CBLA.

CBLA obtains concurrence from BDE to the estimates and recommendations and returns the estimates, along with any suggestions to the district. The district obtains the necessary rights or interests required for the highway project from the utility company.

3.8.3.2 *Acquiring Operating Property from a Railroad*

- Land Owned in Fee Simple. When a railroad company owns the fee simple title to its operating right of way, compensates the railroad company for the right of way needed. No compensation of any kind shall be made for the acquisition of such right of way to construct a grade separation facility where an existing highway grade crossing is eliminated; however, consideration should be given if the size of the acquisition is different than the original right of way acquired.

- Easement owned. If a railroad company only has an easement for its operating right of way and can continue to operate its facilities either in, above, below, or adjacent to the highway use, no compensation is paid to cross or longitudinally utilize any part of the right of way. An easement is a legal right to use another person’s property and thus the owner of the land still owns the property.

- Processing Fee. When a railroad demands a fee to process the documents covering the permanent acquisition, the fee is considered as a right of way incidental cost. When the fee does not exceed $1,000, justification of the amount is not required. If the fee exceeds $1,000, make the payment after receipt from the railroad of the executed document and an invoice with all expenses itemized.

- Work of a Temporary Nature. Permission to do temporary work on railroad operating right of way is included in the railroad agreement created by the BDE. If the railroad demands a fee for processing, the railroad submits an invoice covering all costs. Process this fee with the costs submitted by the railroad's engineering department for inclusion by the BDE in the agreement as an engineering cost.

  When there is no railroad agreement obtain permission to do temporary work on the railroad's operating property. If the railroad demands a fee for processing, the Railroad submits an invoice covering all costs considered a right of way incidental cost.

- Additional Compensation. Provide in construction plans the accommodation of any justified future expansion of railroad facilities eliminating any need for consideration of additional construction costs in the right of way payment.

3.8.4 Valuation Issues Associated with Acquisitions from Legal Non-Conforming Properties

Legal non-conforming properties will typically fall into one or more of the following categories:

- Legal Non-Conforming Use (Grandfathered Use). A legal non-conforming use is a use of property that was allowed under the zoning regulations existing at the time the use was established; but which, because of subsequent changes in those regulations, is no longer a permitted use. This type of use is often referred to as a "grandfathered use". Most zoning ordinances (but not all) will permit the grandfathered use to continue until such time the use is discontinued. Once a use is discontinued it will typically lose its grandfathered status and will not be permitted to restart. If it is no longer grandfathered or never was legal to begin with, it is likely an illegal use of the property.

  A grandfathered use in the before condition, which is the highest and best use of the larger parcel, may create a before fair market value that exceeds what is possible under a use that is legal and conforming. The proposed acquisition may cause the grandfathered use to be discontinued, which would result in an after condition highest and best use that is legal and conforming but has a lower fair market value than the before condition. In this situation, the before and after analysis will value the legal non-conforming property, with the grandfathered use in place for the before condition. The after condition will be valued based upon the legally permissible highest and best use of the affected property. The difference will be considered a severance damage resulting from the loss of the grandfathered status.

If the before condition of either legal conforming use or a grandfathered legal non-confirming use, is not the highest and best use of the larger parcel, then the subject property is being underutilized and an interim use likely exists. Valuation issues associated with an interim use are addressed in Section 3.5.11.

- Legal Non-Conforming Structure. A legal non-conforming structure is one that complied with zoning and development regulations at the time it was built; but which, because of subsequent changes to the zoning, development regulations, or as a result of governmental acquisitions, no longer fully complies with those regulations. The non-conforming status of an improvement can result from: the building not meeting setback requirements; the improvements being too large or tall for the site (exceeding site coverage or height requirements); or other physical characteristics exhibited by the site improvements which do not conform to the zoning ordinances in place at the time of the appraisal.

  When opining the fair market value impacts of the existence of a legal non-conforming structure, either in the before condition or the after condition, the appraiser should assume that, if a non-conforming structure is damaged or destroyed, it may be restored or rebuilt.

- Legal Non-Conforming Lot. A legal non-conforming lot is one that at the time of its establishment met the minimum lot size requirements for the zone in which it is located; but which, because of subsequent changes to the minimum lot size applicable to that zone, or because of subsequent governmental acquisitions, is now smaller than that minimum legal lot size. Some zoning authorities will recognize this type of lot as legal, or a lot of record, as long as it is capable of supporting adequate setback requirements for a proposed structure.

The scope of work for an appraisal analysis of a property, that is either legal non-conforming in the before condition or will become legal non-conforming as a result of the proposed acquisition, must include a determination of the exact nature of the non-conformity. In making this determination, the appraiser must understand that the local zoning regulations establish the formalized rules for what qualifies as a conforming, non-conforming, legal non-conforming, or illegal property. The zoning regulations can vary greatly, from jurisdiction to jurisdiction. Often times the interpretation of the zoning regulations may vary even within the same jurisdiction, over time, depending on the individuals authorized with overseeing the regulations. It is for this reason that the appraiser is advised to discuss the legal status of non-conforming properties, as well as the nature of the non-conformity, with the local zoning authority, if they believe that a subject of their appraisal is or may become non-conforming.

Once the appraiser has determined a property is legal non-conforming, they must opine how the local market reacts to the identified non-conformity.

- Does the non-conformity enhance or complicate the marketability of the affected property?
- Is the non-conformity unique?
- If the non-conformity is unique, does the unique nature of the non-conforming property increase its desirability in the market?

- Does the non-conformity impact the fair market value of the non-conforming real estate? If so, a thorough analysis must be explained.
  - Is the current use an illegal use of the property?
  - Does the local zoning authority require de-conversion?
  - Is there an amortization for the current use to conform?

Answers to these questions should be based upon an analysis of available market data, including but not limited to, comparable sales data, a review of aerial photography of the market area, a personal inspection of the subject's market area, and possible interviews with real estate professionals familiar with the market area. The level of analysis undertaken by the appraiser will vary based upon the nature of the proposed acquisition and the defined appraisal problem. That portion of the appraiser's scope of work associated with identifying and measuring non-conformities should be discussed with the review appraiser assigned to the affected parcel, to determine the appropriate level of analysis.

3.8.5 Tenant-Owned Improvements and Personal Property

3.8.5.1 *Tenant-Owned Improvements*

Tenant-owned improvements are defined as buildings, structures or other improvements owned by a tenant which would be considered real estate if owned by the real property owner. The appraiser reports the presence of tenant-owned improvements on the subject property affected by the acquisition. Acquisitions that include tenant-owned improvements are not eligible for waiver valuations. The appraiser offers the tenant-owner, if known, an opportunity to be present during the inspection of the property when the tenant-owned improvements are affected by the acquisition. Any affected tenant-owned improvements are identified in the appraisal. Do not consider separate allocations of the fair market value of tenant-owned improvements within the appraisal. The "unit rule" requires the fair market value of improved property be considered as a "whole" property, without assignment of separate values for the land and individual improvements.

If the property owner signs a Disclaimer Affidavit for Tenant-Owned Improvements (LA 40505D Template), the review appraiser, or if unable, the appraiser, provides a list of the tenant-owned improvements affected with reasonable allocation. The allocated value of tenant-owned improvements is the amount which the improvements contribute to the fair market value of the whole property or the fair market value of such buildings, structures, or improvements for removal from the real property, whichever is the greater. The allocation to the landowner and tenant or tenants should not exceed the fair market value of the total part taken as part of the whole. Damages to tenant-owned improvements also require allocations if the owner signs an affidavit. The list and allocation are for the purpose of negotiations only, satisfying federal requirements. The allocation is not attached to the appraisal and is kept in the acquisition file. Any document discussing the list and allocation must clearly state the listing and allocation are for negotiations only.

3.8.5.2 *Salvage Value*

Salvage value on tenant-owned property for removal is the salvage value of improvements, components, or scrap. Salvage value avoids valuing the part taken (landowner and tenant interests) in excess of "the fair market value of the part taken as a part of the whole before the acquisition," required by Illinois law. The fair market value of the whole property is included in the salvage value, if any. In the fair market value concept, when improvements do not represent the highest and best use of the land, salvage of existing improvement contribute to the fair market value of the whole property to the extent the value of salvageable items exceeds demolition costs.

3.8.5.3 *Personal Property*

Identify and resolve personal property issues prior to or at the time of the appraisal of the property to avoid appraising personal property as real property. Items classified and appraised as real property are not eligible for relocation reimbursement.

Inspect the property with all parties involved (i.e., the appraiser, review appraiser, relocation representative, the property owner and/or tenant), classifying items as real property or personal property. Subsequent to the inspection, a prepared list, indicating the items determined real property and items determined personal property is reviewed and signed by all parties present during the inspection.

Include a copy of the list of real property items in the appraisal and consider only those items determined to be real property in the appraisal along with all other components of the real property. Also, provide a copy of the personal property list to the relocation representative.

Obtain legal advice from the Office of Chief Counsel for all questionable items of real or personal property.

Manufactured Housing requires an opinion as to whether or not it is personal or real property. The appraiser is responsible for independently confirming whether the housing is personal or real property and shall coordinate with the District and Review Appraiser in defining the scope of the assignment. When doing the confirmation of real or personal, the appraiser should consider the condition, manner of attachment, and the owner's intent. If the condition of the structure does not allow for it to be moved, then it is considered realty as it contributes to the whole property. If it is determined that the structure has been permanently secured to the land in accordance with local requirements, it is considered real estate and include any contribution of the residence to the whole property.

3.8.6 Valuation of Signs

Outdoor advertising signs located on right of way to be acquired are classified as personal property and are handled under the department's relocation program. The sign itself is not included in the valuation of the property. Legal sign sites may enhance the fair market value of the real property as a result of their desirability for this use. Give consideration to a sign site's effect, if any, on the fair market value of the whole property, and the part to be taken if the sign area is to be acquired, based on the property's highest and best use.

3.8.6.1 *On-Premise Signs*

On-premise signs are defined as signs that advertise an activity conducted on the property where the sign is located. Most on-premise signs can be moved to the remainder property and will be addressed as a cost to cure damage. Cost to cure damages to move a very small sign to the remainder can be established by the appraiser. For all other on-premise signs, contact the districts on the process to obtain an estimate of the cost to move the sign to the remainder property. Signs with a considerable fair market value typically feature one or more of the following attributes: sign has electrical service; requires the services of a sign company for repair or relocation; or requires the services of a masonry contractor to construct. Include any estimates in the appraisal work file when considering the fair market value of the subject property's remainder. The cost to cure damages to move the sign cannot exceed the loss in fair market value that would result if such a move were not undertaken. When the moving of the sign is complex, such as an extreme modification of the sign or the cost to move is excessive, the appraisal should include an analysis of the cost to move the sign compared to the loss in fair market value that would result if the sign were not moved onto the remainder property. Include the acquisition cost of the sign in the fair market value of the whole property where the cost is less to acquire the sign.

The appraisal should treat signs similarly as any other improvements located in the acquisition area. Based on the manner in which the sign, or part of the sign, is attached to the real estate, the appraiser may determine that the sign, or part of the sign, is personal property (i.e., the sign face, sandwich board sign, A-frame signs, flags, etc.). An opinion of the contributory fair market value in place of the sign, if determined to be real estate, should be included as part of the take and consideration of damages and special benefits be made. A cost to cure should be considered in lieu of damages. A cost to cure may include re-establishment of the existing sign out of the acquisition area, if applicable. Re-establishment may include additional costs including permitting, electrical (if necessary), engineering, etc. If the sign cannot be re-established, damages should be considered if it was opined that the sign contributes fair market value to the underlying land. Generally, the opined contributory fair market value of the sign plus any damages to the remainder or costs to cure should not exceed the cost of replacing the existing sign with a new sign.

If the sign is being valued as a component of a partial acquisition, then the depreciated replacement cost of the sign structure would be the appropriate method of valuation. If it is determined that the sign cannot be moved to the remainder property, the appraiser will need to opine whether the loss of the affected signage will result in severance damages to the remainder, and whether the severance damages are curable or incurable. An example of possible severance damages resulting from the acquisition of an on-premise sign would include: if the remainder of the larger parcel has building improvements on it, or the loss of signage resulting from the acquisition of the on-premise sign may cause severance damages to the improvements. If the sign can be replaced by a different type of signage, the severance damages may be curable. If the remaining site is too small, or zoning will not permit the placement of a new sign, the severance damages may be incurable. It is recommended that the appraiser discuss any potential severance and cost to cure methods with the assigned review appraiser.

3.8.6.2 *Off-Premise Signs*

Off-premise signs are those signs that advertise a business conducted at sites other than the property on which the sign is located.

Request a copy of the sign site lease. Those sections of the lease pertinent to the compensation due for the lease of the site should be considered and included in the appraisal. The lease should be retained in the appraiser's work file for the parcel.

If the off-premise sign is registered or permitted by the department under the Highway Advertising Control Act of 1971, as amended (HACA), include a copy of the registration or permit in the appraisal. If condemnation is necessary to acquire a parcel including off-premise signs, DLA should brief the SPAAG assigned to the case of the method used to arrive at the enhanced fair market value of the real property due to its use as an outdoor advertising sign site.

Use the department's Sign Valuation Manual and forms to value permitted outdoor advertising signs. Notify the district's relocation representative when off-premises outdoor advertising signs are affected by an acquisition.

3.8.6.3 *Legal Non-Conforming (Red Tag) Signs*

Legal Non-Conforming (Red Tag) Signs are permitted signs erected prior to the effective date of the HACA in non-conforming areas and can only be relocated (if the sign owner so elects) to a legal conforming site, either along a controlled route or a non-controlled route. If the sign owner elects to not move the sign to a legal conforming site along a controlled route or a non-controlled route, coordinate with CBLA to acquire the sign under the provisions of Outdoor Advertising Control Program. If the sign owner elects to relocate the sign to a legal conforming site along a controlled route or a non-controlled route, the actual and eligible moving costs under the provisions of Section 6.9.12 is the sign owner's only due compensation.

3.8.6.4 *Illegal Signs*

Illegal signs are not entitled to compensation. Contact CBLA's outdoor advertising manager for determination of the legality of a sign.

3.8.7 Nursery Stock

The appraisal includes the number and size of each species of nursery stock in-ground located on the right of way to be acquired. Nursery stock that has been removed from the ground and put up for sale is personal property. There are several methods for valuing nursery stock; however, the preferred method is wholesale "in-place" price. Obtain the district landscape architect assistance in identifying, valuing, and reviewing the fair market value of all nursery stock to be acquired. See Section 7.2.2 and form LA 70202 for additional information for nursery stock inventory.

3.9 APPRAISAL REVIEW CERTIFICATION REPORT

All appraisal reports prepared for acquisition purposes must be reviewed. Appraisals may be reviewed singularly or by segments of a project. Review appraisers use independent judgment in their fair market value opinion. In order to maintain consistency on a project, the review appraiser responsibility is to:

- Confirm all items affecting the fair market value of the property are considered in the appraisal and all mathematics are correct.
- Confirm all appraisals containing items not considered fully or properly are returned to the appraiser for revision.
- Develop or have developed a list of realty items and personalty items and assure the list is included in the appraisal and only the realty items are considered in the valuation of the parcel when relocation is involved.

- Annotate in the review any extraordinary assumptions and/or hypothetical conditions which the appraiser relied upon in the development of the appraisal and that their use may have impacted assignment results.
- Make sure items that are considered in the valuation of the acquisition are not also considered as a damage to the remainder (i.e., paying contributory fair market value for bushes, trees, etc., and then including these items as a damage to replace in kind).
- Make sure that the closing of an entrance (loss of access), categorized as damages to the remainder, is not a police power issue.
- For a project with multiple appraisers, evaluate all appraisals for consistency in land fair market values, improvements that lie within the acquisition area, and the manner in which similar types of damages are considered (i.e., proximity damages to residential properties). As a proximity damages example, it would be important that similar setbacks to the new right of way and reduction in setback to the original setback be considered by different appraisers in a similar manner. Similar means resembling but not being identical. Another example would be the handling of cost to cure for various site improvements that lie within the acquisition.

The review appraiser makes a visual inspection of the parcels and the comparable sales considered in arriving at the fair market value to confirm everything is considered and the facts reported are true. The extent of the inspection varies from parcel to parcel depending upon the complexity of the appraisal problem, the agreement/divergence in the appraisal reports, etc. If any comparable sales in the appraisal report were unable to be verified, the review appraiser should address the issue in the review appraisal and explain why the inclusion of the unverified comparable sale was necessary to produce credible assignment results. In certain limited circumstances, a review appraiser may conduct a desk review of all comparables which may include sales and listings explaining the reasons for doing so in the scope of work section in the review appraiser's review.

3.9.1 Problem Identification for a Desk or Field review

The research and analyses necessary to develop credible assignment results will vary depending on the scope of work for an appraisal review assignment. **Prior to the assignment**, t**he district must approve a desk review is appropriate and acceptable. The appraiser must assume a field review is always required unless the district indicates otherwise.** The appropriate scope of work to be performed within the review process may be based on the fair market value of the property and/or the complexity of the valuation problem, as dictated by the regulatory and policy requirements of the acquiring agency. The degree of controversy surrounding a particular acquisition (or the agency's project generally) may also play a role in determining the scope of work. It is critical that the review appraiser clearly identify the precise scope of work and extent of the review process for each appraisal review assignment. It is noted that there will be times when a desk review proves to be inadequate, and in such cases, a more comprehensive appraisal review will be required.

Terms such as **desk review** and **field review** may not be understood by all users or readers of the review and require precise definition if used. This can be done while disclosing the mandatory assignment elements for a scope of work. For example, reviews may be conducted as either field reviews or upon district approval, a desk review. In addition to confirmation that the report was prepared in accordance with these Standards, a desk review involves a thorough review and analysis of the information and analysis contained in the appraisal report under review and a careful examination of the internal logic and consistency. In a desk review, the review appraiser limits the examination to the information and analysis presented within the appraisal report. The comparative data contained within the appraisal report must be confirmed by the appraiser, may or may not be confirmed by the review appraiser and the review appraiser may or may not identify additional comparative market data. If additional comparative market data is identified by the review appraiser, the original appraiser is given the opportunity to revise the appraisal considering the additional comparative information.

The most significant difference between a desk review and a field review is the level of evaluation accorded the factual data presented in the appraisal report. A field review is the highest level of due diligence within the appraisal review practice and always requires at least an exterior field inspection of the subject property and the properties used as comparable data in the appraisal report. A desk review is based upon a thorough review of the appraisal and market data contained in the appraisal and at a minimum, the reviewer should use technology such as an aerial mapping program with a street view to attempt to verify if the imagery looks the same as what the appraiser shows for the appraisal. The reviewer is an appraiser who forms an opinion regarding the analysis, judgment, and/or opinion(s) of fair market value contained in the appraisal report and falls under the requirements of Standards 3 and 4 of USPAP.

An appraiser could complete a desk review when considered appropriate by DLA under the following requirements:

- Reviews of only non-complex appraisal reports, only.
- Appraisal must contain sufficient information to warrant a desk review without a field visit; otherwise, a field review is required.
- Acquisition of a temporary easement only with no permanent damages.
- Acquisition of a permanent easement and / or temporary easement only with no permanent damages (Railroad and / or Utility Properties Excluded).
- Acquisition of a fee simple take and / or temporary easement only with no permanent damages and compensation is less than $20,000.
- Upon discovering circumstances during the desk review process which would alter the scope of the work from a desk review to a field review, the review appraiser must notify the district and complete a field review visiting the subject property and comparative data.
- Avoid tracts with new or offset alignment.
- Avoid Urban areas.
- Avoid locations with frequent condemnation.
- Avoid problem tracts and tracts with complicated cost to cure issues.
- Avoid tracts with Cost to Cure items vs. Damages.
- Avoid tracts with permanent damages to the remainder.

The review appraiser considers all pertinent fair market value information available including appraisals obtained by the district, appraisals obtained by the property owner, the appraiser's own data bank, independent estimates, etc. On the basis of additional fair market value information, the appraiser of record may, and should, consider adjusting the opined fair market value at any time prior to settlement. The review appraiser shall perform an updated review of any modified appraisal (See Section 3.5.2 Market Reconsideration). Any adjustments are documented and supported. When the compensation changes, a revised offer is made to the property owner. (See Section 4.4.12 Revising the Original Offer.)

3.9.2 Examination of Appraisal Reports

The review appraiser shall examine all appraisal reports to opine that they:

- Are completed in accordance with department policies and procedures and meet the minimum appraisal requirements of 49 CFR 24, and USPAP Guidelines as of the date of the report and signature thereof.

- Follow accepted principles and techniques in the evaluation of real estate in accordance with existing state and federal law.

- Contain all the information and documentation necessary to support the conclusions and opinions of value.

- Include consideration of everything taken, all compensable items of damage and all benefits but do not include compensation for items non-compensable under state law.

- Are consistent in the fair market value and damages to the remainder with the appraisals of other similar parcels on the project.

3.9.3 Approval and Documentation

The review appraiser reviews each appraisal on a project and determines if the report is:

- Recommended – meets all requirements and selected as a basis of the offer.

- Accepted – meets all requirements, but not selected as basis of offer; or

- Not accepted – may not meet all requirements (provide reasoning for non-acceptance).

Before recommendation of an appraisal, the review appraiser must opine that the appraiser's documentation, including valuation data and analysis of that data, demonstrates the soundness of the appraiser's opinion of fair market value. For the purposes of this part, an acceptable appraisal is any appraisal that, on its own, meets the requirements of 49CFR§24.103. A recommended appraisal is the one acceptable appraisal that is opined to best fulfill the requirement to be the basis for the amount believed to be just compensation. Recognizing that appraisal is not an exact science, there may be more than one acceptable appraisal of a property, but for the purposes of this part, there can be only one recommended appraisal. Where an appraisal represents fair market value and is properly supported, the review appraiser may recommend the appraisal.

When the review appraiser does not agree with fair market values in the appraisal, an additional appraisal may be requested, or an opinion of value (appraisal) may be prepared by the review appraiser. If the review appraiser prepares an opinion of value, reference to data or properly supported values in appraisals previously reviewed may be used to support the opinion of fair market value. (USPAP allows incorporation by attachment or incorporation by reference). The review appraiser includes independent data and properly supported valuation analysis when necessary to support the recommended opinion of fair market value.

The review appraiser adds documentation when not in agreement with any of the fair market values in the appraisal or when there is a wide divergence in the appraisals received and one of the appraisals is recommended. Regardless of the number of appraisals on a parcel, the amount of just compensation must be supported by a recommended appraisal, or an appraisal plus the review appraiser's documentation.

When preparing an opinion of fair market value, the review appraiser obtains the required number of appraisals specified in Section 3.5.3. Properly supported appraisal review documentation qualifies as an acceptable appraisal when the review appraiser does not accept fair market values and/or documentation in appraisals. An appraisal which meets minimum requirements but does not agree with the review appraiser's opinion of fair market value, also qualifies as an acceptable appraisal.

All unacceptable appraisals are made acceptable by the appraiser before the review appraiser arrives at a conclusion of their opinion of fair market value or as soon as possible after completing the project assignment. Because time is of the essence, after 30 days has elapsed, any impasse between the appraiser and review appraiser must be brought to the attention of the department.

When it becomes necessary to acquire additional land from a parcel after the original right of way has been acquired, the review appraiser may document the original review in order to opine the fair market value of the additional land required. This practice will be limited to a reasonable period of time after the original acquisition due to changing market conditions and a period of no more than six months (See Section 3.5.2 Market Reconsideration for further guidance). USPAP allows incorporation by attachment or incorporation by reference from the original appraisal. Subsequent acquisitions are assigned a new parcel number.

The review appraiser prepares a written appraisal review report using the Appraisal Review Certification (LA 30905 Template). This report may be simple or detailed, depending on the complexity of the appraisal being reviewed and includes the following information:

- Identification of appraisal being reviewed.
- Documentation of review findings and conclusions.
- Identification of any damages and/or benefits.
- Documentation of whether the appraisal is recommended, accepted, or not accepted; and

- Indication that an original appraisal review certification was prepared and any supplemental appraisal review certifications, if necessary.

3.9.4 Corrections and Revisions

Request necessary corrections from the appraiser. Review appraisers may supplement appraisal reports with corrections of math errors and by adding documentation in support of appraiser's findings. Review appraisers may also supplement comparable sales data and appraisal reports when the following factual data have been omitted:

- Project and/or parcel number.
- Owner's and/or tenant's names.
- Parties to transaction, date of purchase and deed book references on sale of subject property and comparables.
- Statement that there were no sales of subject property in past five years or transfers of any kind within the past three years, or so state all sales or transfers that did occur within the aforementioned time frames.
- Location, zoning or present use of subject property or comparable sales.

Review appraisers must initial and date corrections or additions to comparable sales data or appraisal reports.

Fee appraisers and review appraisers are eligible to receive additional compensation for revisions caused by changes in plans or changes in appraisal requirements, but not for corrections. Any time an appraiser changes the fair market value or the effective date of the appraisal, a revised Appraisal Report (LA 30700 Template) is submitted along with revised appraisal documentation.

3.9.5 Appraisal Review Certification

The review appraiser completes an Appraisal Review Certification (LA 30905 Template) on all parcels showing the consideration on original and supplemental reviews and attaches a copy to each appraisal reviewed. Instructions are included with the template.

The department approves all opinions of fair market value made by a reviewing appraiser before offers are made to property owners. The review certification is signed by the regional engineer or their delegate when in agreement with the review appraiser.

When a parcel is settled through negotiations above the approved appraised fair market value, an administrative settlement document establishing the amount to be paid is prepared to justify the additional cost. The administrative documentation contains the reasons why the compensation being offered to the property owner is larger than the approved appraised amount.

3.10 SPECIALTY REPORTS

When the appraisal problem involves the valuation of specialty items outside of the real estate appraiser's normal expertise and ability, the services of a specialty agent may be required to aid in opining the contributory fair market value of these items. The specialty agent is an expert in the area of the specialty item(s). Specialty reports received from these experts contain data to support the conclusions presented and are not otherwise available to the appraiser. Cost estimates obtained or estimated by sources available to the appraiser such as cost valuation manuals, contractor estimates, etc., are not specialty reports and are typically used in the appraisal for consideration of fence replacement, sign relocation costs, or other contractor estimates to be incorporated into the analysis and conclusion.

Specialty reports can be obtained to consider the cost to cure certain damages to the property. These damages may be a result of the acquisition of right of way and may be mitigated by the property owner should they perform corrective actions on the property. These corrective actions may be to regain some or all of the property's pre-acquisition use and utility. A cost to cure is provided to the appraiser for consideration in the analysis and conclusion in the appraisal of the subject property. Examples of a specialty report could include a study on reconfiguration of parking; cost to cure for modifications to a building such as the addition or removal of a part of the building (i.e., the addition of an overhead door to replace one that is lost; cost to cure for the cost to construct an access road or another parking area, relocation of a sign, reconfiguration of the canopy and fuel equipment for a gas station, etc.).

The appraiser and review appraiser of the real property review the contents of each specialty report to opine no duplication (double dipping) of items are included in the report and it does not include items which are not compensable under Illinois law. The use of the specialty report is up to the discretion of the appraiser and review appraiser. The appraiser does not arbitrarily add the conclusions in the specialty report to the opined fair market value of the property. Normally, the conclusions in the specialty report represent the contributory fair market value of the specialty items, but it is the appraiser's responsibility to analyze and consider the enhancement or diminution, if any, to the whole property as typically viewed by market participants and incorporate the contributory fair market value into the whole property. If the appraiser concludes that the data contained in the specialty report are appropriate, the appraiser may extend the conclusions made into their appraisal by the use of an extraordinary assumption. The extraordinary assumption may have impacted assignment results and/or the opined fair market value contained therein or similar statement to that effect should be included when an extraordinary assumption is utilized in either an appraisal or an appraisal review.

Use a licensed appraiser for a fair market value conclusion involving specialties as those outlined by the American Society of Appraisers (ASA) or similar organizations. When a licensed appraiser is required for a fair market value conclusion involving valuation specialties such as those outlined by the ASA or similar organizations, the specialty report must meet appraisal requirements.

Narrative type reports are acceptable. They must be typed, dated, and signed by the person making the report prior to submittal to the department. The following information must be included in the report:

- Identification of the property, which should include:
  - Route
  - Project
  - Section
  - Job No.

- County
- Parcel
- Unit
- Street address

- Photographs of the impacted area that is relevant to the specialty report being provided.
- Sufficient documentation and/or exhibits which relate to the subject property supporting information contained within the specialty report.

If needed, a right of way plat or parcel sketch may be attached to the specialty report.

3.11 SUBMITTAL OF APPRAISALS TO CENTRAL BUREAU OF LAND ACQUISITION

Original appraisals and review certifications are kept in the district or local agency files. One copy of the recommended appraisals or appraisals administratively documented by the review appraiser for all state highway projects must be submitted to CBLA when:

- Total compensation exceeds $100,000, or
- Total compensation is less than $100,000 but damages exceed $50,000, excluding non-complex cost to cure.

On local agency projects with federal aid in the right of way, one copy of the recommended appraisals must be submitted to CBLA when:

- Total compensation exceeds $100,000, or
- Total compensation is less than $100,000 but damages exceed $50,000, excluding non-complex cost to cure.

Offers may be made after the appraisals have been submitted to CBLA.

All appraisals and appraisal reviews are subject to an administrative review by CBLA. Appraisal reports, appraisal review documentation and settlement reports will typically be reviewed by CBLA via an administrative review process on a “spot check” basis. An administrative review is neither an appraisal nor an appraisal review and can be performed by an appraiser or non-appraiser within CBLA. This review does not ensure that the appraisal and/or appraisal review is USPAP compliant. The reviewer will not make any inspection of the subject property or the comparable sales in the report. The opined fair market rent and / or fair market value is not being reviewed, only whether the opinion expressed is adequately documented in the appraisal. An administrative review may include commentary that the appraisals:

- Are complete in accordance with department policies and procedures and meet the minimum appraisal requirements,
- Follow accepted principles and techniques in the evaluation of real estate in accordance with existing state law,
- Contain all the information and documentation necessary to support the conclusions and opinions of fair market value,

- Checks for any mathematical errors, especially those that would affect the final opinion of fair market value,
- Include consideration of everything acquired, all compensable items of damage and all benefits but do not include compensation for items non-compensable under state law; and
- Are consistent in the definition pertaining to the opined fair market value and / or fair market rent and damages to the remainder with the appraisals of other similar parcels on the project.

A copy of the documentation is sent to the district, where it is initialed to show it has been received and read, and a copy placed in the files. The district will give a copy of the findings to the appraiser and review appraiser for inclusion in their work file. If deficiencies are noted, CBLA may, as appropriate:

- Inform the district that any deficiencies found are minor and that inclusion of the review comments in the file is sufficient,
- Request the district have the appraiser update the report with corrections and/or the necessary documentation to support the fair market value opinion, or
- Require the district have the corrections and/or additions made to the report by the appraiser and then have the report resubmitted to CBLA for further review.

3.12 SUBMITTAL OF APPRAISALS TO THE FEDERAL HIGHWAY ADMINISTRATION

When requested, CBLA submits the necessary copies of acceptable appraisal reports and acceptable review documentation to the division office of FHWA. Copies of administrative documentations and settlement reports, however, are not submitted to FHWA.

3.13 CONDEMNATION

When condemnation is imminent, up to two additional appraisals may be obtained. Condemnation is considered imminent when there has been no answer within the allotted time to the “Restatement of Offer” letter or when the restated offer has been refused. It is recommended that any additional appraisers or valuation witnesses be retained before the condemnation petition is filed in order that they can view the property on that date.

The above provision does not apply to opinions of fair market value for court testimony, which may be obtained by either the Regional Engineer or the SPAAG. When the opinions of fair market value are obtained by the district, the files are documented to show they were obtained for court testimony rather than for negotiating purposes and the fees coded as a court cost rather than appraisal fees.

As soon as possible after an assignment to a SPAAG is made, a meeting is arranged between the SPAAG and the district to review the valuation evidence. The SPAAG and valuation witness discuss the valuation evidence before any valuation testimony is presented. The SPAAG may request updates of existing appraisals, which according to USPAP is a new appraisal assignment. New appraisals or opinions of fair market value also may be obtained. Opinions of fair market value, which are obtained for court testimony, may be prepared in any detail desired by the SPAAG. Waiver valuations are not used as a basis to give valuation testimony in condemnation proceedings. It is highly recommended, however, that the administrator and the attorney obtain the opinion of the review appraiser as to the reasonableness of the fair market value opinion. If these opinions of fair market value are later used as the basis for settlement, the department must be furnished a copy, which contains data to document and support their opinions of fair market value and/or damages. The district updates the existing appraisals when requested to do so by the SPAAG. The effective date of the appraisal is the date the condemnation complaint is filed.

When condemnation is necessary, the appraisal should always include the fair market value of the whole property before and after the acquisition, or as instructed by the SPAAG. This revision will utilize existing data on the whole property in the appraiser's file and any new information obtained for this purpose (see Section 3.5.15 for further information).

When the SPAAG has had a chance to completely analyze the case and study the evidence including the state and property owner testimony, a settlement may be recommended. There are several reasons for recommending settlement, including:

- Updated appraisals reflecting increases in fair market values between the dates the appraisals were originally prepared and the date the petition is filed.
- Legal interpretation of assumptions made in appraisals obtained by the department.
- Quantity and quality of data available to the appraiser.
- The effectiveness of the appraiser as a witness.
- Additional appraisals, including those of the landowner.
- Interest payments to which an owner may be entitled under state law.
- Uncertainty as to the highest and best use of the property before the acquisition, and, when appropriate, after the acquisition.
- Complex severance damages or other valuation problems that necessarily produce uncertainties as to fair market value.
- Uncertainty as to interpretations of state law concerning the measure or compensability of particular elements of fair market value or damage or concerning the admissibility of evidence necessary to prove facts in issue.
- Recent court or jury awards for eminent domain acquisitions in the area.
- Other factors which would justify settlement.

When settlement is based on a subsequent appraisal, the department must be furnished a copy of the appraisal that contains data to document and support the opinions of fair market value and/or damages.

3.14 VALUATION OF EXCESS PROPERTY

3.14.1 General

When acquiring right of way for highway purposes, 605 ILCS 5/4-501 authorizes the department to acquire inaccessible and uneconomic remnants (i.e., remainders) under certain conditions (see Section 2.2.2.11 and Section 4.5.5.5). When the department determines it should acquire such remainders, the review appraiser will prepare a file memorandum, with assistance from the original appraiser, that will document an allocation of the contributory fair market value of the remainder acquired that is not needed for the construction of the project (highway purposes). This allocated value is then included in the NORWAY inventory by the district Property Manager for internal documentation purposes only and does not necessarily represent fair market value. See Section 7.9.1 for more information on the inventory of non-operating right of way.

When disposing of excess property, 605 ILCS 5/4-508 requires the department to determine the fair market value of the property. The fair market value may be based upon one or more appraisals completed by a qualified appraiser approved by the department, or a valuation waiver prepared by the department, depending on the disposal method used:

- Sale to the Former Owner, Sale to a Local Public Agency, or Sale to an Abutting or Adjacent Property Owner. For these disposal methods, the fair market value may be opined with one appraisal, or a waiver valuation may be used if the fair market value is anticipated to be $15,000 or less.
- Public Sale or Exchange. For these disposal methods, the fair market value may be opined with one appraisal, or a waiver valuation may be used if the fair market value is anticipated to be $15,000 or less.
- Legislative Action (directed sale). For this disposal method, the Illinois General Assembly requires one appraisal and one review appraisal if the fair market value is under $5,000. However, if the fair market value is $5,000 and above, three appraisals are required, with no review appraisal.
- Release of Dedications and/or Access Rights: For a disposal involving either of these issues, the fair market value must be opined with one appraisal and one review appraisal. Due to the complexity, a waiver valuation may not be used.

Appraisals will be completed using the Appraisal Report for Disposal of Excess Property (LA 31401 Template). Waiver valuations will be completed using LA 30705A Template. The minimum requirements for these appraisals and waiver valuations shall be the same as for property to be acquired, including the minimum fair market value of $300.

All valuations of property to be disposed of will be reviewed by the CBLA prior to finalizing the agreement with the prospective owner for the exchange, sale or release of property or rights.

A fee appraiser, if used, must be a certified residential real estate appraiser or a certified general real estate appraiser. The assignment of fee appraisers will be made in accordance with the selection criteria described in Section 3.3.

3.14.2 Valuation of Stand-Alone Parcels

If the excess property is owned in fee simple by the department and the highest and best use is a “stand-alone” parcel, the appraiser will use comparable sales to opine the fair market value of the parcel.

3.14.3 Valuation of Assemblage Parcels

If the excess property is owned in fee simple by the department and has no independent highest and best use as it is not developable, the subject may have a potential for assemblage with an adjoining property. The appraiser will have to opine if the fair market value of the excess property has increased functional utility assembled than it does separately. If not, the excess property should be appraised using sales prices of similar adjacent property. If there is a greater unit fair market value upon assemblage, the excess parcel should be valued at the fair market value which reflects the increased functional utility. When there are multiple adjoining owners and the excess property will be sold at public auction or by sealed bid, the excess property should be appraised without consideration of any benefit if assembled. Assemblage costs can be considered by the appraiser but have to be thoroughly explained and documented in the appraisal.

Excess property in the aforementioned context includes both excess land and surplus land. Excess land is land that has its own separate highest and best use without assemblage thereof. Surplus land is land that has no independent highest and best use as it cannot be developed as a separate developable entity and thus would have to be part of an assemblage to have any potential toward possible development thereof.

Example: There may be great demand for one-acre lots in an industrial park where most of the platted lots are one-half acre. By itself, a half-acre lot has a value of $2.00 per square foot. When combined with an excess parcel the value may decrease to $1.50 per square foot due to the assembled tract exceeding one-acre. The impact may vary depending on whether the excess is subdividable and buildable by itself or is surplus that cannot be developed unless assemblage takes place with a contiguous parcel, as a part thereof.

Examples of potential for a greater unit value assembled:

A non-conforming tract of land requires the assemblage of an excess parcel in order to be buildable. Here you have a value benefit to the assembled tract due to plottage (assemblage).

A second example is the increased utility and value where the plottage (assemblage) creates increased economic utility such as creating a corner location from an interior site with the ability to now access both roadways.

A third example could be agricultural land which may be less than optimum size and has a lower unit value because the smaller tract cannot support the modern equipment needed to produce maximum profits. If the assemblage with an excess parcel result in achieving an optimum size, then the appraiser should opine if the unit fair market value is greater upon assemblage.

3.14.4 Valuation of Dedicated Property

When the department is releasing a dedication of surface rights for highway purposes (i.e., a highway easement), the appraiser will first opine the fee simple fair market value of the dedicated property by using comparable sales of similar types of property. If an abutting property has sold within the past five years and is comparable to the dedicated property, it should be considered by the appraiser. The size and shape of the dedicated property shall be considered by the appraiser. For example, if the property to be released is tillable and can be farmed in conjunction with the abutting land, the fee simple fair market value should be based on sales of tillable land in the area. A factor has been added to the percentages shown in the Standards for Valuing Release of Dedicated Property and Access Rights (Exhibit LA 31404) to cover the fact that reshaped land may not be as productive as other tillable land. Property that has had the pavement removed and has been reworked/reshaped will be considered as tillable unless it has been overgrown with trees, or other heavy growth, or unless the abutting land is not tillable, such as permanent pasture or woodland. In these cases, sales of similar pasture or woodland will be used to establish the fee simple fair market value.

After the fee simple fair market value for the dedicated property has been opined, the appraiser shall apply the appropriate percentage listed in Exhibit LA 31404 under the “LAND TO BE RELEASED” section, except when the adjoining property is developed or the pavement remains in place. The listed percentages cannot be adjusted. Adjustments for the effect of use potential on fair market value when the adjoining land is developed (residential, commercial, and industrial properties) should be considered by the appraiser. Adjustment for the effect of use potential on market value when pavement remains in place (agricultural property) should be considered by the appraiser. Explanations of adjustments should lead to an understanding of why adjustments are warranted, and how the fee simple fair market value is affected. Include in the Scope of Work that the department utilizes percentage and factor adjustments to maintain uniformity in the valuation of dedicated property and may not reflect market adjustments.

3.14.5 Valuation of Dedicated Property and Access Rights

When access rights are released along with the dedicated property, the appraiser will provide an opinion of the fair market value of the dedicated property as stated above and apply the appropriate factor/percentage from Exhibit LA 31404 under the “EASEMENT AND ACCESS RIGHTS TO BE RELEASED” section. The percentage will be based on the highest and best use of the abutting land after the release of the access rights and cannot be adjusted. A before and after appraisal on the abutting property is required if the access rights are needed to develop the property. If the access rights are not needed to develop the abutting property, the access rights would only have a nominal fair market value and a before and after appraisal is not required but should be discussed in the appraisal. The values of the dedicated property and the access rights are considered together to opine the total fair market value for the release of dedicated property and access rights.

3.14.6 Valuation of Access Rights Only

When only access rights are released, the appraiser will provide an opinion of the fair market value of the property to which the access rights are being restored before and after the release of the access rights. The difference will be fair market value of the access rights.

3.14.7 Valuation of Permanent Easements

When a permanent easement is released, the appraiser will provide an opinion of the fair market value of the property to which the easement will be restored before and after the release of the easement. The difference is the fair market value of the permanent easement.

3.15 LAND ECONOMIC STUDIES

3.15.1 General

Land economic studies are prepared for the purpose of showing the actual damage or benefit, occurring to the remainder of a property as the result of the acquisition of land for a public improvement. They are used primarily by staff and fee appraisers to assist in opining adjustments to the comparable sales used to value the remaining property in a partial acquisition in connection with appraisals for transportation projects.

3.15.2 Origin of Data

Land economic studies are originated with a district obtaining information on sales of remainder properties from which right of way has been acquired in their respective areas, and then investigating all aspects of the sale. The district obtains sale information from many sources such as property owners, realtors, appraisers, newspapers, county records, etc. After sales are identified, only the procedures required to produce studies from an area when no sales are known will be discussed.

3.15.3 Investigation

After an area is chosen and right of way plans are obtained, prepare lists of the parcels, having promise for further investigation. Include information such as the parcel number, the name of the owner, the tax identification number, the township, range, and section where the parcel is situated, the year of the state's acquisition, and whether acquired by negotiation or condemnation.

Use the year the state acquired each parcel as a beginning point when going through the records in the courthouse or other sources. Quick takes or condemnation cases are indicated to show that the entry of the transaction between the state and the property owner will not be recorded in the form of a deed.

Once the lists have been completed, "run the records" at the county courthouse beginning with using the parcel owner's name found in the grantor's index indicating the sale of property to the state. When the name reappears at this specific location, it normally indicates a sale of all or part of the land to another individual or firm.

Many different instruments are used, but the one most frequently employed for land economic studies is the warranty deed. If this is the case, a check is made in the Deed book and on the right of way plans to discover if the property sold by the owner coincides with the property, which borders on the right of way. If this is affirmative, complete the Land Economic Studies Sales Data form (LA 31503). This form is for reference purposes and includes the grantors and grantee's name and address, parcel number, date when recorded, consideration indicated, the acreage involved, the book and page number where the sale is found in the Deed Book, the amount of revenue stamps affixed to the deed, and the date the form is completed. In addition, a detailed legal description of the land involved in that transaction is recorded on this form for easy reference purposes. After sales have been located for a particular parcel, the number of sales can be written near the owner's name on the list.

If an owner's name does not appear again after the initial sale of land to the state of Illinois, then the work "none" can be placed beside the owner's name to indicate that there were no recorded sales of these remainders.

Another source of information and verification of sales data is the Real Estate Transfer Declaration, which must be presented to the Recorder of Deeds or Registrar of Titles at the time a deed is presented for recordation. This document or a copy thereof may also be found with the County Clerk's office, Supervisor of Assessments, Assessor or Board of Assessors of the County where the property is located.

3.15.4 Screening

Once the courthouse investigation is exhausted, the sale forms prepared at the courthouse are examined to opine the most promising sales. The sales are divided into different categories (borrow pits, interchanges, residential, commercial, industrial, agricultural, etc.). Some will be used immediately, others later, and some are not used because they do not indicate true market transactions. Check the legal descriptions of the land to see if they agree with the right of way plans and appraisal.

The sale indicates a damage or benefit, which attributed to the right of way acquisition. Sales around interchanges, or of remainders affected by severance of property, irregular shape, proximity to the highway, reduction in size, land locking less desirable access, etc., often provide information for useful studies.

3.15.5 The Interview

An interview is conducted with the grantor and/or grantee on each selected parcel's transaction. This interview has five main purposes: verify the sale price, visually inspect the property, discover if any improvements were added to the property from the time the state bought the land to the time when the owner sold the remainders, determine the reasons for buying or selling the land along with the use to which it is or will be put, and determine if any subsequent changes in zoning or other factors had an effect on the sale price. Use the Land Economic Studies Personal Interview form (LA 31505) for the interview to ensure that all necessary information is recorded. Other items, which the interviewer should have, are a county plat book, a plat of each piece of property from the approved appraisal, and the sale papers complete with the legal description.

The interviewer is prepared with an amiable attitude, expecting to listen to criticisms concerning some state operation with an understanding ear. Introduce the business as subtly as possible. Often during an interview, ask about any additional information concerning recent sales in a specific area, as there could be some unrecorded contract for deed sales.

Once the interviews are completed and the forms returned to the office, the land economist analyzes and selects the suitable sales based on the interview data.

3.15.6 The Rough Draft

After the most promising studies have been chosen, the appraisals for each parcel are obtained and one of the following preliminary forms is completed as appropriate:

- LA 31506A - Land Economic Studies (Residential)

- LA 31506B - Land Economic Studies (Rural)
- LA 31506C - Land Economic Studies (Commercial)

Most of the information for these preliminary forms can be gathered from the appraisals and local realtors.

Most land economic studies show a resulting benefit or damage. A benefit occurs when a subsequent sale indicates that a new highway improvement actually increased the fair market value of the property. Conversely, damage has usually occurred when a recent sale shows that, after the highway improvement, the remainder sold for less.

As part of the land economic study, a photograph is taken of the rural properties by aerial surveys. This picture is then detailed by outlining the property lines, the land taken, the location of the highway and property, the acreage involved, and any township or county roads adjacent to the subject land (for an example refer to Exhibit LA 31506D).

3.15.7 Computation

The damages or benefits to a particular tract of land are computed based on the approved appraisal, an adjustment for changes in market conditions over time and the subsequent sale price. The amount for the part acquired by the state is deducted from the total before fair market value to arrive at the fair market value of the remainder before acquisition, to which a market condition adjustment is applied, creating an adjusted fair market value of the remainder before acquisition. Market condition adjustments are obtained from local sources and will vary depending on location and length of time between the state's acquisition and the subsequent sale. The difference between the adjusted fair market value of the remainder before acquisition and the subsequent sale price is the indicated damage or benefit to the property. This difference is then divided by the fair market value of the remainder before acquisition to show the percentage of damage or benefit.

3.15.8 The Final Copy

When the land economic study preliminary form is finished, it is to be typed and proofread. Any mistakes are corrected, and the final copy is completed. A cover sheet is made, consisting of an outline of the state of Illinois with the interstate system traced across the state. The particular county where the study is located is identified on the map with diagonal lines. Each study's number is followed by the state highway district where it is located (for example, No. 187-2). The type of study (agricultural, residential, industrial, or commercial) and the characteristics causing the damage or benefit, such as proximity, shape, division, land locking and size are indicated at the top of the cover sheet. Near the bottom of the cover page is the byline of the state.

3.15.9 Printing Procedure

The final stage of the creation of a land economic study is publication. A memorandum is sent to CBLA for approval. If approved, a printing request is forwarded to the appropriate bureau and the actual printing is then done.

All of the finished copies are then sent to the CBLA where they are distributed for information and use. Extra copies are kept in the appraisal unit’s files. The land economic studies are for the use of all staff and fee appraisers and other-interested parties. These studies are used as a tool by appraisers in opining the after fair market values and benefits more accurately.

It is our desire to maintain a close relationship with all staff and fee appraisers in the State of Illinois. Also, a working relationship is generated with other states by sending samples and complete sets of studies to their respective land economic sections. It is anticipated that all will benefit by this type of cooperation and exchange of information.

Table of Contents

4 NEGOTIATION AND ACQUISITION

4.1 *GENERAL*

The policies and procedures set forth in this chapter govern the acquisition of real property for all state projects, as well as local public agency projects using federal funds. Uniformity in the application of these policies and procedures under the guidance of CBLA will ensure projects are eligible for federal reimbursement and maintain a high standard of integrity and professionalism in the acquisition of private property for public use.

Authority for the acquisition and disposition of real property required for highway purposes is established and governed by statute at 605 ILCS 5/4-501 to 5/4-511, inclusive. It is always the goal of the department to successfully negotiate with property owners to acquire necessary property rights by agreement. When an agreement cannot be reached with the property owner, eminent domain is used to accomplish such acquisition through court action (i.e., condemnation) (735 ILCS 30/1-1-1 to 30/99-5-5 inclusive). See Chapter 5 for information on the condemnation process.

Negotiations are to be performed by qualified department staff or specialty agents (i.e., consultants) who meet the requirements for approval and inclusion on the Specialty Agent list maintained by CBLA. The qualification requirements and application process for being listed as a specialty agent are described in Chapter 1.

Counties, municipalities, or other local governmental agencies may acquire right of way on the state highway system provided such acquisition conforms to the department's policies and procedures and the process has the prior approval of the department.

4.2 *PREPARING FOR NEGOTIATIONS*

Prior to making first contact with the property owner (i.e., beginning negotiations), it is important for the negotiator to be aware of, and become familiar with, the following.

4.2.1 Timing of Negotiations and Public Involvement

During the planning of a project (Phase I), federal regulations require that the social, economic, and environmental impacts of a project be considered, and that there be meaningful input from the public through a public involvement process. Therefore, land acquisition activities which involve contact with the public, including the negotiation process, shall not begin until after the public involvement process is complete and the Phase I report is approved.

However, during the public involvement process negotiators may be asked to participate with other staff to present the project and answer general questions related to land acquisition. Such participation in encouraged but negotiators should choose their words carefully and any statements made should be factual, impartial and not involve the potential valuation, damages, or other specifics related to any particular parcel.

4.2.2 Appraisals/Waiver Valuations

A copy of the appraisal or waiver valuation prepared for the acquisition is to be provided to the property owner at the initiation of negotiations. The negotiator should have a working knowledge of the appraisal process and be prepared to answer questions regarding the appraisal. When the appraisal has recognized damages due to the acquisition and design of the project, the negotiator should explain to the property owner the cause of damage and how the appraisal has taken the damages into consideration. An inadequate explanation of damages may result in the owner forming an impression that vital information is being withheld. See Chapter 3 for more information about the appraisal process.

4.2.3 Conflict of Interest – Negotiation/Appraisal

Federal regulations found at 49 CFR 24.102(n) contain the following provisions to ensure the process of valuing property to be acquired is not negatively impacted by potential conflicts of interest.

- The appraiser, review appraiser, or person performing the waiver valuation shall not have any interest, direct or indirect, in the real property being valued for the agency. Compensation for making an appraisal or waiver valuation shall not be based on the amount of the valuation estimate.

- No person shall attempt to unduly influence or coerce an appraiser, review appraiser, or waiver valuation preparer regarding any valuation or other aspect of an appraisal, review, or waiver valuation. Persons functioning as negotiators may not supervise or formally evaluate the performance of any appraiser or review appraiser performing appraisal or appraisal review work, except that, for a program or project receiving federal financial assistance, the federal funding agency may waive this requirement if it determines it would create a hardship for the agency.gency may waive this requirement if it determines it would create a hardship for the agency.

- An appraiser, review appraiser, or waiver valuation preparer making an appraisal, appraisal review, or waiver valuation may be authorized by the agency to act as a negotiator for real property for which that person has made an appraisal, appraisal review, or waiver valuation only if the offer to acquire the property is $15,000 or less. (*See* Appendix A, § 24.102(n).)

In keeping with these regulations, it is the policy of the department that the same individual shall not perform the valuation of the property and conduct the negotiations for acquisition, except in cases of minor acquisitions involving compensation of $15,000 or less where the individual who has prepared the valuation may also serve as the negotiator for that same parcel with prior approval from CBLA. Requests for approval should identify the project for which approval is sought and include a brief explanation of the need for such authorization.

Further, a negotiator may not supervise or formally evaluate the performance of any person who performs waiver valuations, appraisals, or review appraisal duties, unless the supervisor is not actively functioning as a negotiator but functioning only as an administrator or project manager. Consultants should work to organize their staff to avoid a negotiator directly supervising or formally evaluating the performance of any person performing waiver valuations, appraisals, or review appraisal duties. A district may request a waiver from the FHWA should compliance with this requirement become a hardship. All such requests must be submitted to CBLA for review. CBLA then forwards such requests to the FHWA for approval or denial.

4.2.4 Initial Parcel Analysis

Prior to any communication with the property owner, a negotiator must become familiar with the details of each assigned parcel and the effect of the project on those parcels. The negotiator should also review all ownership and title information as it becomes available, to understand the identity of the property owner, who they will be corresponding with, and what issues the ownership might present. A negotiator must have no direct or indirect, present or contemplated future personal interest in the parcel, and cannot in any way benefit from the acquisition of such property.

In addition to having familiarity with the project objectives, right of way plans and the approved appraisal, it is essential that the negotiator be familiar with the land itself; the neighborhood; the number, extent and ownership of improvements (including special land improvements); property boundaries; barriers both natural and manmade (e.g., fences, rivers, creeks, ditches, etc.); the area of the taking; the remainder, if any; the existing road system and its relation to the parcel in question; the location of comparable sales with reference to the subject parcel; and the general effect of the acquisition on the property including specific benefits, if any.

4.2.5 Title Analysis

During this evaluation phase, prior to first contact, the negotiator should also assess any possible encumbrances on title arising from the negotiator’s observation of the property, related documentation and the title commitment provided. The negotiator is responsible for knowing whether or not any title exceptions affect the part to be acquired, requiring that they be cleared from title as part of the negotiation and acquisition process. A clear understanding of potential encumbrances is necessary so that the negotiator will be able to ask questions and raise concerns about title issues when discussing the offer and acquisition process with the property owner. The negotiator will need to prepare a title analysis report for each assigned parcel, setting forth the relevant information about the encumbrances, whether they affect the acquisition, and how they are to be addressed.

4.2.6 Identifying Owners and Ownership Issues

Property can be held by individuals, groups of individuals, or various types of entities, such as corporations, trusts or local governments. Section 4.5 includes more details about the types of issues presented by various types of property owners and different paperwork needed for each.

4.2.7 Coordination of Negotiation and Relocation

Prior to initiating contact with the property owner and presenting a written offer, the negotiator should determine whether the property owner may be eligible to receive benefits under the Relocation Assistance and Payments Program (see Chapter 6 for information regarding relocation). If eligibility is likely, an appropriate entry should be noted in the Negotiator's Report and the negotiator should coordinate the delivery of the written offer to purchase the property with the relocation representative assigned to the parcel prior to the initiation of negotiations.

The relocation representative should then accompany the negotiator when the written offer to purchase the property is presented to the owner-occupant to explain the relocation program and the property owner's eligibility. The relocation representative must also promptly notify any tenant of relocation eligibility once the negotiator has delivered the offer to purchase the property.

4.2.8 Knowledge of Plans/Design/Construction

For the negotiator to become thoroughly familiar with the highway construction plans, particular attention should be made to review and understand the plan and profile sheets, cross section sheets, any other detail sheets, such as driveway details, etc. If the negotiator has any questions regarding the highway construction plans, he/she may need to consult with the District Project Engineer for an explanation of any unusual design features that may affect a property. The negotiator should use this information to provide the owner with a clear understanding of the proposed highway improvement, and its effect on their property.

The negotiator should also be prepared to discuss clearly and effectively any construction or design features that may affect the valuation and/or usage of the property. Those construction or design features may include:

- Access limitations and control to be imposed.
- Existing and proposed means of ingress and egress.
- Frontage roads to be provided, if any.
- Elevations of the highway in relation to the existing terrain.
- Cut and fill, if any.
- Driveways - existing and proposed.
- Fencing - owner or state responsibility for erection and maintenance – type.
- Easements required for construction, channel change, or other purposes.
- Changes in drainage patterns, if any.
- Damages to the remainder.
- Other features.

Negotiators should use this knowledge to gain the confidence of the property owner that the department's design has been well thought out and the proposed improvement is necessary. Negotiators should always be honest and answer any questions or concerns raised by the property owner. Best practices for explaining the construction plans and impacts to the property owner include the following:

- Keep an entire set of highway construction plans with you, or, at a minimum, a full copy of the proposed improvement's plan and profile sheets; and have a general understanding of the proposed corridor and project as well as the properties required for the project, including those of adjacent property owners who are also being affected by the right of way acquisition.
- Highlight the acquisition area on the construction plans so the property owner can clearly identify their property and the proposed acquisition needed for the project.
- Use construction plans to help explain the relationship between the highway and the remaining land, the means of ingress and egress, proximity to the improvements, drainage patterns, relative elevation of the highway to the existing terrain, general details, etc.

- Show the instruments of conveyance while discussing the construction plans, aerial plan sheet, right of way map or parcel sketch. Describe the acquisition and trace the description on the map or sketch. This can help the property owner visualize and better understand the proposed acquisition.
- Supplement the description by relating the plans to known physical landmarks so the owner can graphically recognize the land to be acquired and any land remaining.
- Request the district stake the proposed ROW where doing so will help the property owner better understand the proposed acquisition area and alleviate the property owner's concerns, particularly for complex acquisitions.

Each property owner is entitled to have a clear understanding of the project, and the impact on their property. Preliminary construction plans may be used but must be clearly labeled "PRELIMINARY". The negotiator should always request an updated set of construction plans, even after the offer has been made, as the design progresses along with the acquisition process. It is best to have the latest set of plans. The negotiator should explain to the property owner that changes in the overall design can still occur prior to the letting, but any changes that may impact their property will be discussed before reaching a settlement.

4.2.9 Entry on Private Property

During negotiations, it is helpful for all parties to visually observe the area to be acquired. This can help negotiators understand what concerns the property owner may raise when the offer is presented. It may also be useful to have the area of the acquisition staked to allow the property owner to better understand the impact of the acquisition on their property. Under 605 ILCS 5/4-503 of the Highway Code, the department, or any county, by its officers, agents, or employees, has authority to enter onto the land to be acquired for various purposes, including to make preliminary surveys and determinations of the amount and extent of land, rights or property to be acquired. The department must first provide written notice to the owners and occupants in advance of making such entry onto private property and is responsible for any damages caused by, including any damages to existing crops. See Section 2.3.8 for more information.

4.3 *INTEREST TO BE ACQUIRED*

Per state law (30 ILCS 545/2), the department must obtain title to all lands needed for the project before the construction contract can be executed or any work undertaken. Federal regulations (23 CFR 1.23; 23 CFR 710.305) also require the department to acquire adequate "real property interests" (see definition in Appendix A) for the construction, operation, and maintenance of any federally funded project. The Highway Code (605 ILCS 5/4-501) then authorizes the department to "acquire the fee simple title, or such lesser interest as may be desired, to any land, rights, or other property necessary for the construction, maintenance or operation of State highways."

4.3.1 Fee Simple

Typically, the department acquires fee simple title to the land required for highway projects. Fee simple title is the most complete form of ownership and affords the department an appropriate level of control over the highway right of way. However, as allowed by the Highway Code, the department may acquire a lesser interest in the land as may be desired. The following sections explain some of the other types of property interests the department often acquires.

4.3.2 Easements

In some cases, fee simple ownership is not necessary and the department will instead acquire an easement. An easement is a grant of an estate or interest in land that leaves the property owner in possession of the land but grants the department certain rights to use the land for highway purposes. The easement document, which describes the specific highway purpose(s) for the easement, is recorded in the same manner as a deed, is irrevocable, and "runs with the land" granting the department rights that continue even if the landowner sells or transfers the property. The acquisition of an easement is accomplished in the same manner as fee simple with respect to appraisal and acquisition requirements.

The department may acquire a permanent or a temporary easement, depending on the specific needs of the project. Although typically located outside or beyond the proposed highway right of way lines, all easements are considered right of way parcels and are to be reported as "right of way" required for construction of a project for purposes of obtaining authorization to advertise the project for letting.

4.3.2.1 *Permanent Easement*

A permanent easement grants rights to the department without any time limitation. A permanent easement is obtained when such interest is deemed sufficient for the project design or when the fee simple title is not available. Examples of permanent easements include areas required for future maintenance or reconstruction purposes, such as installation of an outfall storm sewer, riprapping of stream channels, or channel changes. Permanent easements are also used to cross railroad right of way when the railroad is unwilling or unable to convey the fee interest. Use the LA 40302P series of templates when acquiring a permanent easement.

4.3.2.2 *Temporary Construction Easement*

A temporary construction easement also grants rights to the department, but only for the length of time specified in the conveyance document. Temporary construction easements are obtained where the specified use is temporary but essential to completion of construction of the proposed improvement, such as detour roads, borrow pits, removal of remainders of buildings situated partially on acquired right of way, channel changes requiring no future maintenance, etc. The department does not build permanent improvements on temporary construction easements. Use the LA 40302T series of templates when acquiring a temporary easement.

Temporary construction easements acquired by the department are set to terminate at the end of their stated term of years, or upon completion of the construction project, whichever occurs first. If a project is completed or abandoned before the term of the temporary easement has ended, the department may need to record a release of the temporary easement, using form LA 40302R.

4.3.3 Dedication

In the early development of the state highway system, landowners would often donate or dedicate the surface rights from a portion of their property to the State. This "dedication of surface rights for highway purposes" (i.e., dedication) gave the department the ability to construct, operate, and maintain the highway; yet the landowner retained the underlying fee interest. This practice was discontinued many decades ago in favor of acquiring the fee interest. If unique circumstances arise that would warrant acquisition by dedication, DLA must work with CBLA and OCC to proceed with such acquisition. Use the LA 40303D series of templates when acquiring a dedication.

In situations where additional right of way is being acquired from an owner still holding a fee interest to existing dedicated right of way, the department will acquire that fee interest as part of acquiring the additional right of way. This procedure will unify the department's interest in the right of way and eliminate the owner from having to pay taxes on the dedicated right of way.

4.3.4 Access Rights for Freeways

The Illinois Highway Code authorizes the establishment of freeways in the state of Illinois (605 ILCS 5/8-101 to 5/8-109). A freeway is a controlled access highway, defined in the Illinois Vehicle Code as "[e]very highway, street or roadway in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or from the same except as such points only and in such manner as may be determined by the public authority having jurisdiction over such highway, street or roadway" (625 ILCS 5/11-112).

When a freeway is established along an existing highway location, the access rights of abutting property owners must be acquired for the department to extinguish or restrict the access the owners previously enjoyed. The valuation of the access rights is included as part of the appraisal assignment.

When a freeway is established along a new highway location, property owners do not have pre-existing access rights as there is no highway currently abutting their property; and as such, there is nothing to acquire for the department to exercise access control. This approach is supported by an opinion of the Attorney General, (1959 OP Atty. Gen. #548), which states that the department need not acquire or pay for the acquisition of access rights from property abutting a freeway on a new location.

Freeways may be designated to have full control of access (i.e., full freeways) or modified/partial control of access (i.e., modified freeways or expressways).

4.3.4.1 *Full Freeways*

Direct access from abutting property to the travel lanes of a freeway with full control of access is never permitted. Instead, access is provided by frontage roads, service drives, or other public roadways which lead to grade separated interchanges. Remnants and remainders from partial acquisitions are also acquired when they become inaccessible or landlocked due to the implementation of full access control (see Section 2.2.2.11).

4.3.4.2 *Modified Freeways (Expressways)*

Direct access from abutting property to the travel lanes of a freeway with modified/partial control of access (i.e., and expressway) is permitted as follows:

- By agreement or stipulation with the property owner, when access rights are being acquired, the department may designate points of direct access to the freeway from the abutting property, used solely for agricultural or single-family residential purposes.

- Whenever property held under one ownership is severed by a freeway, with partial or modified access control, the department may permit the crossing of the freeway at a designated location and under specified terms and conditions used solely for one single family residential and/or farming purposes and for passage from one severed tract to the other. If such severed tracts at any time cease to be held under one ownership, the department terminates and revokes the said permit; however, access to the freeway continues at the same points, when this is the only access to the tract.
- Direct access from abutting property to the freeway is never permitted for commercial purposes. Where commercial units are located on roads that intersect the freeway, access to the freeway is limited to the intersecting roads. When these units are located in areas through which local service drives or frontage roads are constructed, access from the abutting property is to the local service drive or frontage road and thence to the freeway by way of the local service drives or frontage roads where such local service drives or frontage roads provide access to the freeway.
- If a property is so located as not to fit in any of the above situations, then completely extinguish the right of access to the freeway from that property.

Additional detailed material concerning the establishment of freeways is in the Design and Environment Manual. The access control plan for a particular freeway also provides additional and valuable information for understanding the acquisition and the terms and conditions of the access control. The access control plan is available from the Bureau of Design and Environment.

The Policy on Permits for Access Driveways to State Highways of the Bureau of Operations also contains information relating to access control on freeways. The district should refer any violations of access restrictions contained in the conveyance to the Central Bureau of Operations, which will coordinate with OCC.

See Section 4.5.1.6 for more information regarding the language used in conveyance documents related to access rights.

4.3.5 Temporary Use Permit/License

A license is a specific and temporary grant of permission from an owner to an individual or entity to use real property for a particular purpose. It does not transfer an interest in real estate. It is specific to the licensee and cannot be transferred to any third party. A license is generally revocable at any time by the owner of the property who granted the license. A temporary use permit is a specific form of license that may be used by the department only in limited circumstances and only with the prior approval of CBLA.

A temporary use permit may be requested from a property owner when no addition or change is to be made to the property to be used, or the property is not essential to complete a department project, such as use of a parcel to park trucks or store materials. Because acquisition of a temporary use permit is not an acquisition of land rights subject to eminent domain requirements, a formal appraisal for the value of the temporary use permit is not required. The compensation to be paid to the property owner may be mutually agreed between the department and the property owner. A temporary use permit is never to be used if a change to the character of the property will occur, or use of a particular parcel is essential to the project. In such situation, a permanent or temporary easement must be acquired in accordance with department policies and procedures.

In order to request authority to seek a temporary use permit, the district must provide CBLA with an explanation of the parcel covered by the proposed temporary use permit, the amount proposed to be paid for the temporary use permit, the identity of the property owner, and an explanation of the need for the temporary use permit. CBLA, in consultation with OCC, will review the request and determine whether the temporary use permit may be granted. No temporary use permit may be obtained without prior approval from CBLA.

4.4 *NEGOTIATING FOR SETTLEMENT*

Negotiations officially commence when the negotiator approaches the property owner by personal contact, or by letter, to formally present a written offer for the proposed transaction, including the compensation to be paid. An oral offer without a written offer does not constitute the initiation of negotiations under the Uniform Act. The preferred end of negotiations is when a settlement has been agreed to, and the compensation has been paid to the owner of record. However, some parcels will ultimately go to condemnation despite the best efforts of the negotiator.

4.4.1 Negotiator's Report

Prior to the first contact with a property owner the negotiator shall sign a statement included on the Negotiator's Report (form LA 40401) which certifies:

- they understand that the parcel is to be secured for use in connection with a federal-aid or state highway project; and
- they have no direct or indirect present or contemplated future personal interest in the parcel or will in any way benefit from the acquisition of such property.

When negotiations are successful, the negotiators shall sign a statement included on the Negotiator's Report which certifies:

- the written agreement secured embodies all of the considerations agreed upon between the negotiator and the property owner; and
- the agreement was reached without coercion, promises other than those shown in the agreement, or threats of any kind whatsoever by or to either party.

Negotiators must at all times maintain a current written record in the parcel file using the Negotiator's Report, including the pertinent points of each discussion or contact with the property owner or their designated representative, the date(s) and place(s) of such contact, offers made, and the owner's response and questions or inquiries, as well as any other relevant information about the negotiation process. The report should contain actual statements made by the property owners or their designated representatives and other interested parties. Personal opinions, assumptions and judgments about the property owner should not be included in the Negotiator's Report, which will become a court exhibit, in the event of condemnation. Additionally, avoid including any personal information related to any of the parties' identities in the report (this includes social security numbers and account numbers, such as mortgage account numbers), as transmission of such information can violate the Illinois Personal Information Protection Act (815 ILCS 530/1 et seq.)

All entries in the Negotiator's Report should be made within 24 hours of any contact with the property owner. This report is considered part of the project parcel file and can be beneficial to the negotiator when reviewing previous conversations or correspondence with the property owner, even after construction has begun. Additionally, it can also be used by the department and the FHWA in reviewing the history of the negotiation and in the analysis of negotiation procedures. It will also be reviewed by the Attorney General's office when requesting the appointment of a SPAAG, as well as becoming an important part of any future condemnation proceedings.

To assist in monitoring right of way activities to ensure compliance with Title VI of the Civil Rights Act of 1964, the negotiator should check the classification in the Title VI (Non-Discrimination) block in the Negotiator's Report. Also indicate in the proper blank the gender of the first-named owner of record shown on the Title Commitment or other evidence of ownership (M-Male, F-Female, O-Other). If the property owner refuses to respond to this request, it should be noted in the report. In the case of a trust, corporation, or business entity where no individuals are named, no entry is required.

Include information regarding heirs and other owners of interest and their addresses, sales of property which the appraisers have not considered, counteroffers by the owner, points of discussion related to controversial or over-looked items, special considerations regarding the owner's acquisition of the subject property or any of the comparable properties, and other details of title or value. This information can be invaluable in subsequent discussions with the owner, for eminent domain proceedings if required, and future negotiations with others.

If it becomes necessary for a different negotiator to take over the acquisition of a parcel, then notation of the change in negotiators should be made in the report; and as the report stays with the parcel, each entry made in the report must identify the negotiator making the entry.

4.4.2 Negotiator Introduction

Prior to contacting the property owner, the negotiator is to prepare the "Introduction of your Negotiator" letter (LA 40402 Template) and submit the same to the District Land Acquisition Engineer (or designated personnel, who has signature authority) for review and signature. The letter should be sent to the property owner as soon as practicable after assignment of the parcel.

As the department's first notification to the property owner of an interest to acquire the property, the letter includes information required by state law and federal regulation (735 ILCS 30/10-5-15(c), 49 CFR 24.102(b)), an explanation of the project including the relevant information about the proposed acquisition, as well as the name, address and telephone number of the negotiator and the department representative to be contacted concerning the property owners' rights in relation to Eminent Domain.

4.4.3 Property Owner/Tenant Cannot be Located

The negotiator must make every reasonable effort to contact the property owner and describe those efforts in the Negotiator's Report. These efforts should include online searches, a check of the assessment rolls, post office, sheriff's office, public utilities, individuals in the community and any other sources that may provide information regarding the owner's current location. The districts may also have access to public records databases (e.g., LexisNexis) for this purpose. At a minimum, if all other efforts at contact fail, the negotiator should visit the subject property to attempt to reach the property owner and/or leave the negotiator's contact information. These measures are essential to the legal requirement to conduct a diligent search. If the negotiator cannot locate an owner, or tenant, the parcel must be recommended for condemnation with documentation of the efforts made to locate the owner.

4.4.4 Initial Contact with Property Owner

After sending the Introduction of your Negotiator letter, the negotiator will initiate contact with the property owner. This first contact will most often be a phone call to request an in-person meeting to present the Acquisition Package ("Offer") to the property owner. Please note that if the property owner wishes to have the Offer mailed and then meet at a later date, the negotiator may also offer the property owner a virtual meeting as an option and record results concerning the "in-person meeting" in the Negotiator's Report. Where a property owner prefers not to meet in person, such preference should be noted in the Negotiator's Report.

Do not contact owners at their place of business unless it is a business property that is proposed to be purchased or unless requested by the owner. The meeting is ordinarily held at the owner's residence; however, if it is desirable to meet at the district land acquisition office, a private office is made available.

In the initial contact, the negotiator greets the property owner, briefly explains the project, the required acquisition and next steps, as well as schedules a meeting to review the Acquisition Package with the property owner. The negotiator must assess the conversation and be prepared to address questions of the property owner. The negotiator should also determine whether this initial contact is an appropriate time to inquire about or clarify potential issues related to the acquisition, such as ownership questions, tenants or parties in possession, or other obvious title concerns.

Make all reasonable efforts to acquire the real property by negotiation. Each property owner is personally contacted by a negotiator representing the acquiring agency to discuss the offer and explain the full effect of the acquisition.

4.4.5 Acquisition Notice and Acquisition Package

The Acquisition Notice and the Purchase Offer can be sent with or without the 60-day notice required prior to commencing condemnation proceedings. The negotiator will need to consult with the district Land Acquisition Engineer/Manager to determine which type of offer format they will use for individual jobs. The choice will depend on factors such as how time sensitive the job is or the likelihood of completing the acquisition before the letting. Generally, all the parcels on a project should be treated the same way unless there is documentation in the parcel file indicating why it was treated differently.

The negotiator will prepare the appropriate Acquisition Notice, and all documents to be included in the accompanying Acquisition Package for review by the District, with signature by the Land Acquisition Engineer/Manager. At the first meeting with the property owner, the negotiator will present the following:

- Acquisition Notice (LA 40405A or LA 40405D Template): This letter identifies the project, restates the negotiator's identity and role, explains the property owner's option to designate a representative to receive notices and documents from the department and negotiate on their behalf, presents the Acquisition Package, sets the timeline for negotiation, and explains the steps to be completed if the property owner agrees to the Purchase Offer.

  The LA 40405A version of the letter includes the 60 day notice to inform the property owner of the possibility of condemnation should a negotiated agreement not be reached, the department's intent to continue to seek a negotiated settlement even if condemnation proceedings are initiated, and the earliest date on which a complaint for condemnation could be filed. In the case of a corporation or other business organization, a copy of the 60 day notice must be sent to the registered agent of the owner.

- Purchase Offer (form LA 40405B or LA 40405E): This form, which is to be reviewed, approved, and signed by the Regional Engineer or their designee, presents the offer of just compensation, explains the basis for computing the offer, and provides a summary of the parcel information and valuation of the property in compliance with the requirements of the Eminent Domain Act (735 ILCS 30/10-5-15(d)) and federal regulations (49 CFR 24.102(e)).

  The LA 40405B version of the purchase offer complies with the Eminent Domain Act (735 ILCS 30/10-5-15(d)) and is to be used with LA 40405A.

- Approved Legal Description identifying the property to be acquired.
- Right of Way Plat depicting the area to be acquired.
- Preliminary construction plans and/or aerial plan view specific to the parcel in question.
- Valuation Report: A copy of the Appraisal and Review Appraisal, or Waiver Valuation used in determining the just compensation for the parcel.
- Required informational brochures: Highway Improvements and Property Rights and A Land Owner's Guide to Land Acquisition by the Illinois department of Transportation and Eminent Domain.
- Property Owner's Designated Representative to Negotiate Offer form (LA 40405C): If the property owner would like to designate another party to receive notices and documents from the department or negotiate on their behalf (e.g., an adult child of the property owner, a farm manager, an attorney, etc.), that authorization must be granted in writing using this form which is kept in the file.

TO MEET STATUTORY REQUIREMENTS OF THE EMINENT DOMAIN ACT, IF THE ABOVE DOCUMENTS INCLUDE THE CONDEMNATION LANGUAGE, THEY MUST BE SENT TO THE PROPERTY OWNER, THE REGISTERED AGENT, AND THEIR DESIGNATED REPRESENTATIVE IF APPLIABLE. FURTHER, THE DOCUMENTS MUSTE BE SENT BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED; BY A PRIVATE DELIVERY SERVICE PROVIDING THE SAME FUNCTION AS CERTIFIED MAIL WITH RETURN RECEIPT REQUESTED; OR BY PERSONAL SERVICE (i.e., HAND DELIVERY). THIS IS TRUE EVEN IF THE DOCUMENTS WERE ALSO SENT ELECTRONICALLY. Stamp hand delivered copies of the Acquisition Notice and included documents as copies. If return receipt for the Acquisition

Notice is not returned, the Acquisition Notice should also be sent via regular US First Class mail.

Regarding Local Public Agency Projects, all offers must be made in writing and on the Local Public Agency's letterhead.

4.4.6 First Meeting

At the first meeting with the property owner or their designated representative, the negotiator should be prepared to discuss and explain clearly and effectively, all the printed material in the Acquisition Notice and Acquisition Package.

Include all persons at the first meeting who have an interest in the fee title to the property. It is not appropriate to discuss valuation, marital status, liens, or other items that may be considered personal in nature before a third party. Therefore, avoid including disinterested parties at the first meeting unless the property owner's specific circumstances (such as age or disability) require them to have another person present to assist them, or they have designated a representative using the Property Owner's Designated Representative to Negotiate Offer form (LA 40405C).

The negotiator should reaffirm to the owner, or their designated representative, the appraisal process and explain the department's offer and the need for the proposed highway improvement. Discuss all details of the proposed construction, appraisal and payment procedures and responsibilities of each party at the first meeting. Subsequent contacts may be confined to more specific details of particular concern to the owners. If the district presents separate offers to the fee owner and tenant-owner, contact with the tenant-owner should be made as soon as possible after the first meeting with the fee owner.

The negotiator should take time at the first meeting to confirm details or ask questions regarding potential title issues based on the initial title analysis. Some necessary questions may be uncomfortable, such as inquiries into marital status, heirship, liens or judgments, or the recent death of a loved one. It is also important to be clear in explaining any expenses or deductions that will be necessary to complete the transaction, such as delinquent taxes to be paid, inclusion of a mortgage holder as a payee, judgments, lessees' interests, etc. Remember to approach such questions with tact and respect.

4.4.7 Closing at the First Meeting

With smaller, less complex acquisitions, an effort should be made to complete the signing of the conveyance documents at the first meeting. To facilitate closing, the negotiator should have the conveyance and closing documents in hand, be prepared to review and complete them with the property owner and have them signed. In many cases however, the negotiator will not have sufficient information to accurately draft the conveyance documents by the first meeting and must wait to draft the documents prior to providing them to the property owner for execution at another meeting.

Also note, as the complexity of the proposed acquisition increases, the less likely signing at the first meeting becomes, and in such cases more than one meeting will be needed to reach an agreement.

4.4.8 Negotiation Technique

The negotiator is the principal contact between the acquiring agency and the property owner. Successful negotiations are a result of thorough preparation and personal contact with the property owner. As such, it is essential that the negotiator's interactions with property owners be professional and well-communicated. The following are some skills negotiators should possess.

Common Courtesy and Respect – Make appointments at the owner's convenience. Be punctual for appointments. If delayed, apologize, and offer to reschedule if needed. Allow adequate time for the appointment. Treat their time/home/children/pets with respect.

Appearance – Dress in a professional manner that is appropriate for the setting.

Confidence – Prepare yourself with a thorough knowledge of each acquisition. Express an understanding for the owner's concerns and a sincere desire to assist them in the process of acquiring the property needed for the project.

Listening – Listen to the owner's questions and concerns, making note of them in the Negotiator's Report along with any actions to be taken.

Discuss, Never Argue – Provide accurate information without arguing or conveying the impression of superiority. Acknowledge the differing opinion with appreciation for the owner's reasoning. Then explain how the federal regulations and/or department's policies require certain actions or impose specific limitations.

Follow Up – Follow up regularly after the offer is presented, and specifically address any questions and concerns brought up in previous meetings or correspondence.

4.4.9 Explaining the Unique Aspects of Conveying Property to the State

The following items involved with conveying property to the state, which differ somewhat from other types of real estate transactions, may help to close the acquisition and should be explained to the property owner.

- The department bears the expense of the title search and the title insurance.
- The department provides all instruments for conveyance to the state (transfer of title, mortgage releases, etc.) and recording fees at no cost to the owner.
- There are no brokerage or realtor fees.
- When the department purchases property, the purchase is a full cash sale.
- The negotiator discusses these transactions at the owner's convenience.
- The owners may have the option of retaining any of the improvements located on the property by accepting the established retention value. (See Section 7.3.1 for details.)
- The department does not take possession of the property until the warrant is delivered to the property owner and any damages before the department takes possession may impact the property owner. The property owner may wish to retain insurance coverage of the improvements and personal property within the acquisition area until they receive payment for the acquisition.

- The property owner remains responsible to continue to make mortgage and real estate tax payments that come due between the time of agreement and the delivery of the warrant.
- A relocation assistance program, administered by the state, is designed to reduce the cost and inconvenience to eligible displaced families, businesses, and farm operations.
- The issue of possible income tax, or other tax consequences as a result of the acquisition are best addressed by an advisor of the owner's choosing.

4.4.10 Explanation of Legal Rights and Obligations Under Eminent Domain

Unfortunately, not every acquisition can be negotiated and settled. Where the negotiator has been unable to locate or make contact with the property owner, the property owner does not wish to sell or cannot provide clear title, or the department and the property owner cannot agree on the value of the property interest to be acquired, the department will need to use its right of Eminent Domain to complete the acquisition. Eminent Domain is the term for the government's right to take private property for public use.

The subject of a property owner's legal rights usually arises after a discussion about Eminent Domain and condemnation proceedings. The negotiator should never threaten condemnation, even by inference or implication. The negotiator's responsibility and function are to explain the condemnation process and point out that the condemnation process is based upon certain constitutional and statutory provisions. The negotiator should never attempt to advise or explain what the property owner's legal rights might be, as this may constitute the unauthorized practice of law.

When condemnation appears to be the only recourse after earnest efforts to reach agreement have failed, the negotiator should describe the usual course of events in such proceedings, such as the Restatement of Offer Letter (LA 40410A Template), the request for condemnation, the filing of the complaint, etc. In doing so, the negotiator must emphasize:

- A negotiated settlement can still be reached even after such proceedings are initiated; however, after a complaint has been filed, all communication for settlement should be conducted through the special assistant attorney general (SPAAG) assigned to the case; and,
- The department cannot file a complaint to initiate condemnation proceedings until at least 60 days have elapsed from the time such 60 Day Notice is provided to the property owner, the registered agent, and their designated representative if applicable. The 60 Day Notice may have been included in the Acquisition Notice, or may be sent separately (LA 40410B or LA 40410C Template), but in either case it must be sent by certified mail, return receipt requested, by a private delivery service providing the same function as certified mail with return receipt requested, or by personal service (i.e., hand delivery) and must include the following information:
    - The department's basis for computing its determination of just compensation as originally presented;
    - That the department continues to seek a negotiated settlement with the property owner; and

- That in the absence of a negotiated settlement it is the intent of the department to initiate condemnation proceedings.

After the complaint for condemnation has been filed in the court of record, and notice served, negotiators should no longer communicate directly with the property owner. All contacts with the property owner are made by the SPAAG in charge of the case, unless specifically directed otherwise by the SPAAG.

4.4.11 Subsequent Contacts

Before leaving the first meeting with the property owner or their designated representative, the negotiator offers their business card and explains further contact will be made after ample time has been allowed for any follow-up research to any questions from either party. The number and frequency of contacts is left to the discretion and judgment of the negotiator, with consideration for project specific deadlines for the completion of the acquisition of right of way.

4.4.12 Revising the Original Offer

In order to satisfy the requirements for good faith negotiations prior to condemnation, the original offer must be revised, and the 60-Day Notice time period restarted, in the following situations:

- The size of the acquisition increases, regardless of an increased monetary offer;
- The size of the acquisition decreases and the revised monetary offer has a lower price per acre (or square foot) than the original offer;
- The monetary offer decreases;
- The term of a temporary easement has expired, or is anticipated to expire, before the job is completed; or
- Other circumstances that are disadvantageous to the property owner(s).

To revise the original offer and restart the 60 days, a “Revised” Acquisition Notice / Package is sent to the property owner(s) by certified mail, return receipt requested, along with a new 60-day notice.

In situations that are not considered disadvantageous to the property owner(s), a “Revised” Acquisition Notice / Package may be sent without restarting the 60-day condemnation notice time period. Examples of such situations include:

- The size of the acquisition decreases and the monetary offer is unchanged or the monetary offer, although decreased, has the same or a greater price per acre (or square foot); or

- The monetary offer is increased but the size of the acquisition remains the same. (For example: An update of the appraisal caused by a delay which resulted in an increased value).

4.4.13 Agreement and Execution

Once the negotiator has reached an agreement with the property owner as to the purchase price and terms for the acquisition, all of the necessary acquisition documentation must be completed and executed by the property owner and other necessary parties, such as holders of title encumbrances. The complete agreement between the department and the property owner is embodied in the properly executed written instruments prepared and obtained by the Negotiator.

4.5 *ACQUISITION DOCUMENTATION*

4.5.1 Instruments of Conveyance

All instruments of conveyance, whether deed, easement or otherwise, must meet certain requirements and include specific information set forth in the following sections. Any request for a change to the department's LA forms and templates must have prior approval from OCC.

