



Land Acquisition Policies and Procedures Manual



**Land Acquisition
Policies and Procedures Manual**

Prepared and Published By:

**Illinois Department of Transportation
Office of Highways Project Implementation
Bureau of Land Acquisition**

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(Continually Updated Resource)

PREFACE

The *Bureau of Land Acquisition Manual* has been prepared to provide uniform practices for the acquisition of property required for highway improvements, including the control of outdoor advertising and junkyards by department and consultant personnel. This *Manual* presents the information normally required in the project, all criteria and practices presented in the *Manual* must be met.

The *Bureau of Land Acquisition Manual* was developed by staff within the Bureau of Land Acquisition with assistance from each individual district.

Document Control and Revision History

The Land Acquisition Manual I is reviewed during use for adequacy and updated by the Bureau of Land Acquisition as necessary to reflect current policy. The approval process for changes to this manual is conducted in accordance with the document control standards outlined in [Departmental Order 01-01: Policy Administration Program](#) and in this manual.

This manual 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 Center](#) site on Inside IDOT.

The information contained in this manual 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 Center](#) on InsideIDOT.

Date	Description	Approval
8/16/2018	Outdated information updated or removed	Paul Loete



LAND ACQUISITION POLICIES AND PROCEDURES

1. POLICY

Land acquisition and related activities by the Illinois Department of Transportation, Office of Highways Project Implementation, shall be performed according to the standards set forth in this policy.

2. PURPOSE

The purpose of this policy is to provide operational guidelines in the form of a published Manual establishing a uniform procedure for land acquisition and related activities by the Illinois Department of Transportation, Office Highways Project Implementation.

3. GUIDELINES FOR IMPLEMENTATION

- a. The Manual outlines the requirements necessary for planning and implementing the Statewide Land Acquisition Program, including allied functions such as relocation assistance, property management, and preparation of right of way plans.
- b. The Manual consists of two volumes; namely, the text portion entitled "Land Acquisition Policies and Procedures Manual" and the exhibit portion entitled "List of Forms, Templates and Exhibits."

The Manual is divided into ten major chapters which are as follows:

- Chapter 1 – Overview, Federal Programming and Qualifications
- Chapter 2 – Right of Way Engineering
- Chapter 3 – Appraisal and Appraisal Review
- Chapter 4 – Negotiation and Acquisition
- Chapter 5 – Relocation Assistance and Payments Program
- Chapter 6 – Property Management
- Chapter 7 – Accounting for Land Acquisition Services
- Chapter 8 – Contracting for Land Acquisition Services
- Chapter 9 – Outdoor Advertising
- Chapter 10 – Special Wastes

4. RESPONSIBILITIES

The Bureau of Land Acquisition shall implement the policies and procedures published in this Manual.

5. ACCESSIBILITY

Copies of this Departmental Policy and Manual may be obtained from the Bureau of Land Acquisition, Office of Highways Project Implementation, Department of Transportation, 2300 South Dirksen Parkway, Springfield, IL 62764.

An electronic version of this manual can be obtained on the [Land Acquisition Services](#) page of IDOT's website, which is accessible through the following link:

<http://www.idot.illinois.gov/doing-business/procurements/land-acquisition-services/index>

A direct link to this manual is shown below:

<http://www.idot.illinois.gov/Assets/uploads/files/Doing-Business/Manuals-Guides-&-Handbooks/Highways/Land-Acq/Land%20Acquisition%20Manual.pdf>

6. CLOSING NOTICE

Supersedes: Departmental Policy LAC-1 Land Acquisition Policies and Procedures, Effective: November, 1983.

Departmental Policy LAC-1 Land Acquisition Policies and Procedures, Effective July 3, 1985.

Departmental Policy LAC-1 Land Acquisition Policies and Procedures, Effective April 1, 2011.

Approved: _____
Director, Office of Highways Project

Implementation

Date

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LIST OF FORMS, TEMPLATES, AND EXHIBITS

1 OVERVIEW, FEDERAL PROGRAMMING AND QUALIFICATIONS

1.1 GENERAL

Pursuant to the U.S. Constitution, Fifth Amendment, private property shall not be taken for public use without payment of just compensation. 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 (Uniform Act); 49 CFR 24, Uniform Relocation Assistance and Real Property Acquisition for Federally-Assisted Programs; state statutes and federal and Illinois case law. All of these assure the public of this right. The Uniform Act requires the Illinois Department of Transportation establish procedures and make interpretations to implement its provisions. The purpose of this manual is to establish policies and procedures for this implementation.

Uniformity in the application of these policies and procedures under the guidance of the Central Bureau of Land Acquisition (CBLA) will ensure the public rights, the state's rights, Federal reimbursement, and maintain a high standard of integrity and professionalism in the acquisition of private property for public use.

Full consideration is appropriate for social, economic and environmental impacts and with meaningful input from the public into project development through a public involvement process. Consequently, right of way activities which involve contacts outside of the department shall not begin until the public involvement process is complete, and the design report is approved.

As every phase of a project involves purchased property, and federal funds may be used in any or all phases, the acquisition of property is subject to federal oversight and approval.

In all cases, it is the responsibility of the regional engineers and their staffs to ensure that right of way acquisition is in conformity with the state procedures.

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

1.1.1 Confidentiality of Records

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

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 these regulations shall be personally served or sent by certified first-class mail, 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 Federally-Assisted Projects

Whenever two or more federal agencies provide financial assistance to an agency or agencies to carry out functionally or geographically related activities that 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. 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 these regulations, 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 these regulations. All federally-assisted activities under the agreement shall be deemed a project for the purposes of these regulations.

1.1.4 Federal and/or Agency Waiver of Regulations

The federal agency funding the project may waive any requirement in the Uniform Assistance and Real Property Acquisition Policies Act of 1970, as amended that is 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 this part. Any request for a waiver shall be justified on a case-by-case basis and must be submitted to the Central Bureau of Land Acquisition (CBLA) for approval. Requests for waivers on federally-assisted projects will be forwarded to FHWA for approval.

1.1.5 Federal Aid Programming of Right of Way Projects

A portion of the state's Annual Highway Improvement Program is financed in part with federal funds. Among the prerequisites to the use of federal funds is the requirement that a proposed improvement be on the Surface Transportation Improvement Program (STIP) and the proposed construction meet AASHTO standards.

Projects that are to qualify for federal participation must be included in appropriate federal-aid programs and the acquisition procedures must be in compliance with Title II and Title III of the "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended" and with "Title IV - Uniform Relocation Act Amendments of 1987." The provisions of Title II and Title III of the Act must be complied with if federal-aid is used in any phase of a project regardless whether or not right of way is programmed for such federal-aid. 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 Federal Highway Administration (FHWA) to undertake and complete such work within a reasonable length of time. The major steps involved in dealing with FHWA for the purpose of obtaining federal participation on a project are programming, authorization, project agreement and processing of final voucher.

1.1.5.1 Programming

Prerequisites for programming of any right of way work (preliminary activities, advance acquisition, right of way acquisition, and relocation assistance) include the following:

- The project is part of the approved Proposed Improvement Program. If not shown in the Proposed Improvement Book, a program addition is processed.
- The project is shown on the State Transportation Improvement Program (STIP).
- The project development and route selection meet with approval of the local public agencies involved.

Avoid extremely long right of way projects in the program. Consider the following guidelines when establishing project limits:

- The length of the right of way project correlates with the length of one or more construction projects.
- Where more than one construction section is included in a right of way project, assure the project length allows completion of the plans and documents for all sections in two years or less time.

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 Authorizations

After the Fiscal Year Annual Program has been approved, it will be necessary to obtain authorization from FHWA for federal-aid projects.

Projects with federal dollars in the right of way activities must be authorized by FHWA prior to any right of way negotiation.. Parcels will not qualify for federal participation where negotiations are initiated prior to authorization.

For preliminary right of way work, FHWA authorization may be requested only after 'corridor approval' on new corridor projects or after public involvement has occurred. Preliminary right of way activity consists of title work, preparation of plans, plats and legal descriptions, relocation studies and appraisal work.

The initiative to obtain authorization for preliminary right of way work is begun in the district by notifying CBLA of the need for preliminary right of way authorization. CBLA secures FHWA's authorization to proceed with preliminary right of way activities in conjunction with the project agreement that is submitted electronically to FHWA.

The District will need to submit the following information to CBLA to obtain Federal Authorization. See Exhibit LA 1152 for instruction.

- Right of Way 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.)
- Number of Relocations
- Letting Date
- Design Approval Date
- Environmental Clearance Date

1.1.5.3 Authorization for Advance Acquisition

In extraordinary cases or emergency situations, FHWA may approve federal participation in the acquisition of a particular parcel or a limited number of particular parcels within the limits of a proposed highway corridor prior to the completion of processing of the final Environmental Impact Statement or adoption of the Environmental Assessment. Only after official notice has been given to the public by the department that it has selected a particular location to be preferred or recommended alignment for a proposed highway or a public hearing has been held or an opportunity for such hearings has been afforded could this occur. Advance acquisition considered under these provisions is either protective buying or hardship acquisition.

1.1.5.4 Authorization for Right of Way Acquisition

After design approval is obtained, authorization is requested of FHWA before any negotiation activities are initiated with the exception of advance acquisition as discussed in Section 1.1.5.3 Authorization for Advance Acquisition. This authorizes all costs necessary to acquire and clear right of way. Request authorization at any time after design approval providing the following requirements have been met:

- Right of way plans completed
- Project relocation plan submitted and approved
- Environmental Impact Statement or Environmental Assessment submitted and approved
- Final clearinghouse approval obtained

The request for authorization for the acquisition of right of way is submitted by the district to CBLA.

The information required for federal authorization and the project agreement for acquisition of right of way is shown on Form 37A from Project Control in the Bureau of Budget and Fiscal Management. Instructions on how to complete Form 37A can be found on Form 37A Instructions. The initiative to obtain authorization and place a project under agreement is normally the responsibility of CBLA in cooperation with the districts and Project Control Manager in the Bureau of Budget and Fiscal Management.

Authorization to proceed with acquisition of right of way in conjunction with the project agreement is submitted electronically to FHWA for approval by Project Control in the Bureau of Budget and Fiscal Management. The authorization to proceed along with the project agreement is received from FHWA electronically in Project Control and copies of the approved Authorization and Agreement are distributed to CBLA and the districts.

1.1.5.5 Project Agreement

Before any claims for reimbursements may be submitted to FHWA, a project agreement must be executed between the Illinois Department of Transportation and the U.S. Department of Transportation as provided under the provisions of 23 CFR Part 630, Subpart C of the Code of Federal Regulations - Projects Agreements.

The initiative to place a project under agreement is normally the responsibility of CBLA in cooperation with the districts and Bureau of Budget and Fiscal Management.

To provide for concurrent billing to function without delay and to avoid accrual of unbilled costs, projects are placed under agreement along with the authorization.

The project agreement is submitted in conjunction with the project authorization electronically to FHWA for approval by Project Control in the Bureau of Budget and Fiscal management. The authorization to proceed along with the project agreement is received from FHWA electronically in Project Control and copies of the approved Authorization and Agreement are distributed to CBLA and the districts.

Prior to executing of the project agreement, the right of way plans are to be completed and made available to FHWA upon request. If there have been changes made since the authorization and agreement stage, the plans must be updated. It is imperative that the right of

way plans be kept current since they are the basis for reimbursement under the project agreement.

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 exceeds the amount of the agreement
- The right of way takings and costs are increased to the point where this addition exceeds the contingency amount

If the right of way plans are changed, revised plans must be completed and made available to 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, Modified Project Agreement (Form 37A), to the Project Control Manager in the Bureau of Budget and Fiscal Management.

The MPA (Modified Project Agreement) is submitted electronically to FHWA for approval by Project Control in the Bureau of Budget and Fiscal Management. The approval of the MPA (Modified Project Agreement) is received from FHWA electronically in Project Control and copies of the approved Agreement are distributed to CBLA and the districts.

It is the responsibility of CBLA in cooperation with the Project Control Manager of the Bureau of Budget and Fiscal Management 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.

1.1.5.6 Federal Aid Project without Participation in Right of Way

The provisions of Title II and Title III of the "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended" must be complied with if there is federal-aid in any phase of a project whether or not right of way is programmed for federal-aid. Construction authorization requests submitted to FHWA must contain a certification that the requirements of Title II and III have been complied with 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, it is necessary that CBLA provide CBDE (Project Management Unit), prior to construction authorization requests, with a memorandum indicating that the requirements of Title II and III have been met.

1.2 LAND ACQUISITION PROCESS-OVERVIEW

The first step in planning for the acquisition of the land is programming 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). 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).

The negotiations team comprises 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 (3) to four (4) months to go through the statutory Illinois Commerce Commission proceedings (see Chapter 4).

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 5).

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 a consistency for the land owner.

The Land Acquisition System (LAS) shall be maintained to reflect a current record of all relocation assistance activities offered and accomplished and 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 FHWA **triennial** report and, more importantly, it provides the status of parcel clearances for service bulletins and construction contract lettings. Therefore, it is essential that LAS reflect accurate and current status at all times.

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 land acquisition process is an integral part of roadway maintenance, rehabilitation, and new construction. 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 District Land Acquisition:

- Input into LAS system
- Plats
- Plans
- Legal Descriptions
- 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 planning and implementing the statewide land acquisition program. Included within this program are allied functions, such as relocation assistance, property management, and preparation of right of way plans. CBLA is also responsible for administering the Highway Advertising Control Act and the Junkyard and Scrap Processing Facilities Act.

CBLA works closely with the offices of the department's Chief Counsel and the Attorney General in order to coordinate and plan departmental 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.

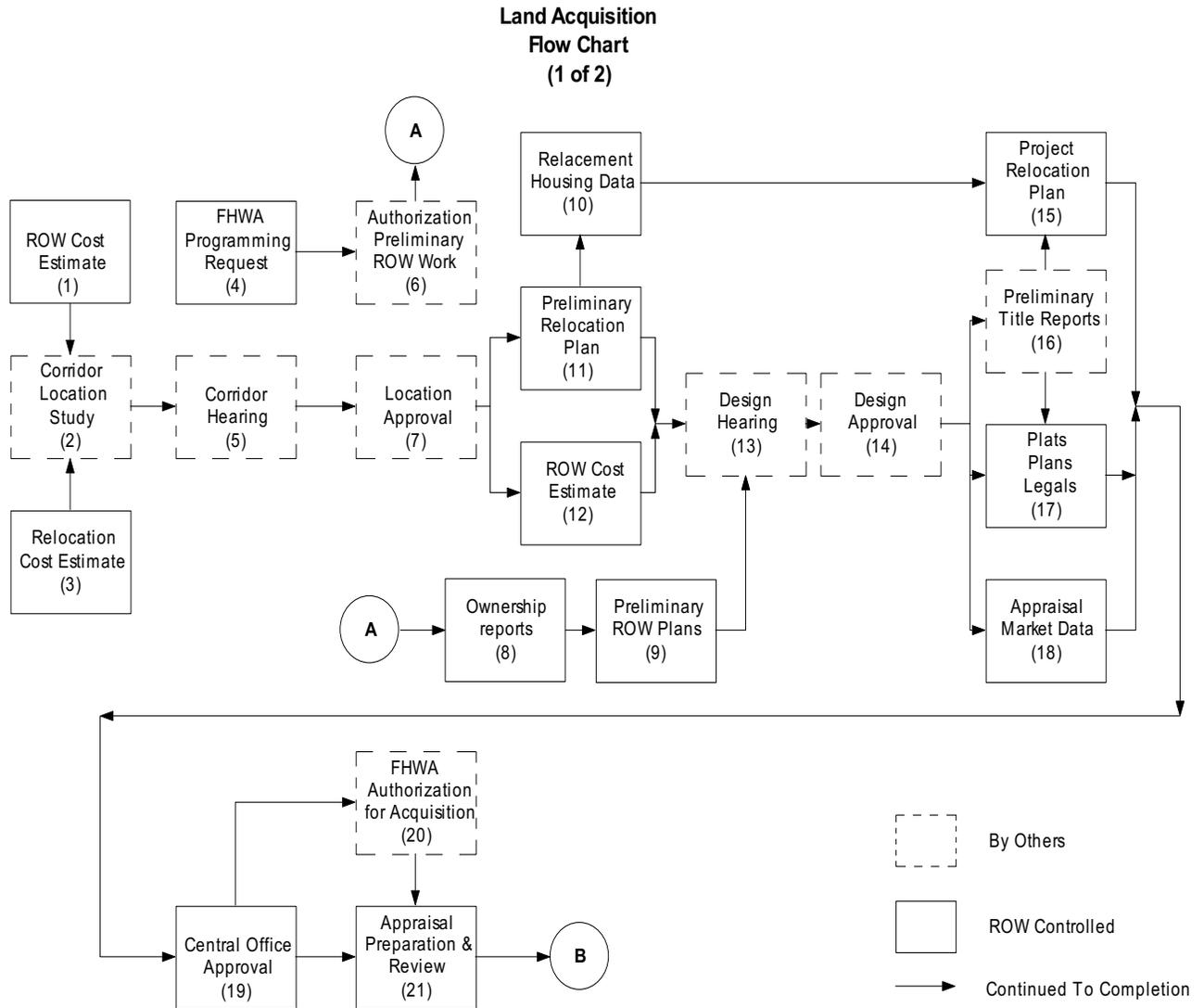
The following are the major responsibilities of CBLA:

- Advise and assist districts in resolving unusual and difficult acquisition problems.
- Provide and review all data necessary for approval of legal title to land.
- Prepare all necessary documentation in regard to the release of excess land.
- Coordinate land acquisition and outdoor advertising training programs.
- Regulate outdoor advertising
- Regulate junkyards.
- Prepare, coordinate, and monitor the annual land acquisition program in tracking the district progress towards accomplishing objectives.

- Control, evaluate and maintain data in the Land Acquisition System (LAS).
- Produce monitoring reports, as required.

1.5 LAND ACQUISITION ACTIVITIES FLOW CHART

The Land Acquisition Flow Chart shows schematically all major steps and events of the land acquisition process from the inception of a project to its construction. Activities indicated in solidly outlined boxes are those that are performed and controlled by land acquisition. Activities indicated in boxes bound by dashed lines are performed by others and are not within the control of land acquisition. The numbers in the boxes relate to the definition of these steps and events that are contained in the following:



(Rev. 11/00)

Figure 1 - Land Acquisition Flow Chart 1 of 2

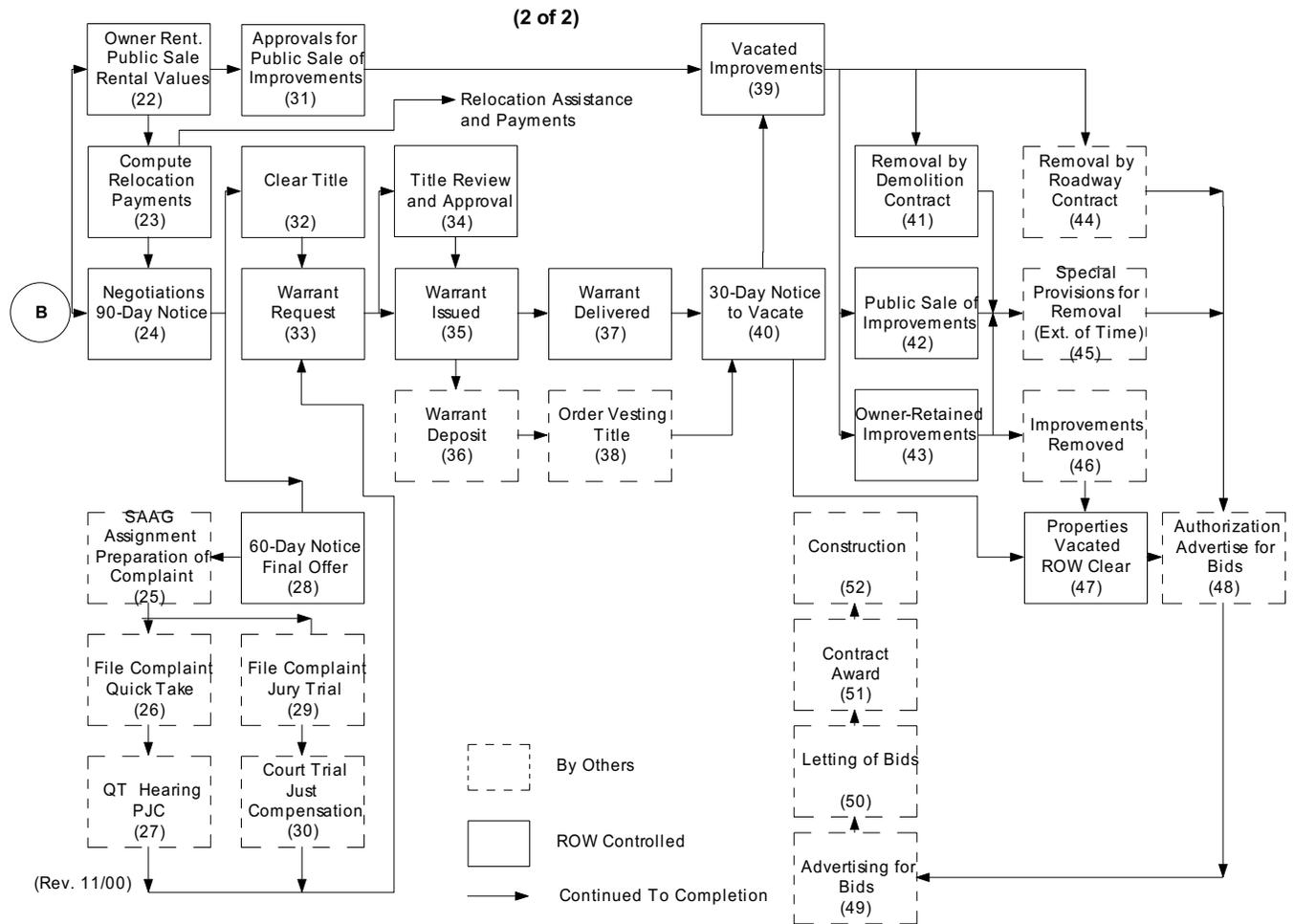


Figure 2 - Land Acquisition Flow Chart 2 of 2

1.6 REALTY SPECIALISTS QUALIFICATIONS (FEE AND STAFF)

1.6.1 General

Appraisers (all types), 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.

All realty specialists must be either qualified staff or on the approved fee list. All lists are approved and maintained by CBLA.

Fee specialists complete the standard "Application for Assignment as Land Acquisition Fee Agent(s)" (LA 161) and furnish the required evidence. The applicant receives an approval or denial letter (with reason for denial) after the application is reviewed. A specialist must be on an approved list prior to receiving assignments.

The specialist is subject to removal based on performance and updated qualification requirements. Anytime a specialist is given an unsatisfactory evaluation the specialist is removed from the list and not reappraised until reapplication is made and satisfactory corrective actions taken by the specialist. Fee specialists are evaluated once per contract, or as needed. Fee specialists reapply every third year.

The requirements of this section are not applicable to the selection of witnesses by Special Assistant Attorneys General (SAAG) for the department in condemnation proceedings.

1.6.2 Appraisers

Staff appraisers and fee appraisers must have an active certified general or certified residential appraiser license issued by the State of Illinois Department of Financial and Professional Regulation without any appraisal disciplines. Appraisers must have the necessary background and experience, ability and enterprise to gather the necessary facts, correlate and analyze them, demonstrate good judgment in forming opinions of fair market values and their appraisal reports must meet the department's minimum requirements. They must be able to interpret highway plans and be capable of determining the effect of the proposed improvement on the properties being appraised. Appraisers must be willing to prepare and testify to unbiased opinions of value without being an advocate for the department. Appraisers are advocates for their opinion of value. When called upon for service as expert witnesses, they must be capable of presenting, in a forthright and thorough manner, all of the facts considered in preparing the appraisal, and to defend, in a logical and convincing manner, the conclusions, which they have reached.

The selection of fee appraisers shall be in accordance with the following classifications:

- State Certified Residential Real Estate Appraiser – This category limits the appraiser to appraising residential property containing one to four living units, and vacant single-family land zoned residential, which will accommodate no more than four living units.
- State Certified General Real Estate Appraiser – This category allows the appraiser to appraise any type of real estate.

Appraisers seeking approval status shall supply the following:

- An application for assignment as land acquisition fee agent (form LA 161 found on IDOT's website);
- A current copy of their Illinois appraisal license;
- Evidence of two years of experience appraising property, preferably eminent domain experience;

Evidence of the successful completion of at least one eminent domain appraisal class sponsored by:

- National Highway Institute (NHI);
- Appraisal Institute;
- International Right of Way Association (IRWA); or
- American Society of Farm Manager & Rural Appraiser (ASFMRA)
- Evidence of the successful completion of the current USPAP course as of the date of application; and
- Two sample appraisals completed and signed by the applicant within the last five years related to an eminent domain acquisition.

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

When appraisals do not meet the requirements, the review appraiser informs the appraiser of the deficiencies and requests corrective action(s). If satisfactory work cannot be obtained, the appraiser's name is removed from the approved fee appraiser list.

1.6.3 Reserved

A trainee appraiser must hold an Illinois Associate Real Estate Trainee Appraiser license without any appraisal disciplines. The trainee appraiser is limited in his or her scope of practice and is required to have an IDOT-approved appraiser co-sign all appraisal reports. Trainee appraisers should be working towards developing and obtaining the skills and training required of approved appraisers.

Trainee appraisers seeking approval status shall supply the following:

- An application for assignment as land acquisition fee agent (form LA 161 found on IDOT's website);
- A current copy of their Illinois Associate Real Estate Trainee Appraiser license;
- Evidence of the successful completion of the current USPAP course as of the date of application; and
- Two sample appraisals related to an eminent domain acquisition in which the trainee appraiser provided significant real property appraisal assistance.

IDOT recognizes that Illinois Associate Real Estate Trainee Appraisers seeking to upgrade to a state certified appraisal license are required to submit no less than 50% of their appraisal work samples that include certifications signed by the trainee. Trainee appraisers should be signing appraisal reports (in accordance with any applicable requirements of USPAP and Illinois law) along with their approved supervisor unless instructed otherwise by a Special Assistant Attorney General representing the department in a condemnation proceeding.

1.6.4 Review Appraisers

Staff review appraisers and fee review appraisers must have an active certified general or certified residential appraiser license issued by the State of Illinois Department of Financial and Professional Regulation without any appraisal disciplines. Additionally, a fee review appraiser shall be on the fee approved appraiser list, shall have five years of experience in eminent domain appraising, and must have successfully completed three additional courses (at least one in the field of Eminent Domain) from the course providers listed in Section 1.6.2.

The selection of review appraisers shall be in accordance with the following classifications:

- State Certified Residential Real Estate Appraiser – This category limits the review appraiser to reviewing residential appraisals of properties containing one to four living units, and vacant single-family land zoned residential, which will accommodate no more than four living units.

- State Certified General Real Estate Appraiser – This category allows the review appraiser to review any type of real estate appraisal.

Prospective review appraisers also:

- Demonstrate they are knowledgeable of department land acquisition procedures and requirements of the FHWA as addressed in the Appraisal review;
- Have experience working with the department’s appraisal forms;
- Have experience in litigation to include formal testimony;
- Furnish examples of appraisal work along with the Specialty Agent Application (include complex examples that show damages related to proximity, severance, access control, change in highest and best use and/or land locking, etc.); and
- Have a working knowledge of plats, plans, profiles, legal descriptions and title reports.
- Former land acquisition work experience as a direct employee of the Illinois Department of Transportation may be considered in lieu of some requirements.

Appropriate assignments are made to the level of expertise and experience of the review appraiser. When the appraisal review work is found unsatisfactory, the district notifies the review appraiser of the deficiencies and requests corrective actions. If satisfactory work cannot be obtained, the review appraiser is removed from the approved review appraiser list.

1.6.5 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. Waiver valuations are not considered to be experience towards an appraisal license.

Licensed appraisers should not complete waiver valuations. 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 (starting 1/1/2015), or 4) a municipal engineer (starting 1/1/2015).

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 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 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.

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. Employee of a municipality

(Municipal employees can perform waiver valuations starting January 1, 2015 per Public Act 98-0933)

- 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

(Municipal engineers can perform waiver valuations starting January 1, 2015 per Public Act 98-0933)

- 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.

1.6.6 Negotiators—Staff and Fee

An applicant for an approved fee negotiator must fully complete form LA 161 – Application for Assignment as Land Acquisition Fee Agent. This would include submitting any attachments requested within the form.

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.

1.6.7 Relocation Agent—Staff and Fee

An applicant for an approved fee relocation agent must fully complete form LA 161 – Application for Assignment as Land Acquisition Fee Agent. This would include submitting any attachments requested within the form.

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.

2 RIGHT OF WAY ENGINEERING

2.1 GENERAL

This portion of this Manual is devoted to the preparation of right of way plans, right of way engineering aspects of land surveying, right of way plats, legal descriptions, designing the right of way, incidental land surveying services, and metric guidelines.

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 to prepare the right of way plans or to direct their preparation if such work is performed by engineering consultants.

Right of way plans are to be prepared for all projects on which right of way is to be acquired, whether federal-aid or state-only and regardless of type or method of funding. Districts preferring to prepare a plat of highways in lieu of individual parcel plats may substitute the plat of highways for right of way plans provided they are prepared and completed in accordance with Section 2.2.2

Properly prepared 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 taking in addition to other required plan features.

The right of way plans are the basic engineering documents for the acquisition of right of way. For federal-aid projects the right of way plans also serve as the basic documents for reimbursement of funds. 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 but of the same ownerships, interest or interests for the entire area. If from a total holding, for instance, a portion is acquired as a Temporary Construction Easement and another one as a Channel Change Agreement then the entire taking shall be considered as one parcel of land consisting of two tracts. It is common that in addition to the principal taking there are various easement tracts on both sides of the improvement. The combination of all such tracts is considered as one acquisition or one parcel.

Right of way takings from non-contiguous properties under the same ownership located within a right of way project 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 legal call. For the sake of accountability it is necessary that each acquisition be assigned an individual parcel number. For typical tract designations, typical parcel number elements and numbering examples see Exhibit [LA 221](#).

2.2.2 Right of Way Plans Preparation

In addition to the following standards, Exhibit [LA 222A](#) and Exhibit [LA 222B](#) indicate examples to serve as guidelines for the preparation of right of way plans:

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 meters to three decimal places and the metric length in kilometers to three decimal places for Metric plans and lineal feet to two decimal places and length in miles to three decimal places for English plans. 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 1:1000 for Metric plans and (1" = 100') for English plans and urban areas a scale ratio of 1:500 for Metric plans and (1" = 50') for English plans. There are areas where it might be preferable to use a scale ratio of 1:500 for Metric plans and (1" = 50') for English plans such as rural areas where a large amount of detail is required. In urban areas, the scale ratio of 1:500 for Metric plans and (1" = 50') for English plans may not show all the detail required, and it may be necessary to use a scale ratio of 1:250 for Metric plans and (1" = 20') for English plans.

From the standpoint of practicality, plans drawn at the scale ratio of 1:1000 for Metric plans and (1" = 100') for English plans 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 takings in reference to each other. This becomes especially critical for takings around interchanges. Special care should be taken to avoid splitting an interchange area between two or more sheets. The scale ratio of 1:500 for Metric plans and (1" = 50') for English plans is often useful for plans covering urban areas and should be considered if no intricate configurations of right of way takings 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. Normally a centerline or survey line station figure is shown every 100 meters on Metric plans and (500 feet) on English plans and a tick mark for every 50 meters on Metric plans and (100 feet) for English plans 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.

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 station and offset. Access control lines are designated if the project is a freeway. Also show the width of the existing right of way. The dimension is a normal or radial distance shown from the centerline or survey line to the existing right of way 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 stationing 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 recorded plat of survey and stated in 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 limits of slope or 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 for which the access rights have been or are to be acquired, the access control lines and all approved points of ingress or egress are shown and designated. The "AC" symbol is used to indicate the access control lines. The access control at intersecting highways and railroads shall be shown in accordance with Exhibit [LA 2228A](#). The access control line is dotted under the structures. The access control at bridges and culverts is shown in accordance with Exhibit [LA 2228B](#). Access is allowed through culverts with 1800 mm (6 feet) or more clearance in height. If the access control line is not coincident with the right of way line, designate and dimension it from the centerline or survey line of the route with normal or radial offsets and stations. Points of access to and from the highway on modified access controlled highways (expressways) are shown on the right of way plans. When points of access are shown on the plans, it is necessary they be designated at the station where the access is to be allowed, and the purpose of the access be noted. When access control extends down a crossroad, particularly at an interchange, the point where the access control ends is designated and the station indicated. Also refer to Chapter 35 of the Bureau Design and Environment Manual of Policies and Procedures for detailed guidance on the limits of access control.

2.2.2.9 Parcels to be Acquired

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 taking. 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 taking. If the area to be acquired from one property owner results in the taking of more than one tract, each tract is identified and

the area of each tract is shown with the total taking 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 *Landlocked Remainders and Uneconomic Remnants*

Any landlocked remainder is marked on the plans to aid in appraising and reviewing. At times, there are uneconomic remnants, determined by the department as having little value or use by the owner or are inaccessible. These remnants can be acquired in their entirety, and included in the right of way and within the access control lines as indicated in Exhibit [LA 22211](#). When the landlocked remainder is major in size and the property owner requests that the state acquires this land because it is of little or no value to them, the area on federal-aid projects is distinguished from normal right of way by crosshatching or shading and designated as "Property of the State of Illinois" and as non-participating and are entered into the NORWAY database.

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. Buildings are numbered for identification purposes on the plans using the same number appearing in the appraisal.

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 a minimum of 914.4 mm (36 inches English) wide by 558.8 mm Metric (22 inches English) high to reflect the requirements of CADD. The area within the border is 850.9 mm Metric (33.5 inches English) wide by 533.4 mm Metric (21 inches English) high. The above dimensions permit the sheets to be reduced by half and still have a workable scale. Normally County Recorders do not accept the large sheets. They are reducing the size of the documents to fit smaller books to save space.

All plan sheets are prepared on paper, vellum or mylar. It may be desirable to make a reproduction of the vellum sheets on mylar in order to provide a more permanent tracing.

To insure legible prints when reduced to one-quarter size, the minimum size lettering is 10 point type (1/10 inch) if capital letters are used. Symbols and abbreviations should be in accordance with Standard 000001 found in the Highway Standards of the Bureau of Design and Environment.

2.2.3 Right of Way Plans Review

It is the responsibility of the DLA engineer/manager to see that all right of way plans are carefully checked and reviewed. Since the right of way plans are prepared under the specific directions of the district chief of plats and plans, it is only proper that the chief be responsible for the review.

The review is made as to form, content and accuracy as outlined in Section 2.2.2. Sets of plans that fail to pass this review are not accepted as complete. Right of way plans submitted to the district chief of plats and plans for review that are found to be grossly deficient need not be corrected and brought up to standard by the chief but are rejected as incomplete. In no instance shall the district chief of plats and plans be required to correct or complete insufficiently developed right of way plans that have been submitted.

The Right of Way Plans Review Outline, Cover Sheet, and Right of Way Plans Review Outline, Plan Sheet, Exhibits [LA 223A](#) and [LA 223B](#) are designed to facilitate the review and document the fact that such a review was performed.

2.2.4 Preliminary Right of Way Plans

The term "Preliminary Right of Way Plans" is applicable to plans at any stage of development prior to their completion and approval. Preliminary Right of Way Plans have the same elements as the Final Right of Way Plans; however, the elements are subject to possible revision. These plans include the following elements:

- Cover Sheet
 - Federal-Aid Route and/or State Bond Issue Route
 - Project Number if Federal-aid
 - Construction Section
 - County
 - Job Number
 - Title Stamp
 - Vicinity Map and North Arrow
 - Beginning Station and Ending Station of Section/Sections
 - Station Equations
 - Federal-aid Projects - Beginning and Ending of Project
 - Length of Project or Section

- Plan Sheet
 - North Arrow, Section, Township, Range and Principal Meridian
 - Lots, Blocks, and Name of Subdivision, if subdivided
 - Stationing of Centerline or Survey Line and Curve Data
 - Job Limits (Beginning and Ending Stations)
 - Proposed and existing right of way lines
 - Property lines

- Limits of construction
- Right of way widths - Station and offset at each change in width
- Right of way taking (Dimensional data or stations and offsets and parcel numbers)

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 taking 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 correction 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 of taking as well as that of the remainder. The policy of the department is to survey and monument the area of takings only. 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 this department, that is, if the remainder must be established with certainty for appraising purposes. In such instances, no monument shall be set by the surveyor and no certified plat should be 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 taking 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 taking 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 parcel 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 U.S. Public Land Surveys

2.3.4.1 U.S. Rectangular System

The basic division of the land in Illinois is the U.S. Public Land Survey System, also known as the U.S. Rectangular System. The objective of this system was to establish and monument on the ground, legal land divisions for the purpose of describing and conveying of the public domain under the general land laws of the United States. The rectangular system is basically a grid system under which the land is divided uniformly and referenced to two fixed lines, one at right angles to the other. One is a true north-south line and is called the principal meridian. The other line, an east-west line, is called the base line.