4.5.1.1 *Drafting by Licensed Attorney*

Illinois law requires any legal instrument prepared in Illinois, including deeds and other instruments relating to real estate, be prepared by or under the supervision of an attorney licensed to practice law in Illinois (705 ILCS 205/1). While negotiators prepare instruments and other documents for acquisition, such preparation is made using forms approved by the department's Office of Chief Counsel and under its supervision.

Illinois law also requires that the preparer of a recorded document be included on the document (55 ILCS 5/3-5022; 1975 Opinion Atty. Gen. S-880). To meet this requirement, the instrument(s) should be stamped as follows:

> "This instrument prepared by State of Illinois, Department of Transportation (insert district's address here)."

4.5.1.2 *Legally Competent Grantor*

To convey property in the State of Illinois, the grantor must be 18, and of sound mind. If the property owner does not satisfy this requirement, a designated representative will need to convey the property on behalf of the property owner. See Section 4.5.2.3 for more detailed information regarding representatives.

4.5.1.3 *Grantor Information*

All owners of record must convey their interest in the property to be acquired to the State of Illinois. The grantor clause of the conveyance must accurately reflect the identity of the Grantor(s) and match, or be correlated with, the information included in the title commitment or in the deed by which the property was acquired (see "Change in Grantor's Name" below).

Marital Status - The correct legal marital status of ALL individual grantors must be disclosed in the granting clause using appropriate terminology, such as:

- a single person, never married and not party to a civil union
- married person(s)

- widowed and not remarried and not a party to a civil union
- divorced and not remarried and not a party to a civil union
- parties to a civil union
- a married person (if married to someone other than the other grantor(s))

Business Entity Information - If the grantor is a business entity, the grantor's clause lists the state in which the entity was established and type of business entity (e.g., a Missouri Corporation); and if not established in Illinois, the clause includes a statement that the entity is authorized to do business in Illinois. See Section 4.5.2.6 for more information regarding acquisitions from business entities.

Change in Grantor's Name (aka, fka, nka, etc.) - If the grantor conveys under a form of name different from that under which title was acquired, such disparity must be accounted for in (1) the granting clause, (2) the signature block, and (3) the notary acknowledgment of the instrument, by showing both the name under which the grantor presently is conveying as well as that under which title was acquired. The same language must be used in all three places where the grantor is identified in the conveyance document. Some examples include:

- Albert J. Doe, AKA (also known as) A. John Doe, and Betty Doe, his wife - Other variations of the AKA abbreviation are FKA (formerly known as) and NKA (now known as)
- Mabel Smith, who acquired title as Mabel Doe, and Richard Smith, wife and husband
- Elsie Davis, a widow and surviving joint tenant of Michael Davis, deceased
- Button Company, an Illinois corporation, successor to Zipper, Inc., a Missouri corporation, authorized to do business in Illinois.

State law requires warranty deeds, quitclaim deeds and mortgages to have the names of the grantors typed or printed below the signatures. See Section 4.5.2 for further guidance regarding signatures based on the type of owner.

4.5.1.4 *Purchase Information*

The conveyance document must recite the full consideration that includes the value attributed to damages to the remainder, as well as the complete and accurate legal description of the interest conveyed, which has been approved by Plats and Legal.

4.5.1.5 *Warrant of Good Title*

When acquiring fee simple title a warranty deed is required and the LA 40501W series of templates are used. All deeds for fee simple acquisitions must state that the grantor "grants, conveys, and warrants" the property to the State. Exceptions are allowed for acquisitions from a railroad, public utility, trust or contract buyer. In these cases, a quitclaim deed (LA 40501Q series of templates) or other approved deed (e.g., LA 40501E or LA 40501T series of templates) is acceptable provided the granting clause contains "after acquired title" language (see Section 4.5.2.9 for more information regarding acquisition from Railroads). This after acquired title clause reads as follows:

> "…all the existing legal and equitable rights of Grantor, and without limitation any after-acquired title, in and to the following described real estate."

Special Warranty Deeds (LA 40501S series of templates) are not acceptable unless they have been pre-approved by the Office of Chief Counsel. All requests for use of a Special Warranty Deed will be evaluated on a case-by-case basis.

4.5.1.6 *Access Rights*

If the roadway in question is a freeway and access rights are to be acquired from an abutting property, the conveyance document must include language to convey those rights and extinguish or restrict access to the roadway. If access rights are being acquired in conjunction with acquisition of right of way, use the versions of the standard warranty deed or permanent easement templates for freeways, which include the necessary language. The following is sample language for transfer of access rights for a freeway with full control of access:

> "In addition, for the consideration stated above, Grantor also grants, quit claims and conveys to Grantee access rights, pursuant to Article 8 of the Illinois Highway Code, 605 ILCS 5/8-101 to 5/8-109. Grantor does relinquish, release and extinguish any and all interests, rights or easements of access, crossing, light, air or view, which Grantor might otherwise enjoy in, to, under and over the public highway identified as ______________, and all existing, future or potential rights or easements of access, crossing, light, air or view to, from or over the premises and real property of Grantor not so taken and abutting the premises or Highway whether consisting of one tract or contiguous parcels.

Where only access rights are to be acquired (i.e., no property), an Access Rights - Highway Release (LA 40501A series of templates) can be used.

Where a freeway is established with full control of access (i.e., a full freeway) and access to an abutting property will be accommodated via a local service drive or frontage road, incorporate the following additional provision into the instrument of conveyance:

> "Excepting, however, that the Grantee shall supplement the main Freeway pavement with a (permanent all weather) local service drive (frontage road) to provide access to the main Freeway pavement at an interchange. Access to the local service drive (frontage road) from the abutting property of the Grantor shall be by way of (an) entrance(s) to be provided thereto in accordance with the "Policy on Permits for Access Driveways to State Highways."

Where a freeway is established with modified/partial control of access (i.e., an expressway) and direct access to the freeway will be allowed but restricted, incorporate one of the following additional provisions in the instrument of conveyance as appropriate:

> CASE 1 - **Entrance is required solely to connect severed parcels**.
>
> "A crossing at grade of the freeway solely for passage from one severed tract to another is provided at station __________________ thereof, which crossing shall remain in effect and operation only so long as said lands are held under one ownership. Entrance(s) to the freeway will also be provided at station(s) ___________________ thereof, which shall remain in effect and operation only

so long as said entrance(s) is used for farming or for one single family residence or both and so long as such entrance(s) is not used for access to a commercial enterprise other than farming. It is further understood that the use of either entrance by the general public to purchase any agricultural product is to be considered a commercial enterprise other than farming. Violation of any of the terms and conditions set forth herein authorizes the department to take such action as it deems necessary to terminate and revoke these rights and/or to enforce such terms and conditions as are contained herein."

CASE 2 - **All Grantor's property on one side of the Freeway. Existing entrance to remain in place.**

"The existing direct access entrance from the present abutting land of the Grantor to the freeway at station _______________ thereof, shall remain in effect and operation only so long as the said entrance is used for farming purposes or for one single family residence or both, and so long as said entrance is not used for access to a commercial enterprise other than farming. It is further understood that the use of said entrance by the general public to purchase any agricultural product is to be considered a commercial enterprise other than farming. Violation of the terms and conditions set forth herein authorizes the department to take such action as it deems necessary to enforce such terms and conditions."

CASE 3 - **All Grantor's property on one side of the freeway. New entrance to be provided.**

"A direct access entrance from the present abutting land of the Grantor to the freeway shall be provided at station ____________ thereof, it being understood that said entrance shall remain in effect and operation only so long as the said entrance is used for farming purposes or for one single family residence or both, and so long as said entrance is not used for access to a commercial enterprise other than farming. It is further understood that the use of said entrance by the general public to purchase any agricultural product is to be considered as a commercial enterprise other than farming. Violation of the terms and conditions set forth herein authorizes the department to take such action as it deems necessary to enforce such terms and conditions."

See Section 4.3.4 for more information on Access Rights.

4.5.1.7 *Damage Waiver*

Where the department acquires a portion of a landowner's property, it can negatively affect the value of the landowner's remaining property. Such change in value is assessed in the appraisal and included in the just compensation calculation as damages. It is important that the property owner acknowledge those damages are included in the amount they receive as just compensation and that they are not entitled to any further compensation. To address this issue, the department's deeds, permanent easements, and temporary easements should all contain the following clause:

"Grantor, without limiting the interest above granted and conveyed, acknowledges that upon payment of the agreed consideration, all claims arising out of the above acquisition have been settled, including without limitation, any diminution in value to any remaining property of the Grantor caused by the opening, improving, and using the premises for highway purposes. This acknowledgment does not waive any claim for trespass or negligence against the Grantee or Grantee's agents which may cause damage to the Grantor's remaining property."

It is vital that there is true agreement between the landowner and the department on the just compensation value, which includes damage to the remainder. The damage waiver language is included in the conveyance document to provide evidence of the parties' agreement and assure that the landowner understands their acceptance of the offer is a final settlement of all real and potential claims against the state as a result of the acquisition under eminent domain law. If the landowner is unwilling to indicate his/her agreement by allowing inclusion of the damage waiver language, the parcel should be referred for condemnation.

The only exceptions to requiring this damage clause in our conveyance documents are as follows:

- Acquisition of the whole property is involved.
- The landowner requests and signs a separate release which states that the consideration includes compensation for any damages to the remainder due to the acquisition of the right-of-way (use the Release in Lieu of Waiver of Damage Clause LA 40501C).
- The property is donated to the state without payment of compensation.
- When railroad right-of-way is needed for highway purposes, the requirement of the damage waiver may be satisfied by the terms of separate agreements with the railroad, such as the Construction and Maintenance Agreement.

It is the department's policy to allow the above exceptions only when the property owner specifically objects to the damage clause in the conveyance document and only when the acquisition meets the above-described circumstances and with the prior approval of OCC.

4.5.1.8 *Homestead and Release of Marital Rights*

Illinois law provides certain protections for a person's homestead, or their primary residence. When the department acquires a fee simple interest in property that is a landowner's homestead, the grantors and their spouses must execute a release of homestead rights.

Determining whether or not the property is a homestead may be difficult and if the property is residential, the negotiator should be aware of the need to clarify homestead status. A spouse can have homestead rights in a property, even if that spouse is not listed as an owner in the title record. To limit the department's risk, obtain the signature of the non-title holding spouse of the grantor in all cases where the grantor is married and the property is a homestead or the homestead status is unclear. Use the statement "Signing solely for the release of homestead rights" below the spouse's signature line. In some cases, an affidavit indicating that there is no homestead may be an acceptable alternative.

There may still be homestead rights involved when an acquisition involves separated or divorced individuals because marital interests may continue after separation. In such case, examine the court's dissolution of marriage decree to determine whether the estranged spouse must sign for release of homestead rights.

The homestead release, which states “Grantor hereby releases and waives all right in the premises under and by virtue of the Homestead Exemption Laws of the State of Illinois” is required for deeds, permanent easements and donations from a) individual property owners, b) trusts that hold residential property, and c) executors who are occupying any part of the property as their principal residence. Such release statements are rarely required for deeds involving commercial property or property owned by corporations, limited liability companies and other legal business entities. Please note that these are not all-inclusive lists.

It is not necessary to obtain signatures of non-title spouses on temporary easements therefore, the homestead release statement need not appear in the instrument of conveyance.

Sole proprietorships or other small businesses may appear to be the owners of property that is in fact titled and owned by an individual or individuals. If it is commercial property and the individuals do not reside on the property, then no homestead laws apply. If the proprietors do reside at the property as well as conduct business at the property, then homestead rights attach in which case both spouses must execute the deed and release their homestead rights.

4.5.1.9 *Real Estate Taxes and Transfer Tax Information*

Include information on the conveyance document indicating where the tax bill is to be mailed. In most transactions, the tax bill should be mailed to the seller, since the seller will be responsible to pay the real estate taxes for the year of purchase up to the point of the state taking possession, and after that point the property is exempt from taxation.

Where an escrow closing occurs and the parties have agreed to escrow the real estate taxes for the acquisition, this portion of the deed should list the district as the party to whom the tax bill will be mailed. When received the tax bill should be forwarded to the escrow agent for resolution of the tax escrow. Taxes must always be held in escrow when acquiring whole properties, to ensure the department does not later receive a bill for taxes unpaid by the departing property owner.

Most purchases of real estate are also subject to a transfer tax, which is similar to a sales tax on the transaction. Purchases by the state are exempt from transfer tax. In order to clearly indicate to the County that this is an exempt real estate sale, the following language should appear on all deeds and permanent easements:

"Exempt under 35 ILCS 200/31-45(b), Real Estate Transfer Tax Law."

____________________	________________________________
Date	Buyer, Seller or Representative

This section must be signed and dated by the negotiator or other district personnel prior to recording the conveyance document. More information about the department’s tax exemptions in relation to acquired property can be found in Section 4.7.2.3.

4.5.1.10 *Format Requirements*

The Illinois Counties Code sets forth requirements for recording of instructions that must be followed in order for a document to be recorded, 55 ILCS 5/3-5018.2. Failure to comply with the following requirements will result in additional fees or rejection by the County.

- The document shall consist of one or more individual sheets measuring 8.5 inches by 11 inches, not permanently bound and not a continuous form. Graphic displays accompanying a document to be recorded that measure up to 11 inches by 17 inches shall be recorded without charging an additional fee.
- The document shall be legibly printed in black ink by hand, type or computer. Signatures and dates may be in contrasting colors if they will reproduce clearly.
- The document shall be on white paper of not less than 20-pound weight and shall have a clean margin of at least one-half inch on the top, the bottom, and each side. Margins may be used only for non-essential notations that will not affect the validity of the document, including, but not limited to, form numbers, page numbers and customer notations.
- The first page of the document shall contain a blank space, measuring at least 3 inches by 5 inches, in the upper right corner.
- The document shall not have any attachment stapled or otherwise affixed to any page.

4.5.1.11 *Signature and Notarization*

The conveyance document must be signed by all of the grantors, dated, and acknowledged in person before a notary public. The signature block must contain the names, and titles if applicable, of the parties typed or printed below the signatures. 765 ILCS 5/8. The notary block must state the grantor's complete name and must be consistent with the grantor clause of the document.

Documents must be signed or acknowledged in person before a notary in order to be valid. It is a violation of the Notary Public Act to notarize documents not presented and signed or acknowledged in person before the notary, except in compliance with the specific statutory requirements for electronic notification. If a property owner indicates that they are having difficulty getting to a notary to execute documents, the negotiator should offer to meet with them at a mutually convenient time and place in order to facilitate execution.

See Section 4.5.2 for further guidance regarding signatures based on the type of owner.

4.5.2 Ownership Documentation

Although negotiators and district personnel will encounter many of the same situations on repeated occasions, each parcel has its own specific set of circumstances to be addressed. It would be impractical to address every possible scenario in this manual, however, the following sections provide guidance on the most commonly encountered ownership types and how each should be handled. If a negotiator encounters a specific type of property owner not covered by this manual, consult with CBLA/OCC to determine how best to proceed.

4.5.2.1 *Joint Ownership*

Title to real estate may be held by multiple owners in several different ways, referred to as joint ownership. There are multiple types of joint ownership that may be noted in the title commitment or in the deed by which the current owner received the property:

- Owner A and Owner B, joint tenants with right of survivorship – in this case, if one of the owners dies, the surviving owner(s) retains the entire interest in the property.
- Owner A and Owner B, tenants in common – this means that if one of the owners dies, that owner's share of the property passes to his or her heirs or beneficiaries under a will or through the deceased owner's estate. This is the default way in which real estate is held by multiple owners. If the document conveying property to the joint owners does not clearly indicate a right of survivorship, then the owners are tenants in common.
- Owner A and Owner B, tenants by the entirety – this only applies to homestead property owned jointly by two spouses. If one spouse dies, the surviving spouse retains the entire interest in the property as sole owner and nothing passes through the deceased spouse's estate.

Whether title is held in joint tenancy, tenancy in common, or tenancy by the entirety, all living title holders must sign the conveyance documents. If one owner has died and the nature of the tenancy is not easily determined, please contact CBLA/OCC for guidance.

4.5.2.2 *Life Estate*

A life estate can be created either by a deed transferring property to an individual for life or by a grantor transferring property to a grantee and retaining a life estate for him or herself. The life estate holder has possession and control of the property during his or her lifetime, but that individual's interest terminates as soon as he or she dies and does not pass to that individual's heirs or through their will. A property ownership interest that comes into existence at the death of a life estate holder is called a remainder interest and the individuals who take ownership at the life estate holder's death are known as *remaindermen*.

If property to be acquired is subject to a life estate interest, conveyance documents must be signed by both the life estate holder and the remaindermen. For a fee acquisition, the remaindermen must sign a warranty deed. The life estate holder may sign the warranty deed with the remaindermen or may convey the life estate interest via a quit claim deed. Permanent or temporary easements must be signed by all parties. The warrant documentation may indicate that payment is to be made to the life estate holder or the remaindermen, or some combination thereof. In all cases, all parties must sign the receipt to verify how payment will be made.

4.5.2.3 *Individual Owners – Conveyance by Legal Representative*

A. Power of Attorney

A property owner (principal) may give another individual (agent) authority to sell and convey the owner's property under a written document called a power of attorney (POA). The authorized individual is called an "attorney in fact" but need not be an attorney; often the attorney in fact or agent is a family member. A power of attorney is considered "durable" and may last through the principal's disability or incapacity, but a power of attorney can be used even if the principal is not disabled if it expressly provides such authority.

The POA may be either a specific grant for a particular piece of real estate or transaction or may be a general statutory Short Form Power of Attorney for Property. The department cannot rely on a POA that does not conform to legal requirements. Thus, if property is to be transferred by an agent under a POA, the department must obtain the POA and provide a copy to OCC for review to determine whether it gives the agent the authority to convey real estate and satisfies all legal requirements. Additionally, the original POA must be recorded in the county in which the property is located.

A POA requires special caution because it can be invalidated by certain circumstances; a POA can be revoked by the principal while he or she is still living and not disabled, and the POA has no validity after the principal's death. To ensure that the POA is valid the negotiator must also establish by sworn statement that the principal is living and the agency has not been terminated as of the date of signing of the conveyance document using the Certification of Agent Under Power of Attorney form (LA 40502A).

The conveyance document must name the property owner, not the agent as the grantor. The name signed to the conveyance document is that of the property owner as follows: "John Doe by Richard Roe, his attorney in fact" with the same language typed or printed below the signature. The acknowledgement clause indicates the agent executed the instrument as the duly authorized attorney in fact for the principal.

Example: By: ____
(Signature)

John Doe, By Richard Roe, his Attorney in Fact
(Print Name and Title)

B. Guardianship

A property owner who is a minor or is disabled may be under guardianship and legally unable to execute conveyance documents for themselves. A guardian of the estate is a person appointed by a court and charged with the duty of managing the property and rights of another person who has been determined by the court to be incapable of administering his/her own affairs due to age (minor), illness, cognitive impairment or other factors. A *guardian ad litem* is a special representative appointed by the court as a neutral party to represent the court's interest in guardianship matters. If a *guardian ad litem* is involved, please consult with CBLA/OCC regarding how to proceed.

Note that unlike a POA, a guardian cannot convey real estate on behalf of the disabled/minor individual without first obtaining permission from the court. For the department to acquire property from an individual subject to guardianship, the negotiator must obtain a copy of current Letters of Guardianship issued by the court and of the court order authorizing the guardian to convey the property interest.

Example: By: ____
(Signature)

John Doe, By Richard Roe, his legal guardian
(Print Name and Title)

C. Deceased Owner

When an acquisition involves land held by a deceased person additional steps must be taken to ensure that all claims to the property based on estate and inheritance laws are addressed. The heirs of the deceased, including the spouse, as well as any beneficiaries under a Last Will and Testament and any creditors to whom the deceased owed a debt all have certain rights to the property of the deceased. These interests arise at the moment of death, but all are subject to debts, taxes, and costs of administration.

In general, a probate case must be opened with the appropriate court and an executor (if the decedent left a will) or an administrator (if the decedent did not leave a will) must be appointed to settle the estate, including the transfer of real estate. If no probate case has been initiated contact CBLA/OCC for further instruction. Request a copy of 1) the decedent's Last Will and Testament, if there was one, 2) the order opening the probate case and 3) the court document appointing the personal representative for the estate, called the "Letters Testamentary" or "Letters of Administration." If the deceased had no will, the negotiator must inquire and obtain the names and addresses of the deceased's heirs, or next of kin using an Affidavit of Heirship.

A will may grant an executor the power to sell property, or the court order appointing a representative may indicate that the representative is acting under "Independent Administration," which authorizes the representative to sell property without getting specific court approval. If it is unclear that the representative has already been granted authority to sell property, the representative may need to obtain a specific court order authorizing the sale of the property the department seeks to acquire. A representative, in their capacity as such, executes an Executor's Deed (see the LA 40501E series of templates) conveying the property to the state.

Payment is issued in the name of the "Estate of [Decedent]" and made to the executor/administrator, who then has the responsibility to distribute to heirs or beneficiaries accordingly. If the representative requests that payment be made directly to heirs or beneficiaries, consult with CBLA/OCC and the title company to determine whether such payment can be processed or any additional documents are required. Payment directly to heirs/beneficiaries, or without opening a probate case will require additional documentation and may not be appropriate, as outstanding taxes and debts of the decedent may be entitled to payment ahead of the heirs and beneficiaries. In such cases, provide all supporting documentation with the Title Approval Request package to verify payment to the property parties.

In cases of a deceased owner, the supporting documentation should be reviewed by the title company. A revised Title Commitment reflecting the name change should be included with Title Approval Request package when submitting documents to CBLA for title approval.

4.5.2.4 *Trusts*

A. General Trust Information

A trust can be created by an individual (referred to as the grantor, settlor, or trustmaker in the trust document) during his/her lifetime (inter vivos) or by will (testamentary). The Trustee may be the same person who created the trust or someone else.

Where title is held in the name of a trust, it is necessary to obtain and submit documentation to verify the basic information about the trust and its validity. Under the Illinois Trust Code (760 ILCS 3/1013), the Trustee has the option to provide the trust document or will by which the trust was created, and a Trust Certification. The Trustee must complete the department's Trust Certification (LA 40502B Template), and either indicate that the full trust document has been provided or fill in certain necessary information about the Trust. The trust instrument or trust certification must contain language indicating that the Trustee has authority to convey real estate. If the trust instrument requires the consent or approval of any party, such as a beneficiary or descendant, such consent or approval must be obtained in writing and submitted with the Title Approval Request package. It is the negotiator's responsibility to review the Trust Agreement and indicate the relevant provisions before submitting it with the Title Approval Request package. District staff should also review and confirm the information before it is submitted.

Typically, when paying a trust, the payee is the trust, not the individual trustee or beneficiary, and the tax ID number provided should be the number assigned to the trust. The trust may have its own tax ID number assigned, or it may use the trustmaker's social security number. If the tax ID is an individual's SSN, the payee line on the warrant request should state that individual's last name first, then first name, followed by the name of the trust. The Illinois State Comptroller requires the first field of the payee line to match the tax ID number.

Example: "John A. Smith Declaration of Trust" should be shown on the payee line as:

Smith, John A. Declaration of Trust

Other title related documents can sometimes cause confusion when it comes to trusts. The title exceptions may show the existence of a Trust Deed, which does not establish a trust, or convey a property interest to or from a trust, but is instead a security transaction similar to a mortgage. A title exception showing a Trust Deed should be addressed as an encumbrance on title in the same manner as a mortgage. A Warranty Deed in Trust generally does not create a trust, but is the vesting document which transfers ownership of property into a trust. A Warranty Deed in Trust cannot be provided in lieu of the Trust Certification or Trust Agreement.

A Trustee's Deed (see the LA 40501T series of templates) is the type of deed used when the department must acquire land from a trust. Where the department acquires property from a trust, disclosure of the beneficiaries of the trust is also required under state law (See Section 4.5.4.3 regarding disclosure of beneficial interests).

B. <u>Land Trusts</u>

There is another form of trust known as the Illinois Land Trust which has been designed to keep the names of the owners of the beneficial interest out of the public record. In general, a land trust is created by an individual who appoints an institution, often a bank, to serve as Trustee. In most cases, the name of the trust will not include the name of the trustmaker, and title to the trust will be shown as being held by the Trustee, with reference to a trust number (e.g., ABC Bank, as Trustee under a Declaration of Trust, known as Trust #2437, dated June 20, 1999).

The trustee/bank is the party who must execute any conveyance documents, but they can only do so upon written direction from the beneficiaries of the trust. Because the trustee cannot make decisions regarding the conveyance of Land Trust property without direction from the beneficiary, the department must communicate with both the Trustee and the beneficiary or beneficiaries regarding the acquisition. The actual negotiation as to compensation will generally take place with the beneficiary of the land trust, who has the decision-making authority. In many cases, where the Land Trust holds residential property, the property is the beneficiary's residence. It may be necessary to contact the trustee identified in the chain of title in order to obtain contact information for the beneficiary with authority to direct conveyance.

The trustee must execute the actual conveyance documents and, in addition to the trust certification, a copy of the written direction to convey must be provided with the Title Approval Request package, along with a written statement from the trustee directing that the payment go to the beneficiary. The beneficiary generally executes all other closing documents, such as the title affidavit, receipt, etc. All other documentation requirements for trusts apply to land trusts including the disclosure of the beneficiaries (see Section 4.5.4.3 regarding disclosure of beneficial interests).

4.5.2.5 *Condominium Property / Condominium Associations*

Condominium properties involve a combination of collective rights and individual rights of the condo owners. Where the property to be acquired is a part of the common area, the collective rights of the property owners are at issue. In many cases, the vested owner will be a condominium association or similar governing body, which should be handled similar to other types of corporate entities. If acquiring commonly held condominium property, or property expressly owned by the condominium association, it is necessary to obtain a copy of the association bylaws or other governing documents for review to determine who has authority to convey property on behalf of the condominium and what steps need to be taken to do so. If research indicates that the condominium governing entity is defunct or dissolved, consult with CBLA about how to proceed. In general, all conveyance documents and other required documentation must be completed in the same manner as with other types of corporate entities, including a certified resolution of the governing body of the condominium association.

When an acquisition includes any interest of a specific owner of a condominium outside the common areas, normal acquisition procedures should be followed to acquire those interests from the specific owner.

4.5.2.6 *Limited Liability Companies (LLC)*

A limited liability company (LLC) is a type of business entity established under state law which can, among other things, own and sell real property. An LLC can be formed under the Illinois Limited Liability Company Act (805 ILCS 180/1-30 et seq), or similar law in other states. An LLC is formed by filing articles of organization with the Secretary of State, which specify certain basic information, including the management of the LLC.

When acquiring from an LLC, the following documents are required:

- Conveyance documents signed on behalf of the LLC by the person or persons designated in the articles of organization as having management authority.
- Copy of the Articles of Organization and any amendments. This is available on the Secretary of State website.
- Disclosure of the names and addresses of the individuals entitled to receive more than 7 1/2 % of the total distributable income, or verification that the ultimate owner is a publicly-traded corporation in which no person is entitled to more than 7 1/2% of the total distributable income (see Affidavit of Title form (LA 40504A)).
- Some indication of good standing from the Secretary of State.

- All other documents normally required (receipt, affidavit, tenants' releases, etc.).

It is necessary to determine who has authority to manage the affairs of an LLC. While most corporations are structured and operate in uniform ways, LLC management structure is much more flexible. An LLC may be managed by its members or by one or more named managers. Most LLC business is governed by the LLC's operating agreement, which will spell out the details of how the LLC functions. The negotiator must obtain a copy of the operating agreement, if one exists, and locate and note the sections of the agreement that grant the individual signing the conveyance documents the authority to sell, transfer or, convey real estate. If the LLC does not have an operating agreement, the default rule under the Limited Liability Company Act is that it is member-managed, and that majority consent of all members is necessary to act (805 ILCS 180/15-1).

When acquiring from an LLC, ensure the conveyance document is signed by the appropriate person(s) designated in the operating agreement. Some examples of LLC signature blocks include:

Howard & Sons Auto Repair, LLC
(Company Name)

By:_________________________
(Signature)

Jonathan Howard, Manager(or Member/Manager depending on who has authority to convey
(print Name and Title)

It is not uncommon to encounter an LLC that is managed by another entity, such as a corporation, partnership or other LLC. Below is an example of how a signature block should be set up in such case.

SCOTUS Consulting, LLC
(Company Name)

By: ______________________________
(Signature)

Thurgood Marshall, President of Supremes, Inc., Manager of SCOTUS Consulting, LLC
(print Name and Title)

The Title Approval Request package should include a copy of the operating agreement (marked to indicate conveyance authority of the signatory) and evidence of good standing with the Illinois Secretary of State or from the state of origin, if not organized in Illinois. If an LLC is doing business in Illinois, it must be registered with the Illinois Secretary of State.

In some cases, the department will need to acquire property from an LLC that has been dissolved. In most cases, where property is owned by a dissolved entity, it is the result of involuntary dissolution by the Secretary of State, due to failure to file annual reports and pay annual registration fees. Typically, good standing can be reinstated with the filing of appropriate paperwork and payment of outstanding fees to the Secretary of State. If the LLC is unwilling or unable to reinstate its good standing, however, the department may still acquire the property without condemnation, with the cooperation of the LLC members/managers. Under the LLC Act, if an LLC is involuntarily dissolved, the dissolved LLC can continue "only for the purpose of winding up its business" and can take actions necessary to wind up and terminate its business and affairs. 805 ILCS 180/35-30(c). The appropriate LLC representative can execute all documents on behalf of an involuntarily dissolved LLC, in the same manner as other LLCs. Required documentation to verify authority of the signing individual must still be provided with the Title Approval Request package. The entity may owe outstanding fees or penalties to the state, which may require that the compensation for the acquisition be paid to the Secretary of State or other state agency, rather than to the LLC or its members.

LLCs are required to provide disclosure of the owners of beneficial interest in the LLC under the Public Officers Prohibited Activities Act, 50 ILCS 105/3.1. For more information on disclosure requirements, see Section 4.5.4.3.

4.5.2.7 *Corporations*

A corporation is an entity formed under the Business Corporation Act, 805 ILCS 5/2.10 *et seq.*, or similar statute in another state. The negotiator, in initial review of the ownership information for the parcel, must determine if the corporate owner is in good standing. If the corporation is organized under Illinois law, a corporate search on the Secretary of State’s website can provide information about the corporation’s standing. If the corporation is incorporated in another state, provide proof of good standing from the jurisdiction of origin.

The department generally does not require bylaws for corporations for title approval, however some title insurers require that corporate bylaws be provided to insure title. Most vendors will waive the requirement upon request, once provided the department’s Certified Resolution (Corporation) (LA 40502C Template). If the title vendor requires bylaws district personnel should contact the vendor to request and obtain a waiver before submitting the package to CBLA for approval.

It is important that the corporate name be shown accurately and completely on the instruments of conveyance. If the name of the corporation that originally took title has changed because of merger or acquisition, then the grantor on the conveyance is the new corporation with the indication that it is the successor in interest to the original corporation. If the corporation’s name is followed by the state of incorporation on the evidence of title, such as “an Illinois corporation” or “a Delaware corporation,” then the instrument of conveyance must describe the corporation in the same manner. In some cases, a corporation can amend its Articles of Incorporation to legally change its name to something other than the name used to take title in the property or to operate under an assumed name. In this case the documents should reflect the name change (e.g., ABC Corp f/k/a XYZ Corp or ABC Corp d/b/a XYZ Corp). Any time a corporate merger or amendment affects the name of the corporation reflected in the title documents for the property, CBLA/OCC and/or the title insurer may require that copies of the merger or amendment documents be provided as part of title review.

As with LLCs, the department may need to acquire property owned by a corporation that has been dissolved. A dissolved corporation is not permitted to carry on any business but may still take actions necessary to wind up and liquidate its business and affairs, specifically including disposing of assets, 805 ILCS 5/12.30.

Corporations are required to provide disclosure of the owners of beneficial interest in the corporation under the Public Officers Prohibited Activities Act, 50 ILCS 105/3.1. For more information on disclosure requirements, see Section 4.5.4.3.

4.5.2.8 *Public Utilities*

Public utilities provide essential services to the general public and are highly regulated. Most public utility providers are private corporations, although some may be publicly owned, such as municipal providers of electrical or water service. Public utilities may include standard electric providers, wind and solar power producers, gas companies, gas pipelines, water providers and sewerage. In Illinois, regulation of public utilities falls under the jurisdiction of the Illinois Commerce Commission (ICC). Under the Illinois Eminent Domain Act, the State (i.e., the department) cannot condemn property owned by a public utility subject to the jurisdiction of the ICC without prior approval from the ICC for such condemnation, 735 ILCS 30/20-5-5. The process of obtaining ICC approval is lengthy and can be complicated. The lack of a readily available option to condemn and the potential for delays should be kept in mind when seeking to acquire an interest in property owned by a public utility.

Public utilities present particular issues to land acquisition for roadways. Because many utilities have installed facilities within or adjacent to highway right of way, utilities issues arise frequently. Where the acquisition involves non-operating property owned by the public utility, normal acquisition processes apply, with the understanding that condemnation may not be as readily available a tool as in other acquisitions. When the utility owns the fee to the land required for construction, acquire an easement for public road purposes from the utility on crossings or an easement or fee title on longitudinal acquisitions using the standard form. If the land is being acquired for an Interstate highway, add the following language to the conveyance document:

> "It is understood that on an interstate-type freeway, the Grantor will not perform normal maintenance to its facilities from and through traffic lanes of such highway or any ramps leading thereto. Emergency maintenance to the Grantor's facilities shall be in accordance with procedures to be set forth by the Regional Engineer."

Use the Access Rights – Highway Release (Individual) form (LA 40501A) or Access Rights – Highway Release (Corporation – LLC – Partnership) form (LA 40501B) when no land is to be acquired and the utility ownership abuts the freeway, except for freeways on new locations, in which case the Attorney General holds there are no inherent rights of access in abutters.

Where the department's project impacts operating utility facilities and relocation of those facilities is necessary, such relocation is addressed separately after the right of way is acquired. In many cases, the utility is not the fee holder of the property being acquired but holds an easement or other interest in the property that appears as an encumbrance on title (see Section 4.5.3.3 for information on encumbrances). When relocating the utility facilities, acquire all pre-existing rights of the utility in the property. Obtain a warranty deed from the utility, if owned in fee, or, if an easement, have the utility join in the conveyance from the underlying fee owner, or execute a Subordination of Surface Rights form (LA 40502I or LA 40502J Template). Where utility easements or similar interests lie within the area being acquired, the Title Analysis Report (or Parcel Data Summary, for condemnation) must indicate how the utility's interest is to be addressed. If not within the area being acquired, the report should indicate that the easement is not affected.

4.5.2.9 *Railroad Property*

Acquisition of property owned by an operating railroad presents unique challenges and differs from dealings with a typical corporation. While most operating railroads are corporate entities, railroads, like public utilities, are regulated by the ICC. For these reasons, acquisition of railroad property can vary from the standard acquisition process.

For acquisition of operating railroad facilities, the department will typically acquire only a permanent easement. The specific details of how construction will be managed, and the potential impacts of the right of way improvements on the railroad's operating facilities must be negotiated and set out in a detailed construction and maintenance (C&M) agreement. Often the provisions of this agreement, and any disputes over how it is interpreted and applied, must be resolved through the ICC. This process is separate from any ICC proceeding on the question of acquiring railroad property through condemnation. The C&M Agreement also addresses any potential damages issues that would typically be covered by the damage waiver clause in standard acquisition documents.

In many cases, in addition to the C&M Agreement, the railroad will also request changes to the permanent easement language to address concerns regarding use, interference and abandonment by the department. Proposed changes to permanent easement or other conveyance documents must be reviewed and approved by OCC. Negotiation between OCC and railroad attorneys regarding the specific language of the PE may be necessary.

The department will accept execution of an Operating Railroad Affidavit (LA 40502K Template) in lieu of the standard Title Affidavit where visual inspection confirms that the area to be acquired is improved with operating railroad facilities and used solely for operating railroad purposes. Any objections by a railroad to items #2 and #4 of the Affidavit may alternatively be satisfied with affirmative statements by the surveyors of the acquired property. Such statements by the district shall be in the following format and accompany the copies of title documents:

> "District personnel have visually inspected the subject parcel and find it to in fact be operating railroad right of way with no parties other than the owners in possession of any portion of said parcel; nor does the department's survey of the subject property reveal any apparent encroachments, overlaps, or boundary line disputes involving the subject parcel."

For acquisitions of railroad-owned property that is non-operating, including abandoned railroad right of way, the approach to acquisition will be similar to typical acquisitions from other corporate owners. If the department requires acquisition of non-operating railroad right of way in fee, and the railroad declines to execute a warranty deed, a quit claim deed may be used so long as the granting clause contains "after acquired title" language as follows:

> "All the existing legal and equitable rights of the Grantor in the premises described herein and shall extend to any after acquired title in the described premises."

For all non-operating railroad acquisitions, obtain the standard Affidavit of Title form (LA 40504A) without exception.

4.5.2.10 *Unusual Business Entities*

There exist various specific business entities that are not governed by the Illinois Secretary of State. Some examples include Agricultural Cooperatives organized and registered with the Illinois department of Agriculture, or Banking Associations, which are chartered and regulated by the US Office of the Comptroller of Currency. If a Secretary of State corporate search for the entity yields no results and/or title research indicates that a property owner is an entity other than a corporation or LLC, additional research may be needed to establish the entity's good standing with the relevant governing agency. Evidence of good standing from such agency must be included in the Title Approval Request package.

In general, the information and documentation required to acquire property from these entities will be the same as for property acquired from a more traditional corporation, including the required disclosures under the Public Officers Prohibited Activities Act (see Section 4.5.4.3). If there are questions or issues verifying information about unusual business entities, consult with CBLA/OCC.

4.5.2.11 *Partnerships*

A partnership is a formal arrangement by multiple parties to manage and operate a business and share liabilities and profits. The general rules for how partnerships function are set out in state law (805 ILCS 206/100 et seq., 805 ILCS 215/0.01 et seq.), but partners may choose to adopt a partnership agreement, which can specify different rules specific to the partnership. It is necessary to always ask whether a partnership agreement has been adopted, and if so, request a copy to verify who has authority to convey real estate and under what conditions. As with an LLC Operating Agreement, it is the negotiator's responsibility to review the agreement and indicate the relevant provisions before submitting it with the Title Approval Request package. If the partnership does not have a partnership agreement, it is governed by the provisions of the Illinois Uniform Partnership Act or Illinois Uniform Limited Partnership Act. All partnerships are also required to make disclosures of the owners of beneficial interests under the Public Officers Prohibited Activities Act (see Section 4.5.4.3).

There are two primary types of partnerships:

A. <u>General Partnership</u>

Typically, in a general partnership, the partners have equal authority to act. Under the Uniform Partnership Act (805 ILCS 206/100 *et seq.*), property held in the name of the partnership may be transferred by a conveyance document executed by any partner in the name of the partnership, so long as a statement of partnership authority is recorded in the Recorder's Office of the county in which the property is located. This authority may, however, be limited by a partnership agreement, so a copy of the agreement must be obtained and submitted with the Title Approval Request package. (See LA 40501W6 Template or LA 40501W7 Template for deeds.)

Example signature block:

Howard & Sons Auto Repair
(Name of Partnership)

By: ____________________ By: ____________________
(Signature of Partner) (Signature of Partner)

Jonathan Howard, Partner Jason Howard, Partner
(Print Name and Title) (Print Name and Title)

B. Limited Partnership

A limited partnership has one or more limited partners, who hold a beneficial interest in the partnership and receive a portion of the profits, but do not have authority to make decisions or act for the partnership. A limited partner cannot sign conveyance documents or dispose of property. It will also have one or more general partners who will have the authority to control partnership business. As with general partnerships, the specific details about who has authority to convey property and under what conditions is often governed by a Partnership Agreement adopted by the partners. Obtain a copy of the limited partnership agreement, if there is one, to determine the authority of the general partner(s) and submit the agreement with the Title Approval Request package. (See LA 40501W8 Template and LA 40501W9 Template for deeds.)

Example signature block:

Howard & Sons Auto Repair, LP
(Name of Limited Partnership)

By: ____________________
(Signature)

Jonathan Howard, General Partner
(Print Name and Title)

Example signature block (with another entity has authority, rather than an individual):

Howard & Sons Auto Repair, LP
(Name of Limited Partnership)

By: ____________________
(Signature)

Jonathan Howard, President of H & S Auto Repair Inc.,
General Partner of Howard & Sons Auto Repair LP
(Print Name and Title)

4.5.2.12 *Nonprofit Organizations and Churches*

Various types of nonprofit organizations may own property. These entities are generally approached in the same manner as many of the business entities described previously. The negotiator must determine the particular entity type, who has authority to act for the entity, and how that authority can be exercised based on the entity's own governing rules.

Some corporations are organized as nonprofit corporations, which means no individuals receive profits or dividends from the corporation. In general, however, the form and function of a nonprofit corporation is the same as that of a for-profit corporation. It will be necessary to verify good standing and obtain a certified resolution of the organization's governing body authorizing conveyance of the property, as is required with any other corporation.

Church property may be held in a variety of ways, so it is important to examine how the church acquired title prior to preparing the conveyance and closing documents for signature. While some churches may be incorporated as non-profit corporations, the structure of an incorporated church can often differ from that of an ordinary corporate entity. The governing body of a church may be a Board of Trustees, Board of Directors, Council of Elders, etc. A vote of approval by the congregation or by the governing body (such as the board of trustees, or the church elders) may be required before any action by the board or presiding officer. Some larger denominations require that the local church holding the property get written approval from the denominational authority before property can be conveyed. Property owned by the Roman Catholic Church is normally conveyed by the Bishop of the Diocese in which the property is located. The negotiator must request and review the church bylaws to understand the proper procedure for conveyances and prepare all documents accordingly. The bylaws must be included and reviewed for compliance for title approval of church acquisitions.

4.5.2.13 *Governmental Entities*

Local Government Entities: If property is being conveyed by a county, municipality township, or other type of local governmental entity, the statutory requirements that govern the specific type of entity must be met. In general, transfer of property by any governmental entity requires a vote by the governing board at a proper public meeting, and a Certified Resolution must be provided, though a copy of the entity's own form of resolution approving the conveyance will be sufficient if the department's certified resolution cannot be obtained. The conveyance documents for acquisition from a local governmental entity should state the statutory authority to convey property for that particular type of entity. If unsure of the correct statutory citation, please consult with CBLA.

Counties: A County Board may convey property by a vote of the majority of the county board members present at the meeting, under the Counties Code, 55 ILCS 5/5-1005, Counties may indicate the vote either by submitting a certified copy of the minutes of the meeting at which the issue was considered, or by having the results of the vote indicated in the certified resolution.

Municipalities: Municipalities (cities and villages) must approve conveyance of real estate by the vote of 2/3 of the elected officials in office, as required by the Municipal Code, 50 ILCS 605/4. The vote may be documented by a certified copy of the minutes of the meeting at which the issue was considered or by having the results of the vote indicated in the certified resolution.

Townships: A Township requires a resolution passed by the vote of a majority of the electors present and voting at a township meeting in order to convey real estate, 60 ILCS 1/35-40, which may be documented by a certified copy of the meeting minutes or recording of the results of the vote in the certified resolution. An elector is a person who has registered to vote within the township no later than 28 days before the date of the annual or special meeting when the vote was conducted.

Jurisdictional Transfer Option: If the property to be conveyed by a County, Municipality, or Township is associated with a local roadway, or segment thereof, which is needed for state highway purposes, the local public agency may enter into an agreement with the department to transfer jurisdiction of the roadway, and the interest it holds in the real estate. Refer to Section 7.11 for more information on Jurisdictional Transfers with Other Highway Authorities.

Schools: School District property is generally titled in the name of the school board of trustees or other school officials. Under 105 ILCS 5/5-29, the trustees of schools or school officials having legal title to the land, can sell and convey to the state land required for highway purposes with the consent of the school board as indicated by resolution adopted at a proper public meeting (LA 40502E Template). In special charter districts the board of education is given all power of the trustees of schools and conveys under those powers (105 ILCS 5/32-4.8). Verify which of these scenarios applies to the school district in question and provide proper documentation of approval by the school board. (See LA 40501W10 Template and LA 40501W11 Template).

Drainage Districts: Occasionally the department must acquire property from an existing Drainage District. The statute governing drainage districts requires that the District, in addition to the typical board approval requirement, also obtain court approval to transfer real property to the state for right of way purposes (70 ILCS 605/30). It is necessary for the negotiator to work with counsel for the Drainage District to ensure that a hearing is set to obtain such approval. The Court order approving the transfer must be included in the Title Approval Request package.

Cemeteries: Cemetery property can raise unique issues. In most cases, title to cemetery property is vested in a cemetery association, governed by 805 ILCS 320/0.01 *et seq*, or in the local government entity where the cemetery is located. If property is owned by a defunct cemetery association, the statute does not provide a means for the property to be conveyed and condemnation is likely necessary.

A highway project taking real property occupied by a cemetery may need to disinter human remains and relocate the remains to another suitable location. This process presents time intensive challenges and therefore, CBLA and OCC should be notified and involved early in the process. Depending on how the cemetery title is vested, there are legal mandates regarding disinterring and moving human remains. These legal requirements may require notification of relatives and/or court action. Also, in some instances, the department may not be able to exercise its right of eminent domain.

There are many other types of local government entities established under Illinois law, from library districts to soil and water conservation districts. Each of these is governed by its own set of statutes that will spell out the rules for taking action on property owned by the entity. All of them will require official action by the governing board of the entity. The conveyance document for a governmental entity should reference the appropriate statute granting authority to convey property. If there are questions about what documentation is required for an acquisition from a local government entity, consult with CBLA/OCC.

4.5.2.14 *State Agencies*

The department may acquire property owned by the state and under the custody and control of other state agencies for highway purposes (605 ILCS 5/4-504). For such an acquisition, an inter-departmental transfer of jurisdiction document is prepared by CBLA for execution by the appropriate agency heads and approval of the Governor. Submit to CBLA one copy of the instrument prepared in draft form, and adjusted to cover the proper agency, route, purpose, etc., for review and final drafting, along with a completed plat and title evidence. CBLA will secure execution by the proper officials. A statement should accompany the request indicating the transfer has been reviewed by and is satisfactory to the local office of the agency in question. Also include any agreements with the said agency related to the transaction. Additionally, under some circumstances, the department will be responsible for acquiring substitute property for the agency in question.

Refer to Section 7.9.11 for further instructions for inter-departmental transfers and Section 4.8.7 for information regarding acquisition of replacement property for state agencies.

4.5.2.15 *Federal Government*

Federal law allows for the U.S. Secretary of Transportation, through FHWA, to transfer lands owned by the United States to the department for right of way purposes, 23 U.S.C. 317. FHWA has an established process for such conveyances, referred to as Federal Land Transfer. Under the Federal Land Transfer process, where the department has identified property owned by the United States that is needed for right of way, the department can apply to FHWA to acquire the needed right of way from the federal agency with management authority over that property.

Federal regulations set forth the process for a Federal Land Transfer in 23 C.F.R. 710.601. If acquisition of property from the U.S. government is needed the district should begin by notifying the local branch of the managing federal agency of the needed property and seeking cooperation in the land transfer process. The Federal Land Transfer process begins with an application to FHWA, which must include the following:

- The purpose for which the lands are to be used;
- The estate or interest in the land required for the project;
- The federal project number or other appropriate references;
- The name of the federal agency exercising jurisdiction over the land and identity of the installation or activity in possession of the land;
- A map showing the survey of the lands to be acquired;
- A legal description of the lands desired; and
- A statement of compliance with NEPA and any other applicable federal environmental laws, including the National Historic Preservation Act.

Submit the Federal Land Transfer application to the FHWA Division Administrator, and to the Division realty officer for review. If FHWA concurs in the need for the transfer, the federal agency managing the needed land will be notified. The owning agency then has four months to review the matter and to a) agree to the request as presented; b) agree to the request with stipulations designating conditions for the adequate protection and utilization of the reserve; or c) certify that the proposed appropriation is contrary to the public interest and inconsistent with the purposes for which the land has been reserved. FHWA may extend the period for the agency to reply to the request.

Once the federal agency has responded favorably to the request, the department will prepare the conveyance document. The deed for a Federal Land Transfer must contain any clauses required by the owning agency as conditions, any additional language required by FHWA, as well as nondiscrimination covenants as set forth in 49 C.F.R. 21.7(a)(2). The deed is then submitted along with the owning agency's response to FHWA for review and execution. FHWA's internal review of the transfer and conveyance documents will take some additional time and districts should account for the time needed to work through the process. Upon execution by FHWA, the district shall record the deed and notify FHWA and the transferring agency of completion.

Acquisition under the Federal Land Transfer process may require payment of the fair market value of the property, or provision of functional replacement property, as well as reimbursement of costs incurred by the transferring agency, where the agency's governing laws require such as a condition of transfer.

The Federal Land Transfer process may only be used to acquire property for projects constructed on a Federal-aid highway or under Chapter 2 of Title 23, U.S.C. Some federal agencies may have authority to directly transfer real property under their control, and in some cases, the district may be able to acquire following the standard negotiation process without enlisting the Federal Land Transfer process. It is important to note, however, that many federal agencies are restricted in their ability to transfer property or on the process they must follow to do so, which can impede the department's ability to acquire needed right of way in a timely fashion. It is strongly recommended that districts make use of the Federal Land Transfer process and consult early with FHWA, as well as CBLA/OCC any time acquisition from a federal agency is required.

4.5.3 Encumbrances and Title Clearance

Title encumbrances are pre-existing rights, interests, or restrictions in the real property, other than those of the fee simple owner. Encumbrances include both interests recorded in the chain of title and listed in the title commitment as exceptions (mortgages, liens, easements, etc.) and unrecorded interests (tenant under an unrecorded lease, adverse possession, etc.). If not addressed, the superior rights found in title encumbrances may frustrate the department's intended use of the acquired property or give rise to claims that the department has violated an interested party's constitutional rights by acquiring a property interest without just compensation.

With any encumbrance, it is important to provide the necessary documents to comply with the requirements of the title company, or if it is not possible to clear an exception, to get the title company to waive the exception, before submitting the Title Approval Request package to CBLA. Due to the length of time it may take to reach a negotiated settlement and clear encumbrances, negotiators should identify and contact interested parties, whether or not of record, and seek to release their interest and/or execute a consent as early in the negotiations process as practicable. All title exceptions should be listed in the title analysis report, with notes indicating how each has been addressed.

For possible encumbrances not included in the title record, such as unrecorded leases, the property owner is required to complete the Affidavit of Title form (LA 40504A) to identify, under oath, any such potential rights others might have to the property, so that those encumbrances may also be addressed prior to closing.

The following sections list some of the common types of encumbrances and how they may be addressed.

4.5.3.1 *Lease/Tenants*

A lease may be recorded, in which case it will appear as an exception in the title commitment. Often, however, leases or rental agreements are not recorded, and sometimes are not even in writing. Nonetheless, tenants in these cases have certain rights in relation to the property and must be addressed as encumbrances or included as interested parties in a condemnation action. It is therefore important for the negotiator to do sufficient research to determine whether there are any potential tenants and make reasonable efforts to gather information about tenants. This may include asking the property owner for a tenant list, reviewing publicly available information such as office park directories, etc. The property owner is required to disclose in the Affidavit of Title any other parties in possession of the property, including tenants.

If the property to be acquired is currently being leased by a tenant(s), obtain a tenant's release of the lease for fee and permanent easement acquisitions (LA 40503A, LA 40503B LA 40503C or LA 40503D Template) or consent to a temporary easement (LA 40503E or LA 40503F Template) in order to clear title. The release or consent must be signed by all tenants with an interest in the property being acquired. The signed release is obtained to clear title to the property, and it does not affect the tenant's eligibility for relocation assistance, in accordance with Section 6.4.6. If the terms of the lease or other relevant documentation make clear a tenant has no rights in the area to be acquired (such as common areas, including parking and entrance areas of a mall, whose tenant stores have rights to the internal retail spaces only), title approval may be obtained based on this information in lieu of obtaining releases/consents from all tenants. A copy of the lease or documentation must be included with the Title Approval Request package.

Where the property owner runs a business out of the property and the business is not the owner of record (e.g., Bob Smith is the vested owner, and Bob Smith's Auto, LLC runs its business out of the property), a tenant's release or consent must be obtained. The vested owner's conveyance is not sufficient to clear the tenant's interest in the property from title, even where the individual signing the conveyance and the tenant's release or consent will be the same person.

Acquisitions may also be encumbered by leases for cellular towers, or solar or wind energy installations. As far as possible these types of tenants should be addressed in the same manner as a typical tenant. In some cases, obtaining the necessary releases can be difficult. Additionally, clearing such an entity's interest through condemnation may also present additional obstacles, as these entities may be considered public utilities and subject to regulation and condemnation approval by the Illinois Commerce Commission. If a cell tower, wind or solar energy lease affects the area of an acquisition and the tenant will not cooperate with executing the necessary release documentation, consult with CBLA/OCC regarding how to proceed.

When the department is acquiring tenant-owned improvements, the improvements are conveyed using a quitclaim deed. See Part B of Section 4.5.5.6 for more information regarding tenant owned improvements to be acquired.

4.5.3.2 *Contract for Deed/Installment Contract*

A Contract for Deed (sometimes referred to as an installment contract) is a situation in which a buyer of real estate finances the purchase by making installment payments directly to the seller/owner over time. Both parties have certain rights in the property that must be addressed. The contract buyer must sign a quitclaim deed with an after acquired title clause (LA 40501Q series of templates) and the fee owner of the property must sign a warranty deed for the portion the department is acquiring. The fee owner must be named as a payee on the warrant; the contract buyer may be named as a payee if the parties direct. If acquiring the whole property, additional issues may arise requiring consultation with CBLA/OCC.

4.5.3.3 *Easements*

When a landowner grants an easement, the easement holder has a clearly established right to use the easement property for the purpose of the easement that supersedes the rights of the underlying property owner. Easement rights are also binding on any later purchasers once the easement is properly recorded.

When property is acquired for highway purposes, the department needs to acquire title that is superior to all other parties and potentially conflicting claims. If another entity has easement or superior property rights, there are various options the department can use to address them. For example, the easement holder can release its property right via a quit claim deed. In other situations, a subordination may be appropriate, which is a waiver of a prior superior right as to a particular party. OCC should be consulted if a subordination is preferred.

If the department does not obtain a quit claim deed or subordination of all pre-existing rights, there will remain someone who can prevent the department from using the land acquired or interfere with the department's use. Where a title commitment indicates an easement on the property to be acquired, the district must review the easement in relation to the area of the taking, to determine whether or not the easement affects the right of way to be acquired. Regardless of the type of easement, if it does not impact the right of way acquisition, the title analysis report should note that the exception "does not affect the area to be acquired" and the exception should be waived from the final title policy. No further documentation is required.

A. Public Utility Easement

Because many utilities have acquired right of way for their facilities, public utility easements frequently arise as exceptions on title, which may appear as recorded grants of easement to specific utility providers, or as general utility easements set forth in subdivision plats. These easements must be addressed in order to clear title and obtain title approval for the acquisition.

If utility easements are found within proposed acquisition parcels, the district should first evaluate if the specific location of the easement affects the acquisition or project. If the easement does not directly conflict with the district's project, this should be noted on the Title Analysis Report. If the utility location conflicts with the district's project, it needs to coordinate with its utility relocation staff to determine how to address the conflict.

Where utility facilities are located within state right of way and a project requires that those facilities be moved, state law governs the procedures to be followed to move those utility facilities, 605 ILCS 5/9-113. Generally, if the utility holds an existing easement interest that is affected by the department's acquisition or project, and that interest has not been subordinated, the department will be required to pay the costs to relocate the utility facilities. If the utility is on state right of way by permit, or the utility's easement has been subordinated, then the utility will be required to move its facilities at its own cost.

The district may request subordination of utility easements that affect the area to be acquired. If an executed subordination is received, the subordination document should be included with the Title Approval Request package and noted on the Title Analysis Report. If no subordination of the affected utility has been received, the district needs to confirm the location with its plats staff and its ability to relocate with its utility staff to determine if it will take subject to the exception. Once that determination has been made, the Title Analysis Report should make note of it.

B. Private Easement

The title record may identify private easement rights that have been established over the property in question. Private easements can be created for a variety of purposes, including access or ingress/egress. The private easement may be granted to specific individuals or entities, but often is for the benefit of an adjacent property owner. As property changes hands over time, the easement interest may be transferred to successor owners. Where a private easement appears on title and is determined to affect the right of way to be acquired, the easement must be cleared for the acquisition to be completed. If the title commitment shows a private easement interest granted to specific individuals, the district must identify the current holder of the easement interest and must obtain documents to clear the easement from title.

Private easements can be established in plats of subdivision or subdivision covenants or restrictions. Such easements may establish access or ingress/egress rights for owners of other property within the subdivision, or for a property owner's association established in conjunction with the subdivision. Private easements established within subdivision documents can grant rights to multiple property owners and may not be limited only to those properties immediately adjacent to the parcel in question. It is important that the district carefully review all subdivision documents to evaluate whether such easement rights are implicated and to determine all interested parties in order to clear title.

A private easement can be released through execution and recording of a quit-claim deed or easement release. Where the holder of the easement cannot be identified or located, or refuses to cooperate to release the easement, condemnation of the parcel will be necessary to obtain clear title.

4.5.3.4 *Liens*

A lien is a claim or legal right against property, used to guarantee payment of a debt. There are various types of liens that may appear in a title commitment during the acquisition process. Any lien of record must be addressed and cleared in order for the acquisition to be completed and warrant to be paid.

A. Mortgage Lien

A mortgage lien arises where the property has been used as collateral to obtain a loan. If the mortgage is not released, the state is at risk of losing the property in a future foreclosure action if the borrower fails to repay the loan. When only part of a property is being acquired, obtain a partial release of the mortgage from the mortgagee (LA 40503H or LA 40503I Template). This includes where the state is acquiring "Access Rights" from a property, as such acquisitions have an impact on the value of remaining property. When the department's acquisition only involves a temporary easement, obtain a "Mortgagee's Consent to Temporary Construction Easement" (LA 40503J or LA 40503K Template) in place of a release. A partial release or consent is not required for partial acquisitions costing $25,000 or less, unless the department has any reason to believe there is a possibility the owner may default on the mortgage, there is a chance of foreclosure, tax sale or the remainder's value is less than $25,000.

If the whole property is being acquired, a complete and general release of the lien of mortgage is obtained from the mortgagee (LA 40503L or LA 40503M Template). Often this requires payoff of the mortgage from the proceeds of the department's acquisition prior to the lender providing the release and a traditional title company escrow closing is required to handle such a transaction and ensure that all payments are made to the appropriate parties and all required documentation received. In an escrow closing, the payoff of the mortgage will be covered by the terms of the Deed and Money Escrow Agreement, and no additional documentation to address the mortgage is required for title approval. An escrow closing may also be appropriate if a release or consent cannot be obtained from the lender in a timely fashion.

For any partial acquisition over $25,000, the fee simple owner and mortgagee are named as payee on the same warrant and the Receipt of Conveyance Documents and Disbursement Statement even though a partial release has been obtained, unless the lender has indicated in writing that it does not wish to be included on the payment. Mortgage companies are paid as their interest is shown on the title commitment. Their local agent is not made payee. If the mortgage has been assigned to another company or its name changed, the warrant should pay the company to which it is assigned, or the current name of said company. Any such changes should be clearly detailed in the signatory and payment fields of LAMS.

Often, property of a public utility or railroad is subject to what is referred to as a "blanket mortgage," which covers a large number of properties for that type of large entity. Generally, a partial release of the "blanket mortgage" is not necessary. Instead, a statement is made regarding the title exception on the title analysis report as follows: *"after considering Section 4.5.3.4 of the Land Acquisition Manual a release is not required."* However, where a substantial amount is involved requiring Illinois Commerce Commission approval of the sale, obtain the release.

B. <u>Real Estate Tax Liens</u>

In Illinois, real estate taxes are payable in the year following their assessment and levy. Current taxes levied upon property constitute a lien upon the property, even though the taxes in question are not due or payable until the following year.

If all or a substantial part of the subject property is being purchased, then the seller must pay all of the real estate taxes levied upon the property for the year of purchase. Illinois law provides that the owner of real property as of January 1 in any year is liable for the taxes of that year, 35 ILCS 200/9-175. The state cannot pay state or local property taxes either in their entirety or any pro-rata share thereof; consequently, the owner must clear the tax lien on the property.

Use of escrow to retain some of the sales proceeds for payment of current and/or previous year real estate taxes may be necessary in some cases to ensure the taxes are paid and cleared from title. Guidance from the Illinois Attorney General recommends that a seller must make sure all currently payable taxes are paid in full, and should deposit with an escrow agent, agreed upon between the department and the seller, an amount equal to 120% of the latest available tax bill for the property, prorated to the date of transfer. The escrow agreement should provide that the escrow agent will apply the funds to the next tax bill, when it becomes available, and any remaining funds will be refunded to the seller at that time. Some County Treasurers may agree to serve as escrow agent for this purpose. In the alternative, the title company providing title insurance for the parcel may agree to do so. A copy of the escrow agreement must be included with the Title Approval Request package.

In addition to taxes currently owed to the County, where an owner has failed to pay property taxes for a specified period of time, the property may be sold by the County at a tax sale. A tax purchaser pays the outstanding real estate taxes and the fee owner has a specified period of time to repay the tax debt to the purchaser with interest and penalties. If the tax purchaser continues to pay real estate taxes and the fee owner does not redeem the property by repaying the delinquent taxes with interest and fees, the tax purchaser can acquire the property. If a title search shows that property taxes are delinquent, an escrow closing may be necessary to satisfy the delinquent taxes. If proceeds from our acquisition are not enough to satisfy the taxes with an escrow closing, further steps may be needed in order to clear the delinquent taxes from title. If taxes have been sold, a release from the tax purchaser must be obtained. If unable to clear encumbrances related to delinquent taxes, then the parcel will need to be condemned.

C. Liens of Special Assessments

In addition to ordinary property taxes, special assessments, which are taxes assessed based on something other than the value of the property, may be owed. All liens of special assessment levied against the acquired property must be satisfied in the same manner as ordinary real estate taxes.

D. Mechanic's lien

When a property owner hires a contractor to make improvements on the property and fails to pay the contractor or suppliers, a mechanic's lien may be imposed on the property. Any mechanic's lien in the title documentation must be cleared in order to obtain title approval. It is possible that a contractor who has recently done work on the property may have mechanic's lien rights that do not yet appear in the title record. For this reason, the title affidavit that the property owner must sign (LA 40504A) includes language swearing that no work has been done or improvements made to the property in the last 6 months which could give rise to a mechanic's lien.

E. Judgment lien

When a property owner has been sued and a court has entered a judgment against the owner, a judgment lien can be recorded in the title record, requiring that the plaintiff in the case be paid the judgment out of any proceeds from the sale of the property. Any judgment lien would appear in the title commitment and a lien release must be obtained to clear the judgment lien from the title. This may require the property owner to pay the judgment.

F. *Liens of Other State Agencies or Debts Owed the State*

Failure to pay taxes or other obligations to the State of Illinois can result in a lien against the property of the debtor. Some common examples include liens for failure to pay income taxes, failure to pay payroll or business taxes, or amounts paid by the State on behalf of Medicaid recipients, which the State is entitled to recover from assets. If the debt has already been paid, or the property owner is able to pay the debt in order to clear title, a release from the appropriate State agency can be obtained and recorded to clear the matter from title. Although the property owner is responsible for clearing the lien from title, in many cases, the negotiator may be able to contact the appropriate agency directly to obtain the necessary documentation more quickly, to avoid condemnation. The status of Illinois Department of Revenue (IDOR) liens can be checked on the IDOR website. If the property owner is unable to pay the debt in full, the negotiator may need to work with the agency to determine whether a release can be obtained upon payment of the proceeds from the acquisition, or whether condemnation will be necessary.

In addition, Illinois law specifically requires that any monies owed to the state be set off against any amounts due from the state (15 ILCS 405/10.05). Thus, if the department seeks to purchase a real estate interest from an individual or entity who owes a debt to the State of Illinois, or whose property is the subject of a lien by the state, in addition to clearing the lien from title, the department must ensure that the proceeds from the acquisition are applied to the existing state debt, if it is not paid in full prior to closing. This may require that all or a portion of the compensation be paid to the state agency owed the debt and should be so indicated on the receipt. In some cases, an escrow closing may be necessary to ensure payment of the debt. In such cases a Release of Lien must still be obtained and recorded in order to clear title.

G. *Federal Tax Lien*

Failure to pay federal taxes can result in the attachment of a lien to real property owned by the taxpayer, whether an individual or entity. If such a lien appears on title, it must be cleared prior to submission of the Title Approval Request package. The property owner will need to pay the outstanding debt and obtain a release of the lien from the appropriate agency. The release will be recorded and a copy should be included with the Title Approval Request package, or an updated title commitment with the exception removed should be provided. If the property owner is unable to make the necessary payment to clear the lien, the property will need to be acquired through condemnation.

4.5.3.5 *Regulated Substances and Recognized Environmental Conditions*

In accordance with Section 9.2, all properties must be evaluated for the potential presence of regulated substances, and other recognized environmental conditions (RECs), prior to acquisition. This applies to whole/partial acquisitions and temporary/permanent easements no matter how they may be acquired (e.g., negotiation, condemnation, or donation).

A title commitment may indicate potential environmental restrictions on a particular property and its use. A No Further Remediation (NFR) letter is a letter from the Illinois Environmental Protection Agency (IEPA), recorded in the chain of title, regarding a site owner or operator’s compliance with all IEPA laws and regulations in relation to an environmental cleanup program at the site. Some sites may also be the subject of USEPA cleanup requirements. Any environmental cleanup program may result in environmental covenants or restrictions recorded to require ongoing maintenance of the property and limit future uses. Some such sites are referred to as Superfund or CERCLA sites. The department generally avoids any acquisition involving a Superfund site, as the ongoing maintenance requirements of such sites can be especially costly and burdensome.

In all cases, an environmental review of the property to be acquired should be conducted early in the process to determine whether to proceed with acquisition where such restrictions are in place. Where the district has determined to acquire property for which the title commitment contains exceptions related to a recorded NFR letter or other environmental covenants or restrictions, a copy of the NFR letter or underlying document must be submitted with the Title Approval Request package for review by the Office of Chief Counsel. Additionally, the title analysis should indicate that the document has been provided and environmental review has been completed. An NFR letter may contain specific provisions that impose restrictions on the department as to how the property can be used. During title review, the Office of Chief Counsel will review the documentation and provide further direction if needed.

Section 9.3 provides additional guidance on acquiring properties with RECs, including underground storage tanks (USTs).

4.5.3.6 *Mineral interests*

In some cases, the rights to the minerals found on or under certain real estate have been separated from the fee interest and may be owned by someone other than the identified owner of the property. This is generally noted in the legal description for the property within the title commitment, rather than in the listed exceptions.

When acquiring a PE or TE, the status of the underlying mineral interest is not an issue, as no rights to minerals would be included in those acquisitions, however, it remains important to be attentive to any potential mining activities impacting the area of such acquisitions. The state acquires title to the minerals underlying the surface when the fee interest is acquired, unless the owner has specifically reserved them or they have been previously severed in some manner from the surface ownership. Make no additional payment for the mineral interest, and if the owner insists upon payment, the minerals may be reserved. Add the following paragraph to the warranty deed, following the legal description if the minerals are specifically reserved by the surface owner.

> "Reserving however unto the Grantors, their heirs, executors, administrators, and assignees all of the coal, oil, gas and other minerals underlying the above-described tract with the right to mine and remove the same, but without the right to break, disturb, or subside the surface of said tract."

Where mineral interests have been separated from the fee ownership, check the public records, review all other available data, and take such other action as necessary to determine: (1) the type of minerals involved, (2) whether the mineral interests are intact, and (3) any affect such mineral ownership and the inherent rights of the surface owner have on the use which may be made of the land. The state's title contract contains a separate bid item covering information relative to the mineral severance deed and mineral report on title. The review of public records as well as a review of geological data, inspection of the site, etc., may enable the district to recommend that nothing further be done at this time to acquire surface releases from the owners of the royalty or working interests.

If the district determines the severance of mineral interests does not impact the department's right of way or use of the property, the mineral rights need only be addressed within the warranty deed and the title analysis report as follows. The legal description of the property in the landowner's deed to the department must except out the previously severed mineral interest by adding either of the following after the deed's legal description:

"Except therein mineral interests previously conveyed"

OR

"Except therein mineral interests previously reserved"

The title analysis report must contain a statement or recommendation relative to such mineral ownership. If said rights will not have any effect on the acquisition, a statement such as the following is made in reference to the mineral interests in the report:

"Standard Mineral Exception, Section 4.5.3.6 of the LAPPM"

If the severed mineral interests, mineral leases, or active production or mining on the property may impact the acquisition or the department's right of way, the district will need to take further steps to ensure clear title is acquired and that the department's right of way is not at risk of being disturbed by mineral production activities. It is the district's responsibility to fully evaluate the mineral interests affecting all acquisitions and to take appropriate steps to obtain releases from all relevant parties where required.

A. *Oil and Gas-Producing Facilities Within the Proposed ROW*

In oil and gas producing areas the owner of the minerals makes an oil and gas lease providing for a 7/8th interest therein to be vested in an individual, group, or firm subject to the terms thereof. This lease is generally for a term of years, or so long as oil and gas are produced, and carries with it the right to break and disturb the surface in connection with the recovery of any oil or gas which might lie beneath the surface. Such an interest is known as a "working interest."

In cases where oil and gas rights have been severed in some manner from the surface ownership, obtain a release of the mineral owner's surface rights, regardless of whether the acquisition is in fee, or is an easement for highway purposes. When an oil or gas company leases the mineral rights from the mineral owner, they essentially have the right to use the surface estate. Therefore, a Release of Surface Rights (LA 40503N Template) should be obtained from the lessee and all assignees thereof that hold working or certain lesser interests as provided hereinafter.

The 1/8th interest remaining in the owner is commonly called a "royalty interest" and can be conveyed, devised or inherited. A Release of Surface Rights should also be secured from the owner(s) of this royalty interest since ownership carries the right to break or disturb the surface and all outstanding interests will revert to the owner(s) after the lease expires.

If a visual inspection indicates that there are outstanding mining operations, the interests to be acquired will be governed by the mineral report on title obtained separately or in conjunction with the report on title covering the surface.

B. Oil and Gas-Non-Producing Facilities Within the Proposed ROW

The district must obtain a release of the valid and unexpired surface rights (LA 40503N Template) involved, even if the district's review reveals no producing facilities have been in existence for many years. Likewise, if a majority of the working interest is owned by a large oil company or by an individual, a release of the surface rights would also be required. Statutes provide that anyone owning at least one-half of the right to drill for and remove oil and gas may bring suit to drill for and remove the oil and gas (765 ILCS 520/1)

Apply the same principle of obtaining releases of the majority interest to the owner(s) of the royalty interest. Do not order mineral report on title. In the event a review of the records indicates that mineral rights have been severed but production has ceased or was never accomplished, obtain an Affidavit of Non-Production (LA 40503O Template). Note: Most leases have a production clause limiting the time (usually in months or years) in which the minerals can be mined. If they are not mined during that period, usually the lease expires. However, if the mineral interests have been pooled, combined, or unitized with another, or several other, leases, and any part of the combined leases are still producing, then the pooling agreement and/or original lease is still in effect. If there are questions regarding the current effect of a mineral lease, include a copy of the recorded document with the Title Approval Request package and seek further guidance from CBLA/OCC.

C. Other Minerals

Mineral rights other than oil and gas may also be severed from the surface ownership. In determining whether it is necessary to obtain a Release of Surface Rights from the owner(s) of such mineral rights, consider if the minerals have been mined or removed in some manner and, if not, whether removal of the same may affect the present or future integrity of the highway improvement.

Highway improvements are affected by the mineral owners' right to break or disturb the surface, or cause subsidence without liability. If the highway improvement can be affected by the mineral owner's surface rights, the department should acquire as much of the mineral owners' rights as are needed to protect the highway improvement.

Depending on the circumstances, obtain the recommendation of a mineral specialist in determining whether to acquire the mineral interest or the surface rights of the mineral owner.

If, after proper review, a determination is made to acquire a release of surface rights, then obtain a report on title covering mineral ownership, separately or in conjunction with the report on title covering the surface.

4.5.3.7 *Encroachments*

An encroachment occurs when a structure is built that crosses property boundary lines and intrudes upon the property of another landowner. Encroachments are often structures, such as outbuildings or fences, but can also include vegetation, trees or other landscaping. An encroachment can, over time, become an easement by prescription, creating a permanent easement right in favor of the owner of the encroaching structure, and, if the encroachment exists within the right of way area, can impact title of property the department seeks to acquire. An encroachment will not be specifically identified in a title commitment, but encroachments are generally listed among the standard exceptions to title commitments.

The negotiator should take steps to inquire as to whether any encroachments exist which may impact the right of way acquisition, including review of the appraisal for notes regarding possible encroachments, inquiry to the property owner, and visual inspection of the property. Additionally, paragraph 4 of the Affidavit of Title form (LA 40504A) requires the property owner to make a statement under oath that he or she "has no knowledge of any driveway agreements, encroachments, overlaps, or boundary line disputes involving the premises to be conveyed."

If an encroachment is discovered that will affect the right of way acquisition, obtain a release from the relevant encroaching party in the form of a quit claim deed for fee or permanent easement acquisitions, or a consent for a temporary easement, and consult with CBLA/OCC with any questions.

4.5.3.8 *Adverse Possession / Color of Title*

Adverse possession refers to the legal process by which a person can obtain title to real property as a result of long-term use, without receiving any written conveyance or agreement of the prior owner. Under Illinois law, if a person exercises continuous and open possession of real estate for at least 20 years, without the permission of the owner of record, that person may take title to the land in question, 735 ILCS 5/13-101. Examination of property to be acquired may reveal evidence that the party in possession of the real estate does not match the owner of record. In cases where evidence indicates that, due to adverse possession, the vested owner is not the true owner of the property, negotiation with the adverse owner will be necessary. In addition to executing all standard conveyance and closing documents, the adverse owner must execute an Affidavit of Adverse Possession (LA 40503P), attesting to the facts necessary to support the owner's claim of title.

In addition to the 20 year adverse possession rule, a property owner who has acquired title under a defective or invalid conveyance document may be properly vested in title to real property where that owner has had continuous and open possession of the property and paid all property taxes for at least 7 years, from the date of the defective conveyance document. This is referred to as possession under color of title. Where there is evidence of such situation, it will be handled in the same way as the standard adverse possession claim, with the color of title owner executing all ordinary acquisition documents, as well as an Affidavit of Adverse Possession (LA 40503Q).

If the owner of record can be located and disputes the adverse possession, the parties may need to litigate an action to quiet title (i.e., have a court ultimately determine who is the proper owner of the property). In the case of such a dispute, consult with CBLA/OCC regarding how to proceed.

4.5.3.9 *Other Encumbrances*

A title commitment may contain other types of exceptions not listed here, such as but not limited to, annexation agreements, recorded plats, or prior conveyances to the State of Illinois. Many of these title exceptions may be informational in nature, but all must be addressed in the Title Analysis Report to obtain title approval. Title exceptions may also include documentation required by the title insurance vendor, such as business entity authorization documents, court orders, estate documentation, etc. The district must comply with all requests for documentation indicated by the title company and include all such documents with the Title Approval Request package.

Title insurance does not protect against claims of persons whose interests do not appear in the title record. The negotiator is responsible for ascertaining all evidence of possible unrecorded interests at the earliest possible date. The negotiator should determine the identities of all parties in possession, observe any visible evidence of easements, encroachments or other encumbrances, and note visible improvements to the premises which may have been completed within six months immediately preceding the date of the inspection. If potential interests appear from these visits, investigate the nature of such interests fully. If valid interests, though not of record, exist, such as a contract for deed, leases, or unrecorded conveyances, acquire the interests by the proper instrument and explain such interests on the Title Analysis Report. The Affidavit of Title (see Section 4.5.4.1) also protects against the exceptions and exclusions of the title policy.

While the most commonly encountered title encumbrances have been addressed in this section, other, more obscure title exceptions or situations may arise and require action to obtain clear title. The district is responsible for identifying all potential encumbrances on title, whether or not recorded, and to address each. If unusual encumbrances arise, contact CBLA/OCC for guidance on how to proceed.

4.5.4 Additional Required Closing Documents

In addition to obtaining the properly executed instruments of conveyance, various other documents must be signed by the property owner and submitted to CBLA for review and approval in order for title to be approved and payment to be processed. These documents are explained in the following sections.

4.5.4.1 *Affidavit of Title*

In preparing the documents necessary for title examination, obtain an Affidavit of Title form (LA 40504A). The affidavit identifies any outstanding interests which impair or potentially impair the title being transferred to the State of Illinois and includes the beneficial interest disclosures required by the Public Officers Prohibited Activities Act (see Section 4.5.4.3 for information regarding required disclosures). An Affidavit of Title is required for all acquisitions.

Before preparing the affidavit for signature, the negotiator must interview the owner to determine the use and occupancy history of the property. If the information received, and/or the negotiator's observation of the property, suggests the existence of rights and interests not disclosed in the title commitment, make further inquiry to determine if it is necessary to obtain additional releases or quitclaim deeds to clear these interests.

The affidavit should be executed by a person who has knowledge of the facts about the property. The affidavit cannot be made on information and belief or with a disclaimer. If a trustee is unable or unwilling to provide the information, a beneficial owner makes the affidavit. When some of the statements cannot be affirmed, the potential problem must be resolved before title will be approved. The Affidavit of Title must disclose the existence of the following types of issues:

- Tenants or any parties residing at or possessing a part of the property

- Existing unrecorded leases
- Unrecorded contracts for purchase
- Unrecorded deeds
- Unrecorded easements
- Encroachments or boundary disputes
- Chattel mortgages affecting crops or machinery
- Potential mechanics liens
- Unrecorded mineral leases
- Tax liens

The affidavit is one of several tools meant to help protect the department from the existence of interests that are not covered by the title policy or do not appear in the public record and therefore are excluded from the standard title commitment. The property owner's own sworn statement about the status of the property, combined with the observations of the appraiser and negotiator as to the condition of the property being acquired and the final records check at the courthouse prior to delivery of the warrant to the owner, all help to minimize the risk that the department will not obtain clear title to its right of way acquisitions.

As noted previously in Section 4.5.2.9, an Operating Railroad Affidavit may be executed instead of the standard Affidavit of Title where the department is acquiring operating railroad right of way. In all acquisitions involving non-operating railroad-owned property, including abandoned railroad right of way, the standard Affidavit of Title is required.

4.5.4.2 *American Land Title Association (ALTA) Statement*

Most standard real estate transactions that require title insurance include an ALTA Statement executed by the property owner. While the ALTA Statement provides similar information as the Affidavit of Title, the ALTA Statement includes assurances directed to the title company that it relies upon to insure certain title issues. Each title insurance company uses its own version of the ALTA Statement. For each parcel, an ALTA Statement on the applicable title insurer's form, signed by all sellers, should be included with the Title Approval Request. The signed ALTA Statement is not required for parcels only involving Temporary Easements.

4.5.4.3 *Disclosure of Beneficial Interests*

Before the state or any local government may contract to acquire or make use of real property, the Public Officer Prohibited Activities Act (50 ILCS 105) requires that:

> "the identity of every owner and beneficiary having any interest, real or personal, in such property, and every member, shareholder, limited partner, or general partner entitled to receive more than 7 1/2% of the total distributable income of any limited liability company, corporation, or limited partnership having any interest, real or personal, in such property must be disclosed. The disclosure shall be in writing and shall be subscribed by a member, owner, authorized trustee, corporate official, general partner, or managing agent, or his or her authorized attorney, or other authorized representative with knowledge of the

information required by the disclosure, under oath. However, if the interest, stock, or shares in a limited liability company, corporation, or general partnership is publicly traded and there is no readily known individual having greater than a 7 1/2% interest, then a statement to that effect, subscribed to under oath by a member, officer of the corporation, general partner, or managing agent, or his or her authorized attorney, shall fulfill the disclosure statement requirement of this section. The disclosure requirement of this section may also be satisfied by providing a copy of the most recent proxy statement or other official corporate document filed in the previous calendar year with the federal Securities and Exchange Commission or similar federal regulatory body disclosing the overall ownership of the limited liability company, corporation, or general partnership." (50 ILCS 105/3.1)

Similarly, the Land Trust Beneficial Interest Disclosure act (765 ILCS 405/2) requires the name, address and interest of each beneficiary of a land trust be identified, regardless of the size of the beneficiary's interest.

The disclosure of beneficial interests is made using the Affidavit of Title form (LA 40504A).

The above statutory requirements cannot be waived by anyone and are required for deeds, permanent easements and temporary easements, as all are contracts.

No disclosure is required when the parcel is donated and no benefits are derived. A benefit is something exchanged for the parcel other than money. When the property owner has not or will not receive a non-monetary benefit in exchange for the donation, the property owner selects and signs the appropriate statement to this effect on the Donation Letter (LA 40505A Template).

When the property owner has or will receive a non-monetary benefit in exchange for the donation, the property owner selects and signs the appropriate statement to this effect on the Donation Letter. The property owner then provides a disclosure of beneficial interests by completing an Affidavit of Title or additional disclosure forms.

4.5.4.4 *Receipt of Conveyance Documents and Disbursement Statement*

The Receipt of Conveyance Documents and Disbursement Statement (LA 40504C Template) is used to acknowledge the receipt of fully and properly executed instruments conveying the property or property interest sought for right of way or other use by the department and the disbursement of funds. This "receipt" states that the property or interest therein is conveyed subject only to (1) approval of title by the State of Illinois, and (2) payment of the recited consideration to the Grantor(s).

The receipt contains the final terms of the agreement between the department and the property owner and essentially serves as the real estate contract between the parties. As such, it must set forth the details of the transaction. If the owner is retaining improvements or the transaction is an exchange, include information regarding the total consideration, less amount of retention or exchange for the total compensation due the owner. The receipt must accurately state the nature and acreage of the acquisition, as well as the consideration to be paid to the property owner.

All agreements related to the conveyance must be made in writing to ensure there is no doubt or misunderstanding as to the respective obligations of the state and the grantor(s), and those agreements are to be attached to the receipt.

Agreements relative to construction items, if any, are handled by a separate “commitment letter” from the Regional Engineer attached to the receipt. Such commitments are typically incorporated into the design of the construction plans and listed under “Commitments” in the General Notes of the plans, if time allows. If not, a copy of the “commitment letter” should be presented to the department’s resident engineer at the Pre-Construction meeting.

The receipt also includes the information necessary for the department to fulfill the IRS Form 1099 reporting requirements (see Section 8.2). If there are multiple owners, the negotiator should request an allocation of the payment so the tax reporting forms will reflect the actual payment going to each payee.

Line 4 of the form can be used to break out deductions from the total purchase price for such things as payment for tenant-owned improvements and performance deposits paid by the state out of the purchase price. All warrants are made payable to the fee owner and/or lien holder. This form cannot be used to break out separate warrants if interests are not specifically called out by the title commitment except in cases of tenant-owned improvements. Separate warrants should be issued to each party on title. Exceptions are made for married persons. The Tax ID Number provided in this section must reflect that of the payees.

The receipt is also used to indicate when some part of the purchase price will be withheld, subject to forfeiture, to ensure performance of some agreed to act or action by the grantor or other interested party (e.g., removal of a retained improvements).

The receipt is acknowledged by the owner and certified as correct by the department representative handling the closing. A copy of the receipt is kept in the parcel file and a copy is provided to the owner for their records.

4.5.4.5 *IRS Form W-9 (Taxpayer Identification Number)*

The Internal Revenue Service (IRS) requires the department to report real estate transactions, with compensation of $600 or more, by issuing IRS Form 1099-S or 1099-Misc (see Section 8.2 Tax Issues (1099)). To facilitate this requirement, an IRS Form W-9 must be attached to the Receipt of Conveyance Documents and Disbursement Statement for each property owner, except corporations and government agencies. The department is not required to report real estate transactions involving corporations and government agencies.

The attached W-9 will indicate the correct filing category and proper taxpayer identification number (T.I.N.) for the later issuance of the appropriate 1099 form. Verify that the T.I.N. and information listed on each W-9 matches that of the parties to receive payment on the receipt. For an escrow closing, the name and T.I.N. for the escrow agent are included in the receipt, but a W-9 should still be obtained for each of the property owners.

The Taxpayers Relief Act of 1997 excludes the seller of a principal residence from the requirement of filing a 1099-S form. For the sale of a principal residence to be exempt, a Certification (Exclusion of Principal Residence 1099-S) form (LA 80200A) must be signed by each owner. The Certification should be presented to the property owner for completion when acquiring a full take of a principal residence. Include this document with the Title Approval Request package submitted to CBLA.

4.5.4.6 *REQUIRED SIGNATURES (including examples of signature blocks)*

Careful attention should be given to assure that signatures and names listed in the notary acknowledgements of the document match the names of the grantors or other parties appearing in the caption or the body of the conveyance document. For individuals, including Trustees, the signature and grantor clause should both match the name as it appears on title. For example, if the name on title includes the middle initial, the grantor should sign using the middle initial. The signatures and signature blocks on all other required documents should also match. See Section 4.5.1.3 for guidance on how to address a grantor whose name has changed since title was acquired.

If the grantor is unable to write, they may sign by mark, in which case the signature line appears as follows:

His		Her
John X Smith	or	Jane X Doe
Mark		Mark

Everything but the "X" may be typed. The "X" must be affixed by the grantor. Although not required, it is customary to have the mark witnessed in writing by two people.

Where property is owned by an entity, such as a trust, LLC, corporation, partnership, or governmental body, the title of the representative signing on behalf of the entity must be included in the signature block for all documents signed on behalf of the entity. See the various subsections in Section 4.5.2 for examples of signature blocks related to such entities.

4.5.4.7 *Multiple Signature Procedures*

Most documents offer space for additional signatures on the same sheet; this is sufficient for most situations. As noted in Notary Procedures, the notarization should be dated as of the day the Notary was in the presence of the individual(s) whose signatures are being notarized.

If more signatures are required, or interested parties will be signing on different dates due to scheduling or geographical distance, use duplicate signature pages citing all interested parties on each page. This avoids any misconception that the parties signing each acceptance form will receive the total offer amount as opposed to their share of the total.

Each duplicated page must be annotated with the page number and a letter. For instance, the signature pages of the will be marked 2A, 2B, 2C, etc.

The dates for each signature should match the day each individual signed – they do not need to match. The “Date Accepted” and “Deed Signed Date” fields in LAMS or any other documentation will be the date of the last signature.

4.5.4.8 *Electronic Signatures*

Electronically signed documents may be accepted so long as they comply with all current department policies and applicable laws and regulations of the jurisdiction where signed.

4.5.4.9 *Notary Procedures*

Notarization is the assurance by a duly commissioned Notary Public that a document is authentic, that its signature is genuine, that its signer acted without duress or intimidation and intended the terms of the document to be in full force and effect. A Notary should always verify the identity of the signing party by reviewing a government issued form of identification prior to notarization.

For a notarization to be effective, one of the following is required:

- The documents are signed in the presence of the Notary (preferred),
- The person physically signs the documents in advance and then, in the presence of the Notary (in the same room, not by phone), points to the signature and tells the Notary that the signature on the document is theirs. It is never appropriate for documents to be signed, then mailed to a notary for notarization.

The date of the notarization should be the date the Notary witnessed the signature or the in-person acknowledgment and the notarial seal must be included in the appropriate location of the document.

Increasingly, many states are allowing for electronic notarization. Documents notarized electronically will be accepted so long as the notarization complies with the laws of the state in which the execution and notarization has taken place. Illinois law provides for electronic notarization by notaries who have obtained additional specific certification for that purpose. Illinois law also allows for remote notarization of documents by any notary, in compliance with rules established by the Illinois Secretary of State, which include: (1) the interaction must be by two way audio-video communication and must be recorded, (2) the acknowledgment must specify that the notarization involved the use of audio-video technology, (3) the signor attests in the recording to being physically located in Illinois, (4) the signor affirmatively states what document they are signing, (5) the signor must show each page of the document to the notary through the audio-video communication, (6) the act of signing must be captured sufficiently close up for the notary to observe, (7) the original documents must be sent from the signor to the notary no later than the day after signing, then stamped by the notary and returned no more than 24 hours after the notary’s receipt. Additional details and requirements are set forth in the Notary Public Act, 5 ILCS 312/6-102.5, and in the Illinois Administrative Code, 14 Ill. Admin. Code Part 176. Any remote notarization MUST follow all of the requirements established by the Secretary of State. Under no circumstances should a notary notarize documents that have been mailed after signing, without directly witnessing signature or acknowledgment.

4.5.5 Non-Standard Purchases

4.5.5.1 *Donations*

Any settlement for the purchase of property for less than fair market value must be supported. A legitimate offer by an owner to sell for less than fair market value or an offer to donate property can serve as valid support for a settlement that deviates from the fair market value. The owner must be provided with all the facts concerning the acquisition, including the right to receive full compensation, in money, for land and damages, if any, in accordance with the law of this state.

A Donation Letter (LA 40505A Template), which constitutes a waiver of the owner's rights to just compensation must be signed by the owner. A donation letter is always required when a developer donates property in conjunction with an entrance or other improvement they request.

When the property owner has not or will not receive a non-monetary benefit in exchange for the donation, the property owner selects and signs the appropriate statement to this effect on the Donation Letter. (See the LA 40501W12 – LA 40501W15 series of deeds.) No disclosure is required when the parcel is donated, and no benefits are derived. A benefit is something exchanged for the parcel other than money.

When the property owner has or will receive a non-monetary benefit in exchange for the donation, the property owner selects and signs the appropriate statement to this effect on the Donation Letter. The property owner then provides a disclosure of beneficial interests by completing an Affidavit of Title or additional disclosure forms. (See Section 4.5.4.3 on Disclosure of Beneficial Interests).

4.5.5.2 *Administrative Settlements*

When reasonable efforts to negotiate at the original offer amount have failed, the district Land Acquisition Engineer/Manager can authorize the negotiation of a settlement greater than the originally approved fair market value, provided the Regional Engineer determines that the proposed settlement is reasonable, prudent and in the public interest (see 49 CFR 24.102(i)). The Regional Engineer may agree to a purchase amount over and above the established fair market value after considering all relevant facts and circumstances, including, but not limited to any appraisal or documentation provided by the property owner to support their proposed valuation, recent awards by condemnation juries for similar property in the same area, the potential risks associated with litigation and the benefit of avoiding unnecessary litigation and congestion in the courts. If additional items of value are brought to light or other oversights noted during negotiations, the negotiator should report these to the district Acquisition Manager for consideration. All property owners’ counteroffers are reported to district Land Acquisition and included in the Negotiator’s Report. The property owner must be provided with a written response to all counteroffers.

Where a settlement is made based on an administrative determination for greater than the approved valuation offered to the property owner, the parcel file must contain a statement approved by the Regional Engineer that sets forth the reasons for such settlement. A copy of the administrative settlement must be submitted with the Title Approval Request package for the parcel, for review by CBLA and OCC. Administrative Settlements submitted for review that do not contain any supporting evidence of value may be rejected.

Where a settlement is made based on an administrative determination and the parcel’s fair market value was determined with a Waiver Valuation, the settlement can be made for an amount greater than $15,000 with proper justification and documentation, without the need for a full appraisal.

4.5.5.3 *Consideration $250,000 and over*

State law mandates that negotiated acquisitions of $250,000 or more be approved in writing by the Secretary of Transportation, the Director of Finance & Administration, the Director of Highways Project Implementation and the Chief Counsel, 30 ILCS 105/9.02. In such cases, the district must prepare, and include in the warrant requisition package, a Request for Approval to Purchase Property $250,000 and Over form (LA 40505B). CBLA will be responsible for obtaining the appropriate signatures. An approved copy will be returned to the district for inclusion in the parcel file.

4.5.5.4 *Exchange*

A property owner may prefer to negotiate an exchange in lieu of receiving some or all of the department's offer amount for the acquisition. The department may dispose of excess property in exchange for new acquisitions, in accordance with the requirements set forth in the Highway Code, 605 ILCS 5/4-508. Where an exchange is negotiated, the fair market value of both the parcel to be acquired and that to be disposed of must be determined. Any difference in valuation must be offset, either by payment by the department to the landowner, if the new acquisition is of greater value, or by the landowner to the Illinois State Treasurer in the form of a Cashier's Check if the opposite is true. The exchange agreement must be included with the Title Approval Request package when submitting to CBLA. Contact CBLA for further guidance on how to process the exchange. See Chapter 7 for more details about the disposal process.

4.5.5.5 *Acquisition of Remnants and Remainders*

In some cases, the acquisition of a portion of a landowner's property will render the remaining property inaccessible or will damage the value of the remaining property to the extent that it has little or no value or utility to the owner. In some such circumstances, the Highway Code allows the department to purchase the whole property, where only a portion is needed for highway purposes. 605 ILCS 5/4-5-1.

Where the acquisition results in a remnant that is inaccessible, the department may determine that it is more practical and economical to acquire the fee to the inaccessible remnant of the tract than to pay severance damages. In such case, the negotiator offers to purchase the uneconomic remnant simultaneously with making the offer to purchase the needed right of way.

Similarly, where a portion of a parcel is to be acquired for highway purposes and the accessible remnant is left in a shape or condition that renders it of little value to the owner, or that would give rise to a claim for severance or other damages, the department may acquire the whole parcel. Such offer to purchase is contingent upon the owner furnishing the department with a written request to purchase said remnant. Separately make an offer to purchase the uneconomic remnant (LA 40505C Template) or merge into the offer for the needed right of way.

When acquiring a portion of a parcel for a highway on a new location, and the parcel of land is one acre or less in area containing a single family residence, and in conformance with existing zoning ordinances, the owner has the right under the highway code to demand that the department acquire the whole parcel if: a) the partial acquisition causes the remainder of the parcel not to conform with existing zoning ordinances, or b) the location of the right of way line of the proposed highway reduces the distance from an existing single family residence to the right of way line to ten feet or less. The acquisition of the whole property will follow the same negotiation policies and procedures as any other parcel. Illinois courts have established that the right to demand that the department acquire the whole parcel is limited to a new highway, and that a widening or similar improvement of an existing highway, resulting in zoning nonconformance or bringing a residence to within ten feet or less of the right of way line does not give rise to an obligation by the department to acquire the whole property. Department of Public Works & Bldgs. V. Wishnevsky, 51 Ill. 2d 550.

Remnants may be acquired by separate deed or may be incorporated into the deed for the needed right of way; however, uneconomic remnants or remainders must be purchased with state funds only, without the use of participating federal funds. Notify the district property manager of such an uneconomic remnant/remainder acquisition. This information is incorporated into the department's Non-Operating Highway Right of Way System (NORWAY) inventory (see Section 7.9).

4.5.5.6 *Disposition of Improvements*

Buildings or other improvements within the area being acquired for highway right of way must be removed by one of several means:

- By the property owner, when the improvements are retained for a predetermined price.
- By the new owner, when the department disposes of the improvements at a public sale, by sealed bids or public auction.
- By the department's contractor as part of the highway construction contract.
- By the department's contractor as part of a separate demolition contract (prior to the construction contract).

If practicable and in the best interest of the department, the negotiator should attempt to conclude negotiations with the property owners on the basis the owners retain and remove the improvements. Execute a complete written agreement between the department and the owners setting out the requirements and responsibilities of each party. The negotiator must be familiar with the property management procedures in Chapter 7 relative to this matter in order to discuss the subject as it arises.

The provisions of this section do not apply to outdoor advertising signs. Signs are considered personal property and not improvements (see Section 4.5.5.8).

A. <u>Owner Retention</u>

Major retentions involve buildings and structures. "Buildings" include homes, commercial structures, barns, and garages but not portable storage sheds or mini barns. Mini barns may not be appraised or be included in the offer because they are usually considered personal property and should be moved as a relocation item. "Structures" include free-standing land improvements that are anchored to the ground such as radio towers or fuel storage tanks.

The negotiator should explain, as a part of the offer process, that retention of a building or structure is possible and the owner must make arrangements for retention before the deed is signed.

Minor retentions involve the property owner or tenant electing to retain improvements, fixtures and/or equipment listed in the approved appraisal. The value will be entered on the Receipt of Conveyance Documents and Disbursement Statement to be deducted from the purchase price.

The retention agreement (LA 70301A Template) shall include:

- A description of the improvements or items being retained;
- The date by which the owner or tenant must remove the improvement or items;
- A statement that if the improvement or items are not removed on or before a date set forth, the improvements or items will be considered abandoned property and will be subject to demolition and/or removal by the department;
- A statement regarding the disposition of any associated holdback warrant if the improvement or items are not removed by the property owner or tenant;
- A statement that the owner or tenant is not eligible for relocation benefits for the retained items.

B. Acquisition of Tenant-Owned Improvements

Tenant-owned improvements can be acquired from a tenant owner, under certain circumstances. Acquisitions involving tenant-owned improvements are closely coordinated with the department's appraiser to avoid any possible violation of the "unit rule". The unit rule was established in Illinois case law and requires the value of improved property be considered as a whole, without assignment of separate costs for the land and individual improvements. (The Department of Transportation, Plaintiff-Appellee, v. First Bank of Schaumburg, as Trustee, Defendant-Appellant, 260 Ill. App.3rd 490, 631 N.E. 2nd 1145 (1st Dist.)). Any affected tenant-owned improvement(s) should be identified in the appraisal.

In these cases, the offer of just compensation should be made to the record owner based on an appraisal that considers the value of the tenant-owned improvements separately, as long as it does not violate the unit rule.

When the offer is made to the owner of record, the specifics regarding any tenant-owned improvements should be determined. The negotiator should inform the record owner to request the department to make an allocation of values between the land and the tenant-owned improvements (for negotiating purposes), providing the record owner is willing to disclaim all right, title and interest in the improvements to be acquired by signing a Disclaimer Affidavit for Tenant-Owned Improvements (LA 40505D Template).

If the record owner executes the disclaimer, the negotiator goes back to the appraisal unit/section and asks for a listing of the tenant owned improvements affected, with reasonable allocation of values. The negotiator then makes new offers to each party based on this allocation.

The offer to the tenant owner is made using an Introductory/Offer Letter for Tenant-Owned Improvements (LA 40505E Template) and a Tenant-Owned Improvement Compensation and Offer to Purchase (LA 40505F Template) that contains the allocation of the tenant-owned improvements being acquired. If all parties agree with the values allocated, execute the necessary instruments to convey their respective interests to the department. The tenant's interest in the improvements is acquired by obtaining a quitclaim deed from the tenant owner for the full amount allocated for the improvements and any other interest(s) they may have in the property. Separate warrants may be drawn in favor of the record owner and the tenant owner.

If the record owner has refused to sign the required disclaimer and condemnation is necessary, the tenant owner will be given a copy of a 60-day notice *provided to the fee owner* by certified mail.

If the record owner executes the disclaimer and either they or the tenant owner cannot agree to the amounts allocated and offered for their respective interests, both parties are informed that the department will initiate condemnation proceedings to acquire the needed property. In said proceedings, the court has exclusive authority to hear and determine all rights in the improvements and the just compensation to be deposited. Separate 60-day notices should be sent to both the record owner and the tenant owner. The 60-Day Notice (LA 40410B Template) should be sent to the fee owner and the 60-Day Notice – Tenant Owner (LA 40410C Template) should be sent to the owner of the improvements.

4.5.5.7 *Personal Property*

The fixtures normally found within a structure, such as furnaces, plumbing, lighting, etc. are generally considered part of the real estate, and are included in the appraisal of the property. Conversely, appliances, business machinery, and other removable personal items are considered personal property and not included in the appraisal of the property. It is the department's policy not to acquire personal property from a landowner, but to require the property owner to remove such items prior to the department taking possession. If relocation assistance is involved, the movement of the displaced person's personal property will be handled by that program, but again, the personal property is not acquired. In the unusual event personal property is to be acquired, instead of being relocated or removed by the owner, contact CBLA/OCC for guidance.

4.5.5.8 *Outdoor Advertising Signs*

Outdoor advertising signs are classified as personal property; and as such, the sign itself is not included in the valuation of the property. However, legal sign sites may enhance the value of the real property as a result of their desirability for this use. Appraisers should consider a sign site's effect, if any, on the value of the whole property, and the part to be acquired if the sign area is to be acquired, based on the property's highest and best use (see Chapter 3 for appraising of outdoor advertising signs). No offer includes compensation for advertising signs determined to be illegal. The apportionment of the just compensation between the site fee owner and the sign owner is between the site owner and the sign owner.

When the sign owner is not the sign site's fee owner, obtain the sign owner's interest by using the following:

- For an on premise sign:
    - Lessee's Release of Lease and Agreement to Vacate Advertising Sign (LA 40505G Template), or
    - Lessee's Release of Lease and Bill of Sale for Advertising Sign (LA 40505H).
- For off-premise signs: Tenant's Release of Lease (LA 40503A Template).

If condemnation is necessary to acquire any parcel containing an advertising sign, both the sit owner and sign owner are named in the eminent domain action unless the sign owner's interest is satisfied and the removal of the sign owner's interest is specifically authorized by the SPAAG assigned to the condemnation case.

Signs located on right of way to be acquired are eligible for the cost of the relocation to another legal sight under the department's relocation assistance program. Consult with the Outdoor Advertising Unit in CBLA about potential relocation of the sign.

When a sign owner elects not to relocate an off-premise advertising sign, the amount of the payment for direct loss of an advertising sign is the lesser of:

- The depreciated reproduction cost of the sign as determined by the department, less the proceeds from its sale; or
- The estimated cost of moving the sign, but with no allowance for storage. The estimated cost shall be based on a moving distance of no more than 50 miles.

When the sign owner elects to relocate the sign, the sign owner is reimbursed the actual and reasonable costs to move the sign as a personal property only move (see Section 6.9.12).

4.6 *TITLE REVIEW AND APPROVAL*

4.6.1 Negotiated Settlement and Title Approval Request

If the property owner agrees to the offered purchase price for the acquisition, or an agreed settlement has been successfully negotiated, CBLA must request that a warrant be issued to pay the property owner the agreed amount. It is the responsibility of the districts to process the Warrant Request in LAMS prior to submitting the Title Approval Request to CBLA for review (see Section 8.3.1). Upon requesting the warrant, the acquisition must be reviewed for title approval by CBLA and the Office of Chief Counsel (OCC). Additionally, for acquisitions with a purchase price greater than $25,000, state law requires the department obtain title approval from the Office of the Attorney General (OAG) prior to issuance of the warrant (30 ILCS 545/2).

The negotiator prepares the Title Approval Request package for review and approval. The Title Review Memorandum form (LA 80301) is to be completed and signed by the negotiator, then reviewed and signed by the District Acquisition Manager. It is the responsibility of the negotiator to complete all necessary fields on the form and ensure that all applicable documents as listed on the form are attached or included in the electronic submission. The negotiator or other designated district personnel must also enter all necessary parcel and payee information into LAMS for generation of the payment invoice by CBLA staff once title has been approved.

Once reviewed and signed by the district Acquisition Manager, the Title Approval Request Package is submitted electronically to designated CBLA staff for initial review. CBLA staff may contact the district Acquisition Manager regarding any incomplete information, or documentation, or may note any potential issues and forward the package electronically to OCC for review.

4.6.2 Title Commitment

Examination and approval of title on acquisitions is based upon a commitment of title with minutes of condemnation, obtained from a qualified title services vendor. The effective date of such commitment must not be older than one-hundred twenty (120) days prior to the date of title review for all parcels with a purchase price of $25,000 or less, or ninety (90) days for parcels with a purchase price of over $25,000. A title commitment older than 90/120 days when received for title approval is considered "stale." If the title commitment will become "stale" within a week of submission, CBLA/OCC may hold review and approval of the parcel until a later date commitment is received; or may proceed with review and request that the district obtain a later date commitment to supplement the file as the title approval process proceeds.

For acquisition of a Temporary Easement with an agreed purchase price of $25,000 or less, the district may submit the last vesting deed for the property with the Title Approval Request package in lieu of a title commitment.

4.6.3 OCC Review

Once received, the Title Approval Request package will be assigned to an OCC staff attorney to review for title clearance, effective conveyance documents, proper signature authority and all other required documentation and execution. The OCC reviewer will identify any additional corrections or omissions not raised by CBLA staff and request that the district address such concerns. OCC reviewers may request that the district provide additional documentation to complete review, including recorded documents referenced in the title commitment. OCC's review will not be complete until requested documentation is provided.

Once the OCC reviewer has determined that the Title Approval Request package satisfies all requirements for acquiring acceptable title to the acquisition, the reviewer will sign the Acknowledgement of Title Approval page of the Title Approval Request form and mark the appropriate box to indicate whether CBLA is to generate an invoice and request a warrant to pay the property owner, or to transmit the package to OAG for further review, depending on the purchase price for the acquisition. Any notations the OCC reviewer wishes to convey related to the parcel or title issues will be included in the Acknowledgment of Title Approval. The signed Title Approval Request form is returned to CBLA electronically for further processing.

4.6.4 Attorney General Review

CBLA staff will prepare and submit the Title Approval Request package to the OAG for title approval after OCC has approved title, if the purchase price for the acquisition is over $25,000. CBLA staff will compile the OAG Title Approval Request package including the following:

- Signed Title Approval Request with completed OCC Acknowledgment of Title Approval including any reviewer notes.
- Title Commitment.
- Negotiator's Title Analysis Report.
- Executed instruments of conveyance.
- Supporting documentation of signor's authority.

- Affidavit of Title and additional disclosures.
- ALTA Statement
- Executed documents to clear title (both record and non-record encumbrances).
- Executed Receipt of Conveyance Documents and Disbursement Statement.

The Title Approval Request package will be submitted to OAG electronically. Once CBLA staff receive title approval from the OAG, the date of title approval will be entered into the LAMS and CBLA staff will proceed with requesting the warrant for payment.

4.7 *CLOSING PROCESS*

4.7.1 Processing Payment

Once all approvals have been received, the warrant request is forwarded to be scheduled in the FOA System by CBLA.

At the time of scheduling, the Accounting Unit enters the last four digits of the schedule number and the schedule date in the LAMS payee screen. The schedule and invoice are submitted to the Bureau of Business Services to be approved, vouchered and sent to the State Comptroller's Office for payment.

State warrants for acquisition are mailed to CBLA. The Accounting Unit enters the voucher number, warrant number, and the received date in the LAMS payee screen. Upon completion these warrants are then mailed to the appropriate districts and they enter the acknowledgement date.

4.7.2 Closing Title

Upon receipt of the warrant, and prior to delivery to the property owner, the district must ensure a check of title records in the applicable County recorder's office to determine whether any changes in interest or other matters have occurred which might affect title. The negotiator or other personnel designated by the district, will use the Title Search Checklist (form LA 40702A) to document the results of this review, and maintain the completed checklist in the parcel file. In some cases, such as where the title company holds an escrow closing, the title company may conduct the final title check.

If there have been any changes on title, hold the warrant and contact CBLA for instructions. If the title is still clear, deliver the warrant to the owner(s). If the acquisition is closed in escrow, deliver the warrant to the escrow agent.

4.7.2.1 *Property Owner Chooses Method of Payment*

The property owner should choose the manner of closing. The seller may choose an escrow closing, as described in Section 4.7.2.5, or a non-escrow closing, which will follow the process set out in Section 4.7.2.2. The district will maintain written documentation of the seller's decision.

4.7.2.2 *Recording the Conveyance Instruments*

After the district has confirmed that no changes in interest or other matters have occurred that may affect clear title, the executed right of way instruments should be immediately recorded with the County Recorder of the subject county to avoid the possibility of a judgment or lien being placed on the property between the time the warrant is delivered, and the recording of the deed or easement(s). The department pays the recording fees.

After recording, the warrant should be immediately delivered to the property owner by one of the following methods:

- Certified mail, return receipt requested, post marked contemporaneously with the final recording of conveyance documents; or
- Private delivery service (such as FedEx or UPS) that provides a signed confirmation, with documentation of sending on the same day as final recording; or
- Personal delivery by district staff or specialty agent, who will request a signed acknowledgement. The person delivering the warrant will make a signed, written record of the time and location of delivery and the name of the person the warrant was delivered to.

The signed acknowledgement or other proof of the receipt of warrant by the property owner should be kept in the parcel file.

Upon recording the conveyance documents, order a title insurance policy, if applicable, from the authorized title insurance company.

4.7.2.3 *Real Estate Tax Exemption*

Transfers of real property to the State of Illinois, Department of Transportation are exempt from real estate transfer tax under 35 ILCS 200/31-45(b) of the Real Estate Transfer Tax Law. Property acquired by the department for highway purposes is also exempt from annual real estate taxes once the state takes title. Although exempt from taxation, the department is still required to complete certain filings related to transfer and real estate taxes with the County.

At the time of recording the deed, a Real Property Transfer Tax Declaration (also referred to as a PTAX-203) must be prepared and submitted with the deed for recording. Alternatively, the Illinois Department of Revenue has implemented an electronic system for these filings, called “MyDec”. Some counties may require either electronic submission or paper submission. Consult with the county recorder for instruction.

The department must also file with the County an Application for Property Tax Exemption, designated as PTAX-300FS (commonly known as PTAX-300), in order to officially establish the tax-exempt status of the property. The department has made a version of this form available for use by districts (LA 40702B), but in most cases, the Illinois Department of Revenue Form will be used.

4.7.2.4 *Title Insurance Policies*

All acquisitions require the ordering and purchase of a title insurance policy, except for temporary easements. Each policy of insurance is to be for the full value of the real estate acquired, rounded up to the nearest thousand. The amounts of damages to the remaining land, if any, are not covered unless an extraordinary case occurs.

Check the policy for disposition of all exceptions and for free and clear title in the name of the People of the State of Illinois, Department of Transportation.

4.7.2.5 *Escrow Title Closings*

Most non-right of way real estate transactions involve an escrow closing, in which the parties submit all necessary documentation to the escrow agent, often a title company, and, once all documentation has been verified, the conveyances are executed and the payment issued simultaneously. Escrow services may be used by the department for title closings when necessary to use a portion of the acquisition proceeds to clear title encumbrances, such as tax liens or when ownership of the parcel is complex, such as multiple owners, heirs, etc., or when use of escrow services is requested by the seller (i.e., the property owner). Always use an escrow closing when acquiring a property in full. When unsure of whether the circumstances of a transaction are best suited for an escrow closing, please consult with the Office of Chief Counsel.

The fees charged by the title company for escrow services are established for each district by the statewide title services contracts. When closing in escrow, all necessary documents for closing the transaction are transmitted to the escrow agent and the warrant for the purchase amount is made payable to, and deposited with, the escrow agent. Because of this, the payee information on the Receipt of Conveyance Documents and Disbursement Statement (LA 40504C Template) must name the escrow agent and list the TIN of the escrow agent. In addition to the standard conveyance and title approval documents, an escrow closing requires all parties – the district, Property Owner and Escrow Agent – to execute an escrow agreement, spelling out the details of the transaction and what conditions must be met before the escrow agent can record the conveyance documents and issue payment to the seller. Where the District is acquiring the property in full, a separate tax escrow agreement is also required. This requires the seller to deposit a specified amount with the escrow agent to be used to pay the current year’s real estate taxes when they come due. The tax escrow agreement is prepared by the title company prior to closing and will not be included in the title approval package.

After all of the conditions of the escrow agreement are met, the escrow agent will complete the final title check, record all necessary documents to convey clear title to the department and distribute the proceeds to the property owner and any other interested parties entitled to receive a portion of the funds.

4.7.3 Possession and Vacation of Premises

The department does not take possession of an acquisition until the warrant is delivered to the property owner. When the department purchases a building or mobile home the negotiator should explain to the owner of the real property that the transaction is not final until they receive payment from the department and that any damages to the improvements, such as fire or accident, that occur prior to payment would cause the property to be reappraised. The property owner should consider maintaining insurance coverage of the improvements and any personal property within the acquisition area until payment is received and the building is vacated. Losses or liabilities which occur after payment is made but while the owner still occupies the building must be covered by the owner's insurance. The property owner should also be advised that they are responsible to continue to make mortgage and real estate tax payments that come due between the time of agreement and the delivery of the warrant.

The department has no authority to obtain possession of property by partial payment. Possession can only be obtained by full payment of the agreed consideration, full payment of a judgment of the court, or deposit of the preliminary amount of just compensation set by the court and the judge signing an Order Vesting Title to the department.

Once the property is actually paid for by delivery of the warrant or the amount of the just compensation established by the court has been deposited, provide the person(s) lawfully occupying the real property or having personal property thereon with a 30-day specific date written notice to vacate the property using the Notice to Vacate (LA 60402 Template). The department officially takes possession of the property upon delivery of the warrant or depositing the amount of just compensation with the court, and this 30-day notice cannot be given until that delivery/deposit.

No rent will be charged during this 30-day period. After this initial 30 days, the department charges rent for any continued occupancy of the property based on the values previously established on the Disposition and Rental Values of Buildings/Improvements form (LA 70203). See Section 7.2.3 for more information. If the occupants remain on the property with department approval, the department and the occupants are required to enter into a rental agreement and rent will be charged. The rent may be pro-rated for periods less than one month in duration, but rent payments are required. See Sections 7.3.3, 7.3.4, and 7.5 for more information on Rental Agreements.

If the occupant remains on the property without department approval, the department may need to initiate eviction proceedings. If such a situation arises, consult with CBLA/OCC regarding how to proceed. Additionally, where a party occupies the property illegally after the initial 30-day period, without paying rent, the amount of rent not collected is then considered as revenue or income to the occupants for state and federal income tax reporting purposes. Prepare a 1099-Misc. and send to the occupants showing the "free rent" as income. This issue is not negotiable under property management, acquisition or relocation policies.

4.7.4 Performance Deposit

When a property owner is obligated to conduct activities on a parcel after closing, such as removing a retained improvement, the department retains a portion of the total compensation by means of a performance deposit warrant until the landowner has completed the required activity. This will be accomplished by requesting an additional warrant for the retention amount that is deducted from the total purchase amount. See Section 7.3.1 for more information.

4.8 *SPECIAL CIRCUMSTANCES*

4.8.1 Rescinding the Offer

In cases where the department no longer needs to acquire a particular property after an offer has been made, a letter rescinding the offer is sent to the property owner, with a copy kept in the parcel file. The letter is to be prepared on IDOT letterhead, include the subject line of "Letter Rescinding Offer", reference the parcel and project information, and be signed by the Regional Engineer. The body of the letter shall state:

> "The Illinois Department of Transportation has decided not to acquire the above referenced property.
>
> This letter shall serve as a notice to you that we are rescinding our offer to purchase a (*insert acquisition type*) consisting of ____ acres.
>
> No further negotiations or proceedings shall be forthcoming. We appreciate your past cooperation regarding this matter."

Note: A letter rescinding the offer should not be used when the offer needs to be revised (see Section 4.4.12 for information on Revising the Original Offer).

4.8.2 Early Acquisition

Federal regulations found at 23 CFR 710.501 allow the department to acquire property early (i.e., prior to final environmental approval of the proposed transportation project), provided certain specific requirements are met and prior concurrence is received from the FHWA. See Section 1.1.6.1 for more information.

As it is the department's policy to carry out early acquisition through negotiations only, without the threat of condemnation, offers to property owners must be made without Eminent Domain language and without the associated 60-day notice. If the early acquisition offer is not accepted within the negotiation period, the offer must be rescinded in writing instead of being referred for condemnation. At a later time, it is possible that the owner may receive another offer from the department under regular acquisition procedures, with the threat of condemnation. It is also possible that after the early acquisition offer is rescinded, there will be no other future offer.

The other aspects of early acquisition (plats, legal descriptions, appraisals, relocation assistance, title approval, etc.) follow the regular acquisition processes.

4.8.3 Protective Buying and Hardship Acquisition (Advanced Acquisition)

Federal regulations found at 23 CFR 710.503, and state law (605 ILCS 5/4-510), allow the department to acquire a particular parcel or a limited number of parcels within the limits of a proposed highway corridor in advance of the final environmental approval of the project to prevent imminent development and increased costs (Protective Buying), or to alleviate hardship for a property owner (Hardship Acquisition). Use of advanced acquisition requires that certain specific requirements be met and prior concurrence from the FHWA. See Section 1.1.6.2 "Advanced Acquisition" and Section 2.4.5 "Corridor Protection Map" for more information.

4.8.3.1 *Protective Buying*

Protective buying is used to prevent imminent development or major improvement of property needed for future right of way. A significant increase in cost may be considered as an element justifying a protective buy.

Subsequent to the approval of a Corridor Protection Plan, the department determines the approximate locations and widths of future acquisitions. Owners of land needed for the improvement are then served by registered mail and advised of the approximate locations and widths of the acquisitions. After such notification by registered mail, the owner may not rebuild, alter or add to any improvement or incur development cost or place improvements in, upon or under the land without giving this department 60 days' notice. The department has 45 days thereafter to indicate its intention to acquire the land and an additional 120 days to acquire it. Acquisition commences in accordance with the established procedures in this Manual.

The department must document the necessity considering increased real property values, large damage claims, extraordinary relocation expenses and/or extraordinary property management expenses.

Following are examples where protective buying may be appropriate:

- Parcels on the verge of costly development, expansion, or change in physical character by construction, excavating, flooding, dumping, etc.;
- Parcels with pending zoning or land use changes that will increase the value of the land;
- Parcels where existing improvements have been severely damaged and reconstruction of the improvements is pending.

In other aspects, protective buying follows the regular acquisition processes; except that partial acquisitions are not allowed without fully developed right of way plans for at least that portion of the project.

Any uneconomic remnants/remainders acquired through this process, are incorporated into the department's NORWAY inventory (See Section 7.9).

4.8.3.2 *Hardship Acquisition*

Hardship acquisition is requested by the property owner when they need to dispose of their property for personal reasons (e.g., health, safety, or financial), but have been unable to attract a buyer on the open market after it has become general knowledge that the property will eventually be acquired either partially, or in its entirety, for highway right of way.

General knowledge of an upcoming project may affect the ability to sell a property; however, this knowledge affects every property owner within the project corridor and by itself is not a justifiable reason for accepting and concurring in a property owner's hardship acquisition request. Further, a property must be exposed to the open market for an adequate length of time (no less than three months for residential and six months for commercial) and with a reasonable asking price to attract a buyer as compared to other property recently sold in the area.

In a slow market, when little or no real estate is being traded, it is difficult to judge whether a piece of property does not sell because it is in the future right of way or because of the general market conditions. Evidence that a bona fide offer to purchase was in all sincerity made and withdrawn as a result of the project should be presented; and should consist of more than a statement by the property owner that the property could have sold at a certain price to a certain buyer who withdrew a bid after having learned of the proposed project.

If the department concurs with the hardship request, a memorandum by the Regional Engineer is submitted to the FHWA stating continued ownership until the acquisition phase of the project poses an undue hardship for the property owner compared to other property owners and the reasoning for such determination.

In other aspects, hardship acquisition follows the regular acquisition processes, except that partial acquisitions are not allowed without fully developed right of way plans for at least that portion of the project.

4.8.4 Acquisitions involving Government Employees

4.8.4.1 *Government employees Performing Land Acquisition Functions*

Acquisition of land from an employee of the department, county, city, or other governmental agency may give rise to a conflict of interest. This could also occur when acquisition is from others with whom the employee has a friendly, family or organization membership relationship. All acquisitions are to be conducted uniformly.

All questions on conflict of interest are resolved in favor of the public. Disclosure of conflicts must be recognized as early as possible in the acquisition process, preferably prior to the acquiring agency entering into any contract for an appraisal or authorizing staff appraisal of the affected property. If an employee's interest in property is not known or discovered until after the appraisal assignment is made, all land acquisition activities on the property involved are suspended and a written statement outlined below is forwarded to the CBLA.

An employee having a possible conflict of interest shall submit a written statement to the Regional Engineer. The statement should contain the following (see LA 40804 Template as an example):

- Full name, job title and work address of the employee.
- Summary of all activities conducted on the subject property to date.
- The location of the property where the conflict may exist and the name of the owner if other than the employee.
- What specific interest the employee has in the property, such as ownership solely or with others, partnership, corporate, etc., or interest by reason of family friends, or organization membership.
- In the case of employee ownership, in whole or in part, beneficial or in any other manner, a statement indicating whether the employee intends to be self-represented.
- In the case where the employee has an interest because of family, a statement indicating whether the employee will represent the family and if so, the necessity to do so. An employee shall not represent a friend or organization to which the employee may be a member.
- A statement indicating that the employee's salary is or is not in excess of 60% of the salary of the Governor of the State of Illinois.

In no case may an employee participate in the appraiser selection, appraisal preparation, appraisal review or computation of relocation payments as a staff negotiator or in the eminent domain operations for a parcel in which the employee has an interest.

Upon receipt of the employee's statement, the regional engineer shall prepare a recommendation on the acquisition process for the parcel at issue, and shall forward a copy of the employee's statement and the recommendation to CBLA for review and concurrence. When the employee is in CBLA, a written statement will be submitted to the Director of Highways Project Implementation, who in turn will furnish a copy to the regional engineer having jurisdiction over the parcel to be purchased. The regional engineer shall concur in the acquisition process or corrective action. After concurrence is given, the acquisition process may proceed. In addition, the requirements of Section 4.5.2 must also be followed.

4.8.4.2 *State Officers, State of Illinois Employees, their Spouses or Minor Children not involved in the Land Acquisition Process*

When an acquisition involves property owned by state officers, state of Illinois employees, their spouses or minor children, provide the following documentation to CBLA with the appropriate warrant request material (see example letter LA 40804 Template).

- Full name, job title and work address of the employee (and spouse's full name or minor child's full name, if applicable)
- Location and description of the project, and of the property for which an exemption is being requested
- Describe the specific interest the employee has in the property, such as ownership solely or with others, partnership, corporate.
- Provide an explanation of why the acquisition is necessary to properly complete the project and why it is in the best interest of the people of the state of Illinois to acquire the property.
- Indicate the amount of the original offer and include a statement that the department proposes to enter into an agreement to purchase the property for an agreed to price of $____________. A copy of the conveyance documents should be included.
- A statement indicating that the employee's salary is or is not in excess of 60% of the salary of the Governor of the State of Illinois

CBLA reviews this information in conjunction with the title documents. District One sends the above information to CBLA by separate memorandum with their warrant request and title approval memorandum.

4.8.4.3 *Employees Representing Themselves*

When employees represent themselves or their families in negotiation for the property, the files are fully documented as to such employee's capacity and activities in the transaction. In addition, the time spent by the employee in such negotiations is not charged to the state and the file is so documented.

4.8.4.4 *Report of Acquisition*

When the property is acquired by negotiated settlement, a copy of all written reports and documentation in connection with each transaction reflecting all activities is forwarded to CBLA. In the event a negotiated settlement cannot be obtained, a similar report of all activities conducted to date is forwarded to CBLA for concurrence in the filing of a condemnation petition.

4.8.5 Acquisition of Privately Owned Lands or Interest in Lands by Federal Condemnation Action

The state may also acquire privately owned land, or interests therein, through the use of the federal government's power of condemnation. 23 CFR Section 710.603, Direct Federal Acquisition, prescribes the policies and procedures relating to the acquisition of privately owned land, or interests in lands, by the United States Secretary of Transportation upon the request of a state, when such lands are required for the construction of the interstate system or defense access roads. Comply with the requirements of the Program Manual in its entirety and furnish two additional copies of the required data in all such cases. A "right of entry" is given to the state for construction purposes after the United States has acquired title to the property. A formal deed is delivered for acceptance and recording at a later date.

4.8.6 Acquisition of Land for Relocation of Railway Tracks or Public Utility Facilities

Substitute right of way may be acquired by negotiation or condemnation to relocate the line or tracks of a railroad or the facilities of a public utility which are not located in or upon a public street or highway, when relocation is required by a highway improvement after securing an agreement covering the relocation approved by the ICC (605 ILCS 5/4 505). It is the department's policy that a utility company acquires its own right of way for such relocations. However, where the provisions of (605 ILCS 5/4-505) are to be used, the Agreement with Utility Company to Acquire Substitute Right of Way (LA 40806A Template) should be submitted via email to CBLA. The template has been drafted to cover the acquisition and conveyance of an easement to the company, but it may be that on occasions the fee title would be acquired requiring modification of said template. It is expected that the utility company would obtain the approval of the ICC as a part of its contribution to the acquisition and provide the department with the ICC order approving the agreement for use in acquiring the substitute right of way. However, this approval from the ICC is also obtained by the district. A form of deed for the Conveyance of Substitute Right of Way to Utility Company (LA 40806B Template), must be prepared in draft form and submitted to CBLA together with the agreement.

4.8.7 Acquisition of Property to Replace Property Acquired from a Public Agency

When property owned by another public agency is required for a state highway project, acquire such easements, rights, lands or other property by negotiation or condemnation as may be necessary to replace this property. The department and public agency must enter into an Agreement to Replace Property Acquired from a Public Agency (LA 40807 Template) relative thereto (605 ILCS 5/4-509). The execution of such agreement must precede the acquisition of the replacement property. After acquiring the replacement property, the department conveys it to the public agency.

This authority has been made applicable to property owned by state agencies by an Attorney General's opinion (1979 Op. Atty. Gen. S 1424). Rather than a deed, a transfer of jurisdiction under the Illinois Highway Code and Section 4.5.2.14 is used to complete the action.

4.8.8 Acquisition of Property for IDOT Capital Improvements

At times, district Land Acquisition (DLA) staff will be involved in the purchase of land for the construction of a new maintenance facility, the expansion of an existing maintenance facility or similar capital improvement project. Projects involving the construction or renovation of IDOT facilities will be accomplished through the Capital Development Board (CDB). When the CDB is involved with a project, the funding for the land and improvements will come out of the Capital Improvements Section's budget.

Because the property to be acquired will ultimately be controlled by IDOT, the transaction still needs to go through the appropriate CBLA title approval process, as well as having the warrant request processed in LAMS. That also requires the assignment of a right of way job number and a parcel number for the acquisition. During the process of purchasing the land, DLA will work with a representative of the Capital Improvements Section of the CDB to facilitate the purchase. When processing the Warrant Request in LAMS, the district must include a payment message in the Payment Request Screen describing what the purchase is for, as well as the proper Obligation and Appropriation Number. The same information should also be included on the subject line when submitting the Title Approval Packet to OCC/CBLA via email. Upon receiving Title Approval, CBLA will process the payment in the FOA system. Once payment is issued to the property owner, the district should notify the Capital Improvements Section in writing that the acquisition is complete.

4.9 *ACQUIRING FUNCTIONAL REPLACEMENT PROPERTY FOR GOVERNMENTAL AGENCIES*

Property in public use or ownership is acquired: (1) at its fair market value or (2) in certain instances compensation may be on the basis of providing replacement facilities and/or land when it is determined that functional replacement is necessary to preserve and protect the public's interest.

4.9.1 Acquisition Based on Fair Market Value

When an acquisition is based on the fair market value of the property being acquired, the normal procedures for acquisition contained in this manual apply. No further instructions or procedures are needed.

4.9.2 Acquisition Based on Functional Replacement

Land and facilities devoted exclusively to public use and owned by any governmental agency may be eligible for functional replacement. 605 ILCS 5/4-509. Examples may include schools, police and fire stations, parks, recreational areas, municipal garages or maintenance facilities, libraries and city or county government buildings and other public-owned areas. The real property cannot be owned by a utility or railroad.

The concept of replacement is based on the necessity, legal obligation or duty of the agency to maintain the facility for the general public welfare. The intent of functional replacement is to eliminate potential increased costs to any governmental agency due to highway takings. If the agency feels there is not a necessity to replace the facility, compensation is based on the market value of the property taken.

When eligible for functional replacement, the agency has the choice of receiving market value for the property taken or functional replacement of land and/or facilities. The replacement only has to be functionally equivalent, not an exact duplicate. Except where the replacement facility meets present standards, codes, ordinances or laws, the agency does not receive reimbursement for enhancements, upgrades, or increased capacity.

Clearly inform the governmental agency, at the commencement of discussions with the agency, that enhancements, upgrades and increases in capacity are not eligible. Size and type of construction of the replacement facility is guided by what typically is constructed in the area, and by what the agency is reasonably expected to build, with their own funds, to replace the utility (capacity) of the existing facilities. When the agency chooses to increase capacity and/or include enhancements or upgrades other than those required to meet present standards, codes, ordinances or laws, the cost is the responsibility of the agency. The agency incurs the eligible cost before reimbursement is made.

4.9.3 Replacement Site

A replacement site is defined as one which is considered capable of providing sufficient areas to accommodate a replacement facility and offers amenities appropriate for a site devoted to the proposed use. The proposed use must conform to zoning codes. The replacement site is appraised on the basis of its highest and best use. When replacement property is acquired by the department, 605 ILCS 5/4-511 requires the property to be within a one-mile radius of the property being acquired for highway purposes.

If a replacement building is erected on land owned by the agency, the agency is compensated for the market value of land taken for highway purposes.

4.9.4 Alternatives in Functional Replacement

When there is a partial taking, the facility may be remodeled and/or added as required to make it function as before the taking. The total cost cannot exceed the cost of new construction.

The facility being acquired for highway purposes may be functionally replaced by remodeling other facilities owned by the agency. The cost may not exceed the cost of new functional replacement construction.

Existing facilities that offer equivalent utility may be acquired to replace the facility being acquired for highway purposes. When necessary, the replacement facility may be remodeled to fit the functional replacement needs of the agency, but the total cost cannot exceed the cost of new construction.

New facilities may be constructed to functionally replace the facility being acquired for highway purposes.

Land taken for highway purposes may be functionally replaced by substitute land, or if the agency chooses, receive market value for the land taken. Do not pay market value for the land and special land improvements and then replace them.

4.9.5 Partial Takings

In the case of a partial taking when a replacement site is acquired by the department and conveyed to the agency along with replacement facilities, the property occupied by the facility being replaced, including improvements, is conveyed to the department.

When the agency retains the remainder, the department is given a credit for the appraised value of the remainder based on its highest and best use, considering the cost of alterations required to make the remainder usable when applicable and all other features which affect the market value of the remainder. The department is given a credit for the value of improvements when improvements, considered a part of the real estate, are retained and removed from the site by the owner, unless it is a part of functional replacement.

When a portion of the site is occupied by other facilities of the agency which are not affected by the taking and are not a part of functional replacement, that portion of the site is conveyed to the department, or included in the valuation of the remainder when the agency chooses to retain the remainder.

4.9.6 Approval of the Concept

The district decides during development of the environmental assessment if functional replacement is warranted.

- Obtain approval for use of the concept from CBLA and FHWA before informing the governmental agency of the possibility of functional replacement. Submit the following with the request for approval of the concept: Cost Estimate for Functional Replacement (LA 40906 Template).
- Explanation of why functional replacement is in the public interest,
- Estimate of how replacement will be made,
- Statement that any property to be acquired is in accordance with Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and the Office of Highways Project Implementation's procedures,

4.9.7 Detailed Justification

Obtain detailed justification for use of functional replacement after approval of the concept. Submit to CBLA, any information from the meeting with the agency in which a preference is expressed for functional replacement or payment based on market value. Include the results of the meeting and any agreements in the environmental assessment. When the agency chooses functional replacement, a formal request is submitted by the agency to the district. The request includes the following:

- Why functional replacement is in the public interest
- A waiver of its right to receive an offer based on the appraised value of the property
- If applicable, a request to construct minor structures without Preliminary Specifications and Estimates approval may be made at this time.

On federal participating projects, CBLA submits the detailed justification to FHWA and requests authorization to proceed with the acquisition of a substitute site and with physical construction of minor structures, or in the case of major improvements, to proceed with the development of detailed plans, specifications and estimates.

4.9.8 Agreement Between the Department and Governmental Agency

After approval of the detailed justification, the department prepares an agreement with the agency for the functional replacement of land and/or facilities being acquired. CBLA, once notified by the district, coordinates the preparation of this agreement with the appropriate bureaus within the department. The type of agreement used depends partially on whether the department or the agency retains the architect.

4.9.9 Architect’s Agreement Contracted by the Governmental Agency

The governmental agency may follow their procedures for selection of an architect and award of contract. However, the district and CBLA approve the architect selected before the governmental agency enters into an agreement with the architect. (Illinois Statutes and Municipal Code for Cities and Villages may determine the governmental agency's procedures.)

CBLA and the district prepare the Architect Agreement used by the governmental agency. If the agency intends to replace more than functional utility, additional architect fees are the responsibilities of the agency.

The design phase is usually a lump sum amount, but the construction phase must be cost plus. Cost plus may also be used in the design phase, when appropriate.

Department auditors audit the architect’s records to verify overhead and fringe benefit factors prior to executing the agreement.

The Architectural/Engineering Professional Services Handbook by the Capital Development Board and Consultant Services Unit of the Bureau of Design and Environment are consulted when reviewing the “Net Fee” and other charges detailed in the proposed architect’s agreement.

To determine final overhead and fringe benefit factors applicable to cost plus portions of the architect’s agreement, the architect’s records are audited by IDOT auditors.

4.9.10 Architect’s Agreement Contracted by the District

Departmental Order 6-2 sets forth requirements for selection and control of architect-engineer consultant firms when retained by the department.

4.9.11 Site Selection

When a replacement site is acquired, the architect and the agency select a proposed site. If a site selection study (requiring a separate fee) is desired, prior approval is obtained from the district and CBLA.

The district and CBLA approve the proposed site. Support for the site selection shall include the following:

- Alternate sites considered
- Physical description (size, shape, utilities, topography, access, location and other significant features) and photographs of sites considered
- Attractive and detractive features of each site, including environmental impact caused by the proposed use
- Estimate of cost of each site and relocation of existing occupants
- Summary of reasons for selecting the specific site
- Section 605 ILCS 5/4-511 requires the replacement site to be within a one-mile radius of the property being acquired for highway purposes.

In most cases the district acquires the replacement site. When the agency chooses a site larger than is necessary to accommodate a functional replacement facility, the additional cost of the larger site is the responsibility of the agency.

When only replacement land is required, such as a park or forest preserve and facilities are not involved, an architect is not required. No other approvals are required if the department is authorized to acquire the right of way on the project.

4.9.12 Development of Plans, Specifications and Estimates

The architect proceeds with development of the PS&E after the architect's agreement is approved. Review and approval is requested at various stages in the development of the design and specifications, but the district and CBLA approves the final Plans, Specifications and Estimates before advertising for bids.

When the agency chooses to build more than a functional replacement facility, the Plans Specifications and Estimates show both what the functional replacement and what the upgrades or betterments are. The agency is responsible for the cost of betterments and enlargements.

The contractor for the proposed facility complies with all contracting requirements on federal-participating projects. On straight-state jobs, the requirements are reviewed to determine if the provisions of the Illinois Procurement Code apply.

4.9.13 Advertising for Bids and Award of Contract

The agency follows its procedures in advertising for bids and awarding contracts; however, their procedures are approved by the department before advertising. (Illinois Statutes and Municipal Code for Cities and Villages may determine the local agency's procedures.)

The agency receives bids and recommends acceptance of a particular bid. Bids that do not meet the requirements under Section 4.9.13 are rejected.

The district and CBLA approve the recommended bid prior to award of the construction contract.

4.9.14 Review of Construction Progress and Payment

Construction administration, coordination and inspection are provided for in the architect agreement.

The district reviews the progress of construction and approves requests for payment recommended by the architect. Usually, a resident engineer performs this function for the department.

The district reviews and recommends all requests for justified change orders recommended by the architect. Obtain approval from CBLA before approving change orders.

A district provides representation at meetings with the contractor and architect when considering items such as pay requests, work progress, and change orders. The land acquisition coordinator and the resident engineer usually attend these meetings.

4.9.15 Exchange of Deeds

Upon completion or substantial completion of the replacement facility, the department and governmental agency exchange deeds. Title approval is obtained for the property being acquired for highway purposes prior to execution of our deed for the replacement site.

The department executes a "Quitclaim Deed" for the replacement land and/or facility. The district attempts to obtain a "Warranty Deed" from the governmental agency for the property being acquired for highway purposes. The deeds are prepared by CBLA.

4.9.16 Joint Statement

After completion of the replacement facility and payment of all costs, the state and governmental agency execute a Joint Statement (LA 40916 Template). The statement certifies the cost of the replacement facility has actually been incurred in accordance with the agreement between the state and the governmental agency. Also certified that a final inspection of the facility was made by the state and the governmental agency and the state are released from any further responsibility.

4.9.17 Close-Out Report

After completion of the functional replacement, prepare a final report. Suggested contents are:

- Photographs
  - Facility being acquired
  - Replacement site at time of acquisition
  - Functional replacement facility after completion
- Significant Dates
  - Approval of concept
  - Agreement with the local agency
  - Architect agreement

  - Site selection
  - Approval of PS&E
  - Award of construction contract
  - Joint statement

- Summary of Contracts and Costs
  - Architect’s contract, name of firms and costs
  - Construction of the facility
    - Contractor, name of firm and amount of contract
    - Subcontractors and Disadvantaged Business Enterprise’s name of subcontractors and amounts
    - Change orders, names of contractors and amounts
    - Total construction cost
    - Total Costs

- Size/Area
  - Site being acquired
  - Replacement site
  - Facility being acquired
  - Replacement facility

4.9.18 Approvals Required from FHWA on Federal Participating Projects (FHWA Participation in any Phase)

Approvals are obtained from the FHWA on the following items.

- Use of the concept (Section 4.9.18)
- Detailed justification and request for authorization to proceed (Section 4.9.7)
- Site selection (Section 4.9.11)
- Site study, if a separate fee is required (Section 4.9.11)
- Plans, specifications and estimates (Section 4.9.12)
- Review of bids and award recommendation (Section 4.9.13)
- Change orders (Section 4.9.14)

Submit copies of the joint statement (Section 4.9.16) and closeout report (Section 4.9.17) to the FHWA.

Table of Contents

Section **Page**

5 CONDEMNATION

5.1 *GENERAL*

If the negotiator is unable to achieve a negotiated settlement and execution of necessary conveyance documents, the matter will be referred for condemnation. Eminent domain is the right of the State to acquire private property for public use. It is subject to the protections provided by the Fifth Amendment to the United States Constitution and the Illinois State Constitution, which provide that an individual citizen's private property cannot be taken or damaged for public use without just compensation. The department is granted specific authority under State law to acquire property for highway purposes under the Highway Code, 605 ILCS 5/4-501; 735 ILCS 30/15-5-35. Authority for other specific purposes, including ditches and drains, replacement property, etc. are also set forth in the Highway Code and noted in the Eminent Domain Act, (see 735 ILCS 30/15-5-5, 15-5-25, 15-5-35).

The Illinois Eminent Domain Act (735 ILCS 30) provides the department with the authority to acquire private property for public use and sets forth the requirements that must be followed in order to exercise that right. Additionally, because most state projects received some federal funding, the department is required to comply with federal regulations relating to the Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs (49 CFR Part 24).

The state is only authorized to condemn private property when the property cannot be acquired through good faith negotiations. The Eminent Domain Act specifically provides the state with authority to take private property for public use when a) the compensation to be paid for the taking cannot be agreed upon; b) the property owner is incapable of consenting (as in the case of a minor or disabled owner without an established agent or guardian); c) the property owner's name or residence is unknown; d) the property owner is a nonresident of the state; or e) liens or similar encumbrances cannot be released and also where the needed authority documents, disclosures or other paperwork needed to pay the property owner cannot be obtained regardless of whether the parties agree on the amount of compensation (see 735 ILCS 30/10-5-10(a)).

Before the department can proceed with condemnation, the Eminent Domain Act (735 ILCS 30/10-5-15) requires certain steps be followed:

- At the first meeting, the department's negotiator shall provide the property owner in writing:
    - A description of the property to be acquired.
    - The name, address, and telephone number of the person designated to answer the property owner's questions.
    - The identity of the State agency attempting to acquire the property.
    - The general purpose of the proposed acquisition.
    - The type of facility to be constructed on the property, if any.

- At least 60 days before filing a petition to initiate condemnation, the department shall send a notice to the property owner by certified mail, return receipt requested; by a private delivery service providing the same function as certified mail with return receipt requested; or by personal service (i.e., hand delivery). At the district's discretion, this 60-day notice may be included as part of the Acquisition Notice (see Section 4.4.5) or may be sent separately using LA 40410B Template (60-Day Notice - Owner) or LA 40410C Template (60-Day Notice - Tenant Owner). In either case, the 60-day notice must be sent to each owner on title at their last known address and their designated representative if applicable. In the case of a corporation or other business organization, a copy of the 60-day notice must be sent to the registered agent of the owner. The notice must include the following information:

- The amount of compensation for the proposed acquisition and the basis for computing it.
- A statement that the department continues to seek a negotiated agreement with the property owner.
- A statement that, in the absence of a negotiated agreement, it is the intention of the department to initiate condemnation proceedings. 735 ILCS 30/10-5-10(d).

Additionally, the department must designate an employee to respond to requests arising from the notifications required under Section 10-5-15(b) of the Act. This person shall respond to the property owners' questions about the authority and procedures of the department in acquiring property by condemnation and about the property owner's general rights under these procedures. However, the designated person shall not provide property owners with specific legal advice or legal referrals. 735 ILCS 30/10-5-15(b).

All correspondence with the property owner in anticipation of condemnation, including the required notices, must be included in the negotiator's report (see Section 5.2.3).

Condemnation of property owned by a railroad or other public utility is subject to the jurisdiction of the Illinois Commerce Commission (ICC); and per Section 10-5-10(g) of the Act, the department must obtain approval from the ICC before the filing of a condemnation complaint in circuit court. The ICC must issue its final decision on such cases within six months of the date of the petition, with the option for the ICC to extend an additional three months for good cause. The department may also petition for the ICC to set an expedited schedule to hear and render its decision on an acquisition.

5.2 *REFERRAL FOR CONDEMNATION*

Each district has a staff person assigned to coordinate parcels to be acquired by condemnation. In most instances, this is the district Condemnation Engineer. However, the determination to refer a parcel for condemnation is generally handled by the district Acquisition Manager, or other District Land Acquisition (DLA) personnel.

Once condemnation is deemed necessary, the fee negotiator for the parcel, or district staff, compiles the "condemnation referral packet". The referral packet is reviewed within the district to ensure the information is accurate and complete before being submitted to CBLA.

As part of the file for each condemned parcel, DLA also completes an Eminent Domain Checklist (form LA 50200) to help ensure all required information and documentation for the parcel is properly contained in the acquisition file.

5.2.1 Condemnation Referral Packet

The “condemnation referral packet” is comprised of the Cover Pages and Parcel Data Summary information contained in the Referral for Condemnation form (LA 50201), and the other required referral documentation listed in the subsections below.

5.2.1.1 *Cover Pages*

The cover pages of the referral for condemnation form (Pages 1 and 2) provide basic information about the project and parcel(s) to be acquired, a listing of the other specific documents included for each parcel being referred, and the project acquisition status which explains how many parcels remain to be acquired for the project and how many are likely to require condemnation.

Separate cover pages may be submitted for each parcel, or multiple parcels may be submitted together for the same project under one set of cover pages. If multiple parcels are submitted together, separate parcel data summaries (pages 3 and 4 of the form) and other required referral documentation must be included for each parcel.

When necessary, the cover pages are also used to request authorization of quick-take proceedings and/or representation by a specific Special Assistant Attorney General (SPAAG), due to the SPAAG’s familiarity with the project or the location of the project. See Section 5.4 for more information on SPAAG assignments and Section 5.6 for more information about quick-take proceedings.

The district Condemnation Engineer reviews the referral package and signs the cover page indicating the information is complete, accurate and the parcel(s) is appropriate for referral.

5.2.1.2 *Parcel Data Summary*

The parcel data summary portion of the referral for condemnation form (Page 3) provides the relevant details about the parcel (parcel number, acquisition type and appraised value) and specific information about the status of the condemnation requirements (project status and purpose, amount of purchase price, any counteroffer(s) and response(s) to counteroffer(s), date notice was sent and date complaint may be filed). The data also includes specific details to assist in assessment of the need for condemnation.

- Ownership and Contact Information. The names and addresses of all owners of the property must be listed. This information should match the vested owner(s) indicated on the title commitment. If the property owner is represented by legal counsel, the attorney’s name and contact information should also be listed.

- Reason for Condemnation. Particular attention must be paid to the information provided regarding the reason for condemnation. As stated above, the Eminent Domain Act lists various reasons condemnation can be pursued, and the appropriate reason must be indicated.

  - Unable to Agree on Compensation. In many cases, the property owner may disagree with the department’s valuation of the taking. While the department will consider counteroffers and engage in reasonable negotiations with the landowner, it is not unusual to find that an agreement on compensation cannot be reached. Additionally, some property owners simply do not wish to convey the interest needed by the department, either because they do not agree with the project, or simply do not want to sell their property and may refuse to agree on compensation. All interactions with the property owner, including any counteroffers submitted and the department's response(s), must be documented in the negotiator's report and submitted with the referral for condemnation.

- Unable to Clear Title. A negotiator may encounter problems obtaining clear title to the property, even if the landowner agrees to the compensation amount. Thus, if a property owner indicates agreement but does not provide the executed conveyance documents in a timely manner, does not or cannot disclose beneficial interests in the property (see Section 5.10), or ceases responding to correspondence from the negotiator, condemnation may be pursued.

  Similarly, finalizing the agreement requires conveyance of clear title, free from problematic encumbrances (i.e., title exceptions). Therefore, if the fee landowner agrees to compensation but the holder of another interest in the property refuses to execute the necessary documents to clear title; if the landowner cannot pay to clear liens from title; or if the landowner is otherwise not able to convey clear title, the agreement of the parties is not final and condemnation may be pursued.

  It is important the negotiator make clear to the property owner that, until the documents are signed, approved and the title is cleared, the agreement of the parties as to compensation is not complete. These situations must be documented in the negotiator's report.

- Unable to Locate or Contact All Property Owners. If the owner(s) of the property are unable to be identified, as in the case of a deceased property owner whose heirs are unknown, condemnation is appropriate. It may also be that a property owner is identified but cannot be located. If reasonable attempts have been made to obtain contact information for the property owner, and all attempts at contact have failed (i.e., phone messages unreturned, mailed correspondence returned undeliverable, attempt made to visit the property), then the parcel can proceed to condemnation. These attempts must be documented in the negotiator's report.

- Property Owner Unable to Consent. Though less common, it is also appropriate to acquire property through condemnation where the owner is unable to consent to the conveyance and compensation. For example, the owner of the property might be a minor child or an adult with a disability, and no guardian or agent under a power of attorney is available to convey the property on their behalf. These situations must be documented in the negotiator's report.

• Potential Interested Parties. To ensure the department obtains clear title to the property through condemnation, all "potential interested parties" must be identified. A potential interested party is any person or entity holding an interest in the property (e.g., easement, lien, mortgage, land right, etc.) that potentially affects, or is affected by, the department's acquisition and eventual use of the property. For this reason, it is necessary to have a recent title commitment (i.e., effective date no more than 120 days old), and to review all encumbrances on title listed therein (i.e., title exceptions).

List all title exceptions with notations to indicate the title exception number, whether or not the acquisition is affected by the exception, and the name(s) and address(es), if available, of the relevant parties. Interested parties and title exceptions not included in the title commitment, such as a tenant under an unrecorded lease, must also be identified. It should also be noted when a title exception can be addressed by other means and does not need to be included in the condemnation (e.g., a tenant's release has already been obtained).

The district may refer to the Title Analysis Report prepared by the negotiator (see Section 4.2.5) to indicate how title encumbrances are to be addressed; but must list in the condemnation referral packet the names and addresses of interested parties to be named in the condemnation complaint, including those not listed in the title exceptions.

5.2.1.3 *Negotiator's Report*

A complete copy of the negotiator's report for the parcel must be included with the referral package. The report memorializes, in writing, all attempts at contact and all actual contact/correspondence with the property owner. The report must also indicate when and by what means the 60-day condemnation notice was sent. If sent via both certified and regular first-class mail, that should be indicated in the report. If attempts to contact the property owner are unsuccessful, it is important to include what exact efforts were made to try to reach them. Where a property owner has made a counteroffer and the department has declined to accept, the counteroffer must be declined in writing and this must be reflected in the negotiator's report. Prior to submission of the referral packet, it is important to ensure the negotiator's report is up to date. If there is a significant gap in time between the latest entry in the report and the submission of the condemnation referral, CBLA or OCC may request an updated report, delaying the referral process.

In general, the negotiator's report should reflect additional attempts to correspond with the property owner, and referral should be deferred for at least 30 days after the delivery of the 60-day notice, unless:

- the property owner could not be located or contacted,
- the property owner is unable to consent,
- the property owner has refused to negotiate, or
- the property owner has indicated an inability or unwillingness to clear title encumbrances.

If other circumstances warrant a more expedited submission and approval of a referral, the district need not wait until 30 days have elapsed after the sending of the 60-day notice to submit the referral, but the report must clearly demonstrate those circumstances. Whether to hold or approve the referral and request immediate appointment of a SPAAG in such cases will be a matter of OCC discretion; however, the ultimate decision to appoint a SPAAG is left to the Office of the Attorney General (OAG). The district will be advised if an updated report, indicating additional attempts at negotiated settlement, must be provided to obtain OCC or OAG approval of the referral.

5.2.1.4 *Copy of 60-Day Notice and Proof of Delivery*

A copy of the 60-day notice must be included with the condemnation referral, to verify the notice was properly sent to the necessary parties and contained the information required by the Act. The district Condemnation Engineer should review the notice to ensure the identity of the owner(s) is correctly stated, the notice was sent to the correct address(es), and it contained accurate project, parcel, and valuation information. If documentation of delivery has been received, it should also be included. If online tracking information for the notice is available, it may be included in lieu of the receipt. If neither is available, the referral may still be approved if the negotiator has also sent the notice via first class mail, and such has not been returned to the department as undeliverable. This should be noted in the negotiator's report.

5.2.1.5 *Legal Description*

The legal description for each parcel must be included in the referral package for insertion in the condemnation complaint. If the project involves establishment of a freeway along an existing highway location, describe the access rights to be acquired including any exceptions. If a modified freeway is involved, include the appropriate provision for limited access as set forth in Section 4.3.4.2.

5.2.1.6 *Plat*

Include right of way plats or right of way plans of sufficient detail to identify the property. These are included for the benefit of the SPAAG's review and, if requested, furnished to the opposing counsel.

5.2.1.7 *Title Commitment*

Include the most recent, later date title commitment in the referral packet. The title commitment cannot have an effective date that is more than 120 days prior to submission of the referral packet. When older than120 days, DLA is responsible for obtaining a later date title commitment prior to submitting the referral. All title encumbrances giving rise to potential interested parties must be identified in the data for condemnation (see Section 5.2.2.3).

5.3 *REFERRAL REVIEW*

After reviewing the complete referral package, DLA submits it electronically to CBLA staff for review. CBLA staff then reviews the referral package for basic compliance with the requirements set forth herein and inclusion of all necessary documentation. If issues or omissions are identified, CBLA staff will correspond with DLA to obtain a corrected referral package.

Once CBLA staff has completed its review, and received any necessary corrections, the referral package is forwarded electronically to OCC for review and approval. An OCC staff attorney is assigned to complete the referral review. In addition to verifying that all parcel information in the referral package is accurate and consistent, the OCC reviewing attorney examines the negotiator's report to ensure the negotiator's notes reflect good faith negotiations and support the reason for condemnation stated in the parcel data summary. The reviewing attorney verifies the property owner has been provided proper notice under the Eminent Domain Act and compares the provided legal description and plat with the title commitment, to ensure the title commitment fully encompasses the area of the taking. The reviewing attorney also examines the title commitment and potential interested parties identified in the data for condemnation to ensure all potential interested parties are listed and it is clear whether or not each will need to be included in the condemnation action (i.e., whether the encumbrance affects the taking area, whether releases have already been obtained, etc.) or if unable to make a determination, such parties are identified for further investigation and determination by the assigned SPAAG.

If any additional information or corrections are required, OCC communicates that need to either CBLA or the district; and additional correspondence may occur until all OCC concerns have been addressed. When the referral is approved by OCC, the staff attorney completes the approval section, including any notes regarding specific issues to be raised with the SPAAG. For downstate parcels, CBLA is notified electronically of the approval and compiles the final referral package to be forwarded to the OAG for acceptance and assignment of a SPAAG. For District 1 parcels, the approval is returned to the appropriate district personnel for finalization and forwarding to the OAG.

5.4 *SPAAG ASSIGNMENT AND OPENING THE CASE*

5.4.1 Coordination with the Attorney General's Office

An eminent domain case for the department is initiated and prosecuted by the Office of the Illinois Attorney General (OAG) who may assign the case to an appointed special assistant attorney general (SPAAG) to act as a trial attorney in the county where the condemnation must be undertaken. SPAAGs are private attorneys who practice in the local community and who, upon appointment, are deputized to represent the state on the OAG's behalf. SPAAGs are compensated on an hourly basis by the department for services performed. The OAG has prepared and distributed a Condemnation Policies and Procedures Manual to the SPAAGs.

All SPAAGs for department condemnation cases are appointed by the OAG's Land Acquisition Bureau, which is based in the OAG's Chicago Office. The OAG's Land Acquisition Bureau Chief assigns staff attorneys from that bureau to review every referral and determine if the parcel is ripe for condemnation, if the basic requirements for condemnation have been met, and which SPAAG should be assigned the case.

Once the OAG has made its determination, it informs the SPAAG, CBLA, OCC, and the applicable district, indicating the appointment of a specific SPAAG to the case. The OAG will forward a copy of the complete referral package to the assigned SPAAG and request the SPAAG initiate condemnation.

When the district office receives notification of the SPAAG assignment, the district Condemnation Engineer contacts the SPAAG to initiate coordination of the condemnation action. The district Condemnation Engineer should provide the SPAAG with any necessary technical assistance in the preparation of the complaint for condemnation. The district also advises the SPAAG of the status of construction deadlines and potential timing issues, to assist in establishing the case strategy.

5.4.2 Complaint Preparation and Review

The SPAAG is responsible for preparing the complaint for condemnation based on the information provided in the referral package and any subsequent communications with the district. The district will provide the SPAAG with an updated title commitment for review prior to the drafting of the complaint, to ensure no change in the ownership of the property has occurred and all potential interested parties are included. The complaint for condemnation should follow the format recommended by the OAG.

The original complaint for condemnation is prepared by the SPAAG and electronically forwarded by the SPAAG to the district Condemnation Engineer (or their designee) for review. The district Condemnation Engineer then submits the complaint, along with the latest dated title commitment, via email to OCC for review with a cover memo requesting approval. The assigned OCC reviewing attorney examines the complaint to ensure: a) all parcel information, including the legal description, is correct; b) all necessary interested parties identified in the referral package and the most recent title commitment (with a later date no more than 90 days prior to the date of submission of the complaint) have been included; c) the reason for condemnation stated in the complaint is consistent with that set forth in the referral package; and d) the complaint is consistent with the approved template provided by the OAG.

If a timely title commitment has not been provided, the reviewing attorney will instruct the district, or contact the appropriate title company directly, to obtain a later dated commitment prior to completing review. If the reviewing OCC attorney has any questions or corrections, the attorney will contact the SPAAG directly to resolve those issues and obtain an updated complaint, where needed. Upon completion of review, the OCC reviewing attorney completes the approval portion of the complaint cover memo and notifies CBLA and the district of approval via email. The complaint is then forwarded to CBLA staff to circulate and obtain the necessary signatures of the Governor and the Secretary of Transportation.

Having obtained the signatures of the Governor and Secretary, CBLA forwards the original complaint to the OAG for final review and approval. The OAG forwards the fully executed original complaint to the SPAAG with a copy of the letter of transmittal to the Regional Engineer and Bureau Chief of CBLA.

5.4.3 Negotiation Review and Settlement Prior to Filing

Even though a parcel has been referred for condemnation, it is department policy to continue to attempt to reach a negotiated settlement up to the point of filing the complaint for condemnation. This approach is conveyed clearly to the property owner in the 60-day notice and other correspondence. In many cases, continued communication with the property owner or other interested parties can achieve this result and the condemnation process can be avoided.

However, communication is vital to any parcel that is being negotiated while a complaint is imminent. If a negotiated settlement is reached at any time after referral, the district must immediately inform CBLA of the change in status and withdraw or suspend the referral for condemnation. If settlement is reached after a SPAAG has been appointed to initiate the condemnation action, but before a complaint has been filed, the district must immediately alert the SPAAG and the OAG, as well as CBLA. It is important to avoid filing a condemnation complaint for a parcel in which a settlement has been negotiated.

Once the district Condemnation Engineer receives notice of the complaint approval, it is their responsibility to review the parcel file and check the status of negotiations. The district Condemnation Engineer must confer with the Acquisition Manager and SPAAG regarding the status of negotiations prior to the filing of the complaint.

5.5 *FILING OF THE COMPLAINT*

Once a complaint for condemnation has been filed, the negotiator must stop actively pursuing negotiations and all negotiations with the property owner must go exclusively through the SPAAG, as settlement of the case must be effected by stipulation and final judgement order, which falls within the authority of the OAG. If a property owner provides signed conveyance documents or approaches the district regarding settlement outside of the court proceeding, immediately notify the SPAAG and CBLA. Any calls from the property owner should be referred to the SPAAG. Any exceptions must be coordinated with CBLA and OCC; and approved by the OAG.

After filing the complaint for condemnation, DLA must request an updated title commitment covering the date of filing of the complaint, showing the Lis Pendens. When received from the title company, deliver the report to the SPAAG for use in determining if all necessary interested parties have been included in the complaint for condemnation.

5.6 *QUICK-TAKE PROCEEDINGS*

The Eminent Domain Act provides the department with authority to use an expedited procedure referred to as quick-take (735 ILCS 30/20-5-5, et seq. and 735 ILCS 30/25-7-103.1). Quick-take proceedings allow the department to acquire title and take immediate possession of needed property before the court or jury makes a final determination as to the just compensation owed to the property owner.

Use of quick-take, which must be approved by the OAG, can help keep a project on schedule; however, the length of time between the referral for condemnation and the actual vesting of title can still be significant, in many cases taking six months or more. Therefore, if the letting date of the project is less than one year away, the district should request authorization to use quick-take when submitting the referral for condemnation form (see Section 5.2).

At any time after filing the condemnation complaint, the department may file a quick-take motion for immediate vesting of title or immediate use and possession. Then a hearing is held to determine whether quick-take is reasonably necessary and whether the department has authority to exercise its right of eminent domain to acquire the property.

The Court’s quick-take order is a final order that may be appealed by opposing counsel within 30 days of entry. If appealed, either the trial or reviewing court may stay further proceedings pending the outcome of such appeal. A stay may well prevent the department from obtaining title or possession in less than six months. In most cases, where either no appeal is taken or no stay ordered, the court hears such evidence as it deems necessary for a preliminary finding of just compensation. If it sees fit, the court may appoint three appraisers to aid in its decision.

Following a preliminary determination of just compensation, the department deposits the amount of preliminary just compensation with the county treasurer. The procedure for processing that payment is similar to that for warrant requests in negotiated settlements, as set forth in Chapter 4. The district must complete the necessary information in the Land Acquisition Management System (LAMS) and submit a warrant request to CBLA for processing.

Once the preliminary just compensation has been deposited, the court enters an order vesting title to the property in the name of the department and fixing a date for possession.

5.7 *TRIAL*

The SPAAG serves as the department's attorney at trial. The DLA engineer/manager and their representatives should fully cooperate with the SPAAG in preparation for the trial. The SPAAG should have the opportunity to meet with and interview all of the appraisers expected to testify sufficiently in advance of the trial, so they may be advised on the legal aspects of their appraisal, such as compensable or non-compensable items and the proper method of valuation. The SPAAG is most qualified to know when additional appraisers or other witnesses are needed to assure success at the trial and the district should rely on the attorney's advice in these matters. DLA must also fully cooperate in the preparation of exhibits recommended by the SPAAG.

The district must furnish any personnel requested by the SPAAG for testimony during trial. This may include personnel from any district bureau when needed for the proper presentation of the department's case.

5.8 *COURT ORDERS*

Upon completion of the trial, the judge or jury will make a final determination of the amount of just compensation to be paid to the property owner for the acquisition and the court will issue a Final Judgment Order, stating the amount of compensation to be paid. If the case did not involve a Quick Take, then the Department must deposit the just compensation amount before a final Order Vesting Title will be issued to grant the Department the needed property rights. The district must obtain copies of the necessary court orders from the SPAAG, give prompt attention to requesting warrants, and deposit the funds to obtain an order vesting title or to satisfy a final judgment. If multiple parcels are combined in one condemnation, one certified copy of the court order is sufficient for requesting the warrants. One copy of the court order is also sent to the OAG.

5.9 *DISCLOSURE OF BENEFICIAL INTERESTS*

If a corporation, partnership, limited liability company, or trust is a party to the condemnation suit as an owner, a disclosure of the beneficial owners under oath is required by the Public Officers Prohibited Activities Act (50 ILCS 105/3.1). See Section 4.5.4.3 of Chapter 4 for more information on disclosure requirements.

It is not uncommon for a property to be referred for condemnation because the property owners refuse to comply with the disclosure requirements of the Act. The SPAAG may use discovery proceedings under the Code of Civil Procedure, if necessary, to obtain this information. The disclosure is obtained by the SPAAG, and it may be desirable for the SPAAG to seek and if possible, obtain such a disclosure prior to an order vesting title. If the case is settled, the district must submit this disclosure to CBLA not later than the submittal of the settlement report. When the case goes to trial, the disclosure is submitted to CBLA before the trial starts.

Since parcels acquired via quick-take are settled by stipulation or proceed to trial well after the vesting of title, a second disclosure should be obtained and submitted not later than the submittal of the final judgment order to cover the possibility of a later sale of the beneficial interests.

5.10 *TITLE INSURANCE POLICY*

After a warrant has been deposited and an order vesting title obtained, or a final judgment order entered in cases in which quick-take is not used, DLA must request from the title company a policy of insurance covering the title acquired by condemnation. Examine the policy to ensure the department's title against all outstanding interests that might affect the use of the property is satisfied. Should any new discrepancies in title be shown, the SPAAG must take immediate action to clear these discrepancies, either by negotiation with the interested party or through additional condemnation proceedings.

5.11 *DOCUMENTATION OF CONDEMNATION AWARDS AFTER SETTLEMENT*

The Director of Highways Project Implementation designates the Regional Engineer to have final authority over right of way matters at the district level, including the approval of settlements. The recommendation to settle a condemnation case, and avoid the time and expense of a trial, typically stems from an exchange of views between the SPAAG and the district.

The SPAAG prepares and executes a settlement report in the format found in the Attorney General's Condemnation Policies and Procedures Manual in duplicate and forwards it to the Regional Engineer for approval. Upon approval by the Regional Engineer (in duplicate), the district returns one original executed copy to the SPAAG requesting that a copy be forwarded to the OAG. The district retains the second original executed copy in its file.

No settlement reports are prepared when the final just compensation is in the same amount as the original approved appraisal amount. Refer to the department's "Accounting and Financial Services Reporting Policies" manual for recording settlements or awards greater than or less than the preliminary just compensation. These require either an adjustment to the function code or an accounts receivable invoice.

A copy of the settlement report is submitted with a copy of any court orders when a warrant requesting payment is ordered for those parcels acquired through condemnation proceedings.

In settling cases, it is generally more convenient for the department if the matter can be concluded by a single payment constituting full and final just compensation rather than by payment of the stipulated just compensation amount followed by a separate payment of interest accrued thereon. Therefore, whenever possible, claims for interest should be a consideration in the settlement amount that is negotiated and included in the court order. When negotiating a settlement, the property owner must understand that the agreed-to amount includes their right to all accrued interest.

If the SPAAG negotiates a settlement after a condemnation complaint is filed, title is obtained by means of a final judgment order because this assures clear title without requiring that releases from the holders of liens, mortgages, and other encumbrances be obtained and recorded. The department also saves the payment of escrow and recording fees.

5.12 *DOCUMENTATION OF CONDEMNATION AWARDS AFTER TRIAL*

Once the trial concludes, the SPAAG prepares a trial report in the format found in the Attorney General's Condemnation Policy and Procedures Manual. Two signed copies of the report are furnished to the Regional Engineer for concurrence and signature. The district should verify that the SPAAG included proper and sufficient information relating to the trial, including recommendations as to post-trial motions and possible appeal. Once fully executed, the district retains one signed original in its files and returns the other to the SPAAG. The district also provides a copy to CBLA and the OAG.

Refer to the department's "Accounting and Financial Services Reporting Policies" manual for recording settlements or awards greater than or less than the amount of preliminary just compensation. These require either an adjustment to the function code or an accounts receivable invoice.

5.13 *APPEALS*

When in the opinion of the Regional Engineer, based on the recommendation of the SPAAG, an appeal of the trial court judgment is in the best interest of the department as evidenced by the trial report, the district must inform CBLA. CBLA will confer with OCC regarding whether approval of the appeal will be authorized and advise the district how to proceed. If an appeal is approved, the district will direct the SPAAG to make a written request, with the trial report attached, to the OAG, with a copy to the district.

5.14 *INVERSE CONDEMNATION*

Illinois statutes provide for the payment of attorney fees and other expenses to a property owner if the state is required by a court to initiate a condemnation proceeding for the actual physical taking of real property (735 ILCS 30/10-5-65). A classic example would be constructing an improvement on land without having title thereto or having only a partial title, etc. A property owner in this case could file a Complaint for a Writ of Mandamus to the Circuit Court requesting the court to order the Secretary of Transportation to file a Complaint for Condemnation to determine the value of the taking and any damages as a result thereof. If the court orders the initiation of the proceedings and the owner is successful in obtaining a judgment, the department is required to pay the property owner's attorney fees and other expenses.

Fees and other expenses are payable only if the department is required by a court to initiate condemnation proceedings.

The Federal government may participate in such condemnation costs on federal-aid projects; however, FHWA normally requests advance notice and information concerning the action as may be possible.

The possibility of inverse condemnation is an additional reason for land acquisition personnel to assure that procedures are properly followed and all outstanding interests are acquired or released.

5.15 *UNECONOMIC REMNANTS / REMAINDERS*

When parcels are obtained by condemnation, it is the district Condemnation Engineer's responsibility to notify the district Property Manager of the acquisition of any uneconomic remnants/remainders so this information can be incorporated into the department's inventory of non-operating right of way (NORWAY) in the Land Acquisition Management System (LAMS).

Table of Contents

Section **Page**

6 RELOCATION ASSISTANCE AND PAYMENTS PROGRAM

6.1 *GENERAL*

The purpose of the relocation assistance and payments program is to provide for the relocation and reestablishment of persons, businesses, farm operations and non-profit organizations displaced as a result of the acquisition of right of way for state highway construction projects. It establishes a means of providing relocation assistance and moving cost payments, replacement housing assistance payments, and other related expense payments in order that such displaced persons or businesses are treated fairly, consistently, and equitably and do not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole. It is also designed to promote public confidence in the department's land acquisition program, as well as to assure compliance with federal requirements in order to assure federal participation on federally-assisted projects.

The provisions of the relocation assistance and payments program and these policies and procedures apply to the relocation of any displaced person for all state highway construction projects and federally-assisted local public agency highway projects. Any person who qualifies as a displaced person must be fully informed of their rights and entitlements to relocation assistance and payments provided by the Uniform Act and these provisions.

6.1.1 Compliance with State and Federal Fair Housing Laws (Civil Rights)

In order to affirmatively implement established state and federal laws regulating the sale or rental of housing, the department will:

- Assist displaced persons as required, and to the extent possible, in ensuring against discriminatory practices in the sale or rental of housing;

- Fully inform displaced persons of their fair housing rights and options in selecting replacement housing in areas of their choice, and the assistance available from the state in ensuring displaced persons that their rights will be protected in accordance with Title VIII of the Civil Rights Act of 1968 (i.e., the Fair Housing Act), as amended (42 U.S.C. 3601 et seq), and the Illinois Human Rights Act (775 ILCS 5);

- Provide copies of state and federal publications dealing with fair housing;

- Advise displaced persons of the name and address of the state agency responsible for receiving and processing housing discrimination complaints; and

- Develop housing resources for displaced persons without discrimination on the basis of race, color, religion, sex, sexual orientation, gender identity, familial status, marital status, national origin, ancestry, age, order of protection status, physical or mental disability, military status, or unfavorable discharge from military service.

6.1.2 Authority and Compliance with Other Laws and Regulations

The implementation of these regulations must be in compliance with applicable state and federal laws and implementing regulations, including, but not necessarily limited to, the following:

20 ILCS 5/5-675, 605 ILCS 5/3-107.1 through 5/3-107.1f; 605 ILCS 5/4-511; 310 ILCS 40/2 through 40/5; 735 ILCS 30/10-5-62; and 775 ILCS 5/1 and 5/3

92 Ill. Admin. Code 518, Relocation Assistance Services and Payments Program for State Highway Projects

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended

49 CFR Part 24, Uniform Relocation Assistance and Real Property Acquisition Regulations for Federal and Federally-Assisted Programs

Section I of the Civil Rights Act of 1866 (42 U.S.C. 1982 et seq.)

Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.)

Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), as amended

The National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.)

Section 504 (49 CFR 27) of the Rehabilitation Act of 1973 (29 U.S.C. 794 et seq.)

The Flood Disaster Protection Act of 1973 (P.L. 93-234)

The Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.)

Executive Order 11063 - Equal Opportunity in Housing, as amended by Executive Order 12892

Executive Order 11246 - Equal Employment Opportunity, as amended

Executive Order 11625 - Minority Business Enterprise

Executive Order 11988 - Floodplain Management

Executive Order 11990 - Protection of Wetlands

Executive Order 12250 - Leadership and Coordination of Non-Discrimination Laws

Executive Order 12630, Governmental Actions and Interference with Constitutionally Projected Property Rights

Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5121 et seq.)