2.3.4.2 Principal Meridians

Government surveyors surveyed the land in Illinois in reference to three different principal meridians:

- The Third Principal Meridian System covered the major portion of Illinois. This control meridian, which roughly cuts the state in two, was established in 1805 as a line running true north from the point of confluence of the Ohio and Mississippi Rivers. Its exact location is 89 degrees, 08 minutes and 54 seconds longitude west of Greenwich, England. The base line is an east-west line intersecting the Third Principal Meridian at a point near Centralia at 38 degrees, 28 minutes and 27 seconds latitude.
- The Fourth Principal Meridian was established in 1815 to control the lands located between the Illinois and Mississippi Rivers. It begins at a point near Beardstown and extends northward. It is an extension of a line straight north from the mouth of the Illinois River near Grafton. The

longitudinal reading of this line is 90 degrees, 27 minutes and 11 seconds west of Greenwich.

The base line for the Fourth Principal Meridian runs straight west from the beginning of this meridian near Beardstown. The geographical location of this line is 40 degrees, 0 minutes and 50 seconds north of the equator. The Fourth Principal Meridian has a second base line used for describing land in Wisconsin and parts of Minnesota. This base line coincides with the Illinois-Wisconsin border.

- The Second Principal Meridian System was established in 1805 to control the surveys in Indiana and a portion of Illinois. The Second Principal Meridian starts at the confluence of the Little Blue River with the Ohio River and runs north to the northern boundary of Indiana. Its geographic location is 85 degrees, 27 minutes and 21 seconds longitude. The base line is an east-west line at 38 degrees 28 minutes and 14 seconds latitude. It commences at Diamond Island in the Ohio River and runs due west to the Mississippi River. For practical reasons, its extension is the base line for the Third Principal Meridian (see Exhibit [LA 2342](#)).

2.3.4.3 Townships

After placement of the principal meridians and base lines, the government surveyors established the grids of townships, whose sides are six miles east and west and six miles north and south. Subsequently, the townships were subdivided by the deputy surveyors into 36 sections of one-mile square according to instructions by the Surveyor General (see Exhibit [LA 2343A](#)). The monuments set by these government surveyors are now to a great extent lost or obliterated. Their locations, however, mark the legal boundaries of all the lands and the restoration of these monuments and determination of the original township and section lines is the core of all land surveying activities (see Exhibit [LA 2343B](#)).

The land in Illinois was surveyed by the government surveyors between the years of 1805 and 1855. The major part of the work was done between 1815 and 1835. Edward Tiffin, Surveyor General, issued the first written instructions to deputy surveyors for subdividing townships in 1815. It is therefore important that the land surveyor in Illinois be thoroughly familiar with these instructions. A valuable source of information is a publication by the Illinois Professional Land Surveyors Association entitled "Federal Instructions for Surveyors of the Public Lands from 1785 to 1843." Also essential to the land surveyor is the pamphlet by the U.S. Department of the Interior, Bureau of Land Management, entitled "Restoration of Lost or Obliterated Corners and Subdivision of Sections." Copies of this pamphlet and Tiffin's instructions are available to the surveyors of the department from CBLA.

2.3.5 Perpetuation of U.S. Public Land Survey Monuments

2.3.5.1 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, a 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.

2.3.5.2 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 (Parcel Plats and Plat of Highways) 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.

2.3.5.3 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 inches by 11 inches, not permanently bound, and not a continuous form (see Exhibit [LA 2353A](#)).
- 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 inches by 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 2353A](#)).

2.3.6 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 Acts (765 ILCS 220/0.01 et seq.), surveyors have a duty to preserve and restore monuments. Refer to Standard 667101 found in the Highway Standards of the Bureau of Design and Environment as an option for monuments.

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 prepare special provisions to be included in the contract, which will provide for the construction and payment for all such monuments and markers. The special provisions shall clearly stipulate that setting of the monuments and markers are to be done under the supervision of either a contractor-provided or district-provided Illinois Professional Land Surveyor. The special provisions shall also require that the attendant monument records be prepared and filed in accordance with 765 ILCS 220/7.

2.3.7 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 vacated, 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, much 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.

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 taking. 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.

2.3.8 Accuracy of Field Work

Field work must be performed with sufficient accuracy to produce a mathematically closed figure for the exterior of the survey.

2.3.9 Entry on Lands to Make Survey

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 239](#) for 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 takings are involved in connection with such entries the owners are never the less 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.

2.3.10 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 Standard 666001 found in the Highway Standards of the Bureau of Design and Environment, 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.

2.3.11 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. Provisions for placement of permanent survey markers are contained in the Bureau of Design and Environment Manual.

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. Provisions for placement of reference markers are contained in the Bureau of Design and Environment Manual under permanent survey ties.

The location of the control points is established at the time of the original survey. The markers are set during construction in accordance with the construction plans and as directed by the engineer. To provide for this work, the designer prepares special provisions included in the contract that call for the construction and payment for permanent survey markers and permanent survey ties.

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 good 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 such as a parcel plat, plat of highways, centerline survey plat and premise plat.

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 parcel plat and plat of highways are statutory plats.

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 that there is no legal requirement that a subdivision plat be prepared for right of way takings 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 this department that all right of way takings are platted and recorded.

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. However, in all situations, the location of the right of way lines change and it is good policy to plat and record all relinquishments to protect the rights of the department and the property owners.

A proper right of way plat conforms 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 Professional Regulation, effective November 20, 2000 (Amended at 34 Ill. Reg. 6668, effective April 27, 2010).

2.4.3 Parcel Plat

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

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

Parcel plats for right of way takings 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:
 - 1:2500 or 1" = 200) on rural projects and large land ownerships
 - 1:1000 or 1" = 100' on rural projects and small acreage ownerships
 - 1:500 or 1" = 50' on suburban projects and small acreage tracts
 - 1:250 or 1" = 20' on urban projects
- Date of completion of field work
- Basis of bearing indicated
 - Assumed meridian
 - Astronomic observation
 - Established from geodetic control
 - Magnetic observation
- Dimensional data
 - Distance expressed to the nearest 0.001 meter or 0.01 foot
 - Angular values consistent with distance measurements
 - Areas to the nearest square meter or ten thousandths of a hectare (square foot or thousandths of an acre)
- Legal description of the property

- Point of Beginning for legal description designated
- Main survey line(s) and centerline(s) and stationing - auxiliary survey lines and centerlines of subordinate roadways, if pertinent to acquisition
- Legend for all symbols and abbreviations used on plat
- Horizontal curve data
- Existing property lines and corners within and near the taking area with appropriate ties to highway survey lines or centerline
- Visible physical evidence of possession or occupation within three feet either way from the exterior lines of the survey shall be shown and dimensioned
- 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 easements or setback lines shown on the recorded plat that affect the subject parcel are to be shown
- 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 taking (may also include area of estimated remainder if so desired)
- Access control lines and points of approved access
- Control monuments (U.S. Public Land Survey) located in Section of subject parcel tied to Point of Beginning
- Center of Section, quarter-quarter corners or closing corners are not to be used as control corners, unless it has a monument record recorded.
- Parcel plat drawings shall be in non-erasable ink or on CADD generated paper that is not less than 8 ½ inches by 11 inches or more than 30 inches by 36 inches.
- Surveyor's seal, signature, date of signing, and license expiration date
- 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."

Temporary easement plats, permanent easement plats, channel change agreement plats, and the like, are parcel plats and are bearing such designations only to indicate the type of acquisition for which they are made. Parcel plats with no such special designations are assumed to depict the acquisition of fee takings.

2.4.4 Plat of Highways

The statutory requirements for the preparation of the Plat of Highways 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.
- The plat is to be recorded within 6 months after completion or vacation of a highway.
- Plats may not be recorded that are less than 8 ½ inches by 11 inches or more than 30 inches by 36 inches.
- 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.

To clarify the department's position on the implementation of this act, the following procedural guidelines are applicable:

- 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.
- An Illinois Professional Land Surveyor certifies the Plat of Highways.
- The Plat of Highways may consist of multiple pages and drawn on high quality drafting cloth, paper, vellum or mylar.
- Revised Plats are submitted for filing together with the surveyor's Affidavit of Correction in case changes are made to the original Plat of Highways subsequent to filing.

In general, the Plat of Highways is an assembly drawing showing the parcel plat features of all right of way taking on a project. In many instances the Plats of Highways may advantageously be developed from the basic right of way plans.

2.4.5 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.

2.4.6 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. Please refer to the Bureau of Design and Environment Manual, Chapter 12, 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 (PE130%? PE260%? route location decision? Freeway order? Design approval?), 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 Program Development and Director of Highways Project Implementation. After receiving the approval of both the Directors 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 "Department shall make a survey and prepare a map showing the location and approximate widths of the rights of way needed . . . 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 . . . 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 1 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 land owners. After these notices are given, the property owners are not to build improvements or start developments without giving the department 60-day 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 a 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.

The process of establishing corridor protection in practice may be summarized in the following steps:

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 (PE130%? PE260%? route location decision? Freeway order? Design approval?), 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 Program Development and the Director of Project Implementation
- Once approved by both Directors, the District will 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.

The process of abolishing corridor protection in practice may be summarized in the following steps:

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 Program Development and the Director of Highways Project Implementation.
- After the approval of both Directors, 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 246](#).

For examples, see [Exhibit LA 246](#).

2.4.7 Premise Plat

A premise plat is a scale diagram showing a right of way taking as it relates to the whole of a property. Premise Plats are also known as Appraisal Plats. Their chief purpose is to aid the real estate appraiser in the preparation of the appraisal report of a right of way taking.

Premise plats are not intended to represent a land or property line survey performed in the field or protracted in the office. Property lines on the premise plat are designated as "Apparent Property Lines" (APL), and dimensions are not used as a basis for making a bona fide property survey. Premise Plats should, however, contain adequate detail showing the general dimensions of a property (without angles and bearings), the various improvement of the property and the natural features that have impact upon the valuation of the property (streams, timberlines, etc.), in addition to the following:

- Ownership
- Project, Route, Construction Section, County, Job Number, Parcel Number
- Section, Township, Range, Subdivision and Lot Number
- Area of taking and remainder
- Distance from right of way line to buildings (both before and after); distance from building to back slope or toe of slope
- Elevations, amount of cut or fill in front of buildings when damage to remainder is affected

Premise plats, photographically enlarged, may also serve as exhibits in eminent domain proceedings.

2.4.8 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 248A](#) for a suggested format of Surveyor's Affidavit of Correction.

2.4.9 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 on the left of the title block near the right hand corner of the plat. 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. It will be brief on parcel plats and may be lengthy on the plats of highways. It will indicate that the survey and plat were made by the signing land surveyor or under the direction of the land surveyor.

In no event shall license department employees 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.

2.5 LEGAL DESCRIPTIONS

2.5.1 General

A legal description is a portion of a conveyance document that identifies a tract of land for conveyance purposes. All legal descriptions are prepared by or under the direction of the district chief of plats and plans. Individuals other than those directly responsible to the district chief of plats and plans are not required to prepare descriptions for land acquisition or the disposal of excess right of way nor are any such descriptions prepared by outside consultants for the department accepted as sufficient unless reviewed and approved by the district chief of plats and plans.

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 Section 2.3.8.

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 purpose the Station Offset Description.

Describing right of way takings in reference to a recorded Centerline Survey Plat is incompatible with sound surveying practices since it does not tie such takings 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 takings. 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 takings 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 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 for clarity and completeness.

For example: (Metric)

"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, 414.507 meters [1359.93 feet] (Bearings assumed for description purposes only) 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 10.583 meters [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, 18.148 meters [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 7.553 meters [24.78 feet] radially distant southerly from the said centerline; thence . . . to the Point of Beginning."

For example: (English)

"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 assumed for description purposes only) 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."

For example: (Metric)

"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, 112.048 meters [367.61 feet] (Bearings assumed for description purposes only) 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 30.175 meters [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, 58.199 meters [190.94 feet] parallel with the said Survey Line; thence northerly 310.485 meters [1018.65 feet] along a curve to the left having a radius of 2,201.279 meters [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, 310.226 meters [1017.80 feet]; thence North 1 degree 07 minutes 49 seconds West, 7.077 meters [23.22 feet] parallel with the said Survey Line; thence . . . to the Point of Beginning."

For example: (English)

"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 assumed for description purposes only) 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."

For example: (Metric)

"Commencing at the northeast corner of said Lot 2, said corner being 10.058 meters [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, 2.134 meters [7.00 feet] (Bearings assumed for description purposes only) 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 12.192 meters [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, 24.384 meters [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."

For example: (English)

"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 assumed for description purposes only) 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."

For example: (Metric)

"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 12.488 meters [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, 12.338 meters [40.48 feet] (38'-3" recorded distance) (Bearings assumed for description purposes only) along a southeasterly line of said Lot 1 to a point 24.814 meters [81.41 feet] normally distant southwesterly from the said centerline; thence to the Point of Beginning."

For example: (English)

"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 assumed for description purposes only)

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."

For example: (Metric)

"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, 821.261 meters [2694.42 feet] (Bearings assumed for description purposes only) 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 35.345 meters [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."

For example: (English)

"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 assumed for description purposes only) 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.

For example: (Metric)

"The said Real Estate containing 796 square meters, more or less, or 0.0796 hectare, more or less, [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 1918 square meters more or less, or 0.1918 hectare, more or less, [containing 20,650 square feet, more or less, or 0.474 acre, more or less]."

"The said Real Estate containing 6,980 square meters, more or less, or 0.6980 hectare, more or less, of which 4,003 square meters, more or less, or 0.4003 hectare, more or less, is in existing public road right of way [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]."

For example: (English)

"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 therein, mineral interests previously conveyed.

Except therein, mineral interests previously reserved.

Except that portion described as follows:

"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 and in existence at the time of writing the description 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 Standard Rules for Metes and Bounds Descriptions

The following rules for metes and bounds descriptions have been adopted by the department to provide for simplicity and uniformity for composition of descriptions. While standard rules 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.

In addition to the following standard rules, Exhibit [LA 255](#) indicates 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.

"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:

(Metric)

". . . thence North 6 degrees 57 minutes 04 seconds East, 58.199 meters [190.94 feet] parallel with the said Survey Line; thence North . . ."

(English)

". . . 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.

"... described as follows:

Commencing at the . . ."

- Periods are used to end a complete description.

For example:

(Metric)

". . . to the Point of Beginning, containing 625 square meters, more or less, or 0.0625 hectare, more or less, [containing 6,728 square feet, more or less or 0.154 acre, more or less]."

(English)

". . . 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.

"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 example:

(Metric)

". . . thence southerly 313.536 meters [1028.66 feet] along a curve to the right having a radius of 2222.920 meters [7293.03 feet] and being concentric with the said Survey Line, . . ."

(English)

". . . 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.. "

(Metric)

". . . thence in a northerly direction along the centerline of Big Muddy Creek the following meanders: North 10 degrees East, 30.000 meters [98.43 feet], North 20 degrees West, 40.000 meters [131.23 feet], North 25 degrees East 25.000 meters [82.02 feet] . . ."

(English)

". . . 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.

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

- An adjective describing a line is not capitalized.

". . . 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.

"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:

(Metric)

". . . thence South 0 degrees 00 minutes 00 seconds West, 24.384 meters [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, 1.524 meters [5.00 feet] along the said southerly line to a point 13.716 meters [45.00 feet] normally distant westerly from the said centerline; thence . . ."

(English)

". . . 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:

(Metric)

". . . parallel with the said Survey Line; thence North 44 degrees 18 minutes 50 seconds East, 22.244 meters [72.98 feet] . . ."

(English)

". . . 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 Plat of Highways 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:

(Metric)

". . . thence North 18 degrees 14 minutes 42 seconds West, 8.534 meters [28.00 feet] (Bearings assumed for description purposes only) along a southwesterly line of said Lot A . . ."

(English)

". . . 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 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 exists
- Physical terminus, if necessary

For example:

(Metric)

"thence North 61 degrees 54 minutes 06 seconds West, 9.754 meters [32.00 feet] to a point 7.925 meters [26.00 feet] normally distant northwesterly from the proposed centerline of FAP Route 656;"

"thence North 27 degrees 36 minutes 30 seconds East, 31.321 meters [102.76 feet] parallel with the said proposed centerline;"

"thence South 0 degrees 38 minutes 02 seconds West, 18.148 meters [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 7.553 meters [24.78 feet] radially distant southerly from the centerline of said FAP Route 685;"

"thence South 84 degrees 15 minutes 47 seconds East, 23.744 meters [77.90 feet] along said existing southerly right of way line to a point 9.144 meters [30.00 feet] normally distant southerly from the said centerline;"

"... to a point 52.000 meters [170.60 feet] radially distant southeasterly from the survey line of FAP Route 406; thence South 7 degrees 56 minutes 55 seconds West, 55.370 meters [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 50.853 meters [166.84 feet] normally distant southeasterly from the said Survey Line;

(English)

"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 for land acquisition 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 exists
- 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 example:

(Metric)

"thence northerly 18.559 meters [60.89 feet] along an easterly line of said Lot 1 on a curve to the left having a radius of 16.764 meters [55.00 feet], the chord of said curve bears North 2 degrees 03 minutes 02 seconds East, 17.627 meters [57.83 feet], to a point 13.411 meters [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 51.816 meters [170.00 feet] normally distant easterly from the Survey Line of FAP Route 406; thence southerly 313.536 meters [1028.66 feet] along a curve to the right having a radius of 2222.920 meters [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, 313.277 meters [1027.81 feet]; to the south line of the Southwest Quarter of the Southwest Quarter of said Section 5;"

"thence northwesterly 99.167 meters [325.35 feet] along the said centerline of County Highway 64 on curve to the right having a radius of 1164.253 meters [3819.72 feet], the chord of said curve bears North 60 degrees 29 minutes 38 seconds West, 99.091 meters [325.10 feet];"

"... to a point 30.175 meters [99.00 feet] normally distant southeasterly from the Survey Line of FAP Route 406; thence northerly 310.485 meters [1018.65 feet] along the said existing easterly right of way line on a curve to the left having a radius of 2201.279 meters [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, 310.226 meters [1017.80 feet];"

"From the point of beginning thence northeasterly 146.423 meters [480.39 feet] along a curve to the right having a radius of 926.530 meters [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, 146.271 meters [479.89 feet] to a point on the westerly right of way line of the Chicago and North Western Transportation Company, said point being 22.860 meters [75.00 feet] normally distant northwesterly from the centerline of the main track of said Transportation Company;"

(English)

"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. Preservation of future right of way includes a careful consideration of how well the right of way is designed.

The purpose of acquiring highway rights of way is to provide sufficient right of way to efficiently construct the facility, enable the safe operation of the facility after it is constructed, and permit the safe and efficient maintenance of the facility after construction.

Some urban and rural areas have profited from the foresight of early designers who designed extensive road systems and acquired the rights of way. To a degree, the same opportunity exists today. We currently have the ability to assure the kind of long-range protection of adequate transportation space.

The Bureau of Program Development in districts Two through Nine and the Bureau of Programming in district One are responsible for the plotting of the highway cross-sections. These cross-sections aid in establishing the right of way width needed for the construction and future maintenance of the highway. However, the exact location of the right of way line should be the final responsibility of the district chief of plats and plans after environmental commitments, construction, safety, and maintenance requirements are met.

To aid the right of way designer, the following guidelines are established for the location of the right of way lines.

2.6.2 Width of Right of Way

2.6.2.1 Metric

Width of the proposed right of way or break points is based on multiples of two meters. For example: 20 meters, 22 meters, and 24 meters. Avoid widths of right of way or break points that are decimals of a meter unless the proposed right of way line is along a property line. There may be cases where the proposed right of way or break points are rounded off to the nearest one-half (0.5) meter where there is existing development. Also it may be necessary to place the right of way line near or at the back edge of sidewalk. Right of way lines parallel or concentric with the existing centerline or survey line are the most desirable. On curves it also may be an advantage to use a series of straight lines.

2.6.2.2 English

Width of the proposed right of way or break points is based on multiples of five feet. For example: 60 feet, 65 feet, and 70 feet. Avoid widths of right of way or break points that are decimals of a foot unless the proposed right of way line is along a property line. There may be cases where the proposed right of way or break points are rounded off to the nearest one (1) foot where there is existing development. Also it may be necessary to place the right of way line near or at the back edge of sidewalk. Right of way lines parallel or concentric with the existing centerline or survey line are the most desirable. On curves it also may be an advantage to use a series of straight lines

2.6.3 Establishment of Proposed Right of Way Lines

Proposed right of way lines shall be dimensioned from a centerline or survey line. Centerlines may be 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.

2.6.4 Principal Arterial Highways/NHS-Interstate, Freeway or Expressways (Construction and Reconstruction)

2.6.4.1 Width Requirements – Rural

Metric – The right of way width is based on a minimum clear width of three (3) meters to five (5) meters between the construction limits and the right of way line for all cut or fill sections under nine (9) meters. For cuts or fills over nine (9) meters, provide an additional clear width of one-half (0.5) meter for each meter of cut or fill over nine (9) meters. The minimum and maximum clear widths are three (3) meters and eight (8) meters, respectively. 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 slope rounding. A clear width greater than eight (8) meters may be necessary in cut or fill areas where soil conditions are unstable. Give the greater than eight (8) meters cases careful consideration, based on the benefits compared to the additional acquisition costs, any environmental impacts, and additional maintenance costs.

English – The right of way width is based on a minimum clear width of ten (10) feet to fifteen (15) feet between the construction limits and the right of way line for all cut or fill sections under thirty (30) feet. For cuts or fills over thirty (30) feet, provide an additional clear width of one (1) foot for each two (2) feet of cut or fill over thirty (30) feet. The minimum and maximum clear widths are ten (10) feet and twenty-five (25) feet, respectively. 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 twenty-five (25) feet may be necessary in cut or fill areas where soil conditions are unstable. Give the greater than twenty-five (25) feet cases careful consideration, based on the benefits compared to the additional acquisition costs, any environmental impacts, and additional maintenance costs.

Metric – Avoid abrupt changes in the right of way lines when possible. The maximum desirable rate of change is two (2) meters laterally for every thirty (30) meters along the centerline or survey line. This low 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 100 meters. To maintain this distance, the minimum clear width at some cross sections may be as close as two (2) meters.

English – Avoid abrupt changes in the right of way lines when possible. The maximum desirable rate of change is five (5) feet laterally for every one hundred (100) feet along the centerline or survey line. This low 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 five (5) feet.

Frontage roads shall follow the guidelines in Section 2.6.5 or Section 2.6.6 based on the existing or design year ADT.

2.6.4.2 Width Requirements – Urban

The same guidelines that apply to rural areas also apply to urban areas, except the minimum clear width is one-half (0.5) meter [two (2) feet] with a maximum of two (2) meters [five (5) feet]. This width of right of way is recommended to reduce the cost of improvements and to minimize the severance damages.

2.6.5 Arterial Highways Not Classified as Freeways or Expressways (Construction and Reconstruction)

2.6.5.1 Width Requirements/Rural

Metric – The right of way width is based on a minimum clear width of three (3) meters between the construction limits and the right of way line for all cut or fill sections under nine (9) meters. For fills over nine (9) meters, provide an additional clear width of one-half (0.5) meter for each meter of cut or fill over nine (9) meters. The minimum and maximum clear widths are one (1) meter and six (6) meters respectively. 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 of slopes for maintenance purposes and slope rounding. A clear width greater than six (6) meters may be necessary in cut or fill areas where soil conditions are unstable. Give the greater than six (6) meters 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. The maximum desirable rate of change is two (2) meters laterally for every thirty (30) meters 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 60 meters. To maintain this distance, the minimum clear width at some cross sections may be as close as one (1) meter.

English – The right of way width is based on a minimum clear width of ten (10) feet between the construction limits and the right of way line for all cut or fill sections under thirty (30) feet. For fills over thirty (30) feet, provide an additional clear width of one (1) foot for each two (2) feet of cut or fill over thirty (30) feet. The minimum and maximum clear widths are three (3) feet and twenty (20) feet respectively. 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 twenty (20) feet may be necessary in cut or fill areas where soil conditions are unstable. Give the greater than twenty (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 five (5) feet laterally for every one hundred (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 three (3) feet.

2.6.5.2 Width Requirements/Urban

Metric – The same guidelines stated for rural areas also would apply to urban areas, where rural cross-sections are proposed except where the cost of right of way is prohibitive. Where curb and gutter and/or sidewalks are proposed or existing, right of way widths are used to reduce the cost for improvements, to minimize severance damages, and to reduce proximity damages. Where sidewalks are proposed or existing, use a 0.6 meter to 0.9 meter wide buffer area behind each curb and assume a 1.5 meter wide sidewalk and provide a 0.3 meter wide right of way strip behind each sidewalk.

English – The same guidelines stated for rural areas also would apply to urban areas, where rural cross-sections are proposed except where the cost of right of way is prohibitive. Where curb and gutter and/or sidewalks are proposed or existing, right of way widths are used to reduce the cost for improvements, to minimize severance damages, and to reduce proximity damages. Where sidewalks are proposed or existing, use a 2 foot to 3 foot wide buffer area behind each curb and assume a 5 foot wide sidewalk and provide a 1 foot wide right of way strip behind each sidewalk.

2.6.6 Collector and Local (Land Access) Roads

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

2.6.7 Rehabilitation Projects

Right of way for rehabilitation projects should be in accordance with the latest 3R guidelines issued by CBDE. 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.

2.6.8 Factors Controlling 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, the need for special drainage facilities, roadside obstacle clear zones, and requirements for future expansion of the highway.

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

2.6.9 Other Considerations

2.6.9.1 Minimize the Number of Break Points

Minimize the number of right of way break points. These guidelines will reduce the number of right of way markers and corner post requirements for fences and will simplify stake-

out of 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.

2.6.9.2 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 a taking 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.

2.6.9.3 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. Also right of way breaks are at least six (6) meters or twenty feet from the edge of any body of water such as lakes or streams.

By adhering to this guideline, the designer can minimize the number of right of way markers or corner fence posts.

2.6.9.4 Where Abrupt Changes are Permitted

Consider additional right of way break points and short distances between breaks only when a parcel taking can be eliminated or to avoid leaving a small uneconomical remnant. In rural areas, small irregular and triangular shaped remainders less than 15 meters or 50 feet in width shall be included as part of the right of way. In order to avoid relocating a building in urban areas, the right of way may be adjusted.

2.6.9.5 Acquiring Fee to Dedicated Right of Way

Obtain the fee interest in right of way. When the owner has a fee interest to dedicated right of way that is adjacent to the property, the fee interest is acquired for that portion of the right of way which lies between the existing right of way line and the property line. This would be in addition to any new right of way required. This procedure will eliminate the owner from having to pay taxes on the dedicated right of way and will make it easier for utility companies to obtain permits.

2.6.9.6 Utility Adjustments

Problems occur with utility adjustments when the right of way lines are irregular and placed too close to the outer limits of construction. When a pole line is relocated on state right of way, the utility company may be faced with the following problems:

- Numerous guy wires
- 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 power and/or telephone poles

Similar problems are 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.

2.6.9.7 The End Right of Way Taking-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.

2.6.9.8 Variable Median

Describe right of way from one survey line or centerline for variable width median roadways wherever possible. For wide medians (60 meters [200 feet] or more) it may be necessary to describe the right of way from two survey lines or centerlines.

2.6.9.9 Sidewalk

If a sidewalk is to be constructed on a project, the right of way line is located a minimum of 600 millimeters or 2 feet from the back edge of the sidewalk if possible.

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

Acquire adequate right of way so as to provide intersection sight distance as described in Chapter 36, Intersection, of the Bureau of Design and Environment Manual or in Chapter 49 and 50, 3R Guidelines for Arterial Routes.

2.6.9.10 Fee Taking 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 additional working area in fee interest to a width of 15 meters [50 feet] or more in lieu of a temporary easement on construction projects.

Additional width of right of way at bridges will allow for easier access for maintenance of bridge and for work on channels such as realignment, placement of riprap and jetties.

2.7 METRIC GUIDELINES

2.7.1 Metrication

The United States Congress legalized the use of the metric system on July 28, 1866. Under the Mendenhall Order, effective April 5, 1893, all legal units of measure used in the United States were defined as exact numerical multiples of metric units. The relationship between the yard and meter were established as follows:

$$1 \text{ U.S. yard} = \frac{3600}{3937} \text{ meter} = 0.9144018288 \text{ meter}$$

$$1 \text{ meter} = 39.37 \text{ inches (exact)}$$

After World War II precision requirements in length measurements increased greatly and the difference between the U.S. inch and the British inch became especially important in gage-block standardization. As a result of several years of discussion, the Directors of the National Standards Laboratories of the United Kingdom and the United States entered into an agreement effective July 1, 1959, whereby uniformity was established for use in the scientific and technical fields. The new relationship between the yard and meter became:

$$1 \text{ yard} = 0.9144 \text{ meter (exact)}$$

$$1 \text{ foot} = 0.3048 \text{ meter (exact)}$$

$$1 \text{ inch} = 25.4 \text{ millimeters (exact)}$$

The foot defined by this equation is referred to as the International Foot.

Thus, the new value for the yard is smaller by two parts in one million than the 1893 yard. However, any data expressed in feet derived from and published as a result of geodetic surveys within the United States continues to bear the original relationship as defined in 1893.

$$1 \text{ foot} = \frac{1200}{3937} \text{ meter} = 0.3048006096 \text{ meter}$$

The foot unit defined by this equation is referred to as the U.S. Survey Foot.

In all survey work, except that of geodetic accuracy, the distinction between the two definitions of the foot can be disregarded. (Rayner, William H., and Schmidt, Milton O., Fundamentals of Surveying, 5th ed., D. Van Nostrand Company, New York, 1969)

2.7.2 Basic Unit of Measure

The equivalents of the different units of measure as applicable to land acquisition and right of way engineering and conversion tables are shown in Exhibit [LA 272](#).

The basic units of length used within the United States are the foot and the meter. The foot (ft.) is of Anglo Saxon origin and is universally used in English-speaking countries. The meter (m) is of French origin and has become the adopted unit for international and scientific usage. On December 23, 1975, the provisions of the Metric Conversion Act of 1975 became law in the United States. The purposes of this legislation were to declare a national policy of coordinating the increasing use of the metric system in the United States and to establish a U.S. Metric Board to assist in the voluntary conversion to the new system. The term metric system specifically means Le Systeme International d' Unites (abbreviated SI) or the International System of Units established by an International Conference of Weights and Measures in 1960. Agencies of the federal government are gradually converting to the SI units in the national surveying and mapping programs. It is likely that in time the meter will replace the foot in all areas of engineering.

There is no officially sanctioned unit of area in the SI system, although the hectare (10,000 m²) is in common use. (Schmidt, Milton O., and Wong, Kam W., Fundamentals of Surveying, PWS - Kent Publishing Company, Boston, Massachusetts, 1985)

For the purpose of simplicity and uniformity, the meter expressed to three decimals shall be the only unit of distance measure used in connection with right of way engineering. No dimensions shall ever be expressed in larger units, such as kilometers (except for stationing), or smaller units such as decimeters or centimeters. The smallest unit of land measure shall be the square meter which is used in connection with residential, commercial and industrial takings. The hectare (10,000 m²) shall be the standard land measure for all other takings.

2.7.3 Right of Way Plats and Plans

- The metric drawing scales for plats and plans shall be expressed in non-dimensional ratios and plotted as follows:
 - 1:2500 on rural projects and large land ownerships

- 1:1000 on suburban projects and small acreage tracts
 - 1:500 on urban projects
 - 1:250 on urban projects with large amount of detail
- On right of way plats and plans, the kilometer station will be used. This will require three places after the decimal point.

(km) (m)(mm)

- The kilometer station is written as: 1 + 000.000 with kilometer stationing increasing from south to north and west to east and from left to right on right of way plan sheets. The decimal marker is a period.
- On new surveys and in converting existing surveys from English units to metric units, the U.S. Survey Foot definition shall be used. One meter = 39.37 inches (exact) or one meter = 3.28083333 feet.
 - All survey angular measurements and bearings shall be given in degrees, minutes, and seconds.
 - Stationing will be noted every 100 meters and tick marks shall be shown on the survey line or centerline at 50-meter intervals.
 - Leave a space between the numerical value and the lower case symbol for meter (15.240 m)
 - Show all new calculated or surveyed dimensions on right of way plats and plans in meters and the metric equivalent in English in brackets. Show recorded deed distances in parenthesis in the units recorded, such as feet, rods, or chains, and designated as a recorded distance.
 - Use the radius definition in lieu of degree of curve. Express the radius in multiples of five-meter increments for new location. For existing curves in English units, convert the radius to metric units U.S. Survey Foot carried out to three decimal places.
 - Give areas in both conventions. In urban locations, use square meters with the square footage in brackets. In rural locations, use hectares with acres in brackets. Show areas calculated in square meters to the nearest square meter. Hectares are carried out to four decimal places.
 - Give right of way plan tabulations of proposed acquisition of properties in both metric and English units of area in tabular form.
 - Show Metric-English station equations along the centerline of plats and plans at major crossroads to help with the conversion between the two. This also helps in establishing and locating breaks in the existing right of way line as shown on previous acquisitions and historical documents.
 - The land acquisition professional reserves the right to redraft any drawings in English units for the purpose of condemnation/court proceedings.

2.7.4 Right of Way Lines

- For minimum right of way width refer to the state's "Minimum Design Criteria" for the subject highway.
- The standard right of way width between the centerline or survey line and the proposed right of way line are rounded to the nearest 2 meters. Thereafter, two-meter increments are recommended. In some instances, in urban areas, give the width to the nearest meter.
- In restricted circumstances, improvements such as buildings, cemeteries, etc., increments of one meter or less are permitted.
- In general, the stationing for break points along the centerlines and survey lines will be designated on 10-meter intervals for the metric offset.
- Proposed right of way line offsets are "hard" conversions, a new rounded, rationalized metric number is created that is convenient to work with and remember. In a soft conversion, the existing English measurement is mathematically converted to its exact (or nearly exact) metric equivalent.

2.7.5 Legal Descriptions

- Give all survey angular measurements and bearings in legal descriptions in degrees, minutes, and seconds.
- Leave a space between the numerical value and the lower case symbol for meter (15.240 m) and do not use a period except when it occurs at the end of a sentence.
- Show all new calculated or surveyed dimensions in legal descriptions in meters and the English equivalent in brackets. Show recorded deed distances in parenthesis in the units recorded, such as feet, rods, or chains, and designated as a recorded distance.
- Give areas in both conventions. In urban locations, use square meters with the square footage in brackets. In rural locations, use hectares with acres in brackets.

2.7.6 Conversion Policy

Since right of way design is based on dimensions and features governed by the design and preparation of construction plans, metric right of way plans, plats and legal descriptions are prepared in all instances where the construction plans are based on the metric system.

Use a single set of documents with dual units of measurement for land acquisition. The metric units will control and be soft converted to English. Exceptions to this would be centerline stationing (metric only) and recorded distances (recorded units).

The use of dual units allows everyone to use our documents as we produced them.

In addition to the metric rules previously stated, Exhibits [LA 276A](#) and [LA 276B](#) indicate guidelines and examples for right of way plats and writing legal descriptions.

3 APPRAISAL AND APPRAISAL REVIEW

3.1 GENERAL

Private property shall not be taken for public use without payment of just compensation (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 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 donate the property or rights to be acquired. When an appraisal is prepared, the owner or owner's designated representative must be given an opportunity to accompany the appraiser during inspection of the property.

"Fair market value" and "market value" are synonymous and are used interchangeably throughout this Manual.

3.2 SELECTING AN APPRAISER

Only licensed Certified General and Certified Residential Real Estate Appraisers are assigned an appraisal. Only fee appraisers on the list of approved fee appraisers are eligible for assignments. Before making an appraisal assignment the acquiring agency 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 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.

3.3 APPLICABLE APPRAISAL STANDARDS, REGULATIONS, AND POLICIES

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

- 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 Uniform Standards of Professional Appraisal Practice (USPAP), and
- the Illinois Department of Transportation's Land Acquisition Policies and Procedures Manual (this manual).

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. IDOT has not adopted the Yellow Book standards; therefore, the Yellow Book regulations do not apply to appraisal assignments performed for IDOT.

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. IDOT's appraisal report templates ([LA 33A](#) template and [LA 33D](#) Template) include standard appraisal assignment conditions that address these topics. It is IDOT'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 assignment and appraisal review assignment 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.

3.4 INFORMATION FURNISHED APPRAISERS

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

- Location of report templates for non-complex/complex appraisals ([LA 33A Template](#)) and valuation finding appraisals ([LA 33D Template](#));
- Right of way plans;
- Sketches of the whole property showing location of improvements, property dimensions on small holdings and other significant topographic features;
- Plats/parcel sketches and descriptions along with areas of the taking and remainders when applicable;
- Plan and profile and cross section sheets;
- Information as to how the particular properties will be affected by the proposed improvement, including construction features to be undertaken 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 rights to be appraised; and
- Any other information that may be necessary or beneficial to the appraiser

3.5 APPRAISAL FORMATS AND WAIVER VALUATIONS

3.5.1 Non-Complex Appraisal Format

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

- Damages, excluding non-complex cost to cure, are \$20,000 or less;
- Acquisition does not involve the taking of a principal building;

- The highest and best use is the same as present use or zoning;
- A complex specialty report is not required;
- Market data is adequate and cost and/or income approaches need not be considered;
- No complicated valuation problem is involved; and
- Access rights value is anticipated to be less than \$10,000.