Executive Order 12892 - Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing (January 17, 1994)

6.1.3 No Duplication of Payments

No person shall receive any payment under these provisions if that person receives a payment under federal, state, local law, or insurance proceeds which are determined to have the same purpose and effect as such payment under these provisions.

Any proceeds received by a displaced person for payment of damages to their residence due to a major disaster, from any source, such as flood insurance or cancellation of a portion of a Small Business Administration (SBA) loan, are to be deducted from the replacement housing payment for which the displaced person is eligible.

6.1.4 Aliens Not Lawfully Present in the United States

Each person seeking relocation payments or relocation advisory assistance shall, as a condition of eligibility, certify to one of the following:

- In the case of an individual, that they are a citizen or national, or an alien who is lawfully present in the United States (see form LA 60104A).
- In the case of a family, that each family member is a citizen or national, or an alien who is lawfully present in the United States. The certification may be made by the head of the household on behalf of other family members (see form LA 60104A).
- In the case of an unincorporated business, farm, or non-profit organization, that each owner is a citizen or national, or an alien who is lawfully present in the United States. The certification may be made by the principal owner, manager, or operating officer on behalf of other persons with an ownership interest (see form LA 60104B).
- In the case of an incorporated business, farm, or non-profit organization, that the corporation is authorized to conduct business within the United States (see form LA 60104C).

In computing relocation payments, if any member(s) of a household or owner(s) of an unincorporated business, farm, or non-profit organization is (are) determined to be ineligible because of a failure to be lawfully present in the United States, no relocation payments may be made to them. Any payment(s) for which such household, unincorporated business, farm, or nonprofit organization would otherwise be eligible shall be computed for the household, based on the number of eligible household members and for the unincorporated business, farm, or nonprofit organization, based on the ratio of ownership between eligible and ineligible owners.

The department will consider the required certification to be valid, unless the department determines that it is invalid based on a review of a person's documentation or other information that the department considers reliable and appropriate. Any review by the department of the certifications provided will be conducted in a non-discriminatory fashion. The department will apply the same standard of review to all such certifications it receives.

If, based on a review of a person's documentation or other credible evidence, the department has reason to believe that a person's certification is invalid (for example a document reviewed does not on its face reasonably appear to be genuine), and that, as a result, such person may be an alien not lawfully present in the United States, it will obtain the following information before making a final determination:

- For a person who has certified that they are an alien lawfully present in the United States, the department shall obtain verification of the person's status by using the Systematic Alien Verification for Entitlements (SAVE) program administered by the U.S. Citizenship and Immigration Services Office (USCIS) to verify immigration status.

- For a person who has certified that they are a citizen or national, if the department has reason to believe that the certification is invalid, the department shall request evidence of United States citizenship or nationality, and if considered necessary, verify the accuracy of such evidence with the issuer or other appropriate source.

In accordance with 49 CFR 24.208(g), no relocation payments or relocation advisory assistance will be provided to a person who has not provided the certification described in this section or who has been determined to be not lawfully present in the United States, unless the person can demonstrate to the department's satisfaction that the denial of relocation assistance will result in an exceptional and extremely unusual hardship to the person's spouse, parent, or child who is a citizen of the United States, or an alien lawfully admitted for permanent residence in the United States. For purposes of this section, exceptional and extremely unusual hardship to the spouse, parent, or child of the person not lawfully present in the United States means that the denial of relocation payments and advisory assistance to such person will directly result in:

- A significant and demonstrable adverse impact on the health or safety of the spouses, parent or child;

- A significant and demonstrable adverse impact on the continued existence of the family unit of which the spouse, parent, or child is a member; or

- Any other impact that the department determines will have a significant and demonstrable adverse impact on the spouse, parent, or child.

The meaning of the term ‘‘exceptional and extremely unusual hardship'' focuses on significant and demonstrable impacts on health, safety, or family cohesion. This phrase is intended to allow judgment on the part of the department and does not lend itself to an absolute standard applicable in all situations.

A standard of hardship involves more than the loss of relocation payments and/or assistance alone. Also, income alone (for example, measured as a percentage of income spent on housing) would not make the denial of benefits an ‘‘exceptional and extremely unusual hardship'' and qualify for a hardship exemption. DLA may need to consult with CBLA to determine the appropriate documentation necessary for the claim of hardship.

The certification form(s), or documentation of "exceptional and extremely unusual hardship due to denial of assistance", required by this section must be retained as part of the relocation file.

6.1.5 Relocation Payments Not Considered as Income

No relocation payment received by a displaced person under these regulations will be considered as income for the purpose of the Internal Revenue Code of 1954, which has been redesignated as the Internal Revenue Code of 1986 (Title 26, U.S. Code), or for the purpose of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act (42 U.S. Code 301 et seq.) or any other federal law, except for any federal law providing low income housing assistance.

6.2 *RELOCATION ASSISTANCE ADVISORY SERVICES*

The services required in these regulations are intended as minimum standards to be followed in assisting such displaced persons to relocate to decent, safe and sanitary housing that meets their needs. Information concerning the services and the service itself must be provided through personal contact if at all possible. If such personal contact cannot be made, the file must be documented to show that efforts were made to achieve the personal contact. In lieu of such personal contact, the displaced person must be notified by certified first class mail, return receipt requested, or by companies other than the United States Postal Service that provide the same function as certified mail with return receipt requested and documented in the department files.

All notices shall be written in plain understandable language. Persons who are unable to read and understand the notice must be provided with appropriate translation and counseling. Each notice shall indicate the name and telephone number of a person who may be contacted for answers to questions or other needed help.

Property owners may designate a representative to receive offers, correspondence, and information by providing a written request to the department.

6.2.1 To Whom Provided

Relocation advisory assistance must be offered to:

- Any displaced person as defined.
- Any person occupying property immediately adjacent to the real property acquired when the Regional Engineer determines that such person or persons are caused substantial economic injury because of the acquisition.
- Any person who began occupancy of the property subsequent to the acquisition of the property by the department, the occupancy is permitted by a short-term rental agreement or an agreement subject to termination when the property is needed for a project and the agreement has been approved by the Regional Engineer.
- Any person unlawfully present in the U.S. who can demonstrate, to the department's satisfaction, that denial of relocation assistance benefits will result in an exceptional and extremely unusual hardship to the person's spouse, parent, or child (if that spouse, parent, or child is a citizen of the U.S. or an alien lawfully admitted for permanent residence in the U.S).
- Persons required to move temporarily (see Section 6.2.3 below).

6.2.2 Advisory Assistance Requirements

Relocation advisory assistance shall include such measures, facilities, or services as may be necessary or appropriate to:

- Determine by personal interview, the relocation needs and preferences of each business, farm and non-profit organization to be displaced (or when determined to be necessary by the department, temporarily displaced) and explain the relocation payments and other assistance for which they may be eligible, the related eligibility requirements, and the procedures to obtain such assistance. In most instances the interviews will be conducted as part of the development of the relocation plan for a project. At a minimum, the interview should include the following:

  - The replacement site requirements, current lease terms and other contractual obligations and the financial capacity of the business, farm operation or non-profit organization to accomplish the move.

  - The need for outside specialists required to assist in planning the move, assistance in the actual move and in the reinstallation of machinery and/or other personal property.

  - Identification and resolution of personal property and/or real property issues. Every effort must be made to identify and resolve personal property and/or real property issues prior to, or at the time of, the appraisal of the property.

    It is recommended that at a minimum the appraiser and/or review appraiser, relocation representative, property owner, and/or tenant, when necessary, be involved in this determination, and that all parties are in agreement as to what is considered personal property and what is considered real property. It is also recommended that a document indicating the determination showing agreement of the parties involved should be included in the parcel/relocation file in order to minimize possible disagreement regarding the determination at a later date.

  - An estimate of the time required for the business, farm operation or non-profit organization to vacate the site.

  - An estimate of the anticipated difficulty in locating a replacement property.

  - An identification of any advance relocation payments required for the move, and the department’s legal capacity to provide them.

- Determine by personal interview, the relocation needs and preferences of each displaced resident (or when determined to be necessary by the department, temporarily displaced) and explain the relocation payments and other assistance for which the person may be eligible, the related eligibility requirements, and the procedures for obtaining such assistance. In most instances the interviews will be conducted as part of the development of the relocation plan for a project. Additional advisory services include:

  - Provide current and continuing information on the availability, purchase prices, and rental costs of comparable replacement dwellings, and explain that the displaced person cannot be required to move unless at least one comparable replacement dwelling is available to them.

- As soon as feasible, inform the displaced person in writing of the specific comparable replacement dwelling and the price or rent used to establish the upper limit of the replacement housing payment and the basis for the determination so that the person is aware of the maximum replacement housing payment they may be eligible to receive. This information is included in the informational letter.

- Where feasible, comparable replacement housing shall be inspected prior to being made available to assure that it meets decent, safe, and sanitary standards. If such an inspection is not made, the department shall notify the person to be displaced in writing of the reason that an inspection of the comparable was not made and that if the comparable is purchased or rented by the displaced person, a replacement payment may not be made unless the replacement dwelling is subsequently inspected and determined to be decent, safe and sanitary.

- Whenever possible, minority persons, including temporarily displaced, shall be given reasonable opportunities to relocate to decent, safe, and sanitary replacement dwellings, not located in areas of minority concentration, that are within their financial means. This policy does not require the department to provide a person a larger payment than is necessary to enable person to relocate to a comparable replacement dwelling.

- Offer all displaced persons transportation to inspect housing to which they are referred.

- Advise any displaced person that may be eligible for government housing assistance at the replacement dwelling of any requirements of such governmental housing assistance program that would limit the size of the replacement dwelling, as well as the long-term nature of such rent subsidy, and the limited (42 month) duration of the relocation rental assistance payment.

• Provide for non-residential moves (businesses, farms, and non-profit organizations) current and continuing information on the availability, purchase prices, and rental costs of suitable commercial and farm properties and locations; and assist them in obtaining and becoming established in a suitable replacement location.

• Provide advisory services such as counseling, advice as to other sources of assistance, other help as appropriate, to displaced persons in order to minimize hardships to such persons in adjusting to a new location.

• Supply persons to be displaced information concerning federal, state and other housing programs, disaster and other loans, programs administered by the Small Business Administration, and other Federal, State or other programs offering assistance to displaced persons and technical help to persons applying for such assistance.

6.2.3 Advisory Assistance Requirements for Persons Required to Move Temporarily

Appropriate advisory assistance for persons required to move temporarily must be provided.

- For persons occupying a dwelling at least one descent, safe and sanitary dwelling is to be made available prior to requiring a person to move, except in the case of an emergency move.
- If a person's business will be shut down due to rehabilitation of a site, it may be temporarily relocated and reimbursed for all reasonable out of pocket expenses or must be determined to be displaced at the department's option.
- Payment provided for all out-of-pocket expenses incurred in connection with the temporary relocation as determined by the department as reasonable and necessary.
- A person's temporary relocation from their dwelling or business for the project may not exceed 12 months. The department must contact any person who has been temporarily relocated for a period beyond 12 months because that person is a displaced person. All required relocation assistance benefits and services shall be offered, and the department may not deduct any temporary relocation assistance benefits previously provided from these benefits.
- A person who is not lawfully present in the United States and who has been determined to be ineligible for relocation assistance, is not eligible for temporary relocation assistance unless such denial of benefits would create an extremely unusual hardship to a designated family member.

6.2.4 Coordination of Relocation Activities

Relocation activities must be coordinated with project work and other displacement-causing activities to ensure that, to the extent feasible, persons displaced receive consistent treatment and duplication of functions is minimized.

6.2.5 Eviction for Cause

Eviction for cause must conform to applicable state and local law. Any person who occupies the real property, and is not in unlawful occupancy on the date of the initiation of negotiations, is presumed to be entitled to relocation payments and other assistance unless the department determines that:

- The person received an eviction notice prior to the initiation of negotiations and, as a result of that notice is later evicted; or
- The person is evicted after the initiation of negotiations for serious or repeated violations of material terms of the lease or occupancy agreement; or
- In either case the eviction was not undertaken for the purpose of evading the obligation to make available the payments and other assistance set forth in these provisions.

For purposes of determining eligibility for relocation payments, the date of displacement is the date the person moves, or if later, the date a comparable replacement dwelling is made available. This section applies only to persons who would otherwise have been displaced by the project.

An eviction related to non-compliance with a requirement related to carrying out a project, such as failure to move or relocate when instructed, or to cooperate in the relocation process, will not negate a person's entitlement to relocation payments and other assistance as set forth in these provisions.

6.3 *RELOCATION PLAN*

Prior to the initiation of negotiations to acquire right of way on a given project, or any action by the department that would cause displacement, a relocation plan must be developed and submitted to CBLA.

6.3.1 Objectives and Scope

The objectives of a relocation plan are to recognize the problems associated with the displacement of individuals, families, businesses, farms, and nonprofit organizations and to develop solutions to minimize the adverse impacts of displacement.

The scope of a relocation plan depends upon the complexity and nature of the anticipated displacement activity, including an evaluation of program resources available to carry out timely and orderly relocations. Uncomplicated projects may only require a one-page report in order to address all pertinent factors. Larger projects, or projects in which relocation problems are anticipated, may require a more thorough analysis of the data and greater explanation of the proposed methods to be used to overcome the problems. The information gathered for a plan may include the following:

- An estimate of the number of households to be displaced including information such as owners/tenant status, estimated value and rental rates of properties to be acquired, family characteristics, and special consideration of the impacts on minorities, the elderly, large families, and persons with disabilities.

- An estimate of the numbers of comparable replacement dwellings in the areas (including price range and rental rates) that are expected to be available to fulfill the needs of those households permanently or temporarily displaced. When an adequate supply of comparable housing is not expected to be available, the department should consider housing of last resort.

- An estimate of the number, type, and size of the businesses, farms, and non-profit organizations to be displaced and the approximate number of employees that may be affected.

- An estimate of the availability of replacement business sites. When an adequate supply of replacement business sites is not expected to be available the impacts of displacing the businesses should be considered and addressed. Planning for permanently and temporarily displaced businesses which are reasonably expected to involve complex, or lengthy moving processes or small businesses with limited financial resources and/or few alternative relocations sites should include an analysis of business moving problems.

- Consideration of any special relocation advisory services that may be necessary for the department displacing a person and other cooperating agencies.

The Relocation Plan Interview – Residential form (LA 60301A) and/or the Relocation Plan Interview – Business, Farm or Non-Profit Organization form (LA 60301B) are used to obtain the necessary information.

As part of the relocation planning process the department should, to the extent practical, identify relocations that may require additional time for advisory services and coordination for their relocations. Such relocations may include the elderly, those with medical needs, and those in public housing. In each of these examples, the relocation requires that the unique needs of the relocated person be determined early, and that the relocation agent make full use of available social services and other program support services and other program support services. Examples include local transportation services that may be available in certain areas, financial support available from local, federal and state agencies, and community services that may be available in considering and developing a relocation plan.

6.3.2 Addendums

When revisions to a highway project require the acquisition of additional parcels necessitating the displacement of individuals, families, businesses, farms or non-profit organizations the approved relocation plan must be amended to reflect those additional relocation units.

An addendum must provide the same type of information as described above in the scope and content required for a relocation plan.

An addendum to the relocation plan must be submitted to CBLA for approval prior to the initiation of negotiations to acquire the additional parcels.

6.4 *RELOCATION NOTICES*

Eligibility for relocation assistance begins on the earliest of:

- the date of a notice of intent to acquire, rehabilitate, and/or demolish;
- the initiation of negotiations; or
- the actual acquisition.

When this occurs, the department shall promptly notify all occupants in writing of their eligibility for applicable relocation assistance.

6.4.1 Ninety (90)-Day Notice of Displacement Letter

Each individual, family, business, farm operation and non-profit organization scheduled to be displaced by the project will be furnished, through personal contact, or if such personal contact is not possible by certified first class mail, return receipt requested or other approved means (see Section 6.2) with:

- a written description of the department's relocation advisory assistance and payments program that will be made available to them;

- the eligibility requirements and procedures for obtaining this assistance and these payments;

- the earliest date which they may be required to vacate the property;

- the information that they cannot be required to move permanently unless at least one comparable replacement dwelling is made available;

- the information that any person who is an alien not lawfully present in the United States is ineligible for relocation advisory services and relocation payments, unless such ineligibility would result in exceptional and extremely unusual hardship to a qualifying spouse, parent, or child as described in Section 6.1.4; and

- the information on how to request a review by the Director, or designees, of any disputed claim for payment or assistance and services provided.

The 90-Day Notice of Displacement (Owner-Occupant) (LA 60401A Template), 90-Day Notice of Displacement (Tenant) (LA 60401B Template), or 90-Day Notice of Displacement (Business, Farm or Non-Profit Organization) (LA 60401C Template) as applicable are used to provide the above information.

Lawful occupants cannot be required to move unless they have received at least ninety (90) days advance written notice of the earliest date by which they may be required to move. Therefore, in no event will this required information be given less than ninety (90) days prior to the date the owner or tenant will be required to move. A Relocation Assistant Unit Record (see Section 6.13) must also be initiated at this time and placed in the appropriate parcel file.

In unusual circumstances, an occupant may be required to vacate the property on less than ninety (90)-day advance written notice if the department determines that a ninety (90)-day notice is impracticable, such as when the person’s continued occupancy of the property would constitute a substantial danger to health or safety. A copy of the department’s determination should be included in the file.

6.4.2 Thirty (30)-Day Specific Date Written Notice to Vacate

No person lawfully occupying the real property or having personal property thereon, can be required to move from their home, farm or business location, or move their personal property without the department or the agency having responsibility for the acquisition, giving at least ninety (90) days prior written notice and a thirty (30)-day specific date written notice to vacate.

The thirty (30)-day specific date written notice to vacate will give a firm date by which the property will be vacated and such notice must be furnished to each individual, family, business, farm operation or non-profit organization to be displaced if they still occupy the acquired property at least 30 days prior to the specific date the property is needed. Such notices must be personally presented or, in the alternative if this is not possible, by certified first class mail, return receipt requested or by other approved means (see Section 6.2). The method of notification must be documented in the file. The vacation date may be extended when conditions warrant, but any extension will be in writing and will give another specific date by which the property must be vacated.

If someone lives on the property or, in the alternative, does not live on the property but has personal property thereon, they must be given at least ninety (90) days prior written notice and the thirty (30)-day specific date notice to vacate. This would apply whether an individual, a family, a business, a farm operation or non-profit organization occupies the property. The key to understanding lies in the words, "required to move." There must be something to move. If there is something to move, the notice must be given. This would not preclude a mutual agreement between the department and the involved person or business providing for the voluntary surrender of possession of the real property in less than ninety (90) days. Likewise, the department cannot be held responsible if a ninety (90)-day/thirty (30)-day notices were issued but the landlord issued a notice giving shorter notice to a tenant.

The thirty (30)-day specific date notice cannot be given, under any circumstances, until the property has been acquired and the state has title. If acquired by negotiation, the warranty deed or other instrument(s) of conveyance must have been delivered to the state and payment for the property must have been made to the owner. If acquired through eminent domain proceedings, preliminary just compensation must have been deposited with the court and the order vesting title must have been entered, or in a case where quick take procedure was not used, upon deposit of just compensation as set forth in the final judgment order.

A Notice to Vacate (LA 60402 Template) completed to show the appropriate date(s) may be used for this purpose. It is not necessary to give the thirty (30)-day specific date written notice to vacate to all owners and tenants. The thirty (30)-day notice is only to be given when the property will actually be required in thirty (30) days for some reason, such as: advertising for a construction letting; advertising for a demolition contract; or to conduct a sale of buildings. When it becomes apparent that certain properties will be required in thirty (30) days, all remaining occupants legally in possession, except those covered by rental agreements, must be given said thirty (30)-day specific notice. Occupants who have signed rental agreements will be notified in accordance with the provisions of the rental agreement that also generally provides for a minimum thirty (30)-day notice.

6.4.3 Notice of Intent to Acquire

A notice of intent to acquire, rehabilitate, and/or demolish is a written communication from the department that is provided to a person to be displaced, including persons required to temporarily move, which clearly sets forth the department's intent to acquire, rehabilitate and/or demolish the property. This notice establishes eligibility for the relocation assistance and payments provided by these procedures prior to the initiation of negotiations. The owner of the property and all persons occupying the property are to be provided with a notice of intent to acquire the property.

CBLA must concur and approve, in writing, before a notice of intent to acquire can be issued. Careful consideration must be given to the use of such a notice, as the department will likely be responsible for relocation assistance and payments for persons entering into occupancy of the property subsequent to vacation of the property by the originally notified displaced person, and prior to the actual initiation of negotiations for the property.

6.4.4 Notice of Receipt of a Claim for Payment

A claimant must be promptly notified of the receipt of any claim for a relocation payment. This notification must be in writing and include a statement of eligibility for, and the amount of, the payment as well as the time and manner in which the payment will be made. A Notice of Receipt of a Claim for a Relocation Payment form (LA 60404) is to be used for this notification.

6.4.5 Notice of Denial of Claim

If the department disapproves all or part of a payment claimed or refuses to consider the claim on its merits because of untimely filing or other grounds, it will promptly notify the claimant in writing of its determination, the basis for its determination, and the procedures for requesting a review of that determination (see Section 6.14 for Dispute of Claims). A Notice of Receipt of a Claim for a Relocation Payment form (LA 60404) is to be used for this notification.

6.4.6 No Waiver of Relocation Assistance

The department will not propose or request that a displaced person waive their rights or entitlements to relocation assistance and benefits provided by the Uniform Act or these provisions.

While the department cannot propose or request that a displaced person waive their right or entitlement to relocation assistance and payments, it may accept a written statement from the displaced person that states that they have chosen not to accept some or all of the payments or assistance to which they are entitled. Such a written statement must clearly show that the individuals know what they are entitled to receive, and their statement must specifically identify which assistance or payments they have chosen not to accept. The statement must be signed and dated and may not be coerced by the department.

6.4.7 Expenditure of Payments

Payments provided in these procedures will not be considered to constitute federal financial assistance. Accordingly, this does not apply to the expenditure of such payment by, or for, a displaced person.

6.5 *AVAILABILITY OF COMPARABLE REPLACEMENT DWELLING BEFORE DISPLACEMENT*

6.5.1 General

No person to be displaced shall be required to move from their dwelling unless at least one comparable replacement dwelling has been made available to the person. Information on comparable replacement dwellings that were used in the determination process must be provided to the displaced person. When possible, three or more comparable replacement dwellings shall be made available. Only in situations where three comparable dwellings are not available (e.g., when the local housing market does not contain three comparable dwellings) may the department make fewer than three referrals and the relocation file must document the efforts to find three or more comparable dwellings. A comparable replacement dwelling will be considered to have been made available to a person, if:

- The person is informed in writing of its location;

- The person has sufficient time to negotiate and enter into a purchase agreement or lease for the property; and

- The person is assured (subject to safeguards) of receiving the relocation assistance and acquisition payment to which the person is entitled in sufficient time to complete the purchase or lease of the property.

6.5.2 Circumstances Permitting Waiver

The federal agency funding the project may grant a waiver of Section 6.5.1 above in any case where it is demonstrated that a person must move because of:

- A major disaster as defined in Section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5122); or

- A presidentially declared national emergency; or

- Another emergency that requires immediate vacation of the real property, such as when continued occupancy of the displacement dwelling constitutes a substantial danger to the health or safety of the occupants or the public.

6.5.3 Emergency Move

Whenever a person to be displaced is required to relocate from the displacement dwelling for a temporary period because of an emergency as described above, the department shall :

- Take whatever steps are necessary to assure that the person is temporarily relocated to a decent, safe, and sanitary dwelling;

- Pay the actual reasonable out-of-pocket moving expenses and any reasonable increase in rent and utility costs incurred in connection with the temporary relocation; and

- Make available to the displaced person as soon as feasible, at least one comparable replacement dwelling. For purposes of filing a claim and meeting the eligibility requirements for a relocation payment, the date of displacement is the date the person moves from the temporarily occupied dwelling.

6.6 *REPLACEMENT HOUSING PAYMENTS*

Individuals and families displaced from a dwelling acquired for a highway project are eligible for replacement housing payments provided the additional costs comprising the replacement housing payment are actually incurred. The displaced individual or family is not required to relocate to the same occupancy status (owner or tenant), but has other options according to ownership status and tenure of occupancy.

Replacement housing payments will be made directly to the relocated individual or family, or upon written instruction from the relocated individual or family, jointly payable to the lessor, or the seller, or other designated party, for use towards the purchase or rent of a decent, safe and sanitary dwelling. In cases where an applicant otherwise qualifies for a replacement housing or rent supplement payment, and upon the applicant's specific request in the application, the department will make such payments into escrow prior to the displaced person's moving.

In order to assist displaced persons in obtaining replacement housing, the department will, at the displaced person's request, state to any interested party, financial institution or lending agency, that the displaced person will be eligible to receive a replacement housing payment in a specified amount provided they purchase and occupy a decent, safe and sanitary inspected dwelling within the one-year time limit (i.e., meets eligibility requirements, see Section 6.6.6 or Section 6.6.9).

Only one replacement housing payment can be made for each dwelling unit except in the case of multi-family occupancy of a single-family dwelling unit (see Section 6.6.10) or in the case of subsequent occupants as described under replacement housing as last resort.

The nature of the acquisition (i.e., whole or partial acquisition, farmstead, etc.) will be taken into consideration when computing the replacement housing payment as well as the final acquisition price. The maximum replacement housing payment to be claimed cannot exceed the difference between what the department paid, or proposes to pay, whichever is greater, and the asking price of a comparable dwelling. Therefore, if the amount approved for negotiation purposes is increased, then the replacement housing payment, if any, must also generally be adjusted downward by a like amount. The determination as to whether or not the adjustment will be downward will depend upon the allocation of values in the approved appraisal, the appraisal review documentation, the administrative documentation or the court award.

If the acquired dwelling is located on a tract larger in size than is typical for residential use in the area, the maximum replacement housing payment is the asking price of a comparable replacement dwelling as determined by the department on a tract typical in size for residential use in its area, less the acquisition price of the acquired dwelling plus the acquisition price of that portion of the acquired land which represents a tract typical in size for residential use in the area.

If the department offers to buy and the owner elects to sell an uneconomic remainder of a residential lot, the additional amount paid for the same will be added to and included in the acquisition price paid for purposes of computing the replacement housing supplement due.

If the department offers to buy a "buildable" lot remainder of a residential lot, the additional amount paid for the same will be added to and included in the acquisition price paid for purposes of computing the replacement housing supplement due.

6.6.1 Whole Acquisitions

The maximum replacement housing payment, if any, is the difference between what the department paid for the acquired dwelling and the purchase price of a replacement dwelling, not to exceed the asking price of a comparable dwelling as determined by the department.

6.6.2 Partial Acquisitions

If the acquired dwelling is located on a tract typical in size for residential use in the area, the maximum replacement housing payment is the asking price of a comparable replacement dwelling, as determined by the department, on a tract typical in size for its area less the acquisition price of the acquired dwelling and the tract on which it is located.

In the case of a partial acquisition of a typical lot, the proper elements of acquisition cost or amount paid for the acquired dwelling, for relocation payment purposes, includes the amounts paid for the dwelling and appurtenant structures, special land improvements, the land acquired, temporary easements, if any, and damages to the remainder. The sum of these amounts is then compared to the cost of the selected comparable dwelling to arrive at the replacement housing supplement due.

If the partial acquisition of a typical lot causes the displacement of the owner from the dwelling and the remainder has economic value to the owner, the department may offer to purchase the entire property if housing of last resort procedures is indicated. Even though this may not necessarily be an acquisition of an uneconomic remnant, the Offer to Purchase Uneconomic Remnant form (LA 40505) will be used in making the offer to purchase. If the owner refuses to sell the remainder to the department, the fair market value of the remainder will be added to the acquisition cost of the displacement dwelling for purposes of computing the replacement housing payment eligibility.

In any case, the maximum housing payment due will be based on the lesser of the purchase price of the actual replacement dwelling or the asking price of the comparable selected by the department.

The mortgage interest differential, if any and the eligible closing costs are then added to this amount to determine the total replacement housing payment due.

6.6.3 Dwelling on Land with Higher and Better Use

When the acquired dwelling is located on a tract where the fair market value has been established based on a higher and better use than residential, the maximum replacement housing payment is the asking price of a comparable replacement dwelling, as determined by the department, on a tract typical in size for residential use in its area, less the acquisition price of the acquired dwelling plus the actual acquisition price of that portion of the acquired land which represents a tract typical for residential use in the area.

6.6.4 Determination of Payment Eligibility

The department will determine the asking price of a comparable dwelling by analyzing at least three comparable dwellings which are available on the private market, and which meet the requirements of comparability. A Replacement Housing Supplement Comparable Listing form (LA 60604A) will be used to describe the selected comparable. Less than three comparable may be used for this determination when additional comparable dwellings are not available, and the department documents the parcel file to this effect. The selection of such comparable and the computation of the housing supplement must be by a qualified state employee or consultant of the department and by a person other than the appraiser or review appraiser on the parcel involved. The comparable selected must be those most nearly comparable and equal to or better than the subject property.

In the absence of at least one decent, safe, and sanitary comparable and subject to prior approval by CBLA, the amount of the replacement housing supplement may be determined by obtaining from a qualified and reputable builder, acceptable to the department, an estimate of the cost of building a new comparable dwelling, including all necessary materials, which is functionally comparable to the old dwelling. Added to this would be the estimated cost of a parcel of residential land, improved with the necessary utilities typical in size for the area or neighborhood. An additional option would be to obtain from a qualified and reputable builder, acceptable to the department, an estimate of the cost of rehabilitating an existing dwelling in order to make it comparable and/or to meet decent, safe and sanitary requirements.

The acquisition price would be subtracted from the estimated cost of said new home plus the land, or the estimated cost of the rehabilitated dwelling, to determine the maximum replacement housing payment eligibility as provided in these regulations. The owner-occupant must actually incur the additional costs prior to receiving the full amount of their eligibility.

A computation of eligibility for a purchase supplement must include a copy of the Payment Evaluation Form for Replacement Housing Supplement (Purchase) form (LA 60604B), the Replacement Housing Supplement Comparable Listing form (LA 60604A) for the subject property and the comparable properties used, and a Replacement Housing Supplement Certification form (LA 60604C).

Copies of all such replacement housing computations should be prepared and forwarded to CBLA prior to the initiation of negotiations on a parcel.

6.6.5 Price Differential

Price differential is the amount that must be added to the acquisition cost of the displacement dwelling and site to provide a total amount equal to the lesser of:

- The reasonable cost of a comparable replacement dwelling as determined by the department; or

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

To qualify for the full amount of the price differential determined by the department a displaced owner-occupant, in addition to meeting any other stated requirements, must also purchase and occupy a decent, safe and sanitary dwelling equal to or higher in price than the acquisition price of the acquired dwelling. In other words, they must actually spend this additional amount or more in securing replacement housing in order to receive the maximum payment.

If the displaced owner-occupant on their own voluntarily purchases and occupies a decent, safe and sanitary dwelling at a price less than the price described above, the replacement housing payment will be reduced to that amount required to pay the difference between the acquisition price of the acquired dwelling and the actual purchase price of the replacement dwelling. If the displaced owner-occupant on their own voluntarily purchases and occupies a decent, safe and sanitary dwelling at a price less than the acquisition price of the acquired dwelling, no differential payment will be made.

As an example, the value of the subject property is determined to be $65,000. A study of available comparable properties indicates an estimated selling price of the chosen comparable to be $75,000. On this basis, the price differential eligibility for the replacement housing payment would be $10,000. In order to receive the $10,000 payment, the displaced owner-occupant would have to purchase a decent, safe and sanitary dwelling costing $75,000 or more. If they purchased a replacement dwelling for $72,000, they would receive a $7,000 payment, and so on. If they purchased a replacement dwelling for $65,000 or less, they would receive no payment.

It is the department's responsibility to make available a comparable replacement dwelling unit and relocate the displaced person to their original ownership status if this is their desire. If an alternate tenancy status is desired by the displaced person, the department will make a reasonable effort to accommodate the request. If optional housing is available, the supplement, if any, will be based on the specified option and computed as prescribed in the following regulations.

6.6.6 Ninety (90)-Day Owner-Occupants Who Purchase

A displaced person is eligible for the replacement housing payment for a ninety (90)-day owner-occupant if the person:

- Has actually owned and occupied the displacement dwelling for not less than ninety (90) days immediately prior to the date of the initiation of negotiations; and

- Purchases and occupies a decent, safe, and sanitary replacement dwelling within one year after the later of the following dates (except that the department may extend such one-year period for good cause):

  - The date the displaced person receives final payment for the displacement dwelling or, in the case of condemnation, the date the full amount of the estimated just compensation is deposited with the court, or

  - The date the department has made a comparable dwelling available to the displaced person.

The department may grant an extension of eligibility if some event beyond the control of the displaced person such as acute or life-threatening illness, bad weather preventing the completion of construction, or physical modifications required for reasonable accommodation of a replacement dwelling or other like circumstances cause a delay in occupying a decent, safe, and sanitary replacement dwelling.

6.6.6.1 *Amount of Payment*

The replacement housing payment for an eligible ninety (90)-day owner-occupant may not exceed $41,200, except as provided for under housing of last resort provisions. The maximum payment is limited to the amount necessary to relocate to a comparable replacement dwelling within one year from the date the displaced owner-occupant is paid for the displacement dwelling, or the date such person is initially offered a comparable replacement dwelling, whichever is later. The payment will be the sum of:

- The amount by which the cost of a replacement dwelling exceeds the acquisition cost of the displacement dwelling as defined under price differential; and

- The increased interest costs and other debt service costs which are incurred in connection with the mortgage(s) on the replacement dwelling; and

- The reasonable expenses incident to the purchase of the replacement dwelling.

When a single-family dwelling is owned by several persons, and occupied by only one or some of the owners, the replacement housing payment will be the lesser of:

- The difference between the collective owner-occupants' share of the acquisition cost of the acquired dwelling and the actual cost of the replacement dwelling; or

- The difference between the total acquisition cost of the acquired dwelling and the amount determined by the department as necessary to purchase a comparable dwelling.

If the displaced owner-occupants do not purchase and occupy a decent, safe and sanitary dwelling, they will be entitled to receive a rent supplement payment if the occupants rent and occupy a decent, safe and sanitary dwelling as defined in these regulations.

If the application of any part of this procedure, because of unusual circumstances, creates an undue hardship on the occupant(s) with a partial ownership, the full facts along with a recommended solution should be submitted to CBLA for further resolution. Housing of last resort procedures may be applicable.

6.6.6.2 *Owner Retention*

If an owner-occupant retains ownership of their dwelling, moves it from the displacement site, and reoccupies it on a replacement site, the purchase price of the replacement dwelling will be considered to be the sum of:

- The cost of moving and restoring the dwelling to a condition comparable to that prior to the move (excluding any betterments); and
- The cost of making the unit a decent, safe, and sanitary replacement dwelling; and
- The current market value, for residential use of the replacement dwelling site, unless the claimant rented the displacement site and there is a reasonable opportunity for the claimant to rent a suitable replacement site; and
- The retention value of the dwelling, if such retention value is reflected in the acquisition cost used when computing the replacement housing payment.

It is not necessary to have a property appraised in order to arrive at its current market value for residential use. The department may use any reasonable method to establish market value.

Payment Computation:

Moving Costs and Comparable	
Restoration Costs	$ 20,000
DSS Costs, if any	$ 0
Market Value of Replacement Site	$ 10,000
Retention Value of Dwelling	+ $ 1,000 *
Total Costs	$ 31,000
Less the Acquisition Price (before deduction of the owner retention value)	- $ 25,000
Replacement Housing Payment	$ 6,000

*NOTE: Use only if not deducted from the acquisition price of the displacement dwelling.

The replacement housing payment to be made under owner-retention cannot exceed the payment that would have been due, as computed by the department, for the purchase of a comparable dwelling.

6.6.6.3 *Advance Replacement Housing Payments in Condemnation Cases*

Property owners should not be deprived of the earliest possible payment of replacement housing supplements rightfully due. An advance replacement housing payment can be computed and paid to a property owner at their written request if the determination of the state's acquisition price will be delayed pending the outcome of condemnation proceedings. Since the amount of the replacement housing payment cannot be determined due to the pending condemnation proceedings, a provisional replacement housing payment may be calculated by deeming the state's maximum offer for the property as the acquisition price. Payment of such amount may be made upon the owner occupant's agreement that:

- Upon final determination of the condemnation proceedings, the replacement housing payment will be recomputed using the acquisition price determined by the court as compared to the actual price paid or the amount determined by the department as necessary to acquire a comparable, decent, safe and sanitary dwelling, whichever is less, and

- If the amount awarded in the condemnation proceedings as the fair market value of the property acquired plus the amount of the provisional replacement housing payment exceeds the lesser of the price paid for the state's determined cost of a comparable dwelling, the displaced person(s) will refund to the state, from the condemnation judgment, an amount equal to the amount of the excess payment so determined. However, such displaced person(s) will not be required to refund more than the amount of the replacement housing payment advanced. If the property owner does not agree to such adjustment, the replacement housing payment will be deferred until the case is finally adjudicated and computed on the basis of the final determination, using the award, as applicable to the dwelling acquired, as the acquisition price.

6.6.6.4 *Increased Mortgage Interest Costs*

A payment for increased mortgage interest costs is provided to offer some relief to displaced persons for the increased interest costs incurred when financing their replacement dwellings. This payment is commonly referred to as a "buydown". The payment for an increased mortgage interest cost will be the amount which will reduce the mortgage balance on a new mortgage to an amount which could be amortized with the same monthly payment for principal and interest as that for the mortgage(s) on the displacement dwelling. In addition, payments will include other debt service costs, if not paid as incidental costs, and will be based only on bona fide mortgages that were valid liens on the displacement dwelling for at least 180 days prior to the initiation of negotiations. Eligibility for the increased mortgage interest payment will also be contingent upon a mortgage being placed on the replacement dwelling.

6.6.6.5 *Payment Computation*

The amount of the payment for increased mortgage interest costs will be calculated using the FHWA's Mortgage Interest Differential Payment (MIDP) Calculators available at: https://www.fhwa.dot.gov/real_estate/uniform_act/relocation/midpcalcs/. The calculation is based upon the type of mortgage (i.e., traditional fixed rate; interest only, plus points; or an adjustable rate) and the following:

- The payment will be based on the unpaid mortgage balances on the displacement dwelling; however, in the event the displaced person obtains a smaller mortgage than the mortgage balance used in computing the buy down determination, the payment will be prorated and reduced accordingly. In the case of a home equity loan, the unpaid balance will be the balance that existed 180 days prior to the initiation of negotiations or the balance on the date of acquisition, whichever is less.

- The payment shall be based on the remaining term of the mortgage(s) on the displacement dwelling or the term of the new mortgage, whichever is shorter.

- The interest rate on the new mortgage used in determining the amount of the payment cannot exceed the prevailing fixed interest rate for conventional mortgages currently charged by mortgage lending institutions in the area in which the replacement dwelling is located.

- Purchaser's points and loan origination or assumption fees, but not seller's points, will be paid to the extent:

    - They are not paid as incidental expenses;

    - They do not exceed rates normal to similar real estate transactions in the area;

    - The department determines them to be necessary; and

    - The computation of such points and fees shall be based on the unpaid mortgage balance on the displacement dwelling, less the amount determined for the reduction of the mortgage balance under this sub-paragraph.

- If the combination of interest and points for the new mortgage exceeds the current prevailing fixed interest rate and points for conventional mortgages and there is no justification for the excessive rate, then the current prevailing fixed interest rate and points shall be used in the computations. Justification may be the unavailability of the current prevailing rate due to the amount of the new mortgage, credit difficulties, or other similar reasons.

- The displaced person shall be advised of the approximate amount of this payment and the conditions that must be met to receive it as soon as the facts relative to the person's current mortgages are known and the payment will be made available at or near the time of closing on the replacement dwelling in order to reduce the new mortgage as intended.

6.6.6.6 *Reverse Mortgage*

The payment for replacing a reverse mortgage shall be the difference between the existing reverse mortgage balance, and the minimum dollar amount necessary to purchase a replacement reverse mortgage which will provide the same or similar terms as that for the reverse mortgage on the displacement dwelling. In addition, payments shall include other debt service costs, if not paid as incidental costs, and shall be based only on reverse mortgages that were valid liens on the displacement dwelling for at least 180 prior to the initiation of negotiations. The following shall apply to the computation of the mortgage interest differential payment (MIDP) required, which payment shall be contingent upon a new mortgage being purchased for the replacement dwelling.

- The payment shall be based on the difference between the reverse mortgage balance, and the minimum amount needed to qualify for a reverse mortgage with the similar terms as the reverse mortgage on the displacement dwelling, however, in the event the displaced person obtains a smaller reverse mortgage than the reverse balance(s) computed in the buydown determination, the payment will be prorated and reduced accordingly. The reverse mortgage balance should be the balance which existed 180-days prior to the initiation of negotiations or the reverse mortgage balance on the date of acquisition, whichever is less.

- The interest rate on the new reverse mortgage used in determining the amount of the eligibility shall not exceed the prevailing rate for reverse mortgages currently charged by mortgage lending institutions for owners with similar amounts of equity in their units in the area in which the replacement dwelling is located.

- Purchaser's points and loan origination but not seller's points, shall be paid to the extent:

  - They are not paid as incidental expenses;

  - They do not exceed rates normal to similar transactions in the area;

  - The department determines them to be necessary; and

- The computation of such points and fees shall be based on the reverse mortgage balance on the displacement dwelling plus any amount necessary to purchase the new reverse mortgage.

- The displaced person or their representative shall be advised of the approximate amount of this eligibility and the conditions that must be met to receive the reimbursement as soon as the facts relative to the person's current reverse mortgage are known; the payment shall be made available at or near the time of closing on the replacement dwelling in order to purchase the new reverse mortgage as intended.

The provisions above set forth the factors to be considered when estimating an amount, after paying off the existing reverse mortgage balance, sufficient to purchase a replacement reverse mortgage that provides a tenure or term payment, line of credit, or lump-sum disbursement. The department must know the value of the acquired dwelling, existing balance of displacement reverse mortgage, remaining equity, and price of the selected comparable or actual replacement dwelling, to compute the estimated reverse mortgage supplement payment for a replacement reverse mortgage. The FHWA website provides a simple calculator to estimate the reverse mortgage supplement payment needed to purchase a replacement reverse mortgage at www.fhwa.dot.gov/realty.

In cases where there is a tenure or term payment additional information such as the age of the youngest borrower, amounts of the tenure payment, amount and remaining term of term payment and the current interest rate, is needed to calculate the payment and will require the assistance of a reverse mortgage broker.

Below are four scenarios and suggestions for relocation payments eligibilities. The eligibility is the same for each case; however, benefit amounts will vary depending on the individual's circumstances.

- Scenario 1 – The owner has sufficient remaining equity to obtain a replacement reverse mortgage for purchase.
- Scenario 2 – The owner's existing reverse mortgage has a tenure disbursement payment and there is not sufficient remaining equity to obtain a replacement reverse mortgage.
- Scenario 3 – The owner's existing revere mortgage has a term disbursement payment and there is not sufficient remaining equity to obtain a replacement reverse mortgage.
- Scenario 4 – The owner's existing reverse mortgage is a line of credit and there is not sufficient remaining equity to obtain a replacement reverse mortgage.

In each of the above scenarios, the relocation payment eligibilities are the same, however amounts will vary depending on the individual's circumstances and reverse mortgage terms. The homeowner would be eligible for:

- A price differential payment (difference between the comparable replacement dwelling and the acquisition cost of the displacement dwelling).

- Incidental costs incurred with a replacement reverse mortgage and fall into three categories: mortgage insurance premium, loan origination fee, and closing costs.

- Mortgage interest differential payment (MIDP). Note that most reverse mortgages are monthly adjustable-rate mortgages, so a mortgage interest differential payment would be minimal.

- If the displaced homeowner elects to relocate into rental housing rather than remain a homeowner, the department will calculate relocation assistance payments in accordance with ninety (90)-day owners who rent (see Section 6.6.7). For example, the department computes a rental assistance payment of $10,000 for the owner based on a comparable replacement rental dwelling. When the owner settles with the department, they will pay off the balance of the reverse mortgage and retain any remaining equity in the property. They are eligible for the $10,000 rental assistance payment when they rent and occupy a decent, safe and sanitary replacement dwelling.

Other Agency options (not recommended unless elected by the displaced person, since they do not place the person into the same situation as the displacement reverse mortgage provided:

- A direct loan as set forth under replacement housing of last resort.
- A life estate interest in a comparable replacement dwelling under replacement housing of last resort.
- The department purchases a comparable replacement dwelling and retains ownership and conveys a leasehold interest to the owner for their lifetime.
- The department offers a comparable replacement rental dwelling to convert the homeowner-occupant to tenant status.

6.6.6.7 Replacement Housing Costs in Excess of $41,200 for a Ninety (90)-Day Owner-Occupant

The ninety (90)-day owner-occupant is eligible for increased interest costs, closing costs, and a replacement housing payment. When the sum of these items exceeds the $41,200 maximum, housing of last resort provisions are applicable. A written request to use housing of last resort provisions which states the reasons to use such provisions must be submitted to CBLA for approval before payment of the claim can be made.

6.6.6.8 Filing the Claim for Payment

A completed and properly documented Claim for Replacement Housing Supplement form (LA 60666A) will be used by owner-occupants to claim the supplemental replacement housing payment. A completed Dwelling Inspection (Decent, Safe and Sanitary) form (LA 60666B) must be filed with the Claim for Replacement Housing Supplement form (LA 60666A) as well as documentation supporting the expenses being claimed.

6.6.7 Rental Assistance Payments for Ninety (90)-Day Owner-Occupants Who Rent

A ninety (90)-day owner-occupant who could be eligible for a replacement housing payment under Section 6.6.6, but elects to rent a replacement dwelling, is eligible for a rental assistance payment.

6.6.7.1 *Computation and Disbursement of Payment*

The amount of the rental assistance payment is based on a determination of market rent for the acquired dwelling compared to a comparable rental dwelling available on the market. The difference, if any, is computed and disbursed in accordance with Section 6.6.9, except that the $9,570 limit does not apply. Under no circumstances can this payment exceed the amount the owner-occupant would have received had they elected to purchase and occupy a replacement dwelling.

6.6.7.2 *Determination of Payment Eligibility*

A computation of payment eligibility for ninety (90)-day owner-occupants who choose to rent a replacement dwelling must include a copy of the Payment Evaluation Form for Replacement Housing Supplement (Rent) form (LA 60667), the Replacement Housing Supplement Comparable Listing form (LA 60604A) for the subject dwelling and the comparable dwellings used, and a Replacement Housing Supplement Certification form (LA 60604C).

Copies of all such replacement housing computations should be prepared and forwarded to CBLA.

6.6.7.3 *Filing the Claim for Payment*

A completed and properly documented Claim for Replacement Housing Supplement form (LA 60666A) will be used by 90-day owner-occupants who choose to rent a replacement dwelling to claim their supplemental replacement housing payment. A completed Dwelling Inspection (Decent, Safe and Sanitary) form (LA 60666B) must be filed with the Claim for Replacement Housing Supplement form (La 60666A) as well as documentation supporting the expenses being claimed.

6.6.8 Mixed-Use and Multi-Family Properties

The procedure for computing replacement housing payment amounts to owners of multi-family dwellings that occupy one unit of such dwellings is as follows:

- The comparable dwelling should be the same as that acquired, i.e., if the acquired property is a triplex, the comparable should be a triplex. If comparable are not available, then structures of the next lowest density must be used. If there were not any available comparable multi-family structures to be found, then the comparison of the owner's living unit would be to a single-family residence. A higher density structure should never be used as a comparable.

- The value of the owner's living unit is to be used as the base for the replacement housing payment determination, not the entire fair market value (acquisition price) of the subject property. The replacement housing determination is that difference, if any, between the value of the owner's living unit and the value of a living unit in the most comparable available property. If the comparable is a triplex, the replacement housing payment is based on the value of only one of the three units; if a duplex, the payment is based on one of the two units; if a single-family dwelling, the payment is based on the entire value of the dwelling. The other living units of a multi-family dwelling cannot be included in the value of a comparable because these are considered as income producing and not part of the owner's personal living area.

6.6.9 Replacement Housing Payments for Ninety (90)-Day Tenants

A ninety (90)-day tenant displaced from a dwelling is entitled to a payment not to exceed $9,570 for rental assistance, or down payment assistance, except as provided under the housing of last resort provisions, if such displaced person:

- Has actually and lawfully occupied the displacement dwelling for at least ninety (90) days immediately prior to the initiation of negotiations; and

- Has rented, or purchased, and occupied a decent, safe, and sanitary replacement dwelling within one year (unless the department extends this period for good cause) after the date they move from the displacement dwelling.

6.6.9.1 *Nursing Homes and Similar Situations*

Replacement housing payments should be computed in the same manner as for tenants occupying sleeping rooms or furnished apartments, as the case may be. Rents charged by other comparable nursing homes would be used for comparison with the present payments to arrive at an eligible amount. If the individual resident or patient is competent to handle their own affairs, the department's representative should contact the individual. If the individual is incompetent, the department's representative would deal with the same party that handles the nursing home arrangement with the operator, presumably the legal guardian. The payment would be made to the individual or their legal guardian.

If welfare patients are to be involved, the decision as to whether to relocate to the new location or to leave and move somewhere else would have to be worked out between the nursing home operator, the individual, and the welfare agency. Otherwise, welfare patients would be handled in the same manner as others discussed above. If it was decided that the welfare patient would not relocate with the nursing home, any replacement housing payment to which they are entitled would be made to the patient or their legal guardian. The effect of the payment on their welfare status would have to be worked out between the individual and the welfare agency. Replacement housing payments may not be used to affect the eligibility of any person for assistance under any other federal law.

6.6.9.2 *Determination of Payment Eligibility*

A computation of eligibility for a rent supplement for ninety (90)-day tenants must include a copy of the Payment Evaluation Form for Replacement Housing Supplement (Rent) form (LA 60667), Replacement Housing Supplement Comparable Listing form (LA 60604A) for the subject dwelling and the comparable dwellings used, and a Replacement Housing Supplement Certification form (LA 60604C). When a ninety (90)-day tenant's gross household income is classified as low income by the U.S. Department of Housing and Urban Development's annual survey of income limits for the Public Housing and Section 8 Programs, an Economic Means Evaluation for Low Income Households form (LA 60669) showing the computation of their base monthly rental must be included with the computation of eligibility for their replacement housing supplement.

Copies of all such replacement housing computations should be prepared and forwarded to CBLA prior to the issuance of the ninety (90)-day notice of displacement.

6.6.9.3 *Rental Assistance Payment*

An eligible displaced person who rents a replacement dwelling is entitled to a payment not to exceed $9,570 for rental assistance. Such payment will be 42 times the amount obtained by subtracting the base monthly rental for the displacement dwelling from the lesser of:

- The monthly rent and estimated average monthly cost of utilities for a comparable replacement dwelling, as determined by the department, or

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

6.6.9.4 *Base Monthly Rental*

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

- The average monthly cost for rent and utilities at the displacement dwelling for a reasonable period prior to displacement, as determined by the department. For an owner-occupant, the department will use the fair market rent for the displacement dwelling. For a tenant who paid little or no rent for the displacement dwelling, the department will use the fair market rent, unless its use would result in a hardship because of the person's income or other circumstances; or

- 30 percent of the displaced person's average monthly gross household income if the amount is classified as low income by the U.S. Department of Housing and Urban Development's (HUD) most recently published Uniform Relocation Act Annual Income Limits. This information is updated annually and is available on the FHWA web site at: https://www.fhwa.dot.gov/real_estate/policy_guidance/low_income_calculations/index.cfm. The base monthly rental will be based on actual rent and utilities for persons with income exceeding the survey's low-income limits, for persons refusing to provide appropriate evidence of income, and for persons who are dependents. A full-time student or resident of an institution will be assumed to be a dependent, unless the person demonstrates otherwise; or

- The total of the amounts designated for shelter and utilities if the displaced person is receiving a welfare assistance payment from a program that designates the amounts for shelter and utilities.

The gross annual income received by the displaced family, excluding income from any dependent children and full-time students under the age of 18. If the household income for the eligible displaced person/family is less than or equal to the income limit, the family is considered low income.

6.6.9.5 *Manner of Disbursement*

The amount of the rental payment, determined as shown above, will be disbursed in a lump sum amount unless the department determines on a case-by-case basis, for good cause, that the payment should be made in installments. However, except as limited by the provisions for a replacement housing payment after death, the full amount computed vests immediately, whether or not there is any later change in the person's income or rent, or in the condition or location of the person's replacement housing.

6.6.9.6 *Change of Occupancy*

If a tenant, after moving to a decent, safe and sanitary dwelling, relocates again within the one-year period to a higher cost rental unit, they may present another claim for the amount in excess of what was originally claimed, but not to exceed the total rent supplement originally computed by the department.

6.6.9.7 *Down Payment Assistance Payment*

An eligible displaced residential tenant who has occupied the acquired dwelling for ninety (90) days or more, or owner-occupant who has occupied the acquired dwelling less than ninety (90) days prior to the initiation of negotiations to acquire such dwelling, may use their computed rent supplement eligibility as a down payment for the purchase of a replacement dwelling up to a maximum payment of $9,570. A ninety (90)-day owner-occupant is not eligible to receive this payment.

In addition to the rent supplement the down payment assistance payment may also include reimbursement of the amount required to be paid by the purchaser as points, or origination fee or loan services fee, (if such fees are normal to real estate transactions in the area) for the replacement dwelling, as well as reimbursement for eligible incidental expenses.

If the total down payment assistance payment is less than $9,570; the department will increase the total payment to $9,570. <u>This additional monetary payment must actually be applied to the purchase of the replacement dwelling</u>. Documentation must be provided verifying that the entire $9,570 was applied to the purchase of the replacement dwelling.

An example of the computation for a payment with an additional monetary payment is as follows:

Eligible down payment	$ 5,000
Eligible incidental expenses	$ 2,500
Additional monetary payment	+ $ 2,070 *
Total payment	$ 9,570

* Amount required for a total payment of $9,570.

If the total down payment assistance payment exceeds $9,570, the department will limit the total payment to $9,570 unless the original rental supplement computation was computed under housing of last resort provisions.

An example of the computation for a payment exceeding 9,570 is as follows:

Eligible down payment	$ 7,000
Eligible incidental expenses	+ $ 2,800
	$ 9,800
Total payment	$ 9,570

6.6.9.8 *Application of Payment*

The full amount of the replacement housing payment for down payment assistance must be applied toward the purchase price of the replacement dwelling and related eligible incidental expenses. The payment must be based on costs actually incurred by the displaced person and supported by documentation acceptable to the department. The amount of the down payment and incidental expenses claimed should be shown in the final closing statement. Documentation such as bills, paid receipts, or other evidence of eligible incidental such expenses deemed acceptable to the department must be furnished to the department for expenses not shown on the closing statement.

6.6.9.9 *Filing the Claim for Payment*

A completed and properly documented Claim for Replacement Housing Supplement form (LA 60666A) will be used by ninety (90)-day occupants to claim their supplemental replacement housing payment, including an Economic Means Evaluation for Low Income Households form (LA 60669) if appropriate. Documentation supporting the expenses being claimed must be included. A completed Dwelling Inspection (Decent, Safe and Sanitary) form (LA 60666B) must also be filed with the claim.

6.6.10 Multiple Occupants of One Displacement Dwelling

If two or more occupants of the displacement dwelling move to separate replacement dwellings, each occupant is entitled to a reasonable prorated share, as determined by the department, of any relocation payments that would have been made if the occupants moved together to a comparable replacement dwelling. However, if the department determines that two or more occupants maintained separate households within the same dwelling, such occupants have separate entitlements to relocation payments.

6.6.11 Additional Rules Governing Replacement Housing Payments

6.6.11.1 *Determining Cost of a Comparable Replacement Dwelling*

The upper limit of a replacement housing payment will be based on the cost of a comparable replacement dwelling.

- If available, at least three comparable replacement dwellings will be examined and the payment computed on the basis of that dwelling which is most nearly representative of, and equal to or better than, the displacement dwelling.

- If the site of the comparable replacement dwelling lacks a major exterior attribute of the displacement dwelling site (e.g., the site is significantly smaller or does not contain a swimming pool or a greenhouse), the contributory value of such attribute will be subtracted from the acquisition cost of the displacement dwelling for purposes of computing the payment.

- If the acquisition of a portion of a typical residential property causes the displacement of the owner from the dwelling and department determines that the remainder has economic value to the owner, the department may offer to purchase the entire property. If the owner refuses to sell the remainder to the department, the fair market value of the remainder may be added to the acquisition cost of the displacement dwelling for purpose of computing the replacement housing payment.

  The price differential portion of the replacement housing payment would be the difference between the comparable replacement dwelling and the department's highest written acquisition offer. The price differential would be calculated as follows:

  Department Offers to Acquire the Remainder

Comparable replacement dwelling		$200,000
Before value of parcel	$180,000	
Minus remainder value	$ 15,000	
Acquisition of part needed	$165,000	
Highest written offer		$180,000
Price differential payment eligibility		$ 20,000

  Department Does Not Offer to Acquire the Remainder

Comparable replacement dwelling		$200,000
Before value of parcel	$180,000	
Minus remainder value	$ 15,000	
Acquisition of part needed	$165,000	
Highest written offer		$165,000
Price differential payment eligibility		$ 35,000

- To the extent feasible the comparable replacement dwellings shall be selected from the neighborhood in which the displacement dwelling was located or, if that is not possible, in nearby or similar neighborhoods where housing costs are generally the same or higher.

6.6.11.2 *Deductions from Relocation Payments*

The department will deduct the amount of any advance relocation payment from the relocation payment(s) to which a displaced person is otherwise entitled. The department will not withhold any part of a relocation payment to a displaced person to satisfy an obligation to any other creditor.

6.6.11.3 *Mixed-Use and Multi-Family Properties*

If the displacement dwelling unit is part of a property that contains another dwelling and/or space used for non-residential purposes, and/or located on a lot larger than typical for residential purposes, only that portion of the acquisition payment that is actually attributable to the displacement dwelling unit itself will be considered its acquisition cost when computing the price differential.

6.6.11.4 *Revision to Replacement Housing Amount*

If the displaced person requests assistance in finding replacement housing, the displaced person must be offered housing which is comparable and available for purchase within the total offered amount. When such housing is no longer available and no other comparable housing is available within their financial means, the department will determine a new replacement housing amount, based on then available housing which is equal to or better than the dwelling acquired and meets the other comparable criteria. However, the inability to purchase or lease a comparable replacement property as a result of inaction by the displaced person, or a refusal to vacate the acquired property is not sufficient reason to revise the amount of a replacement housing payment. If a revision to the computation of eligibility is made the new replacement housing payment cannot be reduced to less than the amount originally computed.

6.6.11.5 *Inspection of Replacement Dwelling*

Before any replacement housing claim for payment or releasing the initial payment from escrow can be considered, an inspection must be made by a departmental representative, or their designee, to make a determination that the replacement housing selected is decent, safe and sanitary. The Dwelling Inspection (Descent, Safe and Sanitary) form (LA 60666B) must be completed to document this inspection and submitted with any claim for a replacement housing payment.

The department may also utilize the services of any public agency ordinarily engaged in housing inspections to make the inspection. Such determination by the department, or its consultant, that a dwelling meets the standards for decent, safe and sanitary housing is made solely for the purpose of determining the eligibility of relocated individuals and families for payments and is not a representation for any other purpose.

6.6.11.6 *Purchase of Replacement Dwelling*

For the purpose of implementation of the provision of this section, a displaced person purchases a dwelling when they:

- Purchase a dwelling;
- Purchase and rehabilitate a substandard dwelling;
- Relocate a dwelling which they own or purchase;
- Construct a dwelling on a site they own or purchase;
- Contract for the purchase or construction of a dwelling on a site provided by a builder or on a site the person owns or purchases; or
- Currently own a previously purchased dwelling and site, valuation of which will be on the basis of fair market value.

Ordinarily, the cost of the land and dwelling unit at the time of purchase by the displaced person will constitute the actual cost in the replacement housing payment determination, however, in the case of replacement dwellings purchased prior to the initiation of negotiations the fair market value of the same will be used when determining the replacement housing payment due.

6.6.11.7 *Occupancy Requirements for Displacement or Replacement Dwelling*

No person will be denied eligibility for a replacement housing payment solely because the person is unable to meet the occupancy requirements set forth in these regulations for reasons beyond their control, including:

- A disaster, an emergency, or an imminent threat to the public health or welfare, as determined by the President, the federal agency funding the project, or the department; or
- Another reason, such as a delay in the construction of the replacement dwelling, military reserve duty, or hospital stay, as determined by the department.

6.6.11.8 *Conversion of Payment*

A displaced person who initially rents a replacement dwelling and receives a rental assistance payment is eligible to receive a purchase payment if they meet the eligibility criteria for such payments, including purchase and occupancy within the prescribed one-year period. Any portion of the rental assistance payment that has been disbursed will be deducted from the computed payment.

6.6.11.9 *Payment After Death*

A replacement housing payment is personal to the displaced person and upon their death the undisbursed portion of any such payment will not be paid to the heirs or assigns, except that:

- The amount attributable to the displaced person's period of actual occupancy of the replacement housing shall be paid.
- Any remaining payment shall be disbursed to the remaining family members of the displaced household in any case in which a member of a displaced family dies.
- Any portion of a replacement housing payment necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by or on behalf of a deceased person shall be disbursed to the estate.

6.6.11.10 *Insurance Proceeds*

To the extent necessary to avoid duplicate compensation, the amount of any insurance proceeds received by a person in connection with a loss to the displacement dwelling due to a catastrophic occurrence (fire, flood, etc.) shall be included in the acquisition cost of the displacement dwelling when computing the price differential.

6.6.12 Replacement Housing as Last Resort

When the replacement housing payments described above are not sufficient to provide such housing, additional measures may be needed. The purpose of this section is to prescribe the provisions and procedures to provide for replacement housing as last resort when it is determined that a state and/or federally-assisted project cannot proceed on a timely basis because comparable replacement dwellings are not available for displaced owner-occupants and tenants and cannot otherwise be made available to them within their monetary limits.

Any decision to provide last resort housing assistance must be adequately justified either:

- On a case-by-case basis which means that appropriate consideration has been given to:
    - The availability of comparable housing in the project or program area;
    - The resources available to provide comparable housing; and
    - The individual circumstances of the displaced person;
- By a determination that:
    - There is little, if any, comparable replacement housing available to displaced persons within an entire project or program area; and, therefore last resort housing assistance is necessary for the area as a whole; and
    - A project or program cannot be advanced to completion in a timely manner without last resort housing assistance; and
    - The method selected for providing last resort housing assistance is cost effective, considering all elements which contribute to total project or program costs.

6.6.12.1 *Rights of the Displaced Person*

Displaced persons cannot be required to move from their dwelling unless comparable replacement housing is made available to that person. No person may be deprived of any rights the person may have under the Uniform Act or these provisions, nor their freedom of choice in the selection of replacement housing. However, the state's obligation of providing comparable replacement housing will have been discharged when comparable replacement housing has been made available to the displaced person in compliance with the Uniform Act.

The department may not require a displaced person, without their written consent, to accept a dwelling provided by the department under these procedures in lieu of their acquisition payment or relocation payment for which they may be eligible. A ninety (90)-day homeowner-occupant who is eligible for a payment is entitled to a reasonable opportunity to purchase a comparable replacement dwelling. The department is not required to provide persons owning only a fractional interest in the displacement dwelling a greater level of assistance to purchase a replacement dwelling than the department would be required to provide such person if they owned fee simple title to the displacement dwelling. If such assistance is not sufficient to purchase a replacement dwelling, the department may provide additional purchase or rental assistance.

In addition to a price differential payment computed under housing of last resort provisions a ninety (90)-day owner-occupant may also receive reimbursement for eligible incidental expenses and a ninety (90)-day owner-occupant will be eligible for increased mortgage interest costs.

A ninety (90)-day tenant or owner occupant may use their rent supplement computed under housing of last resort provisions as a down payment for the purchase a replacement dwelling. The amount eligible to be used as a down payment will be limited to the maximum amount of the originally computed rent supplement. In addition to the rent supplement the down payment assistance payment may also include reimbursement of the amount required to be paid by the purchaser as points, or origination fee or loan services fee, (if such fees are normal to real estate transactions in the area) for the replacement dwelling, as well as reimbursement for eligible incidental expenses. <u>The total down payment assistance payment will be reimbursement of the costs actually incurred in the purchase of their replacement dwelling</u>.

The following are examples of a down payment assistance payment **under housing of last resort** provisions when the originally computed rent supplement had a maximum eligibility of $5,300.

- Actual down payment equals the $5,300 maximum eligibility:

Down payment	$ 5,300
Eligible incidental expenses	<u>$ 3,100</u>
Total down payment assistance payment	$ 8,400

- Actual down payment exceeds the $5,300 maximum eligibility:

Down payment	$ 10,000
Eligible incidental expenses	<u>$ 2,400</u>
	$ 12,400
Total down payment assistance payment	$ 7,700 *

*NOTE: Payment includes $5,300 maximum rent supplement plus eligible incidental expenses.

- Actual down payment is less than the $5,300 maximum eligibility:

Down payment	$ 3,500
Eligible incidental expenses	<u>$ 2,950</u>
	$ 6,450
Plus additional monetary payment	<u>$ 750</u>
Total down payment assistance payment	$ 7,200 *

*NOTE: Payment includes $750 additional monetary payment which must be added to the actual down payment, plus eligible incidental expenses.

6.6.12.2 *Methods of Providing Housing of Last Resort*

When comparable replacement housing is not available and cannot otherwise be made available, within the monetary limits for owners or tenants, the department will have broad latitude in implementing this requirement but implementation must be on a reasonable cost basis justified, on a case-by-case basis unless an exception to case-by-case analysis is justified for an entire project.

The methods of providing last resort housing include, but are not limited to, the following:

- A replacement housing payment in excess of the limits of $41,200 to an eligible owner-occupant and $9,570 to an eligible tenant-occupant - A rental assistance payment under this provision may be provided in installments or in a lump sum at the department's discretion.
- The rehabilitation of and/or additions to existing replacement dwellings, including such as required to meet decent, safe and sanitary requirements provided the cost of acquisition or rehabilitation does not exceed the estimated cost of construction of a new comparable dwelling meeting the decent, safe and sanitary requirements of the displaced person that can be constructed on a timely basis.
- The construction of new replacement dwellings.
- The provisions of a direct loan, which requires regular amortization of deferred repayment - The loan may be unsecured or secured by the real property. The loan may bear interest or be interest free.
- The relocation and, if necessary, the rehabilitation of a dwelling.
- The purchase of land and/or replacement dwellings and subsequent sale or lease to, or exchange with, a displaced person
- The removal of barriers for persons with disabilities.

Under special circumstances, consistent with the definition of a comparable dwelling, modified methods of providing housing of last resort permit consideration of replacement housing based on space and physical characteristics different from those in the displacement dwelling, including upgraded, but smaller replacement housing that is decent, safe and sanitary and adequate to accommodate individuals or families displaced from marginal or substandard housing with probable functional obsolescence. However, a displaced person cannot be required to move into a dwelling that is not functionally equivalent.

The physical characteristics of the replacement dwelling may be dissimilar to those of the displacement dwelling but they may never be inferior. However, such variation should never result in a lowering of housing standards nor should it ever result in a lower quality of living style for the displaced person.

One example might be the use of a new mobile home to replace a very substandard conventional dwelling in an area where comparable conventional dwellings are not available.

Another example could be the use of a superior, but smaller decent, safe and sanitary dwelling to replace a large, old sub-standard dwelling, only a portion of which is being used as living quarters by the occupants and no other large comparable dwellings are available in the area.

The department shall provide assistance to a displaced person who is not eligible to receive a replacement housing payment because of failure to meet length of occupancy requirements when comparable replacement rental housing is not available at rental rates within their financial means. Such assistance will cover a 42-month period.

6.6.12.3 *Central Bureau of Land Acquisition Approval Required*

Please note that commitments should not be made to make payments in excess of $41,200 or $9,570 in advance of specific approvals and concurrence by CBLA. The computation for a replacement housing payment using housing of last resort provisions must be forwarded to CBLA for review and approval prior to providing the displaced person with their eligibility. The submittal for approval is on a case-by-case basis and must include the specific reasons for the necessity of using housing of last resort provisions.

6.6.13 Government Subsidized Housing

A special subset of displaced persons who may qualify for housing of last resort involves relocating the recipients of rental assistance under the Section 8 Housing Choice Voucher Program. There are two main types of government assisted housing subsidies. The first is tied to the person, so if the tenant moves, the subsidy or voucher moves with her/him. In the second type, the subsidy is tied to the project itself, and if the tenant moves, the subsidy is left behind. Both subsidies typically entail a payment directly to the landlord from either the local housing authority, nonprofit organization, or State or local government, along with a payment from the tenant to the landlord.

Once it is determined that there are displaced persons in a government assisted housing program on the project, the relocation agent needs to work closely with the agency providing the assistance (usually a public housing authority) to ensure that there is no loss in the housing subsidy. DLA should always attempt to find comparable housing where the landlord will accept government assistance for those who are displaced from subsidized housing. If replacement subsidized housing is located, the displaced person may have no need for a rental assistance payment under the relocation program. This will be more beneficial to the displaced person in the long-term, because the housing assistance will last longer than the potential 42-month rental assistance payment they could receive.

Example: Jan Roberts and her son live in a two-bedroom, single-family house that is being acquired for a project. During your interview, Jan informs you she has a Housing Choice Voucher, and her rental subsidy is paid directly to the landlord. Based on the documents provided by Mrs. Roberts, she pays $360 per month of her $1,200 per month income, and the Housing Authority pays the remaining $340 of the monthly rent. In searching for comparables, you have found two available properties for rent. The first dwelling is a single-family dwelling that is not part of the Section 8 program and rents for $825 per month. The second dwelling is on the market for rent at $850 per month and is part of the Section 8 program.

- Can both replacement properties be considered as comparables?

  Since a subsidized replacement rental unit is available, it should be used as the replacement comparable for the determination of benefits. Therefore, the private market unit will not be used.

- What Replacement Housing Payment is Jan Roberts eligible for?

  Assuming the entire rent difference is covered by the Housing Authority, the URA replacement housing payment would be zero. If a small true out-of-pocket expense occurs to Ms. Roberts, then that difference could be paid for 42 months.

Note: If Ms. Roberts voluntarily withdraws from the subsidy program and rents a private market unit, she still would not receive a rental assistance payment. She should be encouraged to remain on the program as its long-term nature is beneficial to her.

If the displaced person is not currently in a subsidized housing program, they can be offered assistance when relocated. DLA cannot offer a subsidized housing unit as the comparable housing, but they are able to offer a referral to a housing authority, which may be able to provide assistance. However, the displaced person cannot be required to accept government assisted housing in lieu of a replacement housing payment. An example of this may be relocatee who is low-income and being displaced from a substandard dwelling. She may have a large rental assistance payment, but it will end in 42 months. It may not be feasible to apply it as a down payment because of credit problems or because of the inability to pay property taxes and insurance. In the long term, a government-assisted housing program would be a better alternative.

The rental assistance payment for a displaced person who accepts government housing assistance should be based on their actual out-of-pocket costs and will be known as a Gap Payment. For example, where the replacement dwelling rent/utility cost is more than the payment standard under the voucher program, or the initial rent/utilities burden exceeds 30 percent of the tenant's average monthly gross household income, the tenant may be eligible for a 42-month cash supplement to cover the gap. Since the displaced person is receiving housing assistance from a federal program, a gap payment would be considered as income under the Uniform Act. Therefore, DLA should clearly communicate with both the housing authority and the displaced person that the gap payment will be paid to the housing authority, so the relocatee is not further negatively impacted by the department's actions.

6.7 *MOBILE HOMES*

This section describes the requirements governing the provision of replacement housing payments to a person displaced from a mobile home and/or mobile home site who meets the basic eligibility requirements for displaced owner-occupants and tenant-occupants. Except as modified by this paragraph and the provisions that follow such a displaced person is entitled to a moving expense payment and a replacement housing payment to the same extent and subject to the same requirements as persons displaced from conventional dwellings. Moving costs to persons occupying mobile homes are described in items 1 through 11 of the eligible actual moving expenses.

6.7.1 Partial Acquisition of Mobile Home Park

The acquisition of a portion of a mobile home park may leave a remaining part of the park that is not adequate to continue the operation of the park. If the department determines that a mobile home that is located in the remaining part of the park must be moved as a direct result of the project, the owner-occupant or tenant-occupant of such mobile home will be considered a displaced person who is entitled to all relocation payments and other advisory assistance.

6.7.2 Replacement Housing Payment for Ninety (90)-Day Mobile Home Owner-Occupants

A displaced owner-occupant of a mobile home or site is entitled to a replacement housing payment, not to exceed $41,200 if:

- The person occupied the mobile home on the displacement site for at least ninety (90) days immediately prior to:
  - The initiation of negotiations to acquire the mobile home, if the person owned the mobile home and the home is real property; or
  - The initiation of negotiations to acquire the mobile home site if the mobile home is personal property, but the persons own the mobile home site; or
  - The date of the department's written notification to the owner-occupant that the owner is determined to be displaced from the mobile home.

- The person purchases and occupies a decent, safe and sanitary replacement dwelling within one year after the latter of:
  - The date the displaced person received final payment for the displacement dwelling or, in the case of condemnation, the date of the full amount of the estimate of just compensation is deposited in the court; or
  - The date the department makes a comparable replacement dwelling available to the displaced person.

- The department acquired the mobile home as real estate, or acquired the mobile home site from the displaced owner, or the mobile home is personal property but the owner is displaced from the mobile home because the department determines that the mobile home:
  - Is not and cannot economically be made decent, safe, and sanitary; or
  - Cannot be relocated without substantial damage or unreasonable cost; or
  - Cannot be relocated as there is no available comparable replacement site; or
  - Cannot be relocated as it does not meet mobile home park entrance requirements.

6.7.2.1 *Payment*

The replacement housing payment for an eligible displaced ninety (90)-day owner is computed incorporating the following, as applicable:

- If the department acquires the mobile home as real estate and/or acquired the owned site, the acquisition cost used to compute the price differential is the actual amount paid to the owner as just compensation for the acquisition of the mobile home and/or site if owned by the displaced mobile home owner.

- If the department does not purchase the mobile home as real estate, but the owner is determined to be displaced from the mobile home and eligible for a replacement housing payment because the department has determined that it is not practical to relocate the mobile home because the mobile home can't economically be moved and/or made decent, safe and sanitary, relocated without substantial damage, no replacement site is available, or it does not meet mobile home entrance requirements), the eligible price differential payment for the purchase of a comparable replacement mobile home, is the lesser of:

- The homeowner's net cost to purchase a replacement mobile home, i.e., purchase price of the replacement mobile home less trade-in or sale proceeds of the displacement mobile home; or
- The cost of the department's selected comparable mobile home less the estimate of the salvage or trade in value for the mobile home from which the person is displaced.

- If a comparable mobile home site is not available, the price differential payment will be computed on the basis of the reasonable cost of a conventional comparable replacement dwelling.

6.7.2.2 *Rental Assistance Payment for Ninety (90)-Day Owner-Occupant Displaced from a Leased or Rented Site*

If the displacement mobile home owner-occupant's site is leased or rented a ninety (90)-day owner-occupant is entitled to a rental assistance payment not to exceed $9,570 computed in accordance with the provisions for a rental supplement for a ninety (90)-day occupant/tenant. The rental assistance payment may be used to lease a replacement site; applied to the purchase of a replacement site; or applied with any replacement housing payment attributable to the mobile home, to purchase a replacement mobile home and the purchase or lease of a site, or the purchase of a conventional decent, safe and sanitary dwelling.

6.7.2.3 *Owner-Occupant Not Displaced from the Mobile Home*

If the department determines that a mobile home is personal property and may be relocated to a comparable replacement site, but the owner-occupant elects not to do so, the owner is not entitled to a replacement housing payment for the purchase of a replacement mobile home, however, the owner is eligible for moving costs and any replacement housing payment for the purchase or rental of a comparable site as described above, or in provisions for a replacement housing payment for ninety (90)-day mobile home occupants detailed below.

6.7.3 Rental Assistance Payment for Ninety (90)-Day Mobile Home Tenants and Certain Others

6.7.3.1 *Payment Computation*

A displaced tenant or owner-occupant of a mobile home and/or site is eligible for a replacement housing payment as described herein, not to exceed $9,570, if:

- The person actually occupied the displacement mobile home on the displacement site for at least ninety (90) days immediately prior to the initiation of negotiations;
- The person meets the other basic eligibility requirements for a ninety (90)-day occupant; and
- The department acquires the mobile home and/or mobile home site, or the mobile home is not acquired by the department but the department determines that the occupant is displaced from the mobile home because the department determines that the mobile home:

- Is not and cannot economically be made decent, safe, and sanitary; or
- Cannot be relocated without substantial damage or unreasonable cost; or
- Cannot be relocated because there is no available comparable replacement site; or
- Cannot be relocated because it does not meet mobile home park entrance requirements.

6.7.3.2 *Filing the Claim for Payment*

A completed and properly documented Claim for Replacement Housing Supplement form (LA 60666A) will be used by mobile home occupants to claim their supplemental replacement housing payment(s), including an Economic Means Evaluation for Low Income Households form (LA 60669) if appropriate. Documentation supporting the expenses being claimed must be included. A completed Dwelling Inspection (Decent, Safe and Sanitary) form (LA 60666B) must also be filed with the claim.

6.8 *ELIGIBLE INCIDENTAL EXPENSES*

6.8.1 Incidental Expenses on Purchase of Replacement Dwelling

Incidental expenses are those necessary and reasonable costs actually incurred by the displaced person incident to the purchase of a replacement dwelling, and customarily paid by the buyer, including:

- Legal, closing, and related costs, including those for title search, preparing conveyance instruments, notary fees, preparing surveys and plats, and recording fees.
- Lender, FHA, or VA application and appraisal fees.
- Loan origination or assumption fees that do not represent prepaid interest.
- Professional home inspection, certification of structural soundness and termite inspection.
- Credit report.
- Owner's and mortgagee's evidence of title, e.g., title insurance, not to exceed the costs for a comparable replacement dwelling.
- Escrow agent's fee.
- State revenue or documentary stamps, sales or transfer taxes (not to exceed the costs for a comparable replacement dwelling).
- Such other costs as the department determines to be incidental to the purchase.

To claim reimbursement for the above expenses, the Claim for Replacement Housing Supplement form (LA 60666A) must be submitted, with the Eligible Incidental Expenses on Purchase of Replacement Dwelling Worksheet form (LA 60801) attached as supporting documentation. Prompt notice of the receipt and disposition of the claim must be mailed to the claimant. A Notice of Receipt of a Claim for Relocation Payment (LA 60404) must be used for this purpose.

6.8.2 Eligible Incidental Expenses on Transfer of Real Property to the State

In addition to any other amounts authorized under this program, owners of real property are entitled to receive payments for their reasonable and necessary expenses incurred in transferring property to the state under the provisions of the Uniform Act. Please note that the incidental expenses listed below are normally paid by the department as a part of the acquisition process with no expense to the property owner. Such expenses may include the following:

- Recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the real property, and similar expenses incidental to conveying the real property to the state, if such expenses are actually incurred, and if required in the judgment of the department. However, the state is not required to pay costs required solely to perfect the owner's title to the real property;

- The cost of obtaining partial or complete mortgage releases; and penalty costs and other charges for prepayment of any pre-existing recorded mortgages entered into in good faith encumbering the real property; and

- The pro rata portion of any prepaid real property taxes which are allocable to the period after the department obtains title to the property or effective possession of it, whichever is earlier.

Whenever feasible, the department shall pay these costs directly to the billing agent so that the owner will not have to pay such costs and then seek reimbursement from the department.

If any of these expenses are actually incurred by the property owner rather than by the department during the acquisition process, reimbursement may be claimed. A Claim for Incidental Expenses on Transfer of Real Property to the State form (LA 60802) and supporting documentation must be submitted to claim reimbursement for the incidental transfer expenses. Prompt notice of the receipt and disposition of the claim must be mailed directly to the claimant. A Notice of Receipt of a Claim for a Relocation Payment form (LA 60404) properly completed, must be used for this purpose. For administrative purposes only, these expenses are processed as relocation claims for payment, however, such costs, for accounting purposes, are coded as acquisition expenses.

6.9 *PAYMENTS FOR MOVING AND RELATED EXPENSES*

6.9.1 Actual Reasonable Moving and Related Moving Expenses

The department is authorized to pay, as part of the cost of construction of any project on a state highway or federally-assisted highway project, relocation payments to eligible displaced persons for their reasonable and necessary moving expenses caused by their displacement from real property acquired for such projects. The relocation payments will be made by the department or a local agency acting as agent for the department.

Any displaced person who moves from a dwelling (including a mobile home), business, farm or non-profit organization is entitled to payment for moving and related expenses as the department determines to be reasonable and necessary. The payment will be appropriate to the class, type and nature of the move and the amount of the payment will be determined in accordance with the criteria and provisions described in the section.

A non-occupant owner of a rented mobile home is eligible for actual cost reimbursement to relocate the mobile home. If the mobile home is not acquired as real estate, but the homeowner-occupant obtains a replacement housing payment under one of the circumstances, the homeowner-occupant is not eligible for payment of moving the mobile home but may be eligible for a payment for moving personal property from the mobile home.

Moving costs cannot generally be paid for more than one move of a displaced person unless it can be shown to be in the public interest. Approval to make more than one moving cost payment must be approved in advance of the move by CBLA. Concurrence by FHWA may also be required on federally-assisted right of way projects.

6.9.2 Direct Payment to Mover

By written pre-arrangement between the displaced person and the mover, the displaced person may file a claim for payment of an unpaid moving bill. However, both the displaced person and the mover should be named as co-payees and both parties must sign the claim.

6.9.3 Advertising for Bids

The expenses incurred by the displaced person in advertising for packing, crating and transportation may be reimbursable if the department determines that such advertising is necessary. This should be limited to complicated or unusual moves where advertising is the only feasible method of securing bids.

6.9.4 Cost of Moving Bids

The department can claim federal reimbursement for the cost of any bids or estimates it obtains on federally-aided right of way projects, not to exceed two bids per move (also see Moves from a Business, Farm or Non-Profit Organization, self-move provisions in this section). However, if the two bids are incompatible or otherwise unacceptable, a third may be obtained. Fees for preparing such bids or estimates should not be derived as a percentage of the total estimated moving cost.

6.9.5 Payment After Death

In those cases where a displaced person has died, and who otherwise was or would be eligible for moving expenses, the moving expense reimbursement, either actual or fixed, may be paid to the executor or the administrator, depending upon whether or not the displaced person died testate or intestate, or to the person or persons who actually incurred the expense of moving the personal property in those cases where the estate has been closed.

6.9.6 Nursing Homes

Residents of nursing homes may be relocated as a unit or individually. In either case, the department must personally contact every resident, or their legal representative, to explain the relocation program, the benefits and payments for which they are eligible, and the options for actual relocation available to them.

Ideally, the nursing home would be treated as an institution and the cost of moving its personal property plus the cost of moving the individual residents and their personal property would be treated as a one-unit business move and would be reimbursed on an actual cost basis.

On the other hand, the moving costs of residents who elect not to move with the nursing home to its new facility would be reimbursed for their moving costs on the same basis as an occupant of a sleeping room or a furnished apartment.

6.9.7 Multiple Occupants of One Displacement Dwelling

If two or more occupants of the displacement dwelling move to separate replacement dwellings, each occupant is entitled to a reasonable prorated share, as determined by the department, of any relocation payments that would have been made if the occupants moved together to a comparable replacement dwelling. However, if the department determines that two or more occupants maintained separate households within the same dwelling, such occupants have separate entitlements to relocation payments.

Two or more families occupying the same dwelling unit who must relocate into separate dwelling units because a single comparable dwelling unit is not available, may elect to be reimbursed either on an actual cost basis or on the fixed rate room count schedule for each family. Two or more families occupying the same dwelling unit, who relocate into separate dwelling units on a voluntary basis when a single comparable dwelling unit is available, may elect to be reimbursed either on an actual cost basis or on the fixed rate room count schedule basis with the single payment to be divided by the families. A schedule basis payment will be based on the number of rooms actually occupied by each such family plus community rooms utilized by each such family.

6.9.8 Moves from a Dwelling

A displaced person's actual, reasonable, and necessary moving expenses for moving personal property from a dwelling may be determined based on the cost of one or a combination of the following methods:

- Commercial move performed by a professional mover, or

- Self-move performed by the displaced person in one of, or a combination of, the following methods:

  - Fixed Residential Moving Cost Schedule (Exhibit LA 60908).