Non-complex appraisals do not have a limit on the total compensation. Damages may include non-complex cost to cure and permanent damage to the remainders. At a minimum, complete all items identified in Standard One – Appraisal Development table in [LA 33A](#) Template. Instructions on completing this template can be found at the end of [LA 33A](#) Template. Reference to specific sales can support 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 or in the appraiser’s work file (see Section 3.6.5 – Comparable Sales). After-values are supported by a narrative explanation of the effect of the taking 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 Part Taken** – The description of the part taken shall be given by listing items included in the take and attaching a copy of the plat showing the part taken.
- **The Remainder** – The remainder description may be given by reference to the description of the whole property before the taking when the remainder is essentially the same except for the part taken. 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 taking would involve a more complex appraisal problem and the procedures below should be followed.

3.5.2 Complex Appraisal Format

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

- Damages, excluding non-complex cost to cure, exceed \$20,000;
- Acquisition involves the taking of a principal building;

- The highest and best use is different than present use or zoning;
- A complex specialty report is required;
- Market data is inadequate and consideration must be given to the cost and/or income approaches as appropriate;
- A complicated valuation problem is involved;
- Excess land parcels when the appraisal problem is complex; or
- Access rights when the value is anticipated to be greater than \$10,000.

At a minimum, complete all items identified in Standard One – Appraisal Development table in [LA 33A Template](#). Instructions on completing this template can be found at the end of [LA 33A 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 assumptions, directly related to a specific assignment as of the effective date of the assignment results, 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 the 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.
- An adequate description of the physical characteristics of the property being appraised. In the case of a partial acquisition, an adequate description of the remaining property is required;
- 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;
- 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.” 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. As a general rule, the cost and income approaches are used as a check of the sales comparison approach, and should not be relied on exclusively. Special use properties do 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 market value of the property is appraised as value in exchange. Value in use is not necessarily equal to 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.

3.5.3 Waiver Valuation

3.5.3.1 Criteria

The district may determine that an appraisal is unnecessary because the valuation problem is uncomplicated and the anticipated value of the proposed acquisition is estimated at

\$10,000 or less based upon review of data (49 CFR 24.102 (c) (2) (ii)). The qualifications required to perform a waiver valuation are included in Chapter 1 of this manual.

The waiver valuator should conduct a sufficient valuation analysis of the subject whole property and the part to be acquired to determine if the impact of the taking is minor. See [LA 33B](#) Template for the required format for a waiver valuation, with instructions. The decision to perform a waiver valuation as opposed to an appraisal is based on factors such as total compensation, tenant-owned improvements; land locking, proximity damages, familiarity of past acquisitions/condemnations trends in the project area, and past acquisition from the same property owners.

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. The waiver valuator may make the offer to the property owner(s) after the district approves the amount of just compensation.

Waivers cannot 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;
- Minor, non-complex damages exceed \$5,000, excluding non-complex cost to cure damages; or
- Testifying in condemnation proceedings. When an offer to purchase based on a waiver valuation is rejected and the parcel is referred to condemnation, an appraisal, written by a qualified staff or fee appraiser, must be written and reviewed. The effective date of the appraisal is the date the condemnation complaint is filed.

3.5.3.2 Content

The content of a waiver valuation is as follows:

- The minimum compensation threshold for a parcel is \$300.
- The waiver valuation contains the following statement: “Based on a review of available data, appraisals are unnecessary 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 3.6.4);

- The waiver valuator is not required to meet with the property owner(s) or enter the property; and
- When additional information becomes available during negotiations that affect the valuation, and the revised compensation exceeds \$10,000, an appraisal is required. After the appraisal is reviewed and approved, a revised offer for the property is made to the property owner.

3.5.4 Valuation Finding Appraisal Format

The Valuation Finding Appraisal template ([LA 33D Template](#)) is a Restricted Appraisal Report per USPAP, intended only for use by the client and not intended for any other users. It is used for uncomplicated takings where the total compensation is not expected to exceed \$50,000 and an in-depth analysis is not required to value the remainder property. Permanent damages to the land and site improvements cannot exceed \$5,000. Non-complex cost to cure cannot exceed \$10,000. Permanent damages to building improvements should not be included in a Valuation Finding appraisal. 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 ([LA 33D Template](#)) (i.e., \$15,000 damages including cost to cure).

When the parcel is referred to condemnation, a non-complex or complex appraisal must be written with the effective date of the appraisal being the date the condemnation complaint is filed.

In the event that a parcel involves the acquisition of tenant-owned improvements, the district shall prepare a non-complex or complex appraisal. Tenant-owned improvements are defined as 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. A non-complex or complex appraisal shall also be prepared when the acquisition creates a landlocked remainder or uneconomic remnant, when there is a change in highest and best use or the taking of a principal building, if there is a complicated valuation problem involved, or the acquisition involves outdoor advertising signs other than on premise signs.

- The Valuation Finding Appraisal ([LA 33D Template](#)) must be used for this type of non-complex valuation process and must contain the following items as outlined below. Additional pages may be used at the discretion of the preparer. The appraiser is required to include any applicable Extraordinary Assumptions or Hypothetical Conditions.
- Adequate visual examples of the part to be acquired and any improvements. At least two photographs of the subject property, showing any improvements located within the part taken. The form includes a photo page and additional photo pages may be inserted in order to provide an adequate visual description of the part to be acquired.
- Attach a right of way plat/parcel sketch.
- Attach or include a sales location map.
- Consider any decrease or increase in value caused by the acquisition of a part of the property in estimating the value of the remainder after the taking.
- When the acquisition is a temporary easement only with no damage outside the temporary easement area, valuation of the whole is not required.

- Any Cost to Cure Damages. Retain supporting documentation in the appraiser's work file.

3.5.4.1 Review of a Valuation Finding Appraisal

When there are no permanent damages to the remainder, a desk review of the subject and comparable is sufficient by an approved licensed review appraiser and is noted in the Scope of Work section for the review documentation. The reviewer has the option to complete a field review if necessary. A field inspection is always required for appraisals with any permanent damages to the remainder.

3.6 APPRAISALS

3.6.1 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;
- Contains an independent opinion of value and be an advocate for that opinion;
- Prepared on standard appraisal report templates, in accordance with the instructions for their use except in cases when the standard templates do not fit the appraisal problem.

When the standard templates do not fit the appraisal problem, use narrative reports or other templates, supported and documented to a degree compatible with the instructions for the standard templates or with the appraisal problem;

- Contains minimum compensation of \$300 threshold for a parcel for any property rights acquired on a single parcel. This includes fee, permanent easements, temporary easements, etc.

See Section 3.6.16 for the minimum payment requirements for the acquisition of easements on railroad and utility operating right of way;

- Give no consideration for or allowance for relocation assistance;
- Be typewritten or computer-generated and independently prepared;
- Disregards, in estimating the value of the property before taking, 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 value caused by the actual acquisition of a part of the property must be considered in estimating the value of the remainder after taking. Such changes in value are parcel-specific.

Compensates for changes in value as a direct result of a taking, parcel-specific damage. Alleged “proximity damages” or damages suffered in common by all property owners in the neighborhood are not compensable;

- Reviewed by and the fair market value estimated on each parcel by a review appraiser prior to the start of negotiations on a parcel, except for donations; and
- Is in compliance 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 uses the prevailing wage in determining labor costs.

The appraiser shall:

- Not be coerced or influenced by others when establishing their opinion of value;
- Give the owner or designated representative an opportunity to accompany the appraiser when inspecting the property;
- Prepare a revised Certificate of Appraiser section ([LA 33A Template](#)) when there is a change that affects the total compensation or the date of valuation changes;
- Monitor the market and reassess when appropriate. Situations occur when opinions of value require reevaluation and potentially a new appraisal. The real estate market is not static and values may change over time. Reevaluation is necessary when the initiation of negotiations for a particular property is not made promptly. Between the effective date of an opinion of value and initiation of negotiations, values in the real estate market may have increased or decreased affecting the accuracy of the opinion of value and necessitate a reevaluation. A six month interim requires a reassessment to determine if the original opinion of value is still appropriate and relevant or needs adjusted. The appraisers and review appraisers monitor the market and determine if a new appraisal and/or review is required.

3.6.2 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 meets the following criteria:

- Be a written statement;
- 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;
- Include the appropriate definition(s) of “fair market value”;
- Include the assumptions and limiting conditions;
- Disclose which approaches of value to use and a discussion of the selected approach;
- Prepared prior to the appraisal assignment;
- Included in the appraisal report;
- Maintain 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.
 - All relevant and reliable approaches to 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 value used sufficient to support the appraiser’s opinion of 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.
 - A statement of value of the real property to be acquired. For a partial acquisition, a statement of the value of the damages and benefits, if any, to the remaining property. The effective date of valuation, date of appraisal, signature and certification of appraisal.

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.

3.6.3 Number of Appraisals

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 if the review appraiser feels the compensation is substantially outside the range of appraisals received, additional appraisals may be obtained with concurrence from the Engineer of Land Acquisition. Concurrence shall be received before they are requested from the appraiser. This concurrence may be verbal, but a memorandum that summarizes the concurrence must be in the district files.

3.6.4 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 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 used 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.
- Farmstead (FS) - That part of a farm that is occupied by the dwellings, buildings, adjacent yards or corrals, plus family gardens and orchards in which the produce is utilized for family consumption. Land in farmsteads includes land used for barns, machinery sheds, grain bins, waste lagoons, feedlots, pens, corrals and farmstead or feedlot windbreaks. Lanes to farm residences are considered part of the farmstead.
- Research and Experimentation Land (RL) - Land utilized for research farms and experiment stations
- 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.

3.6.5 Comparable Sales

When a project contains many parcels or the project is publicly opposed, the district may choose to gather sale data and make it available to all appraisers on the project. The appraiser is still responsible for checking for additional 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. The sales in the booklet are plotted and numbered on a map, and the map is made a part of the booklet.

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 on all sales and all principal above ground improvements or unusual features affecting the value 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.

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. Factual details include such items as sale price, date of sale, grantee and grantor, property identification, size, number of rooms, access, income data, and financing of the sale. Each appraiser must, however, inspect the sale property.

In condemnation cases, all witnesses should personally verify the sales with a party involved in the transaction. When the appraisers and review appraisers are unable to verify the pertinent facts of sales and this information is crucial to the appraisal, contact the SAAG assigned to the project for an opinion regarding use of the sales. The SAAG 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.

3.6.6 Approaches to 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. 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 a check of the sales comparison approach, and are not relied on exclusively. Special use properties do 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 market value of the property is appraised. Value in use to a particular user does not necessarily equal 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.

3.6.7 After Values and Damages

The amount of damages or benefits is determined by subtracting the "Value of the Remainder After Taking" from the "Value of the Remainder Before Taking." The valuation of the remainder after the taking involves a similar valuation process used to determine the value of the whole property. After the highest and best use has been determined, the appraiser must make every effort to obtain sales to support the valuation of the remainder after the taking. Sales used to support the value of the whole before the acquisition can be used to value the remainder if they are the most comparable to the remainder. The appraiser should make a diligent search for the best after value sales available. Land Economic Studies can be taken into consideration when making adjustments to the sales used to determine the value of the remainder.

Analysis of cost to cure may be included in estimating the 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 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 value, but not a recoverable items in themselves. See Section 3.8 (Specialty Reports) for valuation of specialty items.

When the appraiser determines that the remainder will not be damaged or benefited, a thorough explanation of this finding, along with an estimate of the after value as explained in the instructions for [LA 33A Template](#), will be sufficient to meet requirements for an after 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 (i.e., \$15,000 damages including cost to cure).

3.6.8 Benefits

Illinois is not a true “before and after” state because the property owner must always receive compensation for the part taken. Special 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 ILLINOIS EMINENT DOMAIN PRACTICE (2002 Supplement) presented by the ILLINOIS INSTITUTE FOR CONTINUING LEGAL EDUCATION and the ILLINOIS ATTORNEY GENERAL’S CONDEMNATION MANUAL (2000) and any subsequent versions of these resources. If legal advice is needed, the district contacts CBLA for direction from the Office of Chief Counsel.

3.6.9 Unit Rule

All appraisals involving the acquisition of right of way must comply with the “unit rule.” The “unit rule” requires the appraiser to value a property as a whole property and not to value the different property components separately and add them together to determine the value of the whole property, the value of the part taken, and the value of the remainder. The property components should only be considered in the light of how they enhance or diminish the above values. The part taken has to 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.

3.6.10 Influence of Proposed Highway Improvement on Value

In estimating the value of the property before taking, 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 value caused by the actual acquisition of a part of the property must be considered in estimating the value of the remainder after taking. Such changes in value are parcel-specific.

Changes in value as a direct result of a taking are compensable, parcel-specific damages. Alleged “proximity damages” or damages suffered in common by all property owners in the neighborhood are not compensable.

3.6.11 Non-Compensable Items of Damage

Certain elements of damage that may adversely affect the market value of the remaining property are non-compensable under Illinois law. For information on non-compensable items of damage, see ILLINOIS EMINENT DOMAIN PRACTICE presented by the ILLINOIS INSTITUTE FOR CONTINUING LEGAL EDUCATION and the ILLINOIS ATTORNEY GENERAL'S CONDEMNATION MANUAL. This information can also be obtained from the CBLA's Appraisal Unit Manager. If legal advice is needed, the district should contact the Office of Chief Counsel for direction.

3.6.12 Access Rights

3.6.12.1 *Acquiring Access Rights*

Access rights are valued on a before and after basis, with the difference being a damage to the remainder. If damage is over \$10,000, the appraisal problem is complex and requires a detailed appraisal.

Defining "Reasonable" access is often a problem, and each case is considered on its own merits. See Chapter 4 for additional information on the acquisition of access rights. Address direct questions concerning access rights should be obtained from CBLA.

3.6.12.2 *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 by condemnation be taken without compensation.

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 State'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.

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 a taking is involved with the moving or closing of entrances, the appraiser can take into consideration the effects, if any, of the taking on the remaining property.

3.6.13 Valuation of Easements and Temporary Use Permits

Permanent and temporary easements are valued after the taking (fee, dedication or perpetual). 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) of easement. 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 value of the whole property is the fair market value of the remainder after the taking (fee, dedication or perpetual easement) as

affected by the contemplated improvement. A permanent easement is valued before the temporary easement. The fair market value of the whole property before the imposition of the temporary easement is the value of the remainder property after the imposition of the permanent easement.

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 taking is required except for waiver valuations. The degree of support for the “before and after” 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 or outside the easement area.

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 or outside 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).

When the final improvement being constructed within the permanent/temporary easement area has permanent damages and/or benefits to the remainder property outside of the easement area, the damages/benefits are different. When the highest and best use and value of the remainder are different than the value of the whole after consideration of the taking, consider the damages/benefits in the remainder situation.

Example:

a. Market Value of the Whole Remainder Property Before the Imposition of the Easement(s)	\$100,000
b. Market Value of the Easement Area(s) as it Contributes to the Remainder Property Before the Imposition of the Easement(s)	\$5,000
c. Market Value of the Easement Area(s) as it Contributes to the Remainder Property After the Imposition of the Easement(s)	\$4,000
d. Diminution or Change in Market Value of the Easement Area(s) (b-c)	\$1,000
e. Market Value of the Remainder Property Outside the Easement Area(s) Before Imposition of the Easement(s)	\$95,000
f. Market Value of the Remainder Property Outside the Easement Area(s) After Imposition of Easement(s)	\$87,000
g. Diminution or change of Market Value of the Remainder Property Outside the Easement Area(s) Due to Imposition of the Easement(s) (e-f)	\$8,000
h. Total Compensation for Easement(s) (d+g)	\$9,000

3.6.14 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 a staff or fee 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 staff or fee appraiser inspection indicates the area is not in compliance, district land acquisition shall contact the Bureau of Design’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, the statewide consultant 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, district land acquisition 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 the CBLA. CBLA and CBDE 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.

- 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 3.8) of placing the property back into conditional status. The estimate will be provided to the appraiser for consideration in determining the value of the remainder.

3.6.15 Uneconomic Remnants

"Uneconomic remnant" means a parcel determined to have little or no value or utility to the owner of real property after the partial acquisition. 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.

Review appraisers 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.

3.6.16 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. For railroads, it includes mainlines, branch lines, yards, depots, control towers, siding, substations and other facilities presently being used in the operation of a railroad or a utility line. Minimum payment of \$300.

Spur tracks and sidings into places of business are not operating right of way regardless of who owns the land and track age, 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.

- **Acquiring Operating Property From a Utility Company**
 - Land Owned in Fee - When a utility company owns the fee title to its operating right of way, the utility company is compensated for the right of way needed.
 - Land Owned as an Easement – When a utility company owns an easement for its operating right of way and can contribute 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.
 - 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 the BDE. There may be cases, however, when a proposed highway improvement takes part of improved or unimproved operating right of way of a utility company 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 company whether the property is owned in fee or easement, 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 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.

- Acquiring Operating Property From a Railroad
 - Land Owned in Fee - When a railroad company owns the fee 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.
 - Land Owned as an Easement - 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.

- 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 Railroads 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.

3.6.17 Highest and Best Use (Probability of Re-Zoning)

Base all appraisals on the highest and best use of the land. The property may have the highest and best use as a "stand-alone" parcel or as assemblage to an adjoining property. In determining 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.

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;
- Change of actual uses in the area;
- 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.

3.6.18 Tenant-Owned Improvements and Personal Property

3.6.18.1 *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 determines 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 or the valuation finding appraisal. 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 value of tenant-owned improvements within the appraisal. The “unit rule” requires the 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 an affidavit disclaiming all interest ([LA 4113A](#)) in the tenant-owned improvements, the review appraiser, or if unable, the appraiser, provides a listing 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 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 listing and allocation is 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 listing and allocation must clearly state the listing and allocation are for negotiations only.

3.6.18.2 *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 (land owner and tenant interests) in excess of “the fair market value of the part taken as a part of the whole before the taking,” required by Illinois law. The value of the whole property is included in the salvage value, if any. In the market value concept, when improvements do not represent the highest and best use of the land, salvage of existing improvement contribute to the value of the whole property to the extent the value of salvageable items exceeds demolition costs.

3.6.18.3 *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.

3.6.19 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 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 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.

3.6.19.1 *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, include an estimate of the cost to move the sign to the remainder property in the appraisal. Include the estimate in the appraisal when considering the value of the subject property's remainder. The cost to cure damages to move the sign cannot exceed the loss in 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 includes an analysis of the cost to move the sign compared to the loss in value that would result if the sign were not moved onto the remainder property. Include the acquisition cost of the sign in the value of the whole property where the cost is less to acquire the sign.

3.6.19.2 *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 included in the appraisal. The lease should be retained in the appraiser's work file for the parcel.

Check with CBLA Outdoor Advertising Control Unit to determine if the site location is along a controlled route. If the route is controlled, CBLA will be able to check inventory to determine if the sign is registered or permitted. If the off-premise sign is registered or permitted 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, district land acquisition should brief the SAAG assigned to the case of the method used to arrive at the enhanced 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.

3.6.19.3 *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 site, either along a controlled route or a non-controlled route. If the sign owner elects to not move the sign to a legal site along a controlled route or a non-controlled route, acquire the signboard under the provisions of Section 9.3 (Advertising Signs). If the sign owner elects to relocate the sign to a legal site along a controlled route or a non-controlled route, the actual and eligible moving costs under the provisions of Section 9.4 is the sign owner's only due compensation.

3.6.19.4 *Illegal Signs*

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

3.6.20 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 value of all nursery stock to be acquired. See Section 6.2.2 and [LA 622](#) for additional information for nursery stock inventory.

3.6.21 Not Valuing the Whole

When the taking is minor and a valuation of the whole would involve more time and expense than the appraisal problem warrants, a determination not to include the valuation of the whole property in the appraisal assignment is made. Examples of this include:

- Valuation of a fee taking/permanent easement/temporary easement from an active railroad line which involves hundreds of miles of track, switching equipment, switching yards, etc.;
- Minor fee taking/permanent easement/temporary easement from a property where the major improvements contributing to value to the property are located such that the taking does not impact their function, or where there is little or no unity of use between the major improvements and the area of the taking with the exception of cost to cure damage considerations for items such as fencing, signs, landscaping and other similar items (for example, a corner clip from a large hospital campus).

The district land acquisition is responsible to make the determination and inform the appraiser of the determination at the time of the assignment. In these instances, the taking will not impact the improvements either negatively or positively. It is the review appraiser's responsibility to make the initial determination that any proposed appraisal assignment fits this situation. The appraiser is responsible for conducting a sufficient analysis to concur that the

taking is of such a minor nature that it is not necessary to include a detailed before and after valuation of the whole property in the appraisal report.

3.7 APPRAISAL REVIEW

All acquisition appraisals must be reviewed. Appraisals may be reviewed singularly or by segments of a project. Review appraisers use independent judgment in their value estimate. In order to maintain consistency on a project, the review appraiser responsibility is to:

- Assure all items affecting the value of the property are considered in the appraisal and all mathematics is correct.
- Assure 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 personal items (see Section 3.7.10) and assure the list is included in the appraisal and only the realty items are considered in the valuation of the parcel.
- Annotate in the review any Extraordinary Assumptions and/or Hypothetical Conditions which the appraiser relied upon in the development of the appraisal.
- Familiarize the negotiators with the neighborhood data, the comparable sales and the subject properties before negotiating begins.

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 or divergence in the appraisal reports, etc. In certain circumstances a review appraiser may conduct a desk review of the comparable sales explaining the reasons for doing so in the scope of work section in the review appraiser's review. A desk review is acceptable provided sufficient information is contained in the appraisal for Valuation Finding Appraisals only with no permanent damages to the remainder; however, the review appraiser may conduct a field inspection of the subject property and comparable sales, if needed.

The review appraiser considers all pertinent 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 value information, the appraiser may, and should, adjust the estimated value at any time prior to settlement. Any adjustments are documented and supported. When the compensation changes a revised offer is made to the property owner.

Changes in value as a direct result to a taking are compensable, parcel specific damages. Alleged "proximity damages" or damages suffered in common by all property owners in the neighborhood are not compensable.

3.7.1 Examination of Appraisal Reports

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

- Are completed in accordance with department policies and procedures, and meet the minimum appraisal requirements of 49 CFR 24.
- 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 estimates 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 value and damages to the remainder with the appraisals of other similar parcels on the project.

3.7.2 Approval and Documentation

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

- Recommended – meets all requirements and the appraisal is used 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 acceptance of an appraisal, the review appraiser must determine that the appraiser's documentation, including valuation data and analysis of that data, demonstrates the soundness of the appraiser's opinion of value. For the purposes of this part, an acceptable appraisal is any appraisal that, on its own, meets the requirements of §24.103. An approved appraisal is the one acceptable appraisal that is determined 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 approved appraisal. Where an appraisal represents market value and is properly supported, the review appraiser may recommend the appraisal.

When the review appraiser does not agree with values in the appraisal, an additional appraisal may be requested, or an estimate of value may be prepared by the review appraiser. If the review appraiser prepares an estimate of value, reference to data or properly supported values in appraisals previously reviewed may be used to support the estimate of value. The review appraiser includes independent data and properly supported valuation analysis when necessary to support the approved estimate of value.

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

When preparing an estimate of value, the review appraiser obtains the required number of appraisals specified in Section 3.9. Properly supported appraisal review documentation qualifies as an acceptable appraisal when the review appraiser does not accept values and/or documentation in appraisals. An appraisal which meets minimum requirements, but does not agree with the review appraiser's opinion of 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 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 estimate the value of the additional land required. This practice will be limited to a reasonable period of time after the original taking due to changing market conditions. Subsequent acquisitions are assigned a new parcel number.

The review appraiser prepares a written appraisal review report. This report may be simple or detailed, depending on the complexity of the appraisal being reviewed and include the following information:

- Identification of appraisal being reviewed;
- Documentation of review findings and conclusions;
- Identification of any damages and/or benefits;
- Documentation of whether 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.

3.7.3 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 and/or tenant's names;
- Parties to transaction, date of purchase and deed book references on sale of subject property and comparable;
- Statement that there were no sales of subject property in past five years; or
- Location, zoning or present use of subject property or comparable sales.

Review appraisers will 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 value or the effective date of the appraisal, a revised certificate ([LA 33A](#) Template) is submitted along with revised appraisal documentation.

3.7.4 Appraisal Review Certification

The review appraiser completes an Appraisal Review Certification ([LA 3729](#) Template) on all parcels showing the consideration on original and supplemental reviews and attaches a copy to each appraisal reviewed. Instructions can be found on the [LA 3729](#) Template.

The department approves all estimates of 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. However, in order to settle a parcel above the approved appraised 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 the property owner is larger than the appraised amount.

Appraisals for state highway projects are obtained and reviewed by local public agencies and are submitted to the district office for review prior to an offer being made. If the district concurs, the local public agency will be advised, and the offer is made.

3.8 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 estimating the contributory value of these items. The specialty agent is an expert in the area of the specialty items. 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 taking 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.

The appraiser and review appraiser of the real property review the contents of each specialty report to determine no duplication of items are included in the report and it does not include items which are not compensable under Illinois law. The appraiser does not arbitrarily add the conclusions in the specialty report to the value of the property. Normally, the conclusions in the specialty report represent the contributory 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 and incorporate the contributory value into the whole property.

Typically, specialty reports are obtained by the regional engineer; however, the fee appraiser responsible for the appraisal may employ the specialist. The fee appraiser obtains approval from the regional engineer or designee before employing the specialist. Any report requiring compensation in addition to the fee quoted in the appraiser's contract is approved by the regional engineer or designee prior to the assignment given.

Use a licensed appraiser for a 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 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.

3.9 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 approved appraisals or appraisals administratively documented for all state highway projects is submitted to CBLA. Two copies are submitted if there is federal aid in the acquisition.

One copy of the approved appraisals or appraisals administratively documented by the review appraiser for all state highway projects must be submitted to CBLA under the following circumstances:

- Total compensation exceeds \$50,000;
- Total compensation is under \$50,000 but damages excluding non-complex cost to cure exceed \$20,000; or
- On local agency projects with federal-aid in the right of way, one copy of all approved appraisals shall be sent to CBLA when:
 - Total compensation exceeds \$50,000.
 - Total compensation is under \$50,000 but damages excluding non-complex cost to cure exceed \$20,000.

Offers may be made after the appraisals have been submitted to CBLA.

CBLA is responsible for reviewing appraisal reports, review documentation, and settlement reports received from the districts for compliance with department policies and procedures. Appraisal reports, appraisal review documentation and settlement reports will be reviewed on a "spot check" basis.

CBLA prepares an administrative review on the appraisal reports which will include the determination that the appraisals:

- Are complete in accordance with department policies and procedures, and meet the minimum appraisal requirements of 49 CFR 24;
- 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 estimates 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; and
- Are consistent in the value and damages to the remainder with the appraisals of other similar parcels on the project.

If discrepancies are noted, CBLA, (1) returns the reports to the district for correction; (2) calls the district for corrections. A copy of the documentation is sent to the district, where it is initialed to show concurrence and placed in the files. All appraisals are reviewed and any corrective action is noted in the appraisal review.

3.10 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.

3.11 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 value for court testimony, which may be obtained by either the regional engineer or the SAAG. When the opinions of 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 SAAG is made, a meeting is arranged between the SAAG and the district to review the valuation evidence. The SAAG and valuation witness discuss the valuation evidence before any valuation testimony is presented. The SAAG may request updates of existing appraisals, which according to USPAP is a new appraisal assignment. New appraisals or opinions of value also may be obtained. Opinions of value, which are obtained for court testimony, may be prepared in any detail desired by the SAAG. 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 value estimate. If these opinions of value are later used at the basis for settlement, the department must be furnished a copy, which contains data to document, and support their opinions of value and/or damages. The district updates the existing appraisals when requested to do so by the SAAG. The effective date of the appraisal is the date the condemnation complaint is filed.

The appraiser who will testify in court as to value of the parcel needed for the Department’s project will now be working under the SAAG, not the Department.

When condemnation is necessary, the appraisal should always include the value of the whole property before and after the acquisition, or as instructed by the SAAG. 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 3.6.21 for further information).

When the SAAG 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 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 taking, and, when appropriate, after the taking.
- Complex severance damages or other valuation problems that necessarily produce uncertainties as to value.
- Uncertainty as to interpretations of state law concerning the measure or compensability of particular elements of value or damage, or concerning the admissibility of evidence necessary to prove facts in issue.
- Recent court or jury awards for eminent domain takings 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 value and/or damages.

3.12 VALUATION OF EXCESS LAND

3.12.1 General

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 (see Appendix A for definition), the review appraiser will prepare a file memorandum, with assistance from the original appraiser, that will document an allocation of the contributory 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 6.9.1). This allocated value is included in the NORWAY inventory for historical purposes and does not necessarily represent market value. It is for internal documentation purposes only.

- 605 ILCS 5/4-508 requires excess land be disposed of for no less than its fair appraised (market) value. The minimum fair market value of an excess land parcel is \$300.
 - For a Directed Sale (the release of easements or access rights to the original Grantor) – One appraisal and one review appraisal are required.
 - For a Legislative Release (dedication, access control, directed sale) – If the value is under \$5,000 only one appraisal and one review appraisal are required. If the value is \$5,000 and above, three appraisals are required, with no review appraisal.
 - For a Public Auction – One appraisal and one review appraisal are required.
- Waiver valuations are not considered appraisals so they cannot be used to value land to be disposed.
- The minimum requirements for these appraisals shall be the same as for property to be acquired.
- There may be instances when the property to be disposed has been recently acquired. In these instances, it is permissible for the district review appraiser, who reviewed the appraisals for the acquisition of the property, to write documentation based on the original review in support of the value of the excess land. When this is done, it will not be necessary to obtain a separate appraisal on the excess land. The time between the original review and the documentation should not exceed six months in an active real estate market and one year otherwise.
- Two appraisals may be obtained when a complicated problem is involved or when requested by CBLA.
- Appraisals must be approved by a district review appraiser and the regional engineer.
- All valuations of property to be disposed 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 appraiser. The assignment of fee appraisers will be made in accordance with the selection criteria described in Section 3.2.

3.12.2 Valuation of Stand-Alone Parcels

If the excess land is owned in fee by the department and the highest and best use is a “stand-alone” parcel, the appraiser will use comparable sales to determine the fee value of the parcel.

3.12.3 Valuation of Assemblage Parcels

If the excess land is owned in fee by the department and the highest and best use is assemblage with an adjoining property, the appraiser will have to determine if the value of the excess land has been enhanced by the assemblage. Enhancement is created when adjoining parcels have a greater unit value assembled than they do separately. If there is no enhancement, the excess land should be appraised using values of similar adjacent property. If there is enhancement, the excess land parcel should be valued at the enhanced unit value. When there are multiple adjoining owners and the excess land will be sold at public auction or by sealed bid, the excess land should be appraised as unenhanced. Assemblage costs can be considered by the appraiser, but have to be thoroughly explained and documented in the appraisal.

3.12.4 Valuation of Dedicated Land

When the department is releasing a dedication of right of way for highway purposes, the appraiser will first determine the fee value of the dedicated land by using comparable sales of similar types of property as well as using the fee value of the abutting property. If the abutting property has sold within the past five years and is comparable to the dedicated land, it should be considered by the appraiser. For example, if the land to be released is tillable and can be farmed in conjunction with the abutting land, the fee value should be based on sales of tillable land in the area. A factor has been added to the percentages in [LA 37134](#) Template to cover the fact that reshaped land may not be as productive as other tillable land. Land that has had the pavement removed and has been 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 value. The size and shape of the dedicated land shall be considered by the appraiser.

After the fee value for the dedicated land has been established, the appraiser shall apply the appropriate percentage from [LA 37134](#) Template under LAND TO BE RELEASED 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 market value when the adjoining land is developed (residential, commercial, and industrial properties) and 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 value is affected. Include in the Scope of Work that the department utilizes percentage adjustments to maintain uniformity in the valuation of dedicated land and may not reflect market adjustments.

3.12.5 Valuation of Dedicated Land and Access Rights

When access rights are released along with the dedicated land, the appraiser will value the dedicated land as stated above and apply the appropriate percentage from [LA 37134](#) Template under EASEMENT AND ACCESS RIGHTS TO BE RELEASED. 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 value and a before and after appraisal is not required, but should be addressed in the appraisal. The values of the dedicated land and the access rights are considered together to determine the total amount for the release of dedicated land and access rights.

3.12.6 Valuation of Access Rights Only

When only access rights will be released, the appraiser will value the property to which the access rights to the highway are being restored before and after the release of the access rights. The difference will be the amount to be received for the release.

3.12.7 Valuation of Easements

When a permanent easement is released, the appraiser values the property to which the easement will be restored before and after the release of the easement. The difference is the amount to be received for the release of the easement.

3.13 LAND ECONOMIC STUDIES

3.13.1 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 determining adjustments to the comparable sales used to value the remaining property in a partial taking in connection with appraisals for transportation projects.

3.13.2 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.

3.13.3 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, a special form is completed ([LA 394](#) Template). This special form is for reference purposes and includes the grantor's 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 word "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 Supervisor of Assessments, Assessor or Board of Assessors of the County where the property is located.

3.13.4 Screening

Once the courthouse investigation is exhausted, the sale forms prepared at the courthouse are examined to determine 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.

3.13.5 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 which had an effect on the sale price. Use [LA 396](#) Template 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 should 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.

3.13.6 The Rough Draft

After the most promising studies have been chosen, the appraisals for each parcel are obtained. Templates [LA 397A](#), [LA 397B](#), and [LA 397C](#) represent the urban and rural land economic study preliminary forms, respectively. 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 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 (see [LA 397D](#) Exhibit).

3.13.7 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 value to arrive at the value of the remainder before taking, to which a market condition adjustment is applied, creating an adjusted value of the remainder before taking. 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 value of the remainder before taking and the subsequent sale price is the indicated damage or benefit to the property. This difference is then divided by the value of the remainder before taking to show the percentage of damage or benefit.

3.13.8 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.

3.13.9 Printing Procedure

The final stage of the creation of a land economic study is publication. A memorandum is sent to the Engineer of Land Acquisition 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 estimating after 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.

4 NEGOTIATION AND ACQUISITION

4.1 NEGOTIATION POLICIES

The following policies govern the acquisition of real property for state as well as local public agency highway improvement projects. Uniformity in the application of these policies and procedures under the guidance of the Central Bureau of Land Acquisition (CBLA) will ensure federal reimbursement and maintain a high standard of integrity and professionalism in the acquisition of private property for public use.

4.1.1 General

Only those staff and fee personnel on the approved list (as described in Chapter 1) are approved to perform negotiations.

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

In all cases, it is the responsibility of the regional engineers and their staffs to ensure that right of way acquisition is in conformity with the state procedures.

Prior to the first contact with a property owner the negotiator shall sign a statement that (1) he/she understands that the parcel is to be secured for use in connection with a federal-aid or state highway project; and (2) he/she has 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 that (1) the written agreement secured embodies all of the considerations agreed upon between the negotiator and the property owner; and (2) 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. Both certifications are included as a part of the Negotiator's Report ([LA 4110](#)).

A successful negotiation is a result of thorough preparation and personal contact with the property owner. The negotiator must have certain knowledge of each parcel. In addition to having a working familiarity with the 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.

4.1.2 Right of Way Plans, Design and Construction Features

In order for the negotiator to become thoroughly familiar with the plans and profiles, he/she may need to consult with the District Studies and Plans Section to obtain an explanation of unusual design features. With this information, the negotiator will then be able to provide the owner with a proper description of the proposed highway improvement, its necessity and its advantages.

The negotiator should be prepared to discuss intelligently and understandably certain highway construction and design features that may affect the valuation and/or usage of the property. The following list is suggested:

- 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 facility 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 or channel change or for other uses
- Changes in drainage patterns, if any
- Other features

Complete knowledge, truthfulness, full disclosure and discussion of all facts relative to construction and design features are necessary and will do much to instill in the owner a justifiable feeling of confidence and trust in the negotiator.

The construction plans may be advantageously employed to show 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.

If the negotiator has highlighted the parcels to be acquired, and outlined the subject property, this will allow the owner to see:

- The breadth and extent of the properties required for this project and the numbers of friends and neighbors who are being affected by the right of way acquisition.
- The parcels already acquired. Knowledge that other properties have been acquired may make a favorable impression on the owner and assist in negotiating the acquisition of the property.
- That the property is outlined for ready reference and is not considered as being only one among many.

Each property owner is entitled to know exactly what type of right of way plans are being discussed. Preliminary plans must be clearly labeled PRELIMINARY to alert the property owner to possible future changes. This would also apply to preliminary construction plans if presented to the landowner for review.

Show the instruments of conveyance while discussing the right of way map, or immediately following. To assist the property owner, read the calls in the description and trace the same on the right of way map when a partial acquisition is involved. Supplement the description by relating them to known physical landmarks so the owner can graphically recognize the land to be acquired and the land remaining, if any.

4.1.3 Appraisals and Waiver Valuations

Having knowledge of the appraisal process, appraisal reports and waiver valuations in conjunction with the layout of the project allows the negotiator to understand the taking, damages and/or enhancements involved and be better prepared to answer questions regarding the appraisal or waiver valuation. Provide a copy of the appraisal or waiver valuation to the property owner at the initiation of negotiations.