  - Actual costs of the move, supported by receipted bills for labor and equipment. Hourly labor rates should not exceed the cost paid by a commercial mover. Costs for moving personal property that requires special handling should not exceed the market rate for a commercial specialist. Equipment rental fees should be based on the actual cost of renting the equipment, but not to exceed the cost paid by a commercial mover.

- A moving cost estimate prepared by qualified department staff person developed from a thorough review of the personal property to be moved and documented costs for materials, equipment and labor. Hourly rates should not exceed the cost paid by a commercial mover.

- A moving cost estimate based on the lower of two bids from commercial movers.

Eligible expenses for moves from a dwelling are described in items 1 through 8 in Section 6.9.13.

There may be circumstances in which a self-move will necessitate the use of a combination of a commercial mover and the fixed residential moving cost payment in order to complete a move from a dwelling. The displaced person may use a commercial mover for heavy items such as a piano, appliances or dressers and request a payment supported by receipted bills, and also request a payment based on the fixed residential moving cost schedule for moving the remaining items. When utilizing such a combination the department will adjust the number of rooms used when determining the amount of the fixed payment in order to offset the items moved by the commercial mover.

6.9.9 Moves from a Mobile Home

A displaced person's actual, reasonable, and necessary moving expenses for moving personal property from a mobile home may be determined based on the cost of one, or a combination of, the following methods:

- Commercial move performed by a professional mover, or

- Self-move performed by the displaced person in one or a combination of the following methods:

  - Fixed Residential Moving Cost Schedule (Exhibit LA 60908).

  - Actual costs of the move, supported by receipted bills for labor and equipment. Hourly labor rates should not exceed the cost paid by a commercial mover. Costs for moving personal property that requires special handling should not exceed the hourly rate for a commercial specialist. Equipment rental fees should be based on the actual cost of renting the equipment, but not to exceed the cost paid by a commercial mover.

  - A moving cost estimate prepared by qualified department staff person developed from a thorough review of the personal property to be moved and documented costs for materials, equipment, and labor. Hourly rates should not exceed the cost paid by a commercial mover.

  - A moving cost estimate based on the lower of two bids from commercial movers.

Eligible expenses for moves from a mobile home are described in items 1 through 8 in Section 6.9.13. In addition to the general provisions shown above in this section, the owner-occupant of a mobile home that is moved as personal property and used as the person's replacement dwelling, is also eligible for reimbursement of the expenses described in items 9 through 11 in Section 6.9.13.

6.9.10 Moves from a Business, Farm or Non-Profit Organization

Personal property as determined by an inventory from a business, farm or non-profit organization may be moved by one, or a combination of the following methods:

- Commercial move based on the lower of two bids or estimates prepared by a commercial mover. At the department's discretion the payment for a low cost, or uncomplicated move, may be based on a single bid or estimate.

- Self-move based on one, or a combination of the following methods:

  - The lower of two bids or estimates prepared by a commercial mover or qualified department staff person. At the department's discretion, the payment for a low cost or uncomplicated move may be based on a single bid or estimate without additional documentation, as long as the payment is limited to the amount of the lowest acceptable bid or estimate; or

  - Supported by receipted bills for labor and equipment. Hourly labor rates should not exceed the rates paid by a commercial mover to employees performing the same activity and equipment rentals should be based on the actual rental cost of the equipment, but not to exceed the cost paid by a commercial mover.

  - A moving cost finding prepared by qualified department staff person developed by estimating and determining the cost of a small uncomplicated non-residential personal property move of $5,000 or less, with the written consent of the person. The estimate may include only the cost of moving personal property which does not require disconnect and reconnect and/or specialty moving services for activities including crating, lifting, transportation, and setting the items in place.

Eligible expenses for moves from a business, farm or non-profit organization include those expenses described in items 1 through 6, item 8, and items 12 through 19 in Section 6.9.13, and items 1 through 3 in Section 6.9.14.

Eligible businesses, farm operations or non-profit organizations must furnish a current certified inventory of all items of personal property to be moved (excluding any and all items of personal or real property acquired and paid for by the department but retained by such owner) in a form acceptable to the department, for use by the department in securing moving bids or estimates.

The department will obtain at least two bids or estimates for the total cost of moving the personal property of the business from at least two qualified moving firms that are authorized, licensed, and regulated by the Illinois Commerce Commission as motor carriers of property. The business owner, farm operator or non-profit organization must allow and assist in the reasonable inspection of such personal property at reasonable hours by the department, or its consultant or designated representatives, for the purpose of preparing bids or estimates. In certain cases, and for certain types of personal property, it may be necessary to solicit bids from non-ICC carriers. A Bid Form for Actual Moving Expenses form (LA 60910) may be used in the preparation of the bids or estimates, especially when a bid is prepared by qualified department staff, consultant or designated representative.

Particular attention should be given to the following items in order for the district to be furnished with bids that can be compared one to the other and in order to receive uniform bids:

- All movers should be given the same instructions for bidding, i.e., distance of the move; special conditions of the move; day/hours of the week to accomplish the work (no overtime authorized except by district consent); firm bids; items to be included in the firm bid; storage charges authorized; etc.

- All bidders should be requested to present their charges for the following items in a manner that will permit the district to make a meaningful comparison:

  Truck and driver @ $ ______/hr. x ______hrs. = $_______
  Additional men @ $ ______/hr. x ______hrs. = $_______
  Additional equipment @ $ ______/hr. x ______hrs. = $_______

- All bids must be approved as to form and content. If not acceptable, they should be corrected to the satisfaction of the district or disallowed altogether. The district should question wide discrepancies.

- Quotes for transit insurance should be based on an agreed reasonable value to be insured, considering the goods that would actually be in transit at any given time, and the cost of such insurance should be approximately the same, if not the same, on all bids received.

- Firm bids should be requested in every case.

- Bid calculations should always be checked.

The above list is not all-inclusive but is the kind of bid audit that needs to be performed for the district to make a proper determination of monies due the displaced person for moving expenses.

Large, costly and/or complicated moves must be kept under constant surveillance by department representatives to the extent required to assure the reasonableness of such costs and the files should be so documented. After the move has been completed, if the department determines that items of personal property listed on the originally certified inventory were not moved, the amount to be paid for the move will be adjusted appropriately. For example, adjustments must be made if the inventory has been reduced significantly or if the items of inventory were sold to and removed by others from the acquired property. The business-owner must personally and directly incur the costs of moving personal property in order to claim a payment for moving expenses.

When personal property is abandoned with no effort being made by the owner to dispose of such property by sale, the owner will not be entitled to moving expenses, or losses, for the items involved. The department will proceed to remove it in the most economical manner. A properly executed release should be obtained, to protect the department, prior to the removal of any such personal property.

6.9.11 Personal Property Only

Eligible expenses for a person who is required to move personal property from real property, but is not required to move from a dwelling (including a mobile home), business, farm or non-profit organization, include those expenses described in items 1 through 8 and item 19 in Section 6.9.13. Examples of personal property only moves might be:

- Personal property that is located on a portion of the property being acquired, but the business or residence will not be acquired and can still operate after the acquisition;
- personal property that is located in a mini-storage facility that will be acquired or relocated; or
- personal property that is stored on vacant land that is to be acquired.

For a residential personal property move, the cost of obtaining moving bids may exceed the cost of the move. In those situations, the department may allow an eligibility determination based upon the "additional room" category of the Fixed Residential Move Cost Schedule (see Exhibit LA 60908).

For a non-residential personal property only move, the owner of the personal property has the options of moving the personal property using either a commercial move or self-move. If a question arises concerning the reasonableness of an actual cost move, the department may obtain estimates from qualified movers to use as the standard in determining the payment.

6.9.12 Off-Premise Advertising Signs

Off premise advertising signs are considered personal property, and when moved. Personal Property Only provisions will apply.

If a sign owner elects not to relocate an off-premise advertising sign, the amount of the payment for direct loss of an advertising sign, which is personal property, will be the lesser of:

- The depreciated reproduction cost of the sign as determined by the department, less the proceeds from its sale; or
- The estimated cost of moving the sign, but with no allowance for storage. The estimated cost will be based on a moving distance of 50 miles.

If a sign owner elects to relocate the off-premise advertising sign, CBLA must be contacted to coordinate a new permitted location. Legal non-conforming (red tag) signs cannot be relocated to another non-conforming location on a controlled route (Interstate or Primary highway); however, a legal non-conforming sign may be relocated to a legal site, either along a controlled route or a non-controlled route.

It should be noted that off-premise advertising sign companies are not eligible to receive reestablishment expenses or related nonresidential expenses because the definition of a small business expressly disqualifies sites occupied solely by outdoor advertising signs, displays or devices.

6.9.13 Eligible Actual Moving Expenses

The following expenses are eligible for reimbursement as actual costs incurred in moving personal property.

1. Transportation of the displaced person and personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the department determines that relocation beyond 50 miles is justified.

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

3. Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances and other personal property. For businesses, farms or non-profit organizations this includes machinery, equipment, substitute personal property, and connections to utilities available within the building. It also includes modifications to the personal property, including those mandated by federal, state or local laws, codes or ordinances necessary to adapt it to the replacement structure, the replacement site, or the utilities at the replacement site, as well as modifications necessary to adapt the utilities at the replacement site to the personal property. Construction costs for a new building at the replacement site, to substantially reconstruct a building, or rehabilitate a building are generally ineligible for reimbursement.

4. Storage of the personal property for a period not to exceed 12 months, unless the department determines that a longer period is necessary.

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

6. The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.

7. Reasonable reimbursement, as determined by the department, for actual expenses not to exceed $1,000 incurred for replacement dwelling application fees or credit reports required to lease a replacement dwelling. Advanced payment of such fees may be made to relieve a hardship as allowed in Section 6.12

8. Other moving related expenses that are not listed as ineligible under these provisions that the department determines to be reasonable and necessary.

9. The reasonable cost of disassembling, moving, and reassembling any appurtenances attached to a mobile home, such as porches, decks, skirting, and awnings, which were not acquired, anchoring of the unit and utility “hookup” charges.

10. The reasonable cost of repairs and/or modifications so that a mobile home can be moved and/or made decent, safe, and sanitary.

11. The cost of a non-refundable mobile home park entrance fee, to the extent it does not exceed the fee at a comparable mobile home park, if the person is displaced or

temporarily moved from a mobile home park or the department determines that payment of the fee is necessary to effect relocation.

12. Any actual, reasonable, or necessary costs of a license, permit, fees or certification required of the displaced person to operate a business, farm, or non-profit at the replacement location. However, the payment may be based on the remaining useful life of the existing license, permit, fees or certification.

13. Professional services as the department determines to be actual, reasonable, and necessary for:

    - Planning the move of the personal property;
    - Moving the personal property; and
    - Installing the relocated personal property at the replacement location.

14. Re-lettering signs and replacing stationery on hand at the time of displacement, and making reasonable and necessary updates to other media or websites that would update contact and location information made obsolete as a result of the move.

15. Actual direct loss of tangible personal property incurred as a result of moving or discontinuing the business or farm operation. The payment shall consist of:

    - If the item is currently in use but is not being moved to the replacement site, the lesser of:

        - The estimated cost to move the item up to 50 miles and reinstall; if the item is operational at the acquired site. The estimated cost to reinstall shall be based on the cost to install the item as it currently exists and shall not include the cost of code required betterments or upgrades that may apply at the replacement site; or
        - The fair market value in place of the item, as is for continued use, less the proceeds from its sale. To be eligible for payment the claimant must make a good faith effort to sell the personal property, unless the department determines such effort is not necessary.

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

    - When payment for property loss is claimed for goods held for sale, the fair market value shall be based on the cost of the goods to the business, not the potential selling price.

      The fair market value in place estimate and moving cost estimate must reflect only the as is condition and installation of the item at the displacement site. The in-place value estimate may also not include installation costs for machinery or equipment that is not operable or not installed at the displacement site. Value in place can be obtained by hiring a machinery and equipment appraiser or value can be estimated via websites available for machinery and equipment valuations.

Payment Computation: The actual direct loss of tangible personal property incurred as a result of moving or discontinuing the business or farm operation is the lesser of:

A.	Fair market value of item in place, as is, installed and fully operational	$ 10,000
	Less proceeds from sale of the item	- $ 7,000
	Total	$ 3,000
	OR	
B.	Current estimated cost to move and reconnect, as is with no upgrade for code requirements	$ 2,500

The payment is $2,500.

16. The reasonable cost incurred in attempting to sell an item that is not to be relocated.

17. Purchase of substitute personal property if an item of personal property, which is used as part of a business or farm operation, is not moved but is promptly replaced with a substitute item that performs a comparable function at the replacement site.

    The payment is the lesser of:

    - The cost of the substitute item, including installation costs of the replacement site, minus any proceeds from the sale or trade-in of the replaced item; or
    - The estimated cost of moving and reinstalling the replaced item, but no allowance for storage. At the department's discretion, the estimated cost of a low cost or uncomplicated move may be based on a single bid or estimate.

    Payment Computation: The payment for items of personal property not moved but promptly replaced with a substitute item is the lesser of:

A.	Cost of the substitute item	$ 10,000
	Plus the cost of installation	+ $ 1,000
		$ 11,000
	Less the proceeds of sale of item or trade-in	- $ 2,500
	Total	$ 8,500
	OR	
B.	Cost to move and reinstall the replaced item with no allowance for storage	$ 2,500

The payment is $2,500.

18. Searching for a replacement location. A business or farm operation is entitled to reimbursement for actual expenses, not to exceed $5,000, as the department determines to be reasonable, which are incurred in searching for a replacement location, including:

    - Transportation;

- Meals and lodging away from home;
- Time spent searching, based on reasonable salary or earnings;
- Fees paid to a real estate agent or broker to locate a replacement site, exclusive of any fees or commissions related to the purchase of such sites;
- Time spent in obtaining permits and attending zoning hearings; and
- Expenses negotiating the purchase or lease of a replacement site based on reasonable salary or fees, including actual, reasonable and necessary attorney's fees.

In special cases when the department determines it to be reasonable and necessary, certain additional categories of searching costs may be considered for reimbursement. These include those costs involved in investigating potential replacement sites and the time of the business owner, based on salary or earnings, required to apply for licenses or permits, zoning changes and attendance at zoning hearings. Necessary attorney fees required to obtain such licenses or permits are also reimbursable. Time spent in negotiating the purchase of a replacement business site is also reimbursable based on a reasonable salary or earnings rate. In those instances when additional costs to investigate and acquire the site exceed $5,000, the department may consider requesting a waiver of the cost limitations from the FHWA as permitted under these regulations. Any such waiver must be approved by FHWA before a payment in excess of the $5,000 limit can be made.

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

19. Low value/high bulk. When the personal property to be moved is of low value and high bulk, and the cost of moving the property would be disproportionate to its value in the judgment of the department, the allowable moving cost payment will not exceed the lesser of:

    - The amount which would be received if the property were sold at the site, or
    - The replacement cost of a comparable quantity delivered to the new business location.

    Examples of such items include, but are not limited to stockpiled sand, gravel, minerals, metals and other similar items of personal property as determined by the department.

6.9.14 Additional Eligible Related Business, Farm and Non-Profit Moving Expenses

The following expenses are also eligible for reimbursement as a moving expense for businesses, farms and non-profit organization when the department determines they are actual, reasonable and necessary:

1. Connection to available utilities from the replacement site's property line to improvements at the replacement site. Actual, reasonable, and necessary reimbursement for connection to available utilities are for the necessary

improvements to utility services currently available at the replacement property. Examples include(a) a laundromat business that requires a larger service tap than the typical business service tap already on the property, and (b) a business that requires an upgrade or enhancement of the existing single phase electrical service to provide 3-phase electric services.

2. Professional services performed prior to the purchase or lease of a replacement site to determine its suitability for the displaced person's business operation including but not limited to, soil testing, feasibility and marketing studies (excluding any fees or commissions directly related to the purchase or lease of such site). At the discretion of the department a reasonable pre-approved hourly rate may be established. A reasonable hourly rate should be comparable to the rates of other similar professional providers in the area.

3. Impact fees or one-time assessments for anticipated heavy utility usage, i.e., water, sewer, gas and electric. Impact fees and one-time assessments that may be levied on a non-residential relocation person in their replacement location for other major infrastructure construction or use such as roads, fire stations, regional drainage improvements, and parks are not eligible. Providing information on the potential eligibility of impact fees for anticipated heavy utility usage is an important advisory service.

6.9.15 Ineligible Moving and Related Expenses

The following expenses are considered ineligible for reimbursement as actual moving expenses and a displaced person is not entitled to payment for:

- The cost of moving any structure or other real property improvement which the displaced person reserved ownership, i.e. exercised owner-retention. However, this does not preclude its consideration under the provisions for the replacement housing payment for 90-day homeowner-occupants;
- Interest on a loan to cover moving expenses;
- Loss of goodwill;
- Loss of profits;
- Loss of trained employees;
- Any additional operating expenses of a business, farm operation, or non-profit organization incurred because of operating in a new location, except as specifically provided for under the provisions for business re-establishment expenses;
- Personal injury;
- Any legal fee or other cost of preparing a claim for a relocation payment or for representing the claimant before the department;
- Expenses for searching for a temporary or replacement dwelling which include costs for mileage, meals, lodging, time and professional real estate broker or attorney fees;
- Any physical changes to the real property including any improvements, at the replacement location except as specifically provided for as eligible actual moving expenses described above and as business re-establishment expenses;

- Costs for storage of personal property on real property already owned or leased by the displaced person, or person to be moved temporarily;
- Refundable security and utility deposits; and
- Cosmetic changes to a replacement or temporary dwelling such as painting, draperies, or replacement carpeting or flooring.

6.9.16 Notification and Inspection

The department will inform the displaced business, farm operation or non-profit organization, in writing, of the requirements of this section, as soon as possible after the initiation of negotiations. This information will be included in the relocation information provided to the displaced business in the ninety (90)-day notice of displacement informational (introductory) letter. To be eligible for payment under this section the displaced person must:

- Provide the department with reasonable advance notice of the approximate date of the start of the move or disposition of the personal property and an inventory of the items to be moved. However, the department may waive this notice requirement after documenting its files accordingly.
- Permit the department to make reasonable and timely inspections of the personal property at both the displacement and replacement sites and to monitor the move.

6.9.17 Transfer of Ownership

Upon request, the claimant will transfer to the department ownership of any personal property that has not been moved, sold, or traded in utilizing a Bill of Sale (LA 70700 Template).

6.9.18 Filing the Claim for Payment

A completed and properly documented Claim for Moving Expenses form (LA 60918) will be used to claim actual moving expenses for individuals or families, businesses, farm operations and non-profit organizations. Documentation supporting the expenses being claimed must be included.

When a business, farm operation or non-profit organization claims expenses incurred in searching for a replacement location a certified statement of the type and amount of the expense being claimed, as well as support for such expenses is required. The name of the person conducting the search, the amount of time spent searching, including, but not limited to, the dates of the search(s), the hours involved (time from which to which, the location(s) visited, and the hourly wage/earnings rate(s)) must accompany the claim for payment.

6.10 *RE-ESTABLISHMENT EXPENSES FOR SMALL BUSINESSES, FARM OPERATIONS AND NON-PROFIT ORGANIZATIONS*

In addition, a small business, farm, or non-profit organization is entitled to receive a payment, not to exceed $33,200, for eligible, reasonable, and necessary, as determined by the department, expenses actually incurred in relocating and re-establishing such small business, farm or non-profit organization at a replacement site.

6.10.1 Eligible Expenses

Re-establishment expenses must be reasonable and necessary, as determined by the department. They include, but are not limited to, the following:

- Repairs or improvements to the replacement real property as required by federal, state or local law, code or ordinance.
- Modifications to the replacement real property to accommodate the business operation or to make replacement structures suitable for conducting the business.
- Construction and installation costs for exterior signing to advertise the business.
- Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, paneling, or carpeting.
- Advertisement of replacement location when not paid as part of moving expenses.
- Estimated increased costs of operation during the first two years at the replacement site for such items as:
    - Lease or rental charges;
    - Personal or real property taxes;
    - Insurance premiums; and
    - Utility charges, excluding impact fees.
- Other items that the department considers essential to the re-establishment of the business

6.10.2 Ineligible Expenses

The following is a non-exclusive listing of re-establishment expenditures not considered to be reasonable, necessary, or otherwise eligible:

- Purchase of capital assets, such as office furniture, filing cabinets, machinery or trade fixtures.
- Purchase of manufacturing materials, production supplies, product inventory or other items used in the normal course of the business operation.
- Interest on money borrowed to make the move or to purchase the replacement property.
- Payment to any part-time business that is conducted in the home when the business income generated does not contribute materially to the household income; and
- Construction costs for a new building at the business replacement site, or costs to construct, reconstruct, or rehabilitate an existing building. Such costs are considered capital expenditures and are generally ineligible for reimbursement as a reestablishment expense. In rare instances when a business cannot relocate without construction, reconstruction, or rehabilitation of a replacement structure, the department may request a waiver from the FHWA. An example of such an instance would be a rural area where there are no suitable buildings available and the new construction, reconstruction, or rehabilitation of a replacement structure is the only option that will enable the business to remain a viable commercial operation. If a

waiver is granted, the cost of such new construction, reconstruction, or rehabilitation as a replacement structure will be considered an eligible reestablishment expense subject to the $33,200 limit.

In markets where existing and new buildings are available for rent (and sometimes for purchase), the buildings or the various units available within the buildings often have only the basic amenities available (e.g., heat, light, water and sewer). These types of buildings or units are often referred to as shells. The cost of constructing, reconstructing, or rehabilitating a shell is not an eligible reestablishment expense because the shell is considered a capital real estate improvement (a capital asset); and a certain degree of construction costs are generally expected by the market because shells are designed to be customized by the tenant. However, certain modifications to a shell (e.g., the addition of necessary facilities such as bathrooms, room partitions, built-in display cases, and similar items), if required by Federal, State, or local codes, ordinances, or simply considered reasonable and necessary for the operation of the business, may be considered by the department as reestablishment expenses by requesting a waiver from the FHWA. If a waiver is granted, the costs for these types of improvements or modifications are eligible for reimbursement, up to the amount of $33,200. By contrast, a structure or shell which is dilapidated or is in disrepair and which requires construction, reconstruction, or rehabilitation would not be eligible for reimbursement.

6.10.3 Filing the Claim for Payment

A completed and properly documented Eligible Reestablishment Expenses for Small Business, Farm or Non-Profit Organization Worksheet form (LA 61003) must be used and filed with the Claim for Moving Expenses form (LA 60918) when such expenses are claimed. Documentation supporting the expenses being claimed must be included.

6.10.4 Fixed Payment for Moving Expenses

6.10.4.1 *Residential Fixed Payment*

Any person displaced from a dwelling, a seasonal residence, or a dormitory style room is entitled to receive a fixed moving cost payment as an alternative to a payment for actual moving and related expenses. This payment will be determined according to the Fixed Residential Moving Cost Schedule (Exhibit LA 60908). The FHWA publishes and periodically updates this schedule on their website.

The department may determine that the storage of personal property is a reasonable and necessary moving expense for a displaced person when using the provisions for a residential fixed moving payment. The determination shall be based on the needs of the displaced person; the nature of the move; the plans for permanent relocation; the amount of time available for the relocation process; and, whether storage will facilitate relocation. If the department determines that storage is reasonable and necessary in conjunction with this payment, the department shall pay the actual, reasonable, and necessary storage expenses according to Item 4 in Section 6.9.13. However, regardless of whether storage is approved the residential fixed moving payment is a one-time payment for one move from the displacement dwelling to the replacement dwelling, dwelling, or storage facility. The displaced persons must be fully informed that reimbursement of costs to move the personal property to storage and the cost of approved storage represent a full reimbursement of their eligibility for moving costs under these provisions.

For the purpose of implementing this program, a room is generally defined as a permanently enclosed area consisting of a least 70 square feet. No firm rule can be set as to exactly what constitutes an enclosed area, but as a guide it should be a natural and normal room enclosure of any house or suitable living structure, including a completely enclosed porch, which is furnished and utilized as a room. (An "L" shaped living room with a furnished dining area could reasonably be construed as two rooms of furniture.) A kitchen with a divider bar and a dinette set would not be considered two rooms. Attics, utility rooms, garages, small sheds, basements, laundry rooms, etc., that are used for general storage and such other uses, are not to be considered separate rooms as most dwellings are considered to have such storage and the cost of the same and has been considered in developing the reimbursement schedule. If any of the above-mentioned spaces are actually being utilized as living quarters or contain above average personal property, such as a bedroom in the attic, family room in the basement, etc., they may be considered as an additional room if warranted in the judgment of the department. A playroom, a tool room, bathroom, or sewing room would not normally be considered an additional room except when, in the judgment of the department, they are furnished to the degree necessary to be considered another room of furniture. Exceptional cases may be found where an occupant has furniture stored for some reason. If the quantity stored constitutes at least one room of furniture or more, the additional rooms should be included when calculating the payment to be made.

If the displaced person elects to accept the allowable payment under the fixed residential moving cost schedule all that is required is that they complete the move and file a written claim for payment of the exact amount determined from the schedule. Supporting evidence of the cost incurred or information as to how the move was accomplished is not required.

6.10.4.2 *Filing the Claim for Payment*

A completed and properly documented Claim for Moving Expenses form (LA 60918) will be used to claim a fixed moving payment for individuals or families.

6.10.5 Business Fixed Payment

A displaced business may be eligible to choose a fixed payment in lieu of payments for actual moving and related expenses, and actual, reasonable reestablishment expenses. Such fixed payment will equal the average annual net earnings of the business, as computed in Section 6.10.8, but not less than $1,000 nor more than $53,200.

A displaced business is eligible for a fixed payment if the department determines that the business:

- Owns or rents personal property which must be moved in connection with such displacement and for which an expense would be incurred in such move, and the business vacates or relocates from its displacement site;
- Cannot be relocated without a substantial loss of its existing patronage (clientele or net earnings). A business is assumed to meet this test unless the department determines that it will not suffer a substantial loss of its existing patronage;

- Is not part of a commercial enterprise having more than three other entities which are not being acquired by the department, and which are under the same ownership and engaged in the same or similar business activities;
- Is not operated at a displacement dwelling solely for the purpose of renting such dwelling to others;
- Is not operated at the displacement site solely for the purpose of renting the site to others; and
- Contributes materially to the income of the displaced person during the two taxable years prior to displacement.

If the business elects the fixed payment for moving expenses option, the payment represents its full and final payment for all relocation expenses. Should the business elect to receive this payment, it would not be eligible for any other relocation assistance payments including actual moving or related expenses, or reestablishment expenses.

6.10.5.1 *Determining the Number of Businesses*

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

- The same premises and equipment are shared;
- Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled;
- The entities are held out to the public, and to those customarily dealing with them, as one business; and
- The same person, or closely related persons own, control, or manage the affairs of the entities.

6.10.6 Farm Operation Fixed Payment

A displaced farm operation may choose a fixed payment in lieu of the payments for actual moving and related expenses, and actual reasonable reestablishment expenses, in an amount equal to its average annual net earnings, as computed in Section 6.10.8, but not less than $1,000 or more than $53,200.

In the case of a partial acquisition of land that was a farm operation before the acquisition, the fixed payment will be made only if the department determines that:

- The acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land; or
- The partial acquisition caused a substantial change in the nature of the farm operation. The term farm operation encompasses all farm related agri-business activities conducted on the premises acquired.

If a farm operation elects the fixed payment for moving expenses option, the payment represents its full and final payment for all relocation expenses. Should the farm elect to receive this payment, it would not be eligible for any other relocation assistance payments including actual moving or related expenses, or reestablishment expenses.

6.10.7 Non-Profit Organization Fixed Payment

A non-profit organization may choose a fixed payment of not less than $1,000 or more than $53,200 in lieu of payments for actual moving and related expenses and actual reasonable reestablishment expenses, if the department determines that it cannot be relocated without a substantial loss of its existing patronage (membership or clientele). A non-profit organization is assumed to meet this test unless the department demonstrates otherwise. Any payment in excess of $1,000 must be supported with financial statements for the two 12-month periods prior to the acquisition. The amount to be used for the payment is the average of two years annual gross revenues less administrative expenses. Gross revenues may include membership fees, class fees, cash donations, tithes, and receipts from sales or other forms of fund collection that enables the non-profit organization to operate. Administrative expenses are those for administrative support such as rent, utilities, salaries, advertising and other like items, as well as fund raising expenses. Operating expenses for carrying out the purposes of the non-profit organization are not included in administrative expenses. The monetary receipt and expense amounts may be verified with certified financial statements or financial documents required by public agencies.

If the average annual net earnings for the non-profit organization is determined to be less than $1,000, even $0 or a negative amount, the minimum payment of $1,000 will be provided.

If a non-profit organization elects the fixed payment for moving expenses option, the payment represents its full and final payment for all expenses. Should the non-profit organization elect to receive this payment it would not be eligible for any other relocation assistance payments including actual moving or related expenses, or reestablishment expenses.

Other requirements, such as requesting payment eligibility, payment determination, period of operation, required information, notification of receipt of the request for a determination and filing of the claim for payment are the same as for a business.

6.10.8 Average Annual Net Earnings for a Business or Farm Operation

The average annual net earnings of a business or farm operation is one-half of its net earnings before federal, state, and local income taxes during the 2 taxable years immediately prior to the taxable year in which it was displaced.

If the business or farm was not in operation for the full two taxable years prior to displacement net earnings will be based on the actual period of operation at the displacement site during the two taxable years prior to displacement, projected to an annual rate. Average annual net earnings may be based upon a different period of time when the department determines it to be more equitable. Net earnings include any compensation obtained from the business or farm operation by its owners, the owner’s spouse, and dependents. The displaced person will furnish the department proof of net earnings through income tax returns, certified financial statements, or other reasonable evidence which the department determines is satisfactory.

The average annual net earnings for a business or farm operation must contribute materially to the income of the displaced person during the 2 taxable years prior to displacement. This does not mean that the business or farm operation needed to be in existence for a minimum of 2 years prior to displacement to be eligible for this payment.

If the business or farm operation has been in operation for only a short period of time (i.e., 6 months) prior to displacement, the fixed payment would be based on the net earnings for the actual period of operation projected to an annual rate. If a business or farm operation was not in operation for a full 2 years, the existing net earnings income data should be used to project what the net earnings could be if it was in operation for a full 2 years. If the business is seasonal, the business' operating season net income represents the full annual income for the purposes of calculating this payment.

For Examples:

- Business in operation for only 6 months earned $10,000.

  Computation: ($10,000 / 6) X 12 = $20,000
  Annual net earnings x 2 years = $40,000
  Divided by 2 = $20,000
  Eligibility = $20,000

- Business in operation 18 months

  Computation: $20,000 / 18 = $ 1,111 per month
  $ 1,111 x 24 = $26,664 / 2 years = $13,332
  Eligibility = $13,332

- Business is seasonal – open summer only for only 4 months

Computation:	Earnings year 1 =	$ 5,000
	Earnings year 2 =	$ 6,000
	Total	$11,000 / 2 = $5,500

  Eligibility = $5,500

If the annual net earnings of the displaced business or farm are determined to be less than $1,000, even $0 or a negative amount the minimum payment of $1,000 will be provided.

6.10.9 Request for a Determination of Eligibility

Departmental approval must be given before a displaced business, farm operation or non-profit organization may claim a fixed payment in lieu of moving and related expenses. A Request for Determination of Eligibility for a Fixed Payment in Lieu of Moving Expenses form (LA 61009A) including appropriate income verification must be submitted to the department. This request will be reviewed and a determination of eligibility to receive such payment will be made. The actual amount of the payment will be based on the facts that exist on the date the acquired property is vacated.

A Notice of Receipt for Determination of Eligibility for a Fixed Payment in Lieu of Moving Expenses form (LA 61009B) must be used to notify the business, farm operation or non-profit organization of the review determination. If the business, farm operation or non-profit organization is determined to be ineligible for such payment, the notification must include reasons for the ineligibility.

6.10.10 Filing the Claim for Payment

If determined to be eligible for this payment, the business, farm operation or non-profit organization will be instructed to complete the move and to submit a claim for payment using a Claim for Fixed Payment in Lieu of Moving Expenses form (LA 61010).

6.11 *UTILITY RELOCATION*

Section 405(d) of the Uniform Relocation Assistance and Real Property Acquisition Polices Act of 1970, as amended, does not apply to federally-assisted highway projects. The relocation of utilities and federal reimbursement for eligible costs are governed by 23 U.S.C. 123. The applicable regulations are set out in 23 CFR 645, Subpart A. Payments for public utility relocation's on federally-assisted highway projects can qualify for reimbursement only under Title 23.

6.12 *CLAIMS FOR RELOCATION PAYMENTS*

6.12.1 Documentation

Any claim for a relocation payment must be supported by documentation such as bills, certified prices, appraisals, or other evidence of such expenses deemed acceptable by the department. The department will provide the appropriate claim forms to the displaced persons and will provide reasonable assistance to complete and file any required claim for payment. One copy of the signed relocation claim, documentation supporting the amount of the claim, the code stamp and the schedule must be forwarded to CBLA for approval and processing.

6.12.2 Expeditious Payments

The department will review claims in an expeditious manner. The claimant will be promptly notified as to any additional documentation that is required to support the claim. Payment of a claim will be made as soon as feasible following receipt of proper documentation to support the claim and approval by CBLA.

6.12.3 Advanced Payments

If a displaced person demonstrates the need for an advanced relocation payment in order to avoid or reduce a hardship, the department will issue the payment, subject to such safeguards as are appropriate to ensure that the objective of the payment is accomplished.

6.12.4 Time for Filing

In addition to meeting all other eligibility requirements for a relocation payment, the displaced individual, business, farm operation, or non-profit organization must file a written claim for payment on a form provided by the department, adequately supported by receipted bills or other acceptable evidence of expenses incurred. All claims for a relocation payment will be filed with the department no later than 18 months after:

- For tenants, the date of displacement; or

- For owners, the date of displacement or the date of the final payment for the acquisition of the real property, whichever is the later.

This time period will be waived by the department for good cause.

6.13 *RECORDS*

Section 1.1.1 and Section 8.9 address the retention and reporting requirements for land acquisition records in general. Specific requirements for the records related to relocation assistance activities and payments are described herein.

The Land Acquisition Management System (LAMS) is an important tool which must be used for tracking the progress of relocation activities. Before the first relocation contact can be made, the district must input information relating to each relocation unit or parcel into the relocation screen in LAMS. Then as the various milestones are reached for each unit or parcel, the district must update the appropriate dates and information required in LAMS.

When relocation assistance activities have been completed and the payments processed for a given relocation unit or parcel, the relocation completion date must be promptly entered in LAMS. Entry of this date automatically removes the unit or parcel from the construction status report and helps to clear the project for letting.

6.13.1 Relocation Assistance Unit Record

As a permanent record of the relocation assistance offered and provided, a Relocation Assistance Unit Record (Residential) form (LA 61301A) or Relocation Assistance Unit Record (Business, Farm or Non-Profit Organization) form (LA 61301B), as applicable, will be kept for each relocation unit or parcel. The relocation agent must initiate the unit record no later than 24 hours after the initiation of negotiations for that parcel, and update the unit record on an on-going basis. The Relocation Assistance Parcel Checklist (LA 61301C) is used in conjunction with the unit record as a tool to insure that all appropriate relocation assistance functions have been completed.

When the relocation activities for a given unit or parcel have been completed and all claims for relocation payments have been submitted to CBLA, the unit record must be completed and placed in the district parcel file as a permanent record. A copy must also be forwarded to CBLA.

6.13.2 Moving Expense Payment Records

The following information must be maintained in the district regarding moving expense payments:

- Business
  - Certified inventory of the personal property being moved, or photographs documenting items to be moved;
  - Properly documented moving bids or estimates;
  - Executed claim for payment including the supporting documentation;

- Request for determination of entitlement for payment in lieu of moving expenses and supporting documentation;
- Notice of receipt of determination of entitlement for payment in lieu of moving expenses;
- Executed claim for payment in lieu of moving expenses, including income tax returns or other financial data deemed necessary to support the claim; and
- Notice of receipt of claim for moving expenses or payment in lieu of moving expenses.

- Residential
  - Executed claim for moving expenses including support documentation if reimbursement of actual expenses is claimed; and
  - Notice of receipt of claim for moving expenses.

6.13.3 Replacement Housing Payment Records

The following information regarding replacement housing payments must be maintained:

- Replacement housing eligibility computation and supporting documentation;
- Replacement housing listings if requested by the displaced person;
- Notice to vacate;
- Executed claim, including support of the purchase price or rental of the replacement dwelling, eligible incidental expenses and the mortgage interest differential;
- Decent, safe, and sanitary inspection; and
- Notice of receipt for replacement housing claim.

6.13.4 Miscellaneous Documentation

The following documentation must also be a part of the permanent file for each relocation unit:

- All correspondence pertaining to relocation activities; and
- Notes of additional explanation for methods used to accomplish relocation, when required.

The relocation records described above must be available for inspection any time during working hours by state or federal employees and must be retained for at least three years after the final voucher for the project is submitted. Federal regulations provide that records maintained by an agency in accordance with these regulations are confidential regarding their use as public information, unless applicable law provides otherwise.

6.13.5 The Uniform Act Relocation and Real Property Statistical Report

If there is federal participation in right of way acquisition and/or construction or other costs on a state or local public agency project, a summary report on activities under the Uniform Act must be submitted to the FHWA annually. The report will cover activities during the federal fiscal year immediately prior to the submission date. The Uniform Act Relocation and Real Property Acquisition Statistical Report form (LA 61305) is be used for this report. The report will be prepared by CBLA and developed from the information in LAMS. Therefore, it is important that LAMS be kept up to date and accurate.

6.14 *DISPUTE OF CLAIMS*

If relocation assistance advisory services, payments, or the amount of the payment is denied, in whole or in part, the district will notify the aggrieved person in writing of the denial or revised amount of the claim, including the basis for the district's determination. The written notification will also inform the person of their right to request a review of the determination and include the procedures to be followed when requesting a review. Prior to any review, the aggrieved person will be permitted to inspect and copy all materials pertinent to their review except materials that are classified as confidential.

The aggrieved person, or a representative, will be afforded a full opportunity to be heard and to present information or documentation in support of their position. Representation by another person will be at the sole expense of the aggrieved person.

6.14.1 District Review

The first review is by the Regional Engineer. An aggrieved person may file a written request for review within ninety (90) calendar days after receipt of written notification of the district's determination. The request for review will be filed with the Regional Engineer at the address provided in the written notification. If the aggrieved person does not file a request for review within ninety (90) calendar days after receipt of written notification of the district's determination, the aggrieved person will be deemed to have waived their opportunity to file a request for review. In that case, the determination will stand, and the department will take appropriate action to implement the determination and/or process the approved amount of the claim, if any, for payment. A written request for review will be considered regardless of form.

Upon receipt of the request for review, the Regional Engineer will assign a date and place for the review meeting. Written notification of the date and place will be provided to the aggrieved person by certified mail, return receipt requested, or by other approved means (see Section 6.2) at least ten (10) days prior to the scheduled date for review. The Regional Engineer cannot have been directly involved in the actions being reviewed.

6.14.2 Determination and Notification of the Regional Engineer Review Finding

The Regional Engineer will render a decision based upon the facts presented and the law. Written notification of the decision will be sent by certified mail, return receipt requested, or by other approved means (see Section 6.2) within thirty (30) calendar days after the date of the review.

If the Regional Engineer's decision upholds the denial of eligibility for relocation assistance advisory services or payments, in whole or in part, the written notification will detail the reasons supporting the denial and will also advise the aggrieved person of their right, if dissatisfied with the decision, to request a final review by the Director. If the aggrieved person does not request a final review within thirty (30) calendar days after written notification of the decision, the aggrieved person will be deemed to have waived their opportunity to file a request for a final review. In that case, the Regional Engineer's decision will stand, and the district will take appropriate action to implement the decision and/or process the approved amount of the claim, if any, for payment.

6.14.3 Final Review

An aggrieved person may request a final review by notifying the Regional Engineer in writing at the address provided in the written notification of the decision. The Regional Engineer will forward the request to the Director and provide a copy to the Engineer of Land Acquisition. A written request for final review will be considered regardless of form.

Upon receipt of the request for a final review, the Director will assign a date and place for the final review meeting. Written notification of the date and place of the final review will be provided to the aggrieved person by certified mail, return receipt requested, or by other approved means (see Section 6.2) at least ten (10) days prior to the scheduled date of the final review. The Director or their designee cannot have been directly involved in the action being reviewed.

6.14.4 Determination and Notification of the Final Review

The disposition of the final review will be based upon the facts presented and the law. Written notification of the final decision and the reasons supporting the decision will be sent by certified mail, return receipt requested, or by other approved means (see Section 6.2) within thirty (30) calendar days after the date of the final review.

The district will take appropriate action to implement the Director's determination and/or process the approved amount of the claim, if any, for payment.

The Director or his/her designee's decision is final. The aggrieved person will be advised of their right to seek redress through judicial review.

The Director or his/her designee may extend any time period provided in this section for up to thirty (30) days upon written request from either the aggrieved person or the Regional Engineer.

Table of Contents

7 PROPERTY MANAGEMENT

7.1 *GENERAL*

Property management is that function of the right of way acquisition process concerned with the management of right of way and improvements, including the disposition of such improvements, until such time as the acquired right of way is needed for state highway construction purposes. Property management also includes the inventory, management and disposition of excess property that has been determined to be no longer needed for state highway purposes, and the leasing of operating highway right of way to others for non-highway related uses.

The Federal Highway Administration (FHWA) requires the department to manage all real property interests that have been acquired, as well as having clear guidance for the disposal of those interests. Real Property Interest are defined as "any interest in land and any improvements thereto, including fee and less-than-fee interests such as: temporary and permanent easements, air or access rights, access control, options, and other contractual rights to acquire an interest in land, rights to control use or development, leases, and licenses, and any other similar action to acquire or preserve right of way for a transportation facility. As used in this part, the terms "real property" and "real property interest" are synonymous unless otherwise specified." 23 CFR Part 710.105.

The department's Land Acquisition Management System (LAMS) and Non-Operating Right of Way (NORWAY) databases are important tools for its property management role. It is essential that all data pertaining to property management be entered into LAMS or NORWAY as appropriate, once that data is available.

7.1.1 Organizational Responsibility

The Central Bureau of Land Acquisition (CBLA) is responsible for developing, evaluating and interpreting the policies and procedures for planning and implementing the statewide land acquisition program. Responsibility for the statewide property management function is delegated to the Acquisition and Management Section of CBLA and the Relocation and Property Management Unit within that section.

The district bureaus/sections of land acquisition (DLA) are responsible for implementing these policies and procedures within their respective districts. Responsibility for the property management function is delegated to the property management section or unit within DLA.

7.1.2 Regulatory / Statutory Authority and Requirements

Many of the procedures for implementing the property management function are federally regulated or guided by specific statutory authority or requirements. Those regulations and statutes, which in whole or in part affect the property management function, are:

23 CFR Part 710 - Right of Way and Real Estate

23 CFR Part 710.105	Definitions
23 CFR Part 710.201(e)	Record Keeping
23 CFR Part 710.403	Management

23 CFR Part 710.405	Right of Way Use Agreements
23 CFR Part 710.409	Disposal of Excess Property

Chapter 20 - Executive Branch

20 ILCS 2705/2705-550	Transfer of realty to other state agency; acquisition of federal lands
20 ILCS 2705/2705-555	Lease of land or property

Chapter 30 - Finance

30 ILCS 105/6r	Money received from the rental of land, buildings or improvements
30 ILCS 500	Illinois Procurement Code
30 ILCS 562/1.5	State Real Property Leasing Act

Chapter 35 - Revenue

35 ILCS 200/9-195	Leasing of (tax) exempt property
35 ILCS 200/15-10	(Tax) Exempt property; procedures for certification
35 ILCS 200/15-15	Obligation to file copies of leases or agreements
35 ILCS 200/15-55	State property (tax exempt)

Chapters 425 and 430 - Fire and Public Safety

425 ILCS 60	Smoke Detector Act
430 ILCS 135	Carbon Monoxide Alarm Detector Act

Chapter 605 - Roads and Bridges

605 ILCS 5/4-201.1	Power to adopt rules, regulations and specifications
605 ILCS 5/4-201.16	Rental of lands, buildings or improvements; annual report of rented parcels to the General Assembly
605 ILCS 5/4-501	Acquisition of land, rights, or other property for state highways - eminent domain
605 ILCS 5/4-508	Sale or exchange of lands not needed - Conveyances to governmental agency/not-for-profit organizations - Conveyances to other highway authorities

The department, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d; 78 Stat. 252), the regulations of the U.S. Department of Transportation, 49 CFR 21 implementing such Act, and the Illinois Human Rights Act (775 ILCS 5/) will affirmatively ensure that no person shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity on the grounds of race, color, religion, sex (including gender identity and sexual orientation), familial status, national origin, or disability.

All aspects of property management must conform to the requirements of the Americans with Disabilities Act (ADA) (42 U.S.C. 12101 et. seq.) and the Illinois Environmental Barriers Act (410 ILCS 25/).

According to the current Stewardship and Oversight (S&O) Agreement between the FHWA and the department, property management approvals on the interstate system are the responsibility of the FHWA and approvals for the National Highway System (NHS) have been delegated to the department.

7.2 *PRE-NEGOTIATION REQUIREMENTS*

7.2.1 Inspection of Buildings and/or Improvements

Buildings and/or improvements situated on land to be acquired are inspected by the appraiser and review appraiser assigned to the parcel, as well as the district's property manager and/or relocation manager. The buildings and/or improvements are then listed on the Project Inventory of Buildings/Improvements form (LA 70201). The purpose of this inspection and inventory is to determine and compile complete lists of items to be considered as real and personal property. These lists are used by the appraiser for inclusion in the appraisal; by the relocation unit for future determination and verification of items moved and actual moving costs; and by the property management unit for determining owner retention, rental and sale values, inventory, management, and disposition of acquired buildings and/or improvements.

In exceptional cases it may be necessary to obtain legal advice on any questionable determination of items of real or personal property. In any event, the lists of personal and real property are compiled and available for use by the property manager in establishing owner retention, rental and public sale values prior to releasing the approved appraisal for initiation of negotiations.

As a part of the property inspection, the type, number, and condition of the buildings and/or improvements to be acquired are noted. If the buildings are not to be rented, the most feasible method of disposition is considered, i.e., by sale, demolition contract or inclusion in the highway construction contract for removal by the contractor. This information is then added to the appropriate screen in LAMS.

During the inspection particular attention is given to the condition of land improvements, such as wells, cisterns, underground storage tanks and septic systems that could become health, environmental and safety hazards. These items are noted in the file for possible future remedial measures. Procedures for proper disposition of these items are discussed in detail in Section 7.4.

7.2.2 Preparing the Inventory

Items specifically identified in the approved appraisal as improvements or fixtures that have a value for sale as individual items, and which can be disposed of separately from the building(s), are reported in LAMS, then managed and disposed of in the same manner as the building(s). Examples of such improvements or fixtures are equipment, and/or integral plant equipment necessary for the operation of a business, fencing, bar equipment, wall cabinets, air conditioning units, heating plants, water heaters, water pumps, gas pumps, etc. Each individual item is given a distinct unit number, e.g., unit 1, unit 2, etc., for reporting purposes.

Nursery stock, regardless of minimum resale value, is inventoried, accounted for, and disposed of in the same manner as building improvements. If nursery stock is acquired in quantity, the district landscape architect is provided with a complete inventory of the stock, listing the kind (species), number, size, and estimated date of availability. Use the Classification and Disposition Values of Nursery Stock form (LA 70202) for nursery stock inventory.

If any nursery stock is not to be retained for use within the district, this information is then forwarded to the Bureau of Design and Environment (BDE) who determines if such stock is retained for use on other state highway projects.

7.2.3 Establishing Values

Prior to initiation of negotiations on the parcel, a Disposition and Rental Values of Buildings/Improvements form (LA 70203) is prepared. This requires that for each item inventoried a determination is made of:

- Owner retention value
- Public sale value
- Rental value (per month)

When establishing the owner retention and public sale values of buildings, the estimates of value are supported by references to comparable sales of similar buildings, adjusted for time, condition of the improvement, etc., and then further adjusted, on the basis of judgment and experience. The variables considered include availability and cost of vacant land, availability of moving contractors, probable moving costs, costs of any permits or fees, costs of any utility adjustments, availability of financing, other estimated restoration costs and probable restored market value and demand in the market. A source of supportive data is past owner retentions and public sales of comparable buildings and other improvements by the department with appropriate adjustments for location or other influencing factors.

When establishing values of items other than buildings, such as irremovable items, they are supported by reference to the appraisal, prior sales conducted by the department of similar property, or by contacting individuals having knowledge of such values. It is permissible to either value each item individually or one value may be established for a group of items so long as each item is listed within that group. Adjustments may be necessary on the basis of judgment and experience for removal costs, condition of property and such variables that are unique to each item.

When establishing the current rental rate for buildings, it is supported by references to comparable rentals of similar improvements with appropriate adjustments for location, condition, etc., and then further adjusted, on the basis of judgment and experience, for short term occupancy. Comparable buildings rented by the department are a good source of data for this purpose. An appraisal can be used to establish the rental rate but is not required if the value of the property is less than current waiver valuation levels. Rental rates are discussed further in Section 7.5.9.3.

7.3 *NEGOTIATION ACTIVITIES*

When the property being acquired includes buildings and/or improvements, the assigned negotiator should become familiar with the property management procedures so they are able to discuss all the details and requirements for owner retention, public sale, rental, vacancy and possession with the property owner during their negotiations.

7.3.1 Owner Retention

During negotiations every effort is made to settle with property owners on the basis that they will retain ownership of the buildings and/or improvements on the land to be acquired and assume responsibility for their removal. If the owner is willing, and it is considered economically practicable, insofar as the state is concerned to conclude negotiations on this basis, a credit is made on the total agreed consideration for the acquisition of the property for the amount of the previously established owner-retention value.

The terms for settlement and requirements for removal of the building(s) and/or other improvements are embodied in a written Retention Agreement (LA 70301 Template). Provisions of the agreement template not applicable or not required for a particular parcel should be struck through and initialed/dated by each party. It is clearly set out in the agreement that the owner's equity (total consideration less the owner retention credit to the state) is requested in two separate warrants. The second warrant represents a minimum of 10% of the (retention) value of the retained improvements as a performance deposit retained by the district to assure satisfactory removal and clearance of the right of way by the owner in accordance with the agreement. The amount of this warrant may, however, be increased at the discretion of the Regional Engineer.

As an alternative, particularly if removal is expected to take six months or longer, only one warrant need be requested for the full amount of the owner's equity. However, the owner must agree to deposit with the district their own certified check, bank draft, or money order for the amount of the required performance deposit. This is an acceptable alternative since state warrants are not honored for payment after six months from the date of issuance; and as a consequence, warrants not canceled within six months are returned for re-issuance.

The retention agreement also specifies the period of time within which the owner must remove the improvements and clear the right of way; which as a rule, should be no more than 90 days from the date payment is made to the owner. However, the owner may request a longer period of time to which the Regional Engineer might agree, provided the acquired right of way is not needed for construction of the proposed project in the immediate future. When the removal and clearance operation is expected to extend beyond a 90-day period immediately following the acquisition, the owner is expected to enter into a rental agreement for occupancy of the land on which the retained improvements are situated. This will require that a current rental value for the land is established.

In cases where the owner has agreed to removal and clearance of the right of way within the 90 day period and it becomes apparent that the operation cannot be completed within that period because of extenuating circumstances, the owner may request in writing and be granted up to an additional 30 days rent free, in which to complete the removal and clearance operation. Such extensions are only granted where there is evidence that the owner has been making a concerted effort to complete the removal within the initial period and circumstances beyond the control of the owner have delayed the operation. The file is documented to substantiate any extension of time beyond the initial period.

Upon notification by the owner of completion of the removal, the district property manager inspects the property. If it is determined that the owner has satisfactorily cleared the right of way in accordance with the terms of the agreement, the performance deposit may then be released to the owner.

If it is determined that the right of way has not been cleared in accordance with the terms of the agreement, the property manager will immediately remind the former owner in writing of their responsibility to comply with the agreement. If the former owner does not comply within a reasonable time, the property manager will take immediate and appropriate action necessary to satisfy the terms of the agreement. Where completion of the removal must ultimately be accomplished by others at the direction of the district, the costs thereof will be immediately paid by the former owner in full by certified check, draft or money order at which time the performance deposit may be released. The owner's refusal or failure to perform or pay such removal costs will be sufficient grounds for forfeiture of the performance deposit to the state as liquidated damages.

7.3.2 Acquired Improvements

Any improvements being acquired as part of the right of way that are not retained by the owner will become the property of the state. As in any real estate transaction, it is the responsibility of the seller to protect, preserve and maintain the property being sold until the time they surrender possession of the property to the buyer.

The Regional Engineer at their discretion may request the owner's equity in two separate warrants. This would serve to assure that a property owner, either as the occupant or as a landlord, will assume responsibility in delivering the acquired property to the state in the best possible condition. Where two separate warrants are requested, the second warrant should represent a minimum of 10% of the value of the acquired improvements. The amount of this warrant may be increased at the discretion of the Regional Engineer.

This warrant is to be retained by the district as follows:

- If property is owner-occupied - until the latter of either:
  - The last day the premises are occupied by the owner; or
  - The date on which the state takes title to the property (final payment made and deed recorded or deposit of court award and Order Vesting Title entered); or
  - The effective date of a rental agreement with the owner.
- If property is tenant-occupied – until the latter of:
  - The last day the premises are occupied by the tenants; or
  - The date on which the state takes title to the property (final payment made and deed recorded or deposit of court award and Order Vesting Title entered.

These provisions are subject to the district's inspection of the property that will show if any of the acquired improvements and/or fixtures have been damaged or removed.

If it is determined that any improvements and/or fixtures have been unlawfully damaged in any way, or removed, the property manager will immediately estimate the value of those items and the former property owner will be required to reimburse the state for the full amount of the estimated damages, if any, and the value of improvements removed from the premises. Payment should be by certified check or money order at which time the security deposit may then be released to the owner.

7.3.3 Rental to Existing Owner/Tenant Occupant

Both improved and unimproved right of way acquired for future state highway construction should be rented if the construction schedule permits, the land and/or building(s) are in rentable condition, and there is a market for such rental. It is advantageous for the department to rent right of way during the interim period before the construction letting for various reasons: rental proceeds help to offset acquisition costs; vandalism, unlawful occupancy, illegal dumping and hazardous conditions can be deterred; and usable and sound buildings can be preserved for future sale. Rentals also provide interim housing for owner or tenant occupants in the process of locating or building replacement housing or business establishments.

It should be known or determined during the beginning of negotiations if the construction schedule is far enough in the future to permit the interim rental of the property. If the schedule will permit and buildings or land would be suitable for rental, the following steps should be taken during the negotiation and acquisition process for the parcel:

- **Existing Occupant Interviews** – In connection with either negotiation and/or relocation assistance interviews with the existing occupants, it should be evaluated to tentatively determine their plans for relocating and vacating the parcel. The occupants should be informed at an early date of the availability of the property for rental to assist them in their future plans.

- **If Owner-Occupied** – At the time of reaching a negotiated settlement for acquisition of the property or as soon thereafter as possible, the owner-occupant should have decided whether they wish to remain on the property under a rental agreement, or if they intend to vacate and give physical possession of the property to the state. In either case, this choice must be made within 30 days after the state makes payment for and takes title to the property. It is preferable that all terms of rental or vacation of the property be embodied in the settlement agreement. <u>Properties acquired under hardship provisions should not be rented back to the person from whom the property was acquired.</u>

- **Condemnation** – Where acquisition is by condemnation proceedings, this information may not be obtainable until after the quick take hearing but should be obtained prior to the deposit of preliminary just compensation and will require coordination with the Special Assistant Attorney General handling the case for the department.

- **If Tenant Occupied** – Tenant occupants should also be contacted soon after the settlement has been reached with the owner (or after the quick take hearing) to determine if they wish to remain on the property under a rental agreement, or if and when they expect to vacate the property. In either case, a rental agreement must become effective or the property vacated within 30 days after the state makes payment for and takes legal title to the property.

- **Land and Building Vacation** – The vacation of acquired land and buildings by the existing owner/tenant occupants is discussed in detail in Section 7.4.1.

- **Current Rental Rates** – It may be that considerable time has lapsed or changing conditions will warrant a reevaluation and possible adjustment of the previously established rental rate. If the previously established rental rate is either increased or decreased, a revised Disposition and Rental Values of Buildings/Improvements form (LA 70203) will be prepared and inserted in the parcel file.

Rental of department property is discussed in more detail in Section 7.5 but the following considerations when renting to existing owners or occupants should be addressed in the acquisition process.

7.3.3.1 *Rental Considerations – Improved Residential or Commercial*

Any existing owner or tenant occupant who elects to remain as a resident or business occupant on the acquired property under a rental agreement will not be permitted more than 30 days rent-free occupancy. Therefore, when payment for the property is made to the owner, or as soon as possible thereafter, the effective date of the rental agreement should be established and the rental agreement executed. The effective date may be adjusted to begin at any time within the 30 days immediately following payment for the property so as to coincide with the typical monthly billing period. The first rental payment is then due no later than the effective date of the agreement.

Once the department has paid for the property, by delivering a warrant or depositing the amount of court-established just compensation, the former owner(s) and/or tenant(s) occupying the property must be provided with a 30-day specific date notice to vacate the property. This 30-day notice cannot be given until such time as the department has title to the property. No rent will be charged during this 30-day period. After this initial 30 days, the department must charge rent for any continued occupancy of the property. If the occupant(s) remain on the property with department approval, the department and the occupant are required to enter into a rental agreement and rent must be charged. The rent may be pro-rated for periods less than one month in duration, but rent payments are required. There are no legal exceptions to this requirement. If the occupants pay no rent after the initial 30-day period, the amount of rent not collected must then be considered as revenue or income to the occupant for state and federal income tax reporting purposes. A 1099 S/Miscellaneous must be prepared and sent to the occupant showing the “free rent” as income. This issue is not negotiable under property management, acquisition, or relocation policies.

In the case of a farm residence acquired in connection with other farm buildings, the residence should be rented as a separate rental unit on a month-to-month agreement. The farm buildings should be rented as a separate rental unit including rental of any acquired farmland on an annual crop basis.

7.3.3.2 *Rental Considerations – Unimproved Agricultural Land*

Where the department acquires farmland with existing crops and the construction schedule permits, the incumbent owner/tenant farm operator should be allowed to retain physical possession of the acquired crop acreage rent free through the current crop growing season in order that they may harvest any existing crops. If the land is acquired any time between annual crop growing seasons (i.e., after fall harvest and prior to spring planting when no growing crops exist) and the land is not expected to be used for construction during the next crop year, it will be necessary to enter into a rental agreement with the farm operator for planting and harvesting future crops. Any costs incurred by the operator for ground preparation and/or fertilization prior to the acquisition would be recoverable from the future crop under the rental agreement. Former owner landlords will not be included as a party to any rental agreement with a farmer tenant operator.

7.3.4 Outdoor Advertising Signs-Rental Prohibited

Illinois law (605 ILCS 5/9-112.1) states that no person will place or cause to be placed any sign or billboard or any advertising of any kind or description upon any state highway or any other highway outside the corporate limits of any municipality. Therefore, in keeping with the intent of this statute, any sign or billboard located upon newly acquired right of way will be required to be removed or relocated as set out in Chapter 9.

7.4 *POST-ACQUISITION ACTIVITIES*

7.4.1 Vacation and Physical Possession

District staff and/or the negotiator should determine whether or not the construction schedule allows and if the incumbent owner or tenant occupants will elect to remain in the acquired property at the time of the negotiated settlement or quick take hearing, or no later than the time payment is made to the owner. As soon as an estimated date for their vacating the property can be established, the property can be advertised for rental or tenants can otherwise be solicited (see Section 7.5.2). The actual date of vacancy by the existing occupants should be coordinated with the expected date the property will be available for a new tenant to occupy.

When the acquired property must be vacated by an owner or tenant occupant, or an owner of personal property located on the acquired property, such “displaced person(s)” must be given a 90-day notice of displacement and a 30-day specific date written notice to vacate the property (see Section 6.4 for more information on the required Relocation Notices). NOTE: The 30-day specific date written notice to vacate is used for relocation purposes and is not intended to be given to tenants under a lease or rental agreement with the state. Tenants under a lease or rental agreement will be notified in accordance with the provisions of the agreement which, as a general rule, also provides for a minimum 30-day notice.

Extenuating circumstances may prevent the current occupants from vacating the acquired property by the date specified in the 30-day specific date written notice to vacate. When an occupant requests an extension of time to remain beyond the initial 30-day free occupancy period (specified date of vacation), a maximum of 15 days may be granted subject to the occupant executing a rental agreement for the property effective on the first day following the initial specified date of vacation. The first month's rent will be due and payable on the effective date of the rental agreement with the understanding that if the occupant actually vacates the property within the allowed 15-day extension, the rental agreement will become null and void and their rental payment will be returned in full. It is permissible to retain the first month's rental payment in the district office through the 15-day period for the probable return to the occupant.

If the occupant remains on the property after the 30-day period and the department does not agree to enter into a rental agreement, the district must initiate eviction proceedings immediately.

7.4.2 Interim Protection of Property

Preventive measures should be taken against trespassing, vandalism, or fire if the buildings are expected to be unoccupied for any length of time. The building should be inspected on the date it is vacated to be sure that all utilities serving the property are either disconnected or at least temporarily shut off; eliminate any obvious fire hazards within or around the structure; and be sure that the structure is left securely locked. The property manager should also immediately notify local and state law enforcement or protective agencies of the status of the property and take such other protective measures as the situation demands and as may be available in the area and further document these actions in the files.

7.4.3 Rodent Control

Rodent control is intended to attempt to eliminate the migration of rodents from properties acquired as right of way for future highway construction to properties adjacent to such right of way. The district should inspect all improved properties immediately upon vacation by the occupants or, in the case of vacant buildings, when the state takes possession of the buildings. Such inspection should be made, and the necessary controls established, prior to the demolition or removal of improvements located within the right of way.

If the inspection indicates rodent control measures are necessary, the following steps must be taken immediately:

- The district will first contact and solicit the cooperation and participation of the appropriate local governmental agencies or units, such as the city and county health departments, and request that they assume responsibility for the control of rodents. If such agencies or units are agreeable, the project records should be so documented.
- If such local agencies or units are unable or unwilling to assume this responsibility, the district should proceed to obtain bids under those guidelines indicated in Section 7.6.5.
- Bids for this work must be obtained from qualified and responsible exterminators and the contract specifications in the Scope of Service will, at the minimum, contain the following requirements:
    - Describe the building or specific area to be baited. Bait is to be distributed throughout the buildings on 8 foot by 8 foot spacing.
    - The contractor must agree to prominently display warnings of baited areas and provide for the protection of the health and safety of persons, pets or domestic animals that may have access to the baited area.
    - The contractor will, at its own expense and in its own name, obtain all permits, certificates, and licenses required by the city of __________, the county of __________, the state of Illinois, and the United States of America, and will carry on all work under the contract in strict conformity therewith, and will save and keep harmless the state from any expense incurred thereby.
    - The contractor will be obliged to notify the district property manager at least twenty-four (24) hours in advance of the date the bait is to be placed. After the bait has been in place 96 hours (4 days), the undersigned will arrange for the collection and disposal of all uneaten bait and visible carcasses.

- The district may add other requirements in the Scope of Services of each contract as needed.

The district will thereafter be responsible for the supervision of the exterminating firm to ensure compliance with the specifications and standards established by the Illinois Department of Public Health and said specifications and standards must be made a part of each contract awarded.

Documentation of any inspections should be placed in the DLA file for each inspected property and include the decision made as to whether or not control measures should be instituted and the action taken.

The cost of providing such rodent control is eligible for federal participation and reimbursement in the same ratio and in the same manner as any other project cost.

7.4.4 Capping, Sealing, or Filling of Wells, Cisterns, Basements, Etc.

If property is not to be rented or sold as excess land and it is determined an existing water well, cistern or tank is hazardous to the health and/or safety of the community, immediate steps should be taken to seal the well and fill or remove the cistern or tank. This information should be added to the "Improvement" screen on LAMS.

Water wells are sealed according to the Bureau of Design and Environment (BDE) Manual and the Standard Specifications for Road and Bridge Construction. The Illinois Department of Public Health also has a Fact Sheet for Abandoned Wells located at the following website: http://www.idph.state.il.us/envhealth/factsheets/abndwlsFS.htm

Contract specifications are available in the district if it is necessary to fill or remove cisterns, basements, etc., as a property management activity. The cost of this activity is eligible for federal participation and reimbursement in the same ratio and in the same manner as any other project cost.

7.4.5 Soil Erosion and Sedimentation Control-Unimproved Lands

The Illinois Soil and Water Conservation Districts Act (70 ILCS 405) provides, among other things, for the control and preservation of soil erosion and sedimentation damages to all Illinois lands. This includes agricultural, non-agricultural and lands involving construction sites.

Section 27 thereof provides that “Agencies of this state which will have jurisdiction over, or be charged with the administration of, any state-owned lands, and of any county or other governmental subdivision of the state, which will have jurisdiction over, or be charged with the administration of, any county-owned or other publicly-owned lands, lying within the boundaries of any district organized hereunder, will cooperate to the fullest extent practicable with the directors of such districts in the effectuation of programs and operations undertaken by the directors under the provisions of this act.”

The water-quality management plan developed by the Illinois Environmental Protection Agency (IEPA) set a goal for reducing soil erosion on all Illinois cropland to a soil-loss tolerance level (“T” value). This level is the maximum average annual soil-erosion loss that may be permitted for sustained crop production at a reasonable cost and has been set at one (1) to five (5) tons per acre annually, depending on soil type.

By the aforementioned Act, the legislature has amended the Illinois Soil and Water Conservation District law to require all local Illinois Soil and Water Conservation districts to establish soil-erosion standards for the land in their districts. The local Soil and Water Conservation District should be contacted to assist in determining the soil type and appropriate control measures.

The district property manager will make every effort to successfully carry out this program on all acquired lands until such time as the acquired right of way is used for state highway construction or otherwise disposed of. Each parcel file should be documented to reflect all property management activities involving soil erosion and sedimentation control of such land. Additional assistance may be requested from CBLA.

7.5 *RENTING DEPARTMENT PROPERTY*

7.5.1 General

The department is authorized to lease any land or property that is not immediately to be used or developed by the state. Such leases or rental agreements must not be for a period of time longer than can reasonably be expected the state will not have use for the property (20 ILCS 2705/2705-555). It is beneficial for property to be used during the interim period before the construction letting or when the property is otherwise not needed for highway purposes. The rental proceeds help to offset the acquisition costs. The rental of such property deters vandalism, unlawful occupancy, and creation of hazardous or unhealthful conditions. It preserves usable and sound buildings for future sale and removal and prevents vacant land from becoming unsightly and overgrown with noxious weeds or from becoming a dumping ground for junk or trash. Such rentals also provide interim housing for owner or tenant occupants in the process of locating or building replacement housing or business establishments).

Several factors may influence the determination whether it will be feasible to enter into rental agreements for either improved or unimproved right of way. The most common issue is the project timing; the right of way acquisition may be near completion and the project is being scheduled for the earliest possible letting of a state highway construction or building demolition contract, or for scheduling of public sale of the buildings to be removed by the successful purchasers. The location or nature of the parcel may make the property unattractive or impracticable for rental.

Rental agreements and leases are both legal documents used to convey a leasehold property interest in real estate and may be used interchangeably in this manual. However, ultimately the type of property being leased will dictate which document should be used. The Rental Agreement (LA 70501 Template) is used for rental of non-operating right of way that are generally for a year or less, including month-to-month leases. Where operating highway right of way has been approved to lease for a non-highway related use, the process discussed in Section 7.10 should be followed and will result in a non-highway use agreement (formerly known as a lease) being executed.

7.5.2 Soliciting New Tenants

As soon as it is determined that the current owner or tenant occupants do not wish to remain or intend to vacate the property, every effort should be made to solicit prospective tenants. The public policy of the State of Illinois, expressed in its Procurement Code, is that the principles of competitive bidding shall apply to all contracts by or for any State agency. 30 ILCS 500/1-5. While right of way leases are governed by this manual, which is subject to federal requirements and approved by FHWA, each right of way parcel or rental unit should be leased through the public solicitation of bids for not less than the current market rental rate unless clear exceptions exist. Exceptions to this policy should be limited and documented.

7.5.3 Exceptions to Solicitation Requirement

If a parcel is deemed to be available for lease, the district will first examine if the parcel needs to be competitively bid. The parcel should be solicited for bids unless one of the following exceptions apply:

- lessee is immediate property owner or tenant remaining in the property to accommodate transition due to department project acquisition and relocation;
- property to be leased is inaccessible to other than the owner of only one abutting property;
- lessee is governmental entity or non-profit organization;
- previous solicitations yielded no bidders;
- the administrative cost of solicitation or maintenance outweighs the rental value of the property;
- the district deemed the property to be less desirable due to location, size, or condition;
- the leasing of the property is incorporated into the Phase 1 report as part of the NEPA process and approved by FHWA; or
- or when other unique circumstances exist that makes solicitation infeasible and where leasing without solicitation would not unreasonably benefit the lessor or frustrate the public policy of the State's Procurement code.

The district must document the facts justifying the exception, which must be approved in writing by the Regional Engineer. This documentation should be provided to CBLA with the fully executed Rental Agreement.

7.5.4 Advertising and Notice to Bidders

If solicitation is appropriate, the proposed leasing of space may be advertised to the public by news releases, legal notices, display ads or placing a notice in a local newspaper of general circulation. If notices are published in local papers, the notice will be published at least once each week for two consecutive weeks with bidding for the lease to be held within a reasonable time, no less than 48 hours, after the date of the last publication of the notice.

In all cases, the advertising notices are also made available on the department's website (https://idot.illinois.gov/doing-business/sales.html). The district must email a copy of the notice to the CBLA property manager who will have it placed on the site. If deemed appropriate in writing by the Regional Engineer, publication may be limited to only the department's website.

At a minimum, the notices should contain the following information:

- General description and location of the space to be leased, as well as the minimum market rental rate (as determined by the appraisal or equivalent).
- The date(s) and time(s) the space will be open for inspection (if appropriate).
- The date and time when sealed bids will be opened or oral bidding will commence.
- The location where sealed bids will be received and opened, or where the public auction will be conducted.
- The amount of the required performance deposit (if required).
- How to obtain a copy of the "Notice to Bidders and Bidder's Proposal" form (LA 70505). *Note, this form is pre-prepared by the district, prior to distribution to prospective bidders, by filling in the required information*.
- How to obtain a draft copy of the Rental Agreement (LA 70501 Template) showing the terms and conditions of the rental.
- The telephone number(s) of person(s) to be contacted for information concerning the lease, as well as the district's fax number and telephone deafness device (TDD) phone number.
- The following provision related to non-discrimination:

"The State of Illinois, Department of Transportation, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d; 78 Stat. 252), the regulations of the U.S. Department of Transportation implementing such Act (49 CFR Part 21), and the Illinois Human Rights Act (775 ILCS 5/) hereby notifies all bidders that it will affirmatively ensure the acceptance of any bid pursuant to this Notice will be without discrimination on the grounds of race, color, religion, sex (including gender identity and sexual orientation), familial status, national origin or disability."

7.5.5 Bidder's Proposal and Performance Deposit

In the case of sealed bids, each bid must be submitted on the Notice to Bidders and Bidder's Proposal for Renting Department Property form (LA 70505) and accompanied by a bank draft, cashier's check, certified check, or money order as a performance deposit (or bid bond) made payable to the Treasurer of the State of Illinois. The district retains these performance deposits pending approval and execution of the rental agreement with the successful bidder; at which point, the deposits of unsuccessful bidders are returned. The successful bid must be for not less than the current market lease rate.

In the case of auction bids, it is advisable to obtain a register of the names, addresses and contact information of all prospective bidders before commencing the auction. The opening bid may not be less than the current market lease rate. At the conclusion of oral bidding, the prospective lessee executes the bidder's proposal form LA 70505 and provides a performance deposit (or bid bond) in the form of a certified check, cashier's check, money order or bank draft made payable to the Treasurer of the State of Illinois. The performance deposit is retained by the district pending approval and execution of the rental agreement.

All bidders, whether by sealed bids or auction bids, must be fully informed of the required performance deposit and that the department reserves the right to retain such deposit as liquidated damages in the event the successful bidder refuses to complete the agreement transaction. All performance deposits are in an amount equal to at least one-twelfth of the annual current market lease rate. The amount may be increased at the discretion of the Regional Engineer.

7.5.6 After the Bidding

Upon the conclusion of successful bidding, or if solicitation was not required, the Rental Agreement (LA 70501 Template) is completed, with the named user and the rental rate to be paid and properly executed by the successful bidder. The original copies, with an attached premise plat, drawings and other exhibits required to be attached to the rental agreement, a report of bidding, if by auction, or a list of bids, if by sealed bids, a copy of the bidder's proposal form completed, together with a recommendation for acceptance of the bid, are then sent to CBLA for review and to obtain execution of the rental agreement by the department.

In order to avoid any future misunderstanding concerning the transaction, ensure the named tenant is exactly the same on the rental agreement as that shown on the bidder's proposal. Also, if the rental agreement is to be executed by a trust, an affidavit of disclosure of the beneficial interests of such trust must be obtained and submitted at this time to CBLA. After execution by the secretary and attestation by the director, the duplicate originals of the rental agreement are forwarded to the district office for delivery of one executed copy to the lessee and completion of the transaction. CBLA also forwards a copy of the fully executed rental agreement to FHWA, if applicable.

7.5.7 Leasing of Property to Specific Entities

7.5.7.1 *Government Agencies*

The department does not have the authority to lease or rent lands, including improvements, for less than the current market rental rate. Therefore, the leasing or rental of land and/or improvements to governmental agencies will not differ from leasing or renting to any other tenant.

7.5.7.2 *Department Employees - Prohibited*

It is department policy to not rent or lease any state property to employees of the department.

7.5.7.3 *Tax Delinquent Tenants -Prohibited*

The department shall not lease any real property to a person who is delinquent in paying any real property taxes on a leasehold estate (30 ILCS 562/1.5). If the department receives notice that a lessee of property, under the department's control, is delinquent in paying property taxes, the department must notify the lessee that the lessee has 60 days to pay the delinquent taxes, plus penalties and interest, if any, or the lease will be terminated. If the lessee fails to submit proof to the department that the lessee has paid the taxes, penalties, and interest, the department will terminate the lease.

A person whose lease was terminated under this section is not allowed to lease state-owned real property or bid on a lease for state-owned real property for a period of two years after the termination of the lease. District staff must notify CBLA within 90 days of any lease terminated for this reason.

7.5.8 Leasing Dedicated Right of Way (Easement)

Where the department possesses no more than the right of an easement for state highway purposes (i.e., a dedication), such property can only be leased or rented to the owner of the underlying fee simple title, or to a prospective lessee or tenant who has obtained approval in writing from the owner of the underlying fee. Each case must be approved by CBLA before execution of the rental agreement.

7.5.9 Terms of Rental Agreements

7.5.9.1 *Effective Date*

Any rental agreement or other leasing or usage instrument should be executed and effective before the prospective tenant occupies the property. The security deposit and the first month's rent are due no later than the effective date of the agreement.

7.5.9.2 *Length of Rental Agreements*

The department's authority to lease property is dependent on the length or terms of such rentals not interfering with state developments or projects. Leases are generally limited to 5-year terms. (20 ILCS 2705/2705-555). An exception to the 5-year limit is for counties with a population of between 500,000 and 800,000, where a lease to any other department of state government, any authority, commission, or agency of the state, or a municipality, county, or township of the state, including in any land lease the corresponding vertical rights, subterranean and air rights, and sublease rights, may be for a period of time no longer than 25 years.

That being said, rental agreements for residential or commercial uses will generally be on a month-to-month basis and rental agreements for agricultural land will usually be for a one-year term. Such terms normally provide sufficient flexibility for cancellation in the event the proposed highway improvement, for which the land was acquired, is suddenly advanced to the construction letting stage.

To simplify the process of renewing rental agreements of agricultural lands, the following Rental Agreement Extension may be signed annually, provided the terms of the lease (i.e., the rental rate) do not need to be updated and the length of the lease would not exceed the 5-year statutory limit:

RENTAL AGREEMENT EXTENSION:

The attached AGREEMENT will be extended, subject to and conditioned on the same provisions set forth therein, from ____*Month, Day*____, __*Year*__ to and including ____*Month, Day*____, __*Year*__.

______________________________ ______________
Tenant's Name Date

STATE OF ILLINOIS
DEPARTMENT OF TRANSPORTATION

____
Regional Engineer

By:______________________________ ______________
Date

The leasing of state property for periods in excess of one year, without a termination for convenience clause, can considerably reduce the department's flexibility to use the property on short notice and is therefore discouraged. Requests for leasing in excess of one year must be reviewed and approved by CBLA.

7.5.9.3 *Rental Rates*

When establishing the appropriate rental rate for buildings, it is supported by references to comparable rentals of similar improvements with appropriate adjustments for location, condition, etc., and then further adjusted, on the basis of judgment and experience, for short term occupancy. An appraisal can be used to establish the rental rate but is not required if the value of the property is less than current waiver valuation levels. Alternative sources for valuation include comparable buildings rented by the department, farm bureau rates, and University of Illinois extension data. Changing conditions may warrant a re-evaluation and possible adjustment of the previously established rental rate prior to soliciting prospective tenants. Use the Disposition and Rental Values of Buildings/Improvements form (LA 70203) to document the evaluation (or re-evaluation).

7.5.9.4 *Rental Agreements*

Once the tenant has been selected and terms have been determined, district staff prepare the Rental Agreement (LA 70501 Template). Any deviations from the template language must be reviewed and approved by OCC. The final Rental Agreement is executed by the Regional Engineer.

7.5.10 Rental Payments and Deposits – Accounting

7.5.10.1 *Payments*

Rental payments for month-to-month standard rental agreements are due and payable in advance no later than the effective date of the agreement, or the first day of each succeeding monthly rental period until the agreement is terminated. In cases where the current monthly rental rate may be a relatively small amount, agreements may be revised to permit a lump sum payment in advance of the effective date to cover several months rental (up to twelve months).

Rental payments for longer-term agreements (up to one year) should also be paid in a lump sum for the full term in advance of the effective date. However, in the case of rental of agricultural land, which is normally for a one-year term, it is permissible to provide in the agreement for payment to be made at the end of the crop year.

An "Accounts Receivable Invoice" will be prepared by the district in accordance with Section 8.5.1 by the 15th of the month prior to the date the rent is due and mailed or delivered to the tenant. Where practicable, the rent due date should be the first day of the month. The words "Improved" or "Unimproved" must be printed on the invoice. The word "Improved" is to be used when the rental property is improved with buildings, and the word "Unimproved" is to be used when the rented property is vacant land, i.e., parking lot, agricultural land, etc.

Rental checks in the form of certified check, cashier's check or money order, made payable to the Treasurer of the State of Illinois, should be processed promptly once received by the district and a “Check Lot” prepared in accordance with Section 8.5.2. The Regional Engineer at their discretion may accept a personal check in payment of rent. However, it is strongly suggested that in order to avoid expenses for checks returned to the department due to insufficient funds that the check be subject to prior verification as to sufficient funds from the bank on which the check is drawn.

For improved rental properties, in addition to the advance payment for the first month's rent, the tenant will also be required to make a separate security deposit ($100 minimum) for losses or damages to the rental property as set forth in the Rental Agreement. Such deposit, in the form of a certified check, cashier's check or money order, made payable to the Treasurer of the State of Illinois, will be processed by the same procedure as set out above for rental checks.

7.5.10.2 *Refunds*

Should a tenant be determined to be entitled to a refund of the amount deposited, or a pro-rata portion thereof, a miscellaneous refund will be processed by the district in accordance with the procedures outlined in Section 8.5.6. District staff must review tenant’s performance (i.e. payment of required taxes, upkeep of property, etc.) before any refund is issued.

Warrants for refunds issued by the State Comptroller will be sent directly to the payee based on the name and address of the tenant provided by the district.

7.5.10.3 *Rent in Arrears (Overdue)*

Rent must be paid promptly. District staff should monitor payments and contact tenants if rent is not received when due. If the previous month's rent has still not been received at the time of mailing the current month's invoice, a Final Demand Letter (LA 70510A Template) stating the total amount of rent due will accompany the current month's invoice. If the previous month's rent has still not been paid within two weeks after the Final Demand Letter is sent, it should then be determined delinquent, and a Notice and Demand for Possession (LA 70510B Template) must be served on the tenant(s) either by personal delivery or by posting on the premises door. All tenants who executed the rental agreement must be listed on the “Notice and Demand for Possession”.

If the tenant is still in possession after the rent has been determined to be delinquent, the district must take steps to regain possession by enforcing the terms of the rental agreement. Any change to an existing “Accounts Receivable Invoice” is reported to the district Bureau of Administrative Services (such as termination of a rental agreement, etc.) and a new “Accounts Receivable Invoice” must be prepared (see Section 8.5.1) for any addition (debit entry) or deduction (credit entry) to the original Invoice. All invoices in the above category are to include a brief explanation for the adjustment.

If the district is unable to recover rent in arrears from a tenant in possession or from a tenant who has vacated the premises, the account is referred to the Central Bureau of Claims (CBC) for collection. The referral includes a cover memorandum to detail what has transpired and what action is requested of the CBC (i.e. eviction and collection, collection only, declaration of uncollectible account). Legible copies of the rental agreement, rental application, notes, delinquent invoices, deed, final demand letter, notice and demand for possession, and the name and telephone number of the appropriate district contact person should be included.

CBC establishes a file and notifies the originating district of the proceedings and all subsequent actions. CBC will determine if the account will be referred to the Comptroller, a collection agency, the Attorney General or written off as uncollectible. Recoveries made by the CBC will be forwarded to the district for processing. Upon receipt, the district processes the recovery by preparing a “Check Lot” in SAP (see Section 8.5.2).

CBC will advise the district in writing of any rental arrearage accounts determined to be uncollectible. The district then prepares an “Accounts Receivable Invoice” (see Section 8.5.1) reversing entry (original plus three copies). The original copy of CBC’s uncollectible determination, with the original Invoice reversing entry, will be sent to BoBS, and copies should be forwarded to the CBC, CBLA, and a copy retained in the district file.

7.5.11 Taxing of Tenants on Exempt Lands

Counties may assess taxes on the state's lessee on both improved and unimproved properties under the provisions of 35 ILCS 200/15-55 and 200/9-195. Detailed information such as parcel description and identification, rental rate for the property using the Disposition and Rental Values of Buildings/Improvements form (LA 70203), and periods of rental must be provided to the appropriate county assessors. Within 60 days after entering into an agreement to lease real property, the property manager must notify the county clerk of the county in which the real property is located of the name and mailing address of the lessee. 30 ILCS 562/1.5 The district must likewise notify lessees/tenants that the property leased, subleased, or rented from the state may be assessed to such lessee/tenant and taxes extended, billed to, and collected from the lessee/tenant. This notice is provided in the department’s standard Rental Agreement (LA 70501 Template).

When evaluating any renewal of a rental agreement, the property manager or appropriate district staff should check that any taxes assessed by the County have been paid and must confirm taxes are current before any security deposit is returned to the tenant at the end of the lease term. If taxes are delinquent as the tenant prepares to vacate the premises, the district should notify the County immediately and refrain from returning the security deposit until the taxes have been paid.

7.5.12 Departmental Obligations for Rented Properties

7.5.12.1 *Lead-Based Paint Hazards – Residential Property*

The department is required to inform all tenants of residential properties of any known lead-based paint hazards. Potential residential renters must be fully cognizant of the hazards posed by lead-based paint and acknowledge this awareness in writing prior to the execution of the rental agreement.

A Lead-Based Paint Hazard Disclosure form (LA 70512) is provided to disclose any known lead-based paint hazards to potential tenants. This form must be completed before any residential rental agreement is executed. A copy of a pamphlet entitled “Protect Your Family from Lead in Your House” will also need to be provided to all potential residential tenants.

7.5.12.2 *Smoke Detectors*

Before renting any improvement containing sleeping quarters, the Smoke Detector Act (425 ILCS 60) requires that operable smoke detectors be present. Once a structure becomes the property of the state, conduct an inspection for compliance. This check and/or installation are noted on the Disposition and Rental Values of Buildings/Improvements form (LA 70203) prior to occupancy of the dwelling. Tenant should also be advised concerning maintenance of the device.

7.5.12.3 *Carbon Monoxide Alarms*

Every dwelling unit will be equipped with at least one approved carbon monoxide alarm in an operating condition within 15 feet of every room used for sleeping purposes as required by the Carbon Monoxide Alarm Detector Act (430 ILCS 135). The carbon monoxide alarm may be combined with smoke detecting devices provided that the combined unit complies with the respective provisions of the administrative code, reference standards and departmental rules relating to both smoke detecting devices and carbon monoxide alarms and provided that the combined unit emits an alarm in a manner that clearly differentiates the hazard.