In the event the fair market value is revised by the review appraiser, present the property owner the revised offer, the revised written summary statement and a copy of the revised appraisal or waiver valuation. The negotiator records the dollar amount of all offers in the negotiator's record. Never defer or use any other coercive action compelling an agreement on the price to be paid for the property.

When the appraiser recognizes damages because of the acquisition and design of the highway the negotiator shall point out the cause of damage and how the appraisal has taken the damages into consideration. If at all possible, do this before it occurs to the owner. If not, the owner may form an impression that vital information is being withheld.

A different individual shall make the appraisal, perform the appraisal review, and negotiate on parcels which are acquired for state or local public agencies, except under the following circumstances:

- In cases of minor acquisitions involving compensation of \$10,000 or less, the waiver valuation preparer may also act as the negotiator on that same parcel under the waiver valuation procedure; or
- In cases of acquisition by and for local public agency highway improvement projects, the waiver valuation preparer may also act as the negotiator on the same parcel where the compensation for such parcel is \$10,000 or less.

Within a district, staff or fee persons functioning as negotiators may not supervise or formally evaluate the performance of any person performing waiver valuation, appraisal, or review appraisal duties. However, this prohibition does not apply to persons not actively functioning as a negotiator, but functioning only as an administrator or project manager.

A district may request a waiver from the above prohibition should compliance with this requirement be a hardship. All such requests must be submitted to CBLA for review and forwarded to FHWA for its approval or denial. Consultants should work to organize their staff in such a manner as to avoid having a person functioning as a negotiator supervising or formally evaluating the performance of any person performing waiver valuation, appraisal, or review appraisal duties.

4.1.4 Group Meetings

It is appropriate to have full consideration of social, economic and environmental impacts and that there be meaningful input from the public into project development through a public involvement process. Consequently, no right of way activities which involve contacts outside of the department shall begin until after the public involvement process is complete, and until the design report is approved.

Every statement made by a negotiator is "on the record". The negotiator cannot avoid responsibility for acts and words during the negotiations regardless of whether the acts or words were made before a group or in the privacy of an owner's home. Public presentations often involve more pressure, and public attention is more directly focused. Any statements in public should reflect the desire of the negotiator to be of service and such statements should be factual, impartial, and objective.

4.1.5 Acquisition Process

As per 735 ILCS 30/10-5-15(c) and 49 CFR 24.5, at the time of first contact with the property owner, the negotiator advises the property owner of the details of the acquisition, the

effect of the acquisition on the property, the name, address and telephone number of the negotiator and the IDOT representative to be contacted concerning their rights. The written notification is hand delivered or sent by U.S. certified mail with return receipt requested for proof of delivery. The written notification can be included within the combination introductory/offer letter (LA 416) or in a separate introductory letter (LA 415). If using a separate introductory letter, the appropriate offer letter to be used is LA 416A.

Make every reasonable effort to contact the property owner. When the return receipt is not returned, the following are considered reasonable steps to make contact:

1. Resending the notice by regular mail.
2. Posting the notice on the property.
3. Resending the notice but address it to “occupant.”

Make every reasonable effort to acquire the real property expeditiously by negotiation. Each property owner residing within the state or his/her representative is personally contacted by a negotiator representing the acquiring agency to discuss its offer and explain the full effect of the taking.

When right of way is acquired by negotiation, the complete agreement between the department's Office of Highways Project Implementation (and the property owner is embodied in written instruments appropriately executed.

Illinois has no authority to obtain possession of property by a 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 for a just compensation set by the court.

Negotiation officially commences when the negotiator approaches the property owner by personal contact, or by letter, to formally present a written offer for the proposed transaction, including compensation to be paid. An oral offer without a written offer does not constitute the commencement or the initiation of negotiation. The normal end of negotiation is when the compensation has been paid to the owner of title.

4.1.6 Offer Packet

After the appraisal or waiver valuation has established the fair market value of the property, the initial contact with the property owner by the negotiator may be by phone or in person. The preferable method of delivering the offer package is in person; however, when the property owner prefers the negotiation package be sent prior to a personal meeting, the package is sent by U.S. certified mail with return receipt requested. At least one in-person contact with the property owner to review and explain their rights and the offer package documents must be made during negotiations. When the property owner (or their representative) refuses an in-person meeting, the time, date and method of notification must be included in the negotiator's report. The offer packet includes the following:

- Offer Letter (LA 416A) (which may also be mailed no earlier than five (5) days before the first meeting)
- Basis for Computing Approved Compensation and Offer to Purchase (LA 416E);

- Instruments of conveyance and other supportive or title curative documents;
- A copy of the approved appraisal and appraisal review certification or a copy of the waiver valuation establishing fair market value;
- Other materials such as title information, plat, maps and plans; and
- Pamphlets entitled “Highway Improvements and Property Rights,” prepared by the Illinois Department of Transportation, and “A Landowner’s Guide to Land Acquisition by the State and Eminent Domain,” prepared by the Illinois Attorney General.

Do not contact owners at their place of business unless it is the 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.

4.1.7 Offer Presentation

Include all persons (at the first meeting) who have an interest in the fee title to the property.

In regards to Local Public Agency Projects, all offers must be made in writing and on the Local Public Agency’s letterhead.

Discuss all the 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 conference with the fee owner.

It is not appropriate or desirable for disinterested parties to be in attendance at the first meeting as there may be discussions regarding valuation, marital status, liens or other items that may tend to be embarrassing before a third party. The exception to this preferred practice would normally be in the case of elderly people who may desire to have a relative or advisor present to assist them with their decisions.

4.1.8 Title Information

Confirm information regarding title matters as soon as possible during the first meeting, at some appropriate time before the value is discussed. The discussion regarding ownership might occur during the preliminary period to help establish a businesslike atmosphere. Other title questions could be inserted when the occasion presents itself.

There will be instances, however, when it will be advisable to hold title questions concerning marital status or heirship when the negotiator receives some indication of friction or resentment because of such questions. It may also prove embarrassing to probe into judgments or liens against the property in the presence of a third person.

The negotiator will be prepared to explain all the printed matter in the instrument.

4.1.9 Closing on the First Contact

The complexity of the proposed taking will determine the negotiator's actions and behavior in closing on the first contact. On minor acquisitions, the objective of closing the transaction with one meeting is possible. Generally, more than one meeting with the property owner to reach agreement is warranted.

4.1.10 Subsequent Contacts

Before leaving the first meeting with the property owner, the negotiator hands out his/her business card and explains further contact will be made in one (1) to two (2) weeks' time. The number and frequency of contacts is left to the discretion and judgment of the negotiator, taking into account established deadlines for the completion of the acquisition of right of way.

4.1.11 Items Which May Assist in Closing

The following items, which differ somewhat from other types of real estate transactions, may be of benefit in closing an acquisition by the department.

- The department bears the expense of the title search and the title insurance.
- The department provides instruments (transfer of title, mortgage releases, and recording fees) at no cost to the owner.
- There are no brokerage 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 6.3.1 for details.)
- A relocation assistance program, administered by the state, is designed to reduce the cost and inconvenience to eligible displaced families, businesses, and farm operations.

When the negotiator presents information to a property owner who may be eligible to receive benefits under the department's Relocation Assistance and Payments Program, noted in the Negotiator's Report ([LA 4110](#)) and the Relocation Assistance Unit Record ([LA 541D](#)). The negotiator coordinates the delivery of the offer to purchase the property with the relocation representative assigned to the parcel prior to the initiation of negotiations. The relocation representative accompanies the negotiator when the offer to purchase the property is presented to the owner-occupant in order to explain the relocation program and the property owner's eligibility. The relocation representative must promptly notify the tenant of their eligibility once the negotiator has delivered the offer to purchase the property.

4.1.12 Donations or Administrative Settlements

The first time offer made to the owners is the approved fair market value of the property as determined by the review appraiser and approved by the regional engineer. Settlements below or above the estimate of fair market value must be supported. The negotiator shows,

through expert support and without the advantage of increasing the offer, the fairness of the department's offer. This can be accomplished by reaffirming the appraisal process and by explaining to the owners the need for the proposed highway improvement.

A) Donations. A bona fide offer by an owner to sell for less than fair market value (including an offer to donate property) could comprise such support. The owner will 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 419) signed by the owner, constitutes a waiver of the owner's rights to just compensation and used when property is donated to the state. A donation letter is always required in those cases when a developer donates property in conjunction with an entrance or other improvement they request. Owners who donate land must comply with Illinois disclosure laws. (See LA 410D7, LA 410D8, LA 410D9 and LA 410D10 for deeds.)

B) Administrative Settlements. The department's offer to purchase is not inflexible. If additional items of value are brought to light or other oversights noted during the course of negotiations, the negotiator reports the same to the district land acquisition engineer/manager for consideration. All property owners' counteroffers are reported and responded to in writing. The regional engineer may increase the offer over and above the established fair market if there are circumstances that support the increase in value.

If an agreement is not reached through the state's normal negotiation procedures, prior to the filing of condemnation proceedings, the regional engineer reviews the parcel file, giving full consideration to all pertinent information. This information includes the appraiser's and review appraiser's estimate of fair market value, recent awards by condemnation juries for similar property in the same area, and the nature of the state's probable testimony should the case be litigated. The regional engineer or the regional engineer's designee determines a settlement should be attempted at an amount other than that previously offered the property owner. However, do not use such settlements solely as a mechanism to avoid condemnation proceedings.

Where a settlement is made on the basis of an administrative determination and such settlement varies from the state review appraiser's estimate of fair market value, the parcel file contains 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 warrant request on all parcels.

Where a settlement is made on the basis of an administrative determination and the parcel was appraised under the minimum payment procedure the settlement can be made for an amount greater than \$10,000 with proper justification and documentation, without the need for a full appraisal.

4.1.13 Negotiator's Report

Negotiators maintain in the parcel file a current written record including, but not limited to, the pertinent points of each discussion or contact with the property owner, the date(s) and place(s) of such contact, offers made, the owners reaction thereto, and the signature or initials of the negotiator following each entry on the record. Use the Negotiator's Report (LA 4110) for this purpose. All entries to the Negotiator's Report are required to be made within 24 hours of the initial contact. This report is considered part of the project parcel file at initiation. This report is beneficial to the negotiator and others within the department and the Federal Highway Administration in reviewing the history of the negotiation and in the analysis of negotiation procedures.

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). In the case of a trust, corporation, or business entity where no individuals are named, no entry is required.

The inclusion of information regarding heirs and other owners of interest and their addresses, sales of property which the appraisers have not considered, counter-offers by the owner, points of discussion related to controversial or over-looked items, special considerations regarding the owners acquisition of the subject property or any of the comparable properties, and other details of title or value 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 on said Negotiator's Report. Each entry on the Negotiator's Report must be identified by the signature or initials of the negotiator making the entry.

4.1.14 Uneconomic Remnant

An uneconomic remnant is the remaining portion of real property, after a partial acquisition, which is determined to have little or no value or utility to the owner.

When, in the judgment of the acquiring agency, either inaccessible or accessible remnants of land from which right of way is being acquired are determined to be uneconomic remnants, simultaneously with making of the offer to the owner to purchase the needed right of way, the department's negotiator offers to purchase the uneconomic remnant. In the case of any accessible uneconomic remnant, 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 such remnant ([LA 4111](#)) or merge into the offer for the needed right of way. Remnants may be acquired by separate deed or may be acquired by the deed for the needed right of way (also see Section 4.18).

Notify the district property manager of such an uneconomic remnant/remainder acquisition. This information is incorporated into the department's NORWAY inventory (see Section 6.9).

4.1.15 Retention of Improvements

All improvements within the area required for highway right of way must be removed by one of several means:

- Retention by the property owner for a predetermined price
- Public sale, by sealed bids or at public auction, for not less than a minimum predetermined price
- By the road contractor as part of the overall construction contract
- By a demolition contract (under separate 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 improvements. Execute a complete written agreement between the department and the owners setting out the requirements and responsibilities. The negotiator is familiar with the procedures

set out in Chapter 6, Property Management Policies and Procedures, 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 personal property and not improvements (see Chapter 9).

4.1.16 Acquisition of Tenant-Owned Improvements

The acquisition of tenant-owned improvements from a tenant owner can be accomplished under certain circumstances. Acquisitions involving tenant-owned improvements are closely coordinated with the department's appraiser avoiding 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.)).

In these cases, make the offer of just compensation to the record owner based on an appraisal considering the existence of any tenant-owned improvements which does not violate the unit rule by valuing those improvements separately.

When the offer is made to the owner of record, the specifics regarding any tenant-owned improvements can be determined. At this time, the negotiator informs the record owner that it is possible, for negotiation purposes, to request that the department make an allocation of values between the land and the tenant-owned improvements, if the record owner is willing to sign an affidavit disclaiming all interest (LA 4113A) in the improvements to be acquired. If the record owner executes the disclaimer, the negotiator goes back to the appraisal unit/section and asks for a reasonable allocation of values between the land owner's interest and the tenant-owned improvements. The negotiator makes new offers to each party based on this allocation. Make the amount offered for the tenant-owned improvements utilizing the "Tenant-Owned Improvement Compensation and Offer to Purchase" (LA 4113A1). If the record owner refuses to disclaim all interest in the improvements, conduct negotiations solely with the record owner. The tenant's interest has to be released before title approval is given with a tenant's release.

Offer the compensation allocated for the tenant-owned improvements to the tenant owners by providing an offer letter (LA 4113C) and a Tenant-Owned Improvement Compensation and Offer to Purchase (LA 4113A1) containing the allocation of the tenant-owned improvements being acquired. 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.

If all parties agree with the values allocated, execute the instruments necessary to convey their respective interests to the department. Separate warrants may be drawn in favor of the record owner and the tenant owner.

If the fee owner executes the disclaimer and either the fee owner or the tenant owner cannot agree to the amounts allocated and offered for their respective interests, both parties are informed that the department initiates condemnation proceedings to acquire the needed property, and the court, in said proceedings, has exclusive authority to hear and determine all rights in and to the just compensation to be deposited in such proceedings. Separate 60-day notices should be sent to both the record owner and the tenant owner. The 60-Day Notice (LA 4114A) should be sent to the fee owner and the 60-Day Notice – Tenant-Owner (LA 4114B) should be sent to the owner of the improvements. If the department is aware of tenant-owned improvements and the record owner has refused to sign the required disclaimer and

condemnation is necessary, the tenant owner will be given a copy of the 60-day notice provided to the fee owner by certified mail.

4.1.17 60-Day Notice

At some point during negotiations, when it appears likely that condemnation is needed, the negotiator should explain to the property owner the provisions of 735 ILCS 30/10-5-15 and the requirement to provide the property owner with a 60-day notice (LA 4114A) by certified mail prior to the filing of a condemnation proceeding. Although the 60-day notice is the only statutory requirement that exists before the department can file an eminent domain action, the negotiator can provide the property owner with a Restatement of Offer Letter (LA 4114C) prior to the time the complaint is filed.

4.1.18 Explanation of Legal Rights, Obligations, Etc.

Often a discussion of legal rights arises with condemnation proceedings. The negotiator never threatens condemnation, even by inference or implication. The negotiator's responsibility and function is to explain the condemnation process and point out that the condemnation process is based upon certain constitutional and legislative provisions. The negotiator never attempts to advise or explain to the property owner what his or her legal rights may be, this may constitute the unauthorized practice of law.

When condemnation appears to be the only recourse after honest efforts to reach agreement have failed, the negotiator may be asked to describe the usual course of events in such proceedings, such as the "restatement of offer" letter (LA 4114C) the request for condemnation, the filing of the complaint, etc. In doing so, the negotiator must emphasize that:

- A negotiated settlement can be reached even after such proceedings are initiated; and,
- At least 60 days before filing a complaint to initiate condemnation proceedings the department sends a letter by certified mail, return receipt requested, to the owner of the property to be acquired giving the property owner the following information:
 - A complete copy of the Basis for Computing as originally presented;
 - A statement that the department continues to seek a negotiated settlement with the property owner; and
 - A statement that in the absence of a negotiated settlement it is the intent of the agency to initiate condemnation proceedings (LA 4114A).
- However, after the complaint for condemnation has been filed in the court of record, and notice served, all contacts with the property owner must be authorized by the SAAG in charge of the case.

In order to satisfy the requirements for good faith negotiations prior to condemnation, a second 60-day notice letter to the property owner(s) by U.S. Certified Mail whenever there has been a revised offer and either:

- The size of the acquisition increases regardless of an increased monetary offer;

- The size of the acquisition decreases and the new monetary offer has a lower price per acre (or square foot) than the original offer;
- Whenever a temporary easement is expired or an extension of time is required or requested; or
- Such other circumstances which are disadvantageous to the property owner(s).

The only time when a second 60-day letter is not required is:

- When the department decreases the size of the acquisition 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
- When the monetary offer is increased but the size of the acquisition remains the same. (For example: An update of the appraisal caused a delay which resulted in an increased value).

4.1.19 Date of Possession

Be very explicit in detailing the expenses or deductions to be incurred by the property owner for the consummation of the transaction (such as taxes, judgments, lessees' interest, etc.).

It should be noted that once the property is actually paid for by delivery of the warrant (or the warrant for the amount of the just compensation established by the court has been deposited), provide the former owners 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 charges rent for any continued occupancy of the property based on the values previously established in the Improvement Disposition and Rental Value ([LA 623](#)). 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. If the occupant is illegally on the property, paying no rent after the initial 30-day period, 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.

In situations when the property is needed immediately for highway construction purposes and the occupant remains after the 30 day period, eviction proceedings are undertaken.

4.2 ACQUISITION POLICES

Authority for the acquisition and disposition of real property required for highway purposes is established and governed by statute 605 ILCS 5/4-501 to 5/4-511 inclusive. Eminent Domain is utilized to accomplish such acquisition through court action in the event an agreement cannot be reached with the property owner (735 ILCS 30/1-1-1 to 30/99-5-5 inclusive).

4.3 INTEREST TO BE ACQUIRED

The department acquires the fee simple title, or such lesser interest as may be desired, to any land, rights or other property necessary for highway purposes by purchase or through eminent domain proceedings. Except in those instances that involve very unusual cases, fee title is acquired within the proposed highway right of way.

Permanent easements ([LA 410K](#), [LA 410K1](#), [LA 410K2](#), [LA 410K3](#), [LA 410K4](#), [LA 410K5](#) or [LA 410K6](#)) are obtained outside the proposed highway right of way lines to cover the construction and/or installation of appurtenant highway facilities of a permanent nature. Installation of an outfall storm sewer, rip-rapping of stream channels, or channel changes are examples where future entry for maintenance or reconstruction purposes would necessitate a permanent easement. The acquisition of a permanent easement is accomplished in the same manner as for a fee taking with respect to appraisal and acquisition requirements.

When a property owner or district prefers the acquisition by dedication ([LA 410I](#), [LA 410J](#), [LA 410J1](#) or [LA 410J2](#)), the property may be acquired by dedication under the following conditions:

- The property owner waives their right for compensation and agrees to donate the parcel; or
- The property owner requests compensation and CBLA gives approval after consulting with OCC; or
- Where a permit project requires land to be donated to the department, IDOT may take title by dedication by means of subdivision plat. A title search must be completed on the parcel and the dedication may only proceed when the following are met:
 - The title search shows that the parcel is clear of all liens;
 - The title search shows a lien or liens and a release or partial release of the lien(s) is obtained; or
 -
 - The title search shows a lien or liens and the department is willing to assume the risk in not clearing the lien(s). The Regional Engineer or designee makes the final determination if the risk should be assumed.
- Where the acquiring agency is a local public agency.

Temporary construction easements ([LA 410M](#), [LA 410M1](#), [LA 410M2](#), [LA 410M3](#), [LA 410M5](#), [LA 410M6](#) or [LA 410M7](#)) are also obtained outside the proposed highway right of way lines to perform various types of work incidental to construction of the highway improvement project.

Temporary construction easements are grants of an estate or interest in land and as such are irrevocable. Temporary easements are recorded to run with the land. Acquisition of temporary construction easements should be accomplished in the same manner as the acquisition of a fee taking or a permanent easement with respect to appraisal and acquisition requirements. Obtain construction easements for such things as detour roads, borrow pits, removal of remainders of buildings situated partially on acquired right of way, channel changes

requiring no future maintenance, etc., where the specified use is essential to completion of construction of the proposed improvement. If a release is required for a recorded temporary easement because the project has been completed or the project has been abandoned, use Release of Temporary Construction Easement (LA 410M4).

Although located outside or beyond the proposed highway right of way lines, all easements are considered as 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.

4.4 FACTORS WHICH MAY AFFECT EXECUTION AND OWNERSHIP

Prior to the initial contact by the negotiator, a thorough study is made of the title requirements to expedite the acquisition process and to insure a proper conveyance of the interest sought. 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 a licensed Illinois attorney (705 ILCS 205/1).

Consequently, a determination will be made as to (1) the instruments needed to convey the interest sought and the form thereof, (2) the signatures required and the form thereof, and (3) what other instruments will have to be executed or what action taken to obtain good title.

It is impractical to list all of the factors affecting execution and ownership; however, those normally encountered will be discussed.

4.4.1 Owners

All instruments of conveyance must recite the full consideration including the value attributed to damages to the remainder. The state of Illinois does not accept less than a warranty deed when acquiring fee title except acquisitions from a railroad, public utility, trust or contract buyer. In these cases a quitclaim deed is acceptable provided the granting clause contains "after acquired title" language. This after acquired title clause reads 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."

The statutes require warranty deeds, quitclaim deeds and mortgages to have the names of the parties typed or printed below the signatures. The first page of the document shall also contain a blank space of 3 inches by 5 inches in the upper right hand corner for use by the recorder (55 ILCS 5/3-5018).

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) 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 grantor is identified in the same manner in all three places where the grantor is identified in the deed. The following typical grantor names illustrate this:

- 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, qualified to do business in Illinois

The legal age for conveyance purposes is 18.

4.4.2 Marital Status

Disclose in the granting clause the correct legal marital status of ALL grantors. The correct marital status in Illinois is disclosed by the use of the words, such as, "a single person, never married; widow; widower; husband and wife; divorced and not remarried; parties to a civil union" as appropriate.

4.4.3 Homestead and Release of Marital Rights

Title holding grantors and their spouses must execute a release of homestead rights if the property is a homestead. If the property is not a homestead, said instrument should so state immediately after the legal description by the following statement, "The Grantor does not possess rights of homestead in the premises." Determining whether or not the property is a homestead is often difficult and the safe procedure is to obtain the signature of the non-title holding spouse of the grantor even though an affidavit indicating that there is no homestead may be acceptable. For temporary construction easements it is not necessary to obtain signatures of non-title spouses; further, homestead release statements and "the Grantor does not possess rights of homestead in the premises" statements need not appear in the instrument of conveyance.

The homestead release, which states, "...hereby releasing and waiving all right under and by virtue of the Homestead Exemption Laws of the State of Illinois" is required for deeds, permanent easements and donations from individual property owners and, trusts that hold residential property and 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.

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 and the deed should state "The Grantor does not possess rights of homestead in the premises." If the individuals do reside there as well as conduct their business on the property, then homestead rights attach in which case both spouses must execute the deed and release their homestead rights.

When an acquisition involves separated or divorced individuals, the possibility of the property being considered a homestead should be considered. Therefore, an examination should be made of the court's dissolution of marriage decree, because marital interests may continue after separation and possibly divorce.

4.4.4 Property Held Jointly

Title to real estate may be held by the owners in several different ways. If a spouse of a husband or wife who owns property solely in his or her own name dies, the title remains in the husband or wife and no interest in the property passes to the children of the couple. However, many times there will be two or more owners of real estate who own the property as joint

tenants or as tenants by the entirety (available only for the homestead of a husband and wife). In such case, upon the death of one of the owners, the survivors become the sole owners of the real estate. However, if there is no clear intent that the property be held in joint tenancy or as tenants by the entirety, then the property is held as tenants in common and, upon the death of any of the owners, that interest descends to the deceased owners' heirs unless devised to others by will. Whether title is held in joint tenancy, tenancy by the entirety or tenancy in common, all living title holders must be signatories. If one owner has died and the nature of the tenancy is not easily determined, please contact the Office of the Chief Counsel for guidance.

4.4.5 Estates

When an acquisition involves land held by a decedent's estate, obtain a copy of the decedent's last will and testament, and a copy of the court order appointing the personal representative for the estate subject to probate must be obtained.

When a court has jurisdiction over the estate, court approval may be required for any sale of property. The will may grant the executor the power of sale. A representative, in their capacity as such, executes an Executor's Deed ([LA 410Z](#), [LA 410Z1](#), [LA 410Z2](#) and [LA 410Z3](#)) conveying the property to the state. If independent administration has been ordered, the personal representative can generally convey real property without court order.

Examine the will to determine the disposition of the property. The surviving spouse remains an interested party. The devisees also receive their interest as of the moment of death but subject to debts, taxes, and costs of administration. After a will is filed for probate, there are statutory periods for filing of claims, contesting the will and renunciation of the will by the surviving spouse. A title company may require additional documentation to waive potential claims arising in these areas.

Open estates may be subject to federal and state estate taxes which must be satisfied to clear title. Sometimes an affidavit stating that the personal property has a value which is sufficient to meet all claims will be satisfactory to the title insurance company to waive these obligations.

For guardianship (the estates of disabled adults or of minors), court approval of a conveyance is required. In such cases, obtain a copy of the court order appointing the guardian and a copy of the court order approving the conveyance.

4.4.6 Condominium Property

The approval of title in condominium acquisitions is on a case-by-case basis and requires close coordination with the Office of the Attorney General as well as the title company.

There will be cases when the Attorney General approves title without a formal title commitment. A letter from the title company is required stating the search of the records indicates the property in question is held in the name of a specific condominium association and the title company will insure good title after conveyance by the board. With this letter, the title company provides the district with a copy of the Declaration of Condominium Ownership. From this information the district determines whom to contact to discuss and get copies of the bylaws describing the power, authority, and structure of the appropriate board responsible for conducting the business of the condominium association.

It is important that the title company knows exactly the size and location of land taken from the condominium property. This enables the determination of possible easements, liens, or mortgages affected by the acquisition. The title company provides this information from the condominium plat recorded with the declaration. This information is provided in letter form to

the district. When the department has no title commitment to rely on, the standard “Affidavit of Title” will need modification to also address any encumbrances.

Along with the appropriately executed conveyance documents and the standard supporting material, obtain an affidavit indicating the identity of each board member and certifying their tenure as officers or agents is current.

Also required is a resolution of the appropriate board members indicating the conveyance is approved in accordance with the bylaws of the condominium association.

When a taking includes any interest of a specific owner of a condominium outside the common areas, a formal commitment will be required and those interests will need to be acquired from the specific owner. Condemnation actions involving condominium ownership also require a title commitment.

4.4.7 Limited Liability Company

A limited liability company (LLC) is authorized to own and sell real property under 805 ILCS 180/1-30(3) & (4). An LLC has articles of organization which specify the management of the LLC. An operating agreement can provide for the appointment of a manager and define his/her authority. An LLC is formed by filing the articles of organization with the Secretary of State. The filing of annual reports with the Secretary of State is also required.

When acquiring from an LLC, the following documents are required:

- A warranty deed ([LA 410D1](#) or [LA 410D2](#)) signed on behalf of the LLC by the person or persons designated in the articles of organization as having management authority. The corporate deed form may be modified.
- Copies of the articles of organization and any amendments. If the articles of organization do not provide for property sales, the operating agreement may also be required.
- If the articles of organization or operating agreement show interests held by a corporation, partnership, or trust, then request disclosure until the names of individuals owning the interest in the entity involved are known, 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 [LA 4111A](#)). If additional Affidavits are necessary, use [LA 4111C](#) or [LA 4111D](#).
- Some indication of good standing from the Secretary of State
- All other documents normally required (receipt, affidavit, tenants’ releases, etc.)

4.4.8 Corporate Property

A) Private Corporations. Real property owned by a corporation is usually conveyed by one or more designated officials of the corporation, such as the president or vice president, and attested to by the secretary after approval by the board of directors. In these cases, the corporate notary acknowledgement must be used. A copy of the duly adopted resolution of the board of directors authorizing the conveyance, certified by the secretary or assistant secretary that such action was taken at a properly held meeting of the board of directors, on a form similar to [LA 448](#), is submitted to CBLA along with the Warrant Requisition. In addition, if the

corporation is incorporated in a state other than Illinois, the CBLA requires proof of incorporation and good standing in that jurisdiction.

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.

An Affidavit of Title ([LA 4111A](#)) is required from the corporation to protect the state from exclusions in the title policy. Also to obtain the identity of every shareholder who is entitled to receive more than 7 ½% of the total distributable income from any corporation having an interest in the property, as mandated by 50 ILCS 105/3.1.

Further, if the initial disclosure, or any subsequent disclosure, shows interests held by another corporation, partnership or trust, then further disclosures should be requested until the names of the individuals owning an interest in the entity is known or until it can be verified that the ultimate owner is a publicly-traded corporation in which no person is entitled to more than 7 ½% of the total distributable income (Templates [LA 4111B](#), [LA 4111C](#), or [LA 4111D](#)).

B) Governmental Entities. If property is being conveyed by a county, municipality or township, certain statutory requirements must be met.

Counties must indicate the vote on the issue 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 authorizing resolution so it may be determined that the vote passed by a majority of the county board members present at the meeting, as required by 55 ILCS 5/2-1005. Each deed from a county should mention the statutory cite of "55 ILCS 5/2-1005."

Municipalities (cities and villages) must indicate the vote on the issue 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 authorizing resolution so it may be determined that the vote passed by a 2/3rds majority of those elected officials in office, as required by 50 ILCS 605/4. Each deed from a municipality should mention the statutory cite of "50 ILCS 605/4."

Townships must indicate the vote on the issue 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 an authorizing resolution so that it may be determined that the vote passed by a majority of the electors present and voting at the township meeting, as required by 60 ILCS 1/35-40. 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. Each deed from a township should mention the statutory cite of "60 ILCS 1/35-40."

4.4.9 Partnerships

4.4.9.1 General

With the adoption in Illinois of the revised Uniform Partnership Act in 1997, partnership property held in the name of the partnership may be transferred by an instrument of transfer executed by any partner in the name of the partnership, subject to a statement of partnership authority recorded in the Recorder's Office of the county in which the property is located.

However, the partnership agreement is always paramount, so a copy of the agreement must be obtained. (See [LA 410D3](#) and [LA 410D4](#) for deeds.)

4.4.9.2 Limited

A limited partnership has one or more general partners who will have the authority to control partnership business, including the right to sell the partnership property. Obtain a copy of the limited partnership agreement to determine the authority of the general partner(s). Limited partners cannot sign a deed of conveyance. (See [LA 410D5](#) and [LA 410D6](#) for deeds.)

If the general or limited partnership agreement shows interests held by a corporation, another partnership or a trust, request disclosure until the names of individuals owning the interest in the entity is discovered ([LA 4111B](#) or [LA 4111C](#)), or it can be verified that the ultimate owner is a publicly-traded corporation in which no person is entitled to more than 7 ½% of the total distributable income ([LA 4111D](#)).

4.4.10 Church Property

Church property is usually held in the name of the board of trustees. However, there are exceptions when it is necessary to determine how the church acquired title. Ordinarily, a vote of approval by the congregation or by the official board must precede action by the board of trustees. The church by-laws should prescribe the proper procedure for conveyances and must be obtained in order that a review can be made to determine if the proper procedure has been followed. Property owned by the Roman Catholic Church is normally conveyed by the Bishop of the Diocese in which the property is located.

4.4.11 School Property

The trustees of schools or school officials having legal title to the land, with the consent of the school board as officially indicated by the adopted resolution ([LA 448B](#)), can sell and convey to the state land required for highway purposes (105 ILCS 5/5-29). 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. (See [LA 410AB](#) or [LA 410AC](#))

4.4.12 Power of Attorney

A property owner (principal) may give another individual (agent) the 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 is a family member. A power of attorney is considered "durable" and may last through the principal's disability or incapacity.

The POA may be either a specific grant for a particular piece of real estate or may be a general statutory short form for property. If property is to be transferred by use of a POA record the POA in the county in which the property is located.

There are certain legal requirements for powers of attorney to be valid. Illinois recently passed a major rewrite of the Power of Attorney Act which will become effective on July 1, 2011. These changes affect both statutory and non-statutory POAs. Because a POA does not conform to legal requirements it may be insufficient to pass title, a copy of the POA is always obtained for reviewed by OCC. In addition, since a POA does not survive the death of the principal and may be revoked at any time, establish by sworn statement that the principal is living and the agency has not been terminated at the date of the delivery of the deed (see [LA 4412](#) for reference).

The deed of conveyance names the property owner as the grantor and not the attorney in fact. The name signed to the deed 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.

4.4.13 Required Signatures, Acknowledgments and Releases

Assure complete agreement between the signatures and acknowledgments and the names of the grantors or other parties appearing in the caption or the body of the instrument. Secure the signatures of tenants and lessees to the required releases. In cases involving tenant-owned improvements, the instrument of conveyance obtained from the tenant owner is a quitclaim deed. In the case of an advertising sign the conveyance document can be a Lessee's Release of Lease and Agreement to Vacate Advertising Sign ([LA 4413A](#)) or Lessee's Release of Lease and Bill of Sale for Advertising Sign or Billboard ([LA 4413B](#)). Obtain releases for all encumbrances, liens, and judgments of record, except in limited cases established by the department, and releases or subordination agreements obtained for miscellaneous easements. Acquire the interest of the tax purchasers. Both the seller and the buyer convey their respective interest in property being sold and purchased under a bond, or contract for deed. The deed is prepared as a warranty deed for signature by the fee owners. A quitclaim deed ([LA 410W](#)) with the after acquired title clause is accepted from the contract buyer (See Section 4.4.17). With certain deeds, such as trustee's deeds, executor deeds, and corporate warranty deeds, the warranty deed signed by the fee owner must not be signed by the contract buyer. In those transactions, the contract buyer must sign a separate quitclaim deed.

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.

4.4.14 Trusts

Trusts can be created by a person during his/her lifetime (inter vivo) or by will (testamentary). Where title is held in the name of a trust, it is necessary to submit for title approval the instrument creating the trust in order to determine if the trustee has power to convey. 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 from being made public. In this situation it may be possible to obtain title approval on the basis of a sworn statement ([LA 4414](#)) which shows the particular provision of the trust relating to such power. Contact the title company before anything less than the complete copy of the trust agreement is provided to the department, giving the title company the opportunity to determine if it will insure title based upon the documentation provided. Many times the trust instrument requires a direction from the beneficiary to the trustee to convey and, if so, a copy of such letter of direction is included with the submittal. Do not confuse trusts of this nature with a Trust Deed which, from its contents, indicates that it is a security transaction somewhat similar to a mortgage. Do not confuse the warranty deed in trust with the trust agreement. Even though provisions of the trust may be referred to in the body of a warranty deed in trust, it is not acceptable in lieu of the trust agreement.

Templates [LA 410E](#), [LA 410F](#), [LA 410G](#), and [LA 410H](#) are examples of the types of deeds used when the department must acquire land from a trust.

4.4.15 Disclosure of Beneficial Interests

Before any contract to acquire or use of real property is entered into by and between the State or any local governmental unit or any agency of either 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 ½% 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, 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 ½% 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.

Other statutes also require the name, address and interest of beneficiaries under oath (765 ILCS 405/2). The Affidavit of Title, [LA 4111A](#), should be used to make the disclosure of beneficial interests. Further, if the initial disclosures, or subsequent disclosures at other levels, show interests held by another corporation, partnership, limited liability company, or trust, then additional disclosure forms, [LA 4111B](#), [LA 4111C](#), and [LA 4111D](#), are used until disclosure is made of the names of individuals owning the interest in the entity involved, or it can be verified that the ultimate owner is a publicly-traded corporation in which no person is entitled to more than 7 ½% of the total distributable income. This statutory requirement cannot be waived by anyone and is required for deeds, permanent 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 419](#)). 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.

4.4.16 Guardians

A guardian is a person lawfully invested with the power, and charged with the duty, of taking care of another person and managing the property and rights of another person, who, for defect of age, understanding, or self-control, is considered incapable of administering his/her own affairs.

A guardian ad litem is a special guardian appointed by the court to prosecute or defend, on behalf of a minor or incompetent person, in a suit to which he/she is a party, and such guardian is considered an officer of the court to represent the interest of the minor or incompetent person in the litigation.

When a guardian or guardian ad litem is appointed by the court to complete a land acquisition transaction and the guardian executes the required conveyance instruments, the documentation to approve title includes a copy of the guardian's letter of appointment and a copy of the court order that empowers the guardian to execute and deliver any deed or other instruments.

4.4.17 Contract for Deed/Installment Land Contract

When an acquisition involves a contract purchase, the contract buyer signs a quitclaim deed ([LA 410W](#)) and the fee owner of the property must sign a warranty deed. The contract buyer may be named as a payee along with the fee owner on the warrant. The fee owner's name cannot be eliminated from the warrant.

4.4.18 Life Estates

When property involves a life estate the remainder men signs a warranty deed. At a minimum, the holder of the life estate signs a quitclaim deed; however, the holder of the life estate may join the remainder men as a grantor on the warranty deed. All parties are named as payees on the warrant.

4.5 ACQUISITIONS INVOLVING GOVERNMENT EMPLOYEES

4.5.1 Acquisitions Involving 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. Owners of such property are treated no differently than anyone else. 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.

When the existence is known of an employee's interest in property 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 451](#) as an example):

- Full name, job title and work address of the employee.
- List a 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 or not 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.

Along with the employee's statement, the regional engineer should include a recommendation on the process for acquiring this particular parcel. In no case, will 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 statement, the regional engineer shall forward a copy to CBLA for review and concurrence and recommendation on the acquisition process for the particular parcel. 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.

4.5.2 Acquisitions from 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 [LA 451](#)).

- 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.)

4.5.3 Suspension of Activities for Non-Awareness

In the event that the acquiring agency is not aware of the existence of an employee's interest in the property being acquired until after a contract has been made with a fee appraiser or an assignment has been made to a staff appraiser, all land acquisition activities on the property involved are immediately suspended and the necessary report forwarded to the chief of CBLA and the procedures set forth in Section 4.5.2 above are followed. Furthermore, the report

contains a summary of all activities conducted on the subject property to date. Concurrence by CBLA is obtained in any corrective action and for the procedures by which the acquisition process followed.

4.5.4 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.

4.5.5 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.

4.6 ENCUMBRANCES

4.6.1 Mortgage Liens

A mortgage constitutes a lien on the land to be acquired. If all of the property is being acquired, a complete and general release of the lien of mortgage is obtained from the mortgagee (LA 410P or LA 410Q). When only part of a property is being acquired, obtain a partial release of the mortgage from the mortgagee (LA 410O or LA 410O1). Partial releases are not required on partial acquisitions costing \$10,000 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, or the remainder's value is less than \$10,000. This includes fee takings and permanent easements.

The mortgagee is named a payee on the warrant even though a partial release has been obtained, unless it requests in writing that its name be omitted from the warrant. 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 portions of the warrant requisition. If the state is acquiring "Access Rights" from a property, such acquisition have an impact on the value of remaining property. Therefore, it is also necessary to secure a partial release from the mortgage company as with any other acquisition over \$10,000. All releases are to be recorded. When the department's acquisition involves only the taking of a temporary easement, obtain a "Mortgagee's Consent to Temporary Easement" (LA 410Y or LA 410Y1) in place of a release on those parcels over \$10,000. The mortgagee is named a payee or a letter obtained stating they do not want named payee on Temporary Easements over \$10,000.

Generally, a partial release of the so-called "blanket mortgages" covering real property owned by the large utility companies subject to the Illinois Commerce Commission, such as railroads and power companies, are not necessary. A statement is made in regard to the title exception on the warrant request as follows: "after considering Section 4.6.1 of the Land Acquisition Manual a release is not required." Where a substantial amount is involved requiring Illinois Commerce Commission approval to the sale, obtain the release.

4.6.2 Real Estate Tax Liens

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 payable until the following year.

All real estate taxes are paid if all or a substantial part of the subject property is being purchased. The statutes provide the owner of real property as of January 1 in any year be liable for the taxes of that year. 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.

The Illinois Attorney General has published guidelines for handling taxes on capital improvement acquisitions. A portion of this publication is reproduced below as a suggested method of dealing with real estate taxes:

"The grantor must arrange to pay the current real estate taxes now outstanding against the property. In this connection, your attention is directed to 35 ILCS 200/9-185 for the manner provided for settling real estate tax liability upon transfer of land to an exempt use. In the event that difficulty is encountered in satisfying real estate taxes before the date that taxes are payable, the following procedure is suggested: the grantor should pay the current real estate taxes now due and owing and deposit with an escrow agent, agreed upon between you or the Special Assistant Attorney General (SAAG) representing you, and the grantor, a sum equal to 120% of the latest available tax bill on the premises. (Please note that county treasurers will often agree to serve as escrow agents and will hold such moneys for application to tax bills when issued.) The amount of the deposit should be based upon the fraction that the property being conveyed bears to the property described on the tax bill and should be pro-rated from January 1 of the current year to the date of the exchange of the consideration. The terms of the escrow agreement should be that the escrowed shall apply the funds in his hands to the payment of the current year's tax bill when issued next year and to refund any excess to the grantor. Upon delivery by the grantor of a properly receipted tax bill showing full payment of such tax before the delinquent date and before application of the fund by the escrowed to such purpose, the escrowed shall return the entire fund to the grantor and deliver the receipt to your office."

Property acquired by the department for highway purposes is exempt from real estate taxes once the state takes title. The department is still required to file an application for exemption. The form is the FEDERAL/STATE AGENCY, Application for Property Tax Exemption, designated as PTAX-300FS and commonly known as PTAX-300 and sometimes referred to herein as the FORM and shown as [LA 462](#). Use this form for all fee acquisitions made by the department.

The PTAX-300 is a Department of Revenue form designed to be generated from LAS. The PTAX-300 automatically draws the necessary data from the Parcel Screen (P), the Appraisal/Negotiation screen (A/N), the Condemnation Screen (CD), and the tax screen (T). It is absolutely mandatory that those screens be kept current and maintained in an accurate manner.

Each year a form of affidavit is requested by the district office from the County Assessor or Supervisor of Assessments in order that any change in ownership previously listed highway

tax exempt property can be noted by the district and filed with the county official (35 ILCS 200/115-10). This matter is also discussed in Chapter 6.

Warrant requisitions reflect the remaining value of the property in dollars so the title data examiner knows if sufficient equity remains to satisfy all taxes. When the whole property has not been appraised, an estimated remaining value of the property is made along with a statement that the whole property was not appraised with a reason therefore.

4.6.3 Liens of Special Assessments

All liens of special assessment levied against the acquired property must be satisfied if all or a substantial portion of the property is being purchased.

4.6.4 Liens of Other State Agencies or Debts Owed the State

State law requires any monies owed to the state to be set off against any amounts due from the state (15 ILCS 405/10.05). Accordingly, whenever a person from whom we are purchasing any real estate interest has a debt owed the state or a lien in favor of the state, consult with the appropriate agency so a release, full or partial, may be obtained and the proper offset made. Because the state cannot issue a warrant if there are federal or state taxes due, include a release with the warrant request as with any other curative documents.

4.6.5 Other Encumbrances

Take care to obtain a waiver of objections or to comply with requests of the title company, prior to submitting a warrant requisition to CBLA. Show the handling of judgments, liens or other interests, such as easements, affecting the title, both recorded and unrecorded, on the warrant requisition. Include replies or explanations for the standard printed objections in the report on title. The warrant requisition also contains a statement that the district has checked the description recited in the report on title and found it to cover the land being acquired by the instrument under consideration.

Since title insurance does not protect against claims of persons whose interests do not appear of record, ascertain all evidence of such possible interests at the earliest possible date. Persons who call upon property owners or visit the property are to ascertain the identities of all parties in possession, to observe any visible evidence of easements, encroachments, or other encumbrances, and note visible improvements to the premises which may have been completed within four months immediately preceding the date of the inspection. If possible 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, explain such interests on the warrant requisition. The affidavit called for in Section 4.11 is also utilized to protect against the exceptions and exclusions of the title policy. If condemnation is necessary to acquire title, include parties in possession as additional defendants.

When the district receives a commitment that contains exceptions related to a recorded "NFR" (No Further Remediation) letter, a copy of the NFR letter must be faxed to CBLA for review by the Office of Chief Counsel. An NFR letter may contain specific provisions that impose restrictions on the department as to how the property can be used. The Office of Chief Counsel will review the NFR letter and provide further direction if needed.

4.7 MINERAL INTERESTS

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 regional engineer to recommend that nothing further be done at this time to acquire surface releases from the owners of the royalty or working interests.

The state acquires title to the minerals underlying the surface when the fee interest is acquired unless the owner has specifically reserved them or the same 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 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."

When the mineral ownership is severed from the surface ownership, the following procedures apply. The landowner's deed to the department except out the previously severed mineral interest by adding either of the following after the deed's or dedications legal description:

"Except therein mineral interests previously conveyed"

"Except therein mineral interests previously reserved"

The warrant requisition 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 the encumbrance's portion of requisition A:

"Standard Mineral Exception LAPPM 4.7"

4.7.1 Oil and Gas-Producing Facilities Within the Proposed Right of Way

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."

Release the mineral owner's rights in the surface, regardless of whether the acquisition is in fee or is an easement for highway purposes, in those cases where the oil and gas rights have been severed in some manner from the surface ownership. Obtain a Release of Surface Rights ([LA 471](#)) 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. Release surface rights 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 mineral interests, 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.

4.7.2 Oil and Gas-No Producing Facilities Within the Proposed Right of Way

Even if the district's review reveals no producing facilities in existence for many years, if a majority of the working interest is owned by a large oil company or by an individual, obtain a release of the valid and unexpired surface rights (LA 471) involved. 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 472).

4.7.3 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, to purchase or use the surface, or cause subsidence without liability therefore. If the highway improvement can be affected, then so much of the mineral owners' rights as are needed to protect the highway improvement should be acquired.

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.

4.8 PROPERTY OR RIGHTS OWNED BY UTILITY COMPANIES

The following procedure will apply to the acquisition of utility company operating property or interests. Compensation, if any, will be determined under Section 3.7.15. See Section 4.6.1 relative to release of mortgages on these acquisitions.

When the utility owns an easement in land required for the construction of a Federal-Aid Interstate Route, in addition to obtaining the fee title from the underlying fee owner, also obtain a release or subordination of the utility's interest to the right of the state to construct the highway. LA 48A has been designed for this purpose.

When the utility owns an easement in land required for construction of all other routes (Freeway or Non-Freeway), in addition to obtaining the fee title or an easement for the highway from the underlying fee owner, also obtain a release or subordination of the utility's interest (LA 48B) or by the utility company also executing the instrument obtained from the underlying fee owners.

When the utility owns the fee to the land required for construction of a Federal-Aid Interstate Route, 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 and adding the standard subordination paragraph limiting utility maintenance of its facilities found in [LA 48A](#).

In those cases where the utility owns the fee to the land required for construction of all other routes (Freeway or Non-Freeway), acquire an easement for public road purposes on crossings, or an easement or fee title on longitudinal acquisitions using the appropriate standard form. Use [LA 492](#) Freeway Release (Individual) or [LA 492A](#) Freeway Release (Corporation) 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.

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 the appropriate standard form. [LA 48A](#) or [LA 48B](#) should be used for this purpose. If this is the case, you must indicate the handling of the utility's interest on the warrant requisition which covers the underlying fee owner, under encumbrances, etc., by indicating the department has or will obtain an appropriate instrument executed by the utility company or the easement of the utility does not affect the right of way.

The general utility easements occurring in subdivisions are often handled by affidavit with the title insurance company, if no facilities are installed. A separate warrant requisition is forwarded when the utility owns the fee the same as is customary on other acquisitions from the owners.

In acquiring non-operating property of a utility company, treat the company as any other owner of land required for the project. Condemnation of a utility company property requires approval of the Illinois Commerce Commission.

4.9 Acquisition for Freeways

Statutes authorize 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 "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 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 11-112). An opinion of the Attorney General, (1959 OP Atty. Gen. #548), states that the department need not acquire or pay for the acquisition of access rights from property abutting a freeway on a new location. A new location is defined as one which does not replace a highway, street or roadway to which an abutting owner formerly had access. A freeway may be established under the concepts of either complete control of access or modified control of access.

4.9.1 Full Freeways

Never permit direct access from abutting property to the travel lanes of a freeway with complete control of access. Where a freeway is established on other than a new location, with complete control of access from the abutting property, it may be necessary to indicate access to the freeway from the abutting property. When this situation occurs, incorporate the following provision in the instrument of conveyance:

Local Service Drive or Frontage Road to be Constructed - All Access Rights, or Right of Way and all Access Rights to be Acquired "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."

4.9.2 Modified Freeways

Modified control of access may establish a freeway 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 limited 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 such a unit is so located as not to fit in any of the above patterns, then completely extinguish the right of access to the freeway by purchase or condemnation.

Incorporate the following in the instrument of conveyance as appropriate, to wit:

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."

The appropriate instruments of conveyance must be used if access rights are to be acquired as set forth above. This would include the use of the Freeway Release (Individual) ([LA 492](#)) or Freeway Release (Corporation) ([LA 492A](#)) where access rights only are to be acquired.

4.9.3 Other Bureau Responsibilities

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. Violation of the terms and conditions of access restrictions contained in the instrument or instruments of conveyance are to be first referred by the district to the Central Bureau of Operations for such handling as it deems necessary with the Office of Chief Counsel.

4.10 INSTRUMENT OF CONVEYANCE

The purpose of land acquisition is to provide the landowner with just compensation for land needed for highway purposes. This includes two elements:

- payment of fair market value of land taken or used by the department
- payment of the damage due to the reduction in value of the remainder of the property

Unless both the department and landowner agree on this value, there is no true agreement. The damage waiver assures the landowner understands the acceptance of the state's offer is a final settlement of all elements of eminent domain and proves evidence of the parties' agreement. If the landowner is unwilling to indicate their agreement of this matter, refer the parcel for condemnation.

The damage waiver clause assures the land acquired through negotiation accomplishes the same results as land acquired through the eminent domain process; settlement of all real and potential claims against the state as the result of a taking would be made.

The practice of accepting a deed without a damage waiver creates the potential of a later damage claim against the department or a Court of Claims action.

The only exceptions to requiring this damage waiver clause in our conveyance documents are as follows:

- When a whole take is involved.
- The landowner is provided a separate release which includes compensation for any damages to the remainder due to the acquisition of the right of way (Use Release in Lieu of Waiver of Damage Clause, [LA 410AA](#)).
- When the property is transferred to the state without payment of compensation.
- When railroad right of way is needed for highway purposes, the requirement of the damage waiver is satisfied if there is an executed railroad agreement on the project.

Utilize 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.

The department's standard deeds, permanent and temporary easements should all contain the following damage waiver clause:

For Non-Freeway deeds

"The Grantor, without limiting the interest above granted and conveyed, does hereby acknowledge that upon payment of the agreed consideration, all claims arising out of the above acquisition have been settled, including any diminution in value to any remaining property of the grantor caused by the opening, improving and using the above-described 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."

For Freeway Deeds

"The Grantor, without limiting the interest above granted and conveyed, does hereby acknowledge that upon payment of the agreed consideration, all claims arising out of the above acquisition have been settled, including any diminution in value to any remaining property of the Grantor caused by the opening, improving and using the above-described 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; and for the consideration hereinabove stated the Grantor, conveys and relinquishes to Grantee all existing, future or potential easements or rights of access, crossing, light, air or view, to, from or over the premises herein described and the public highway identified as _____ Route _____ from or to any remaining real property of the Grantor abutting said premises or said public highway whether consisting of one tract or contiguous parcels."

4.11 Closing Documents – General

In addition to obtaining the properly executed instruments of conveyance obtain an affidavit of title, providing the owner with a form of receipt to acknowledge the delivery of the fully executed instruments to the department. These forms are discussed in the following paragraphs.

4.11.1 Affidavit of Title

In preparing the documents necessary for title examination, obtain an Affidavit of Title (see [LA 4111A](#)). The affidavit determines any outstanding interests which impair or potentially impair the title being transferred to the state of Illinois. Affidavit or Operating Railroad Affidavit ([LA 4111E](#)) discloses any shareholder's interest who is entitled to receive more than 7 1/2% of the total distributable income of any corporation having an interest in the property (50 ILCS 105/3.1). "Further, if the initial disclosures, or subsequent disclosures at other levels, show interest held by another corporation, partnership, or trust, then further disclosures must be requested until the names of individuals owning the interest in the entity involved are known, or you can verify the fact 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." Disclosure forms can be found at [LA 4111B](#), [LA 4111C](#) or [LA 4111D](#).

Cover the same items in the affidavit as excluded from the standard title insurance policy. These general items do not appear on the public records, but are accounted for in the title examination process.

The affidavit is part of a three-step method to protect the department from the existence of interests not covered by the title policy. (1) the observations by the appraiser(s) and the negotiator of the condition of the property being acquired, (2) the Affidavit of Title, and (3) the records check prior to delivery of the warrant to the owner.

A person who is fully acquainted with and knowledgeable of the facts makes the affidavit. 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 made, the potential problem is resolved before title is approved. Disclose the existence of the following types of problems:

- Tenant's rights
- 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

In preparing the affidavit for signature, the negotiator interviews 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, suggest the above interests exist, further inquiry is made to determine if it is necessary to obtain additional releases or quitclaim deeds to satisfy these interests. An affidavit is required for all acquisitions except temporary use permits. Temporary use permits from a corporation require an affidavit in order to fulfill the ownership disclosure of interest requirement.

Operating railroad right of way usage is singular and monumental. The likelihood of claims against the standard title policy exceptions on operating railroad right of way is virtually non-existent. Therefore, where it is clear from visual inspection that a railroad's property is in fact improved with operating railroad facilities and used solely for operating railroad purposes, an Operating Railroad Affidavit ([LA 4111E](#)) may be utilized. As an absolute minimum, all railroads must attest to the 7 1/2% ownership as this is a statutory requirement. Use Disclosure of Ownership Affidavit, ([LA 4111C](#) or [LA 4111D](#)). Any objections by a railroad to items #2 and #4 may alternatively be satisfied with affirmative statements by the surveys 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."

In all acquisitions involving non-operating railroad-owned property, including abandoned railroad right of way, obtain the more comprehensive Affidavit ([LA 4111A](#)) without exception.

4.11.2 Receipt and Disbursement Statement

Issue the Receipt and Disbursement Statement ([LA 4112A](#)) to the property owner upon receipt of a fully and properly executed instrument conveying the property or property interest sought for right of way or other use by the department. The Receipt and Disbursement Statement states that the property or interest therein is conveyed subject only to (1) approval of title by the state of Illinois, and (2) the payment of the recited consideration to the Grantor(s).

The Receipt and Disbursement Statement is captioned by reference to the route and section, project, and parcel number, and the name of the Grantor(s). If the owner is retaining improvements or the transaction is an exchange, note on the consideration the total, less amount of retention or exchange for the total compensation due the owner.

Restrictions or reservations relative to access control and/or limitations are recited in the instrument of conveyance. Agreements relative to construction items, if any, are handled by a separate letter from the regional engineer attached to the receipt.

All agreements relative to the conveyance are in writing to allow no area of doubt or controversy as to the respective obligations of the state and the grantor(s), and those agreements attached to the Receipt and Disbursement Statement.

The Receipt and Disbursement Statement ([LA 4112A](#)) also includes the information necessary for the department to fulfill the IRS 1099-S filing requirements, as covered in Section 7.2.

This form can be used to break out deductions from the total purchase price for such things as payment for tenant-owned improvements, payments for mortgages, taxes, lien releases, etc., paid by the state out of the purchase price. 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. Normally make all warrants payable to the fee owner and lien holder.

The Receipt and Disbursement Statement is also used when some part of the purchase price is withheld, subject to forfeiture, or to ensure performance as agreed of some act or action by the grantor or other interested party (i.e., removal of a building.) Chapter 9 addresses acquisition of advertising signs.

The Receipt and Disbursement Statement is acknowledged by the owner and certified as correct by the department representative handling the closing. A copy of the same is presented to the owner for his records as well as maintained in the district parcel file.

4.12 TITLE EXAMINATION

By statute, title to property or interests therein is approved by the Attorney General when the consideration to be paid exceeds \$10,000 (30 ILCS 545/2). All invoices ordering the payment of said consideration are approved by the Attorney General as to title and interest of the payee(s). The Attorney General requires a commitment of title with minutes of condemnation prepared by a qualified title insurance company in order to make this approval. The title findings shown in said commitment, or commitment with minutes of condemnation, must not be older than ninety (90) days, if consideration being paid is over \$10,000 and, if older, must be recertified or a date down endorsement thereto obtained. For those acquisitions of \$10,000 or less, the commitment cannot be older than 120 days.

Title to those purchases of \$10,000 or less in Districts 1 through 9 is approved by a staff attorney in the Office of Chief Counsel.

The requirement of title approval by the Attorney General does not apply to property or other real estate interest acquired for projects constructed under the Bikeway Act. Title approval in these cases, when the necessary interest is taken in the name of the state, will be performed by a staff attorney in the Office of Chief Counsel. A right of entry or license cannot qualify as a sufficient title under this statute to enable authorization of the work.

Examination and approval of title on all fee acquisitions is based upon a commitment of title with minutes for condemnation, obtained from local title companies. When the consideration is \$10,000 or less, only one copy of the title packet is furnished to CBLA. When the consideration is \$10,000 or more, two copies of the title packet are sent to CBLA in order for title to be approved, as one copy stays with CBLA and the second copy is submitted to the Attorney General's office for examination and approval.

Temporary easements whose consideration is \$10,000 or less must have one copy of the supporting documents, but no title commitment will be necessary. The warrant requisition

must contain a statement "that title to the land subject to the easement has been examined by the district, the instrument executed by all necessary parties and the payee is certified as entitled to the compensation."

For temporary easements over \$10,000, title commitment and all other supportive documents are required. If a tenant is involved, use [LA 410X](#) or [LA 410X1](#) to obtain the necessary consent. If the property is encumbered by a mortgage, use [LA 410Y](#) or [LA 410Y1](#). When the grantor is a trustee, then a disclosure identifying the owners of the beneficial interests in the trust is required regardless of the amount of the consideration paid for the instrument. When acquiring only a temporary easement from a trust and the compensation is \$2,500 or less, it is not necessary to submit a copy of the trust agreement. If the value of the temporary easement exceeds \$2,500, submit a copy of the trust agreement with the title documents when title approval and the warrant for payment are requested.

When submitting a warrant request and back-up documentation for the purchase of property \$250,000.00 and over, include the Request for Approval to Purchase Property \$250,000 and over ([LA 416G](#)). CBLA will be responsible for obtaining the appropriate signatures. An approved copy will be returned to the district for inclusion in the parcel file.

4.12.1 Title Insurance Services

Bids are solicited by CBLA from the title insurance companies qualified to perform title services throughout the state of Illinois for the furnishing of title insurance for all districts to utilize. Under this contract a commitment with minutes for condemnation, date down endorsement and policy are services to be provided. Contracts for such services are awarded to the lowest qualified bidder, and each district office has the initial authority for ordering the required title data under the contract. All companies contracted to provide title insurance services understand that orders for such title insurance cover all parcels acquired by negotiated settlement or by condemnation proceedings.

When possession does not agree with the findings of the title company, the district may be required to provide an Affidavit of Adverse Possession ([LA 4121A](#) or [LA 4121B](#)).

Secure title guarantee policies on all acquisitions except temporary easements. Each policy of insurance is to be in full value of the real estate acquired. 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 objections and for free and clear title in the name of the People of the State of Illinois, Department of Transportation. Order policies within 180 days of the commitment or update to assure issuance of the policy.

4.12.2 Closing Title

Upon receipt and prior to delivery of the warrant, it will be necessary for the district office to check and determine whether or not there have been any changes in interest or other matters, which might affect title. A checklist, modified to fit the records of each county, should be prepared to assist in this work (see [LA 4122](#)). Each parcel file includes some type of documentation that the appropriate records were checked prior to the delivery of the warrant.

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 owners. If the acquisition is closed in escrow, deliver the warrant to the escrowed.

4.12.3 Recording the Instruments

After the District has confirmed the warrant has been delivered by a signed receipt from return receipt requested U.S. Mail or other signed confirmation from another delivery service or

by signed acknowledgement of personal delivery by District staff or a vendor/consultant, the executed right of way instruments are immediately filed of record with the County Recorder of the subject county. It is recommended that temporary easements also be recorded. The instruments are immediately entered upon the entry book to avoid the possibility of a judgment or lien being placed on the property between the time the warrant is delivered and deed is recorded. The state pays recording fees. Order a title insurance policy, if applicable, from the authorized title insurance company. When the policy is received, examine immediately assuring it covers the property acquired, and the merchantable title is vested in the People of the State of Illinois.

The statutes provide "No recorder shall record any instrument affecting title to real estate unless the name of the person who prepared and drafted such instrument is printed, typewritten or stamped on the face thereof . . ." (55 ILCS 5/3-5022).

An Attorney General's opinion states that "person" or "persons" as well as all words referring to or importing persons may extend and be applied to bodies politic and corporate as well as individuals (1975 Opinion Atty. Gen. S-880). The instrument(s) should be stamped as follows:

"This instrument prepared by State of Illinois, Department of
Transportation (Insert district's address here)."

Deeds to the State of Illinois, Department of Transportation are exempt from real estate tax under 35 ILCS 200/31-45(b) of the Real Estate Transfer Tax Law. The Department of Revenue has advised County Recorders that the completion and filing of the Real Estate Transfer declaration is required, but no tax is due. The following language appears on all deeds:

"Exempt under 35 ILCS 200/31-45(b), Real Estate Transfer Tax Law."

_____	_____
Date	Buyer, Seller or Representative

Effective January 1, 1995, 55 ILCS 5/3-5018 made changes in the process of recording instruments filed for record in the Recorder's Office throughout the state of Illinois.

- 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.
- The document shall be printed in black ink, typewritten or computer generated, in at least 10-point type.
- 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.
- 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. A document that does not conform to these standards shall not be recorded except upon payment of the additional fee.

4.12.4 Escrow Title Closings

Escrow services are seldom used for title closings. However, fees for this service are set in the accepted bid for title services submitted by the bidding companies for each of the nine districts so escrow services may be available when needed for complicated transactions or when requested by the property owner.

The deed to the state of Illinois is deposited with the escrowed and the state of Illinois agrees to deposit the consideration. The consideration for the purchase is made payable to and deposited with the escrowed who checks the title, records the deed, and issues a guarantee policy showing the title in the state after which the consideration is distributed to the interested parties.

4.13 REAL PROPERTY OWNED BY THE STATE AND UNDER THE CUSTODY AND CONTROL OF OTHER STATE AGENCIES

The Department of Transportation may acquire property owned by the state and under the custody and control of other state agencies (605 ILCS 5/4-504). For such an acquisition, a jurisdictional transfer instrument is prepared for execution by the appropriate agency heads and approval of the Governor. Submit one copy of the instrument prepared in draft form, and adjusted to cover the proper agency, route, purpose, etc., to CBLA for review and final drafting, and to secure execution by the proper officials. Submit a completed plat and title evidence to CBLA. A statement accompanies the request indicating the transfer has been discussed and is satisfactory to the local office of the agency in question. Also include full particulars concerning any agreements with the said agency relative to fencing if access rights are not involved, etc. Refer to Section 6.9.8 for further instructions for jurisdictional transfers between state agencies.

4.14 ACQUISITION OF PROPERTY TO REPLACE PROPERTY OF 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 enter into an agreement relative thereto (605 ILCS 5/4-509). A form of such agreement can be found at [LA 414](#). 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 has been made applicable to property owned by state agencies by an Attorney General's opinion (1975 Op. Atty. Gen. S 1424). Rather than a deed, a transfer of jurisdiction under the Illinois Highway Code and Section 4.13 is used to complete the action.

4.15 REAL PROPERTY OWNED BY THE FEDERAL GOVERNMENT

The Federal Aid Policy Guide sets forth the procedures for acquiring lands or interests in lands owned by the United States for state highway purposes. In most cases the Federal Highway Administration (FHWA) coordinates the land acquisition transactions conducted by other federal agencies. There are exceptions to this however and all acquisitions involving the United States Government should be coordinated through CBLA.

4.16 ACQUISITION OF PRIVATELY OWNED LANDS OR INTERESTS 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.

4.17 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 railroad or 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 Illinois Commerce Commission (605 ILCS 5/4 505). It is the policy of the division 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, in triplicate, should be submitted in the form of [LA 417A](#). The exhibit 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 exhibit. It is expected that the utility company would obtain the approval of the Commerce Commission as a part of its contribution to the acquisition and provide the department with an order of the Commission approving the agreement for use in acquiring the substitute right of way. However, this approval from the Commerce Commission is also obtained by the district. A form of deed for subsequent conveyance of the substitute right of way to the utility company, attached as [LA 417B](#), must be prepared in draft form and submitted to CBLA together with the agreement.

4.18 ACQUISITION OF REMNANTS AND REMAINDERS

Acquire remnants or remainders under the Highway Code (605 ILCS 5/4-501). Acquire by a separate deed as non-operating right of way with the remnant or remainder value as the consideration. Acquire such remnants with straight state funds rather than with participating federal funds. The parcel is inventoried in the Non-Operating Highway Right of Way System (NORWAY). See Section 6.9.

4.18.1 Inaccessible Remnants

Inaccessible remnants may be acquired by purchase or condemnation where, in the judgment of the acquiring agency, it is more practical and economical to acquire the fee to said inaccessible remnant than to pay severance damages.

4.18.2 Accessible Remnants or Remainders

When a part of a parcel of land is to be taken and the accessible remnant is in a shape or condition rendering it of little value or use to the owner or giving rise to claims for severance or other damages, upon the written request of the owner, the acquiring agency may acquire the whole parcel (see Section 4.1.14-Uneconomic Remnants).

When acquiring a partial take for highway purposes 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, and the partial take causes the remainder of the parcel not to conform with existing zoning ordinances, or when 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, when the owner so demands, the whole parcel is taken by negotiation or condemnation.

4.19 JOINT IMPROVEMENT AGREEMENTS

4.19.1 General

The department is required to certify to FHWA that the provisions of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 have been complied with as a prerequisite to advertising any federally funded highway improvement project for letting. Make such certifications on all federally funded local agency highway projects as well as on all state highway projects.

It is an accepted practice for local public agencies with qualified personnel to become involved in acquiring needed right of way, acting either as an agent of the state as a contribution to the accomplishment of a state highway project, or acting in behalf of the agency itself for a non-state highway project. The following sections set out the responsibilities between the department and local public agencies and to supplement the requirements of each party.

Joint improvement agreements are prepared by the district and processed either by the Bureau of Design and Environment or Central Bureau of Local Roads and Streets, depending upon the road system or type of funds involved. Agreements having right of way consideration should be reviewed by the district land acquisition staff before being submitted to the appropriate central bureau.

The responsible highway agency, the type of funds involved, and designation of the acquiring agency have a bearing on the right of way acquisition provisions included in joint improvement project agreements.

CBLA does not review these agreements; however, district land acquisition staffs can request assistance from CBLA for unusual or complex situations.

Two types of projects to be considered are state highway projects and local agency projects. Detailed procedures for drafting agreements for these types of projects are set out in Section 4.19.

4.19.2 State Highway Projects

State highway projects, with or without federal-aid in right of way acquisition costs and/or construction costs. Detailed procedures for drafting agreements for this type of project are set out in Section 4.19.

A) Title to Right of Way. State highway projects are defined as any improvement project, in whole or in part, of any existing highway on the state's system of highways, whether on a marked or unmarked route, in which the state has jurisdictional responsibility. Ordinarily additional right of way is acquired by the state, in which case the joint agreement for the improvement would contain a statement to the effect that "The state agrees to acquire all necessary additional right of way for the project at its own cost and expense (subject to reimbursement as hereinafter provided)."

However, as a condition of participation in state highway improvement projects, local agencies may be willing to provide such acquisition services, acting as agents of the state, in accordance with the department's land acquisition policies and procedures.

Only the department and counties are authorized to take title in their own name for a state highway improvement regardless of how the cost of the right of way is treated (605 ILCS 5/4-501).

While under the statute a county can take title in its own name to land required for a state highway improvement, such title is taken in the name of the state. Therefore, except in unusual circumstances, agreements covering joint improvements with local governmental agencies provide that all right of way required for an improvement to the state highway system be taken in the name of the state.

This policy does not apply to federal-aid secondary routes on the county highway system, but does apply to federal aid secondary routes for which the state has maintenance responsibility as these are on the state highway system (605 ILCS 5/2-101 & 5/2-102).

The department certifies compliance, such agreement sets forth the department's responsibility to supervise and monitor the application of the department's procedures to assure that Title II and III requirements are met.

B) Title Approval to Land. See Section 4.12. The provision also covers a situation where the county acquires title in its own name for a state highway improvement. In the event the local agency is paying for the cost of the right of way, at the time title approval is requested in accordance with Section 4.12, a notation is added to the warrant requisition form indicating that the local agency is paying the consideration for the purchase.

C) Standard Agreement Provisions. When the local agency is to provide the personnel for acquiring the right of way on behalf of the state, use the provisions shown on [LA 4192](#). However, all local agency staff members or contract personnel who are to perform appraisal, negotiation or relocation functions are approved in advance by the department.

Paragraph G of [LA 4192](#) provides it is the state's responsibility to supervise and to guide and assist local agencies in each step of the right of way acquisition process to assure compliance with the department's land acquisition policies and procedures. The district works closely with the District Bureau of Local Roads and Streets in coordinating project activities prior to and during the entire right of way acquisition process.

4.19.3 Local Agency Highway Projects

For the purposes of this chapter, local agency projects are defined as any federally-assisted project for the improvement of any existing highway, road or street, not on the state's system of highways. Detailed procedures for drafting agreements for this type of project are set out in Section 4.19.

A) Title to Right of Way. The acquisition of any needed right of way for a local agency improvement project, including the approval of title thereto, is the responsibility of the local agency and such additional right of way is acquired in the name of agency.

As a prerequisite to advertising an improvement project for letting by the state, the local agency certifies to the department's regional engineer the additional right of way required for the improvement is secured, paid for and vacated and the interests acquired in such right of way are adequate for the highway facility constructed thereon. The department then makes the same certification to FHWA when requesting authorization to advertise a project. Verification and certification of compliance with Titles II and III of the Uniform Act will be in accordance with Section 4.24.

B) Standard Agreement Provisions/Local Agency Highway Projects with Federal Participation. All local agency staff members or contract personnel who perform appraisal, negotiation or relocation functions are approved by the state in advance of such activities.

When there is federal participation, project agreements with local agencies include the provisions shown in [LA 4193](#). As set out in Paragraph C, it is the state's responsibility, delegated to the district land acquisition engineer/manager to provide guidance and assistance and to monitor the activities of the local agency through each phase of the right of way acquisition process, working closely with the District Local Roads and Streets Engineer in coordinating project activities prior to and during the entire right of way acquisition process.

The use of the department's land acquisition policies and procedures together with the Compliance Review Check Lists (Section 4.19.4), and guidance and assistance provided by district land acquisition personnel assure that local agencies are in a position to make the required certification to the department as to the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 91-646), as amended.

Before the initiation of negotiations, the real property shall be appraised and the owner or the owner's designated representative shall be given an opportunity to accompany the appraiser during the appraiser's inspection of the property.

The local agency shall have an appraisal review process which includes the following:

- A qualified review appraiser shall examine all appraisals to ensure that they meet the district appraisal requirements and shall, prior to acceptance, seek correction or revision of those which do not.
- If the review appraiser is unable to approve or recommend approval of an appraisal as adequate support for compensation, the review appraiser may develop appraisal documentation in accordance with the district's requirements to support an approved or recommended value if it is determined that it is not practical to obtain additional appraisals.
- The review appraiser's certification and the recommended or approved value of the property shall be set forth in a signed written statement which identifies the appraisal reports reviewed and explains the basis for such recommendation. Any damages or benefits to any remaining property shall also be identified in the statement.

Local public agencies must use an approved certified appraiser for all appraisals needed on projects that are federally funded or have federal assistance in any phase of the project. A State Certified Residential appraiser is limited to appraising residential property containing 1-4 units and vacant single-family land zoned residential which will accommodate no more than one unit. A State Certified Residential appraiser is not allowed to appraise agricultural, commercial and/or industrial properties. A State Certified General appraiser can appraise all types of properties.

Local public agencies are required to use State Certified General appraisers who have been approved by the department to perform appraisal review functions for all review appraising assignments on projects that are federally funded or have federal assistance in any phase of the project.

The local agency shall furnish a list of parcels and each type of property to be appraised, expected complexity of the appraisal problem, availability of the appraiser, effectiveness of the appraiser as an expert witness and other factors that may be of importance.

No appraiser or review appraiser shall have any interest direct or indirect in the real property being appraised for the agency that would in any way conflict with the preparation or review of the appraisal. Compensation for making an appraisal shall not be based on the amount of the valuation. No appraiser shall act as a negotiator for real property that person has appraised, except that the agency may permit the same person to both appraise and negotiate an acquisition where the minimum payment procedure described in Section 3.7.1 has been followed.

The purchase price for the property may exceed the amount offered as just compensation when reasonable efforts to negotiate on that amount have failed and an authorized agency official approves such administrative settlement as being reasonable, prudent, and in the public interest. A written justification signed by the authorized agency official, shall be prepared which indicates that available information (e.g., appraisals, recent court awards, estimated trial costs, valuation problems, and other pertinent information) supports such a settlement.

It is also a requirement that fee negotiators be approved by the district prior to receiving an assignment on a local public agency on a federally aided project.

Before the initiation of any land acquisition activities for a project, there shall be a prior written agreement between the department and the agency to assure that there is a thorough understanding of each agency's responsibility.

4.19.4 Compliance Review Checklists

To assist local agencies in acquiring right of way provide the Compliance Review Checklists to the local agencies at the conceptual stage of each project.

The checklists are designed to guide local agencies in order that they can provide in the order of occurrence, information and documentation as to events, approvals and requirements which must be met throughout the entire right of way acquisition process.

PART A, PROJECT COMPLIANCE REVIEW CHECKLIST ([LA 4194A](#)) is used by the local agency from the initiation of each project at the design-location approval stage for either a state or a local agency highway project.