It is the responsibility of the owner of a structure to supply and install all required alarms.

It is the responsibility of a tenant to test and to provide general maintenance for the alarms within the tenant's dwelling unit or rooming unit, and to notify the owner or the authorized agent of the owner in writing of any deficiencies that the tenant cannot correct.

The owner is responsible for providing one tenant per dwelling unit with written information regarding alarm testing and maintenance.

The tenant is responsible for replacement of any required batteries in the carbon monoxide alarms in the tenant's dwelling unit; except that the owner will ensure that the batteries are in operating condition at the time the tenant takes possession of the dwelling unit. The tenant provides the owner or the authorized agent of the owner with access to the dwelling unit to correct any deficiencies in the carbon monoxide alarm that have been reported in writing to the owner or the authorized agent of the owner.

The carbon monoxide alarms required under this Act may be either battery powered, plug-in with battery back-up, or wired into the structure's AC power line with secondary battery back-up.

7.5.12.4 *Maintenance of Rental Properties*

It is department policy to avoid any obligations under a rental agreement to provide maintenance, repairs, replacements, redecorating or improvement of acquired properties being rented. This policy is documented in the department’s Rental Agreement template. Prospective tenants must be made fully aware of this provision and should be given every opportunity to completely inspect both the interior and exterior of a rental property prior to entering into a rental agreement so there is no future misunderstanding concerning their obligation and the department's position under this provision.

While the department requires tenants to be responsible for maintenance and repairs, there may be instances when emergency repairs and maintenance are required and the department determines it is cost effective to complete the work needed. In these cases, the department’s procurement policies as reflected in Section 7.6.5 must be followed in obtaining any goods or services needed for this repair or maintenance.

7.6 *MANAGEMENT OF ACQUIRED PROPERTY*

7.6.1 Rentable Lands and Buildings

7.6.1.1 *Inventory*

The district property manager is responsible for maintaining an inventory of any parcels and any buildings/improvements under the department’s control that are currently being leased/rented. The inventory shall also include any other parcels, buildings or improvements which are available for lease, rental or permitted use. See Section 7.10.13 for more information.

The appropriate rental screens should be formulated and maintained accordingly by DLA in the Land Acquisition Management System (LAMS) and referenced in the Non-Operating Highway Right of Way (NORWAY) inventory. See Section 7.9 for more information on the NORWAY database. This data is necessary for CBLA to comply with 605 ILCS 5/4-201.16, which requires an annual report to the General Assembly of rented or leased parcels.

7.6.1.2 *Ongoing Management*

District staff supervise the properties and rental collections throughout the term of the rental agreements.

If an agreement to lease department-owned real property has been entered into or modified, district staff must submit the following to both the Financial Services Section of BoBS and CBLA:

- A signed copy of the executed non-highway use agreement
- Types and number of assets leased
- Agreement term
- Dollar amount of non-highway use agreement

- Frequency of lease payments
- Any renewal options on the lease

District staff also provide for policing of unoccupied property and take action to assure tenants occupy and maintain rented property in accordance with terms of the agreement, and to alleviate any hazards to public health and safety that may arise.

7.6.1.3 *Physical Inspection*

Acquired land and buildings, which have been placed under rental agreements, are inspected at least annually to determine whether or not the terms of the rental agreements are being complied with, particularly with regard to proper maintenance and upkeep as set forth in the rental agreement. Such inspections are necessary in order that any apparent violations of the rental agreement may be detected at an early date and corrective measures taken before such violations become a nuisance to the general public or to any abutting property owners.

When violations exist, the tenants should be notified immediately to correct the situation within a reasonable time or face possible eviction from the property and forfeiture of the required deposit for the last month’s rent.

It is extremely important that on each occasion of inspecting rental properties a notation be made in the file indicating the inspector's observations. Such documentation to the file is particularly essential when irregularities are observed so an accurate accounting of the corrective measures taken is a matter of record to anyone who might question the actions of the district at some later time.

7.6.1.4 *Rental Agreement Review*

Tenant Performance – In conjunction with the physical inspection, district staff should review tenant’s compliance with contractual obligations, such as timely rental payments and property tax payments during the rental term. This performance should be considered in determining whether renewal of the rental agreement is appropriate.

Rental rates are to be reviewed each year using the Annual Rental Review form (LA 70601A) and considering the factors in Section 7.5.9.3. If upon review it is determined no change of the rental rate is necessary, the parcel file should be documented accordingly. However, if upon review it is determined a change is necessary, notice to the tenant via a Rental Review Letter to Tenant (LA 70601B Template) is required at least 30 days prior to initiation of the rate change.

7.6.2 Non-Rentable Lands and Buildings – Disposal

Sometimes the highway construction project is scheduled for an early contract letting and it is not feasible to rent acquired land and buildings. There will also be situations where acquired buildings are not suitable for rental because of their poor condition, undesirable location or being the type of building for which there is no demand.

Regardless of the reason for not renting acquired land and buildings, foremost consideration should always be given to disposal by public sale at the earliest possible time. Even though a scheduled construction contract letting may be imminent, usable buildings can be scheduled for public sale and removal to coincide with the process of advertising the project for bids, bid letting, and awarding of the construction contract without delaying construction.

The public sale method of disposal is particularly desirable when the acquired buildings are in good sound condition, in a location where there is vacant land available and there is public interest for purchasing such buildings. The sale of usable buildings is desirable from the standpoint of conserving natural resources and good public relations. The department can be subjected to public criticism for not attempting to sell usable buildings and allowing them to become vandalized and/or damaged beyond repair, ultimately requiring complete demolition.

Ordinarily a determination that buildings will be non-rentable can be made prior to completing the acquisition. As soon as this determination is made, an Order and Approval to Dispose of Buildings/Improvements form (LA 70700A) should be prepared and submitted for obtaining the Governor's written approval to dispose of the buildings by public sale. Detailed procedures for this submittal and for the public sale of buildings and improvements are set out in Section 7.7. By obtaining the required approval before the state's taking physical possession of the buildings, the dates for advertising and conducting the sale can be scheduled as nearly as possible to coincide with or immediately following the date of the state's taking physical possession.

In the case of a project on which Federal Highway Administration (FHWA) authorization is being sought to advertise for letting it will usually be necessary to include a special provision in the construction contract indicating that the buildings have or will be sold by public sale and the estimated date for removal of the buildings from the right of way.

If it is determined that the public sale and removal of acquired buildings is not feasible because of their condition or location, particularly in an urban area, then the district must consider either an early demolition contract or for implementing adequate protective measures to prevent such buildings from becoming a public nuisance and hazardous to the health and safety of the community until they can be removed from the right of way.

In all cases of buildings to be left vacant, the property will be inspected as soon as it is vacated or the state takes physical possession, and if necessary, arrangements made for all utilities to be shut off and preferably to be disconnected. Fire hazards, if any, should be eliminated from within or around all buildings and, where necessary, provide protection of the property from the effects of adverse weather conditions.

Additionally, all local and state law enforcement or protective agencies having jurisdiction should be notified of the status of the property. The file must be documented to include the dates of inspections, condition of the property, any hazards noted and the follow-up corrective action to be taken.

Special attention should be given to those buildings located in urban or more populated areas or neighborhoods where, if left in place, they could be expected to attract unlawful occupancy, vandalism or dumping of undesirable materials thereby creating a public nuisance, hazardous or unhealthy condition.

When it appears that these conditions could develop either at the time of acquisition or very soon thereafter, immediate consideration should be given to demolition of such buildings at the earliest possible date. Procedures for demolition are found in Section 7.8.

7.6.3 Statutory Requirements – Tax Exempt Property

Each year, by January 31st, the district should receive from each County Assessor or Supervisor of Assessments a form that shows the change in tax exempt property either acquired or sold by the department for the previous year. The district must review and ensure that all parcels acquired have been listed as exempt. If the list is not received, or there are any inaccuracies, the district must contact the county to ensure the correct status for all department parcels. Any change in ownership of previously listed highway tax exempt property can be noted by the district and filed with the county official (35 ILCS 200/15-10).

Also, on/or before January 31st of each year, the district must file an affidavit (form PTAX-300-FS)) with each County Assessor or Supervisor of Assessments stating whether there has been any change in the ownership or use, or if there are any additions or deletions to previously listed tax-exempt properties within the county. This is a statutory requirement and failure to file such affidavit annually will, at the discretion of the county, constitute cause to terminate the tax exemption of that property (35 ILCS 200/15-10). Therefore, the district should annually request and the county will furnish a form of such affidavit. The affidavit may state that “the ownership, use and status of each parcel is as it appeared on the last affidavit filed, except as noted;” then list the district’s additions and deletions occurring since the filing of the previous year’s affidavit.

Additionally, as required by the above cited statute, if any property listed by the county as exempt is under rental agreement or leased, the district must also file a copy of all such leases or rental agreements in effect on January 1st of that year at the time the above affidavit is filed. Failure to file copies of leases or rental agreements is also subject to termination of exempt status the same as for failure to file the required affidavit.

35 ILCS 200/15-55 is similar to provisions of 35 ILCS 200/9-195 except that where state-owned property of one or more acres is concerned, the property can be assessed to the lessee/tenant, and it applies to all leases or agreements entered into or renewed. However, the certificate of ownership or use, together with a copy of any written lease or agreement or explanation of an oral agreement on these properties, can be delayed until those in effect on March 30th of the assessment year can be listed. Such certificates, leases or agreements should be filed as soon thereafter as possible, as but no later than April 30th.

7.6.4 Records and Reports

The Project Inventory of Buildings/Improvements form (LA 70201) must be maintained by the district. The form provides a current inventory of all improvements to be acquired, managed, and disposed of, as well as a complete tabulation of all rental units, improved and unimproved, on a project basis. The form must be initiated prior to commencing negotiations for the acquisition of right of way for the particular project. Data related to the owner retention, acquisition, management and disposition of the improvements must be entered as it becomes available. At the end of the acquisition phase, any parcels, buildings or improvements that could possibly be leased shall be added to the district’s inventory of leasable property. Any parcels of land that qualify as non-operating right of way, such as acquired uneconomic remnants, will need to be entered in the NORWAY database.

7.6.5 Incidental Expenses – Property Management

Some property management expenditures may be necessary until the acquired right of way improvements are used for highway construction purposes. The following procedures should be followed for the purchase of services or materials to maintain such right of way or repair or maintain any acquired improvements so as not to become a hazard to the health and safety of the community:

- Expenditures will be limited to repairs and maintenance of the right of way and any improvements until such right of way is needed for highway construction or is disposed of as excess property.
- Property management expenditures that require the services of an engineer, regardless of the amount, must be procured through the Capital Development Board (CBD).
- The Regional Engineer may approve incidental property management expenditures of up to $25,000. Expenditures estimated to be in excess of $25,000 must be approved by CBLA prior to any commitments for purchases or work to be performed. Recommendations for approval of expenditures in excess of $25,000 will be in writing with sufficient documentation of the circumstances and necessity for the proposed expenditures.
- The Regional Engineer may approve, without specific authorization, expenditures for the demolition of improvements that are not part of a construction contract, located on the right of way, up to $25,000, but will still be subject to compliance with these procedures. This subject is discussed in more detail in Section 7.8.

7.6.5.1 *Expenditures of $1,999.99 or Less*

Property management expenditures where the cumulative total paid to the same vendor, for the same service, within the same fiscal year is $1,999.99 or less (and the required service is not available on a Master or Agency specific contract) can be procured using a bid method. Every effort should be made to obtain the highest quality of material and services at the least cost. The request for quote notice should be sent via email or mail to qualified vendors. Parameters of the bid including the department contact person, quote due date and time, and specifications and/or scope of work should be provided to the vendor with the request for quote notice. Solicitations must include the district's phone number, fax number and TDD phone number in order to comply with the Americans with Disabilities Act. At least 3 days must elapse between the initial advertisement and the bid opening. Either a Purchase Order (PO) or a Field Purchase Authority should be used for purchases $1,999.99 and under. Field Purchase Authority books are assigned a specific # series and can be ordered from the department's Central Supply Warehouse.

7.6.5.2 *Expenditures Between $2,000 and $100,000*

Property management expenditures with a cumulative total paid to the same vendor, for the same service, within the same fiscal year, between $2,000 and $100,000, must be entered into BidBuy and procured using one of the following procurement methods, in the order shown below:

1. The primary method of vendor selection should be from a Central Management Services (CMS) Master Contract. A list of available master contracts is located on BidBuy. Please use the instructions here to search and find available Master Contracts. If the required service is not available on a Master Contract, please proceed to option 2 below;
2. Next, vendor selection should be made from an Agency Specific contract. Please use the instructions here to search and find available Agency Specific contracts. If the required service is not available on an Agency Specific contract, please proceed to option 3 below;
3. Finally, vendor selection should be made using the Small Purchase procurement process. Agencies do not need to use a competitive method of source selection for contracts valued at or below $100,000. This process is outlined here.

BidBuy resources for state agencies can be found here.

7.6.5.3 *Expenditures Exceeding $100,000*

Requests for non-contract supply procurements exceeding $100,000 are initiated by completion and submittal of a Procurement Request form (BoBS 2573). The responsible Purchasing Officer shall complete and submit the form via e-mail to BoBS.

Upon receipt of the form, BoBS personnel will enter the procurement request into the BidBuy e-Procurement system. The State Procurement Officer (SPO) will then review the requisition and be responsible for approving the purchase. After the SPO's approval of the requisition, the procurement will be processed as follows:

- Business Services personnel will notify the responsible Purchasing Officer of approval and request submittal of a Request for Requisition form (BoBS 94). The form must be assigned a requisition number by the Purchasing Office's Financial Services staff. The requisition number serves as the order's primary reference number and assures the order has been entered to the Fiscal Operations Administration (FOA) system with funds pre-obligated for the purchase. If required by BoBS, a written specification describing the item(s) must be submitted with the requisition.
- In completing the Request for Requisition, the following information should be included:
  - The statement "Request for Requisition".
  - If known, the NIGP Code for the item to be purchased along with a brief, generic description of the item.
  - Any options and generic description (color, size, etc.) if necessary.
  - If applicable, a description of any items offered for trade-in to reduce the cost of the new item.
  - The estimated cost for each item, the quantity required, and the extended cost for that item.
  - Total cost for all items.
  - Possible source(s) of supply.

- Any special requirements for vendors such as mandatory attendance at a pre-bid conference to discuss the supply specifications or that only pre-approved products may be acceptable.

- Prior to submittal, the Purchasing Officer reviews the Request for Requisition form for accuracy and completeness, ensuring all authorized signatures are affixed, and submits for entry to BidBuy. Most districts have been delegated BidBuy data entry duties, while Central Bureaus submit requests to BoBS for entry to BidBuy. Upon entry to BidBuy, the requisition is assigned a Req number.
- Once bids have been received, BoBS personnel, in conjunction with the requesting office and/or Purchasing Officer, will review the bids to determine the lowest cost vendor whose product meets or exceeds the supply specifications.
- The requesting office shall then submit to BoBS a recommendation to award the procurement contract to the successful vendor(s). BoBS will then secure a Purchase Order instructing the selected vendor to provide the item(s) at the price bid.
- Final copies of the Purchase Order contract are then issued to the vendor and to the State Comptroller. Using the purchase order number, the Comptroller will establish a contract obligation for payment of the order. A copy of the final order will also be issued to the Purchasing Officer, who will provide copies to the requesting office and Financial Services office.
- Receipt document. To ensure accountability, the employee verifying receipt shall not be the same employee who executed the purchase. Proof of receipt must be submitted to Financial Services to support invoice payment.
- Upon receipt of an approved invoice and proof of receipt, the responsible Financial Services office will schedule the invoice for payment against the appropriate PSD obligation.

7.6.5.4 *Emergency Expenditures*

Emergency services that are at or below the $100,000 small purchase threshold, would follow the small purchase process. If an immediate (emergency), the work would be ordered, and paperwork would be completed after. This is if the work is under $20,000. No small business set-aside waiver would be required in an emergency circumstance and the end user could use a small or large vendor to do the work. In most cases there is a master contract in place. Please refer to the emergency processes outlined here.

7.6.5.5 *Payment Processing for Property Management Expenditures*

The vendor's invoice for services rendered or good provided as part of property management will be processed in accordance with Section 8.4.2. A copy of the contract must be attached to the invoice.

The cost of managing such right of way is eligible for federal participation and reimbursement in the same ratio and in the same manner as any other project cost when accomplished in accordance with approved procedures.

7.7 *PUBLIC SALE OF BUILDINGS AND IMPROVEMENTS*

Before a public sale of buildings and/or improvements, the district must submit to CBLA the original and one copy of an Order and Approval to Dispose of Buildings/Improvements form (LA 70700A) and one right of way plan sheet with the subject improvements outlined or shaded in color to indicate its location. The submittal must also state whether federal funding was involved in the acquisition.

If the district anticipates the public sale to potentially generate bids less than the fair market value, the “Order” should include justification to dispose of the buildings/improvements below fair market value (see Section 7.12.1.3). Prior determination that such disposal is in the best public interest will avoid delays in the sale, especially in the case of a public auction.

The “Order” is reviewed by CBLA and transmitted through the Director of Highways Project Implementation (director) to the Secretary of Transportation (secretary) for his or her signature and the Governor's approval. Simultaneously, CBLA will also prepare the original bill(s) of sale using LA 70700B Template (Bill of Sale (Buildings/Improvements)). The original bill(s) of sale will then be initially executed by the chief of CBLA and forwarded together with one copy of the fully executed “Order” to the district. Upon receipt of the partially executed bill(s) of sale and “Order,” the district may proceed with advertisement and sale. The preceding information is entered on the Improvement Screen in LAMS.

7.7.1 Advertising and Notice to Bidders

To ensure that a sale is public, the sale must be advertised by placing a notice in a local newspaper of general circulation. This notice will be published at least once each week for two consecutive weeks with the sale to be held within a reasonable time, no less than 48 hours, after the date of the last publication of the notice.

The notice will also be made available on the department’s website located at: Excess Property Sales. This is the only other advertising that will be placed. When the ad is sent to the newspaper(s) in the local area, also e-mail a copy of the notice to the CBLA property manager who will place it on the department website.

At a minimum, the notice will contain the following provisions:

- The description, fair market value, and location of improvements to be sold.
- The date(s) and time(s) the improvements will be open for inspection.
- The location where sealed bids will be received and opened, or where the public auction will be conducted.
- The date and time when sealed bids will be opened or oral bidding will commence.
- The amount of the required performance deposit.
- How to obtain a copy of the “Notice to Bidders and Bidder’s Proposal” form (LA 70702). *Note, this form is pre-prepared by the district, prior to distribution to prospective bidders, by filling in the required information*.
- The telephone number(s) of person(s) to be contacted for information concerning the sale, as well as the district’s fax number and TDD phone number.

- The following provisions relative to prevailing wages and non-discrimination:
  - "It will be required that all persons employed by the successful bidder, or by any contractor engaged by the successful bidder, to remove any improvements from state right of way will be paid not less than the general prevailing rate of hourly wages as determined by the Department of Transportation of the state of Illinois."
  - "The State of Illinois, Department of Transportation, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d; 78 Stat. 252), the regulations of the U.S. Department of Transportation implementing such Act (49 CFR Part 21), and the Illinois Human Rights Act (775 ILCS 5/) hereby notifies all bidders that it will affirmatively ensure the acceptance of any bid pursuant to this Notice will be without discrimination on the grounds of race, color, religion, sex (including gender identity and sexual orientation), familial status, national origin or disability."
- The following provisions relate to permit requirements for moving buildings/improvements which may require a permit, on or across state highways:
  - Permits will be required for moving on state highways.
  - A moving permit is not guaranteed as a condition of the sale and prospective bidders should determine in advance of the sale that a permit would be issued.
  - Whom to contact for issuance of a permit.

Please note that neither department employees nor family members living within the same household may bid on property, either real or personal, offered for public sale by the state.

7.7.2 Bidder's Proposal and Performance Deposit

7.7.2.1 *Sealed Bids*

Each bid, in order to be qualified, must be submitted on form LA 70702 (Notice to Bidders and Bidder's Proposal for Public Sale of Buildings/Improvements) and accompanied by a bank draft, cashier's check, certified check, or money order as a performance deposit made payable to the Treasurer of the State of Illinois. The successful bid must equal or exceed the fair market value of the building/improvement unless disposal for less than fair market value has been approved.

7.7.2.2 *Auction Bids*

Ordinarily, the best place to conduct a public auction is at the building/improvement site. However, an auction can be conducted in the district office or any other location believed to be most attractive and/or convenient to prospective bidders. It is advisable to obtain a register of the names and addresses of all prospective bidders before commencing the auction to assist in determining the most convenient location.

All bidders must be fully informed of the required performance deposit and that the department reserves the right to retain such deposit as liquidated damages in the event the successful bidder refuses to complete the transaction or the removal of buildings. The amount of the performance deposit should be set according to the following and included in the public notice to permit prospective bidders to come to a sale with the fixed deposit in hand:

Current Fair Market Value	Minimum Performance Deposit
$1,000 or less	50% of fair market value
$1,001 - $2,500	$500
$2,501 - $5,000	$1,000
$5,001 - $10,000	$1,500
$10,001 - $20,000	$2,000
Over $20,000	10% of fair market value

The above-suggested deposit amounts are considered to be reasonable minimums; however, they may be increased at the discretion of the Regional Engineer.

The successful bid must equal or exceed the fair market value, unless disposal for less than fair market value has been approved. At the conclusion of bidding, the successful bidder will complete and execute the bidder's proposal form (LA 70702) and submit the required performance deposit in the form of a bank draft, cashier's check, certified check, or money order made payable to the Treasurer of the State of Illinois.

The performance deposits of successful bidders are not considered to be accounts receivable to the state and are retained by the district until the improvements are satisfactorily removed in accordance with the proposal. The performance deposits of the unsuccessful bidders under the sealed bid procedure will be returned to them as soon as the sale to the successful bidder has been finalized by issuance of a validated bill of sale.

7.7.3 Accounting for Public Sale Proceeds

Immediately following the sale, the district will prepare an "Accounts Receivable Invoice" in accordance with Section 8.5.1, reflecting the purchase price of the items sold and payment due the state.

After payment has been made by the successful bidder, the district will prepare a "Check Lot" in accordance with Section 8.5.2.

7.7.4 Bill of Sale Validation

The original bill(s) of sale previously forwarded to the district, in order to be valid, must be completed by the district by filling in the successful bidder's name and bid amount, and then co-executed and dated by the Regional Engineer. The original copy of the bill of sale must be validated and issued to the successful bidder within ten days following the date of opening of bids or auction, subject to receipt from the successful bidder of a bank draft, cashier's check, certified check or money order in the full amount of the bid, made payable to the Treasurer of the State of Illinois. Personal checks will not be accepted for the full sale price under any circumstances. One copy of the validated bill of sale will be returned to CBLA and a copy retained in the district file.

Once the full sale price has been received and the validated bill of sale is issued to the successful bidder, a sale will be considered final and a successful bidder will not be entitled to any refund of either the performance deposit or the sale amount, except that upon satisfactory removal of the building in accordance with the removal agreement the performance deposit will then be returned to the purchaser.

7.7.5 Reporting Sale to Central Bureau of Land Acquisition

Within five working days after a sale has been finalized the district will prepare and submit a report of sale to CBLA listing: (1) the names of the bidders and, in the case of sealed bids, their respective bids for each building/improvement offered for sale; (2) the name of the successful bidder together with a copy of the successful bidder's proposal; and (3) a copy of the validated bill of sale for each building/improvement or goods and chattels.

After issuance of the validated bills of sale to the successful bidders, the district will maintain surveillance to ensure that all conditions of the sales contract are met. If all the said conditions are met, the performance deposit will be returned to the successful bidder and the file documented accordingly.

7.7.6 Sale of Residential Improvements – Lead-Based Paint Hazards

The department is required to inform all potential purchasers of residential buildings of any known lead-based paint hazards. This requirement directs that potential residential purchasers be fully cognizant of the hazards posed by lead-based paint and acknowledge this awareness in writing prior to the public sale.

A Lead Based Paint Hazard Disclosure to Potential Purchasers form (LA 70706) is provided in order to disclose any known lead-based paint hazards to potential purchasers. The completion of this form is required prior to the public sale of any residential buildings. A copy of a pamphlet entitled “Protect Your Family from Lead in Your House” will also need to be provided to all potential residential purchasers.

7.8 *DEMOLITION OF BUILDINGS*

Where conditions or circumstances do not permit owner retention, public sale, or rental of acquired buildings, the building(s) should be demolished and removed from the right of way. The procedures for demolishing acquired buildings are discussed in the following sections.

7.8.1 Preliminary Asbestos Surveys

Prior to the demolition of any improvements acquired by the department, an asbestos inspection is required in order to determine the likely presence of friable or non-friable asbestos.

Inspections of improvements are conducted by a person licensed under Illinois law to conduct such inspections. To avoid any confusion in this area, each district should have at least one employee obtain the license required to perform asbestos inspections. As an alternative, the districts can obtain the services of a licensed asbestos inspector on an “as needed” basis (form LA 70801A; Exhibit LA 70801B; LA 70801C Template; form LA 70801D; and Exhibit LA 70801E). These services can be paid for as an incidental expense charged to the right of way project, provided the accumulative compensation paid to any one inspector, or inspection company, does not exceed $5,000 in a fiscal year.

The person/entity hired to do an asbestos inspection cannot be affiliated with the department’s statewide consultant responsible for the asbestos testing and abatement process.

In either case, the procedure for conducting asbestos abatement survey is to be followed once the preliminary asbestos abatement survey is completed.

7.8.2 Demolition as Part of the Construction Plans

When the letting of the proposed construction project is imminent, the acquired buildings may be added to the proposed construction plans as an item for removal by the construction contractor. This is usually the most economical and desirable method. However, this method should not be used indiscriminately as an alternative to the public sale method of disposal.

It is also advisable, where buildings are being offered for public sale just prior to a construction letting, to include the buildings in the construction plans to cover the eventuality of any buildings failing to be sold.

In order to assure that building removal is included in the construction plans, DLA must provide the necessary details to their plan preparation staff. Generally, such details would include the presence of asbestos, the type of structure, location by highway stationing or street address, and any special provisions which may be required concerning the disposition of utility connections or prohibiting the contractor from entering the property until vacated.

7.8.3 Demolition Contract

When the letting of the proposed construction project is not imminent, or when demolition of the building(s) will interfere with construction, the acquired building(s) should be demolished under a separate contract. The plans, specifications and other necessary information should be prepared in the district and forwarded to BDE for letting.

7.8.4 Documentation Requirements

As soon as it is determined that disposal of improvements will be by demolition, the appropriate entry will be made in the "disposal method" field on the improvement screen of the LAMS. The "authorized demolition date", "contract amount", and "removal date" fields on the improvement screen are to be completed as they occur.

7.9 *MANAGEMENT AND INVENTORY OF NON-OPERATING RIGHT OF WAY (NORWAY)*

The department is responsible for the management of non-operating highway right of way (NORWAY) parcels, including an inventory of parcels that may now, or sometime in the future, be deemed no longer needed for state highway purposes.

DLA personnel are responsible for the creation and management of this NORWAY inventory. The following definitions are used when determining the status of right of way parcels not considered a part of the operating highway system.

- “Excess Property” – Any land, dedication, easement, access rights or interest in real estate, improved or unimproved, no longer needed for state highway purposes whether originally acquired for state highway purposes or acquired as remnants incidental to acquiring land for state highway purposes, under the provisions of 605 ILCS 5/4-501.

- “Non-Operating Highway Right of Way (NORWAY)” - Department properties that are not devoted as public ways for vehicular travel, and areas, structures, and facilities for support of such public ways, that have not been declared as unnecessary for highway maintenance or future expansion of highway right of way (i.e., excess).

Some right of way parcels may fall outside the usual limits of the operating right of way, and it may seem appropriate to include them in the NORWAY inventory. However, there were likely specific roadway purposes for acquiring this right of way or specific circumstances that may render the property ineligible for disposal. Right of way that has been acquired for the following purposes will not be considered excess property or non-operating highway right of way and will not be available for disposal:

- Access
- Drainage
- Safety
- Other engineering reasons as determined by the Regional Engineer on a parcel-by-parcel basis.

Sometimes the right of way listed on the NORWAY inventory can be leased/rented before it is used for its acquired purpose (20 ILCS 2705/2705-555). Any leased/rented parcels of right of way will be shown in LAMS under rentals.

Non-operating highway right of way will be inventoried by entering all required parcel data into the NORWAY database (for instructions on entering data, see Exhibit LA 70900A “NORWAY Database – Instructions for Data Entry”). Parcel entries are made according to the following schedule:

Schedule for Norway Database Entries		
Type Code	**Project/Parcel Category**	**Time of Data Entry**
RR	Route Relocation	upon project completion
UR	Uneconomic Remnant/Remainder	upon acquisition of parcel
ABRA	Abandoned Rest Area	upon determination
ABP	Abandoned Project	upon determination
LL	Land Locked Parcel	upon acquisition of parcel
UFC	Unfunded Future Construction	upon determination
MA	Mitigation Acquisitions	upon acquisition of parcel

One of the required data fields on the NORWAY inventory is a status code that indicates whether a parcel can be disposed of, has been disposed of, cannot be disposed of, etc. To determine the initial status of a NORWAY parcel, DLA personnel must perform a preliminary review of the department’s present or future need for the parcel in consultation with the other bureaus within the district. Should there be any engineering reasons for retention of the land or rights in land, the parcel will be maintained on the NORWAY inventory with the appropriate status code. If it is determined that a parcel is available for disposal, the parcel will be declared as “excess” using a status code of “A” (available) and the appropriate disposal process will be initiated. During the disposal process, the progress of the parcel can be documented using the remarks field on NORWAY. Once the disposal process is complete, the parcels status is coded as “S” (sold or otherwise disposed of).

The status of NORWAY parcels with an estimated worth of $25,000 or greater is subject to an annual review by DLA personnel; and each January, an email must be sent to CBLA confirming the annual review has been performed. The status of other NORWAY parcels should be reviewed at the discretion of DLA. Should there be a change at any time in the status of any parcel, the NORWAY inventory should be updated and the appropriate action taken. For instructions on running reports in NORWAY, see Exhibit LA 70900B “NORWAY Database – Instructions for Selection of Report Type.”

Non-operating highway right of way is managed according to Section 7.6 “Management of Acquired Property”, to avoid the occurrence of public nuisance, hazardous or unhealthy conditions on the department’s property.

7.10 *NON-HIGHWAY RELATED USE OF OPERATING RIGHT OF WAY BY LEASE*

The department may grant temporary use and occupation of portions of operating highway right of way under its jurisdiction for a non-highway related use if the property is not required presently or in the foreseeable future for state highway purposes. This arrangement is different than the rental of non-operating right of way discussed in Section 7.5, despite some similarities to the process. As discussed in Section 7.5.9, Illinois state law authorizes the department to lease or rent land or other property under its jurisdiction, provided that no such lease be for longer than five years. 20 ILCS 2705/2705-555 and 605 ILCS 5/4.201.16. The department may also allow, by written consent, the use of land or other property under its jurisdiction for non-highway related uses by permit, as discussed in Section 7.11 below. 605 ILCS 5/9-113.

When the non-highway related use involves land or rights acquired in connection with the interstate system, FHWA approval is required and the department must also evaluate the environmental effects of the action (i.e., the non-highway related use). In most cases this action can be classified as a categorical exclusion and documented using the Categorical Exclusion Determination and Approval form (BDE 2301). It is recommended to present the proposed action at an IDOT/FHWA coordination meeting to obtain the FHWA’s approval and environmental concurrence at the same time.

7.10.1 Definition

The terms “space”, “airspace”, “area”, or “surface area” are used synonymously within this section and are defined as that which is located above, at, or below the highway’s established grade line and lying within the established operating right of way limits of an existing highway facility.

7.10.2 Procedure to Use Space

Non-highway use of operating right of way can be initiated in two ways: 1) district staff can identify potential property that may be used or leased out, or 2) an interested party may approach the department or district to inquiry about using the space. In the first instance, which is rarer, district staff should proceed with the following process absent an application, creating the appropriate usage and parameters for available parcels.

If district staff receive an inquiry from an interested party, the district may entertain proposals from an individual, company, organization, corporation, or public agency desiring to use space as defined herein. A written application must be submitted to the appropriate Regional Engineer using the Application for Use of Surface Area Under Elevated Highway Structures or Adjacent to Highway Facilities form (LA 71002). The application will contain the names of the parties involved and a general statement of the proposed use together with any preliminary maps, sketches, photographs, and plans which are necessary to describe the pertinent features in relation to the highway facility.

To determine if the use request is appropriate, the district must first evaluate (1) whether the proposed use adversely affects the existing operating facilities, (2) whether the land is needed during the proposed period for operation, maintenance, improvement, or construction of the highway facility, (3) any adverse effects the proposed use of the area would have on the maintenance or operation of the highway facility, and (4) any other operational concerns with the use. If the district's evaluation indicates the use would be in the best interest of the department, district staff must next determine if solicitation of the parcel is required.

7.10.3 Exceptions to Solicitation Requirement

The public policy of the State of Illinois, expressed in its Procurement Code, is that the principles of competitive bidding shall apply to all contracts by or for any State agency. 30 ILCS 500/1-5. While property leases are subject to this manual, which is subject to federal requirements and approved by FHWA, each operating right of way parcel or rental unit should be leased through the public solicitation of bids for not less than the current market rental rate. Exceptions to this policy should be limited and documented.

If a parcel is deemed to be available for lease or an interested party applies to use a parcel, the district will examine if the parcel needs to be competitively bid. The parcel should be solicited for bids unless one of the following exceptions apply:

- lessee is immediate property owner remaining in the property to accommodate transition due to department project acquisition and relocation;
- property to be leased is inaccessible to other than the owner of only one abutting property;
- lessee is governmental entity or non-profit organization;
- previous solicitations yielded no bidders;
- the administrative cost of solicitation or maintenance outweighs the appraised value of the property;
- the district deemed the property to be less desirable due to location, size, or condition;
- the leasing of the property is incorporated into the Phase 1 report as part of the NEPA process and approved by FHWA;
- the leasing of property would not be within the NEPA process, but the property could be part of the NEPA process; or

- or when other unique circumstances exist that makes solicitation infeasible and where leasing without solicitation would not unreasonably benefit the lessor or frustrate the public policy of the State's Procurement code.

The district must document the facts justifying the exception and approved in writing by the Regional Engineer. The district must request a waiver to the public advertisement requirement at the same time the non-highway use agreement is submitted to CBLA, clearly setting out the circumstances and conditions justifying such a waiver.

7.10.4 Valuation

Once the district decides to lease property, whether through public solicitation for tenants or via an exception to the solicitation requirement, the district should obtain an appraisal to establish the current market lease rate. If the cost of acquiring the appraisal exceeds the anticipated value of the usage or the estimated value is lower than the current waiver valuation level, the district may use the wavier valuation process to determine the current fair market rent. The appraisal (or alternative source of valuation) is then submitted to CBLA with a statement that the accepted or documented valuation indicates the current fair market lease rate of the space to be leased. Approval of the appraisal by CBLA is obtained before the non-highway use agreement can be executed.

7.10.5 Processing Applications to Lease Where Solicitation is Not Required

If the usage is compatible with state needs and solicitation is not required, the district should prepare, or cause to be prepared, a non-highway use agreement (see Section 7.10.9 below) setting out the standard provisions and such other specific and/or unique conditions as to the use of the property to be leased.

A copy of the application and supporting documentation is sent to the district Operations Engineer with the documentation of solicitation exemption, proposed form of non-highway use agreement, and appraisal (or equivalent) for review, comment, and approval. After approval, the application and supporting documents are sent, including the proposed form of non-highway use agreement together with the district's comments and recommendations, to CBLA. CBLA will in turn review and obtain comments and approvals of the proposed use from other central bureaus as appropriate. CBLA will also examine if the proposed agreement was properly exempt from competitive bidding. If the proposed non-highway use agreement is found to be satisfactory, CBLA obtains approval from FHWA, if applicable. After all approvals are received, the district is authorized to proceed with leasing the desired space in accordance with procedures set forth in the following paragraph.

7.10.6 Advertising and Notice to Bidders

If solicitation is appropriate, the proposed leasing of space may be advertised to the public by news releases, legal notices, display ads or placing a notice in a local newspaper of general circulation. If notices are published in local papers, the notice will be published at least once each week for two consecutive weeks with bidding for the lease to be held within a reasonable time, no less than 48 hours, after the date of the last publication of the notice.

In all cases, the advertising notices are also made available on the department's website (https://idot.illinois.gov/doing-business/sales.html). The district must email a copy of the notice to the CBLA property manager who will have it placed on the site. If deemed appropriate by CBLA, publication may be limited to only the department's website.

At a minimum, the notices should contain the following information:

- General description and location of the space to be leased, as well as the minimum market lease rate (as determined by the appraisal or equivalent).
- The date(s) and time(s) the space will be open for inspection.
- The date and time when sealed bids will be opened or oral bidding will commence.
- The location where sealed bids will be received and opened, or where the public auction will be conducted.
- The amount of the required performance deposit (if required).
- How to obtain a copy of the "Notice to Bidders and Bidder's Proposal" form (LA 71007). *Note, this form is pre-prepared by the district, prior to distribution to prospective bidders, by filling in the required information*.
- How to obtain a draft copy of the Non-Highway Use Agreement (LA 71009 Template) showing the terms and conditions of the lease.
- The telephone number(s) of person(s) to be contacted for information concerning the property, as well as the district's fax number and TDD phone number.
- The following provision related to non-discrimination:

  "The State of Illinois, Department of Transportation, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d; 78 Stat. 252), the regulations of the U.S. Department of Transportation implementing such Act (49 CFR Part 21), and the Illinois Human Rights Act (775 ILCS 5/) hereby notifies all bidders that it will affirmatively ensure the acceptance of any bid pursuant to this Notice will be without discrimination on the grounds of race, color, religion, sex (including gender identity and sexual orientation), familial status, national origin or disability."

7.10.7 Bidder's Proposal and Performance Deposit

In the case of sealed bids, each bid must be submitted on the Notice to Bidders and Bidder's Proposal for Leasing Operating Right of Way (Non-Highway Related Use) form (LA 71007) and accompanied by a bank draft, cashier's check, certified check, or money order as a performance deposit (or bid bond) made payable to the Treasurer of the State of Illinois. The district retains these performance deposits pending approval and execution of the non-highway use agreement with the successful bidder; at which point, the deposits of unsuccessful bidders are returned. The successful bid must be for not less than the current market lease rate.

In the case of auction bids, it is advisable to obtain a register of the names, addresses and contact information of all prospective bidders before commencing the auction. The opening bid may not be less than the current market lease rate. At the conclusion of oral bidding, the prospective lessee executes the bidder's proposal form and provides a performance deposit (or bid bond) in the form of a certified check, cashier's check, money order or bank draft made payable to the Treasurer of the State of Illinois. The performance deposit is retained by the district pending approval and execution of the non-highway use agreement.

All bidders, whether by sealed bids or auction bids, must be fully informed of the required performance deposit and that the department reserves the right to retain such deposit as liquidated damages in the event the successful bidder refuses to complete the agreement transaction.

All performance deposits are in an amount equal to at least one-twelfth of the annual current market lease rate. The amount may be increased at the discretion of the Regional Engineer.

7.10.8 After the Bidding

Upon the conclusion of successful bidding, or if solicitation was not required, the approved non-highway use agreement (form LA 71009) is completed, with the named user and the lease rate to be paid, and properly executed by the successful bidder. The original copies, with an attached premise plat, drawings and other exhibits required to be attached to the non-highway use agreement , a report of bidding, if by auction, or a list of bids, if by sealed bids, a copy of the bidder's proposal form completed, together with a recommendation for acceptance of the bid, are then sent to CBLA for review and to obtain execution of the non-highway use agreement by the department.

In order to avoid any future misunderstanding concerning the transaction, ensure the named lessee is exactly the same on the non-highway use agreement as that shown on the bidder's proposal. Also, if the non-highway use agreement is to be executed by a trust, an affidavit of disclosure of the beneficial interests of such trust must be obtained and submitted at this time to CBLA. After execution by the secretary and attestation by the director, the duplicate originals of the non-highway use agreement are forwarded to the district office for delivery of one executed copy to the lessee and completion of the transaction. CBLA also forwards a copy of the fully executed non-highway use agreement and supporting documentation to FHWA, if applicable.

Upon delivery of the non-highway use agreement and receipt of the required payment, the district prepares an "Accounts Receivable Invoice" and a "Check Lot" in accordance with Sections 8.5.1 and 8.5.2 respectively.

7.10.9 Non-Highway Use Agreement

The Non-Highway Use Agreement will be prepared in duplicate using form LA 71009. Although the agreement may vary somewhat depending upon the type of use proposed, it will contain the following provisions at minimum:

- The party responsible for occupying, developing and using the space.
- A general statement of the proposed use, the effective date and term of the non-highway use agreement.
- The general design for the use of the space, including any facilities to be constructed, and such maps, plans or sketches as are necessary to set out pertinent features in relation to the highway facility.
- A detailed description (three-dimensional, if applicable) of the space to be occupied and used.

- The design and construction of any improvements or structures to be built within the approved space will be subject to the prior approval of the department. If the space is located on the National Highway System, the design and construction will also be subject to the approval of FHWA.
- Any change in the authorized use of space requires prior written approval by the department subject to concurrence by FHWA (where applicable).
- The non-highway use agreement for such space will not be transferred, assigned or conveyed to another party without prior approval by the department subject to concurrence by FHWA (where applicable).
- The non-highway use agreement will be terminated by the department in the event that the space facility ceases to be used or is abandoned.
- The non-highway use agreement will be terminated by the department if violated and such violation is not corrected after written notice of non-compliance has been given. Further, in the event that the agreement is terminated and the department deems it necessary to request the removal of the facility occupying the space, the removal will be accomplished at the sole expense of the lessee in a manner prescribed by the department.
- When deemed necessary by the department or FHWA (where applicable) provision for adequate insurance by the responsible party for the payment of any damages that may occur during or after construction of the space facilities and saving the state harmless. Exception to this requirement may be made where the proposal is for the use by a governmental agency, when such agency is assigned the specific responsibility for payment of any related damages occurring to the highway facility and to the public for personal injury, loss of life and property damage.
- The department and authorized FHWA representatives (where applicable) to enter the space facility for the purpose of inspection, maintenance, or reconstruction of the highway facility when necessary.
- The facility to occupy the space will be maintained so as to assure the structures and the area within the highway right of way boundaries will be kept in good condition, both as to safety and appearance, and that such maintenance will be accomplished in a manner so as to cause no unreasonable interference with highway use. In the event the responsible party fails in its maintenance obligations, there will be provisions for the department to enter the premises to perform such work and charge the costs incurred in connection therewith to the responsible party.
- Appropriate provision of Appendix “C” of the State’s Civil Rights Assurances with respect to Title VI of the Civil Rights Act of 1964 and 49 CFR 21.
- Any significant revision in the design or construction of a facility will require written prior approval by the department subject to concurrence by FHWA (where applicable).
- The department will not lease any real property to a person who is delinquent in paying any real property taxes on a leasehold estate under Section 9-195 of the Property Tax Code. If the department receives notice under Section 21-63 of the Property Tax Code that a lessee of property under our control is delinquent in paying property taxes, we will notify the lessee that the lessee has 60 days to pay the delinquent taxes, plus penalties and interest, if any, or the non-highway use

agreement will be terminated. If the lessee fails to submit proof to IDOT that the lessee has paid the taxes, penalties, and interest, the department will terminate the non-highway use agreement . A person whose non-highway use agreement was terminated under this section is not allowed to lease state-owned real property or bid on a rental agreement, lease, or non-highway use agreement for state-owned real property for a period of two years after the termination of the non-highway use agreement.

7.10.10 Additional Considerations and Requirements

Within 60 days after entering into an agreement to lease department-owned real property, the district must notify the county clerk of the county in which the real property is located of the name and mailing address of the lessee. See Section 7.5.11 for more detail.

The effective date of the non-highway use agreement with any lessee should be no later than the date the prospective lessee occupies the property.

As a suggestion, it would seem to be desirable for non-highway use agreements to become effective on the first day of the month so preparation of invoices and other similar management activities involving the leased premises can be conducted more effectively.

If an agreement to lease department-owned real property has been entered into or modified, district staff must submit the following to both the Financial Services Section of BoBS and CBLA:

- A signed copy of the executed non-highway use agreement
- Types and number of assets leased
- Agreement term
- Dollar amount of non-highway use agreement
- Frequency of lease payments
- Any renewal options on the lease

7.10.11 FHWA Approval Considerations

When the non-highway related use involves land or rights acquired in connection with the interstate system, FHWA approval is required. District staff should provide the following documents to CBLA when FHWA approval is required for a non-highway use agreement:

- Plat or plans;
- Plans showing the Access control acquired (if applicable);
- Accurate address/location including aerial view of the location;
- Public interest determination, if appropriate, stating the need and benefits for disposal or release of access control below FMV;
- Environmental clearance (often state-approved CE)
- Non-highway use agreement
- Valuation (waiver or appraisal, or market rent data)
- Design materials or plans for the request of non-highway use.

- Any other relevant documentation requested by FHWA.

Central Bureau of Land Acquisition staff will compile the submitted information, draft a formal request from IDOT to FHWA for the disposal or use of ROW for a non-highway use, and submit the required information to FHWA for its review and approval.

7.10.12 Soliciting New Lessees or Renewal of Non-Highway Use Agreement

Before a non-highway use agreement is scheduled to expire, the district should determine whether a renewal is appropriate, if the tenant wishes to renew, or if a new non-highway use agreement will be necessary. As soon as it is determined that the incumbent lessee occupants intend to vacate the leased space, every effort should be made to publicly solicit for prospective lessees. The district must advertise locally for prospective lessees, as discussed in Sections 7.10.2 through 7.10.3, unless an exception is appropriate under Section 7.10.3.

New applications by prospective lessees for space previously leased by others follow Sections 7.10.2 through 7.10.7.

Where prior approval was given to waive the public bidding requirement on behalf of an incumbent lessee, and the incumbent lessee requests that the non-highway use agreement be renewed, a new formal application need not be submitted, provided the area and use of the space is to remain unchanged. A change in the desirability of the parcel must be considered in evaluating the appropriateness of renewal without solicitation. Such proposed renewal of a non-highway use agreement is reviewed and concurred in by the district maintenance/operations bureau, and the district's recommendation for renewal and waiver of the public bidding requirement approved by CBLA. A current appraisal (or equivalent) for establishing the renewal rate must also be obtained.

7.10.13 Inventory and Management of Leased or Permitted Use Areas of Operating Right of Way

DLA will maintain an individual record of each parcel or unit of space situated within the limits of operating highway right of way under the department's jurisdiction, which space has been identified as being available for leasing, or for a permitted use.

The Inventory and Management of Right of Way Leases (LA 71013A Template) will be initiated by DLA as soon as a parcel or unit of space has been identified and considered available for leasing or permitted use. This template provides information on each individual parcel or unit currently under a rental agreement, lease, non-highway use agreement, or used and occupied by permit, as well as each vacant parcel or unit of space which is available for leasing or permitted use. Page 2 of this template provides for identification of the current lessee or permittee and a rental payment schedule for a five-year term to be maintained on each lessee.

The Lease Index – Operating Highway Right of Way (Non-Highway Related Use) (LA 71013B Template) should also be maintained by DLA. This template serves as the district's inventory of all parcels or units of operating highway right of way space available for, or currently in use; and provides an easy reference to the individual parcel inventory and management forms.

As an alternative to this method, the district may maintain a personal computer-based inventory database as long as all necessary information is retained and available for update and review.

In the event that any lease, rental or permitted use agreement is modified, not renewed or terminated, DLA shall promptly inform CBLA and BoBS.

Both of these inventories shall be shared with CBLA, which shall compile a statewide inventory of leases and permits into a spreadsheet which can be shared with the districts. CBLA will conduct an annual review of the data with each district to ensure proper oversight of the agreements. The spreadsheet should also be used to track CBLA's agreement review and approval, as well as the dates of upcoming agreement renewals, annual physical inspections, tenant performance reviews, and rental rate reviews.

A parcel or unit file will also be maintained on each leased or permitted space containing the following information, if available:

- Location of parcel, survey highway station or other appropriate identification including a photograph if available.
- Identification including copy of application and plans showing the authorized use of the space.
- A detailed description.
- As-built construction plans of the highway facility at the location where the use of space was authorized, or such plans should be available within the district.
- Plans of the facility, if any, authorized to occupy the space.
- A copy of the prior and current executed non-highway use agreement or permit.
- Other pertinent information and records such as affidavits of disclosure of beneficiaries of a trust.
- Copy of prior and current appraisal including appraisal reviewer's certification on all leased parcels (not required on permitted parcels).

During the time of property management responsibility of the department, certain expenditures of funds may be required. The following procedures will be followed where it is necessary to purchase services and/or materials in connection with:

- Authorized expenditures from current and subsequent fiscal year programs will be limited to the costs and expenses incurred for appraisals obtained to establish the current rental rate for the premises to be leased and advertising costs for the solicitation of tenants to use and occupy such space.
- All costs and expenses necessary for the repair and/or maintenance of leased or permitted areas including appurtenances thereto, will be authorized and approved by the district operations engineer and, where required, the Central Bureau of Operations, and any work performed and/or materials used and furnished in connection therewith will be approved by and under the direct supervision of the district maintenance/operations staff.

7.11 *NON-HIGHWAY RELATED USE OF OPERATING RIGHT OF WAY BY PERMIT*

The department may, by written consent, permit the use of land or other property under its jurisdiction for non-highway related uses. 605 ILCS 5/9-113. Units of local government may therefore apply for consent to use and occupy operating highway right of way areas under elevated structures or adjacent to state highway facilities under the department's jurisdiction for public purposes. Therefore, consideration for such consent will be given to applications from municipalities, townships, counties, forest preserve districts, park districts or other units of local government on a case-by-case basis.

Consent is shown in form LA 71100 (Permit for Use of Surface Area Under Elevated Highway Structures or Adjacent to Highway Facilities), prepared in duplicate. Although the form of permit may vary to some degree depending upon the type of use proposed, it must as a minimum contain the following provisions:

- The unit of local government responsible for occupying, developing and using the space.
- A general statement of the proposed use.
- A detailed description (three dimensional under structures) of the space to be occupied, developed and used.
- The permit is valid for no more than a five (5) year period.
- The permit to be revoked at will by the department upon 30 days written notice or may also be revoked upon written notice for any breach of terms or conditions or in the event the permittee ceases to use or abandons the premises.
- If the permit is revoked, terminated or expires, the permittee agrees to immediately yield possession to the department, and at the permittee's sole cost and expense, restore the premises to a condition satisfactory to the department and to remove all improvements and appurtenances thereto, or any other property of the permittee, except any surfacing and column guards.
- Any property of the permittee not removed within 30 days after revocation or termination will be deemed abandoned by the permittee and may be removed and disposed of in any manner seen fit by the department, or the department may elect to declare said property to be property of the department, whereupon all rights of the permittee will terminate immediately.
- The plan of operation for development, occupation and use of such space will be subject to the prior approval of the department, and if located under or adjacent to a federal-aid highway facility it will be subject to the approval of FHWA.
- The plan of operation must consider design of parking or other arrangements, plantings or other screening measures to improve the aesthetics and appearance of the area, surfacing, lighting, fencing, striping, curbs, wheel stops, pier protection, etc., and access for fire protection and firefighting equipment.
- The permittee will be responsible for ascertaining the correct location of property lines of the premises.
- Any improvements made to the premises will be fire resistant and in accordance with applicable local building codes, and that the premises will not be used for the

manufacture or storage of flammable material, explosives or hazardous materials, nor for the conduct of any business or occupation causing the emission of fumes, vapors, odors, drippings, droppings, or discharges deemed to adversely affect the highway facility or use thereof.

- The premises are to be maintained and kept in good condition as to safety and appearances and be accomplished without unreasonable interference of highway use. Upon failure to fulfill such maintenance obligations, the department may enter the premises and perform same at the expense of permittee.
- The department and FHWA will have the right to enter, inspect and view the premises at all times and to take possession thereof in case of national or other emergency situations.
- The permittee will not transfer or assign its rights under the permit without prior written approval of the department and FHWA.
- There will not be erected or allowed to be erected any signs upon the premises, except as approved in writing by the department. Only signs pertaining to the use of the premises are considered for approval.
- The permittee assumes all liability for all losses, expenses costs, actions, courses of action, demands, damage and claims in connection with the use of such premises.

The procedures for evaluating and processing permit applications are the same as those outlined in Section 7.10.2 for non-highway use agreements. Note the procedures outlined in Sections 7.10.3 through 7.10.8 are applicable to the leasing process only.

Upon approval to consent to a permitted use, such permit may be issued by the Regional Engineer through either the DLA engineer/manager or the district permit engineer, at the direction of the Regional Engineer.

Refer to Section 7.10.13 for the inventory and management requirements of operating right of way permitted for a non-highway related use.

7.12 *DISPOSAL OF EXCESS PROPERTY NO LONGER NEEDED FOR STATE HIGHWAY PURPOSES*

7.12.1 Policy on Disposal of Excess Property

When determined to be in the best interest of both the department and the public, it is the policy of the department to use its authority to dispose of excess property (defined in Section 7.9) rather than continue to maintain such property.

7.12.1.1 *General Authority for Disposal*

The Illinois Highway Code allows the department to dispose of “any land, dedications, easements, access rights, or any interest in the real estate that it holds, or other properties, real or personal, acquired for but no longer needed for highway purposes, or remnants acquired under the provisions of Section 4-501” (605 ILCS 5/4-508(a)). Disposal under the statute can be made by public sale, at auction or by sealed bids, as well as by direct sale in certain circumstances. Other statutes provide additional authority and methods for disposal to the department. For a complete listing refer to Section 7.12.2 below.

All disposals are subject to the written approval of the Governor. Any transfer of a property interest is made in the form of a Quit Claim Deed, with the exception of a conveyance of access rights, which is made by recording an Access Rights Release (LA 71201A Template).

If a disposal involves excess property acquired in connection with the interstate system, the department must evaluate the environmental effects of the disposal and obtain FHWA concurrence. In most cases, the environmental effects will qualify as a categorical exclusion and FHWA concurrence can be obtained by presenting the disposal, and its related issues, at an IDOT/FHWA coordination meeting. The Statement for Disposal of Excess Property form (LA 71203A) must indicate this environmental evaluation has been conducted and include the Categorical Exclusion Determination and Approval form (BDE 2301), when applicable.

Additionally, if the excess property to be disposed of was acquired with federal funds, 23 CFR § 710.403(f) requires that the federal share of net income from the use or disposal of real property interests obtained with Title 23 funds shall be used by the department for activities eligible for funding under Title 23. Based on the findings of a recent Process Review of the department's property disposal process, the department has agreed to track the following items in the LAMS system according to FHWA guidance:

- The amount of the federal share of net income from the use or disposal of real property deposited in a state transportation fund during the fiscal year;
- The amount of the federal share of net income expended on Title 23 eligible projects during the fiscal year, and
- The list and description of Title 23 eligible projects on the funds were expended on during the fiscal year.

7.12.1.2 *Factors in Considering Disposal*

The marketability of excess property is dependent upon several variables, i.e., size, shape, accessibility, location, demand and whether the state's ownership is in fee simple or just a right of access or easement for state highway purposes.

Larger, more desirable fee-owned excess properties, having fair market values equaling or exceeding expected disposal costs, should be offered for sale. Preferably within five years from the date construction of the highway project for which such property was acquired has been completed or abandoned; or the date such property is otherwise no longer needed for state highway purposes.

On the other hand, small or inaccessible parcels of excess property, especially in rural areas, are less in demand and the fair market value may be less than the cost to value the property and conduct a public sale. While the Highway Code allows some options to make disposal of such properties more feasible, such as offering the property directly to an adjacent property owner or in certain circumstances allowing for acceptance of bids less than the fair market value, to initiate a public sale of such properties with no assurance of potential bidders may not be a prudent expenditure of department resources.

Where the state owns rights of access or easements, the initiation of disposal is primarily dependent upon the department receiving a request from an interested party, generally the party owning fee simple title to adjacent land or the land encumbered by the rights of the state.

Prior to the district initiating such disposals, the interested party must be able to demonstrate they have legal access to the property which will benefit from the sale and that they are willing to complete the purchase. It is also important the district inform the party in writing that the State of Illinois merely releases its easement in and/or restores access rights to the land and will not name an owner, nor will the state guarantee a transfer of title. Each individual seeking the release of such an easement is expected to perfect their own title. Generally, title insurance companies or title examining attorneys require an individual seeking to perfect title after release of the highway easement, to be the owner or to acquire ownership of the underlying fee of the easement to be released. Therefore, if there is any doubt as to the ability to perfect title, private advice and counsel should be sought in order that the party can be assured of receiving the full benefit of the release of the easement.

7.12.1.3 *Valuation of Excess Property and Policy for Disposal Below Fair Market Value*

The fair market value of excess property will be based upon one or more appraisals completed by a qualified appraiser(s) approved by the department, or a waiver valuation prepared by the department, subject to a minimum nominal value of $300. For guidance on the number of appraisals or review appraisals required, and the limitations on the use of waiver valuations, refer to Section 3.14.

In general compliance with 605 ILCS 5/4-508 and 23 CFR 710.403(e), it is the policy of the department that declared excess property be disposed of for no less than fair market value, except as provided below.

The disposal provisions of 605 ILCS 5/4-508(a) allow, in certain circumstances, for the sale of excess property below fair market value provided such sale is justified in writing by the department. The written justification must include all relevant information considered in the decision to sell below fair market value, particularly any findings regarding: 1) the best interests of the department, 2) other public benefits such as divestment of liabilities, and/or 3) changed circumstances. Disposal of excess property below fair market value is allowed in the following circumstances, with sufficient written justification:

- Sale to a governmental entity for non-highway public use. The written justification shall describe the anticipated public use.
- Sale to a governmental entity for non-public use where the property was originally purchased using funds of the local entity purchasing the excess property. The written justification for the sale shall include documentation of agreement with the local entity governing the acquisition, if any, and proof that local funds were used for the purchase.
- Sale to a non-profit entity for charitable, community or public use, including any entity with 501(c)(3) tax exempt status. Such use might include private nature preserves or recreational areas, community facilities, etc. The written justification shall describe the anticipated public use or benefit.
- Ownership of the property imposes ongoing maintenance costs on the department, including but not limited to fencing, mowing, plowing, etc. The written justification shall explain the estimated costs imposed by retention of the property.
- Ownership of the property creates liability risks to the department due to features of or conditions at the property, including but not limited to water hazards, derelict

improvements, No Further Remediation restrictions from the IEPA, or other potential environmental hazards. The written justification shall set forth the liability risks created by retention of the property.

- A public sale does not yield any bids at or above the established fair market value. The written justification shall include an explanation of any features of the property hindering its marketability, as well as the estimated cost to attempt another public sale.

Other circumstances may arise in which the department finds it is in the public interest to sell excess property below fair market value. Prior to finalizing the disposal package, DLA must confer with CBLA regarding any potential sales below fair market value that fall outside the guidelines set forth in this section. In all cases, the written justification must clearly explain: 1) why accepting less than fair market value is in the best interest of the department and 2) how the final sale price was determined.

If the property being disposed of was acquired with federal funds, federal regulations found at 23 CFR 710.403(e) allow, in certain situations, for disposal below fair market value with FHWA approval. Exceptions to the requirement for charging fair market value must be submitted to FHWA in writing and may be approved by FHWA in the following situations:

- When the department shows that an exception is in the overall public interest based on social, environmental, or economic benefits, or is for a nonproprietary governmental use.
- Use by public utilities in accordance with 23 CFR part 645.
- Use by railroads in accordance with 23 CFR part 646.
- Use for bikeways and pedestrian walkways in accordance with 23 CFR part 652.
- Use for public transportation projects eligible for assistance under 23 U.S.C. 142(f).
- Use for other transportation projects eligible for assistance under Title 23 of the United States Code, provided that a concession agreement, as defined in §710.703, shall not constitute a transportation project exempt from fair market value requirements.

The deed for FHWA-approved disposals of excess property, below fair market value to other agencies for continued public use, must include a clause providing for reversion of ownership to the department for failure to continue public ownership and use. Where property is disposed of at fair market value, no reversion clause is required.

There are other specific types of transfers under state law that do not require sale for fair market value, including exchange of property under 605 ILCS 5/4-508(b), conveyance of property in conjunction with a jurisdictional transfer to another highway authority under 605 ILCS 5/4-508(d), transfer of property to comply with the requirements of state conservation and historic preservation laws as set forth in 605 ILCS 5/4-508(e), transfer of property to the Illinois State Toll Highway Authority as set forth in 605 ILCS 5/4-508.1, and transfers to another State department, authority, commission or agency under 20 ILCS 2705/2705-550.

In general, it is the department's responsibility to establish the fair market value of excess property for disposal, however the Highway Code does allow "any interested party" to obtain and pay for their own appraisal, so long as the appraisal is completed “by a qualified appraiser approved by the Department.” 605 ILCS 5/4-508(a).

7.12.1.4 *Disposing of Access Rights/Access Control*

Whenever the department has acquired property with a Freeway Order, or when a Freeway designation has been established, it has acquired and has control of the access rights of the abutting properties. A freeway is a controlled access highway, defined in the Illinois Vehicle Code as, "*Every highway, street or roadway in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or from the same except at such points only and in such manner as may be determined by the public authority having jurisdiction over such highway, street or roadway (625 ILCS 5/1-112)*”.

To alter this access control, and release or restore the access rights to abutting properties, represents a change from the initial design of the freeway and the following steps must be accomplished in the district prior to submittal for disposal.

- Present the change, alteration, or cancellation of access control at an IDOT/FHWA coordination meeting and document the approval of the BDE and the FHWA in the official minutes of the meeting. The FHWA must approve all changes, alterations, or cancellations of access control in connection with the interstate system.
- Prepare a revised Freeway Order or a Rescinding Order as applicable and submit to BDE for execution by the Secretary and eventual recording in the county where the change will take place.
- Prepare the plat(s) and legal description(s) for the property(s) which show and describe the revised access control and the approved point(s) of access.

Access restrictions can have dramatic impacts on property values, especially if not properly handled. Therefore, it is important that all the preceding steps are taken well in advance of the disposal request to CBLA.

Appraisals obtained for the purpose of the disposal of access rights need to specifically address this issue in the report. See “Valuation of Dedicated Property and Access Rights” in Section 3.14.5 and “Valuation of Access Rights Only” in Section 3.14.6.

Access rights are disposed of by recording an Access Rights Release (LA 71201A Template). However, at times the interested party may desire to develop the abutting property before the disposal of access rights can be accomplished. In such cases, the district may enter into an Agreement for Restoration of Access Rights (LA 71201B Template) with the developer, whereby the developer must agree to make the required payment of the appraised value of the access rights in advance. The department will then grant a temporary permit to the developer to construct an entrance to the highway and then initiate the disposal process.

7.12.2 Methods of Disposal – Overview

The disposal of excess property may be accomplished by one of several methods, each of which is described briefly below and in greater detail in succeeding paragraphs. Note, all methods of disposal are subject to the written approval of the Governor.

7.12.2.1 *Sale to the Former Owner (605 ILCS 5/4-508(c)(1))*

Before attempting to dispose of excess property by public sale (Section 7.12.2.4 below), by exchange (Section 7.12.2.5 below), or by conveyance to another governmental agency or not-for-profit organization for compliance with conservation or historic preservation laws (Section 7.12.2.7 below), 605 ILCS 5/4-508(c)(1) requires the department to first offer the excess property, in writing, at fair market value, to the person from whom such property was acquired, provided the person still owns and has continually owned land adjacent to and abutting such property since the acquisition by the department. If the offer to such person is not accepted in writing, within 60 days of the date of the offer, all rights under this paragraph terminate. (For detailed instructions see Section 7.12.4.)

7.12.2.2 *Sale to a Local Public Agency (605 ILCS 5/4-508(c)(2))*

If the sale to former owner option above does not exist, the offer is made and not accepted, or a sale is not otherwise consummated, 605 ILCS 5/4-508(c)(2) requires the department to next offer the excess property, in writing, at the value determined by the department, to the local municipality in which the property is located, or if the property is located in an unincorporated area, to the county or township, if applicable, in which the property is located. If a letter of intent to accept the offer is not received within 15 days; formal acceptance by resolution is not received within 45 days; or full payment is not made within 90 days of the offer, all rights under this paragraph terminate. (For detailed instructions see Section 7.12.5.)

7.12.2.3 *Sale to an Abutting or Adjacent Property Owner (605 ILCS 5/4-508(c)(3))*

If the local public agency declines the offer above, or a sale is not otherwise consummated, 605 ILCS 5/4-508(c)(3) requires the department to next offer the excess property, in writing, at fair market value, to an adjacent or abutting property owner if the property owner is the only reasonable party as determined by the department. If the offer is not accepted in writing, within 60 days of the date of the offer, all rights under this paragraph terminate and the department may proceed to dispose of the excess property by public sale, exchange, or conveyance to another governmental agency or not-for-profit organization for compliance with conservation or historic preservation laws. (For detailed instructions see Section 7.12.6.)

7.12.2.4 *Public Sale (605 ILCS 5/4-508(a))*

After consideration of the “4-508(c) methods” described above, 605 ILCS 5/4-508(a) authorizes the department to dispose of excess property by public sale, at auction or by sealed bids. A public sale is generally made at or above fair market value, but a sale below fair market value may be made as set forth in Section 7.12.1.3. Note that neither department employees nor family members living within the same household may bid on property, either real or personal, offered for public sale by the state. (For detailed instructions see Section 7.12.7.)

7.12.2.5 *Exchange (605 ILCS 5/4-508(b))*

After consideration of the “5/4-508(c) methods” described above, 605 ILCS 5/4-508(b) authorizes the department to exchange excess property for equivalent interests in land, rights or property, needed for state highway purposes. Note, cash must be paid or received by the department for the difference in value if such interests are not of equivalent value, and “disposal for less than fair market value” provisions discussed above in Section 7.12.1.3 are not applicable. (For detailed instructions see Section 7.12.8.)

7.12.2.6 *Conveyance to Another Highway Authority (605 ILCS 5/4-508(d))*

605 ILCS 5/4-508(d) authorizes the department to convey excess property, without compensation, to another highway authority provided the department enters into, or currently has, a written contract with the highway authority for the transfer of jurisdiction of the highway that is directly associated with the property being conveyed. Note the following:

- The department is not required to exhaust other disposal methods prior to making a conveyance associated with a jurisdictional transfer.

- Property conveyed using this method, cannot thereafter be vacated or transferred by the receiving highway authority without the department's approval, and the department may then require compensation from the highway authority if the property is transferred for a non-public use. Conveyance documents must include a reverter clause explicitly detailing this prohibition.

- If any of the property was acquired as a part of an interstate, it would require FHWA approval to convey.

For new jurisdictional transfers, the Jurisdictional Transfer Agreement form (BLR 05210) contains a checkbox to indicate agreement between the parties related to conveyance of the property. For past jurisdictional transfers, which occurred prior to the enactment of 605 ILCS 5/4-508(d) or which did not otherwise include the conveyance of the property, the parties must enter into a separate agreement to address the conveyance of the property. (For detailed instructions, see Section 7.13.)

7.12.2.7 *Conveyance for Compliance with Conservation or Historic Preservation Laws (605 ILCS 5/4-508(e))*

There will be times when the department is required to acquire land or interest in land in order to mitigate specific environmental concerns caused by highway construction. The most common example of this type of acquisition is wetland replacement. There may also be instances when land and other property acquired for state highway purposes must be managed or preserved in a manner specified in certain state and federal laws or regulations. Examples of this type of acquisition may involve a dwelling which has historical significance or a historic bridge. Although not technically considered excess property as previously referred to in this chapter, the property acquired in these instances is not essential to maintenance or operation of the highway and can be conveyed to other entities that are better equipped to manage such property as mandated by law.

After consideration of the "4-508(c) methods" described above, 605 ILCS 5/4-508(e) authorizes the department to convey such property to another governmental agency, or not-for-profit organization, if necessary to comply with one of the following statutes:

- subdivision (f)(3) of Section 6 of Title I of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460 1-8(f)(3);
- the Historic Bridge Program established under Title 23, United States Code, Section 144 subsection (o)(23 U.S.C. 144(o));
- the National Historic Preservation Act (16 U.S.C. Sec. 470);

- the Interagency Wetland Policy Act of 1989; or
- the Illinois State Agency Historic Resources Preservation Act.

The governmental agency or not-for-profit organization must agree to accept the conveyance and must agree to use the property for purposes consistent with the applicable law. The department must retain rights in the form of a reverter clause on the conveyance documents to protect the public interest. (For detailed instructions see Section 7.12.9)

7.12.2.8 *Inter-Departmental Transfer (20 ILCS 2705/2705-550)*

20 ILCS 2705/2705-550 authorizes the department to transfer jurisdiction of any realty under the control of the department to any other department of the state government, or to any authority, commission or other agency of the state. These transfers are made without compensation as the State of Illinois retains ownership regardless of which state agency has jurisdiction of the property. (For detailed instructions see Section 7.12.10.)

7.12.2.9 *Legislative Action*

Occasionally, the department may have a need to convey excess property to a specific party who is not the prior owner from which the department acquired title, a local public agency, or the adjacent/abutting landowner. The department does not have the authority to convey property directly to a specific party not meeting the requirements of 605 ILCS 5/4-508(c); as a result, legislative action is required to authorize such a direct sale. Legislative action is not a preferred method of disposal and should only be recommended when other methods will not work. Also, due to the level of effort involved with this method, it is the policy of the department that the specific party seeking the excess property must agree to deposit the full amount of the fair market value before the department will initiate the necessary legislation in the Illinois General Assembly. (For detailed instructions see Section 7.12.11.)

Please note that the department will not support a conveyance of excess property by legislative action to an employee of the department or to the employee's family members living within the same household.

7.12.3 Initiation of Disposals

When considering disposal of potential excess property, the department must evaluate: (1) whether or not the disposal will adversely affect the existing operating facilities of the department, (2) whether or not the property will be needed for some future improvement or construction of a highway facility, (3) whether or not the disposal will adversely affect the department's control of outdoor advertising or junkyards, and (4) the environmental effects which may result from the disposal.

At the time the proposed disposal is initiated, DLA staff must gather the acquisition history and data for the excess property; identify all interested parties to whom the property may first need to be offered to comply with 605 ILCS 5/4-508(c); and prepare the Statement for Disposal of Excess Property form (LA 71203A) for review and concurrence by those district bureaus whose operations may be affected by the proposed disposal.

After obtaining concurrence within the district, the Regional Engineer will sign the disposal statement thereby recommending to CBLA that the excess property is no longer needed for state highway purposes and should be disposed of or transferred by the method specified.

The following information and material must accompany the disposal statement when submitted to CBLA.

- Legal Description – The legal description should be prepared using the Legal Description (LA 71203B Template). The accuracy of the final typed legal description on the document of conveyance or in an act of the legislature is of utmost importance. Seemingly minor errors can cause additional administrative time and expense in having to obtain corrected deeds or amendments through the legislature to correct erroneous legal descriptions. Additional detailed information on this subject may be found in Section 2.5.

- Right of Way Plat – The right of way plat must show the parcel(s) of excess property to be conveyed or disposed of, either shaded or hatched, the federal-aid project number, parcel number, north arrow, area of parcel, and sufficient lines, dimensions, angles, bearings, etc., so that the parcel can be laid out on the ground. The plat will also show all property lines as well as illustrating and labeling existing, and if to be revised, the proposed right of way and/or access control lines. Any improvements existing on the parcel should also be shown. It is the department's responsibility to obtain and pay for the land survey required to complete the excess property disposal plat and accompanying legal description. Additional detailed information on this subject may be found in Section 2.4.

- Valuation – When required by the recommended method of disposal, the valuation of the excess property must be prepared and submitted to CBLA for approval, along with a statement that the document opines the fair market value of the subject excess property. If the district proposes to dispose below fair market value as permitted by statute, a written justification for the proposed sale price must also be included. See Section 7.12.1.3 above for more information regarding the valuation of excess property for disposal.

- Acquisition Documents – Provide one copy of the executed conveyance documents, or the Petition for Condemnation and Final Judgment Order, by which the department acquired title to the excess property, including a copy of the original right of way plat depicting the excess parcel thereon in relation to the total parcel acquired where the excess parcel was part of a larger parcel. Note: when conveying property to another highway authority as part of a jurisdictional transfer under 605 ILCS 5/4-508(d), these documents are not required if it is clearly shown that the property being conveyed falls within the right of way limits of the highway being transferred.

- Title Information – Provide one copy of the title insurance policy obtained at the time of acquisition of the excess parcel or an updated title commitment if a title policy is not available. Any outstanding objections on the title policy which have not been waived by the title company must be reconciled by notation as to whether or not the objections affect the excess parcel and/or what action will be necessary to dispose of the objection. There may also be other interests in the property that are not a matter of record, such as that of a utility occupying a portion of the parcel by a permit issued by the department, or the need to reserve the right of an easement over some portion of the property for the purpose drainage, access, etc. Where a permit has been previously issued, DLA must coordinate with the District Operations Permit Section to fully understand the effects of the disposal. If preservation of some right for a third party is warranted, such as an access easement to an adjacent landowner, it is preferable the prospective purchaser agrees at the time of sale to grant such rights in a separate conveyance between the purchaser and the third party. Title insurance documents are not required when property is conveyed under 605 ILCS 5/4-508(d).

- NORWAY Screenprint – Include a copy of the excess property's NORWA screen showing the appropriate status code.
- Environmental Determination – For disposals of excess property acquired in connection with the interstate system, include documentation of the FHWA's approval of the environmental determination. In most cases, this documentation will be the Categorical Exclusion Determination and Approval form (BDE 2301).

Since the responsibilities of CBLA and the district vary somewhat depending upon the method of disposal to be used, the different methods are discussed in detail in the following paragraphs and in Section 7.13.

7.12.4 Sale to the Former Owner Method

The disposal packet submitted for this method must include a letter from the title company stating that they have reviewed the property records from the date of the original acquisition to the present time and that the prior owner has been in continuous and contiguous ownership since the original acquisition. This will ensure the criteria required under 605 ILCS 5/4-508(c)(1) have been met in order for the excess property to be disposed of by sale to the former owner.

CBLA will review the disposal packet; and when deemed necessary, provide other central bureaus an opportunity to review and comment on the recommended disposal. CBLA will also obtain approval for the disposal from the Director of Highways Project Implementation and concurrence from the FHWA when required.

A draft quitclaim deed for conveyance of the property will then be prepared and forwarded to the district along with notification of approvals by the director and the FHWA advising that the excess property may be formally offered in writing to the former owner at the current fair market value.

Upon receipt of the approval, the district will prepare and forward the written offer to the former owner. The written offer must include a statement that if the offer is not accepted in writing within 60 days of the date of the written offer, all rights under the provisions of 605 ILCS 5/4-508(c)(1) will terminate. The district should include with the written offer a copy of the draft form of conveyance, requesting that if the offer is accepted such form should also be approved in writing by the former owner, or their legal counsel if they are represented by counsel. Additionally, the written offer should include instructions for furnishing a deposit of no less than 20% of the fair market value as earnest money in the form of a certified check, cashier's check, money order or bank draft, together with the written acceptance of the offer. Such deposit is retained by the district pending delivery of the deed and closing of the transaction. The former owner must be fully informed in writing that the department reserves the right to retain such deposit as liquidated damages in the event of their refusal to complete the transaction.

Upon receipt of the written acceptance of the offer, the required deposit and written approval of the form of conveyance, the district will forward one copy of each to CBLA recommending execution of the deed. CBLA will then submit the disposal package and draft deed to OCC for review. Upon approval by OCC, CBLA will obtain the execution of the deed in original form by the secretary, attested by the director, and the written approval of the Governor. The fully executed deed will then be returned to the district office for delivery and closing of the transaction.

The district will deliver the deed, along with an Accounts Receivable Invoice prepared in accordance with Section 8.5.1. After receipt of payment, the district will prepare a “Check Lot” in accordance with Section 8.5.2. A copy of the recorded deed as well as a copy of the completed NORWAY screen is then forwarded to CBLA in order to close the parcel file.

In the event the former owner does not accept the department's written offer within the required 60-day time limit, the district should document the non-acceptance in the file and proceed to offer the parcel to the appropriate local public agency.

7.12.5 Sale to a Local Agency Method

The disposal packet submitted for this method must include sufficient detail to assure that the sale to the former owner provisions of 605 ILCS 5/4-508(c)(1) are not applicable and the excess property may be sold to a local agency. Note that excess property in an incorporated area is only offered to the applicable municipality; whereas excess property in an unincorporated area is offered to both the applicable township and applicable county with the county given priority (see below for details).

CBLA will review the disposal packet; and when deemed necessary, provide other central bureaus an opportunity to review and comment on the recommended disposal. CBLA will also obtain approval for the disposal from the Director of Highways Project Implementation and concurrence from the FHWA when required.

A draft quitclaim deed for conveyance of the property will then be prepared and forwarded to the district along with notification of approvals by the director and the FHWA advising that the excess property may be formally offered in writing to the applicable local agency at the value determined by the department. If the excess property is being sold below fair market value, the deed may contain a reversion clause for failure to continue public ownership of the property.

Upon receipt of the approval, the district will prepare and forward the written offer to the local agency. The written offer must include a statement that all rights under the provisions of 605 ILCS 5/4-508(c)(2) will terminate if the department does not receive:

- a letter of intent to accept the offer within 15 days of the date of the offer,
- formal acceptance of the offer by resolution of the governing body within 45 days of the date of the offer, and
- payment for the full amount of the accepted offer within 90 days of the date of the offer.

The district should also include with the written offer a copy of the draft form of conveyance, requesting that if the offer is accepted such form should also be approved in writing.

If, for excess property in an unincorporated area, a timely letter of intent to accept and a formal acceptance is received from a county and a township, the county shall be given priority. However, if a county fails to tender the funds in the full amount of the written accepted offer and a township tenders the full amount of the timely accepted offer within 15 days of the county's failure to timely tender, the department shall sell the excess property to the township.

Upon receipt of the formal acceptance of the offer and written approval of the form of conveyance, the district will forward one copy of each to CBLA recommending execution of the deed. CBLA will then submit the disposal package and draft deed to OCC for review. Upon approval by OCC, CBLA will obtain the execution of the deed in original form by the secretary, attested by the director, and the written approval of the Governor. The fully executed deed will then be returned to the district office for delivery and closing of the transaction.

The district will deliver the deed, along with an Accounts Receivable Invoice prepared in accordance with Section 8.5.1. After receipt of payment, the district will prepare a "Check Lot" in accordance with Section 8.5.2. A copy of the recorded deed as well as a copy of the completed NORWAY screen is then forwarded to CBLA in order to close the parcel file.

In the event a local agency does not accept the department's written offer as required, the district should document the non-acceptance in the file and proceed to either offer the property to an abutting or adjacent property owner who is the only reasonable party to have an interest in the property, or proceed to dispose of the parcel by public sale.

7.12.6 Sale to an Abutting or Adjacent Property Owner Method

The disposal packet submitted for this method must include:

- sufficient detail to assure that the sale to the former owner provisions of 605 ILCS 5/4-508(c)(1) and the sale to a local agency provisions of 605 ILCS 5/4-508(c)(2) are not applicable; and
- information which shows the recommended owner does in fact own adjacent or abutting property and is the "only reasonable party" to receive the offer.

CBLA will review the disposal packet; and when deemed necessary, provide other central bureaus an opportunity to review and comment on the recommended disposal. CBLA will also obtain approval for the disposal from the Director of Highways Project Implementation and concurrence from the FHWA when required.

A draft quitclaim deed for conveyance of the property will then be prepared and forwarded to the district along with notification of approvals by the director and the FHWA advising that the excess property may be formally offered in writing to the abutting or adjacent property owner at the current fair market value.

Upon receipt of the approval, the district will prepare and forward the written offer to the abutting or adjacent property owner. The written offer must include a statement that if the offer is not accepted in writing within 60 days of the date of the written offer, all rights under the provisions of 605 ILCS 5/4-508(c)(3) will terminate. The district should include with the written offer a copy of the draft form of conveyance, requesting that if the offer is accepted such form should also be approved in writing by the owner, or their legal counsel if they are represented by counsel. Additionally, the written offer should include instructions for furnishing a deposit of no less than 20% of the fair market value as earnest money in the form of a certified check, cashier's check, money order or bank draft, together with the written acceptance of the offer. Such deposit is retained by the district pending delivery of the deed and closing of the transaction. The abutting or adjacent property owner must be fully informed in writing that the department reserves the right to retain such deposit as liquidated damages in the event of their refusal to complete the transaction.

Upon receipt of the written acceptance of the offer, the required deposit and written approval of the form of conveyance, the district will forward one copy of each to CBLA recommending execution of the deed. CBLA will then submit the disposal package and draft deed to OCC for review. Upon approval by OCC, CBLA will obtain the execution of the deed in original form by the secretary, attested by the director, and the written approval of the Governor. The fully executed deed will then be returned to the district office for delivery and closing of the transaction.

The district will deliver the deed, along with an Accounts Receivable Invoice prepared in accordance with Section 8.5.1. After receipt of payment, the district will prepare a "Check Lot" in accordance with Section 8.5.2. A copy of the recorded deed as well as a copy of the completed NORWAY screen is then forwarded to CBLA in order to close the parcel file.

In the event the abutting or adjacent property owner does not accept the department's written offer within the required 60-day time limit, the district should document the non-acceptance in the file and proceed to another method of disposal.

7.12.7 Public Sale Method

The disposal packet submitted for this method must include sufficient detail to assure that the provisions of 605 ILCS 5/4-508(c)(1), (c)(2), and (c)(3) are not applicable and that the excess property may be disposed of by public sale.

If the district anticipates the public sale to potentially generate bids less than the fair market value, the disposal packet should include justification to dispose of the excess property below fair market value (see Section 7.12.1.3). Prior determination that such disposal is in the best public interest will avoid delays in the sale, especially in the case of a public auction.

CBLA will review the disposal packet; and when deemed necessary, provide other central bureaus an opportunity to review and comment on the recommended disposal. CBLA will also obtain approval for the disposal from the Director of Highways Project Implementation and concurrence from the FHWA when required.

A quitclaim deed for conveyance of the property will then be prepared and forwarded to the district along with notification of approvals by the director and the FHWA when applicable, advising that the excess parcel may be advertised for public sale.

Upon receipt of the approval, the district will prepare a notice directing attention to the proposed sale to be published in a local newspaper of general circulation. The notice will be published at least once each week for two consecutive weeks with the sale to be held within a reasonable time, no less than 48 hours, after the date of the last publication of the notice.

The notice will also be made available on the department's website located at: Excess Property Sales. This is the only other advertising that will be placed. When the ad is sent to the newspaper(s) in the local area, e-mail a copy of the notice to the CBLA property manager who will place it on the department Internet server.

At a minimum, the notice will contain the following:

- The location, size, fair market value, and general description of the excess property to be sold.
- The location where sealed bids will be received and opened, or where the public auction will be conducted.
- The date and time when sealed bids will be opened or oral bidding will commence.
- The amount of the required performance deposit.
- How to obtain a copy of the "Notice to Bidders and Bidder's Proposal" form (LA 71207A). *Note, this form is pre-prepared by the district, prior to distribution to prospective bidders, by filling in the required information.*
- The telephone number(s) of person(s) to be contacted for information concerning the sale, as well as the district's fax number and TDD phone number.
- The following provision related to non-discrimination:

  "The State of Illinois, Department of Transportation, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d; 78 Stat. 252), the regulations of the U.S. Department of Transportation implementing such Act (49 CFR Part 21), and the Illinois Human Rights Act (775 ILCS 5/) hereby notifies all bidders that it will affirmatively ensure the acceptance of any bid pursuant to this Notice will be without discrimination on the grounds of race, color, religion, sex (including gender identity and sexual orientation), familial status, national origin or disability."

It is not necessary to include the complete legal description of the property in the advertisement. However, sufficient information should be included so potential purchasers can locate the excess property to be sold, such as lot, block, and subdivision or street address and city for urban properties, or the section, township, range and county for rural properties. The advertisement should also state a complete legal description will be furnished upon request.

The district will also prepare a Notice to Bidders and Bidder's Proposal for Public Sale and Purchase of State-Owned Excess Property form (LA 71207A). This form should be reproduced with a sufficient number of copies for distribution to interested buyers between the time of advertising and the sale date and to anyone attending the sale as a prospective bidder. This form is designed so that when more than one parcel is to be offered for sale it is only necessary to attach a separate "Description of Property to be Sold" for each parcel offered. The bidder's proposal portion of the form provides several spaces for inserting individual bids for the respective parcels.