PART B-1, PARCEL COMPLIANCE REVIEW CHECKLIST ([LA 4194B](#)) is used by the local agency (one for each parcel file) from the initiation of appraisal activities for either a state or a local agency highway project in which there are to be federal funds used in any of the project costs.

PART C, PARCEL COMPLIANCE REVIEW CHECKLIST FOR RELOCATION ASSISTANCE ACTIVITIES ([LA 4194C](#)) is used by the local agency (one for each parcel file) for each parcel of right of way in which there will be a displacement of any individual, family, business or farm operation or the personal property thereof on either a state or a local agency highway project.

4.19.5 Compliance Reviews by District

To assure that local agencies are complying with Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646), as amended, and/or the department's land acquisition policies and procedures, representatives of the district land acquisition, with the assistance of representatives of CBLA, review the improvement project files using the checklists discussed in Section 4.19.4. A compliance review

is a prerequisite to the regional engineer's acceptance of the local agency's certification and recommendation to request authorization to advertise the improvement project for a letting. If the reviewer determines that the project is not in compliance with the aforesaid Act and the department's land acquisition policy and procedures, then such non-compliance is resolved by the local agency before the project certification is accepted. If the reviewer determines that the project is in compliance the district land acquisition engineer/manager, the regional engineer will forward a memorandum giving a concise report as to the status of the right of way, together with a copy of the completed Project Compliance Review Checklist ([LA 4194A](#)) to the Central Bureau of Local Roads and Streets.

4.19.6 Agreements

Where the status of a project is such that the approval of a comprehensive joint State-Local Agency project agreement is not in the foreseeable future, it is permissible to use a Letter of Understanding between the district and the local agency. A Letter of Understanding would cover only the land acquisition services to be provided and the appropriate procedures to be followed by the local agency in acquiring needed right of way for future projects.

A Letter of Understanding need not be project specific. However, it includes a provision to require the local agency to notify either DLA or Local Roads and Streets in advance of commencing any land acquisition activities on each project undertaken.

The key here is not necessarily the agreement or its form, but rather that there is a high level of coordination and understanding between the local agencies and the districts initiated well in advance of any land acquisition activities.

The Letter of Understanding includes attachments of each of the standard agreement provisions ([LA 4192](#) and [LA 4193](#)) to cover any type of future state or federally funded project.

When a Letter of Understanding is used, note the date of execution by the regional engineer on the Project Compliance Checklist-Part A, ([LA 4194A](#)) after "Project Agreement Covering Right of Way Acquisition Approved by State _____." Also insert the abbreviation "L/U" after the date to indicate the use of a Letter of Understanding rather than the approved Project Agreement.

4.20 ENTRY ON LANDS TO MAKE SURVEYS

The department, or any county, by its officers, agents or employees, after written notice to the owner, may enter upon the lands or water of any person 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, but subject to responsibility for all damages occasioned thereby (see 605 ILCS 5/4-503). It is important to note that claims for damages be verified and payment determined by the department. Documentation supporting each claim (see [LA 420A](#)), along with proof that the amount being claimed has been determined and approved by the district, must accompany any request for payment submitted to CBLA. A Form of Damage Release can be found as [LA 420B](#) and [LA 420C](#).

If entry is not permitted and legal action is required, the regional engineer should formally request through the Director of Highways Project Implementation that the Office of Chief Counsel review and, if necessary, seek the assignment of the matter to a SAAG. If the matter is assigned to a SAAG, the district will receive a copy of the assignment after which the district should immediately contact and assist the SAAG toward obtaining the necessary rights to enter the property.

4.21 ACQUISITION OF RIGHT OF WAY FOR FUTURE USE

The state is without authority to control the rezoning of private property and has limited authority for the acquisition of property for future highway use. The statutes authorize the Department of Transportation to establish the approximate locations and widths of right of way for future additions to the state highway system, and subject to the provisions of such law, to acquire such land by purchase or through eminent domain proceedings (605 ILCS 5/4-510). Procedures to carry out this provision of the statute have been established in the Central Bureau of Design and Environment manual. Subsequent to the approval of a Corridor Protection Plan, owners of land needed for the improvement are served by registered mail of the determination of the approximate location and width after which 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.

On sections of highway where federal participation is proposed in right of way costs, request approval of advance acquisition in accordance with Section 4.25 of this Chapter.

Any uneconomic remnants/reminders acquired through this process, are incorporated into the department's NORWAY inventory (See Section 6.9).

4.22 URBAN RENEWAL PROJECTS

Coordinate the application of Federal-aid highway funds for costs of highway right of way conveyed to the Department of Transportation by a local public agency acting in cooperation with the Department of Housing and Urban Development.

4.23 CONDEMNATION

4.23.1 Request for Condemnation

When condemnation is necessary after negotiations are exhausted or for any of the other reasons set forth by statute, such as incapability of consenting property owners, non-residency or name or residence being unknown, forward a request for condemnation to CBLA (735 ILCS 30/10-5-10). Even with the use of quick take procedures, the time between the initial request for condemnation and the actual vesting of title is a minimum of ninety days or more. Therefore, from the inception of each right of way project include in the scheduling of acquisition activities the time required for full negotiation and the condemnation process.

The statutes state to acquire property by condemnation from a railroad or other public utility, subject to the jurisdiction of the Illinois Commerce Commission, the prior approval of the Commission is required. Districts submit three copies of the data for condemnation to CBLA.

In the event that a parcel is settled after it has been submitted for condemnation but prior to the actual filing of the complaint, the district informs CBLA with a copy to the Attorney General's Office the condemnation proceedings are no longer required. CBLA, as well as the Office of the Attorney General, can close their files on the matter. The district also immediately telephones and confirms in writing with the SAAG, if one has been appointed, so that no further legal proceeding or expenses will occur.

The Special Assistant Attorneys General (SAAG) request and data for condemnation with all of the required attachments thereto, are submitted to CBLA (for Districts 2-9) and District 1 OCC office (for district 1).

SHORT OFFICE MEMORANDUM (Original copy only - Use BRW 1368)

TO: (Bureau Chief of Land Acquisition)
FROM: (Regional Engineer)
DATE: _____
SUBJECT: Land Acquisition - Condemnation

Route _____
Section _____
County _____
Job No. _____
Parcel No(s). _____
(Name of first party defendant), et al

Attached are two copies of data for condemnation on the subject parcel(s). This project is scheduled to be let on _____.

It is recommended that the parcel(s) be referred to the Office of the Attorney General for acquisition by condemnation proceedings. (If an entity is shown as the owner the district should also include a statement noting that a disclosure of the beneficial owners thereof, under oath, must be obtained in accordance with 50 ILCS 105/3.1.)

If a district prefers representation by a specific SAAG due to the SAAG's familiarity with the project or the location of the project, the district should state, on the first page of the memorandum, **in bold face print**, its request for the SAAG.

ATTACH TO THE AFORESAID MEMORANDUM

- One (1) copy of Negotiator's Report completed to date for CBLA use only.
- Two copies of Data for Condemnation in following format: DATA FOR CONDEMNATION - PARCEL NO(S).

_____ Route _____
Section _____
Job No. _____
_____ County

○ PURPOSE OF ACQUISITION

(Briefly describe the nature of improvement requiring the parcel(s). The location of parcel(s) and type of taking such as total or partial. The effects on remainder property (ies), i.e., general information about accessibility, severance, buildings, etc. The status of programming for construction, and whether or not quick take procedure is to be utilized.)

○ STATUS OF PROJECT ACQUISITIONS

(Indicate whether acquisition of subject parcel(s) will complete project acquisitions or if additional parcels may have to be condemned to complete the project.)

○ FREEWAY STATUS

(Whether or not it is an established freeway. If so, date(s) of Order Establishing Freeway and Amendments thereto, if any, and whether fully controlled or modified freeway.)

- PARCEL NO (S) INTERESTED PARTIES AND ADDRESSES INTERESTS TO BE ACQUIRED DATE COMPLAINT CAN BE FILED 60 DAY NOTICE DATE

(Name all interested parties known whether shown on minutes of condemnation or not, including address and interests to be acquired, such as, fee, permanent easement, perpetual easement for highway purposes, temporary easement and access control rights. If temporary easement, indicate either a specific termination date or number of years for which desired. Specify amount and date of the final offer letters.)

- PARCEL NO (S) COUNTER OFFERS REASON FOR CONDEMNATION

(List counter offers, if any, and under reasons for condemnation specify either - inability to reach agreement on compensation offered, or offer acceptable - unable to obtain clear title to parcel.)

- Attach to the Data for Condemnation two (2) copies each of the following:

(**NOTE:** For those parcels requiring Illinois Commerce Commission approval, three copies will be required, except in District One.)

- Legal descriptions of all parcels to be condemned for insertion in the complaint for condemnation. The legal description should adequately describe the property without a plat. (NOTE: If a freeway on existing location, describe the access rights to be acquired including any exceptions. If a modified freeway, include appropriate provision for limited access as set forth in Section 4.07.)
- Right of way parcel plats, sketches or right of way plans of sufficient detail to identify the property. These plats are to be furnished for the benefit of the SAAG's review and, if requested, to be furnished to the opposing counsel.
- Report on title (not older than ninety days).
- A quick take authorization form (See [LA 4234](#)) for the parcel. This form will be signed and returned to the appointed SAAG when quick take is authorized by the Attorney General. This form should be completed in a manner that will allow the Attorney General to have sufficient information to make an informed decision on the request. There are five areas of information to be completed:
 - Identify the parcel.
 - Insert fiscal year and strike out the inapplicable word (current or future). Include month and year of anticipated letting.
 - Give the number based on the job and completed negotiations.
 - Use a number that includes the current references, previous reference and your best estimate on open negotiations.
 - Provide name of Assistant Attorney General who will have authority to allow filing of a quick take motion.

4.23.2 Appointment of a Special Assistant Attorney General

Eminent domain for the Department of Transportation is initiated and prosecuted by the attorney general through appointed assistants. The attorney general appoints a SAAG to act as trial attorneys in the counties where condemnation must be undertaken. These assistants are compensated on an hourly basis by the Department of Transportation for services performed. The attorney general has prepared and distributed a Condemnation Manual to the Special Assistant Attorneys General.

4.23.3 Assignment to a Special Assistant Attorney General

CBLA (for districts 2-9) and District 1 OCC (for District 1) forward two copies of the regional engineer's Data for Condemnation, together with all attachments thereto, to the proper office of the attorney general with the request to assign a SAAG for handling the condemnation of the parcel. The attorney general, in turn, forwards one copy of all the documents to the appropriate SAAG with the request to initiate condemnation. Copies of the attorney general's letter of transmittal are forwarded to the appropriate district and CBLA.

When the district office receives an informational copy of the letter assigning the condemnation to the SAAG, the district contacts the SAAG and offers any assistance from an engineering standpoint in the preparation of the complaint for condemnation. The district also informs the SAAG of if a motion for immediate vesting of title is necessary in order to meet construction deadlines.

The original complaint for condemnation is executed and forwarded by the SAAG to the regional engineer for checking with two additional copies and then forwarded with one copy to CBLA for the obtaining of the signatures of the Governor and the Secretary. Check the complaint to verify the legal description is correct, the interest being sought in the condemnation process is properly recited and the complaint is executed by our SAAG. Having obtained the signatures of the Governor and Secretary, CBLA forwards the original complaint and one copy to the proper office of the Attorney General for final checking and approval of the Attorney General. The Office of the Attorney General forwards the fully executed original complaint to the SAAG with a copy of the letter of transmittal to the regional engineer and CBLA. The regional engineer contacts the SAAG, relating the status of negotiations and if condemnation is necessary. When a settlement has been reached on a parcel prior to the filing of the complaint for condemnation, inform the office of the Attorney General and CBLA for record purposes. Once a complaint for condemnation is filed, any final resolution to that case is the responsibility of the Illinois Attorney General. All negotiations from the time the complaint is filed are closely coordinated with the Special Assistant in charge of the case. The final resolution of any case filed is by court order. Exceptions are coordinated with CBLA and approved by the appropriate Office of the Attorney General. After filing the complaint for condemnation, request from the title company a date down endorsement on title covering the date of filing of the complaint. When received from the Title Company, deliver the report to the SAAG for use in determining if all necessary parties have been included in the complaint for condemnation.

4.23.4 Immediate Possession (Quick Take Procedures)

The department is authorized under eminent domain to acquire title prior to the final adjudication and payment of just compensation (735 ILCS 30/20-5-5 et. seq. and 735 ILCS 30/25-7-103.1). The petitioner may file a motion at any time after the complaint to condemn has been filed requesting the immediate vesting of title in the petitioner. However, no motion for quick take is filed without prior approval of the assistant attorney general in charge of land acquisition. Complete an "Authorization for Filing Quick Take Motion" ([LA 4234](#)) and submit with the request for condemnation to CBLA accompanying the request to the attorney general's office. The court sets the motion for hearing in no less than five days. At the hearing, the court

determines the propriety of the petitioner's authority to exercise its right to eminent domain over the property. The court's order on this point is a final order and may be appealed within thirty days.

In the event of an appeal, 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. Under usual circumstances, 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 condemner deposits the amount of preliminary just compensation with the county treasurer and, the court enters an order vesting it with title to the property and fixing a date for possession. See Section 7.3 for warrant requisition procedures.

4.23.5 Preparation for Trial

The district land acquisition engineer/manager and their representatives should cooperate as fully as possible with the SAAG in preparation for the trial. See that the Special Assistant has the opportunity to 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 Special Assistant 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. Cooperate as fully as possible in the preparation of exhibits recommended by the Special Assistant.

4.23.6 Cooperation During Trial

Furnish any personnel requested by the Special Assistant for testimony during trial. This would include personnel from any district bureau when needed for the proper presentation of the state's case.

4.23.7 Court Orders, Disclosures or Beneficial Interests, Incorporations, Partnerships and Trusts, and Title Insurance Policy

Obtain sufficient copies of the necessary court orders from the SAAG and give prompt attention to requesting warrants to deposit in order to obtain an order vesting title or to satisfy a final judgment. One certified copy of the order is sufficient for CBLA covering several parcels. Forward an uncertified copy of such order by the SAAG to the proper office of the Attorney General.

If a corporation, partnership, limited liability company or trust is a party to the suit as an owner, a disclosure of the beneficial owners under oath, is obtained by the SAAG assigned the parcel and submitted to CBLA by the district not later than the submittal of the settlement report covering the stipulated settlement or commencement of trial. Discovery proceedings under the Code of Civil Procedure are used, if necessary, to obtain this information. The disclosure is obtained in most cases by the SAAG and it may be desirable for the SAAG to seek and if possible obtain, such a disclosure prior to an order vesting title. The disclosure accompanies the order setting preliminary just compensation. Since acquisitions are settled by stipulation or proceed to trial as much as several years after the vesting title, a second disclosure is 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. If the initial disclosures, or subsequent disclosures at other levels, show interests held by another corporation, partnership, or trust, then further disclosures are requested until the names of individuals owning the interest in the entity involved are known,

or 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.

After a warrant has been deposited and an order vesting title obtained or a final judgment order without their first having been an order vesting title, request from the title company a policy of insurance covering the title acquired by condemnation. Examine the policy to insure the state's title against all outstanding interests which might affect the use of the property is satisfied. Should any discrepancies in title be shown, immediate action is taken by the SAAG to clear these discrepancies, either by negotiation or through additional condemnation proceedings. See Sections 7.3 and 7.5.3 for warrant requisition or refund procedures.

4.23.8 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 and approves such settlements upon the recommendation of the SAAG assigned the parcel for condemnation, normally, after consultation and exchange of views between the SAAG and representatives of the regional engineer. A Settlement Report in the format found in the Attorney General's Condemnation Manual is prepared and signed in duplicate by the SAAG and forwarded to the regional engineer for approval. Upon approval of the regional engineer (in duplicate), one original executed copy is returned to the SAAG requesting that a copy be forwarded to the proper office of the Attorney General. The second original executed copy is retained in the district file. No settlement reports are prepared when the final just compensation is in the same amount as the original approved appraisal amount. 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 judgment amount followed by a separate payment of interest thereon. Therefore, whenever possible, claims for interest should be a consideration in the settlement amount that is negotiated. When negotiating a settlement, the property owner must understand that the agreed-to amount includes their right to all interest.

If a settlement is negotiated after a condemnation complaint is filed, title is obtained by means of a final judgment order because this assures clear title without the necessity for obtaining releases from the holders of liens, mortgages, and other encumbrances, and the recording of the same. Also saving the payment of escrow and recording fees. When for some unusual reason, after the complaint has been filed and title is not vested in the state, title is to be acquired by deed, making it necessary for the SAAG to obtain the permission of the proper office of the attorney general. Always obtain a final judgment order when a settlement has been reached after the court has vested title in the state under quick take procedures.

4.23.9 Documentation of Condemnation Awards after Contested Trial

A trial report, in the format found in the attorney general's Condemnation Manual, is prepared by the SAAG following each contested trial. This report is required regardless of whether the award is substantially in excess of the reviewing appraiser's determination of value and regardless of whether federal funds are involved. Two signed copies are furnished to the regional engineer for concurrence and signature. One fully executed copy is retained in the district files, and the second fully executed copy returned to the SAAG requesting that a copy be forwarded to the proper office of the Attorney General. The district sends one copy to CBLA.

Verify the SAAG includes proper and sufficient information relating to the trial, including recommendations as to post-trial motions and possible appeal in the report (see Sections 7.3 and 7.5.3 for warrant requisition or refund procedures).

4.23.10 Appeals

When, in the opinion of the regional engineer and the SAAG, an appeal of the trial court judgment is in the best interest of the state, as evidenced by the Trial Report, the SAAG in addition to the Trial Report, makes a request in writing to the proper office of the Attorney General with a copy to the district. CBLA is informed of this action by the district to review with the staff of the proper office of the Attorney General and, if warranted after such review, an appeal proceeding is authorized. The district is informed of the action to be taken.

4.23.11 Inverse Condemnation

Illinois statutes provide for the payment of attorney's 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 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, then the department is required to pay the property owner attorney's fees and other expenses.

Fees and other expenses are payable only if the state 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.

4.23.12 Eminent Domain Checklist

Each district has a person assigned to coordinate those parcels to be acquired by condemnation. In most instances this person is referred to as the District Condemnation Engineer. Eminent Domain Checklist ([LA 42312](#)) is maintained for each file. This checklist ensures all the information and documentation for condemned parcels are properly contained in the acquisition file for future reference.

When parcels are obtained by condemnation, it is the Condemnation Engineer's responsibility to notify the District Property Manager of the acquisition of any uneconomic remnants/reminders so this information can be incorporated into the department's NORWAY inventory (see Section 6.9).

4.24 ACQUIRING FUNCTIONAL REPLACEMENT PROPERTY FOR GOVERNMENTAL AGENCIES

Property in public use or ownership is acquired: (1) at its 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.

4.24.1 Acquisition Based on Market Value

When acquisition is based on the market value of the property taken, a normal acquisition and procedures contained in this manual apply. No further instructions or procedures are needed.

4.24.2 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. 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 is to eliminate additional cost to eligible agencies or parties 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 can only 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 betterments or increased capacity. Clearly inform the local agency, at the commencement of discussions with the agency, that betterments 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 reasonably is 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 betterments other than those required to meet present standards, codes, ordinances or laws, the cost are the responsibility of the agency. The agency incurs the eligible cost before reimbursement is made.

4.24.3 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 actually taken for highway purposes.

4.24.4 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.

4.24.5 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.

4.24.6 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 local agency of the possibility of functional replacement. Submit the following with the request for approval of the concept:

- Cost Estimate for Functional Replacement ([LA 4246](#))
- 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, Division of Highway procedures

4.24.7 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 should be. 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.

4.24.8 Agreement Between the Department and Local Public 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 utilized depends partially on whether the department or the agency retains the architect.

4.24.9 Architect's Agreement Contracted by the Local Agency

The local 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 agency enters into an agreement with the architect. (Illinois Statutes and Municipal Code for Cities and Villages may determine the local agency's procedures.)

CBLA and the district prepare the Architect Agreement used by the local 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 Capitol Development Board and Consultant Services Unit of the Central 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.

4.24.10 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.

4.24.11 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.

4.24.12 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 betterment 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.

4.24.13 Advertising for Bids and Award of Contract

The agency follows its procedures in advertising for bids and awarding of 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 receive bids and recommends acceptance of a particular bid. Bids that do not meet the requirements under Section 4.24.13 are rejected.

The district and CBLA approve the recommended bid prior to award of the construction contract.

4.24.14 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.

4.24.15 Exchange of Deeds

Upon completion or substantial completion of the replacement facility, the department and local 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 local agency for the property being acquired for highway purposes. The deeds are prepared by CBLA.

4.24.16 Joint Statement

After completion of the replacement facility and payment of all costs, the state and local agency execute a joint statement. The statement certifies the cost of the replacement facility has actually been incurred in accordance with the agreement between the state and the local agency. Also certified that a final inspection of the facility was made by the state and the local agency and the state is released from any further responsibility. [LA 42416](#) is an example of an acceptable statement.

4.24.17 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

4.24.18 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 4.24.18)
- Detailed justification and request for authorization to proceed (Section 4.24.7)
- Site selection (Section 4.24.11)
- Site study, if a separate fee is required (Section 4.24.11)
- Plans, specifications and estimates (Section 4.24.12)
- Review of bids and award recommendation (Section 4.24.13)
- Change orders (Section 4.24.14)

Submit copies of the joint statement (Section 4.24.16) and closeout report (Section 4.24.17) to the FHWA.

4.24.19 Right of Way Acquisition for State Highways

The department is responsible for and provides all land acquisition services for any improvement project on the state's system of highways in accordance with established state land acquisition policies and procedures. This responsibility is also extended to include the required certification of compliance with Titles II and III of the Uniform Act. However, a local agency, by prior written agreement with the department, may provide land acquisition services as an agent of the state, either in whole or in part, provided such services are also accomplished in accordance with established state land acquisition policies and procedures.

Since the department is required to certify compliance, such agreement sets forth the department's responsibility to supervise and monitor the application of the department's procedures so as to assure that Title II and III requirements are met.

4.25 EARLY ACQUISITION

Negotiations begun prior to the NEPA document being completed is Early Acquisition. In certain situations, approval may be obtained for acquisition of a particular parcel or a number of particular parcels within the limits of a proposed highway corridor prior to the completion of the NEPA document. The parcels acquired in advance must be reviewed under NEPA, and treated as having independent utility for purposes of NEPA review. (i.e. After the environmental surveys are complete, the parcel(s) may be determined to be a CE with no effect on the alternative analysis for the rest of the project). The advanced acquisition shall not limit consideration of alternatives for future transportation improvements with respect to the real property interest. All early acquisitions are approved by CBLA. Local Agency early acquisition requests are submitted through the Local Public Agency Coordinator in the district.

4.25.1 State Funded

The request for authorization for early acquisition is submitted by the district to CBLA indicating the reason for the desired advance acquisition. For State only funded projects a detailed explanation of the need and the associated controlled risk factors are required in the memorandum. Federal funding requires additional information as specified in Section 4. 25.2.

4.25.2 Federally-Funded

For all federally funded acquisitions, the acquired parcels must be incorporated into a project eligible for federal surface transportation funds within 20 years following the fiscal year for which the request is made or the FHWA will offset the amount reimbursed for the real property interests against funds apportioned to the State. CBLA secures authorization from FHWA for all federally-funded acquisition.

1. Advance Authorization

When acquiring with federal funds, FHWA authorization is required prior to beginning the acquisition process.

The acquisition must be included as a project in an applicable transportation improvement program. The acquisition project may consist of the acquisition of a specific parcel, a portion of a transportation corridor, or an entire transportation corridor.

No development may be started on the parcel acquired under advance acquisition until NEPA for the project is completed. This prohibition applies to demolition as well as other activities.

The requesting memorandum to CBLA must contain the following:

- a. the State has authority to acquire the real property interest under State law:

and
- b. the acquisition of the real property interest:
 - i. is for a transportation purpose;
 - ii. will not cause any significant adverse environmental impact;

- iii. will not limit the choice of reasonable alternatives for the project or otherwise influence the decision of the Secretary on any approval required for the project;
- iv. does not prevent an impartial decision to accept an alternative being considered in the environmental review process;
- v. is consistent with the State transportation planning process under section 23 U.S.C.135;
- vi. complies with all applicable Federal and State laws and regulations; and
- vii. will be acquired through negotiation, without the threat of condemnation.
- viii. will not result in a reduction or elimination of benefits or assistance to a displaced person required by law

2. Authorization for FHWA Reimbursement or Credit

Acquisition costs incurred prior to executing a project agreement with the FHWA may become eligible for reimbursement or use as a credit towards the State's share of a Federal-aid project. These acquisitions may begin before completion of the environmental review process without affecting subsequent approvals from FHWA. This applies to acquire parcels for transportation purposes and parcels acquired to preserve environmental and scenic values;

The memorandum requesting advanced acquisition sent to CBLA must include certification of the following:

- a. The property was lawfully obtained by the State;
- b. The property was not land describe in 23 U.S.C. 138 Preservation of parklands;
- c. The property was acquired and relocation assistance provided in accordance with the provision of 49 CFR part 24 and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended
- d. The requirements of Title VI of the Civil Rights Act of 1964 have been complied with;
- e. The FHWA has concurred in the decision that the action taken or the property acquired in advance of federal approval or authorization did not influence the environmental assessment of the project, the decision relative to the need to construct the project, or the selection of the project design or location. (attach evidence of concurrence)
- f. The property will be incorporated into a Federal-aid project.
- g. The original project agreement covering the project was executed on or after June 9, 1998.
- h. The acquisition is consistent with State's mandatory comprehensive and coordinated land use, environment, and transportation planning process under State law. (for reimbursement only. Not needed for credit)

5 RELOCATION ASSISTANCE AND PAYMENTS PROGRAM

5.1 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-aided 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. In extraordinary circumstances, when a displaced person is not readily accessible, the department will make a good faith effort to comply with these provisions and document its efforts in writing.

5.1.1 Compliance with State and Federal Fair Housing Laws (Civil Rights)

In order to affirmatively implement established state and federal laws regulating the purchase of the sale or rental of housing, the regional engineer 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 fair housing rights will be protected in accordance with Title VIII of the Civil Rights Act of 1968 and the HUD Amendment Act of 1974;
- Provide copies of state and federal publications dealing with fair housing;
- Advise the displaced persons of name and address of the state agency responsible for receiving and processing housing discrimination complaints; and
- Develop housing resources using only "open housing", i.e., available to all without discrimination on the basis of race, color, religion, and sex or national origin.

5.1.2 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 and 5/4-511; 310 ILCS 40/2 through 40/5; and 735 ILCS 30/10-5-62

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 of the Rehabilitation Act of 1973 (29 U.S.C. 790 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 and 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)

5.1.3 No Duplication of Payments

No person will 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 the displaced person for payment of damages to his residence as a result of the major disaster, from any source, such as flood insurance or cancellation of a portion of a Small Business Administration (SBA) loan is to be deducted from the replacement housing payment for which the displaced person is eligible.

5.1.4 Aliens Not Lawfully Present in the United States

Each person seeking relocation payments or relocation advisory assistance will, as a condition of eligibility, sign a Certificate of Citizenship ([LA 514](#), [LA 514A](#) or [LA 514B](#)) certifying one of the following:

- In the case of an individual, that they are either a citizen or national of the United States, or an alien who is lawfully present in the United States (see [LA 514](#)).
- In the case of a family, that each family member is either a citizen or national of the United States, 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 [LA 514](#)).
- In the case of an unincorporated business, farm, or non-profit organization, that each owner is either a citizen or national of the United States, 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 [LA 514A](#)).
- 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 [LA 514B](#)).

The required certification will indicate whether such person is either a citizen or national of the United States, or an alien who is lawfully present in the United States. Requirements concerning the certification in addition to those contained in this rule will be within the discretion of the department.

In computing relocation payments, if any member of a household or owner of an unincorporated business, farm, or non-profit organization is determined to be ineligible because of a failure to be legally present in the United States, no relocation payments will be made to them. Any payment for such household, unincorporated business, farm, and non-profit organization will be computed for the household, based on the number of eligible household members and for the unincorporated business, farm, or non-profit 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 an alien'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 an alien'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:

- Verification of the alien's status from the U.S. Citizenship and Immigration Services Office (USCIS) - A list of local USCIS offices is available on their website at <http://www.uscis.gov/portal/site/uscis>. Any request for USCIS verification will include the alien's full name, date of birth and alien

number, and a copy of the alien's documentation. If an agency is unable to contact the USCIS, it may contact FHWA for a referral to the USCIS.

- Evidence of United States citizenship or nationality from such person and, if considered necessary, verify the accuracy of such evidence with the issuer.

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 benefits 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 is 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 displacing agency determines will have a significant and demonstrable adverse impact on the spouse, parent, or child.

The certification required by this section is to be included as part of the claim for all relocation payments.

5.1.5 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.

5.2 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.

5.2.1 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.
- Relocation advisory services may also be offered to persons 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.

5.2.2 Advisory Assistance Requirements

Relocation advisory assistance will include such measures, facilities, or services as may be necessary or appropriate to:

- Determine the relocation needs and preferences, if any, of a displaced residence, business, farm operation and non-profit organization by personal interview; and explain the relocation payments and assistance available, the 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/realty issues. Every effort must be made to identify and resolve personal 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 the relocation needs and preferences, if any, of the displaced residents by personal interview; explain the relocation payments and assistance available; the 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 decent, safe and sanitary sales and rental housing, and explain that the residential 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 homeowner-occupant or residential tenant-occupant in writing of the maximum replacement housing payment they may be eligible to receive and 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. This information is included in the informational letter.
 - Advise residential displaced persons that their replacement housing must be decent, safe, and sanitary; and that payment cannot be made unless the department inspects the replacement dwelling and determines that it is decent, safe and sanitary and certifies to that.
 - Whenever possible, give minority persons reasonable opportunities to relocate to decent, safe, and sanitary replacement dwellings, not located in an area of minority concentration, that are within their financial means. This policy does not 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 current and continuing information on the availability, purchase prices, and rental costs of suitable commercial and farm properties and locations; and assist a person displaced from their business, farm operation, or non-profit organization 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.

5.2.3 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.

5.2.4 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.

5.3 RELOCATION PLAN

A relocation plan must be developed for all projects involving the displacement of an individual, family, business, farm or a non-profit organization to address the issues associated with such displacements, and it must address the full scope of the project. The relocation plan must be submitted to CBLA for approval prior to the initiation of negotiations to acquire right of way on a given project.

A subsidiary relocation field office may be established if the volume of work or the needs of the displaced persons are such as to justify the establishment of such an office. A determination must be made on a project basis and will be addressed in the relocation plan if it is determined that a subsidiary relocation field office will be needed and provided. Subsidiary offices will be staffed as required and open during hours convenient to the persons to be displaced, including evenings, if necessary.

5.3.1 Objectives

The purpose for preparing a relocation plan is to:

- Identify and analyze any problems associated with the displacement caused by the project;
- Develop solutions to address any identified problems, including ways to minimize the adverse impact of displacement; and
- Effectively plan for all relocation activities.

In order to accomplish these objectives, it is necessary to obtain a great deal of information about the displaced persons. A survey of the individuals, families and businesses to be relocated must be made in order to obtain the necessary information. The Relocation Plan Interview - Residential ([LA 531A](#)) or the Relocation Plan Interview - Business ([LA 531B](#)) must be used to record the information, and must be included in the project relocation plan.

5.3.2 Scope

The amount of detail and the depth of the analysis of data obtained by the survey, as well as the length of the relocation plan should directly reflect the scope and nature of the proposed project including an evaluation of program resources available to carry out a timely and orderly relocation. Uncomplicated projects may only require a one-page report in order to address all pertinent factors. Large or complicated projects, or projects in which relocation problems are anticipated, will require a more thorough analysis of the data and greater explanation of the proposed method to be used to overcome the problems.

5.3.3 Content

Each relocation plan will, at a minimum, include the following information:

- Introduction
 - A brief description of the project area dealing with information germane to the proposed project.
 - A description of the project, including the nature of the acquisitions and displacements.
- Displaced person data (information obtained during the interview process)
 - A discussion of the number and types of the residential relocation units affected by the project.
 - A discussion of the number, type and size of each business, farm and non-profit organization affected by the project, as well as the number of employees of each.
 - A brief discussion of the specifics of each relocation unit, including the impact of the acquisition and any relocation problems that might be foreseen.
- Replacement property data (information obtained from a search of the subject area real estate market)

- A discussion of the availability of comparable replacement dwellings appropriate for the nature of the relocation units. The discussion must include the number of, and price range or rental rates for the available decent, safe, and sanitary dwellings.
- A discussion of the availability of replacement business sites.
- A discussion of foreseeable problems, if any, in the availability of adequate replacement properties for residential, business, farm, and non-profit displacements.
- Analysis and Conclusion
 - A brief overview of factors at work in the project area which might impact relocation activities such as the condition of the real estate market, financing requirements, current and proposed development; other business governmental activities which might be competing in the same real estate market; income level; the need for public housing; and the need for any handicap (ADA) accessible housing.
 - Correlation of the displaced persons data and replacement property data.
 - A discussion of the use of housing of last resort procedures when an adequate supply of replacement dwellings is not expected to be available.
 - A discussion of the impacts of displacing the businesses should be discussed when an adequate supply of replacement business sites is not expected to be available.
 - A discussion of the manner in which the relocation of businesses which are reasonably expected to involve complex and lengthy moving processes, or small businesses with limited financial resources and/or few alternative relocation sites should be also included.
 - Consideration of any special relocation services which might be necessary from the department or other agencies. If the need for housing of last resort appears likely, discuss the results of your investigation and the ways in which it might be provided.
 - Assurances that the needs of the displaced persons will be met and the manner in which it will be carried out if problems are foreseen.
- Appendix (supporting documentation)
 - Project location map or drawing.
 - Relocation plan interview forms, including pictures of personal items of each relocate.
 - Other pertinent information, data or documentation for analysis and conclusion.

5.3.4 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. It must include information regarding general project description and a description of the nature of the additional acquisitions, displaced persons data, replacement property data, and an analysis and conclusion of the scope and impacts of the additional relocations activity, as well as supporting documentation. Interviews with each person being displaced are also required, as well as pictures documenting each relocatee's personal items. It should be noted that in situations where the general data for the project and project area remains the same as that provided in the original plan, that information need not be restated in the addendum. References back to the information contained in the original relocation plan may be made in the addendum.

An addendum to the relocation plan must be submitted to CBLA for approval prior to the initiation of negotiations to acquire additional right of way.

5.4 NOTICES

Eligibility for relocation assistance and payments begins on the date of the initiation of negotiations for the occupied property or on the date of issuance of a notice of intent to acquire (offer letter [LA 416A](#)), whichever is earlier, and is established based on the facts existing as of that date.

5.4.1 Ninety (90)-Day Notice of Displacement Letter

As soon as feasible, 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) with 1) a written description of the department's relocation advisory assistance and payments program that will be made available to them; 2) the eligibility requirements and procedures for obtaining this assistance and these payments; 3) the earliest date which they may be required to vacate the property; and 4) how to request a review by the director, or designees of any disputed claim for payment or assistance and services provided. It will also inform the person 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 5.1.4. This information will be furnished to all such displaced persons at the time of the initiation of negotiations to acquire the real property or interest therein. A Residential Informational Letter (90-day owner-occupant) ([LA 541A](#)), or a Residential Informational Letter (90-day occupant) ([LA 541B](#)) is to be used for residential relocation units; and a Business Informational Letter ([LA 541C](#)) is to be used for business relocation units.

Lawful occupants cannot be required to move unless they have received at least 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 ([LA 541D](#)) must also be initiated at this time and placed in the appropriate parcel file.

5.4.2 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. 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 542](#)) 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.

5.4.3 Notice of Intent to Acquire

A notice of intent to acquire is a written communication from the department that is provided 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, which clearly sets forth the department's intent to acquire the property. This notice establishes eligibility for the relocation assistance and payments provided by these procedures. 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.

5.4.4 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 ([LA 544](#)) is to be used for this notification.

5.4.5 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. A Notice of Receipt of a Claim for a Relocation Payment ([LA 544](#)) is to be used for this notification.

5.4.6 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.

5.4.7 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.

5.5 AVAILABILITY OF COMPARABLE REPLACEMENT HOUSING

5.5.1 General

No person to be displaced will be required to move from his or her dwelling unless at least one comparable replacement dwelling has been made available to such person. Where possible, three or more comparable replacement dwellings will be made available. A comparable replacement dwelling will be considered to have been made available to a person, if:

- The person is informed of its location.
- The person has sufficient time to negotiate and enter into a purchase agreement or lease for the property.
- 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.

5.5.2 Circumstances Permitting Waiver

The federal or state agency funding the project may grant a waiver of the policy 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.

5.5.3 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 will:

- Take whatever steps are necessary to assure that the person is temporarily relocated to a decent, safe, and sanitary dwelling; and
- 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.

5.6 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 (owner or tenant) status, 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 his 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.

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 or in the case of subsequent occupants as described under replacement housing as last resort.

The nature of the taking (i.e., whole take or partial take, 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.

5.6.1 Whole Takes

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.

5.6.2 Partial Takes

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 taking 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 taken, 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 taking of a typical lot causes the displacement of the owner from the dwelling and the remainder is a “buildable” lot, 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 letter at [LA 4111](#) 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.

5.6.3 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.

5.6.4 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 ([LA 564A](#)) form 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. In order to receive the full amount of their eligibility the owner-occupant must actually incur the additional cost.

A computation of eligibility for a purchase supplement must include a copy of the Payment Evaluation Form for Replacement Housing Supplement (Purchase) ([LA 564B](#)), the Replacement Housing Supplement Comparable Listing ([LA 564A](#)) for the subject property and the comparable properties used and a Replacement Housing Supplement Certification ([LA 564C](#)).

Copies of all such replacement housing computations should be prepared and forwarded to CBLA prior to the initiation of negotiations on a parcel.

5.6.5 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 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.

5.6.6 90-Day Owner-Occupants Who Purchase

A displaced person is eligible for the replacement housing payment for a 90-day owner-occupant if the person:

- Has actually owned and occupied the displacement dwelling for not less than 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.

5.6.6.1 Amount of Payment

The replacement housing payment for an eligible 90-day owner-occupant may not exceed \$31,000, 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 comparable 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.

5.6.6.2 Owner Retention

If an owner-occupant retains ownership of their dwelling, moves it from the displacement site, and reoccupy 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 market value, for residential use of the replacement 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	<u>+\$ 1,000</u> *
Total Costs	\$31,000
Less the Acquisition Price (Before deduction of the owner retention value)	<u>-\$25,000</u>
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.

5.6.6.3 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.

5.6.6.4 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. See [LA 5664](#) for additional details.

5.6.6.5 Payment Computation

The amount of the payment for the increased mortgage interest costs will be computed on the [LA 5665A](#) or [LA 5665B](#), and in accordance with the following provisions:

- 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 by dividing the amount of the actual replacement mortgage by the computed eligible replacement mortgage amount. This calculation will provide a percentage factor that can then be applied to the computed buy down amount to arrive at the reduced payment due. 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 will 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 will 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.
- The displaced person will 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.

5.6.6.6 Replacement Housing Costs in Excess of \$31,000 for a 90-Day Owner-Occupant

The 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 \$31,000 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.

5.6.6.7 Filing the Claim for Payment

A completed and properly documented Claim for Replacement Housing Supplement ([LA 5667A](#)) will be used by owner-occupants to claim supplemental replacement housing payment. A completed Dwelling Inspection (Decent, Safe and Sanitary) ([LA 5667B](#)) must be filed with the Claim for Replacement Housing Supplement ([LA 5667A](#)). Documentation supporting the expenses being claimed must be included.

5.6.7 Replacement Housing Payments for 90-Day Owners Who Rent

A 90-day owner-occupant eligible for a replacement housing purchase supplement payment who elects to rent a replacement dwelling is eligible for a rent supplement payment.

5.6.7.1 Computation and Disbursement of Payment

The amount of the rent supplemental 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 the supplemental housing provisions for a 90-day occupant, except that the \$7,200 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.

5.6.7.2 Determination of Payment Eligibility

A computation of eligibility for a rent supplement for 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 ([LA 5672](#)), the Replacement Housing Supplement Comparable Listing ([LA 564A](#)) for the subject dwelling and the comparable dwellings used and a Replacement Housing Supplement Certification ([LA 564C](#)).

Copies of all such replacement housing computations should be prepared and forwarded to CBLA.

5.6.7.3 Filing the Claim for Payment

A completed and properly documented Claim for Replacement Housing Supplement (LA 5667A) will be used by 180-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) (LA 5667B) must be filed with the Claim for Replacement Housing Supplement (LA 5667A). Documentation supporting the expenses being claimed must be included.

5.6.8 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 comparables 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.

5.6.9 Replacement Housing Payments for 90-Day Occupants

A tenant or owner-occupant displaced from a dwelling is entitled to a payment not to exceed \$7,200 for rental assistance, or down payment assistance, if such displaced person:

- Has actually and lawfully occupied the displacement dwelling for at least 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:
 - For a tenant, the date they move from the displacement dwelling, or
 - For an owner-occupant, the later of:
 - The date they receive final payment for the displacement dwelling, or in the case of condemnation, the date the required amount of the estimate of just compensation is deposited with the court; or

- The date they move from the displacement dwelling.

5.6.9.1 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.

5.6.9.2 Determination of Payment Eligibility

A computation of eligibility for a rent supplement for 90-day occupants must include a copy of the Payment Evaluation Form for Replacement Housing Supplement - Rent ([LA 5672](#)), Replacement Housing Supplement Comparable Listing ([LA 564A](#)) for the subject dwelling and the comparable dwellings used, and a Replacement Housing Supplement Certification ([LA 564C](#)). When a 90-day occupant'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 ([LA 5692](#)) 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 90-day notice of displacement.

5.6.9.3 Rental Assistance Payment

An eligible displaced person who rents a replacement dwelling is entitled to a payment not to exceed \$7,200 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.

5.6.9.4 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 Annual Survey of Income Limits for the Public Housing and Section 8 Programs. This information is updated annually and is available on the FHWA web site at <http://www.fhwa.dot.gov/realestate/ua/ualic.htm>. 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.

5.6.9.5 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, 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 housing, except as limited by the provisions for a replacement housing payment after death.

5.6.9.6 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.

5.6.9.7 Down Payment Assistance Payment

An eligible displaced residential tenant who has occupied the acquired dwelling for 90 days or more, or owner-occupant who has occupied the acquired dwelling less than 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 \$7,200. A 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 \$7,200; the department will increase the total payment to \$7,200. This additional monetary payment must actually be applied to the purchase of the replacement dwelling. Documentation must be provided verifying that the entire \$7,200 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	\$3,500
Eligible incidental expenses	\$1,950
Additional monetary payment	<u>+\$1,750*</u>
Total payment	\$7,200

*Amount required for a total payment of \$7,200.

If the total down payment assistance payment exceeds \$7,200; the department will limit the total payment to \$7,200, unless the original rental supplement computation was computed under housing of last resort provisions.

An example of the computation for a payment exceeding \$7,200 is as follows:

Eligible down payment	\$5,500
Eligible incidental expenses	<u>+\$1,900</u>
	\$7,400
Total payment	\$7,200

5.6.9.8 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.

5.6.9.9 Filing the Claim for Payment

A completed and properly documented Claim for Replacement Housing Supplement ([LA 5667A](#)) will be used by 90-day occupants to claim their supplemental replacement housing payment, including an Economic Means Evaluation for Low Income Households ([LA 5692](#)) if appropriate. Documentation supporting the expenses being claimed must be included. A completed Dwelling Inspection (Decent, Safe and Sanitary) ([LA 5667B](#)) must also be filed with the Claim for Replacement Housing Supplement ([LA 5667A](#)).

5.6.10 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.

5.6.11 Additional Rules Governing Replacement Housing Payments

5.6.11.1 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 the remainder is a “buildable” residential lot, 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 purposes of computing the replacement housing payment.
- To the maximum extent feasible the comparable replacement dwellings will 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.

5.6.11.2 *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.

5.6.11.3 *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, 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.

5.6.11.4 *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.

5.6.11.5 *Inspection of Replacement Dwelling*

Before any replacement housing claim for payment can be considered, an inspection must be made by a departmental representative and a determination made that the replacement housing selected is decent, safe and sanitary. The Dwelling Inspection (Descent, Safe and

Sanitary) (LA 5667B) 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.

If it is not possible under the circumstances for the department, or its consultant, to make the necessary inspection or to secure the needed inspection through a competent third party, a certification from the displaced person that they have occupied decent, safe and sanitary housing will be sufficient to establish the displaced person's eligibility for payment.

5.6.11.6 *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.

5.6.11.7 *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.

5.6.11.8 *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.

5.6.11.9 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 will be paid.
- Any remaining payment will 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 will be disbursed to the estate.

5.6.11.10 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.) will be included in the acquisition cost of the displacement dwelling when computing the price differential.

5.6.12 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. This means that:

- On a case by case basis 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; or

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; 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.

5.6.12.1 *Rights of the Displaced Person*

Displaced persons cannot be required to move from their dwelling unless and until at least one comparable replacement dwelling 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 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 90-day owner-occupant may also receive reimbursement for eligible incidental expenses and a 180-day owner-occupant will be eligible for increased mortgage interest costs.

A 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. The total down payment assistance payment will be reimbursement of the costs actually incurred in the purchase of their replacement dwelling.

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.

5.6.12.2 *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 \$31,000 to an eligible owner-occupant and \$7,200 to an eligible tenant-occupant - A rental assistance payment under this provision may be provided in installments or in a lump sum at the state'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, 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 will 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.

5.6.12.3 Central Bureau of Land Acquisition Approval Required

Please note that commitments should not be made to make payments in excess of \$31,000 or \$7,200 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.

5.7 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 10 of the eligible actual moving expenses.

5.7.1 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.

5.7.2 Replacement Housing Payment for 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 \$31,000 if:

- The person occupied the mobile home on the displacement site for at least 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 owns 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; and
- The department acquires 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 because there is no available comparable replacement site; or
 - Cannot be relocated because it does not meet mobile home park entrance requirements.

5.7.2.1 Payment

The replacement housing payment for an eligible displaced 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 agency 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;

- The person meets the other basic eligibility requirements for a 90-day occupant; and

- The department acquires the mobile home and/or mobile home site, or mobile home is not acquired by the department, but the department determines that the occupant is displaced from the mobile home because the mobile home cannot 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.
- 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.

5.7.2.2 Rental Assistance Payment for 90-Day Owner-Occupant Displaced from a Leased or Rented Site

A displaced 90-day owner-occupant is entitled to a rental assistance payment. 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 or conventional decent, safe and sanitary dwelling.

5.7.2.3 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 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 90-day mobile home occupants detailed below.

5.7.3 Replacement Housing Payments for 90-Day Mobile Home Occupants

5.7.3.1 Replacement Housing Payment Computation for 90-Day Occupants

A displaced tenant or owner-occupant of a mobile home and/or site is eligible for a replacement housing payment as described in Section 5.7.3, not to exceed \$7,200, if:

5.7.3.2 Filing the Claim for Payment

A completed and properly documented Claim for Replacement Housing Supplement ([LA 5667A](#)) will be used by mobile home occupants to claim their supplemental replacement housing payment(s), including an Economic Means Evaluation for Low Income Households ([LA 5692](#)) if appropriate. Documentation supporting the expenses being claimed must be included. A completed Dwelling Inspection (Decent, Safe and Sanitary) ([LA 5667B](#)) must also be filed with the Claim for Replacement Housing Supplement ([LA 5667A](#)).

5.8 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; and

- The costs of obtaining partial or complete mortgage releases; and penalty costs and other charges for prepayment of any pre-existing recorded mortgages entered into good faith encumbering such real property.
- 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 determine to be incidental to the purchase.

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 for Acquired Property ([LA 58](#)) and supporting documentation must be submitted to claim reimbursement for 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 ([LA 544](#)) 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.

5.9 PAYMENTS for MOVING and related expenses

5.9.1 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.

5.9.2 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.

5.9.3 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.

5.9.4 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 Nonprofit 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.

5.9.5 Payment After Death

In those cases where a displaced person has died, and who otherwise was or would be eligible for moving expenses has died, 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.

5.9.6 Nursing Homes

Residents of nursing homes may be relocated as a unit or individually. In any event the department must personally contact each and 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, as the case may be.

5.9.7 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.

5.9.8 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, or a combination of, the following methods:
 - Fixed Residential Moving Cost Schedule ([LA 598](#)); and/or
 - 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. 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.

Eligible expenses for moves from a dwelling are described in items 1 through 7 of the list of eligible actual moving expenses as provided in this section. Self-moves for moving personal property from a dwelling based on the lower of two bids or estimates are not eligible for reimbursement.

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.

5.9.9 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 ([LA 598](#)), and/or
 - 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. 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.

Eligible expenses for moves from a mobile home are described in items 1 through 7 of the list of eligible actual moving expenses as provided in this section. 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 8 through 10 of the actual moving expenses list as provided in this section. Self-moves for moving personal property from a mobile home based on the lower of two bids or estimates are not eligible for reimbursement.

5.9.10 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; 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.

Eligible expenses for moves from a business, farm or non-profit organization include those expenses described in items 1 through 7, items 11 through 18 of the list of eligible actual moving expenses, and items 1 through 3 of the list of additional eligible related business, farm and non-profit moving expenses as provided in this section.

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 ([LA 5910](#)) 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. The district should question wide discrepancies or disallow the bid:
 - 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.
- 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 in order 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.

5.9.11 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 7 and item 18 of eligible actual moving expenses as provided in this section.

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 taken and can still operate after the acquisition; personal property that is located in a mini-storage facility that will be acquired or relocated; personal property that is stored on vacant land that is to be acquired.

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.

5.9.12 Advertising Signs

If a sign owner elects to relocate must contact Central Bureau of Land Acquisition to coordinate.

Off premise advertising signs are considered personal property. 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.

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 (if the sign owner so elects) to a legal site, either along a controlled route or a non-controlled route. Personal Property Only provisions will apply.

It should be noted that off-premises advertising sign companies are not eligible to receive reestablishment expenses because the definition of a small business expressly disqualifies sites occupied solely by outdoor advertising signs, displays or devices.

5.9.13 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 business, 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 law, code or ordinance 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.
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. Other moving related expenses that are not listed as ineligible under these provisions that the department determines to be reasonable and necessary.
8. 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.
9. The reasonable cost of repairs and/or modifications so that a mobile home can be moved and/or made decent, safe, and sanitary.
10. 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 from a mobile home park or the department determines that payment of the fee is necessary to effect relocation.
11. Any license, permit, fees or certification required of the displaced person at the replacement location. However, the payment may be based on the remaining useful life of the existing license, permit, fees or certification.

12. 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.
13. Relettering signs and replacing stationery on hand at the time of displacement that is made obsolete as a result of the move.
14. Actual direct loss of tangible personal property incurred as a result of moving or discontinuing the business or farm operation. When the personal property is not moved or replaced the payment will consist of the lesser of:
 - The fair market value in place of the item, as is for continued use, less the proceeds from its sale. To be eligible for this payment, the claimant must make a good faith effort to sell the personal property, unless the department determines that such effort is not necessary. When payment for property loss is claimed for goods held for sale, the market value will be based on the cost of the goods to the business, not the potential selling prices; or
 - The estimated cost of moving the item as is, but not including any allowance for storage; or for reconnecting a piece of equipment if the equipment is in storage or not being used at the acquired site.

If the piece of equipment is operational at the acquired site, the estimated cost to reconnect the equipment will be based on the cost to install the equipment as it currently exists, and will not include the cost of code required betterments or upgrades that may apply at the replacement site. The allowable in-place value 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 not include costs that reflect code or other requirements that were not in effect at the displacement site; or include installation costs for machinery or equipment that is not operable or not installed at the displacement site.

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	- <u>\$ 7,000</u>
		<u>\$ 3,000</u>
	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

15. The reasonable cost incurred in attempting to sell an item that is not to be relocated.
16. 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	<u>\$ 1,000</u>
		\$11,000
	Less the proceeds of sale of item or trade-in	- <u>\$ 2,500</u>
		\$ 8,500
	Total	\$ \$8,500.00

OR

B.	Cost to move and reinstall the replaced item with no allowance for storage	\$ 2,500
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The payment is \$2,500

17. Searching for a replacement location. A business or farm operation is entitled to reimbursement for actual expenses, not to exceed \$2,500, 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
- Time spent negotiating the purchase or lease of a replacement site based on a reasonable salary or earnings.

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 \$2,500, the department may consider requesting a waiver of the cost limitations by FHWA as permitted under these regulations. Any such waiver must be approved by FHWA before a payment in excess of the \$2,500 limit can be made.

18. 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.

5.9.14 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 nearby utilities from the right of way to improvements at the replacement site.
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.

5.9.15 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 180-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 replacement dwelling;
- 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 owned or leased by the displaced person; and
- Refundable security and utility deposits.

5.9.16 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 90-day notice of displacement informational (introductory) letter. To be eligible for payment under this section the displaced person must:

- Provide the department reasonable advance notice of the approximate date of the start of the move or disposition of the personal property and a list 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.

5.9.17 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 67).

5.9.18 Filing the Claim for Payment

A completed and properly documented Claim for Moving Expenses ([LA 5918](#)) 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.

5.10 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 \$25,000, 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.

5.10.1 Eligible Expenses

Re-establishment expenses will 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

5.10.2 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.

5.10.3 Filing the Claim for Payment

A completed and properly documented Itemized Eligible Reestablishment Expenses for Small Business, Farm and Non-Profit Organizations Worksheet ([LA 5103](#)) must be used and filed with the Claim for Moving Expenses ([LA 5918](#)) when such expenses are claimed. Documentation supporting the expenses being claimed must be included.

5.10.4 Fixed Payment for Moving Expenses

5.10.4.1 Residential Fixed Payment

Any person displaced from a dwelling or 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 approved by FHWA. The fixed residential moving cost schedule covers three types of occupancy: occupants of unfurnished dwelling units; occupants of furnished dwelling units, including sleeping room tenants; and occupants of mobile homes who move their personal property separate from the mobile home.

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 play room, a tool room, bath room, 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.

The payment to a person with minimal possessions who is in occupancy of a dormitory style room or a person whose residential move is performed by the department at no cost to the person will be limited to the amount stated in the most recent edition of the fixed residential moving cost schedule. The Fixed Residential Moving Cost Schedule ([LA 598](#)) is the department's approved schedule, and provides for a graduated payment based on the number of rooms of personal property to be moved. The fixed residential moving cost schedule includes the cost for utility service transfer fees.

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.

5.10.4.2 *Filing the Claim for Payment*

A completed and properly documented Claim for Moving Expenses ([LA 5918](#)) will be used to claim a fixed moving payment for individuals or families.

5.10.5 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, except for a payment to a non-profit organization, will equal the average annual net earnings of the business, as defined below, but not less than \$1,000 nor more than \$40,000.

A displaced business is eligible for a payment in lieu of actual moving expenses 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.

5.10.5.1 *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.

5.10.6 Farm Operation Fixed Payment

A displaced farm operation may choose a fixed payment in lieu of the payment for actual moving and related expenses and actual reasonable reestablishment expenses in an amount equal to its average annual net earnings, as computed below, but not less than \$1,000 or more than \$40,000.

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.

5.10.7 Non-Profit Organization Fixed Payment

A non-profit organization may choose a fixed payment of not less than \$1,000 or more than \$40,000 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.

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.

5.10.8 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 two taxable years immediately prior to the taxable year in which it was displaced. If the net earnings in any one year are less than \$0, the net income for that year will be set at \$0 for purposes of computation of the fixed payment. For example:

Net income for first year is: -\$10,000
Net income for second year is +\$10,000

The fixed payment would be $(\$0 + \$10,000) \div 2 = \$5,000$.

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 owner, 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.

If the annual net earnings of the displaced business or farm are determined to be less than \$1,000, the minimum payment of \$1,000 will be provided.

5.10.9 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 Entitlement for Payment in Lieu of Moving Expenses ([LA 5109A](#)) 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 Entitlement for Payment in Lieu of Moving Expenses ([LA 5109B](#)) must be used to notify the business of the review determination. If the business is determined to be ineligible for such payment, the notification must include reasons for the ineligibility.

5.10.10 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 ([LA 51010](#)).

5.11 UTILITY RELOCATION

Section 405(d) of the Uniform Relocation Assistance and Real Property Acquisition Policies 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.

5.12 CLAIMS FOR RELOCATION PAYMENTS

5.12.1 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.

5.12.2 Expeditious Payments

The department will review claims. 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.

5.12.3 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.

5.12.4 Time for Filing

In addition to meeting all other eligibility requirements for a relocation payment as set forth in these regulations, 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.)

5.13 RECORDS

When the relocation activities and payments for a relocation unit or parcel have been completed, the relocation completion date must be entered immediately upon completion of the last activity. Entry of this date automatically removes the unit or parcel from the construction

status report. The district will input information relating to each relocation unit into the relocation screen in LAS before the first relocation contact can be made. An accurate and up to date record of all relocation activities will be kept for each relocation unit by utilizing a Relocation Assistance Unit Record (LA 541D). The district must update the appropriate dates and information required in LAS. The District or consultant relocation agent must update the Relocation Assistance Unit Record (LA 541D) on an on-going basis. All contacts and activities with a displaced person must be documented in the unit assistance record and the record will become a part of the permanent parcel file at the completion of relocation activities.

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 report on activities under the Uniform Act must be submitted to 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 (LA 513) must be used for this report. The report will be prepared by CBLA and developed from the information in LAS. Therefore, it is important that LAS be up to date and accurate.

5.13.1 Moving Expense 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.

5.13.2 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.

5.13.3 Miscellaneous Documentation

The following documentation must also be a part of the permanent file for each relocation unit:

- All correspondence pertaining to relocation activities;
- Notes of additional explanation for methods used to accomplish relocation, when required; and
- Completed Relocation Assistance Unit Record ([LA 541D](#)).

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.

5.13.4 The Relocation Assistance Unit Record

The Relocation Assistance Unit Record ([LA 541D](#)) is to be maintained as a permanent record of relocation assistance offered and given. One copy of this record is required for each family or business, including tenants displaced by the project. The basic information will be obtained by personal contact with the displaced persons. The record will be initiated no later than 24 hours after the initiation of negotiations for that parcel. A Relocation Assistance Parcel Checklist ([LA 5134](#)) must be used in conjunction with the unit record as a tool to insure that all appropriate relocation assistance functions have been completed.

When the relocation of a business or family unit has been completed, and all claims for relocation payments have been submitted to CBLA, the Relocation Assistance Unit Record ([LA 541D](#)) must be completed and placed in the district parcel file as a permanent record. A copy must also be forwarded to CBLA.

5.14 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.

5.14.1 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, 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.

5.14.2 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, 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.

5.14.3 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, at least ten (10) days prior to the scheduled date of the final review. The director cannot have been directly involved in the action being reviewed, or may assign to his/her designee.

5.14.4 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, 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.

6 PROPERTY MANAGEMENT

6.1 GENERAL

Property management is that function of the right of way acquisition process concerned with the interim management of all newly acquired right of way and/or improvements, including the disposition of all such improvements, until such time as the acquired right of way is utilized for state highway construction purposes. This function also includes the inventory, management and disposition of excess remnants and any improvements acquired in the acquisition of the needed right of way and existing right of way which has been determined to be no longer needed for state highway purposes, and the leasing of operating highway right of way for non-highway related uses. The department's Land Acquisition Computer System (LAS) and Non-Operating Right of Way (NORWAY) database are important tools for the implementation of the property management function. It is essential therefore that all data pertaining to the property management function be entered into LAS or NORWAY, as appropriate, once that data is available.

6.1.1 Organizational Responsibility

The Office of Highways Project Implementation Central Bureau of Land Acquisition (CBLA) is responsible for developing, evaluating, interpreting and implementing the policies and procedures for 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 Office of Highways Project Implementation district offices are responsible for implementing the policies, procedures and programs of the division within their respective districts. Responsibility for the district's land acquisition program is delegated to the district Bureau of Program Development/Land Acquisition (DLA) and the property management function is further delegated to the property management section or unit within DLA.

6.1.2 Statutory Authority and Requirements

Many of the procedures for implementing the property management function are guided by specific statutory authority or requirements contained in the Illinois Compiled Statutes. Those statutes, which in whole or in part affect the property management function, are:

Chapter 20 - Executive Branch

20 ILCS 2705/2705-550 Transfer of jurisdiction over realty

20 ILCS 2705/2705-555 Lease of land

Chapter 30 - Finance

30 ILCS 105/6r Money received from rental of highway property

30 ILCS 500 Illinois Procurement Code

30 ILCS 562/1.5 State Real Property Leasing Act

Chapter 35 - Revenue

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 (exemptions)
35 ILCS 200/9-195	Leasing of (tax) exempt property
Chapter 425 - Fire Safety	
425 ILCS 60/1	Smoke Detector Act
Chapter 605 - Roads and Bridges	
605 ILCS 5/4-201.1	Rules, regulations and specifications
605 ILCS 5/4-201.16	Rental of lands, buildings or improvements - Annual report to the General Assembly
605 ILCS 5/4-501	Acquisition of land and 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 (78 Stat. 252) and the regulations of the United States Department of Transportation, 49 CFR 21 implementing this Act will affirmatively insure the acceptance of any bid pursuant to the notice or advertisement will be without discrimination on the grounds of race, color, sex or national origin.

All aspects of property management must conform to the requirements of the Americans with Disabilities Act (ADA) (42 U.S.C. 12101 et. seq.).

6.2 PRE-NEGOTIATION REQUIREMENTS

6.2.1 Inspection of Buildings and/or Improvements

Buildings and/or improvements situated on the land to be acquired are inspected by the district's appraiser and review appraiser assigned to that parcel and the property manager and/or relocation manager, and then inventoried on the Project Inventory of Improvements Form (LA 621). 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 is 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 for 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 LAS.

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 6.6.4.

6.2.2 Preparing the Inventory

Acquired items specifically identified in the approved appraisal as improvements or fixtures which have a value for sale as individual items and which can be disposed of separately from the building, are reported in LAS and are managed and disposed of in the same manner as buildings. Examples of such improvements or fixtures are equipment, and/or integral plant equipment necessary to 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 immediately provided a complete inventory of the stock, listing the kind (species), number, the size, and the estimated date of availability. Use the Classification and Disposition Values – Nursery Stock Form ([LA 622](#)) 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.

6.2.3 Establishing Values

Prior to initiation of negotiations on the parcel, an Improvement Disposition and Rental Values form ([LA 623](#)) is prepared. This requires that for each item inventoried a determination is made of:

- Owner retention value
- Current value (minimum public sale value)
- Rental value (per month)

When establishing the owner retention and minimum 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.

6.3 NEGOTIATION ACTIVITIES

When property being acquired for state highway purposes includes the acquisition of buildings or other improvements, the assigned negotiators should become familiar with the property management procedures in order that 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 negotiation contacts. The succeeding paragraphs provide detailed procedures concerning owner retention, rental agreements, vacancy and possession requirements and public sales.

6.3.1 Owner Retention

During negotiations every effort is made to settle with property owners on the basis that they retain ownership of the acquired buildings and/or other land improvements 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 building removal are embodied in a written agreement between the district and the property owner. The agreement used is the Retention Agreement ([LA 631A](#) Template). Provisions not applicable or not required may be deleted. Each deletion is initialed and dated by each party to the agreement. 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 the removal operation is expected to approach a six month or longer duration, 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 date of issuance. As a consequence, warrants not canceled within six months are returned for re-issuance.

The agreement for removal also specifies the duration of time within which the retained improvements are to be removed and the right of way cleared. As a rule the removal of buildings and clearance of right of way should require no more than 90 days from the date payment is made to the owner. The owner, however, may request a delay in the removal of retained improvements providing the acquired right of way is not needed for construction of the proposed improvement project in the immediate future.

Therefore, when the removal and clearance operation is not expected to be commenced and fully completed within the 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. The Rental Agreement ([LA 631B Template](#)) may be utilized for this determination and details are discussed in Section 6.5.

In cases where the owner has agreed to removal and clearance of the right of way within the 90 day or less 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 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 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.

6.3.2 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 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.

6.3.3 Rental to Existing Owner/Tenant Occupants

Both improved and unimproved right of way acquired for future state highway construction should be rented provided the construction schedule permits, and the condition of the land and/or building(s) is such that it can be rented and there is a market for such rental. In those instances when the department acquires property as a result of a hardship request, it is department policy not to rent that property back to the person or entity from whom the property was acquired.

The occupation or use of acquired right of way under a rental agreement during the interim period prior to the project being scheduled for construction letting is advantageous to the department for several reasons. The rental proceeds generate a credit to 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 in which to relocate (see Rental Agreement - [LA 631B](#) Template).

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 in order 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 are desirous of remaining 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. Properties acquired under hardship provisions should not be rented back to the person from whom the property was acquired.

- **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 6.4.1.
- **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 Improvement Disposition and Rental Values form (LA 623) will be prepared and inserted in the parcel file.

Rental rates are to be reviewed each year. If after reviewing the previously established rental rate it is determined the rate should not be changed, then the parcel file should be documented accordingly. An Annual Rental Review form (LA 631C) will be used to complete the annual rental review.

If upon review of the rate, any changes are necessary, notice to the tenant is required at least 30 days prior to the change (use a Rental Review Letter to Tenant - LA 631D Template).

6.3.4 Effective Date of Rental Agreements for Existing Owner/Tenant Occupants

6.3.4.1 Improved Residential, Commercial or Industrial

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, coincidentally with or as soon as possible after payment for the property is made to the owner, the effective date of the rental agreement should be established and the rental agreement executed. The effective date may be adjusted to commence 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 property is actually paid for by delivery of the warrant (or a warrant for the amount of the just compensation established by the court has been deposited), the former owner(s) and/or tenants 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 is required to charge rent for any continued occupancy of the property based on the values previously established in Form [LA 623](#). 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 will 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.

6.3.4.2 Unimproved Agricultural Land

In acquiring farm land where there are existing crops, it is customary, when the construction schedule permits, to allow the incumbent owner/tenant farm operator 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 utilized 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, of course, be recoverable from the future crop under rental agreement. Former owner landlords will not be included as a party to any rental agreement with a farmer tenant operator. The preparation and terms of rental agreements are discussed in detail under Section 6.5 below.

6.3.4.3 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 by the year 2000 for reducing soil erosion on all Illinois cropland to a soil-loss tolerance level. 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.

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 Illinois Department of Agriculture is charged with the responsibility for administering the program and has adopted guidelines (April 18, 1980) also setting a goal of reducing soil erosion on all lands to the soil loss tolerance ("T" value) by the year 2000. District soil erosion standards cannot exceed two times "T" from 1988 to 1994 and one and one-half times "T" from 1994 to 2000. Adopted standards cannot exceed the "T" value after January 1, 1988, on gently sloping land not exceeding 5% slope provided that it can be accomplished with conservation tillage. Using the procedures outlined in the pamphlet "Estimating Your Soil-Erosion Losses with the Universal Soil Loss Equation (USLE)" printed by the University of Illinois College of Agriculture Circular #1220, you can learn if the soil-erosion loss exceeds these standards and determine what adjustment must be made to meet the standards.

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 utilized 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.

6.3.5 Outdoor Advertising Signs-Rental Prohibited

Illinois law (605 ILCS 5/9-112.2) 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.

6.4 POST-ACQUISITION ACTIVITIES

6.4.1 Vacation and Physical Possession

The determination that the incumbent owner or tenant occupants will not elect to remain in occupancy of the acquired property should be known at the time of the negotiated settlement or the 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. 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.

Several factors may influence the determination that it will not be feasible to enter into rental agreements for either improved or unimproved right of way. The most common is that the right of way acquisition is 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.

If occupied property is required to be vacated by an owner or tenant, it will be necessary to give the occupants, or the owners of any personal property located on the acquired property, a 30-day specific date written notice to vacate the property. The Notice to Vacate ([LA 542 Template](#)) showing the specific date for vacating the property should be used for this purpose. The following conditions will affect the issuance of this notice.

- The 30-day specific Notice to Vacate cannot be issued under any circumstances until after either

- The owner has been paid and the deed recorded; or
 - The amount of preliminary compensation has been deposited with the County Treasurer and the Order Vesting Title in the state has been entered by the court; or
 - amount of the court award has been deposited with the county treasurer.
- The specific date for vacating the property as specified in the Notice to Vacate will not, under any circumstances, be earlier than 90 days from the date of issuance of the Introductory Letter ([LA 541A](#) Template or a 180-day owner-occupant, or [LA 541B](#) Template for a 90-day occupant for residential parcels; or [LA 541C](#) Template for 90-day notice for business parcels) to the displaced owner or tenant occupant at the initiation of negotiations.

NOTE: The 30-day specific "Notice to Vacate" is not intended to be given to tenants under prior rental agreement with the state. Tenants under rental agreement will be notified in accordance with the provisions of the rental agreement which, as a general rule, also provides for a minimum 30-day notice.

Extenuating circumstances may prevent the occupants from vacating the acquired property by the date specified in the "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.

6.4.2 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. This can be accomplished by inspection of the building 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.

6.4.3 Soliciting New Tenants

As soon as it is determined that the current owner or tenant occupants intend to vacate the acquired property within the time allowed, every effort should be made to solicit prospective tenants. Whether or not there is an existing waiting list of prospective tenants will determine the extent of solicitation required. It may be necessary and is permissible to advertise locally for prospective tenants via news releases, legal notices, or display ads. The district's fax number

and telephone deafness device (TDD) phone number must be included in any such solicitation or advertisement to provide alternative means for persons having a disability to respond.

Changing conditions may warrant a re-evaluation and possible adjustment of the previously established rental rate. If, after re-evaluation, the rate differs, complete a revised Form [LA 623](#) indicating such change in the rate. Any solicitation should comply with the above requirements, which will assure compliance with the Americans with Disabilities Act.

6.4.4 Effective Date for Rental Agreements for New Tenants

The effective date of the rental agreement with any new tenant should be no later than the date the prospective tenant expects to occupy the property. The security deposit and the first month's rent are due no later than the effective date of the agreement.

The preparation and terms of rental agreements are discussed at length in the following paragraphs.

6.4.5 Leasing of Lands to Government Agencies

There is no authority in Illinois to lease or rent lands, including improvements for less than the current market rental rate for such property. Therefore the leasing or rental of land and/or improvements to governmental agencies will not differ from leasing or renting to any other tenant.

6.4.6 Leasing Lands Where a Dedication of Right of Way for Highway Purposes (Easement) was Acquired

Where the department possesses no more than the right of an easement for state highway purposes, 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 lease or rental agreement.

6.4.7 Rental to Department Employees

It is the policy of the department to not rent or lease any state property to employees of the department.

6.5 RENTAL AGREEMENTS AND RECORDS

6.5.1 General

The Rental Agreement ([LA 631B](#) Template) is used for all month-to-month residential leases of acquired property. This template may also be used for the leasing of land and/or improvements for agricultural, commercial or business purposes by adding provisions or special terms applicable to such uses to insure adequate protection to the state. Where operating highway right of way has been approved to lease for a non-highway related use, the leasing process discussed in Section 6.10 will be followed.

6.5.2 Non-Discrimination Provisions

Non-discrimination language has been made a part of the department's standard lease.

6.5.3 Tenure of Rental Agreements

Illinois law (20 ILCS 2705/2505-555), authorizes the leasing of any land or property under the jurisdiction of the department that is not to be immediately used or developed, provided that no such lease be for a longer period of time than five years.

In counties with a population of not less than 500,000 and not more than 800,000, 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.

Generally, rental agreements for residential, commercial or business uses will be short term, on a month-to-month basis. Rental or lease agreements for agricultural land, however, will usually be for a one-year term. Short term rentals or leases of one year or less 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. [LA 631B](#) Template is to be used for this purpose.

However, in order to simplify the process of annual renewals of agricultural lands, the following amendment may be added to such leases each year for a period of time not to exceed a period of four years:

EXTENSION:

This lease will be extended subject to and conditioned on the same provisions set forth herein from _____, _____ to and including _____, _____.

Signed _____, _____

STATE OF ILLINOIS
DEPARTMENT OF TRANSPORTATION

By: _____ (SEAL)
Lessor

By: _____ (SEAL)
Lessee

If it becomes necessary to make mutually agreeable minor changes in the lease, they should be included in the amendment for extending such lease.

The leasing of state property for periods in excess of one year considerably reduces the department's flexibility to utilize the property on short notice and is therefore to be discouraged. Requests for leasing in excess of one year must be reviewed and approved by CBLA.

6.5.4 Rental Payments and Deposits – Accounting

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" Form AA 644 will be prepared, processed and distributed by the district in accordance with the procedures outlined in Section 7.5.1, 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.

Rental checks in the form of certified check, cashier's check or money order, made payable to the Treasurer of the State of Illinois, will be forwarded to CBLA Accounting and Administrative Services as soon as it is received by the district. 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. Each payment will be accompanied by an "Accounts Receivable Remittance Statement" Form AA 646.

An "Accounts Receivable Remittance Statement" Form AA 646 must be prepared, processed and distributed by the district Bureau of Administrative Services in accordance with the procedures outlined in Section 7.5.2.

The words "Improved" or "Unimproved" must be printed on both the "Accounts Receivable Invoice" Form AA 644 and the "Accounts Receivable Remittance Statement" Form AA 646. 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.

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 forwarded to the Central Bureau of Business Services (BoBS) by the same procedure as set out above for rental checks.

6.5.5 Refunds

Should a tenant be determined to be entitled to a refund of the amount deposited, or pro-rata portion thereof, a warrant in the amount of such refund may be requested through CBLA as an expense incidental to property management. This matter is also discussed in Section 7.5.6. Such a refund must be requested by memorandum from the regional engineer stating the reasons such a refund is due the tenant. The request must also include the parcel identification, name and address of tenant, dates of initiation and termination (property vacated) of the rental agreement, dates and numbers of the accounts receivable invoice and remittance statement by which the deposit was previously submitted, the amount of such deposit, and the total sum of all rents collected during the term of the rental agreement.

Warrants for refunds issued by the State Comptroller will be sent directly to the payee based on the above information provided by the districts.

6.5.6 Rental in Arrears

If the previous month's rent has not been received at the time of mailing the current month's invoice, a Final Demand Letter ([LA 656A Template](#)) stating the total amount of rent due will accompany the current month's invoice. If the previous month's rent has not been paid within six weeks after its due date, it should then be determined delinquent, and a Notice and Demand for Possession ([LA 656B 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 [LA 656B Template](#).