Optional procedure – There may be occasions when a specific private party may express interest in purchasing a particular parcel of either potential or declared excess property, thus prompting the district to initiate the disposal process on the assumption that the interested party will submit a bid. Therefore, to assure that the interested party is a sincere bidder, the district may offer the opportunity for such party to submit a completed bidder's proposal and required cash deposit in advance of advertising and conducting a public sale of the property. As a prerequisite to this procedure, the actual date, time and place of the public sale must be determined and the "Notice to Bidders and Bidder's Proposal" form prepared, with a copy furnished to the interested party prior to accepting the bidder's proposal and cash deposit. This procedure will necessarily require the sale to be by public auction in order that the interested party as the initial bidder will have the opportunity to increase their bid at such sale.

If a specific parcel appears to have potential for recreational or open space development, particularly in urban areas, or is located adjacent to or in close proximity to an existing park, recreation or conservation area, a special effort should be made by the district to notify any local park or municipal authority of the pending sale of the parcel.

As provided by the statute, a public sale may be by either the auction method of oral bidding, or by the sealed bidding method. It should be noted that while the sealed bid method may be appropriate in some cases, prospective bidders have only one opportunity to bid on the property. On the other hand, the auction method provides all prospective bidders an equal opportunity to make as many oral bids as they desire until the highest bid is received. Auction bidding must be used when the above-described optional bidding procedure is followed. Otherwise, the district may select the method best suited to accomplish the disposal with maximum return.

7.12.7.1 *Sealed Bids*

Each bid, in order to be qualified, must be submitted on form LA 71207A (Notice to Bidders and Bidder's Proposal for Public Sale and Purchase of State-Owned Excess Property) and accompanied by the required performance deposit in the form of a bank draft, cashier's check, certified check, or money order made payable to the Treasurer of the State of Illinois. The successful bid must equal or exceed the fair market value of the excess property unless disposal for less than fair market value has been approved.

7.12.7.2 *Auction Bids*

Ordinarily, the best place to conduct a public auction is at the site of the property. However, an auction can be conducted in the district office or any other location believed to be most attractive and/or convenient to prospective bidders. It is advisable to obtain a register of the names and addresses of all prospective bidders before commencing the auction to assist in determining the most convenient location.

All bidders must be fully informed of the required performance deposit and that the department reserves the right to retain such deposit as liquidated damages in the event the successful bidder refuses to complete the transaction. The amount of the performance deposit should be set according to the following and included in the public notice to permit prospective bidders to come to a sale with the deposit in hand.

Current Fair Market Value	Minimum Performance Deposit
$1,000 or less	50% of fair market value
$1,001 - $2,500	$500
$2,501 - $5,000	$1,000
$5,001 - $10,000	$1,500
$10,001 - $20,000	$2,000
Over $20,000	10% of fair market value

The above suggested fixed deposits are considered to be reasonable minimums; however, they may be increased at the discretion of the Regional Engineer.

The successful bid must equal or exceed the fair market value, unless disposal for less than fair market value has been approved. At the conclusion of bidding, the successful bidder will complete and execute the bidder's proposal form (LA 71207A) and submit the required performance deposit in the form of a certified check, cashier's check, money order or bank draft made payable to the Treasurer of the State of Illinois.

The performance deposits of successful bidders are not considered to be accounts receivable to the state and are retained by the district until the sale is finalized. The deposits of the unsuccessful bidders under the sealed bid procedure will be returned to them as soon as the sale to the successful bidder has been finalized.

After the public sale, the draft form of quitclaim deed, which will have been furnished to the district will be filled in with the named grantee and the consideration to be paid, and will be submitted with a report of sale if by auction, or a list of bids, if by sealed bids. Also necessary is a copy of the "Notice to Bidders and Bidder's Proposal" completed by the successful bidder for each parcel, together with a recommendation for the acceptance of the bid. This must be submitted to CBLA for review and to obtain execution of said deed. Careful attention should be given to the tenancy under which the bidder proposes to take title and to the completeness and accuracy of the final typed legal description on said deed. In order to avoid any future misunderstanding concerning the transaction, the named grantee(s) and tenancy under which they propose to take title should be exactly the same on the deed as that shown on the bidder's proposal. Furthermore, if bidding is by corporation, limited liability company, limited partnership, partnership or trust, and title is to be conveyed as such an entity, an affidavit of disclosure of the ownership interests of such entity must also be obtained and submitted to CBLA. See the Disclosure of Ownership Affidavit form (LA 71207B).

CBLA will submit the complete disposal package and draft deed to OCC for review and, upon receiving OCC approval, have the deed executed by the secretary, attested by the director and approved by the Governor. After execution the original deed will be forwarded to the district office for delivery and closing of the transaction.

The district will deliver the deed, along with an Accounts Receivable Invoice prepared in accordance with Section 8.5.1. After receipt of payment, the district will prepare a "Check Lot" in accordance with Section 8.5.2. A copy of the recorded deed as well as a copy of the completed NORWAY screen is then forwarded to CBLA in order to close the parcel file.

7.12.8 Exchange Method

The disposal packet submitted for this method must include:

- sufficient detail to assure that the provisions of 605 ILCS 5/4-508(c)(1), (c)(2), and (c)(3) are not applicable,
- a statement that the interests to be exchanged are either equivalent (i.e., fee for fee, easement for easement, etc.) or greater in the department's favor (i.e., we can exchange our dedication for their fee) and that the values of the interests being exchanged, if not equal, are equivalent with either the payment or the receipt of an amount of money for the difference in values, and
- a copy of the proposed form of conveyance to the department, including the legal description and a plat of the parcel to be acquired; or in the case of an exchange by stipulated settlement in a condemnation proceeding, a copy of the Final Judgment Order either as entered or proposed, detailing the proposed exchange transaction in terms of the total settlement amount, the value of the excess parcel to be credited towards the final settlement, and the difference to be paid or received by the state.

CBLA will review the disposal packet; and when deemed necessary, provide other central bureaus an opportunity to review and comment on the recommended disposal. CBLA will also obtain approval for the disposal from the Director of Highways Project Implementation and concurrence from the FHWA when required.

A quitclaim deed for conveyance of the property will then be prepared and forwarded to the district along with notification of approvals by the director and the FHWA when applicable, advising that excess property may be exchanged for the acquisition of land needed for state highway purposes.

Upon receipt, the district will obtain written approval of the draft form of conveyance from the owner with whom the exchange is taking place, or their legal counsel if they are represented by counsel. The district will also proceed to obtain the necessary executed acquisition documents or copies thereof as set out in the acquisition policies and procedures found in Chapter 4 for acquisition of the land or rights needed for state highway purposes and prepare the required warrant requisition form. A copy of the owner's, or their legal counsel's, written approval of the exchange deed and the warrant request form including copies of required title data will then be forwarded to CBLA.

After title to the parcel being acquired has been approved, CBLA will process the warrant request for issuance of the warrant when additional payment by the state is required, and submit the disposal package and draft deed to OCC for review. Upon approval by OCC, CBLA will obtain the execution of the quitclaim deed by the secretary, attestation by the director and approval of the Governor. The original executed exchange deed together with title approval and the state warrant, if required, is forwarded to the district office for delivery and closing of the transaction.

If payment is due the state, the district will prepare an Accounts Receivable Invoice in accordance with Section 8.5.1 and deliver it along with the executed exchange deed. After receipt of payment, the district will prepare a "Check Lot" in accordance with Section 8.5.2. A copy of the recorded deed as well as a copy of the completed NORWAY screen is then forwarded to CBLA in order to close the parcel file.

Regardless of whether money is to be paid by, or is due, the department, a copy of the payment documentation must be maintained in the disposal file for the exchange.

7.12.9 Conveyance for Compliance with Conservation or Historic Preservation Laws Method

7.12.9.1 *General Procedures*

This type of disposal may be initiated by the department or by the outside agency or not-for-profit organization which qualifies to receive the property under state law. In either case, the district must determine that the disposal is in the department's best interest while taking into consideration the impact to adjacent property owners. Once the district is satisfied that the property in question may be conveyed, the disposal statement and accompanying information is submitted to CBLA.

The submitted disposal packet must include sufficient detail to assure the provisions of 605 ILCS 5/4-508(c) are not applicable and that the excess property may be disposed of in accordance with the provisions of 605 ILCS 5/4-508(e). If there are buildings or improvements on the property, the disposal packet must also include an Order and Approval to Dispose of Buildings/Improvements form (LA 70602).

CBLA will review the disposal packet and provide other central bureaus an opportunity to review and comment on the recommended disposal as appropriate. CBLA will then obtain approval for the disposal from the Director of Highways Project Implementation and concurrence from the FHWA when required. When necessary, CBLA will also prepare the original bill(s) of sale using LA 70700 Template (Bill of Sale (Buildings/Improvements)). The original bill(s) of sale will then be initially executed by the chief of CBLA and forwarded together with one copy of the fully executed order(s) to the district.

Upon receipt, the district will obtain the grantee's approval of the proposed deed, and under certain circumstances, the bill of sale. Upon approval, the documents are returned to CBLA for OCC approval and final signatures by the department and the Governor. If circumstances require a bill of sale, both the Order and Approval to Dispose of Buildings/Improvements (form LA 70602) and the Bill of Sale (LA 70700 Template) will be signed by the Regional Engineer before returning to CBLA for final signatures.

The completed document(s) is then returned to the district for the closing. The district will then have the document(s) recorded, if necessary, and send the original(s) to the grantee.

A copy of the recorded deed as well as a copy of the completed NORWAY screen is then forwarded to CBLA in order to close the parcel file.

IDOT will occasionally retain an interest in the property, such as access rights or easements of other kinds as required for state highway purposes. The potential grantee should be aware of these limitations of the conveyance.

7.12.9.2 *Wetland Disposal/Release Procedures*

When transferring department-owned wetlands, the department must comply with the statutorily mandated Illinois Department of Transportation Wetlands Action Plan dated April 15, 1998. Section XI of the plan, "Transfer of Wetlands", provides as follows:

> Whenever IDOT can transfer management responsibility for wetland compensation areas without jeopardizing project operation, it will submit a written request to IDNR for approval of the transfer. IDOT will ask that IDNR respond to such requests within 60 days. IDOT will identify the proposed recipient of the land and will provide or outline the terms of the transfer agreement. IDOT generally will give preference to qualified entities which can ensure appropriate management without need for funding support from IDOT for assuming the management activities.
>
> In accordance with the requirements of the Act, and subject to obtaining any required approvals from the Governor or the State Legislature, IDOT will transfer compensation wetlands (other than those which are located within or that are otherwise an integral part of project rights-of-way) to IDNR or other eligible sponsors subject to formal transfer agreements that will fulfill all obligations of IDOT related to the approved compensation plan. In the event that IDOT is unable to find any other suitable entity to assume responsibility for long-term management of IDOT-developed wetland compensation sites, IDOT will transfer such sites to IDNR for long-term management. Such transfer will not require a commitment from IDOT to provide funds to IDNR to support the management activities.
>
> As long as wetland compensation property is held by IDOT, it will be maintained for its designated use. Where wetland compensation sites for IDOT pass-through funded projects are under the jurisdiction of a local agency, IDOT will require the local agency to ensure that the site will be maintained for wetlands purposes. Local agencies or sponsors may transfer wetlands or maintenance responsibilities to other public or private entities when allowed by law, subject to obtaining IDNR approval for such transfer.
>
> If IDOT proposes the sale, exchange, or release of State-owned land containing wetlands to an entity other than another State agency, it will require the recipient of the land to grant a conservation easement which must contain provisions to protect the wetlands and any associated buffer areas from adverse impacts. Such easements will be written and recorded pursuant to the Real Property Conservation Rights Act. IDOT will attempt to have a unit of local government be the grantee of the easement. If a unit of local government cannot be obtained, IDOT will attempt to have an acceptable not-for-profit corporation or charitable trust is the grantee. If a unit of local government or not-for profit entity cannot be obtained, IDOT will reserve conservation rights in its deed or release document and will transfer those rights to IDNR. Prior to the sale, exchange, or release of State-owned lands under IDOT control to an entity other than State agency, the department will submit a written request to IDNR in accordance with 17 Ill. Adm. Code 1090.90 c 4.

District property managers should discuss these types of transfers with the CBLA property manager at the initiation of the transfer process in order to minimize problems due to the sensitive nature of wetland properties.

7.12.10 Inter-Departmental Transfer Method

Other departments of state government, or authorities, commissions or other agencies of the state, occasionally request that certain property controlled by the department be transferred to such agencies for another public purpose.

For the most part, such requests are expected to be made formally at the CBLA level through the secretary. Such requests are then forwarded to the Regional Engineer for consideration as to whether or not the transfer is advantageous to the state of Illinois.

Substantially the same process is followed insofar as the district reviews and prepares the disposal packet, except that no valuation of the property to be transferred is required.

CBLA will review the disposal packet; and when deemed necessary, provide other central bureaus an opportunity to review and comment on the recommended disposal. CBLA will also obtain approval for the disposal from the Director of Highways Project Implementation and concurrence from the FHWA when required.

An inter-departmental transfer of jurisdiction document will be prepared by CBLA. The transfer document is executed by the secretary and then forwarded to the requesting agency for their execution. The secretary or the head of the requesting agency may then obtain the Governor's approval. The document is then recorded in the appropriate county, after which one copy is returned for the district's records.

In cases where the department requires either jurisdiction of another agency's property or a temporary easement (or an Illinois Department of Natural Resources (IDNR) Permit) much the same procedure is followed. The district submits a memorandum stating the request and the purpose, along with a plan sheet indicating the property and a legal description to CBLA.

CBLA will then create the necessary document or permit and obtain the secretary's concurrence. The document or permit will then be forwarded to the appropriate agency for their concurrence. After the forms are returned to CBLA, the Governor's approval will be obtained and the completed form will be returned to the district.

Jurisdictional transfers will then be recorded, with one copy being returned to CBLA for transmittal to the agency affected. A copy of the parcel's completed NORWAY screen will also be sent to CBLA. Temporary easements or IDNR permits will be placed in the appropriate parcel file at the district level.

Refer to Section 4.5.2.14 State Agencies, for information on acquiring property owned by the state but under the custody and control of other state agencies.

7.12.11 Legislative Action Method

Occasionally a specific interested party, who does not meet the former owner or abutting/adjacent owner requirements of 605 ILCS 5/4-508(c), will request to purchase excess property directly from the department. Due to the sensitive nature of such requests for a "direct sale", the district should thoroughly investigate the issues associated with the request before forwarding the request, including the district's recommendation, to CBLA for further review. CBLA will then review the disposal packet and determine if a direct sale via legislative action is the appropriate method to use for disposal of the property.

After approval of the disposal by the Director of Highways Project Implementation, and by the FHWA if interstate right of way is involved, a legislative bill is then prepared by CBLA and forwarded, together with one copy of the plat and the appraisal (or three appraisals, if required), to the Office of Inter-Governmental Affairs, subject to the interested party having deposited the full amount of the anticipated "sale price".

The "sale price" will be determined by the General Assembly during the legislative process and the amount will typically equal the average value of the three appraisals. With this understanding, the district will collect an amount equal to the average of the three appraisals from the interested party so that in most instances a department refund or an additional payment from the interested party is not required. The deposit check should be made payable to the Treasurer of the State of Illinois.

If the General Assembly does choose a value different from the average value of the three appraisals the interested party will have a right to:

- Receive a refund of the difference if the selected value is less than the amount previously collected, or
- Be responsible for payment of the increased amount if the selected value is more than the amount previously collected, or
- A refund of the full amount previously paid if the General Assembly selects a value not agreeable to the interested party.

If a refund of the full amount is made the department will request rescission of the legislation in the next legislative session.

A completed Legislative Action Request Letter (LA 71211 Template) should also be provided by the interested party when legislative action is undertaken. This letter indicates that the department has informed the interested party of the nature of the legislative action that is being undertaken and is aware of the requirements that they must fulfill in order to complete the transaction.

Following a review by the Office of Inter-Governmental Affairs, the department's recommendation for introducing the proposed bill in the next session of the General Assembly is submitted to the Office of the Governor. If accepted, a legislative sponsor will be designated and the bill drafted in final form by the Legislative Research Bureau to be introduced in the General Assembly.

Proposed land bills are typically introduced in the January to June session of each calendar year. Therefore, in order to ensure that a particular sale will be introduced in an approaching session, the district submittal should be made to CBLA no later than **December 1st** preceding the next session to ensure being included in the initial administration sponsored omnibus bill for legislative action.

Assuming the bill is passed in both houses and approved by the Governor (i.e., the bill becomes law), CBLA will be provided with a certified copy of the Public Act from the Secretary of State. CBLA will then prepare a quitclaim deed and send it to the district along with the certified copy of the act for recording with the County Recorder. The district then sends a recorded copy back to CBLA.

If the final appraised value written in the act differs from that previously deposited by the Grantee, the district will collect/refund the balance. All "Accounts Receivable Invoices" and "Check Plots" are prepared by the district in accordance with Sections 8.5.1 and 8.5.2. respectively.

A copy of all recorded documents as well as a copy of the completed NORWAY screen is then forwarded to CBLA in order to close the parcel file.

7.13 *LAND CONVEYANCE PROCEDURES INVOLVING JURISDICTIONAL TRANSFERS TO OTHER HIGHWAY AUTHORITIES*

Jurisdictional transfers prior to the enactment of 605 ILCS 5/4-508(d) empowered the recipient with authority and obligation to administer, control, construct, maintain, and operate a highway or street subject to the provisions of the "Illinois Highway Code." They did not include the conveyance of property.

605 ILCS 5/4-508(d) effective January 1, 1999, provides "If the department enters into or currently has a written contract with another highway authority for the transfer of jurisdiction of any highway or portion thereof, the department is authorized to convey, subject to the written approval of the governor, without compensation, any land, dedications, easements, access rights, or any interest in the real estate that it holds to that specific highway or portion thereof to the highway authority that is accepting or has accepted jurisdiction. However, no part of the transferred property can be vacated or disposed of without the approval by the Department, which may require compensation for non-public use."

Per 23 CFR 710 Subpart D-Real Property Management, any conveyance involving Jurisdictional Transfers to other Highway Authorities must show that the transfer is in the overall public interest based on social, environmental, or economic benefits, or is for a non-proprietary governmental use. Based on this, the following criteria must be evaluated and documented in a memorandum of public interest determination:

- Ensure the property to be jurisdictionally transferred is no longer needed for state highway use.
- Ensure the property to be jurisdictionally transferred will not cause any adverse impacts to environment.
- Ensure the property will be used for a public purpose.

Additionally, if the jurisdictional transfer involves property acquired in connection with the interstate system, the transfer must be approved by the FHWA. District staff should prepare and submit the following documents to CBLA if FHWA approval is required for a jurisdictional transfer:

- Statement for Disposal of Excess Property form (LA 71203A)

- Memorandum of Public Interest Determination
- Environmental Clearance documentation
- Plat or aerial map depicting the property to be transferred

Jurisdictional transfer agreements can be divided into two categories: Past – Previously Executed and New – Yet to be Executed. Although quite similar, the procedure for conveyance of property is slightly different for each of these categories. The processes to be followed are described in the following sections and depicted as flow charts in Exhibit LA 71300 (Land Conveyance Procedures for Jurisdictional Transfers). Conveyances under this section must receive prior FHWA approval when appropriate.

7.13.1 Past Jurisdictional Transfer – Previously Executed

Conveyance of land associated with a highway whose jurisdiction has previously been transferred may be initiated by either the department or a local public agency (LPA). In either case, DLA should seek conditional concurrence/general agreement from District Operations (DO), Project Implementation (DPI), Local Roads and Streets (DLRS), Studies and Plans (DSP), and Program Development (DPD) before initiation or continuation of discussions with the LPA.

Should ensuing discussions between the LPA and the department produce an agreement to proceed, DLA should prepare a Letter of Intent to be sent to LPA. It should propose conditions of a land conveyance and include:

- A general description of the property: termini, length, etc.
- Copies of pertinent prior jurisdictional transfers.
- Details associated with how plat(s) and legal descriptions will be prepared.
- A statement that “conveyance documents will include only property deemed to be necessary for highway use and not attendant excess property.”
- A statement that “no part of the transferred property can be vacated or disposed of without the approval of the department, which may require compensation for non-public use.”
- A statement that conveyance would be subject to existing permits.
- Copies of existing permits (utility and access).
- An LPA sign-off area for concurrence/non-concurrence.
- A general location map indicating the limits of the area conveyed.
- A copy of the Categorical Exclusion Determination and Approval form (BDE 2301).

This Letter of Intent is then transmitted to the LPA for its consideration. If the LPA acknowledges concurrence by either returning the Letter of Intent properly noted or by separate letter, DLA should then begin the more detailed preparation of materials for the proposed conveyance required to be submitted to CBLA.

DLA should now initiate a Statement for Disposal of Excess Property form (LA 71203A) for review and concurrence of other district bureaus and sections whose operations will be affected by the proposed transfer.

Upon concurrence by the affected district bureaus, the DLA or the LPA should then prepare or cause to be prepared a plat and legal description of the property proposed to be transferred. The plat must show a north arrow, area to be transferred, and sufficient lines, dimensions, angles, bearings, etc., so the parcel may be laid out on the ground. The legal description should be prepared on LA 71203B Template and titled “A Transfer of Land Rights Associated With a Jurisdictional Transfer”. If it is determined that the plats and legals are to be prepared by the LPA, the survey and title records located in the district offices will be made available to the LPA if necessary.

Copies of permits issued within the area to be transferred should be assembled. These permits are to include access/entry and utility uses.

DLA, on behalf of the district, then submits a recommendation for transfer, and the above information to CBLA for review and further processing.

This data is then reviewed by CBLA. Other central bureaus will be invited to review and comment on the recommended transfer if deemed appropriate. If found acceptable, CBLA will obtain the approval of the director and FHWA when necessary. Subsequent to approval by the director, CBLA will prepare the necessary conveyance documents. This type of instrument will be a Quitclaim Deed. These documents will be transmitted to the DLA along with a notification to proceed.

The district will then examine the CBLA material and, if in agreement, submit the documents to the LPA for review/appropriate action.

Should the LPA find the transfer material acceptable, it should pass and execute the appropriate ordinances/resolutions, thereby agreeing to accept the conveyance upon execution by the secretary and approval by the Governor. Five certified copies of the ordinance/resolution are to be provided to the district by the LPA.

DLA reviews this material and forwards it to CBLA if found to be proper. CBLA finalizes the documents and submits the disposal package to OCC for review. Upon approval by OCC, CBLA will obtain the secretary’s signature and the Governor’s approval and returns them to the DLA for the act of recording.

DLA records the documents in the appropriate county(ies), retains a copy(ies), sends the originals to the LPA and copies to CBLA, CBLRS, DO and DLRS.

7.13.2 New Jurisdictional Transfer - Not Yet Executed

A new jurisdictional transfer for a particular highway may be discussed in the course of planning or design for a project. Should it be determined to be in the best interest of the public or the department to transfer the real estate interest in conjunction with the JT, the district and LPA should prepare a Letter of Intent and begin the process to enter into a Jurisdictional Transfer Agreement using form BLR 05210. The Letter of Intent is to be prepared by DLA and propose conditions of a land conveyance and include:

- A general description of the property: termini, length, etc.
- Details associated with how plat(s) and legal descriptions will be prepared.
- A statement that "conveyance documents will include only property deemed to be necessary for highway use and not attendant excess property."
- A statement that "no part of the transferred property can be vacated or disposed of without the approval of the department, which may require compensation for non-public use."
- A statement that the LPA agrees that the transferred property is in the interest of the general public and will not be used for a non-proprietary governmental use.
- A statement that conveyance would be subject to existing permits.
- Copies of existing permits (utility and access).
- An LPA sign-off area for concurrence/non-concurrence.
- A general location map indicating the limits of the area conveyed.
- A copy of the Categorical Exclusion Determination and Approval form (BDE 2301).

The Jurisdictional Transfer Agreement and Letter of Intent are then transmitted to the LPA for consideration. If the LPA acknowledges concurrence by either returning the Letter of Intent properly noted or by separate letter, DLA should then begin the more detailed preparation of materials for the proposed conveyance required to be submitted to CBLA.

DLA should now initiate a Statement for Disposal of Excess Property form (LA 71203A) for review and concurrence of other district bureaus and sections whose operations will be affected by the proposed transfer.

Upon concurrence by the affected district bureaus, the DLA or the LPA ,must prepare or cause to be prepared a plat and legal description of the property proposed to be transferred. The plat should show a north arrow, area to be transferred, and sufficient lines, dimensions, angles, bearings, etc., so the parcel may be laid out on the ground. The legal description should be prepared on LA 71203B Template and titled "A Transfer of Land Rights Associated With a Jurisdictional Transfer". If it is determined that the plats and legals are to be prepared by the LPA, the survey and title records located in the district offices will be made available to the LPAs if necessary.

Copies of permits issued within the area to be transferred should be assembled. These permits are to include access/entry and utility uses.

DLA, on behalf of the district, then submits a recommendation for transfer, and the above information, in duplicate, to CBLA for review and further processing.

This data is then reviewed by CBLA. Other central bureaus will be invited to review and comment on the recommended transfer if deemed appropriate. If found acceptable, CBLA will obtain the approval of FHWA when necessary. Subsequent to approval by the director, CBLA will prepare the necessary conveyance documents. The type of instrument will be a quitclaim deed. These documents will be transmitted to the DLA along with a notification to proceed.

The district will then examine the CBLA material and, if in agreement, submit the documents to the LPA for review/appropriate action.

Should the LPA find the transfer material acceptable, it should pass and execute the appropriate ordinances/resolutions, thereby agreeing to accept the conveyance upon execution by the secretary and approval by the Governor. Five certified copies of the ordinance/resolution are to be provided to the district by the LPA.

DLA reviews this material and forwards it to CBLA if found to be proper. CBLA finalizes the documents and submits the disposal package to OCC for review. Upon approval by OCC, CBLA will obtain the secretary's signature and the Governor's approval, subsequent to the enactment of the jurisdictional transfer and returns them to the DLA for the act of recording.

DLA records the documents in the appropriate county(ies), retains a copy(ies), sends the originals to the LPA and copies to CBLA, CBLR&S, DO and DLR&S.

7.13.3 Land Vacated or Disposed of Subsequent to it Being Conveyed Under 605 ILCS 5/4-508(d)

605 ILCS 5/4-508(d) includes a provision that "no part of the transferred property can be vacated or disposed of without the approval of the department, which may require compensation for non-public use." The deed of conveyance from the department to the other highway authority will include specific language to reserve this right to approve future conveyances.

The secretary of the department or the secretary's designee will approve or disapprove all subsequent vacations or disposals of property conveyed by the department under 605 ILCS 5/4-508(d).

Any highway authority who desires to vacate property conveyed to them under 605 ILCS 5/4-508(d) will submit their request through the appropriate district office. The district will prepare a memorandum forwarding the request to CBLA. It is important to note that any subsequent vacations or disposals which involve a non-public use of the property originally conveyed by the department may require the department to receive compensation. This compensation will be determined by district land acquisition in the form of an appraisal of the fair market value.

CBLA will process the request to vacate or dispose of the subject property. CBLA's decision will then be returned to the district. The district will, in turn, inform the impacted highway authority.

7.14 *ANNEXATIONS*

There are occasions when a municipality will desire to annex state property under the department's jurisdiction. If the property is considered non-operating right of way, the process falls under 65 ILCS 5/7-1-2 which requires the municipality to pass an ordinance to enact the annexation and then request the written consent of the Governor. The request for annexation will be reviewed by DLA before being forwarded to CBLA and must include the following:

- Copy of the letter from the appropriate municipal official requesting the annexation and a form of consent to be signed by the Governor.

- Legal description of the property to be annexed.
- A detailed description of the type of land to be annexed with an indication of how the property is currently being used by the department.
- A drawing or map showing the location of the property in relationship to our highway with a clear indication of the city limits of all cities in close proximity of the property to be annexed.
- Details of any controversy or disputes that may exist over the proposed annexation.
- Statement that the district is not opposed to the annexation.

The annexation request is then reviewed by CBLA. If in order, CBLA will obtain the Governor's signature on the form of consent and return the original to DLA. DLA then sends the original form of consent to the municipality, retaining a copy.

If the property to be annexed is dedicated or used for highway purposes (i.e., considered operating right of way), the process falls under 65 ILCS 5/7-1-10 which only requires the municipality to pass an ordinance. No consent by the Governor or the department is required.

Table of Contents

Section **Page**

8 ACCOUNTING FOR LAND ACQUISITION SERVICES

8.1 *GENERAL*

The accounting of disbursements of right of way funds and the monitoring of expenditures are the responsibility of the Program Management Section of the Central Bureau of Land Acquisition (CBLA).

Compensation for right of way acquired by the state is paid by state warrant drawn by the state comptroller and countersigned by the state treasurer. District Land Acquisition (DLA) authorizes these payments through the Land Acquisition Management System (LAMS), or the vendor’s statement of goods or services rendered. The warrants are issued upon entry into the Fiscal Operations and Administration (FOA) system and submittal of the invoice to the Bureau of Business Services (BoBS).

8.2 *TAX ISSUES (1099)*

The Internal Revenue Service (IRS) requires the department to report certain real estate transactions. The reporting requirements, and exceptions to reporting, are noted below:

- A 1099-S is issued for fee simple acquisitions, dedications, or permanent easements, including damages to the remainder, in which any payee receives $600 or more.
- A 1099-S is issued for land exchanges when the value of land being acquired by the department is $600 or more.
- A 1099-MISC is issued for temporary easements in which any payee receives $600 or more. Temporary easements are considered rent by the IRS and are reported separately from permanent easements.
- Reporting is required for real estate transactions involving individuals, partnerships, unincorporated companies, churches, cemeteries, clubs, trusts and LLC’s.
- Reporting is NOT required for transactions involving governmental entities and corporations, including S corps.
- The Taxpayers Relief Act of 1997 excludes the seller of a principal residence from the requirement of filing a 1099-S form after the sale. For the sale of a principal residence to be exempt, a Certification (Exclusion of Principal Residence form 1099-S) (LA 80200A) must be signed by each owner.

IRS compliance requires that the negotiator obtain the tax identification numbers and addresses of all those parties in interest, other than governmental entities and corporations, using IRS Form W-9 (see Section 4.5.4.5). If there are multiple owners, the negotiator should also request an allocation of the payment so the 1099 form(s) will reflect the actual payment going to each payee (see Section 4.5.4.4).

For more detailed information on the use of IRS forms 1099-S and 1099-Misc., see Exhibit LA 80200B.

8.3 *WARRANT REQUEST PROCEDURES*

Upon completion of negotiations and execution of an instrument of conveyance, or upon entering of a court order in condemnation proceedings, DLA generates a warrant request through LAMS.

Once the warrant request has been generated, it is necessary that various documents be submitted to CBLA either to support the validity of the request or to indicate that certain procedural criteria have been met. Without exception, supporting documents must be on file in CBLA for the warrant request to be processed.

CBLA acquisition coordinator staff will review the warrant request and issue the final approval through the LAMS system. CBLA accounting unit will then:

- Complete the okay to pay fields on the document within the LAMS system and save the warrant request in pdf format.
- Upload the warrant request via KnowledgeLake to the Invoice Approval SharePoint site and schedule the warrant in FOA.

At the time of scheduling in FOA, the CBLA accounting unit will change the payment status in the LAMS system to “Entered for Payment”. The schedule, warrant request, and code stamp are electronically submitted to BoBS where a voucher number is assigned in the FOA system. BoBS assembles the vouchers and affixes the Secretary’s signature and forwards them to the State Comptroller for payment.

State warrants for acquisition are mailed to CBLA. Once received, the CBLA Accounting Unit completes the “warrant sent to district date” on the CBLA Payment Request screen in the LAMS system. Upon completion, these warrants are mailed to the appropriate districts, and the districts enter the “acknowledgement date” in the LAMS system.

8.3.1 Warrant Request for Right of Way

District submittals of warrant requests vary according to the manner in which an acquisition took place, i.e., by negotiation, quick take, or court award (jury trial, bench trial, stipulated settlement). Submittals are to include:

- The Title Review Memorandum form (LA 80301) is used not only to transmit the appropriate documents, but also to serve as authorization for the issuance of a state warrant.
- District must process the warrant request in LAMS as part of the title review process, by entering the information on the appraisal, negotiation and payment request screens before submitting to CBLA.
- A copy of the Administrative Documentation:
    - The Title Commitment. If over $25,000, title commitments older than 90 days must be updated. If $25,000 and under, title commitments are valid for 120 days.

      Note: No title commitment is necessary for temporary easements whose consideration is $25,000 or less.
    - Copies of the executed instrument(s) of conveyance.

  - A copy of the Receipt of Conveyance Documents and Disbursement Statement (LA 40504F Template).
  - Interest not of record, if any.
  - Affidavit of Title, including the disclosure of the owners of beneficial interest of any entity.
- One copy of the Quick Take Order fixing the amount of Preliminary Just Compensation, one copy of the Final Judgment Order, or one copy of the Settlement Report for condemnation cases settled without going to trial.
- One copy of the appraisal will be submitted if requested by OCC or CBLA.

CBLA procedure for processing warrant requests:

- Review of the warrant request for proper accounting codes.
- Review of the Administrative Documentation and the appraisal for improvements, when applicable.
- Examination and approval of title on amounts of $25,000 or less. Requests for amounts over $25,000 are submitted to the Office of the Attorney General for approval. Signature authority for negotiated acquisitions of $250,000 or more requires approval from the Secretary of Transportation (secretary), Director of Finance and Administration, Director of Program Development, and Chief Counsel.
- Date of title approval entered in LAMS on the parcel screen (District 1 enters this date in LAMS for their parcels).
- Review of Quick Take Order and Final Judgment Order for correct payee and money ordered.
- One Invoice Transmittal Schedule and one invoice key generated through the FOA automated accounting system along with the land acquisition invoice are electronically submitted to the Bureau of Business Services for vouchering.

8.4 *INCIDENTAL EXPENSES*

Vendor invoices for incidental expenditures (i.e., legal fees, contract appraising fees, contract negotiation fees, title reports, court costs, costs incidental to property management, relocation assistance and other miscellaneous costs) are to be submitted to DLA for review and approval. The vendor’s invoice should clearly show the type of services rendered or goods provided. It is the responsibility of DLA to code all vendor invoices and post them in FOA.

The process for paying a vendor’s invoice should include applying a code stamp with okay to pay fields completed and scheduling in FOA where a voucher number will be assigned. Assemble the voucher and affix the secretary’s signature, then forward them to the State Comptroller for payment. Unless otherwise requested, the State Comptroller will mail warrants for incidental expenses directly to payees.

Crop damage claims should be processed for payment as an incidental expense before the acquisition; otherwise, CBLA requires a written explanation. The function code 336 should be used and documentation is required. See Section 2.3.8 and Section 4.2.9 for more information regarding damage claims from entering on lands/private property.

8.4.1 Legal Fees

8.4.1.1 *Submittals*

The Special Assistant Attorney General (SPAAG) will submit to DLA, on a monthly basis, an original and one copy of the Attorney Statement of Services Affidavit (LA 80411 Exhibit), and an original and one copy of the detailed backup documentation signed by the SPAAG indicating the services rendered. An original receipt for all out-of-pocket expenditures must be attached for reimbursement.

8.4.1.2 *Processing in DLA*

- Review of SPAAG invoice by DLA engineer/manager or authorized representative - district personnel must sign and date the invoice for approval.
- Upon completion of the SPAAG invoice review by the district, a copy of the statement of services letter with the approval signature and detailed backup documentation are to be forwarded via email to the Attorney General at Springfield.Land.Acq@ilag.gov for review and approval.
- After approval by the Attorney General's Office, the AG's Office will email the approved statement letter and invoice to the Office of Chief Counsel for final approval.

8.4.1.3 *Processing in CBLA*

- CBLA will receive the signed and approved invoice from the Office of Chief Counsel.
- CBLA will then forward the invoice back to DLA for processing of payment.

8.4.2 Incidental Expenses Other Than Legal Fees

8.4.2.1 *Submittals*

Vendor invoices for costs incurred by a SPAAG (i.e., appraisers and negotiators), are to be submitted to the attorney's office for review and approval, then forwarded to DLA for payment. All other vendor invoices for services rendered or goods provided are to be submitted directly to DLA for payment.

8.4.2.2 *Processing in DLA*

- Review of invoice by the DLA engineer/manager or authorized representative - district personnel must sign and date the invoice for approval.
- Upon completion of the vendor invoice review, it is to be entered for payment in FOA. One copy of the vendor invoice is to be retained in DLA files.

8.5 *REVENUE*

Accounting for funds, due the state, resulting from right of way operations is controlled by the current Operating Procedures of the Bureau of Budget and Fiscal Management (BBFM). These procedures provide for the accountability of all amounts billed or refunded. They provide for the adjustment of accounts and project records and also for an effective internal control over all project records and revenue. Revenue received from land acquisition transactions is to be deposited into the Illinois Road Fund using the SAP procedures outlined on the SAP ERP Resources page.

The sources of revenue are chiefly refunds from condemnation deposits, rental income from renting state property held for future right of way needs, income from the sale of excess land and improvements and miscellaneous refunds and collections. The basic controls for the orderly accounting of these funds are the “Accounts Receivable Invoice” Form BoBS 644 or other applicable invoice used by the District, (except for the Oil and Gas leases and Outdoor Advertising permit fees, since the revenue amount is unknown and varies) and the “Check Lot” using the applicable procedures outlined on the SAP ERP resources page within the folder titled “Check Lots-Bureaus and Offices”. Additionally, if a District uses the A/R system, the receivable will need to be entered in that system as well to reconcile the invoice in that system. It is essential that one person receive all payment of Accounts Receivable.

Within the guidelines as set forth through the department's accounting procedures and subject to the Accounts and Finance Section's review and approval, districts and bureaus shall use the applicable procedures as outlined on the SAP ERP Resources page for processing invoice billings and remittances of checks and cash.

8.5.1 Accounts Receivable Invoice

The department uses the accrual method for the accounting of revenue. An “Accounts Receivable Invoice” must be completed in SAP using the applicable procedures (FPE1-Create Invoice with Project Control Fields) as outlined on the SAP ERP Resources page as soon as it is determined that a financial obligation exists. It serves as a notice to the State Comptroller of amounts due to the state as well as a notice to the debtor that payment is expected. Additionally, an invoice using the “Accounts Receivable Invoice” form BoBS 644 (or alternative method used by the individual district to create a printable invoice) shall be prepared, processed, and distributed as soon as possible once it has been determined that a financial obligation to the department exists. The invoice must contain the SAP customer number and SAP document number. It is the policy of the Governor’s Office that the ERP System is the book of record for the State’s accounting transactions to the fullest extent that it can be. As of **July 1, 2024**, the Governor’s Office requires that each Agency under their jurisdiction implement the process of attaching each invoice and supporting documents to the Invoice Document created within SAP. Procedures on how to attach supporting documents to the SAP Invoice can be found on the SAP ERP resources page. The timing and procedures will vary between different districts, bureaus, and functional areas. Examples of functional areas would be joint improvements, damage claims, land acquisition, and logo sign rentals, etc.

It is the responsibility of DLA to properly create the "Invoice" for anticipated receivable in the SAP system. Any change or adjustment to the Accounts Receivable must be reported immediately to Bureau of Business Services.

CBLA and DLA must follow the Revenue Policies and Procedures required by the BBFM. District and bureau procedures should contain the following general guidelines that include the preparation of the invoice by the originating office and the processing and distribution of the invoice by the processing office.

8.5.1.1 *Originating Office*

- It is important to prepare invoices in the SAP system. The SAP system however does not have the ability to print the invoice so the districts should continue the use of BoBS 644, the Accounts Receivable Invoice form (or alternative method determined by the individual district) to create a printable invoice. The SAP customer number and the SAP document number should be clearly noted on the printed invoice (regardless of what method is used).

- The originating office will retain a copy of the invoice for file purposes, follow-up, and control. A copy of all voided invoices should be retained in numerical order. The original and two (2) copies of all invoices (including the original and one copy of all voids) should be forwarded to the processing office.

8.5.1.2 *Processing Office*

- Normally, Administrative Services of each organization is responsible for processing and distribution of accounts receivable invoices.

  - Two copies of the invoice should be mailed to the debtor. The district would retain the original. One copy should be sent back by the debtor with payment.

  - The processing office for reference and follow-up should retain the third copy of the invoice or a photocopy. (Most processing offices maintain their invoice copies in alphabetical order for easier matching to checks.)

8.5.1.3 *Cut-Off Dates*

- Near the end of each state fiscal year, BoBS will issue cut-off instructions and dates by which invoices must be submitted in order to be paid under the current fiscal year. Invoices, which cannot be submitted to the Accounts and Finance Section prior to cut-off, should carry the first day of the subsequent month in the "Invoice Date" field. The actual submittal date may be entered below the "Invoice Date" field.

- Continue processing as normal. Do not hold invoices during cut-off.

- Strict adherence to cut-off date procedures will simplify the balancing of monthly and quarterly reports that are issued by the Accounts and Finance Section.

8.5.2 Check Lot

A “Check Lot” is to be prepared using the applicable procedures as outlined on the SAP ERP Resources page upon receipt of a payment or refund. This applies to processing of all revenue services (i.e., refunds from condemnation deposits, rental income, income from the disposition of excess land and improvements and miscellaneous refunds). Since the Illinois

Statutes contain very explicit requirements for deposit of state monies, there must be no delay in processing these transactions. Checks are not to be held during "cut-off".

The "Check Lot" is used to transmit such payments as refunds from DLA and CBLA to the Bureau of Accounting and Administrative Services. Its basic function is to communicate the necessary data associated with the transaction.

8.5.3 Refunds from Condemnation Deposits

An "Accounts Receivable Invoice" must be completed in SAP by DLA using the applicable procedures as outlined on the SAP ERP Resources page upon receipt of the final court order if a refund is involved or if the final awarded is equal to the quick take deposit. It serves as a notice to the State Comptroller of amounts due to the state as well as a notice to the debtor that payment is expected. An invoice using the "Accounts Receivable Invoice" form BoBS 644 (or alternative method determined by the individual district to create a printable invoice) shall be prepared, processed, and distributed as soon as possible once it has been determined that a financial obligation to the department exists. This printed invoice must contain the SAP customer number and SAP document number. The coded information provided in the code stamp will record the amounts of the final award. The invoice is prepared in the name of the county treasurer with sufficient reference to the court case. Additionally, the applicable procedures outlined within the folder titled "Check Lots-Bureaus and Offices" on the SAP ERP Resources page should be followed.

In cases where the property owner has withdrawn the preliminary just compensation and the final award is less than the preliminary just compensation, the court will direct the county treasurer and the defendant to make refunds to the State Treasurer. In this instance, an "Invoice" indicating the county treasurer and/or the landowner and the amount to be refunded is prepared. The invoice is coded for the county treasurer indicating the total amount of the refund (court deposit plus defendants withdrawal) in the code stamp.

The original and two copies of the Accounts Receivable are to be prepared for submittal. The original is retained in the district Bureau of Accounting Services (DBAS); one copy is submitted to DLA; and one copy to the Bureau of Accounting and Auditing.

When a refund check is received in a district, it should be date-stamped, endorsed and sent directly to DBAS. If a court order is attached, DBAS will promptly forward the court order to DLA indicating the amount of refund, check number, case number, payer, etc. The "Accounts Receivable Invoice" Form BoBS 644 will then be prepared by DBLA. If the refund is found to be incorrect, DLA will obtain the check from DBAS and secure a corrected check from the county treasurer and/or defendant(s).

When the court order and accompanying check are delivered to DLA, the identifying information and amount are to be recorded and the check promptly forwarded to DBAS.

8.5.4 Rental Income

An "Accounts Receivable Invoice" must be completed in SAP using the (FPE1 and then FPR1) applicable procedures as outlined on the SAP ERP Resources page as soon as the rental agreement is executed. An "Accounts Receivable Invoice" Form BoBS 644 is to be prepared in the name of the party renting the property and mailed (the original encoded) by the 15th of the month prior to the date the rent is due. The invoice must contain the SAP customer number and SAP document number. It is the policy of the Governor's Office that the ERP System is the book of record for State's accounting transactions to the fullest extent that it can be. As of **July 1, 2024**, the Governor's Office requires that each Agency under their jurisdiction implement the process of attaching each invoice and supporting documents to the Invoice Document created within SAP. Two copies are forwarded to DBAS. The fourth copy is retained in DLA. A pre-addressed return envelope that identifies the invoice will accompany the invoice mailed to the tenant. For instance, the invoice number could be imprinted in the lower left-hand corner of the envelope. (Example: ROW INV 425).

When the previous month's rent has not been paid, a final demand letter shall be forwarded to the renter along with the current month's invoice. A copy of this letter must be sent to DBAS with the current month's invoice. This task will vary by district. Should a district desire, it is acceptable to send three letters Outstanding Invoice Tenant Letter (30 days), Outstanding Invoice Tenant Letter-2nd Notice (60 days), and Outstanding Invoice Tenant Letter-Final Notice (120 days).

Upon receipt of rental income, a check lot should be completed using applicable procedures as outlined within the folder titled "Check Lots- Bureaus and Offices" located on the SAP ERP Resources page.

For rental of buildings the word "Improved" must be shown on the invoice and "Unimproved" for rental of vacant land (i.e., agricultural land, etc.).

8.5.5 Proceeds from Disposal of Excess Property or Improvements

At the completion of a sale of excess property or improvements, and upon receiving either the fully executed conveyance document or the executed Bill of Sale together with a copy of the secretary's letter to the successful buyer, DLA shall prepare an "Accounts Receivable Invoice" in SAP using the (FPE1) applicable procedures as outlined on the SAP ERP Resources page as soon as receivable is known. Additionally, an invoice using the "Accounts Receivable Invoice" form BoBS 644 (or alternative method used by the individual district to create a printable invoice), showing the description of the property sold and the full amount due the state. The invoice must contain the SAP customer number and SAP document number.

There may also be occasions when funds are to be received by the state in connection with an exchange transaction or in connection with a "directed sale" through legislative action. In such cases, the original and one copy of the accounts receivable invoice will be forwarded to DBAS and one copy to CBLA. A copy will be retained in the DLA.

DLA, upon receipt of a certified check, bank draft or money order for the full amount or balance due, shall forward or deliver the Bill of Sale or executed document to the successful bidder and the full amount due shall be forwarded to DBAS.

Certified checks, bank drafts or money orders received as bid deposits in connection with the public sale of excess property or improvements are to be held by the district property manager and disposed of in one of the following manners:

- Returned to unsuccessful bidders upon completion of sale

- In the case of a sale of excess property, the deposit is applied as a down payment and submitted to DBAS together with the final payment of the balance due. (These two amounts constitute the full amount due the state for said sale.)
- In the case of a public sale of improvements, deposits are returned to successful bidders upon satisfactory clearance of the premises in compliance with the sale and removal contract.

8.5.6 Miscellaneous Refunds

DLA shall prepare an invoice in the name of the party making the refund. The refund should be processed using applicable procedures as outlined on the SAP ERP resources page within the folder titled "Check Lots-Bureaus and Offices". Additionally, if a district uses the A/R system, the invoice information would need to be entered there as well to print and reconcile.

8.5.7 Adjustment to Invoices

Any change to an existing "Accounts Receivable Invoice," Form BoBS 644 such as termination of a rental agreement, etc., should be reported immediately to DBAS. An "Accounts Receivable Invoice" Form BoBS 644 should be used to record this change in addition to the update of said receivable in the SAP system using applicable procedures as outlined on the SAP ERP resources page for any addition (debit entry) or deduction (credit entry) to the original accounts receivable. All invoices in this category should show a brief explanation for the adjustment.

In the case of uncollectable receivables, the district should forward copies of all letters and other documents to substantiate the write off to the Bureau of Claims in the Office of Chief Counsel. The Bureau of Claims will determine whether to turn the account over to the attorney general for collection or if the account should be written off. DLA must prepare an "Accounts Receivable Invoice" Form BoBS 644. This is prepared with an original and two copies, one of which is for DLA and one for the DBAS. The original, accompanied by the Bureau of Claims approval to write the account off, is sent to the Financial and Administrative Services Section of the Bureau of Business Services.

8.5.8 Warrants

Warrants are issued by the state comptroller and countersigned by the state treasurer. Warrants are valid for a period of twelve months and must be presented for payment by the payee (i.e., cashed) prior to the expiration date.

Warrants not presented for payment within twelve months of the date of issuance become void. If the warrant becomes void, the state comptroller may issue a replacement warrant. A replacement warrant must be issued within five years of the date of the original warrant. Only the person entitled to the original warrant, or their heirs or legal representatives, or a third party to whom it was properly negotiated or the heirs or legal representatives of such parties, may request a replacement warrant. After five years these funds are non-collectable.

To request a replacement warrant, DLA must obtain the voided warrant from the payee. The voided warrant is then sent to CBLA by memorandum, explaining why it was not cashed. The Accounting Unit within CBLA will forward the voided warrant to the state comptroller along with a Replacement Warrant Action Request resulting in an affidavit, Form SCO-061, to be sent to CBLA. Once received, the Accounting Unit will forward the affidavit to the district. When the affidavit is completed and signed by the payee, it should be mailed to the state comptroller's office.

8.6 *RIGHT OF WAY FUNCTION CODES*

The FOA system uses function codes for the cost accounting of all land acquisition related activities. Detailed descriptions of the function codes, clearly identifying and defining all items of cost, expense and receipt for proper accountability, will be found in Exhibit LA 80600 (Right of Way Function Codes).

8.7 *FUND TYPE CODES*

Fund Type (Federal Appropriation) Codes are assigned in conjunction with FHWA and designate the federal appropriation or type of funds with which a project is to be financed. The BBFM maintains the fund type codes. The listing is located in the FOA system. For example, a federal-aid interstate route that is to be financed with interstate funds has a fund type of 042. A project that is to be financed with state funds has a fund type of 07A0.

8.8 *GEOGRAPHICAL LOCATION CODES*

The "Geographical Location Codes" (county code numbers), are numbers that have been assigned to each county and are used as a method of identifying expenditures by county.

The county number as shown on the Job Authorization Form (Form PRO 337) must indicate the county or counties in which the work is located. For example, if a job is located in Sangamon and Montgomery counties, the Job Authorization Form must show both counties and when costs are incurred they will be coded against the county where the expenditure is made.

8.9 *RECORDS MANAGEMENT GENERAL*

The purpose of this section is to provide the districts and CBLA with guidelines in the maintenance, and storage of files and their final disposition. Authority for the handling, storage and disposition of state records is provided in the Illinois State Records Act, reprinted January 1962. The policies and procedures contained therein apply to all records and files produced and accumulated in connection with land acquisition activities regardless as to origin or location of safekeeping.

It is unavoidable that some duplication of records between CBLA and DLA exists. For the sake of simplicity and uniformity these policies equally apply and each office is responsible for the maintenance of its files in their entirety. No records shall ever be indiscriminately discarded under the assumption that their duplicates are maintained at another office. Certain record items, however, are excluded from this and even while copies of them may be used in the districts, they are considered CBLA Records where they are maintained according to these policies. These records are identified in the Retention Schedules as CBLA Records.

8.9.1 Organization of Land Acquisition Files

All records maintained by the districts are divided into four major categories, i.e., Right of Way Design Files, Right of Way Purchase Files, General Subject Files and Archive Files. The following outlines comprise definitions and illustrations of right of way records that are included in these policies and procedures. While these illustrations serve as an example for records organization, adherence is not compulsory nor is it necessary that all records relating to a project or subject matter be maintained at one location.

Right of Way Design Files contain all records and materials accumulated relative to the design aspect of right of way acquisition for highway purposes and are organized as follows:

- Preliminary Right of Way Design
  - Maps of proposed locations and alternate routes
  - Cost estimates
  - Survey notebooks
  - Computations
  - Graphic problem solutions
  - Computer printouts
  - Design and location studies
  - Design approval correspondence

- Right of Way Design
  - Plats of survey (original tracings)
  - Right of way plats (original tracings)
  - Premise plats (original tracings)
  - Right of way plans (original tracings)
  - Legal descriptions
  - Court Exhibits
  - Correspondence (consultants, surveyors, etc.)

Right of Way Purchase Files contain all records relative to the acquisition of the right of way on a particular project. These files are subdivided into the General Project Files and the Parcel Files. The General Project Files contain all items of communication pertinent to a project as a whole. The Parcel Files, conversely, contain all matter relevant to an individual acquisition case.

- General Project Files:
  - Correspondence (project related, not otherwise classified)
  - Federal-aid programming (letters, detailed estimates, etc.) and all related correspondence
  - Contracts and proposals (contracts, proposals and related correspondence in connection with appraisal, negotiation, consultant services, etc.)
  - Incidental expenses (legal fees, appraisal fees, title fees, relocation costs, etc.)
  - Rent and miscellaneous refunds (Accounts Receivable Invoices and Remittance Statements, etc.)
  - Property management - general (inventory of improvements and rental tabulation, inventory of excess land, etc.)

- Sale of buildings and improvements (Accounts Receivable Invoices and Remittance Statements, Bills of Sale, etc.)
- Project relocation records, general (preliminary and project relocation plans, status reports, etc.)
- Work copies - right of way plans, plats, court Exhibits
- Maps, photographs
- PESA Response Form
- Preliminary Site Investigation Report
- Asbestos Abatement Survey Report

• Parcel Files
  - Correspondence (parcel related, not otherwise classified)
  - Appraisals (reports, appraisal certifications, documentations, tabulations of appraisals, etc.)
  - Title reports (all items of communication relating to preliminary and later date title reports)
  - Negotiator's report
  - Condemnation records (all material relative to acquiring a parcel by condemnation, i.e. petitions, quick take, order vesting title, final judgment and stipulations, trial reports)
  - Legal documents (work copies of all documents of conveyance, title policies, etc.
  - Warrant requisitions (coding sheets, etc.)
  - Relocation assistance (relocation records relating to the individual parcel, i.e., rent supplement, purchase supplement, certifications, etc.)
  - Property management (property management records relating to the individual parcel, i.e., rental agreement, improvement disposition values, etc.)

The General Subject files contain correspondence, documents and records that are neither parcel nor project related. These files are maintained in alphabetical order by subject matter, or in some other similar fashion.

The Archive files contain all records, microfilm, or digital, produced for safekeeping and/or permanent storage of the other three major categories.

NOTE: The terms right of way and land acquisition as used in this section are frequently synonymous and equally apply to sign control and sign acquisition. For instance, right of way purchase files also means sign acquisition files, parcel files also means sign acquisition case files, etc.

8.9.2 Record Retention Schedules

The Illinois State Records Act provides that all records made, received or in the custody of public officials are state property and as such may not be disposed of except by law. The State Records Commission was created to determine what records no longer have any administrative, legal, fiscal research or historical value and should be destroyed or disposed of otherwise. No records of a state agency may be destroyed without prior approval of this commission. Record Retention Schedules are an agency's continuing authority for the retention and disposition of its records. They are purposely made continuing to eliminate the necessity for reapplying periodically for consideration of the same record categories. Land Acquisition has both temporary and permanent Record Retention Schedules that contain the authority for the retention and disposition of land acquisition records. For a complete listing, please see the Retention Schedule Master List. For additional information speak with your RIM representative, or email DOT.Records@illinois.gov.

The retention period of all temporary records is the time span that elapse from the date of their closing until their disposition. Conversely, the retention period of permanent records is their perpetual storage time. All project related records are maintained, closed and disposed of as a unit. While the acquisition of a single parcel may be complete, its case files remain in an open status until closing of the entire project.

Federal-aid projects are closed upon receipt of the final voucher payment from FHWA. If a claim, investigation or litigation is pending on a project after what was assumed to be the final voucher payment, then the original final voucher payment date is cancelled and the retention period will not begin until final settlement of the claim, investigation, or litigation. The Project Control Section of the Bureau of Budget and Fiscal Management will disseminate notices of receipt of final voucher payment. The term "final voucher payment" is related to the payment by FHWA to the state and shall not be confused with the payment to the grantor in conclusion of the last acquisition on a project.

State projects are closed after all acquisitions have been completed, no condemnation proceedings are pending, and no further expenditures are expected.

The closing of project records is documented with the district submittal of the Job Completion Notice (see PRO 336). The date of the Job Completion Notice is the date of the beginning of the retention period. Non-project related records are closed after having become superseded, obsolete or no longer applicable.

8.9.3 Disposition Procedures

Temporary records that have been closed are to be stored for the required retention period at IDOT’s own district or at IDOT’s Records Center.

Permanent Records are to be sent to IDOT’s transferred Records for archival.

Records sent to IDOT’s Records Center must be packed in standard record center boxes. These boxes measure 15" x 12" x 10" and are capable of holding one cubic foot of records. Boxes may be obtained upon request from the Bureau of Business Services.

To determine the number of boxes required, the following guide shall be used:

- A letter size file drawer contains approximately 1½ cubic feet of records that equals 1½ boxes. Two drawers would equal three boxes, four drawers - six boxes, etc.

- A legal-size drawer contains approximately 2 cubic feet and equals two standard boxes.

Records that are ready for transmittal to IDOT's Record Center are to be packed in boxes in the same order as maintained in the active files. Boxes should not be packed too tightly, leaving approximately 1½ inches of free space to facilitate servicing. All records in a box must have the same disposal date which is based on the date of the newest document in the box. Files should be organized in logical sequence by route and section. Please refer to this guide for additional information on packing boxes.

Once files are boxed, a BoBS RC 4300 Temporary Records Storage Request or BoBS RC 4200 Permanent Records Archive Work Order must be completed. Box labels may be obtained from IDOT's Records Center.

Records stored at the IDOT's Records Center may be requested for viewing, should the necessity arise, accessing the document in DocuWare or by completing a BoBS RC 4305 Records Retrieval/Refile Request.

Once the retention period expires, the records are eligible for disposal.

No records may be destroyed without proper documentation regardless of age or utility. A SOS ARD 66 State of Illinois Records Disposal Certificate must be completed and emailed to DOT.Records@illinois.gov for approval from the State Records Commission. Once the disposal certificate is approved, IDOT's Records Center will notify the sender of approval at which point the records may be properly disposed of. Approved Disposal Certificates are retained by IDOT's Record Center and copies are provided to the submitting office.

Permanent Records that have been closed are stored either at IDOT's own facilities in DocuWare or in microfilm at the State Archives. The Records Retention Schedules of all permanent land acquisition records are digitally imaged and electronically archived. Hard copies of permanent records can be boxed and sent to IDOT's Records Center for digital archiving by completing a BoBS RC 4200 Permanent Records Archive Work Order. Electronic copies may also be sent for archival by completing the BoBS RC 4200 Permanent Records Archive Work Order. Box labels may be obtained from IDOT's Records Center. An index is required for each box as well as cover sheets for each file is required.

8.10 *STATE AND LOCAL CONTRIBUTIONS-CREDIT*

Real property owned by the department and local governments incorporated within a federally funded project can be used as a credit toward the state-matching share of total project costs. A credit cannot exceed the state-matching share required by the project agreement. Credits can only be applied to projects where the initial project agreement is executed after June 9, 1998.

Credits are not available for lands acquired with any form of federal financial assistance, or for lands already incorporated and used for transportation purposes.

Real property acquired with department funds and required for federally assisted projects may support a credit toward the non-federal share of project costs. The department must prepare documentation supporting all credits including:

- A certification that the acquisition satisfied the conditions in 23 CFR 710.501(c)(1) through (6); and justification of the value of credit applied

- Acquisition costs incurred by the department to acquire title can be used as justification for the value of the real property. The allowable credit for early-acquired lands will be based on the historic acquisition cost of the land involved unless there has been a significant lapse in time since the property was acquired or there has been a significant change in market conditions (not caused by the project) since the property was acquired. In these cases, the allowable credit will be based on the fair market value of the land involved.

- A contribution by a unit of local government of real property that is offered for credit, in connection with a project eligible for assistance under this title, shall be credited against the state share of the project at fair market value of the real property. Property may also be presented for project use with the understanding that no credit for its use is sought. The department must assure that the acquisition satisfied the conditions in 23 CFR 710.501(c)(1) through (6), and that documentation justifies the amount of the credit.

Table of Contents

9 REGULATED SUBSTANCES

9.1 *GENERAL*

This chapter establishes procedures for the evaluation, acquisition, management, and disposal of properties with regulated substances. Regulated substances include hazardous wastes, special wastes, non-special wastes, underground storage tanks (USTs), and other recognized environmental conditions (RECs).

9.2 *EVALUATION OF PROPERTIES FOR REGULATED SUBSTANCES*

Acquiring properties with regulated substances exposes the department to potential liability for associated investigation and cleanup costs. To help manage this risk, all properties must be evaluated for the potential presence of regulated substances prior to acquisition. This applies to whole/partial acquisitions and temporary/permanent easements no matter how they may be acquired (e.g., negotiation, condemnation, or donation).

The regulated substance evaluation process is fully described in Chapter 27 of the Bureau of Design and Environment (BDE) Manual. How the milestones of that process fit with the acquisition of property for department projects is shown in Figure 9.1 on the following page. Proactive coordination between the district Environmental Coordinator (DEC), district Land Acquisition (DLA), BDE, Central Bureau of Land Acquisition (CBLA), and the Office of Chief Counsel (OCC) is a key component.

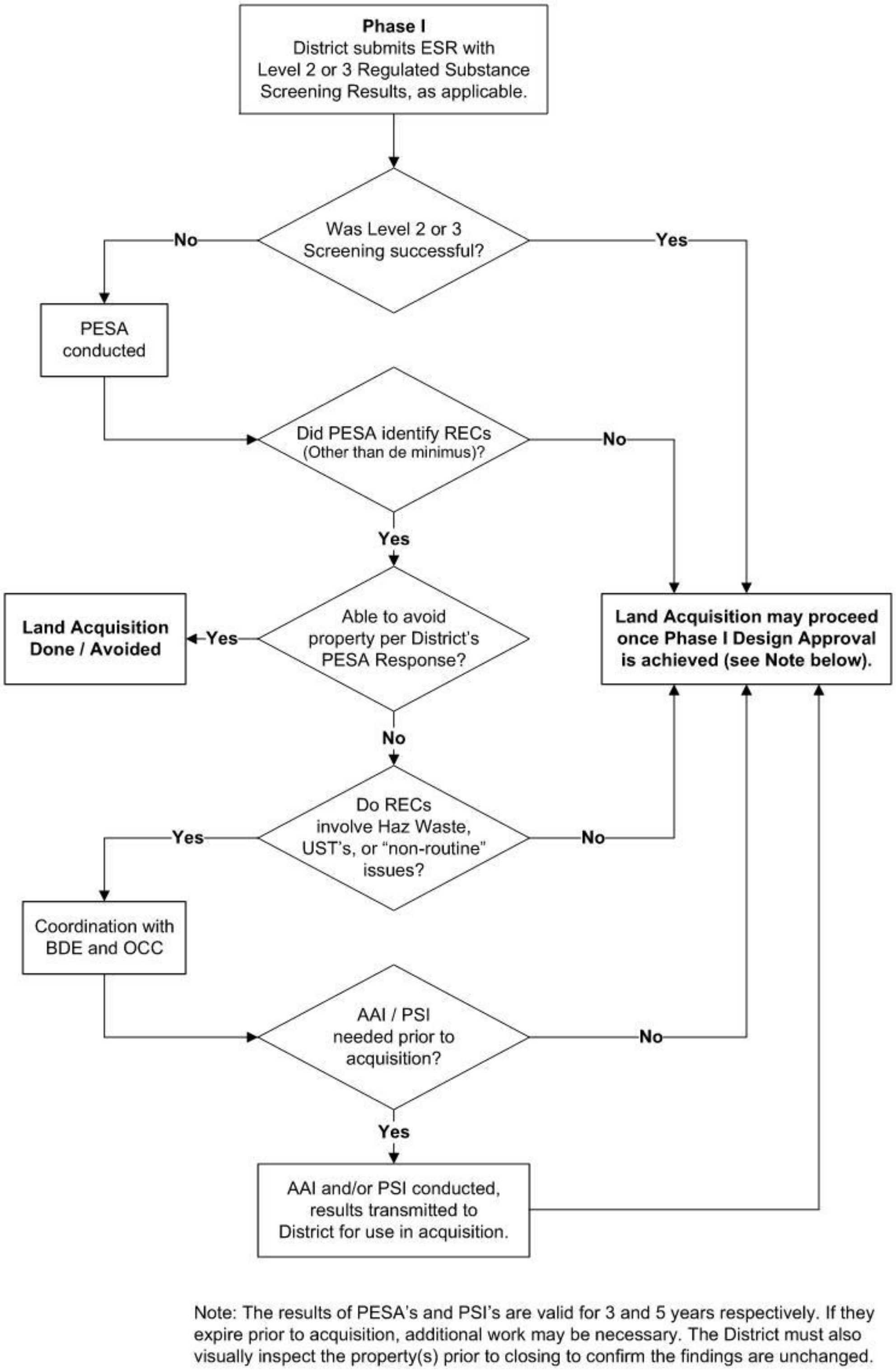
9.3 *ACQUISITION OF PROPERTIES WITH REGULATED SUBSTANCES*

When possible, the acquisition of properties with regulated substances should be avoided. When such properties cannot be avoided, they will be acquired through fee simple title; as per the Attorney General’s Office, acquiring a lesser interest does not help the department limit its potential liability.

9.3.1 Acquisitions for Department Projects

Upon completion of the regulated substances evaluation, the district will receive a memo prepared by BDE, the content of which will vary depending upon the type of evaluation completed (e.g., PESA, PSI, or AAI). In all cases, the memo will summarize the results of the evaluation and how it may affect the acquisition process. The memo may also identify properties with specific concerns and the commitments the district must implement to address those concerns. This information is then provided to the appraisers as well as the review appraisers. Instructions for appraising contaminated properties can be found in Chapter 3.

When a preliminary site investigation (PSI) has been conducted, the portions of the PSI pertaining to the parcel are furnished to each property owner, tenant, or operator to facilitate the owner cleaning up the property prior to acquisition. If the property owner, tenant, or operator agrees to undertake a remedial action and to bear the attendant costs, the department revises the appraisal to take this action into consideration or makes an administrative settlement adjustment. The department obtains documentation that the clean-up meets IEPA standards before taking title to the property. A No Further Remediation (NFR) letter from USEPA or IEPA approving the remedial action plan and the report constitute adequate documentation.



REGULATED SUBSTANCES EVALUATION AND LAND ACQUISTION

FIGURE 9.1

If a negotiated agreement for purchase cannot be reached with the property owner, tenant, or operator, eminent domain proceedings commence. The data for condemnation includes all pertinent and available reports regarding contamination of the site. No eminent domain action involving contaminated property is settled without taking into consideration the environmental condition of the property.

At the condemnation hearing, the department presents evidence regarding the contaminated condition of the property. If the appraisal indicates the contaminated state of the property has an impact on its fair market value, the results of the department's testing are presented as evidence at trial. If applicable, any final settlement considers the contaminated state of the property and provides that the department does not waive its right to pursue future costs of remedial action.

If contamination from the property to be acquired has migrated onto the existing right of way, make provisions to take the necessary legal action to hold the owner liable. Cleanup costs associated with remedial action on existing right of way however, cannot be taken into account when valuing the property to be acquired in an eminent domain proceeding. These costs may be recoverable in a separate trespass action against the owner.

Make all attempts to obtain reimbursement of remedial action costs from the responsible party after acquisition. Normally, the owner is the responsible party. Make these attempts either directly or through the Attorney General.

9.3.2 Underground Storage Tanks

Properties involving underground storage tanks (USTs) require additional coordination to protect the department from becoming the "owner/operator" of the tank as defined by the Illinois Office of the State Fire Marshal (OSFM).

District Land Acquisition (DLA) is responsible for implementing the additional acquisition procedures below and coordinating with the District Environmental Coordinator (DEC), BDE and the Office of Chief Counsel (OCC) as necessary.

1. Attempt to have the property owner remove the UST system prior to acquisition. The UST system includes the tank(s), piping, dispensers, and other appurtenances. If contamination is detected during the removal process, the owner will be required by the OSFM and the Illinois Environmental Protection Agency (IEPA) to take further actions including evaluation and possible clean-up.

2. If the owner will not remove the UST system prior to acquisition, implement the following steps to protecting the department from being classified as the "owner/operator" of the UST system:

   - Ensure the tanks are 100% emptied of their petroleum contents, the system is closed and rendered inoperable, and written documentation is obtained demonstrating this status.

   - Place the tank system into 'temporary closure' status, per Administrative Code Title 41, Chapter 1, Part 175.810 [Temporary Closure].

- Add language to the department's standard offer letter:

  "In making this offer to acquire "Right of Way for Public Road Purposes", the Illinois Department of Transportation has no intention of utilizing the underground storage tank system, including tanks and piping, in such a manner that may classify the department as an owner / operator under the "Leaking Underground Storage Tank Program" (415 ILCS 5/57.3). If these items are not removed, the department will remove and dispose of the tank system."

Once the acquisition is finalized, remove the UST system in accordance with Article 669.08 (Underground Storage Tank Removal) of the Standard Specifications for Road and Bridge Construction.

9.3.3 No Further Remediation (NFR) Letters

The Illinois Environmental Protection Agency (IEPA) administers a voluntary site remediation program in accordance with 35 IL Admin Code 740 and 742. The intent of the program is to provide remediation applicants (i.e., persons seeking to perform investigative or remedial activities of their site/property) the opportunity to receive review and evaluation services, technical assistance, and no further remediation determinations from the IEPA.

For those applicants who demonstrate successful remedial actions for a release or threatened release of contaminants of concern, the IEPA issues a no further remediation (NFR) letter. The NFR letter signifies a release from further responsibilities under the Illinois Environmental Protection Act and is considered *prima facie* evidence that the site does not constitute a significant risk of harm to human health and the environment, so long as the site is utilized or maintained in accordance with the terms of the NFR letter. The NFR letter is then recorded in the county in which the site is located so that it forms a permanent part of the chain of title and thereby notifies future owners of the conditions associated with the property.

When the title commitment for the property to be acquired indicates an NFR letter has been issued, obtain a copy of the letter and include it with the title approval package submitted to CBLA/OCC.

Some NFR letters contain specific provisions which restrict how the property may be used, or require use of institutional controls or engineered barriers, to ensure protection of human health and the environment. For properties with such "conditional" NFR letters, the district must assess the impact of the department's acquisition and use of the property upon adherence with those conditions with respect to the parcel being acquired, as well as the remainder of the property. BDE's Special Waste Coordinator and OCC will verify the adherence to the conditions. Should adherence to the conditions appear to be adversely affected by the acquisition, possibly causing the IEPA to void the NFR, consider the following alternatives:

- An agreement with the parcel's owner to preserve the NFR status on the part acquired and to ameliorate the adverse impact on the remainder, or

- The department preserves the NFR status on the part taken by obtaining either an unconditional NFR, or a NFR to the department or a letter from IEPA indicating the department's impact upon the conditions in the owner's NFR letter is not severe.

9.3.4 Acquisitions for Permit Projects (Donations)

Where a permit project requires property to be donated to the department, evaluate for regulated substances according to the following procedures prior to acquisition.

1. DLA contacts the DEC to request existing evaluations of the property. A Phase I Environmental Site Assessment (ESA) (reference ASTM E 1527) or Preliminary Environmental Site Assessment (PESA) conducted within the last three years would be the best type of documentation. If no recognized environmental conditions (RECs) are identified in this documentation, land acquisition may proceed.

2. If an ESA or PESA is not available, the DEC screens the property using Level 2 criteria (see Section 27-3.02(b) of the BDE Manual). If no RECs are identified, land acquisition may proceed.

3. If RECs are identified with the screening, the DEC coordinates the results with the BDE. If the DEC and BDE determine no additional evaluation is warranted, land acquisition may proceed.

4. If the DEC and BDE determine additional evaluation is warranted, options to avoid the acquisition should be explored. If the acquisition cannot be avoided, BDE will initiate a PESA or PSI at the district’s request. If the results of the additional evaluation show minimal risk to the department, land acquisition may proceed.

5. If the results of the additional evaluation show potential liability for the department, the results are coordinated with the OCC who renders an opinion and may provide options to complete the acquisition. For example, the OCC may recommend language for the conveyance document stipulating the donator retains environmental-related liability associated with the parcel.

Considering the input of the BDE and OCC, DLA is responsible for managing the acquisition with the donator / developer and maintaining the environmental documentation with the land acquisition file.

9.4 *PROPERTY MANAGEMENT*

The risk of potential liability for regulated substances must also be considered as part of managing property. The rental or lease agreement addresses this by means of an indemnity clause which ensures no liability is incurred by the department because of actions of lessees/tenants or their agents. District staff also evaluate the rental properties for recognized environmental conditions during the annual inspections.

For additional information on managing property, see Chapter 7.

9.5 *PROPERTY DISPOSALS*

See Chapter 7 for the policies and procedures related to the disposal of excess property.

APPENDIX A - DEFINITIONS AND ACRONYMS

DEFINITIONS

Abandonment – The voluntary relinquishment of rights of ownership or another interest (such as an easement) by failure to use the property, coupled with an intent to abandon (give up the interest). Abandonment of dedicated right of way on the State highway system requires an act of the Illinois General Assembly.

Abstract – A summary; an abridgement. Before the use of photostatic copying, records were kept by abstract of recorded documents.

Abstract of Title – A compilation of the recorded documents relating to a parcel of land, from which an attorney may give an opinion as to the condition of title. Still in use in some states but giving way to the use of title insurance.

Accession – The right of an owner to an increase in his property by natural means (such as a riparian owner's right to an abandoned riverbed, rights of alluvium and reliction, etc.) or artificially by improvements.

Access Right – A right to ingress and egress to and from one's property. May be express or implied.

Accretion – The gradual addition to the shore or bank of a waterway. The land generally becomes the property of the owner of the shore or bank, except where statutes specify otherwise.

Acknowledgment – A written declaration by a person executing an instrument, given before an officer authorized to give an oath (usually a notary public), stating that the execution is of his own volition.

Acquiring Agency – A state or local public agency which has the authority to acquire property by eminent domain under state law, and a state or local public agency which does not have such authority.

Acquisition Appraisal – An appraisal to determine fair market value of a property to be taken by eminent domain, in order to justly compensate the owner.

Acquisition Costs – Costs of acquiring property other than purchase price; escrow fees, title insurance, lenders fees, etc.

Action to Quiet Title – A court action to establish ownership to real property. Although technically not an action to remove a cloud on title, the two actions are usually referred to as "Quiet Title" actions. (See also: Cloud on Title.)

Ad Litum – (For the suit.) A guardian "Ad Litum" prosecutes or defends a suit for a minor or incompetent and is appointed by the Court.

Administrator C.T.A. – Administrator when there is a will but no executor is named or the executor names is unable or unwilling to serve. The C.T.A. stands for Com Testamento Annexo (with the will attached).

Administrator's Deed – A conveyancing instrument used by an Administrator to transfer property from an estate.

Adverse Possession – A method of acquiring title by possession under certain conditions. Generally, possession must be actual, under claim of right, open, continuous, notorious, exclusive, and hostile (knowingly against the rights of the owner). Exact time (years) of possession and specific requirements (such as payment or property taxes) vary with the statutes of each state.

Advertising for Bids – Publication of the Transportation Bulletin by the IDOT requesting submittal of bids by qualified bidders on various highway projects.

Affidavit – A written statement or declaration, sworn to before an officer who has authority to administer an oath.

Affiant – One who makes an affidavit. Also called a deponent, although technically not the same.

Affirmation – A substitution for an oath when a person objects to taking an oath (Quakers, atheists, etc.). A lie after an affirmation is still perjury.

After Acquired Title – Legal doctrine by which property automatically vests in a grantee when the grantor acquires title to the property after the deed has been executed and delivered.

After Value – The fair market value of the remaining property after the acquisition considering the impact on fair market value, if any, caused by the project.

Agriculture Property - Agriculture Property is any real property for which present or post-remediation use is for growing agricultural crops for food or feed either as harvested crops, cover crops or as pasture. This definition includes but is not limited to, properties used for confinement or grazing of livestock or poultry and for forestry operations. Excluded from this definition are farm residences, farm outbuildings and agrochemical facilities.

Agency – The federal, state or local public agency utilizing federal funds or federal financial assistance for a project or program that acquires the real property or displaces a person.

Air Mile – A distance of one mile as measured horizontally along a straight line between the sign and activity advertised.

Air Rights – The right to the use of the air space above property without the right to use the surface of the property. However, air rights may restrict surface rights, especially height of improvements.

Alien Not Lawfully Present in the United States – An alien who is not lawfully present in the United States as defined in 8 CFR 103.12 and includes an alien present in the United States who has not been admitted or paroled into the United States pursuant to the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) and whose stay in the United States has not been authorized by the U.S. Secretary of Homeland Security, and an alien who is present in the United States after the expiration of the period-of-stay authorized by the U.S. Secretary of Homeland Security or who otherwise violates the terms and conditions of admission, parole or authorization to stay in the United States.

Alluvion – The increase of land when waterborne soil is gradually deposited.

Appraisal – A written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of fair market value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

Appraisal Market Data - The gathering and verification of all data pertaining to market value or costs in the project area.

Appraisal Methods – Generally, three major methods of appraisal: Comparable Sales Approach, Cost Approach, and Income Approach.

Appraisal Preparation and Review – The selection and assignment of qualified appraisers to gather market data and prepare appraisals on all parcels to be acquired. The review and approval of these appraisals by qualified personnel designated as reviewing appraisers.

Appraisal Report – A written report by an appraiser containing their opinion as to the fair market value of a property and the reasoning leading to this opinion. The factual data supporting the opinion, such as comparable, appraisal formulas, and qualifications of the appraiser, will also be set forth.

Approvals for Public Sale of Improvements - Approval by the Central Bureau of Land Acquisition of the Order and Approval to Dispose of Buildings/Improvements, (LA 70700A), and supporting data with subsequent approval by the Governor in accordance with 605 ILCS 5/4-508.

Area Background - Area Background is concentrations of regulated substances that are consistently present in the environment in the vicinity of a site and that are the result of natural conditions or human activities, and not the result solely of releases at the site. (415 ILCS 5/58.2)

Arm's Length – Legal slang meaning that there existed no special relationship between the parties involving in any matter which would taint the result.

Arm's Length Transaction – A transaction without collusion or duress between the parties involved.

Asbestos-Containing Material (ACM) - Asbestos-Containing Material (ACM) is any material containing more than one percent asbestos by weight.

Assemblage – The acquisition of contiguous properties into one ownership for a specific use.

Assignment – A transfer to another of any property, real or personal or of any rights or estates in said property. Common assignments are of leases, mortgages, deeds of trust, but the general term encompasses all transfers of title.

Attorney at Law – An advocate, counsel, or official agent employed in preparing, managing, and trying cases in court. Must be licensed by the state.

Attorney-in-Fact – One who is appointed to act (as agent) for another (principal) under a power of attorney. The scope of the agent's authority is limited to that given by the power of attorney, which may be limited to one specific act or may be broader. (See also: Power of Attorney.)

Authorization for Preliminary Right of Way Work - Authorization granted by FHWA to the department to perform preliminary right of way work functions, i.e., acquiring title reports, preparing plats, plans, legal descriptions, performing relocation studies and preliminary appraisal work

Authorization to Advertise for Bids - The authority to publicly advertise and request bids from qualified bidders to perform work.

Avigation Easement – An easement over private property abutting an airport runway, which limits the height of crops, trees, structures, etc., in the aircraft's take-off and landing path.

Batture Land – The land between a river bank and the water's edge when the water level is lower than normal.

Beneficial Estate – An estate, the right to possession of which has been postponed, such as devise under a will. More commonly, an estate, the legal ownership of which has not yet vested, as under a land contract. An equitable estate.

Beneficial Interest – The equitable, rather than legal, ownership of property as under a land contract.

Blanket Mortgage – (1) A mortgage covering more than one property of the mortgagor, such as a mortgage covering all the lots of a builder in a subdivision. (2) A mortgage covering all real property of the mortgagor, both present and future. When used in this meaning, it is also called a "general mortgage".

Buffer Strip (Buffer Zone) – A parcel of land separating two other parcels or areas, such as a strip of land between an industrial and residential area.

Building Removed by Roadway Contract - Building improvements removed from the right of way as a part of a highway construction contract when such contract is imminent and it is not economically feasible to dispose of the buildings by public sale.

Bundle of Rights – A theory comparing property rights to a bundle of sticks. Each of the usual property rights (possession, alienation, etc.) is represented by a stick and is, therefore, considered separately.

Business – Any lawful activity, except a farm operation, that is conducted:

- Primarily for the purchase, sale, lease, or rental of personal and/or real property, and/or for the manufacture, processing, and/or marketing of products, commodities, and/or any other personal property;
- Primarily for the sale of services to the public;

- Primarily for outdoor advertising display purposes, when the display must be moved as a result of the project; or
- By a non-profit organization that has established its non-profit status under applicable federal or state law.

Business Area – Any part of an area adjacent to and within 660 feet of the right of way which is at any time zoned for business, commercial or industrial activities or not so zoned, but which constitutes an unzone commercial or industrial area. Includes only areas which are within incorporated limits of any city, village, or incorporated town, as such limits existed on September 21, 1959, and which are zoned for business, industrial or commercial use signs along Interstate highways, or to portions of Interstate highways which traverse other areas where the land use, as of September 21, 1959, was clearly established by State law as business, industrial or commercial.

Bylaws – Rules that govern how an owners' association will be run.

Call – In metes and bounds description, the angle and distance of a given line or arc. Each call is usually preceded by the word "then" or "thence". Example: N 22 Degrees E 100" (1st call), thence N 80 Degrees E 100' (2nd call). To demand payment due to default. Also used when a loan payment is not large enough to amortize the loan. Example: A mortgage payment requiring 20 years to pay in full but for a term of 5 years would be referred to as a 20-year amortization with a 5-year call.

Capitalize – To convert future income to current value.

Capitalization – Determining a present value of income property by taking the annual net income (either known or estimated) and discounting by using a rate of return commonly acceptable to buyers of similar properties. For example: Net income of a property is $10,000 per year. Capitalizing at a rate of 10%, the property would be worth $100,000.

Caveat Emptor – "Let the buyer beware." Legal maxim stating that the buyer takes the risk regarding quality or condition of the item purchase, unless protected by warrant or there is misrepresentation. Modernly, consumer protection laws have placed more responsibility for disclosure on the seller and broker.

Central Bureau of Land Acquisition – The office responsible for developing, evaluating and interpreting the policies and procedures for planning and implementing the statewide acquisition program and for advising, guiding and assisting the regional engineers and districts on all program policies.

Central Office Approval – CBLA concurrence based on a determination of adherence to and compliance with established departmental policies and procedures.

Cestui Que Trust – One having an equitable interest in property, legal title being vested on a life in being.

Cestus Que Vie – the person whose life is used to determine the length of an estate based on a life in being.

Chattel – Personal property.

Chain of Title – The linkage of property ownership that connects the present owner to the original source of title.

Civil Law – (1) Roman Law The legal system derived from the Romans which are prevalent in most of the non-English speaking countries, and to some degree, in Louisiana. Differs from Common Law of England from which United States law is derived. (2) Any laws which are not criminal laws.

Citizen – Includes both citizens of the United States and non-citizen nationals.

Clear Title - Elimination of any encumbrances, liens, judgments or objections to title that would affect the conveyance of merchantable title to the state - If the original title commitment were older than 90 days, a date down endorsement is required.

Closed Corporation – (1) A corporation not allowing its shareholders to vote for directors or officers. (2) A corporation owned by a small group of shareholders and not having publicly traded stock. Commonly, and incorrectly, called a closed corporation.

Closing – (1) In real estate sales, the final procedure in which documents are executed and/or recorded, and the sale (or loan) is completed. (2) A selling term meaning the point at which the client or customer is asked to agree to the sale or purchase and sign the contract. (3) The final call in a metes and bounds legal description which “closes” the boundaries of the property.

Closing Statement – The statement which lists the financial settlement between buyer and seller, and also the costs each must pay. A separate statement for buyer and seller is sometimes prepared.

Cloud on Title – An invalid encumbrance on real property, which, if valid, would affect the rights of the owner. For example: A sells lot 1, tract 1 to B. The deed is mistakenly drawn to read lot 2, tract 1. A cloud is created on lot 2 by the recording of the erroneous deed. The cloud may be removed by quitclaim deed or, if necessary, by court action.

Code – The Illinois Highway Code [605 ILCS 5].

Codicil – A written supplement or amendment to an existing will.

Collateral Assignment – An assignment of property as collateral security, and not with the intent to transfer ownership from assignor to assignee.

Collateral Heir – One not in a direct line of descent of inheritance. Example: a nephew, not a son.

Color of Title – Some plausible, but not completely clear-cut indication of ownership rights.

Collateral Security – Most commonly used to mean some security in addition to personal obligation of the borrower.

Commercial or Industrial Activities – Those activities located within 660 feet of the nearest edge of the highway right of way generally recognized as commercial or industrial by zoning authorities

Common Law – The body of laws, originated and developed in England, which was adopted by most states and still prevails if not superseded by statute. Also referred to as case law.

Common Law Dedication – Results when a landowner's acts or words show intent to convey land to the government.

Comparable Replacement Dwelling – A dwelling which is:

- Decent, safe, and sanitary as described in the definition of decent, safe, and sanitary in this section.
- Functionally equivalent to the displacement dwelling. The term functionally equivalent means that it performs the same function and provides the same utility. While a comparable replacement dwelling need not possess every feature of the displacement, dwelling, the principal features must be present. Generally, functional equivalency is an objective standard, reflecting the range of purposes for which the various physical features of a dwelling may be used. However, in determining whether a replacement dwelling is functionally equivalent to the displacement dwelling, the department will consider reasonable trade-offs for specific features when the replacement unit is equal to or better than the displacement dwelling. For example, if the displacement dwelling contains a pantry and a similar dwelling is not available, a replacement dwelling with ample kitchen cupboards might be acceptable. Insulated and heated space in a garage might prove an adequate substitute for basement workshop space. A dining area may substitute for a separate dining room. Under some circumstances attic space could substitute for basement space for storage purposes, and vice versa. In unusual circumstances a comparable replacement dwelling may contain fewer rooms and/or consequentially less living space than the displacement dwelling. Such may be the case when a decent, safe, and sanitary replacement dwelling (which by definition is adequate to accommodate the displaced person) may be found to be functionally equivalent to a larger but very run-down substandard displacement dwelling.

  Another example is when a displaced person accepts an offer of government housing assistance and the applicable requirements of such housing assistance program require that the displaced person occupy a dwelling that has fewer rooms or less living space than the displacement dwelling.
- Adequate in size to accommodate the occupants.
- In an area not subject to unreasonable adverse environmental conditions.
- In a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities and commercial and public facilities, and reasonably accessible to the person's place of employment.
- On a site that is typical in size for residential development with normal site improvements, including customary landscaping. The site need not include special improvements such as outbuildings, swimming pools, or greenhouses.
- Currently available to the displaced person on the private market. However, a comparable replacement dwelling for a person receiving government housing assistance before displacement may reflect similar government housing assistance.

- A comparable replacement dwelling for a person who is not receiving assistance under any government housing program before displacement must be currently available on the private market without any subsidy under a government housing program.
- A public housing unit may qualify as a comparable replacement dwelling only for a person displaced from a public housing unit; a privately-owned dwelling with a housing program subsidy tied to the unit will qualify as a comparable replacement dwelling only for a person displaced from a similarly subsidized unit or public housing; a housing program subsidy to a person (not tied to the building), such as a HUD Section 8 Housing Voucher Program, may be reflected in an offer of a comparable replacement dwelling to a person receiving a similar subsidy or occupying a privately-owned subsidized unit or public housing unit before displacement.

  However, nothing in these provisions prohibit the department from offering, or precludes a person from accepting, assistance under a government housing program, even if the person did not receive similar assistance before displacement, subject to the eligibility requirements of the government housing assistance program. However, the department is obligated to inform the person of his or her options under the provision. If a person accepts assistance under a government housing program, the rules of the program governing the size of the dwelling apply, and the rental assistance payment will be computed on the basis of the person's actual out-of-pocket cost for the replacement housing, and associated utilities after the applicable government assistance has been applied.
- Within the financial means of the displaced person:
  - A replacement dwelling purchased by a homeowner in occupancy at the displacement dwelling for at least 90 days prior to the initiation of negotiations (90-day homeowner) is considered to be within the homeowner's financial means if the homeowner will receive the full price differential, all increased mortgage interest costs and all incidental expenses as described herein, plus any additional amount required to be paid under replacement housing of last resort as described in Chapter 6.
  - A replacement dwelling rented by an eligible displaced person is considered to be within his or her financial means if, after receiving rental assistance under this part, the person's monthly rent and estimated average monthly utility costs for the replacement dwelling do not exceed the person's base monthly rental for the dwelling as described in Chapter 6.
  - For a displaced person who is not eligible to receive a replacement housing payment because of the person's failure to meet length-of-occupancy requirements, comparable replacement rental housing is considered to be within the person's financial means if the department pays that portion of the monthly housing costs of a replacement dwelling which exceeds the person's base monthly rental for the replacement dwelling as described in Chapter 6. Such rental assistance must be paid under replacement housing of last resort provisions as described in Chapter 6.
  - For a person receiving government housing assistance before displacement, a dwelling that may reflect similar government housing assistance. In such cases any requirements of the government housing assistance program, including fair housing, civil rights, and those relating to the size of the replacement dwelling shall apply. However, nothing in this part prohibits the department from offering, or precludes a person from accepting assistance under a government housing program even if the

person did not receive similar assistance before displacement, subject to eligibility requirements of the government housing assistance program. The department is obligated to inform the person of their options under this part and then implications of accepting a different form of assistance than the assistance they may currently be receiving. If the person accepts assistance under a government housing assistance program, the rules of that program governing the size of the dwelling apply, and the rental assistance payment under replacement housing payment for 90-day tenants would be computed on the basis of the person's actual out-of-pocket cost for the replacement housing and associated utilities after the applicable government assistance has been applied. In determining comparability of housing under this part:

A. A public housing unit may qualify as a comparable replacement dwelling only for a person displaced from a public housing unit

B. A privately owned dwelling with a housing program subsidy tied to the unit may qualify as a comparable replacement dwelling only for a person displaced from a similarly subsidized unit or public housing unit.

C. An offer for tenant-based rental assistance, such as a HUD Section 8 Housing Choice Voucher, may be provided along with an offer of a comparable replacement dwelling to a person receiving a similar subsidy assistance or occupying a privately owned subsidized unit or public housing unit before displacement. The department must confirm that the owner will accept tenant based rental assistance before offering the unit as comparable replacement housing.

Comparable Sales Approach – Appraising the fair market value of a property by comparing the price of similar properties (comparable) recently sold. The degree of similarity (physical characteristics and locations) of the properties and the circumstances of the sale (time and terms) are the important considerations.

Compensation – A payment to make amends for the abridgment of rights or an injury. In condemnation, the payment for the taking of a persons' property without the owner's consent.

Compute Relocation Payments - Determine and establish the maximum payment that may be claimed by an individual as a supplemental housing payment.

Condemnation – The taking of private property for public use without the consent of the owner, but only upon payment of just compensation.

Condemnee – The owner of property taken by condemnation (eminent domain).

Condemnor – The party taking property by condemnation (eminent domain).

Conditional Use Permit – Allows a land use that does not conform to existing zoning.

Confession of Judgment – The written, voluntary, submission of a debtor to a judgment by a creditor for a specified amount.

Consanguinity – Blood relationship, rather than legal relationship (through marriage).

Consent Judgment – A written agreement between plaintiff and defendant to have a judgment entered and recorded. Although the court does not enter an actual finding for one party over the other, the judgment is binding on both parties.

Conservation Property - Conservation Property is any real property for which present or post-remediation use is primarily for wildlife habitat.

Conservator – A guardian, court appointed.

Construction - The actual use of personnel and materials by the contractor to perform the work agreed to in the construction contract awarded by the IDOT.

Constructive Eviction – (1) Regarding a landlord and tenant relationship, constructive eviction is any act by the landlord which substantially interferes with the tenant's use and enjoyment of the leased property but is not an actual eviction. (2) The inability of the buyer to obtain possession because of a superior title of a third party. This constitutes a breach of the covenant of quiet enjoyment warranted by the seller.

Constructive Notice – Notice given by publishing in a newspaper, recording, or other method which legally notifies the parties involved, but may not actually notify them.

Contaminant of Concern or Regulated Substance of Concern - Contaminant of Concern or Regulated Substance of Concern is any contaminant that is expected to be present at the site based upon past and current land uses and associated releases that are known to the person conducting a remediation based upon reasonable inquiry. (415 ILCS 5/58.2)

Contamination - Contamination is the presence of any hazardous waste or non-hazardous special waste on the land or in the waters of the state in quantities which are, or may be, harmful or injurious to human health or welfare, or animal or plant life.

Contract – A legally enforceable agreement to do (or not to do) a particular thing.

Contract Award - Award of the highway construction contract or highway construction-related contract.

Contract for Deed – A method of selling and financing property whereby the buyer obtains possession but the seller retains title.

Contributes Materially – Means that during the two taxable years prior to the taxable year in which displacement occurs, or during such other period as the department determines to be more equitable, a business or farm operation:

- Had average annual gross receipts of at least $5,000; or
- Had average annual net earnings of at least $1,000; or
- Contributed at least 33 1/3 percent of the owner's or operator's average annual gross income from all sources.
- If the application of the above criteria creates an inequity or hardship in any given case, the department may approve the use of other criteria as determined appropriate.

Corridor Hearing – A public hearing held to inform the public of the results of a corridor study and to receive comments from those concerned or affected by the corridors or areas studied.

Corridor Location Study - Investigation of all plausible locations within a study area and the social, economic and environmental effects of the proposed highway improvement within each.

Corporate Resolution – An action taken by vote of the directors of a corporation. A title insurance company may require a corporate resolution before insuring a sale or loan made by a corporation.

Corporation – A general term encompassing any group of people "incorporating" by following certain statutory procedures. Most common type of corporation is private, which are formed to carry on a business.

Corpus – A body of people, laws, etc.

Correction Deed – A document used to correct an error in a previously recorded deed.

Cost Approach – An appraisal method estimating the replacement cost of a structure less depreciation plus land value.

Cost to Cure – An amount of money necessary to fix a physical or economic situation arising from a damage.

Cotenancy – A general term covering both joint tenancy and tenancy in common.

Counter Offer – An offer (instead of acceptance) made in response to an offer. For example: A offers to buy B's house for X dollars. B, in response, offers to sell to A at a higher price. B's offer to A is a counter offer.

Courses and Distances – Terminology used in surveying, meaning metes and bounds (see also Metes and Bounds).

Court Trial - Just Compensation - Trial by jury held no sooner than 30 days following the filing of a complaint for condemnation - Following the trial by jury and based on the jury verdict, the amount to be paid as just compensation is ordered by the court to be deposited with the county treasurer.

Covenant – Generally, almost any written agreement. Most commonly in real estate, assurances set forth (express) in a deed by the grantor or implied by law. Example: covenant against encumbrances, covenant of right to convey, etc.

Covenants, Conditions and Restrictions – Privately imposed deed and lease restrictions.

Creative Financing – A general term which encompasses any method of financing property going beyond traditional real estate lending.

Damaged Signs – Signs which require more than 50 percent replacement of the uprights, in whole or in part.

Damages – (1) Money recoverable by one suffering a loss or injury. (2) The loss of fair market value to remaining property after a portion of the property is taken rather than the fair market value of the property taken.

Damage to the Remainder – An appraiser's view of the decrease in fair market value to the property remaining after sale of a portion of the property.

Dated Date – Indicates the date a document was executed (signed), rather than the date of recording (recording date).

Date Down – Subsequent title search to First Report of Title.

D.B.A. (Doing Business As) – An identification of the owner or owners of a business and the business name. Not a partnership or corporation.

Decent, Safe, and Sanitary Dwelling – A dwelling, which meets requirements listed below or the most stringent of the local housing codes, FHWA regulations or the department's regulations or written policy and occupancy codes. However, any of the following standards that are not met by the local code shall apply, unless waived for good cause by the federal agency funding the project. The dwelling shall:

- Be structurally sound, weather tight, and in good repair. Many local housing and occupancy codes require the abatement of deteriorating paint, including lead based paint and lead based paint dust, in protecting the public health and safety. Where such standards exist, they must be honored. Even where local law does not mandate the adherence to such standards, it is strongly recommended that they be considered as a matter of public policy.
- Contain a safe electrical wiring system adequate for lighting and other electrical devices.
- Contain a heating system capable of sustaining a healthful temperature (of approximately 70 degrees) for a displaced person, except in those areas where local climatic conditions do not require such a system.
- Be adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced person. The number of persons occupying each habitable room used for sleeping purposes shall not exceed that permitted by the most stringent of local housing codes or, in the absence of local codes, the policies of the department. In addition, the department shall follow the requirements of separate bedrooms for children of the opposite gender included in local housing codes or in the absence of local codes, the policies of the department.
- Contain a separate, well-lighted and ventilated bathroom that provides privacy to the user and contains a sink, bathtub or shower stall, and a toilet, all in good working order and properly connected to appropriate sources of water and to a sewage drainage system. When required by local code standards for residential occupancy there shall be a kitchen area that contains a fully usable sink, properly connected to potable hot and cold water and to a sewage drainage system, and adequate space and utility service connections for a stove and refrigerator.
- Contains unobstructed egress to safe, open space at ground level.
- For a displaced person with a disability, be free of any barriers that would preclude reasonable ingress, egress, or use of the dwelling by such displaced person.

Reasonable accommodation for a displaced person with a disability at the replacement dwelling means the department is required to address persons with a physical impairment that substantially limits one or more of the major life activities. In these situations, reasonable accommodation should include the following at a minimum: Doors of adequate width; ramps or other assistance devices to traverse stairs and access bathtubs, shower stalls, toilets and sinks; storage cabinets, vanities, sink and mirrors at appropriate heights. Kitchen accommodations will include sinks and storage cabinets built at appropriate heights for access. The department shall also consider other items that may be necessary, such as physical modifications to a unit, based on the displaced person's needs.

Declaration Judgment – A determination by a court as to the legal rights of the plaintiff, with no order for relief. The judgment is binding on future litigation.

Decree – The judgment of a court.

Decree of Distribution – The final determination of the rights of heirs to receive the property of an estate.

Dedication – The giving by an owner of private property for public use, and the acceptance by the proper public authority. Most commonly the dedication by a builder of the streets in a subdivision.

Deed by Trust – An instrument used in many states in place of a mortgage. Property is transferred to a trustee by the borrower (trustor) in favor of the lender (beneficiary) and reconvened upon payment in full.

Deed Restrictions – Limitations on the use of the property placed in the conveyance deed by the grantor, which bind all future owners.

Default – An omission or failure to perform a legal duty.

Default Judgment – A judgment entered against a party who fails to appear in court at the scheduled time.

Defective Title – (1) Title to a negotiable instrument obtained by fraud. (2) Title to real property which lacks some of the elements necessary to transfer good title.

Delivery – In conveyancing, the placing of the property in the actual or constructive possession of the grantee. Usually accomplished by delivery of a deed to the buyer or agent of the buyer or by recording said deed.

Demise – A lease of conveyance for years or life. Loosely used to describe any conveyance, whether in fee, for years or for life.

Department – The Illinois Department of Transportation

Deponent – One who makes a sworn written statement (deposition). If the statement is an affidavit, the maker is called an affiant.

Deposition – Written testimony taken under oath.

Design Approval – Approval of the Environmental Report and Phase I Engineering Report by the department and the FHWA as a result of a design study, environmental studies (i.e., NEPA approval) and a public hearing (when required).

Design Hearing - A public hearing held to present to the public the results of a design study and to receive comments from those concerned or affected by the improvement.

Desist and Refrain – To stop doing what one is doing, and not to start doing it again in the future. The real estate commissioner in some states has the power to issue a desist and refrain order when real estate laws are violated.

Devise – Real estate left by will.

Devisee – One to whom real estate is given by will.

Devisor – A testator who leaves real estate.

Directional Signs – Signs containing directional information about public places owned or operated by governments or their agencies; publicly or privately owned natural phenomena; historic, educational, cultural, scientific and religious sites; areas of natural or scenic beauty; or areas naturally suited for outdoor recreation which is deemed to be in the interest of the traveling public.

Director – The Director of the Office of Highways Project Implementation, Illinois Department of Transportation or the director's designee.

Disclaimer – (1) Statement on a publication attempting to limit liability in the event the information is inaccurate. (2) Renunciation of a claim or right of another. (3) Refusal to accept an estate, either as trustee or as owner.

Displaced Person – Except as provided in the definition of persons not displaced, any person who permanently moves from the real property or moves their personal property from the real property (this includes a person who occupies the real property prior to its acquisition, but who does not meet the length of occupancy requirements of this program) as a direct result of:

- A written notice of intent to acquire, rehabilitate, and/or demolished, the initiation of negotiations for, or the acquisition of such real property in whole or in part for a project.
- Rehabilitation or demolition for a project; or
- A written notice of intent to acquire, or the acquisition, rehabilitation or demolition of, in whole or in part, other real property on which the person conducts a business or farm operation, for a project. However, eligibility for such a person under this paragraph applies only for purposes of obtaining relocation assistance advisory services and moving expenses.

Displacing Agency – Any federal agency carrying out a program or project, and any state, state agency, or local public agency carrying out a program or project with federal financial assistance, which causes a person to be a displaced person.

District – A geographic subgroup of the Illinois Department of Transportation, Office of Highways Project Implementation. Each district has its own land acquisition office or bureau. A Regional Engineer is responsible for all actions within a region which is comprised of one or two districts.

Office – The Illinois Department of Transportation, Office of Highways Project Implementation.

Documentary Tax Stamps – Stamps, similar to postage stamps, affixed to a deed, showing the amount of transfer tax paid. Most states now "stamp" the deed rather than actually affixing a stamp.

Documentary Transfer Tax – A state tax on the sale of real property, based on the sale price of equity transferred, being $.55 for each $500 of the taxable amount in most states. Some states use $1.10 per $1,000; $.50 per $500; $1.00 per $1,000.

Domestic Corporation – (1) Refers to a state rather than a county. For example: In Delaware, a corporation. In New York, a corporation organized under Delaware law would be a foreign corporation (foreign to New York). (2) In international terms, refers to the country in which the corporation is based. In the US, based corporations are domestic.

Dominant Estate – The parcel of land which benefits from an easement.

Dominant Tenement – A parcel of land which benefits from an easement. For example: An easement exists over parcel A for access to parcel B. Parcel B is the dominant tenement; parcel A is the servient tenement.

Donee – One who receives a gift.

Donor – One who gives a gift.

Dower – A common law interest of a wife in the property of her deceased husband. Being changed in many states by statute to give more equality between men and women in property rights.

Downzoning – A change in the allowable use of land by the appropriate zoning authority to a less (usually less valuable) use. Example: Eight units per acre to four units per acre.

Duress – Forcing one to do that which he would not voluntarily do.

Dwelling – The place of permanent or customary and usual residence of a person, according to local custom or law, includes a single family house; a single family unit in a two-family, multi-family, or multi-purpose property; a unit of a condominium or cooperative housing project;; a mobile home; or any other residential unit.

Dwelling Site – A land area that is typical in size for similar dwellings located in the same neighborhood or rural area. This ensures that the computation of replacement housing payments are accurate and realistic when the dwelling is located on a larger than normal site, when mixed use properties are acquired, when more than one dwelling is located on the acquired property, or when the replacement dwelling is retained by an owner and moved to another site.

Easement – A right created by grant, reservation, agreement, prescription, or necessary implication, which one has in the land of another. It is either for the benefit of land (appurtenant such as right to cross A to get to B) or "in gross", such as a public utility easement.

Easement Appurtenant – An easement for the benefit of another parcel of land, such as the right to cross parcel A to reach B. The easement will pass with the transfer of property to a new owner. (See also: Dominant Tenement; Servient Tenement.)

Easement by Prescription – Acquisition of an easement by prolonged use.

Easement in Gross – An easement for the benefit of a person or company, rather than for the benefit of another parcel of land. Commonly, such as easements for public utilities.

Easement of Necessity – An easement granted by a court when it is determined that said easement is absolutely necessary for the use and enjoyment of the land. Commonly given to landlocked parcels.

Egress – A term concerning a right to come and go across the land (public or private) of another. Usually part of the term ingress and egress.

Eleemosynary Corporation – A corporation created for charitable purposes. There are tax advantages accorded to such corporations. The corporation may operate the same as a profit making corporation. Commonly called a non-profit corporation.

Emblements – Growing crops. Annual plantings that require cultivation. Considered chattels which may be removed by a tenant at the expiration of his lease.

Eminent Domain – A government right to acquire private property for public use by condemnation, and the payment of just compensation.

Encroachment – The unauthorized intrusion of a building or other improved onto another person's land.

Encumbrance, Incumbrance – Any impediment to a clear title, such as a lien, lease of easement.

Engineered Barrier - Engineered Barrier is a barrier designed or verified using engineering practices that limits exposure to or controls migration of the contaminants of concern.

Entity – A separate existence of being, most commonly referring to a corporation or other form of business, rather than an individual.

Environmental Deficiency – Deficiency of the area surrounding a property (environment), which decreases its fair market value, such as poorly designed streets and traffic patterns, a high crime rate, no major sewer lines, etc.

Equitable Title (Equitable Ownership) – Ownership by one who does not have legal title, such as a vendee under a land contract, or, technically, a trustor under a deed of trust (legal title being in the Trustee).

Equity – (1) A legal doctrine based on fairness, rather than strict interpretation of the letter of the law. (2) The fair market value of real property, less the amount of existing liens. (3) Any ownership investment (stocks, real estate, etc.) as opposed to investing as a lender (bonds, mortgage, etc.).

Erect – To construct, build, raise, assemble, place, affix, attach, create, paint, draw or in any other way bring into being or establish; not including any of the foregoing activities when performed as an incident to the change of advertising message or normal maintenance or repair of a sign or sign structure.

Escheat – A reversion of property to the state in the absence of an individual owner. Usually occurs when a property owner dies intestate, and without heirs.

Escrow – Delivery of a deed by a grantor to a third party for delivery to the grantee upon the happening of a continent event. Modernly, in some state, all instruments necessary to the sale (including funds) are delivered to a third (neutral) party, with instructions as to their use.

Escrow Account – (See: Impound Account).

Escrow Instruction – Instructions which are signed by both buyer and seller, and which enable an escrow agent to carry out the procedures necessary to transfer real property, a business, or other assignable interest.

Escrow Officer – An escrow agent. In some states, one who has, through experience and education, gained a certain degree of expertise in escrow matters.

Estate – (1) The interest or nature of the interest which one has in property, such as a life estate, the estate of a decreased, real estate, etc. (2) A large house with substantial grounds surrounding it, giving the connotation of belonging to a wealthy person.

Estoppel – The prevention of one from asserting a legal right because of prior actions inconsistent with the assertion.

Et Al – And others.

Et Con – And husband.

Et Ux – And wife.

Et Vir – Latin, meaning "and husband."

Eviction – A court action to remove one from possession of real property. Most commonly, the removal of a tenant.

Evidence of Title – A document establishing ownership to property. Most commonly, a deed.

Executed Sale – One which is final and completed.

Executor – One who is appointed under a will to carry out (execute) the terms of the will.

Executor's Deed – A deed issued by the executor of an estate.

Executrix – A female executor.

Expert Testimony – Testimony by one acknowledged having special training and knowledge in a particular subject. Only testimony on the subject in which the witness is "expert" is considered expert testimony.

Expert Witness – One acknowledged having special training and knowledge of a particular subject and testifying on that subject.

Exposure Route – Exposure route is the transportation mechanism by which a contaminant of concern reaches or may reach a receptor.

Fair Market Rent – The amount of rent which a tenant willing to rent would pay, and an owner willing to lease would accept, when the tenant is not compelled to rent and the owner is not compelled to lease.

Fair Market Value – The fair cash market value of a property in an eminent domain proceeding is that price which a willing buyer would pay in cash, and a willing seller would accept, when the buyer is not compelled to buy, and the seller is not compelled to sell. In the condemnation of a property for a public improvement, any appreciation or depreciation in value caused by the contemplated improvement shall be excluded from the consideration of the fair cash market value of the whole property and the value of the part taken (Illinois Pattern Jury instructions). In the event of a partial acquisition where there is remainder property, any appreciation or depreciation caused by the contemplated improvement shall be considered when opining the fair cash market value of the remainder. Any increase or decrease in fair market value caused by the actual acquisition of a part of the property must be considered in opining the fair market value of the remainder after taking.

Farm Operation – Any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

Federal Agency - Any department, agency, or instrumentality in the executive branch of the United States government, any wholly U.S. owned government corporation, the Architect of the Capitol, the Federal Reserve Banks and branches thereof, and any person who has the authority to acquire property by eminent domain under federal law.

Federal Financial Assistance – A grant, loan or contribution provided by the United States, except any federal guarantee, insurance or tax credits such as the Low Income Housing Tax Credit (LIHTC), and any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual.

Federal Revenue Stamps – Also called IRS stamps. A transfer of tax of $.55 per $500, based on the sale price of real estate (less remaining loans). The tax ended as a federal tax and was taken up by most states with slight modifications in some area.

Federal Tax Lien – A lien attaching to property for non-payment of a federal tax (estate, income, etc.). A federal tax lien differs from other liens in that it is not automatically wiped out by foreclosing on a mortgage or trust recorded before the tax lien (except by judicial foreclosure).

Fee – (1) Modernly, and not in strict legal terms, synonymous with fee simple or "ownership". (2) A charge made by a landlord to a tenant, which is not refundable. For example: A cleaning deposit would be refunded in the tenant left the rented property reasonably clean. A cleaning fee would be charged by the landlord for cleaning the rented property and would not be refunded regardless of the condition of the property.

Fee Simple – The largest, most complete bundle of rights one can hold in land, land ownership. An estate under which the owner is entitled to unrestricted powers to dispose of the property, and which can be left by will or inherited. Commonly, a synonym for ownership.

Fee Simple Absolute – A term now used synonymously with fee simple.

FHWA Authorization for Acquisition - Approval by the FHWA to proceed with preparation of appraisals and negotiations on a particular project.

FHWA Programming Request - A request submitted by IDOT to FHWA requesting participation in a particular highway project or program, i.e., relocation.

Fictitious Name – Commonly refers to a company name in a business not incorporated. The owner files a certificate of fictitious name. For example: Joe Smith (real name); Joe's Garage (fictitious name). Also called d/b/a (doing business as).

Fiduciary – One acting in a relationship of trust, regarding financial transactions.

File Complaint - Jury Trial - Filing of the fully executed complaint for condemnation, together with a motion for setting a jury trial, by the Special Assistant Attorney General in the court having jurisdiction over the matter - This occurs when acquisition by eminent domain proceedings is necessary on a parcel required for a future highway improvement project which is not scheduled and included in the Annual Highway Improvement Program.

File Complaint - Quick Take - The filing, by the Special Assistant Attorney General, of the fully executed complaint for condemnation together with a motion for the setting of a quick take hearing and immediate vesting of title to the property to be acquired.

Final Decree – A decree completely deciding all pending matters before a court, and obviating the need for further litigation.

Financial Corporation – A general term encompassing companies dealing in finance, such as banks, savings and loan associations, insurance companies, and similar companies.

First Mortgage – A mortgage having priority over all other voluntary liens against certain property.

First Refusal Right – A right, usually given by an owner to a lessee, which gives the lessee a first chance to buy the property if the owner decides to sell. The owner must have a legitimate offer which the lessee can match or refuse. If the lessee refuses, the property can then be sold to the offeror.

Fixed Rate Mortgage – A mortgage having a rate of interest which remains the same for the life of the mortgage.

Flowage Easement – Not an easement by agreement, but the common law servitude of land of a lower grade level to allow water from land of a higher level to flow across it.

Forced Sale – A sale which is not the voluntary act of the owner, such as to satisfy a debt, whether of a mortgage, judgment, etc. The selling price under such a sale would not be considered fair market value.

Foreclosure – A proceeding in or out of court, to extinguish all rights, title and interest, of the owner(s) or property in order to sell the property to satisfy a lien against it.

Foreclosure Sale – A sale of property used as security for a debt, to satisfy said debt.

Foreign Corporation – A corporation incorporated in another state. In New York, for example, a Delaware corporation would be a foreign corporation. (See also Corporation; domestic Corporation.)

Forfeiture – The taking of an individual’s property by a government because the individual has committed a crime. In the United States, private property cannot be taken, except by eminent domain upon payment of just compensation, or for non-payment of taxes.

Free and Clear – Real property against which there are no liens, especially voluntary liens (mortgages).

Free Standing Building – A building containing one business, rather than a row of stores or businesses with a common roof and side walls.

Friable – Easily reduced to powder or crumbled. Non-pliable.

Friable Asbestos-Containing Material - Friable Asbestos-Containing Material is an asbestos-containing material which when dry, may be crumbled, pulverized or reduced to powder by hand pressure and includes previously non-friable material which has become damaged or is likely to become friable during demolition operations.

Front Foot Cost – A determination of the fair market value of real property based on a value per foot as measured along the frontage of a parcel. Usually used with commercial property.

FROT – First Report of Title. A statement for the current conditions of title for a parcel of land. This term is unique to District Four.

Fructus Industriales – Those things created by the labor (industry) of man rather than by nature alone. For example, a planted crop rather than an iron ore deposit. Important because Fructus Industriales is treated as personal property.

Fructus Naturales – Produced by nature alone, such as trees (not planted by man) or minerals in the ground. Considered real property.

Full Disclosure – In real estate, revealing all he known facts which may affect the decision of a buyer or tenant. A broker must disclose known defects in the property for sale or lease. A builder must give to a potential buyer the facts of his new development (are there adequate school facilities; an airport nearby, etc.). A broker cannot charge a commission to buyer and seller unless both know (disclosure) and agree.

Garnish – To bring garnishment proceedings.

Garnishee – The person against whom a garnishment is issued. The party holding funds of the debtor and not the debtor.

General Benefits – In condemnation, benefits accruing to property not taken, but which benefits are caused by the taking.

General Lien – (1) A lien such as a tax lien or judgment lien which attaches to all property of the debtor rather than the lien of, for example, a trust feed which attaches only to specific property. (2) The right of a creditor to hold personal property of a debtor for payment of a debt not associated with the property being held. Must be done under an agreement since against general precepts of law.

General Partner – A member of a partnership who has authority to bind the partnership and shares in the profits and losses. A partnership must have at least one general partner and may have more, as well as limited partners.

General Partnership – A partnership made up of general partners, without specific (limited) partners. (See also Limited Partnership and Partnership).

Good Faith – Something done with good intentions, without knowledge of fraudulent circumstances, or reason to inquire further.

Grandfather Clause – The clause in a law permitting the continuation of a use, business, etc., which, when established, was permissible but, because of a change in the law, if now not permissible.

Grant – To transfer an interest in real property; either the fee or a lesser interest, such as an easement.

Grantee – One to whom a grant is made. Generally, the buyer.

Grantor – One who grants property or property rights.

Guarantor – One who makes a guaranty.

Guaranty – Agreement to pay the debt or perform the obligation of another in the event the debt is not paid or obligation not performed. Differs from a surety agreement in that there must be a failure to pay or perform before the guaranty can be in effect.

Guardian – One who is court appointed to manage the affairs of a minor or incompetent.

Guardian's Deed – Used to convey property of a minor or legally incompetent person.

Habendum – A clause in a deed, following the granting clause, which defines the extent of the estate of the grantee.

Hazard - Hazard is a set of inherent properties known to be dangerous to the environment.

Hazardous Waste - Hazardous Waste is a waste, or combination of wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious, irreversible, or incapacitating reversible, illness; or pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed, and which has been identified, by characteristics or listing, as hazardous pursuant to Section 3001 of the Resource Conservation and Recovery Act of 1976, 415 ILCS 5/22.4, or pursuant to the Pollution Control Board regulations. Potentially infectious medical waste is not a hazardous waste, except for those potentially infectious medical wastes identified by characteristics or listing as hazardous under Section 3001 of the Resource Conservation and Recovery Act of 1976, 415 ILCS 5/22.4, or pursuant to Board regulations (415 ILCS 5/3.15).

Heir – One who by law, rather than by will, receives the estate of a deceased person.

Heirs and Assigns – Words usually found in a deed, showing interest the grantee is receiving. A deed to “A, his heirs and assigns,” would grant the property to A, with the right to assign said property or have it descend to A’s heir upon A’s death. This would be considered a fee interest (estate). This would differ from, for example, a life estate granted to A, which would terminate upon A’s death and could not be inherited by A’s heirs.

Herditaments – (1) Anything which could be considered real property. (2) Anything which may be inherited.

Highest and Best Use – The use of land which will result in its highest fair market value. In appraisal, this cannot be merely theoretical but must also be realistic in that the use must be legal (proper zoning, etc.), physically achievable and financially feasible.

Hold Over Tenant – A tenant who retains possession after the expiration of a lease.

Holographic Will – One that is entirely handwritten and signed by the testator but not witnessed.

Homestead – The dwelling (house and contiguous land) of the head of a family. Some states grant statutory exemptions, protecting homestead property (usually to a set maximum amount) against the rights of creditors. Property tax exemptions (for all or part of the tax) are also available in some states. Statutory requirements to establish a homestead may include a formal declaration to be recorded.

Household Income – Total gross income received for a 12 month period from all sources (earned and unearned) including, but not limited to wages, salary, child support, alimony, unemployment benefits, workers compensation, social security, or the net income from a business. It does not include income received or earned by dependent children under 18 or full time students who are students for at least 5 months of the year and are under the age of 24. Household income for purposes of these provisions does not include program benefits that are not considered by federal law such as food stamps and the Women Infants and Children (WIC) program.

Illegal Signs – Signs not in compliance.

Improved Land – Land having either on-site improvements, off-site improvements, or both.

Improvement District – A geographical area which will be assessed for a local improvement.

Improvements – Generally, buildings but may include any permanent structure or other development, such as a street, utilities, etc.

Improvements Removed - All improvements removed and debris cleared from the right of way in accordance with the building removal agreement or demolition contract.

Income Capitalization Approach – Estimating value (v) by dividing Net Operating Income (N.O.I.) by an overall capitalization rate Ro. (N.O.I./Ro-v).

Incompetent – One who is mentally or physically unable to handle his property without help. A court will appoint someone to handle the financial affairs of such a person.

Incumbrance (Encumbrance) – A claim, lien, charge or liability attached to and binding real property. Any right to, or interest in, land which may exist in one other than the owner, but which will not prevent the transfer of fee title.

Indemnity Agreement – An agreement by which one party agrees to repay another for any loss or damage the latter may suffer.

Independent Appraisal – An appraisal by one who has no interest in the property or nothing to gain from a high or low appraisal.

Industrial/Commercial Property - Industrial/Commercial Property is any real property not meeting the definition of residential property, conservation property or agricultural property.

Industrial Process Waste - Industrial Process Waste is any liquid, solid, semi-solid, or gaseous waste generated as a direct or indirect result of the manufacture of a product or the performance of a service. Any such waste which would pose a present or potential threat to human health or to the environment or with inherent properties which make the disposal of such waste in a landfill difficult to manage by normal means is an industrial process waste, Industrial process waste includes but is not limited to spent pickling liquors, cutting oils, chemical catalysts, distillation bottoms, etching acids, equipment cleanings, paint sludge, incinerator ashes (including but not limited to ash resulting from the incineration of potentially infectious medical waste), core sands, metallic dust sweepings, asbestos dust, and off-specification, contaminated or recalled wholesale or retail products. Specifically excluded are uncontaminated packaging materials, uncontaminated machinery components, general household waste, landscape waste, and construction or demolition debris (415 ILCS 5/3.17).

Ingress and Egress – A right to enter upon and pass through land.

Inheritance – In a legal meaning, real property obtained by law rather than by will; generally misused to mean anything which comes from a deceased person.

Initiation of Negotiations - Unless a different action is specified in applicable federal program regulations the term initiation of negotiations means the following:

- Whenever the displacement results from acquisition of the real property by a federal agency or state agency, the initiation of negotiations means the delivery of the initial written offer of just compensation by the agency to the owner or the owner's representative to purchase the real property for the project. However, if the federal agency or state agency issues a notice of its intent to acquire, rehabilitate, or demolish the real property, and a person moves after that notice, but before delivery of the initial written purchase offer, the initiation of negotiations means the actual move of the person from the property.
- Whenever the displacement is caused by rehabilitation, demolition or privately undertaken acquisition of the real property (and there is no related acquisition by a federal agency or a state agency), the initiation of negotiations means the written notice to the person that he or she will be displaced by the project or, if there is no notice, the actual move of the person from the property.
- In the case of a permanent relocation to protect the public health and welfare, under the Comprehensive Environmental Response Compensation and Liability Act of 1980 (Pub. L. 96-510, or "Superfund") (CERCLA) the initiation of negotiations means the formal announcement of such relocation or the federal or federally-coordinated health advisory where the federal government later decides to conduct a permanent relocation.
- In the case of a permanent relocation of a tenant as a result of a voluntary acquisition of real property the tenant is not eligible for relocation assistance until there is a binding written agreement between the department and the owner that obligates the department to purchase the real property.

Injunction – An order of a court preventing one from acting or restraining one from continuing some action.

In Perpetuity – Of endless duration; forever.

Institutional Control - Institutional Control is a legal mechanism for imposing a restriction on land use.

Instrument – Any writing having legal form and significance, such as a deed, mortgage, will, lease, etc.

Intangible Property – Property which has value but cannot be physically touched, such as a patent, the goodwill of a business, etc.

Intangible Value – The value of intangible property or the intangible portions of tangible property.

Interest – (1) A share or right in some property. (2) Money charged for the use of money (principal).

Interlocutory Decree – A provisional or temporary decree, pending some contingency before a final decree. Sometimes the contingency may be only the passage of time.

Inter Vivos – Between living persons. Property transferred between living persons would fall under different laws than property transferred after death or in contemplation of death.

Inter Vivos Trust – A trust during the life of the settler rather than upon death. (See also, Testamentary Trust.)

Intestate – Without leaving a will, or leaving an invalid will so that the property of the estate passes by the laws of succession rather than by direction of the deceased.

Intestate Succession – Laws that direct how a deceased's assets shall be divided when there is not will.

Inure – To take effect, to result.

Inverse Condemnation – The legal process by which a property owner may claim and receive compensation for the taking of, or payment for damages to, his property as a result of a highway improvement.

Joint and Several – A liability which allows the creditor to sue any one of the debtors (sever one from the other) or sue all together (jointly).

Joint Tenancy – An individual interest in property, taken by two or more joint tenants. The interests must be equal, accruing under the same conveyance, and beginning at the same time. Upon the death of a joint tenant, the interest passes to the surviving joint tenants, rather than to the heirs of the deceased.

Joint Tenants – Those holding under joint tenancy.

Jointure – A life estate for a wife which takes effect upon the death of her husband. Takes the place of dower, but must be agreed to by the wife and is not an automatic right such as a dower.

Judgment – The decision of a court of law. Money judgments, which recorded, become a lien on real property of the defendant.

Judgment Lien – A lien against the property of a judgment debtor. An involuntary lien.

Junior Lien – A lien which is subordinate to a prior lien.

Junior Mortgage – Any mortgage of less priority than a first mortgage.

Jurat – (1) The certificate of an officer before whom a writing was sown to, such as a notary public. (2) That part of an affidavit stating where, when and before whom, the affidavit was sworn.

Just Compensation – In condemnation, the amount paid to the property owner. The theory is that in order to be "just," the property owner should be no richer or poorer than before the taking.

Land Contract – An installment contract for the sale of land. The seller has legal title until paid in full. The buyer has equitable title during the contract.

Land Grant – A gift of public land by the federal government to a state or local government, corporation or individual.

Landlocked Parcel – A parcel of land surrounded entirely by land owned by others, with no real access to a public right of way (road). Condemnation for a limited access highway is a major cause of such parcels.

Landlord – An owner of leased real estate.

Landowner's Royalty – In oil and gas leases, the portion of the value of each barrel of oil which goes to the property owner.

Land Surveying - The art and science of reestablishing U.S. Public Land Surveys and land boundaries based on documents of record and historical evidence; planning, designing and establishing property boundaries; and certifying surveys as required by statute or local ordinance such as subdivision plats, registered land surveys, judicial surveys and space delineation.

Latent Defect – A hidden or concealed defect. One which could not be discovered by inspection, using reasonable care. In legal descriptions, a latent defect may be corrected, and totally new description not necessary.

Later Date – Subsequent title search to first report of title.

Lead Agency - The United States Department of Transportation acting through the Federal Highway Administration (FHWA).

Lease – An agreement by which an owner of real property (lessor) gives the right of possession to another (lessee), for a specified period of time (term) and for a specified consideration (rent).

Leased Fee – The lessor's interest in the property.

Leasehold – An estate in realty held under a lease; an estate for a fixed term. Considered in many states to be personal property.

Leasehold Improvements – Improvements made by the lessee. The term is used in condemnation proceedings to determine the portion of the award to which the lessee is entitled.

Leasehold Interest – The interest which the lessee has in the value of the lease itself in condemnation award determination. The difference between the total remaining rent under the lease, and the rent lessee would currently pay for similar space for the same period.

Lease with Option to Purchase – A lease under which the lessee has the right to purchase the property. The price and terms of the purchase must be set forth for the option to be valid. The option may run for the length of the lease or only for a portion of the lease period.

Legacy – Personal property received under a will.

Legal Description – A method of geographically identifying a parcel of land, which is acceptable to a court of law.

Legal Name – First and last name. Middle name included, omitted or incorrect will not matter. Today, full names (for identification purposes) are required in many instances, but only for identification purposes (to distinguish between two men names John Smith, for example).

Legal Notice – The notice required by law in a particular case. May be actual notice, constructive notice, etc.

Legal Owner – The term has come to be used as a technical difference from the equitable owner, and not as opposed to an illegal owner. The legal owner has title to the property, although the title may actually carry no rights to the property other than a lien.

Legal Title – Usually title without ownership rights, such as the title placed in a trustee under a deed of trust, or the title in a vendor under a land contract.

Legatee – (1) One who receives personal property by will. (2) One receiving any property by will, real or personal.

Lessee – The party to whom a lease (the right to possession) is given in return for a consideration (rent).

Lessee's Interest – In appraising the value of a lessee's interest to determine the value of a potential sublease of assignment (sale) of the lease, the value is the fair market value of the property, less the interest of the lessor. The lessor's interest would be largely determined by the ratio of the return on the lease to the fair market value without the lease.

Lessor – The party (usually the owner) who gives the lease (right to possession) in return for a consideration (rent).

Lessor's Interest – The present value of the future income under the lease, plus the present fair market value of the property after the lease expires (reversion).

Letters Testamentary – Order of a probate court granting authority to an executor.

Letting of Bids - Acceptance by the IDOT of bid proposals sealed in proposal envelopes and deposited in locked bid boxes at the place and until the time designated in the Service Bulletin.

Lien – An encumbrance against property for money, either voluntary or involuntary. A lien is an encumbrance, but all encumbrances are not liens.

Lienee – The party subject to a lien.

Lienor – A party holding a lien.

Lien Waiver – For our purposes, a waiver of mechanic's lien rights, signed by subcontractors so that the owner or general contractor can receive a draw on a construction loan.

Life Beneficiary – One who receives payments or other rights from a trust for his or her lifetime.

Life Estate – An estate in real property for the life of a living person. The estate then reverts back to the grantor or on to a third party (remainder man).

Life in Being – The remaining life of someone already alive. An expression used in rules against perpetuities.

Life in Interest – An interest in real estate for a period of the life of the one having the interest, or the life of another.

Life Tenant – One who holds land for the length of his, or another's life.

Light and Air Easement – An easement restricting the servient tenement from obstructing the light and air (usually the view) of the dominant tenement. For example, a developer builds a resort hotel. He may wish to obtain a light and air easement from adjoining owners to that they may not build tall structures and block the sun from the hotel's swimming pool.

Like in Kind Property – A tax term used in exchanges. Property may be exchanged for like in kind property and the tax postponed. The term does not refer to the physical similarity of the properties but the purpose and intent (investment) of the taxpayer.

Limited Partnership – used in many real estate syndications; a partnership consisting of one or more general partners who conduct the business and are responsible (liable) for losses, and one or more special (limited) partners, contributing capital and liable only up to the amount contributed.

Lis Pendens – A legal notice recorded to show pending litigation relating to real property, and giving notice that anyone acquiring an interest in said property, subsequent to the date of the notice may be bound by the outcome of the litigation.

Littoral – Concerning the shore of lakes and oceans, as opposed to rivers and streams, for which the work riparian is used.

Littoral Rights – Rights concerning properties abutting an ocean or lake rather than a river or stream (riparian). Littoral rights are usually concerned with the use or enjoyment of the shore.

Living Trust – A trust which is in effect during the life of the settler, rather than upon his death (testamentary trust).

Location Approval - Approval by the department and the FHWA of the corridor recommended as a result of a corridor study and public hearing.

Loss of Access – Taking away the right of an owner of property abutting a public road, to come and go to and from said road and his property. Usually happens in condemnation when the abutting road becomes a limited access highway.

M.A.I. (Member Appraisal Institute) – The designation given to a member of the American Institute of Real Estate Appraisers (n/k/a Appraisal Institute). A designation earned through experience, education and examination.

Mandamus – Latin for "we command." A writ issued by a superior court ordering an inferior court, corporation, or individual, to do or refrain from doing specific acts. The main importance to real estate if that it is a writ commanding a governmental body to do something, such as issue a building permit.

Marketable Title – Title which can be readily marketed (sold) to a reasonably prudent purchaser aware of the facts and their legal meaning concerning liens and encumbrances.

Mechanic's Lien – A lien created by statute for the purpose of securing priority of payment for the price or value of work performed and materials furnished in construction or repair of improvements to land, and which attaches to the land as well as improvements.

Merger of Title – A lesser interest in real property being merged (absorbed) into a greater interest. For example, a lessee purchases the property being leased. The interest as a lessee is merged into his interest as an owner, thus the leasehold interest.

Metes and Bounds – Description of land by boundary lines, with their terminal points and angles. Originally, meets referred to distance, bounds to direction; modernly, the words have no individual meaning of practical significance.

Mineral Rights – The ownership of the minerals (coal, gold, iron, etc.) under the ground, with or without ownership of the surface of the land.

Minor – Any person under the age of 18. In some states, under age 21 with regard to alcoholic beverages.

Misrepresentation – A statement or conduct by a person which represents to another a fact which is not true. A seller, broker, or builder may have a duty to disclose certain defects in property to a buyer or tenant. Failure to disclose is also misrepresentation. The misrepresentation may be deliberate (known to be wrong), negligent (should have known), or innocent (reasonably believed to be true). Depending on the facts and extent of misrepresentation, there may be a suite for damages, recession of a contract, punitive action against the broker (loss of license), etc.

Mobile Home - Includes manufactured homes and recreational vehicles used as residences. A recreational vehicle that is capable of providing living accommodations may be considered a replacement dwelling if:

- It is purchased and occupied as the primary place of residence;
- It is located on a purchased or leased site and connected to or have available all necessary utilities for functioning as a housing unit on the date of the department's inspection; and
- The dwelling, as sited, meets all local, state and federal requirements for a decent, safe and sanitary dwelling. The regulations of some local jurisdictions will not permit the consideration of these vehicles as decent, safe and sanitary dwellings. In those cases, the recreational vehicle will not qualify as a replacement dwelling.

Mortgage – Means such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of the state in which the real property is located, together with the credit instruments, if any, secured thereby.

Multiple Message Sign – An outdoor advertising sign that displays a series of message changes, regardless of the technology used.

Municipal Waste – Municipal Waste is garbage, general household and commercial waste, industrial lunchroom or office waste, landscape waste, and construction or demolition debris.

Name Change – In conveyance, setting forth both the present name of the grantor and the name under which said grantor acquired title, if different. For example, Joan Doe, a married woman, who acquired title (or also known as) Joan Smith.

Narrative Appraisal – The most detailed of the appraisal reports in which conclusions are supported and explained. The requirements for reaching said conclusion, however, do not differ from the shorter letter report of any properly done appraisal.

Negative Easement – The servient estate or tenement.

Negotiations, 90 Day Notice - The earliest date by which an individual occupying the real property to be acquired may be required to move from his home, farm or business.

Net Acre – An acre which may be used for building of structures. For example: a builder buys ten acres of raw land on which to build houses. Three acres are used for streets, sidewalks, and other off-site improvements. The remaining seven acres are the net acres of the ten acre site.

No Further Remediation (NFR) Letter - No Further Remediation (NFR) Letter is a letter issued by the Illinois Environmental Protection Agency (IEPA) acknowledging that a person is released from further responsibility under the Illinois Environmental Protection Act at a site. An NFR letter may have conditions attached to it including institutional controls.

Non-Conforming Use – A property which does not conform to the zoning of the area. Usually, the property was built in conformity and then the zoning was changed.

Non-Conforming Sign and/or Sign Structure – A registered sign and/or sign structure lawfully in existence as of the effective date of the Highway Advertising Control Act (July 1, 1972), and not currently conform to the QA policy requirements.

Non-Friable Asbestos-Containing Material - Non-friable Asbestos-Containing Material is asbestos containing material not meeting the definition of friable asbestos-containing material.

Non-Hazardous Special Waste - Non-Hazardous Special Waste is special waste found not to be hazardous (e.g., industrial process waste and pollution control waste).

Non-Profit Organization - An organization that is incorporated under applicable laws of a state as a non-profit organization, and exempt from paying federal income taxes under Section 501 of the Internal Revenue Code (26 U.S.C. 501).

Notice to Quit – A notice by a landlord to a tenant to vacate rented property. There are two types: for non-payment of rent or for any other reason. Usually the notice for non-payment allows less time to vacate.

Notice of Intent to Acquire - A written notice furnished to a person to be displaced, including those to be displaced by rehabilitation or demolition activities from property acquired prior to the commitment of federal financial assistance to the activity, that establishes eligibility for relocation assistance prior to the initiation of negotiation and/or prior to the commitment of federal financial assistance.

Notorious Possession – A requirement for adverse possession. Possession so open (notorious) that the owner is presumed to have notice of it and its extent.

Oath – An attestation by a person which binds him or her legally and morally. Usually attesting to the truth of something, as an affidavit, or the validity of one's signature. A promise to tell the truth. Also, a promise to carry out a duty with high morality (oath of office). An oath has religious connotations and usually involves the word "swear," and may contain the phrase "so help me God", or requires the one taking the oath to put his or her hand on a Bible. An affirmation is still legally binding.

Offer and Acceptance – Necessary elements of a contract to sell real estate.

Offer Letter – A written instrument setting out the compensation offered for the acquisition of property interest.

Official Signs – Signs erected and maintained by public officers/agencies within their jurisdiction and in accordance with direction or authorization to carrying out an official duty or responsibility.

Oil and Gas Lease – A lease giving the lessee the right to extract oil and gas from land. More like a mining lease than a land lease, in that the lessee has an ownership interest in a portion of the property (the oil and gas) rather than just the use of the property. The lessor is generally paid based on the amount of oil and gas taken.

On-Premise Signs – Signs advertising activities conducted on the property on which they are located.

Operator - Operator is the person or entity controlling any facility or activity.

Option – A right, which acts as a continuing offer, given for consideration, to purchase or lease property at an agreed upon price and terms, within a specified time.

Order Vesting Title - A court order vesting title to the property being acquired in the state subsequent to the deposit of the preliminary just compensation as previously ordered by the Court - In the case of a stipulated settlement or jury award without the use of quick take procedure, the court shall vest title in the state by a final judgment order.

Owner of a Dwelling - A person who is considered to have met the requirement to own a dwelling if the person purchases or holds any of the following interests in real property:

- Fee title, a life estate, land contract, a 99-year lease, or a lease, including any options for extension, with at least 50 years to run from the date of acquisition; or
- An interest in a cooperative housing project which includes the right to occupy a dwelling; or
- A contract to purchase any of the above interests or estates; or
- Any other interest, including a partial interest, which in the judgment of the department warrants consideration as ownership.

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

Owner-Retained Improvements - Building improvements retained and removed by the property owner, from land acquired as right of way.

Owner Retention, Public Sale and Rental Values - The values to be allocated to the building improvements within the area acquired if the improvements are to be retained and removed by the owner, sold at public sale or rented until the property is required for construction purposes.

Ownership Reports - Record of last known owner and any easements of record.

Parcel – A general term meaning any part of portion of land.

Partial Release – A release of a portion of property covered by a mortgage. A subdivider will obtain a partial release as each lot is sold, upon payment of an agreed upon amount. In areas where the subdivider is not usually the builder, it may be necessary to sell groups of lots to obtain a partial release. In areas where deeds of trust are used instead of mortgages, a "partial reconveyance" is the document used.

Partial Taking – The taking of part of an owner's property under the laws of eminent domain. Compensation must be based on damages or benefits to the remaining property, as well as the part taken.

Partition – (1) Any division of real or personal property between co-owners, resulting in individual ownership of the interests of each. (2) A wall, sometimes moveable, and not load-bearing, used to divide a room or building.

Partnership – As defined by the Uniform Partnership Act, "An association of two or more persons to carry on as co-owners, a business for profit." The business must be lawful, and the partners must agree to share in the profit or loss (but not necessarily equally).

Patent Defect – A defect plainly visible or as would be discovered by the exercise of ordinary case. A patent defect in a legal description is one which cannot be corrected on its face, and a new description must be used.

Per Se – By itself, of itself, inherently.

Person – Any individual, family, , corporation, partnership, or association.

Person Required to Move Temporarily – A person who is required to move or moves his or her personal property from the real property as a direct result of a project but not required to move permanently. Such determination shall be made by the department in accordance with any requirements, policy, or guidance established by the Federal Agency funding the project. At a minimum, for persons required to move on a temporary basis, Agencies must ensure that required services and assistance are provided. Section 6.2.3

Personal Property – A right or interest in things of a temporary or moveable nature; anything not classed as real property.

Persons Not Displaced - The following non-exclusive list of persons who do not qualify as displaced persons under this part:

- A person who moves before the initiation of negotiations unless the department determines that the person was displaced as a direct result of the program or project; or
- A person who initially enters into occupancy of the property after the date of its acquisition for the project; or
- A person who has occupied the property for the purpose of obtaining assistance under the Uniform Act; or
- A person who is not required to relocate permanently as a direct result of a project. Such determination shall be made by the department in accordance with any guidelines established by the federal agency funding the project; or
- An owner-occupant who moves as a result of an acquisition for real property that is not subject to the requirements of The Uniform Act or as a result of the rehabilitation or demolition of the real property. (However, the displacement of a tenant as a direct result of any acquisition, rehabilitation or demolition for a federal or federally-assisted project is subject to this part.); or
- A person whom the department determines is not displaced as a direct result of a partial acquisition; or
- A person who, after receiving a notice of relocation eligibility is notified in writing that he or she will not be displaced for a project. Such written notification shall not be issued unless the person has not moved and the department agrees to reimburse the person for any expenses incurred to satisfy any binding contractual relocation obligations entered into after the effective date of the notice of relocation eligibility; or
- An owner-occupant who conveys his or her property after being informed in writing that if a mutually satisfactory agreement on terms of the conveyance cannot be reached, the department will not acquire the property. In such cases, however, any resulting displacement of a tenant is subject to these regulations in this part; or
- A person who retains the right of use and occupancy of the real property for life following its acquisition by the department; or
- An owner who retains the right of use and occupancy of the real property for a fixed term after its acquisition by the Department of Interior under Pub. L. 93-477, Appropriation for National Park System, or Pub. L. 93-303, Land and Conservation Fund except that such owner remains a displaced person for purposes of Chapter 6;
- A person who is determined to be in unlawful occupancy prior to or after the initiation of negotiations, or a person who has been evicted for cause, under applicable law as provided in Chapter 6. However, advisory assistance may be provided to unlawful occupants at the option of the department in order to facilitate the project.
- A person who is not lawfully present in the United States and who has been determined to be ineligible for relocation benefits in accordance with Chapter 6; or
- Temporary, daily, or emergency shelter occupants are in most cases not considered displaced persons. However, the department may determine that a person occupying a

shelter as a displaced person due to factors which could include reasonable expectation of a prolonged stay, or other extenuating circumstances. At a minimum, the department shall provide advisory assistance to all occupants at initiation of negotiations.

Per Stirpes – As a representative, and not as an individual. In the laws of descent and distribution, one who takes because of a deceased ancestor. For example, A leaves equally to B and C per stirpes. C dies leaving three children. The estate goes one half to B, one half to be divided among the three children of C.

Plats, Plans and Legals - Development of drawings and legal descriptions that indicate the proposed improvement and its effect on each property to be acquired.

Point of Beginning (POB) – A term used in metes and bounds descriptions. The description will start with the words “Beginning at a point” and end with “to the point of beginning.”

Police Power – The power of the state which abridges individual rights for the safety, health and general welfare of society. Condemnation would fall in this category.

Pollution Control Waste - Pollution Control Waste is any liquid, solid, semi-solid or gaseous waste generated as a direct or indirect result of the removal of contaminants from the air, water or land, and which poses a present or potential threat to human health or to the environment or with inherent properties which make the disposal of such waste in a landfill difficult to manage by normal means. Pollution control waste includes, but is not limited to, water and wastewater treatment plant sludge, bag house dusts, landfill waste, scrubber sludge and chemical spill cleanings (415 ILCS 5/3.27).

Power of Attorney – An authority by which one person (principal) enables another (attorney in fact) to act for him. (1) General power – Authorizes sale, mortgaging, etc. of all property of the principal. Invalid in some jurisdictions. (2) special power-Specifies property, buyers, price and terms. How specific it must be varies in each state.

Preliminary Just Compensation (PJC) – Compensation determined by the court at a quick take hearing. Owner retains the right to a jury trial to determine final compensation.

Preliminary Environmental Site Assessment (PESA) - Preliminary Environmental Site Assessment (PESA) is a detailed evaluation of available records dealing with site history, including a field visit to the site to visually inspect and investigate conditions.

Preliminary Relocation Plan - An estimate of housing needs and resources made to determine the probable availability of decent, safe and sanitary housing available to the displaced persons of a highway project. The preliminary relocation plan is done during the phase I engineering environmental studies. The preliminary relocation plan should also address business relocation needs and availability of replacement business facilities and resources.

Preliminary ROW Plans - Right of way plans that have not been completed and/or approved.

Preliminary Site Investigation (PSI) - Preliminary Site Investigation (PSI) is a preliminary investigation of the site, including sampling, testing and analysis of soil or groundwater, as necessary, and an estimate of the cost of cleanup by parcel, if possible, for the department's project.

Preliminary Title Reports - Original title reports indicating ownership, encumbrances on property that must be satisfied prior to the acquisition of the property and the instruments necessary to transfer the required interests to the state.

Prescription – Title obtained in law by long possession. Occupancy for the period prescribed by the Code of Civil Procedure, as sufficient to bar an action for the recovery of the property, gives title by prescription.

Prescriptive Easement – The granting of an easement by a court, based on the presumption that a written easement was given (although none existed), after period of open and continuous use of land. Fifteen years use as a public road creates this right.

Probate – Originally, the proving that a will was valid. Modernly, any action over which probate court has jurisdiction.

Probate Court – A court having jurisdiction of estates, whether or a deceased, a minor, or an incompetent person.

Probate Sale – Sale of property from an estate.

Project - Any state highway construction project or federally-assisted highway construction project undertaken by a local public agency.

Project Cost - Project Cost is the total cost of the project from the conceptual stage to the time when the project is handed over to operations.

Property Owner - Property Owner is the individual or legal entity holding the fee title to a parcel or parcels which the department is seeking to acquire or from whom the department has acquired title. In the case of multiple individuals or entities jointly holding title, the term will apply to all holders collectively. If any tenant owns real property and the fee owner disclaims any interest in the tenant owned real property, property owner includes the tenant owner of real property.

Properties Vacated - Right of Way Clear - Vacant land, right of way devoid of occupants, owners or tenants, personal property, etc.

Public Sale of Improvements - Disposal of improvements at public sale by sealed bids or auction, subject to the Governor's approval – The successful bidder must remove the improvements.

Question of Fact – Question as to what actually happened. Determined by physical evidence and decided by a jury in a jury trial.

Question of Law – Given the facts, what laws, if any, are applicable; decided by a judge, even in a jury trial.

Quick Take – Portion of eminent domain laws which allow certain governments the expeditious acquisition of title before the final determination of fair market value.

Quick Take Hearing - Preliminary Just Compensation - By statute a hearing held no sooner than five days following the filing of the complaint for condemnation - Following the quick take hearing and based on the testimony presented, the amount determined as preliminary just compensation is ordered by the court to be deposited with the county treasurer.

Quitclaim Deed – A deed operating as a release, intended to pass any title, interest or claim which the grantor may have in the property, but not containing any warranty of a valid interest or title in the grantor.

Raw Land – Land in its natural state. Land which has not been subdivided into lots, does not have water, sewers, streets, utilities, or other improvements necessary before a structure can be constructed.

Real Estate – (1) Land and anything permanently affixed to the land, such as buildings, fences, and those things attached to the buildings, such as light fixtures, plumbing and heating fixtures, or other such items which would be personal property if not attached. The term is generally synonymous with real property, although in some states, a fine distinction may be made. (2) May refer to rights in real property as well as the property itself.

Real Property Interests – The interests acquired in real property for any project funded under title 23 (i.e., federal funds), which must be adequate for the construction, operation, and maintenance of the resulting facility, and for the protection of both the facility and the traveling public (23 CFR 710.305).

Referee – One appointed by a court to take testimony and report back to the court. May be in bankruptcy or other proceedings.

Regional Engineer - The regional engineer of any one of the 5 regional offices of the Illinois Department of Transportation, Office of Highways Project Implementation. A regional engineer is responsible for all actions within a region which is comprised of one or two districts.

Regulated Substances - Regulated substances are any hazardous substances as defined under section 101(14) of the Comprehensive, Environmental Response, Compensation, and Liability Act of 1980 (415 ILCS 5/22.7) and petroleum products including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel or mixtures or natural gas and such synthetic gas (415 ILCS 5/58.2).

Release – An instrument releasing property from the lien of the mortgage, judgment, etc. When a trust deed is used, the instrument is called a reconveyance. In some areas, a “discharge” is used instead of a release.

Relocation Cost Estimate - An estimate of expenditures to be made for reimbursement of moving expenses and replacement housing payments.

Relocation Plan - A comprehensive survey and determination of housing needs and resources and a plan of action for making decent, safe and sanitary replacement housing available to those persons displaced as a result of the proposed improvement. This is an acquisition stage relocation plan to be completed prior to the commencement of appraisal and acquisition activities on the project.

Remainder – (1) An estate which vests in one other than a grantor, after the termination of an intermediate estate. Example, A grants land to B for life, then to C, his heirs or assigns. If A grants to B for life, then back to A, it is not a remainder, but reversion. (2) The portion of a property remaining after a taking under eminent domain.

Remainder man – The one entitled to the remainder.

Remedial Action - Remedial action is an action which is consistent with permanent remedy taken instead of or in addition to removal actions in the event of a release or threatened release of a regulated substance into the environment, to prevent or minimize the release of regulated substances so that they do not migrate to cause substantial danger to present or future public health or welfare or the environment. The term includes off-site transport of regulated substances, or the storage, treatment, destruction, or secure disposition off-site of such regulated substances or contaminated material.

Remedial Investigation/Feasibility Study (RI/FS) - Remedial Investigation/Feasibility Study (RI/FS) is an Investigation/Study to assess site conditions and evaluate alternatives to the extent necessary to select a remedy. The RI is designed to assess the nature and extent of releases of regulated substances and determine those areas of a site where releases have created damage or the threat of damage to public health or the environment. The FS develops a range of remedies for the site, taking into account the findings of the RI.

Remise – To give up or remit any existing claim. Used in a deed, especially a quitclaim deed.

Removal - Removal means the cleanup or removal of released regulated substances from the environment. It includes such actions as may be necessary taken in the event of the threat of release of regulated substances into the environment, such actions as may be necessary to monitor, assess, and evaluate the release or threat of release of regulated substances, the disposal of removed material, or the taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or the environment, which may otherwise result from a release or threat of release.

Removal by Demolition Contract - Removal of building improvements from the right of way by demolition contract when the public sale and removal is not economically feasible and the letting of a highway construction contract is not imminent.

Replacement Housing Data - The collection of information regarding housing needs and resources within a particular corridor or study area.

Residential Property - Residential Property is any real property used for habitation by individuals, or where children have the opportunity for exposure to contaminants through soil ingestion or inhalation at educational facilities, health care facilities, child-care facilities or outdoor recreational areas.

Restatement of Letter - Notification to the property owner by registered letter of the state’s final approved offer - If acceptance of the offer is not received by the deadline stated in the letter, the department will take action to acquire the property through eminent domain proceedings.

Restriction – Most commonly used to describe a use or uses prohibited to the owner of land. Restrictions are set forth by former owners in deed or in the case of a subdivision, a declaration of restrictions is recorded by the developer. A limitation on use of the property by law (zoning ordinances) may also be termed a restriction.

Reverse Mortgage - [also known as a Home Equity Conversion Mortgage (HECM)] is a first mortgage which provides for future payments to homeowner based on accumulated equity and which a housing creditor is authorized to make under any Federal law or state constitution, law, or regulations. See 12 U.S.C. 1715z-20. It is a class of lien generally available to persons 62 years of age or older. reverse mortgages do not require a monthly mortgage payment and can also be used to access a home's equity. The reverse mortgage becomes due when none of the original borrowers lives in the house, if taxes or insurance become delinquent, or if the property falls into disrepair.

Revocable – Capable of being revoked.

Right of Survivorship – The right of a survivor of a deceased person to the property of said deceased. A distinguishing characteristic of a joint tenancy relationship.

Right of Way - All property, whether it is presently being used for highway purposes or not, either under the jurisdiction of the department or owned in fee by the state of Illinois or dedicated to the people of the state of Illinois for highway purposes.

Right of Way Cost Estimate - Corridor - A preliminary estimate of the total right of way costs for a proposed project based on a study of the project area - This estimate is normally very general, such as cost per mile, per block, etc.

Right of Way Cost Estimate - Design - A more detailed estimate of the approximate number of parcels, cost and persons to be displaced as a result of a highway improvement project.

Right of Way Surveys - Land surveys performed to accurately locate and describe the land or rights to be taken for a transportation facility. The right of way may be acquired in fee or as an easement.

Rights – A general term which encompasses those things a person may do up opposed, even though a burden on another occurs, as in the right of a tenant, holder of an easement, etc.

Riparian – Belonging or relating to the bank of a river of stream. Land within the natural watershed of a river or stream.

Riparian Owner – One who owns land along the bank of a river or stream.

Riparian Rights – Rights of an owner to riparian lands and water.

Riparian Water – Water within the normal flow of the stream or river. An abnormal flow (flood) is not riparian water.

Risk Assessment (RA) - Risk Assessment (RA) is the determination of the kind and degree of hazard posed by hazardous and non-hazardous special wastes, the extent to which a particular group of people has been or may be exposed to the contamination, and the health risk that exists due to the contamination.

Risk Managed Project (RMP) - Risk Managed Project (RMP) is a proposed construction project for which a PSI is not conducted because:

- The PESA has identified only petroleum contamination; and,
- The Geologic and Waste Assessment Unit has determined
  - The cleanup cost is less than conducting further investigations; or
  - The level of contamination to be such that management of the affected area during construction would not be required.

  Even if a PSI is not conducted, the Central Bureau of Design and Environment (CBDE) will provide the district with a special provision for monitoring and/or managing the affected areas.

Route Surveying - A technical process of gathering field data for locating, designing and constructing a railroad, highway, canal, pipe line, transmission lines or other linear facility. Route surveying comprises all reconnaissance surveys, the location survey and surveys made during construction.

Running with the Land – Usually concerned with easements and covenants. Passing with the transfer of the land.

Salvage Value - The probable sale price of an item, if offered for sale to knowledgeable buyers with the requirement that it be removed from the property at the buyer's expense, i.e., not eligible for relocation assistance. This includes items for re-use as well as items with components that can be re-used or recycled when there is no reasonable prospect for sale except on that basis.

Scenic Easement – An easement acquired to preserve a particular view for the future enjoyment of the public.

Secured Party – Mortgagee, beneficiary (under a deed of trust), pledge, or any other party having a security interest.

Security – Real of personal property pledged or hypothecated by a borrower, as additional protection for the lender’s interest.

Security Agreement – A “catch all” term used to describe many different types of debtor-creditor relationships, such as a chattel mortgage, trust receipt, inventory liens, etc.

Security Interest – The interest of the creditor (secured party) created by a security agreement.

Servient Estate – A land on which an easement exists in favor of a dominant estate.

Servient Tenement – An estate burdened with a servitude. Most commonly, a parcel of land burdened by an easement.

Severance – Partition or separation.

Severance Damage – Damage to the remaining property in condemnation, caused by the partial taking and subsequent construction of the road, building or other use for which the taking took place.

Sheriff's Deed – A deed issued as a result of a court ordered foreclosure sale.

Sign – Any outdoor sign, display, device, notice, figure painting, drawing, message, placard, poster, billboard, or other thing, which is designated, intended or used to advertise or inform, and any part of the advertising or information is or will be visible from the main-traveled way of an Interstate or primary highway, within 660 feet of the nearest edge of the right of way .

Sign Structure – The assembled components which make up an outdoor advertising display, including but not limited to uprights, supports, display area and trim.

60 Day Notice - Notice required under Illinois law that provides that property owners will be informed of certain specifics regarding the acquisition of their property and be given at least 60 days before the filing of a complaint to condemn the property.

Site - Site is any single location, place, tract of land or parcel of property, or portion thereof, including contiguous property separated by a public or private rights of way (415 ILCS 5/58.2).

Small Business - A business having not more than 500 employees working at the site being acquired or displaced by a program or project, which site is the location of economic activity. Sites occupied solely by outdoor advertising signs, displays or devices do not qualify as a business for purposes of Chapter6.

Sole Proprietorship – Individual ownership of a business as opposed to a partnership or corporation.

SPAAG Assignment, Preparation of Complaint - The assignment of a trial attorney by the Attorney General to prepare and file a complaint for condemnation and to represent the department when it becomes necessary to acquire land by eminent domain proceedings.

Special Provision for Monitoring (SPM) - Special Provision for Monitoring (SPM) is a special provision, provided to the district by the Geologic and Waste Assessment Unit, for inclusion in contract documents requiring the contractor to hire an environmental firm for monitoring a specified area for soil and groundwater contamination and worker protection.

Special Provision for Monitoring and Managing (SPMM) - Special Provision for Monitoring and Managing (SPMM) is a special provision, provided to the district by the Geologic and Waste Assessment Unit, for inclusion in contract documents requiring the contractor to hire an environmental firm for monitoring specified areas for soil and groundwater contamination and worker protection and management of the affected area for off-site disposal as either a hazardous or non-hazardous special waste.

Special Provision for Removal – A provisions written into a highway construction contract permitting the removal of building improvements from the right of way by the purchaser coincident with the letting of the construction contract.

Special Purpose Property – A building which, by its design, cannot be used for other than the original purpose intended, without extensive remodeling, such as a hospital or church. Also called a single purpose property.

Special Waste - Special Waste is any industrial process waste, pollution control waste or hazardous waste, except as may be determined pursuant to Section 22.9 of the Environmental Protection Act. Special waste also means any potentially infectious medical waste (415 ILCS 5/3.45).

Special Waste Assessment Screening Criteria - Special Waste Assessment Screening Criteria is the form on which the district presents the findings of the limited record search and field survey. Based upon the limited record search and field survey, the district arrives at a conclusion as to the need or lack thereof for a Preliminary Environmental Site Assessment.

Specialty Supplemental Estimates of Cost/Value - Reports pertaining to the valuation of machinery, equipment, fixtures and other similar items known as "trade fixtures." Specialty reports also may address cost to cure estimates to offset severance damages (e.g., parking lot reconfiguration, construction costs to recreate landscaping onto remainder property, movement of an on premise sign onto the remainder property, etc.).

Squatter – One who lives on another's land without authority or claim of a right of possession. The land may either be private or public.

Squatter's Rights – Commonly confused with adverse possession. A squatter has no ownership rights and cannot, under the definition of a squatter, acquire any since he claims no interest adverse to the owner.

State - The Illinois Department of Transportation, Office of Program Development, unless otherwise identified.

State Agency - Any department, agency or instrumentality of a state or of a political subdivision of a state, any department, agency, or instrumentality of two or more states or of two or more political subdivisions of a state or states, and any person who has the authority to acquire property by eminent domain under state law.

Statutory Dedication – The giving of private land for public use under a procedure dictated by statute.

Subordinate – To make subject or junior to.

Subordination Agreement – An agreement by which an encumbrance is made subject (junior) to a junior encumbrance.

Subpoena – A legal process (writ) used to require the appearance of a person or documents into court.

Subrogation – The substitution of one person for another, so that the former may exercise certain rights or claims of the latter. Used primarily when a surety relationship exists, as in insurance.

Subsidiary Project Relocation Office - Any office established near a project to facilitate the delivery of relocation advisory services and payments.

Subsurface Rights – The rights, whether by fee or easement, to oil, gas, or minerals, below a certain depth beneath the surface of land. The right of surface entry may or may not be excluded, and is important to the value of the surface land for improvement purposes.

Succession – The passing of real property by will or inheritance rather than by a grant of a deed or any other form of purchase.

Survivorship – Gaining an interest in property by outliving (surviving) another that had the interest.

Suspect Asbestos-Containing Material - Suspect Asbestos-Containing Material is material likely to meet the definition of asbestos-containing material.

Taking – As a legal term, it is used to describe acquisition such as taking by will; it is most commonly used as a real estate term to mean acquisition by eminent domain.

Tangible Value – Value in appraisal of the physical value (land, buildings, etc.) as opposed to the value of an intangible, such as a favorable lease.

Tax Deed – (1) Deed from tax collector to governmental body after a period of non-payment of taxes according to statute. (2) Deed to a purchaser at a public sale of land taken for delinquent taxes. The purchaser receives only such title as the former owners had, and strict procedures must be followed to prevent attachment of prior liens.

Tax Lien – (1) A lien for non-payment of property taxes. Attaches only to the property upon which the taxes are unpaid. (2) A federal income tax lien. May attach to all property of the one owing the taxes.

Tax Sale – Public sale of property at auction by governmental authority, after a period of non-payment of property tax.

Tax Search – A part of a title search which determines if there are any unpaid taxes or assessments which may be a lien against the property being searched.

Temporary, Daily or Emergency Shelter – Any facility, the primary purpose of which is to provide a person with a temporary overnight shelter which does not allow prolonged or guaranteed occupancy. A shelter typically requires occupants to remove their personal property and themselves from the premises on a daily basis, offers no guarantee of reentry in the evening, and in most cases does not meet the definition of dwelling.

Temporary, Daily or Emergency Shelter Occupants – Shelters can serve many purposes, and each will have specific rules and requirements as to who can occupy or use the shelter and whether prolonged or continuous occupancy is allowed. Persons who are occupying a shelter that only allows overnight stays and required the occupant to remove their personal property and themselves from the premises on a daily basis and that offers no guarantee in the evening typically would not meet the definition o a displaced person, nor would the shelter meet the definition of dwelling. Persons who will live at the shelter on a continuous, prolonged, or permanent basis may be considered displaced. These determinations are fact-based determination include whether the person is employed because they work to pay their rent or there may be a residential landlord-tenant relationship. It would be unusual to displace a shelter occupant who meets the criteria for making a determination that they are a displaced person. The department should make reasonable effort to provide information about proposed vacation date or other plans for the shelter to relocate. Providing advisory assistance to shelter occupants may be a challenge due to the transient nature of shelter occupancy but must be provided to the maximum extent possible.

Tenancy – An estate fee, such as “joint tenancy” or a non-freehold estate, such as tenancy under a lease.

Tenancy at Sufferance – Occurs when a tenant stays beyond his legal tenancy without the consent of the landlord.

Tenancy by the Entirety – A form of ownership by husband and wife whereby each owns the entire property. In the event of the death of one, the survivor owns the property without probate

Tenancy in Common – An undivided ownership in real estate by two or more persons. The interests need not be equal and in the event of the death of one of the owners, no right of survivorship in the other owners exists.

Tenant - A person who has the temporary use and occupancy of real property owned by another.

Tenant Farmer – One who operates a farm but is a tenant rather than the owner. Rent may be in cash, a share of crops or both.

Tenant Improvements – Improvements to land or buildings to meet the needs of tenants. May be new improvements or remodeling and be paid for by the landlord, tenant or part by each.

Tenant in Severalty – One who owns property alone, without any other person being joined in said ownership.

Testamentary Trust – A trust created by a will.

Testate – Having a written last will and testament.

Testator – One who dies leaving a testament or will.

30 Day Notice to Vacate – A written notice provided to an individual occupying the real property stating the specific date by which they must vacate the property. This notice may not be provided sooner than 30 days prior to the stated specific date of vacation.

Tiered Approach to Corrective Action Objectives (TACO) - Tiered Approach to Corrective Action Objectives (TACO) is a method for developing remediation objectives for contaminated soil and groundwater in accordance with 35 ILL. Adm. Code 742. These remediation objectives protect human health and take into account site conditions and land use. Remediation objectives generated by TACO are risk based and site specific, and can be based on area background, the use of engineered barriers and elimination of exposure routes.

Title – The evidence one has or right of possession of land.

Title by Descent – Laws that direct how a deceased's assets shall be divided when there is no will.

Title by Prescription – Acquisition of real property through prolonged and unauthorized occupation.

Title Cloud – A title defect. Any claim, lien or encumbrance that implies title to property.

Title Company – An agency issuing the policy of a title insurance company.

Title Insurance – Insurance against loss resulting from defects of title to a specifically described parcel of real property. Defects may run to the fee (claim of title) or to encumbrance.

Title Review and Approval - CBLA, the Office of the Chief Counsel, or the Office of the Attorney General reviews and approves of title to property being conveyed to the state.

Trust – A fiduciary relationship under which one holds property (real or personal) for the benefit of another. The party creating the trust is called the settler, the party holding the property is the trustee, and the party for whose benefit the property is held is called the beneficiary.

Trust Agreement – The writing which sets forth the terms of a trust.

Trust Deed – A document that conveys title to a neutral third party as security for a debt.

Trustee – (1) One who is appointed, or required by law, to execute a trust. (2) One who holds title to real property under the terms of a deed of trust.

Trustee in Bankruptcy – One appointed by a bankruptcy court, and in whom the property of the bankrupt vests. The trustee holds the property in trust, not for the bankrupt, but for the creditors.

Trustee's Deed – A deed by a trustee under a deed of trust, issued to a purchaser at auction, pursuant to foreclosure.

Trust Instrument – Any writing which creates a trust. Maybe a will, court order, trust agreement, or similar writing.

Underlying Fee – A basic right of the bundle of rights. Control of the property will vary based on the other interests which have been conveyed out of the property.

Undivided Interest – a partial interest by two or more people in the same property, whether the interest of each is equal of unequal.

Uneconomic Remnant - A parcel of real property in which the owner is left with a property interest after the partial acquisition of the owner's property, and which the department has determined has little or no value or utility to the owner.

Unencumbered – Free of liens and other encumbrances. Free and clear.

Uniform Act - The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91-646, 84 Stat. 1894; 42 U.S.C. 4601 et seq.), as amended.

Unlawful Occupancy - A person who occupies without property right, title or payment of rent, or a person legally evicted, with no legal rights to occupy a property under state law. The department, at its discretion, may consider such person to be in lawful occupancy for the purpose of determining eligibility for assistance under the Uniform Act.

Unmarketable Title – Not saleable. A title which has serious defects.

Unrecorded Instrument – A deed, mortgage, etc., which is not recorded in the county recorder's office and, therefore, not protected under recording statutes. Valid between the parties involved, but not against innocent third parties.

Unzoned Commercial or Industrial Area – Any area adjacent to the right of way of a primary highway or an Interstate highway, not zoned by any county or municipality and lies within 600 feet of any commercial or industrial activity. All measurements are from the outer edges of the regularly used buildings, parking lots, storage or processing areas of the activities, (not from the property lines of the activities), and along or parallel to the edge or pavement of the highway.

Utility Costs - Expenses for electricity, gas, other heating and cooking fuels, water and sewer.

Utility Facility - Any line, facility, or system for producing, transporting, transmitting, or distributing communications, cable, television, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway drainage, or any other similar commodity, including any fire or police signal system or street lighting system, which directly or indirectly serves the public; any fixtures, equipment, or other property associated with the operation, maintenance, or repair of such systems. A utility facility may be publicly, privately, or cooperatively owned.

The term shall also mean the utility company including any substantially owned or controlled subsidiary. For the purpose of this part the term includes those utility-type facilities which are owned or leased by a government agency for its own use, or otherwise dedicated solely to governmental use. The term utility includes those facilities used solely by the utility which are part of its operating plant.

Utility Relocation - The adjustment of a utility facility required by the program or project undertaken by the displacing agency. It includes removing and reinstalling the facility, including necessary temporary facilities; acquiring necessary right of way on new location; moving, rearranging or changing the type of existing facilities; and taking any necessary safety and protective measures. It shall also mean constructing a replacement facility that has the functional equivalency of the existing facility and is necessary for the continued operation of the utility service, the project economy, or sequence of project construction.

Vacant Land – Land without buildings. May or may not have improvements, such as grading, sewers, etc.

Vacate – (1) to move out. (2) A legal term meaning to set aside or annul as to vacate a judgment.

Vacated Improvements - Improvement devoid of occupants, owners or tenants and all personal property.

Valid – Legally binding. Property carried out in accordance with legal procedures.

Valuation – The opinion of fair market value of the acquisition.

Value After the Taking – In the case of a partial acquisition under eminent domain, the fair market value of the part not taken (i.e., the remainder).

Value Before the Taking – The fair market value of a property before condemnation.

Value in Place – The fair market value of an improvement in place, as opposed to value in use.

Value in Use – (1) The value to a specific owner of a property or improvement. Usually much greater than the fair market value. (2) The value of a property for a specific use. Also called Use Value.

Vested – Present ownership rights, absolute and fixed. Modernly, ownership rights, even though on a land contract or subject to a mortgage or deed of trust.

Vested Remainder – A remainder interest which is certain.

Visual Rights – The right to be able to see clearly as a general welfare right taking priority over a property right. Example: Restriction of structures or trees, shrubs, etc., at intersections if visibility is restricted as to cause a danger.

Waive – To knowingly abandon, relinquish, or surrender a right, benefit, or claim.

Waiver – The relinquishment of a right. In construction, most commonly the waiver by subcontractors of their mechanic's lien rights in order for the owner to obtain draws under a construction loan.

Waiver Valuation - The valuation process used and the product produced when it is determined that an appraisal is not required pursuant to the appraisal waiver provisions in Chapter 3. A waiver valuation is not an appraisal under the Uniform Act's definition of an appraisal.

Warrant – (1) To legally assure that title conveyed is good and possession will be undisturbed. (2) The method or means that payment is made to property owners by the Department.

Warrant Delivered - Delivery of the state warrant(s) to the owner(s) of the property acquired subsequent to a final check of the records to determine whether any liens or encumbrances have been filed against the property being acquired.

Warrant Deposit - Deposit of the state warrant with the county treasurer as required by the court.

Warrant Issued - Issuance of a state warrant by the Comptroller's Office with counter-signature by the State Treasurer.

Warrant Request - Submittal, by the regional engineer, of a properly prepared and executed warrant requisition, requesting the issuance of a state warrant(s) totaling the amount of negotiated settlement.

Warranty – A legal, binding promise given at the time of a sale whereby the seller gives the buyer certain assurances as to the condition of the property being sold. Warranties at to real property have taken on a lesser role with the increase of the use of the insurance.

Warranty Deed – A deed used in many states to convey fee title to real property. Until the widespread use of title insurance, the warranties by the grantor were very important to the grantee. When title insurance is purchased, the warranties become less important as a practical means of recovery by the grantee for defective title.

Wild Interest – An interest of record which cannot be traced in the chain of title. Frequently occurs when an incorrect legal description appears on a document. An apparent wild interest may occur if a woman who changes her name through marriage after acquiring property, sells the property using her married name only.

Will – A written expression of the desire of a person as to the disposition of that person's property after death. Must follow certain procedures to be valid.

Witness – (1) To sign a deed, note or other document, to attest to its authenticity, or to prove its execution. (2) The person attesting.

ACRONYMS

The following acronyms are commonly used in this manual or in the implementation of programs subject to these provisions:

- BDE. Bureau of Design and Environment.
- BoBS. Bureau of Business Services.
- CBLA. Central Bureau of Land Acquisition.
- CDB. Capital Development Board.
- CFR. Code of Federal Regulations.
- DEC. district Environmental Coordinator.
- DLA. district Land Acquisition.
- FEMA. Federal Emergency Management Agency.
- FHA. Federal Housing Administration.
- FHWA. Federal Highway Administration.
- FIRREA. Financial Institutions Reform, Recovery, and Enforcement Act of 1989.
- HLR. Housing of last resort.
- HUD. U.S. Department of Housing and Urban Development.
- ICC. Illinois Commerce Commission.
- IDNR. Illinois Department of Natural Resources.
- IDOT. Illinois Department of Transportation.

- ILCS. Illinois Compiled Statutes.
- IRWA. International Right of Way Association.
- LAMS. Land Acquisition Management System.
- LAPPM. Land Acquisition Policy & Procedures Manual.
- MIDP. Mortgage interest differential payment.
- NEPA. National Environmental Policy Act.
- OAG. Office of the Attorney General.
- OCC. Office of Chief Counsel.
- RHP. Replacement housing payment.
- SPAAG. Special Assistant Attorney General.
- USCIS. U.S. Citizenship and Immigration Service.
- USDOT. U.S. Department of Transportation.
- USPAP. Uniform Standards of Professional Appraisal Practices.