If the tenant is still in possession after the rent has been determined to be delinquent, the district takes steps to regain possession by enforcing the terms of the rental agreement. Any change to an existing Accounts Receivable Invoice is immediately reported to the district Bureau of Administrative Services (such as termination of a rental agreement, etc.). An "Accounts Receivable Invoice" Form AA 644 is used to record this change for any addition (debit entry) or deduction (credit entry) to the original Invoice Form AA 644. All invoices in the above category are to include a brief explanation for the adjustment.

If the district is unable to recover rental arrears from a tenant in possession or from a tenant who has vacated the premises, the account is placed with 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, letters, [LA 656A Template](#), [LA 656B Template](#) and the name and telephone number of the appropriate district contact person will be included. The CBC will notify the district of all significant activity on the eviction/collection.

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. The district processes the recovery on an "Accounts Receivable Remittance Statement" Form AA 646 with the original sent to BoBS, one copy to the district and one copy to the CBC.

CBC will advise the district of any rental arrearage accounts determined to be uncollectible. The district then prepares an "Accounts Receivable Invoice" Form AA 644 reversing entry (original plus three copies). The original copy of the CBC uncollectible determination will be sent, with Invoice Form AA 644 reversing entry, BoBS, and copies should be forwarded to the CBC, CBLA, and a copy retained in the district file.

6.5.7 Taxing of Tenants on Exempt Lands

Counties may assess 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 rates and periods of rental will be provided to the appropriate county assessors. It would seem appropriate that tax statements to the tenants should be pro-rated to cover only the actual number of months per taxing year in which each parcel is occupied by the tenants under a written rental agreement. The district places lessees/tenants of state-owned property on notice as to the possibility 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 631B Template](#)).

6.5.8 State Real Property Leasing Act

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 that a lessee of property, under the department's control, is delinquent in paying property taxes, the department notifies 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.

Within 60 days after entering into an agreement to lease real property, the property manager will notify the county clerk of the county in which the real property is located of the name and mailing address of the lessee.

6.5.9 Rental of Residential Properties Lead-Based Paint Hazards

The Illinois Department of Transportation (IDOT) is required to inform all tenants of residential properties of any known lead-based paint hazards. This requirement directs that potential residential renters 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 659](#)) is provided in order to disclose any known lead-based paint hazards to potential tenants. The completion of this form is required prior to the execution of any residential rental agreement. 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.

6.6 MANAGEMENT OF ACQUIRED PROPERTY – GENERAL

6.6.1 Rentable Lands and Buildings

The district property manager is responsible for maintaining an inventory of any parcels of land and any improvements under the department's control that are currently being leased/rented. The appropriate rental screens should be formulated and maintained accordingly in the Land Acquisition System (LAS) and referenced in the Non-Operating Highway Right of Way (NORWAY) inventory.

If it is determined that any improved or unimproved properties should be rented, the district initiates and comply with the following procedures and regulations.

- Establish the rental rate for the property utilizing Form [LA 623](#).
- Arrange for advertising or otherwise solicit tenants.
- Prepare [LA 631B](#) Template and Application for Rental form ([LA 661](#)).
- Supervise the properties and rental collections throughout the term of the rental agreements.
- Provide for policing of unoccupied property and take immediate 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.

- Prior to the rental of any improvement containing sleeping quarters, it is required by 425 ILCS 60/1 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 form [LA 623](#), prior to occupancy of the dwelling. Tenant should also be advised concerning maintenance of the device.
- A copy of the lead poisoning brochure, furnished by the Department of Public Health, is supplied to all residential tenants. A record is to be kept in the parcel file acknowledging receipt by the tenant.
- 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. 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.

- State Real Property Leasing Act - This act prohibits the leasing (renting) of any state property to a person or entity delinquent in property tax payments. It requires the department to immediately notify the county clerk of all rentals (leases) and their mailing address. A copy of the executed lease (rental contract) should be mailed and a notation kept of the mailing date.

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 appear to 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.

6.6.2 Non-Rentable Lands and Buildings – Disposal

There will be occasions when the highway construction project is scheduled for an early contract letting and it is not feasible to rent acquired buildings. There will also be those 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 for rental.

Regardless of the reason for not renting acquired buildings, foremost consideration should always be given to disposal by public sale at the earliest possible time.

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.

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.

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 Excess State Property form ([LA 662](#)) 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 improvements are set out in Section 6.7.

By obtaining the required approval prior to the time of 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 consideration must be

given either to 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 such time as 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, to make arrangements 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 6.8.

6.6.3 Rodent Control

The purpose of rodent control is to attempt the elimination of, and thus 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 6.6.8.
- 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 when accomplished in accordance with the aforementioned procedures.

6.6.4 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 LAS.

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 web site:

<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 also eligible for federal participation and reimbursement under the same circumstances and conditions as set out in Section 6.6.3.

6.6.5 Statutory Requirements—Tax Exempt Property

Each year, on/or before January 31st, the district is required to file an affidavit (PTAX 300) with each county assessor or supervisor of assessments, as the case may be, 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 requirement of 35 ILCS 200/15-10 and failure to file such affidavit annually will, at the discretion of the assessor or supervisor of assessments, constitute cause to terminate the exemption from taxation of that property. Therefore, the district should each year request and the assessor or supervisor of assessments 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 your 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 assessor or supervisor of assessments 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 1 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 (1) or more acres is concerned, the property can be assessed to the lessee/tenant, and 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 30.

The parcels containing less than one (1) acre would still be covered by the provisions of 35 ILCS 200/9-195.

6.6.6 Maintenance of Rental Properties

Item 6 of the Rental Agreement ([LA 631B](#) Template) provides as follows:

"That said STATE by the terms of the agreement or otherwise, will not be bound to do or cause to be done any maintenance, repairs, replacements, redecorating or improving of said premises or appurtenances thereto."

It is not the policy of the department to become obligated to any tenant under rental agreement to provide any maintenance, repairs, replacements, redecorating or improving of acquired properties being rented. 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 that there is no future misunderstanding concerning their obligation and the department's position under this provision.

There may be instances when emergency repairs and maintenance are required and the department determines that it is cost effective to complete the work needed. In these cases the department's procurement policies as reflected in Section 6.6.8 must be followed in obtaining any goods or services needed for this repair or maintenance.

6.6.7 Records and Reports

Form [LA 621](#) (Project Inventory of Improvements) 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 relative to the owner retention, acquisition, management and disposition of the improvements must be entered as the information becomes available.

6.6.8 Incidental Expenses – Property Management

Some property management expenditures may be necessary until such time as the acquired right of way improvements are utilized for highway construction purposes. The following procedures should be followed for the purchase of services or materials in order 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:

- The form of contract used for all property management contracts will be developed from the department's contract generator. A written contract is required for property management expenditures of \$5,000 or more.
- 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.
- The regional engineer may approve incidental property management expenditures up to \$5,000. Expenditures estimated to be in excess of \$5,000 must be approved by CBLA prior to any commitments for purchases or work to be performed. Recommendations for approval of expenditures in excess of \$5,000 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 located on the right of way up to \$10,000 subject to compliance with the procedures. This subject is discussed in more detail in Section 6.8.
- Where a property management expenditure, other than demolition, of up to \$10,000 is involved, while the Illinois Procurement Code does not require the solicitation of competitive bidding, every effort should be made to obtain the highest quality of material and services at the least cost. Where an expenditure is less than \$5,000, at least three informal bid quotes must be obtained. Where an expenditure of more than \$5,000 but not exceeding \$10,000 is involved, the work must be advertised in the local and state newspapers and sealed bids obtained based on standard acceptable specifications that must be provided to each bidder. Solicitations must include the district's fax number and TDD phone number in order to comply with the Americans with Disabilities Act. At least 14 days must elapse between the initial advertisement and the bid opening. These types of expenditures of \$5,000 or more must be reduced to writing in the form of the department's contract generator and submitted to CBLA for review and filing with the Illinois Office of Comptroller no later than 15 days from the date it is accepted or executed by the department.
- Where a property management expenditure, other than demolition, will exceed \$10,000, the work must be bid in accordance with the Illinois Department of Central Management Services' Procurement and Contract

Provisions (44 Illinois Administrative Code). The invitation for bids for these contracts must be published on the Internet in the Illinois Procurement Bulletin. After publication in this bulletin, direct bid solicitation can occur. Advertising in both the state newspaper and local newspaper is required. This process must be closely coordinated with the department's Office of Finance and Administration's Bureau of Business Services (BoBS) and CBLA.

- Bidding for repairs or services will not be required:
 - Where the goods or services to be procured are economically procurable from only one source.
 - In emergencies involving public health, public safety, or where immediate expenditure is necessary for repairs to state property in order to protect against further loss of or damage to state property. Where funds exceeding \$10,000 are expended in an emergency by purchase, contract or otherwise, however, the person or persons authorizing the expenditure must file an affidavit with the Auditor General of the State of Illinois within 10 days after the purchase or contract setting forth: the amount expended, the name of the vendor or contractor involved, and the conditions and circumstances requiring the emergency purchase. Where only an estimate of the cost is available within 10 days after the purchase or contract, the actual cost must be reported immediately after it is determined. A form of emergency affidavit is shown as Template [LA 668](#) (Emergency Repair Statement) (Emergency contracts will also comply with 44 Illinois Administrative Code 660.120).
- A district will maintain, to the extent possible, a prospective bidder's list of qualified contractors for such goods and services as may be required for the repair and maintenance of property under management as set forth herein. Certified disadvantaged business enterprises should be encouraged to participate in property management contracting services and should be requested to submit a listing of goods or services they can provide.
- Contracts for services and/or materials required in connection with the management of property must be executed as two party agreements on the department's contract generator form and submitted by the district to CBLA along with verification that the work has been satisfactorily completed and the material, if any, required by the contract and used therein is acceptable. Where such contracts exceed the sum of \$5,000 or fees of vendors providing miscellaneous repetitive services exceed \$5,000 in the aggregate for a twelve-month period the contracts must be submitted to CBLA within 15 days of execution.
- State statutes require the compliance of any party, corporation, partnership or other business entity conducting business through a contract with the state of Illinois or any of its divisions, with the regulations as shown in the department's contract generator. These requirements must be complied with prior to commencement of the project and must be verified prior to payment for services.

- The Prevailing Wage Act (820 ILCS 130/0.01 et seq.) applies to services obtained in conjunction with work done on property that the department manages until it is needed for construction. The Illinois Procurement Code (30 ILCS 500/25-60) gives the department an exception to complying with the Prevailing Wage Act for services that cost under \$2,000 or are under \$200 per month. If incidental expenses involved with property management include the payment of wages and the services obtained will be \$2,000 or more, wages paid for these services must be based on the Prevailing Wage for the area in which the work is done.

A vendor's invoice covering costs incidental to property management will be prepared and processed in accordance with Section 7.4.2. 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.

6.7 PUBLIC SALE OF BUILDINGS AND IMPROVEMENTS – GENERAL

Prior to a public sale of improvements, the district must submit to CBLA the original and one copy of an Order and Approval to Dispose of Excess State Property (form [LA 662](#)) and one right of way plan sheet with the subject improvements outlined or shaded in color to indicate its location. It is also required that this submittal state whether federal funding was involved in the purchase.

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 in the format shown as [LA 67](#) Template (Bill of Sale (Buildings, Goods and Chattels)). 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 LAS.

6.7.1 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 at least 14 days after the date of the first publication of the notice. The notice must include the requirements of Section 6.3.2 to ensure compliance with the Americans with Disabilities Act.

The department is now making these sale notices available on the department's Internet site located at: <http://www.idot.illinois.gov/doing-business/sales/excess-property-sales/index>. 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 Internet server.

As a minimum, newspaper advertisements will contain the following provisions:

- The description and location of improvements to be sold.
- The dates and times the improvements will be open for inspection.

- The location of the sale and the date and time when sealed bids will be opened or oral bidding will commence.
- The following provisions relative to prevailing wages on 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 (78 Stat. 252) and the Regulation of the Department of Transportation 49CFR, Part 21, hereby notifies all bidders that it will affirmatively insure that the acceptance of any bid pursuant to this advertisement will be without discrimination on the grounds of race, color, sex, or national origin."
- The following provisions relate to permit requirements for moving buildings or goods and chattels 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
- The district's fax number and TDD phone number.

The Bidder's Proposal for Public Sale, Purchase and Removal of State Owned Excess Personal Property form (LA 671) should also be prepared for distribution to prospective bidders by inserting the required information concerning the proposed sale.

The district will also advise CBLA of the date, time and location of the proposed sale.

Please note that neither IDOT employees nor family members living within the same household may bid on property, either real or personal, offered by the state at public auction.

6.7.2 Bidders Proposals and Performance Deposits

6.7.2.1 Sealed Bids

Each bid, in order to be qualified, must be for not less than the current appraised value as approved by the Governor and as shown on the "Order and Approval", and submitted on form LA 671 (Bidders Proposal for Public Sale, Purchase and Removal of State Owned Excess Personal Property) 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.

6.7.2.2 Auction Bids

It is advisable to obtain a register of the names and addresses of all prospective bidders before commencing the auction. The successful bid must not be for less than the established current appraised value as approved by the Governor and as shown on the "Order." At the conclusion of bidding, the potential purchaser will complete and execute form [LA 671](#) and submit with a bank draft, cashier's check, certified check, or money order the required performance deposit, made payable to the Treasurer of the State of Illinois.

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. Performance deposits should be no less than 10% of the sale price. However, since the sale price is indeterminate until after the bids are received, there is usually some delay and inconvenience in obtaining the deposit. Therefore, in the alternative of requiring a percentage deposit based on the high bid, the following guidelines may be used in establishing a fixed deposit amount based on the appraised value of the item being sold. This procedure will then permit prospective bidders to come to a sale with the fixed deposit in hand:

<u>Current Appraised Value</u>	<u>Minimum Fixed Deposit</u>
\$1,000 or less	50% of appraised 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 appraised value

The above-suggested fixed deposits are considered to be reasonable minimums; however, they may be increased at the discretion of the regional engineer. Deposits should be rounded up to even dollar amounts for convenience.

The deposit checks 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 deposit checks 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.

6.7.3 Accounting for Public Sale Proceeds

Immediately following the sale, the district will prepare an "Accounts Receivable Invoice" Form AA 644 in accordance with the procedures outlined in Section 7.5.1, 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 an "Accounts Receivable Remittance Statement" Form AA 646 in accordance with the procedures outlined in Section 7.5.2.

6.7.4 Bill of Sale Validation

The bill of sale (original) previously forwarded to the district, in order to be valid, must be completed by the district by filling in the name of successful bidder and amount of bid, 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.

6.7.5 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 or goods and chattels 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 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.

6.7.6 Sale of Residential Improvements – Lead-Based Paint Hazards

IDOT 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 ([LA 676](#) Template) 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.

6.8 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.

6.8.1 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 681A](#); Exhibit [LA 681B](#); [LA 681C](#) Template; form [LA 681D](#); and Exhibit [LA 681E](#)). 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.

6.8.2 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.

6.8.3 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.

6.8.4 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 LAS. The "authorized demolition date," "contract amount," and "removal date" fields on the improvement screen are to be completed as they occur.

6.9 *MANAGEMENT OF NON-OPERATING RIGHT OF WAY (NORWAY) AND DISPOSAL OF EXCESS LAND OR RIGHTS IN LAND NO LONGER NEEDED FOR STATE HIGHWAY PURPOSES - GENERAL*

605 ILCS 5/4-508(a) states the following: "Except as provided in paragraphs (c) and (d) of this Section, and subject to the written approval of the Governor, the Department may dispose of, by public sale, at auction or by sealed bids, any land, rights of other properties, real or personal, acquired for but no longer needed for highway purposes or remnants acquired under the provision of Section 4/501, provided that no such sale may be made for less than the fair market value of such land, rights, or property."

The purpose of this section of the manual is to establish a system to inventory highway right of way that may now, or sometime in the future, be disposed of according to 605 ILCS 5/4-508 (a) through (e). DLA personnel are responsible for the creation and management of this inventory of land parcels which are not considered to be part of the operating highway right of way until disposed of under the provisions of 605 ILCS 508 (a) through (e), by transfer of jurisdiction to another state agency, or by legislative release.

The following definitions are used when determining the status of right of way parcels not considered a part of the operating highway system.

“Excess Land” - Land or rights in land, 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 provision 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 the public ways; but have not been declared as unnecessary for highway maintenance or future expansion of highway right of way.

There may be circumstances when the department has acquired or will acquire right of way for purposes that do not appear to be for the specific use of the operating highway. While it may appear that these parcels fall outside the usual limits of the operating right of way, there were specific roadway purposes why this right of way was acquired or why it would not be considered eligible for disposal. Right of way that has been acquired under the following situations will not be considered excess land 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. Any leased/rented parcels of right of way will be shown in LAS under rentals.

6.9.1 Inventory and Management

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 691A](#) “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 which 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 according to Section 6.9 provided the parcel is through the disposal process, its process 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. 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 691B](#) "NORWAY Database – Instructions for Selection of Report Type."

Non-operating highway right of way is managed according to the provisions of Section 6.6 Management of Acquired Property, to avoid the occurrence of public nuisance, hazardous or unhealthy conditions on the department's property.

6.9.2 Policy on Disposal of Excess Land

It is the policy of the department that declared excess land, or rights in land, be disposed of for no less than its fair appraised value as required by the Highway Code (605 ILCS 5/4-508(a), (b), (c)), subject to a minimum nominal value of \$300. Payment of the fair appraised value is also not required for transfers or conveyances performed under 605 ILCS 5/4-508(d) and (e); 605 ILCS 5/4-508.1; or 20 ILCS 2705/49.12. However, if the property being disposed of was acquired with federal funds then disposal of that property for less than the fair market value will require FHWA approval unless the property will be used as follows:

- 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; or
- Use for transportation projects eligible for assistance under Title 23 of the United States Code.

Any disposal authorized by the FHWA for this "public use" at less than fair appraised value will require a reversionary clause in the deed for failure to comply with the public use and ownership provisions.

FHWA approval will also be required if a disposal involves land or rights acquired in connection with the interstate system. For disposals involving the interstate system the department is required to evaluate the environmental effects of the disposal. It is recommended to present the disposal and issues related at the IDOT/FHWA coordination meeting. FHWA will need to approve the environmental effects and in most cases will be considered categorical exclusions. The Statement for Disposal of Excess Lands or Rights form ([LA 692](#)) must indicate that this environmental evaluation has been conducted and include [BDE.form 2301](#), if needed.

The marketability of excess land is dependent upon several variables, i.e., size, shape, accessibility, location, demand and whether the state's ownership is in fee simple or no more than the rights of access or easement for state highway purposes.

There is little demand for small, irregular shaped inaccessible parcels of fee-owned excess land in rural areas where the fair appraised value may be less than the cost of advertising and conducting a public sale. To initiate such disposals with no assurance of potential bidders is not a prudent expenditure of department resources.

On the other hand, the more desirable fee-owned excess land parcels having appraised values at least exceeding expected sale costs should be offered for disposal, preferably within five years from the date on which construction is completed on an adjacent highway project; or a planned highway project for which such land was acquired is abandoned or relocated; or an existing highway for which such land was used is abandoned and is no longer used for state highway purposes.

Where the state owns rights of access or easements, the initiation of disposals is primarily dependent upon individual requests of interested parties, generally the party owning fee simple title to adjacent land or the land encumbered by the rights of the state.

Because the release or extinguishments of such rights requires an act of the legislature, it is the policy of the department that the party seeking the release of such rights must agree to deposit the full amount of the fair appraised value before the department will initiate the necessary legislation in the Illinois General Assembly.

6.9.2.1 Access Control/Freeways

Whenever the department has acquired property with a Freeway Order, or when a Freeway designation has been established, it has acquired access control as defined in Section 4.9 in part as: *"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 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/-1-112)"*.

This access control designation must be shown on all plats of the property and **cannot be moved, altered or extinguished without a Rescinding Order prepared by the Bureau of Design and Environment (BDE)** and recorded in the appropriate county courthouse(s). These Rescinding Orders must be prepared in advance of the submittal to CBLA unless access control is to be retained by IDOT. If the access control is to be moved or in any way changed from the initial project design, then the following steps must be accomplished prior to submittal for disposal.

The change, alteration, or cancellation of access control must be:

- Discussed in a coordination meeting held between district personnel, the FHWA and BDE.
- The FHWA must approve all changes, alterations, or removals of access control in connection with the interstate system.
- Once the FHWA has approved the request to rescind the Order Establishing a Freeway Order and their approval is documented in the official minutes of the meeting, a Rescinding Order is initiated in the

district by the BDE and the DLA office and forwarded for approval by the Secretary.

- Recorded in the county where the change will take place.

These steps are described more fully in the BDE Manual. In the Disposal Statement, Item 2c requires that this information be supplied.

Due to federal involvement in all issues affecting access control, as well as the limitations (easement) that this places on property, the steps mentioned above need to be thoroughly and properly accomplished and documented. Access control restrictions can have dramatic impacts on property values and can vastly alter the value of property if not properly handled. Therefore, it is important to the disposal process that all the preceding steps are taken well in advance of the disposal request to CBLA. All appraisals obtained for the purpose of the disposal (relinquishment) of access control need to specifically address this issue in the report. See "Valuation of Dedicated Land and Access Rights" and "Valuation of Access Rights Only" in Section 3.7.13.

6.9.3 Methods of Disposal – General

The disposal of any declared excess land or rights in land may be accomplished by one of several methods, each of which is described briefly below and in greater detail in succeeding paragraphs.

6.9.3.1 Sale to Former Owner

In general, 605 ILCS 5/4-508(c) requires that before disposing of property no longer needed for state highway purposes, the department will first offer in writing that property to the person from whom such property was acquired at the current appraised value of the property, providing the person from whom such property was acquired still owns and has continually owned land abutting such property since the acquisition by the department. If the offer is not accepted in writing within 60 days, all rights under this paragraph will terminate. (For detailed instructions see Section 6.9.5.)

6.9.3.2 Public Sale

After consideration of the above "Sale to Former Owner" method, subject to the written approval of the Governor, 605 ILCS 5/4-508(a) permits the department to dispose of by public sale, at auction or by sealed bids, any land, rights of other properties, real or personal, acquired for but no longer needed for state highway purposes or remnants acquired under the provisions of Section 4-501 of said code. However, a sale may not be made for less than the fair market value of such land, rights or property. Please note that neither department employees nor family members living within the same household may bid on property, either real or personal, offered by the state at public auction. (For detailed instructions see Section 6.9.6.)

6.9.3.3 Exchange

After consideration of the above "sale to the former owner" method, subject to the written approval of the Governor, 605 ILCS 5/4-508(b) provides for the exchange of land, rights or property no longer needed for state highway purposes or remnants acquired under the provisions of Section 4-501 of said code, for equivalent interests in land, rights or property needed for state highway purposes. Cash may be paid or received for the difference in value, if such interests are not of equivalent value. (For detailed instructions see Section 6.9.7.)

6.9.3.4 Inter-Departmental Transfer

Subject to the written approval of the Governor, 20 ILCS 2705-550 (previously 20 ILCS 2705/49.12) provides for the transfer of 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. (For detailed instructions see Section 6.9.8.)

6.9.3.5 Legislative Action

Prior to enactment of legislation authorizing the department to acquire fee title to land, the department, in substantially all cases, acquired a dedication of right of way for highway purposes. This is an easement, and because it is dedicated to the People of the State of Illinois, only the Illinois General Assembly can act on behalf of the people to extinguish or release such easements to the land. Therefore, easements for highway purposes are not considered to be subject to "sale" but can only be extinguished or released through legislative action. The acquisition of access rights is also considered an acquisition of an easement and, if no longer needed, the right of access must also be restored by legislative action. Furthermore, there will be times when the department may have a need to convey the state's fee interest to a specific party. The department does not have the authority to convey property directly to a specific party. Legislative action is required to authorize a direct sale. A direct sale is not the preferred method of disposal and should only be recommended when property is accessible to only one party or if the sale of the land to anyone other than the adjoining owner would cause a severe hardship upon the adjoining owner. (For detailed instructions see Section 6.9.9.)

Please note that the department will not support an easement release to an employee of the department or to the employee's family members living within the same household, unless the employee can provide legal documentation showing proof of the employee's ownership (or family member's ownership) of the underlying fee interest in the dedicated area. This documentation could be a Land Title Policy or a deed instrument specifically describing the easement area desired for release.

6.9.3.6 Conveyance to Another Governmental Agency or Not-for-Profit Organization

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 land as previously referred to in this chapter, these properties can be disposed of two other entities which can manage the property as mandated by law. The property acquired in these instances is not essential to completing the highway improvement. In most cases, there are other entities better equipped to manage these properties than the department.

605 ILCS 5/4-508(e) authorizes the department, subject to the written approval of the Governor, and after consideration of the above "sale to the former owner" method, to convey the title or interest in the land, right, or other property to another governmental agency, or not-for-profit organization. This conveyance is also subject to concurrence in the conveyance by the grantee. This type of conveyance can only involve land, right, or other property being disposed of in compliance with 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 accepting the conveyance must agree to use the property for purposes consistent with the appropriate law. The department may retain rights to protect the public interest. (For detailed instructions see Section 6.9.10.)

6.9.3.7 Conveyance to Another Highway Authority

605 ILCS 5/4-508(d) authorizes the department to convey any land, dedications, easements, access rights, or any interest in real estate that it holds, to another highway authority. This conveyance can occur only if the department enters into or currently has a written contract with the highway authority that is accepting or has accepted the transfer of jurisdiction of the highway that is directly associated with the land being conveyed. The contract for this transfer of jurisdiction between the department and the other highway authority must specifically address an agreement between both parties related to the conveyance of the land or real estate interest associated with the transfer of jurisdiction of that specific highway. In those cases where the jurisdiction has occurred prior to the enactment of the above-mentioned statute, an agreement addressing the conveyance must be obtained from the highway authority which has accepted jurisdiction. (For detailed instructions, see Section 6.10.)

6.9.4 Initiation of Disposals

In proceeding towards a disposal of potential excess land or rights in land by any of the above mentioned methods, it is necessary that a complete evaluation be made within the department in order to determine: (1) whether or not the disposal will adversely affect the existing operating facilities of the department, (2) whether or not the land or rights will be needed for state highway purposes for some future improvement or construction of a highway facility, and (3) whether or not the disposal may cause any adverse effects with regard to the Highway Beautification Act of 1965. The environmental effects should be evaluated for each disposal.

At the time the proposed disposal is initiated, the district land acquisition staff should determine whether or not it is necessary to comply with 605 ILCS 5/4-508(c).

DLA staff is responsible for the preparation and submittal of a preliminary report to the appropriate district bureaus for review and concurrence of the proposed disposal. The regional engineer, at their discretion, will require review and concurrence by those district bureaus whose operations may be affected by the proposed disposal.

After obtaining concurrence from within the district, the regional engineer will recommend to CBLA that the land or rights in land are no longer needed for state highway purposes and should be disposed of or transferred by the method specified. CBLA will obtain the final approval for the disposal from the director.

The following information and material, in duplicate, (unless otherwise specified) must accompany the regional engineer's recommendation for approval to dispose of the parcel of excess land or other rights.

- Statement for Disposal of Excess Land or Rights form ([LA 692](#)) – The respective district bureau chiefs and DLA engineer/manager, will indicate their concurrence by executing the statement together with the regional engineer, recommending the approval of the director. When conveying to another highway authority under 605 ILCS 5/4-508(d), only a Statement for Transfer of Land Rights Associated with a Jurisdictional Transfer form ([LA 694A](#)) will be required.

- The “legal description” should be prepared on the Template [LA 694B](#) and transmitted to CBLA in electronic format. 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. Therefore, to minimize the possibility of errors it is extremely important that the legal description as submitted to CBLA be accurate. Additional detailed information on this subject may be found in Section 2.5.
- The right of way plat must show the parcel or parcels of excess land 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. (Note 1: Three copies of the plat are required for legislative releases.) (Note 2: It is the department’s responsibility to obtain and pay for the land survey required to complete the excess land disposal plat and accompanying legal description.) Additional detailed information on this subject may be found in Section 2.5.
- One or more appraisals must be prepared. Appraisals for the legislative release of easements and/or access rights are based upon the valuation guidelines set out in Section 3.12. Regardless of the estimated value, two appraisals may sometimes be desirable when the appraisal technique is of a complicated nature, or an additional appraisal may be requested by CBLA. The appraisal reports are to be reviewed by the district review appraiser and then submitted to CBLA for approval, with a statement that the accepted or documented appraisal indicates the current appraised value of the subject property. When the recommended disposal is to be by exchange, a statement must also be made 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. (Note: It is the department’s responsibility to obtain and pay for the appraisal(s) establishing the fair market value of the land and/or improvements, or rights proposed for disposal.) Appraisals are not required when the method of disposal is to be by a transfer or conveyance performed under 605 ILCS 5/4-508(d) and (e); 605 ILCS 5/4-508.1; or 20 ILCS 2705/2705-550 (formerly 20 ILCS 2705/49.12).
- The district must provide CBLA with 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 land or rights, including a copy of the original right of way plan depicting the excess parcel thereon in relation to the total parcel acquired where the excess parcel is part of a larger parcel. When conveying property to another highway authority 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.

- The district must provide CBLA with 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 necessity to reserve the right of an easement over some portion of the property for the purpose drainage, access, etc. . In those instances where a permit has been previously issued, ensure coordination with the District Operations Permit Section occurs to fully understand the effects of the disposal.. If it is desirable to preserve some right for a third party, it is preferable the prospective purchaser agree 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).
- In an exchange transaction, the district must provide CBLA with one copy of the proposed form of conveyance to the state 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.
- In those instances where the conveyance is to another highway authority under 605 ILCS 5/4-508(d) the conveyance instrument must recite that the transfer is subject to departmental approval of any future vacation or disposal of the property by the Grantee.
- In order to determine if "the person from whom such property was acquired" is the same person who "still owns and has continuously owned the land abutting such property since the acquisition," it is necessary to re-examine the "person's" ownership at the time of the acquisition, and to confirm such ownership as being continuous since the acquisition to the present time. Therefore, when submitting a recommendation for a sale to a former owner DLA must provide CBLA a letter from the title company stating that they have reviewed the property records from the date of the original acquisition of the property by the department to the present time. It must also state that the abutting/adjacent owner requesting the sale has been in continuous and contiguous ownership of the adjacent property since the original acquisition.
- When legislative action will be used to release easements and/or access, or for a direct sale of property, the district must provide CBLA with two copies of the accounts receivable remittance statement documenting the fact that the interested party has deposited the full payment of the

appraised value, and an Agreement for Restoration of Access Rights ([LA 694C](#) Template) when release of access rights are at issue.

- A copy of the parcel's NORWAY screen showing the appropriate status code is to be included.
-
- A copy of the Categorical Exclusion Determination and Approval Form ([BDE 2301](#))

Since the responsibilities of CBLA and the district in processing disposals 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 6.11.

6.9.5 Sale to Former Owner Method

The statement for disposal submitted with the district's recommendation for disposal must include sufficient detail to assure the criteria required under 605 ILCS 5/4-508(c) have been met in order that the excess parcel may be disposed of by sale to the former owner.

All data is then reviewed by CBLA. When necessary, other central bureaus deemed will also be given an opportunity to review and comment on the recommended disposal. CBLA will also request concurrence from the FHWA when required.

A quitclaim deed for conveyance of the parcel will be prepared and forwarded to the district along with notification of approvals by the director and the FHWA advising that the excess parcel may be formally offered in writing to the former owner at the appraised 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) 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 cash deposit of no less than 20% of the appraised 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 a refusal by the former owner 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 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.

Immediately following delivery of the deed and receipt of payment for the property, the district will prepare an "Accounts Receivable Remittance Statement" Form AA 646 according to the procedures outlined in Section 7.5.2.

In the event the former owner does not accept the department's written offer within the required 60-day time limit, the district should notify CBLA of the non-acceptance, requesting

authorization to proceed to dispose of the parcel by such other method as may be recommended.

6.9.6 Public Sale Method

The statement for disposal submitted with the district's recommendation must include sufficient detail to assure that 605 ILCS 5/4-508(c) (see Section 6.9.5, Sale to Former Owner) is not applicable and that the excess parcel may be disposed of by public sale.

All data is then reviewed by CBLA. When appropriate, other central bureaus will also be given the opportunity to review and comment on the recommended disposal. CBLA will also request concurrence from the FHWA when required.

A quitclaim deed for conveyance of the parcel will also 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 then be advertised for public sale.

Upon receipt of the same, the district will prepare a notice directing attention to the proposed sale to be published in a local newspaper of general circulation in the county where the land is located. The notice must include the requirements of Section 6.7.1 to ensure compliance with the Americans with Disabilities Act. The first notice must appear at least 14 days prior to the sale. A minimum of 48 hours should be allowed between the last publication and time of sale.

The department is now making these sale notices available on the department's Internet site located at: <http://www.idot.illinois.gov/doing-business/sales/excess-property-sales/index>. This is the only other advertising that will be placed. When the ad is sent to the newspaper(s) in the local area, a copy of the notice must be mailed to the CBLA property manager who will place it on the department Internet server.

The minimum acceptable bid may be inserted in the advertisement at the discretion of the regional engineer. It is not necessary the complete legal description of the property be included 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 advertisement must at a minimum include the following:

- The clause "The State of Illinois, Department of Transportation, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252) and the regulations of the Department of Transportation, Chapter 49, CFR (Part 21) issued pursuant to such Act will affirmatively insure the acceptance of any bid pursuant to this notice or advertisement will be without discrimination on the grounds of race, color, sex or national origin."
- The district's fax number and TDD phone number.

The district will also prepare a Notice to Bidders and Bidder's Proposal for Public Sale and Purchase of State Owned Excess Land form ([LA 696A](#)). 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 land, thus prompting the district to initiate the disposal process on the assumption that the interested party will submit a bid, at least in the amount of the minimum bid required. 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 parcel. 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 a 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 does provide 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 districts may select the method best suited to accomplish the disposal with maximum return.

Ordinarily, the best place to conduct a public auction is at the site of the property. However, as with the sealed bid method, 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 in the case of an auction to obtain a register of the names and addresses of all prospective bidders before commencing the auction.

A cash deposit in the form of a certified check, cashier's check, money order or bank draft must be obtained from the high bidder immediately after completion of bidding. It will be retained by the district pending delivery of the deed and closing of the transaction. All bidders must be fully informed of the required 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 deposit should be no less than 10% of the sale price. However, since the sale price is indeterminate until after the bids are received, there is usually some delay and inconvenience in obtaining the deposit. Therefore, in lieu of requiring a percentage deposit based on the high bid, the following guidelines may be used in establishing a fixed deposit amount based on the appraised value of the parcel. This procedure will then permit prospective bidders to come to a sale with the fixed deposit in hand.

<u>Current Appraised Value</u>	<u>Minimum Fixed Deposit</u>
\$1,000 or less	50% of appraised 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 appraised value

The above suggested fixed deposits are considered to be reasonable minimums; however, they may be increased at the discretion of the regional engineer. If the deposit is based on a percentage of the bid, the amount of deposit may be rounded up to even dollar amounts for convenience.

After the 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 696B](#)).

After execution by the secretary, attestation by the director and approval of the Governor, the original deed will be forwarded to the district office for delivery and closing of the transaction.

Immediately following delivery of the deed and receipt of payment for the property the district will prepare an "Accounts Receivable - Invoice" in accordance with the procedures outlined in Section 7.5.1. 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.

6.9.7 Exchange Method

The statement for disposal submitted with the district's recommendation for disposal must include sufficient detail to assure that subsection (c) of 605 ILCS 5/4-508 (see Section 6.9.5) is not applicable, and that the parcel may be disposed of by exchange. CBLA then reviews all data and will request concurrence from the FHWA when required.

A quitclaim deed for conveyance of the parcel will also be prepared and forwarded to the district along with notification of approvals by the director and the FHWA advising that the exchange of the excess parcel for the acquisition of land needed for state highway purposes may then be completed.

Upon receipt of the same, the district will obtain a written approval of the draft form of conveyance deed from legal counsel for the owner with whom the exchange is taking place, or the owner if they do not have legal counsel. The district should also proceed to obtain the necessary executed 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 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.

Immediately following the receipt of payment for the property, the district will prepare an "Accounts Receivable Remittance Statement" Form AA 646 according to the procedures outlined in Section 7.5.2. 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.

Easements and access rights may also be exchanged providing the party with whom such exchange is being made is in ownership of the land to which such easement or access rights are released, and such owner is under advice of legal counsel to accept a quitclaim deed in lieu of an act of the legislature.

6.9.8 Inter-Departmental Transfer Method

Other departments of state government, or authorities, commissions or other agencies of the state, occasionally request that certain property owned or controlled by the department's Office of Highways Project Implementation 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 district reviews and preparation of the required statement, except that no appraisal of the property to be transferred is required.

All data is then reviewed by CBLA. When appropriate, other central bureaus will also be given an opportunity to review and comment on the recommended disposal. **CBLA will also request approval of the disposal from the FHWA when required(right of way associated with the interstate and parcels acquired with Federal Funds).**

Having obtained the approval of the director, 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 transferring agency may 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 Department of Natural Resources (DNR) 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 telecommunicates 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 DNR permits will be placed in the appropriate parcel file at the district level. Refer to Section 4.13 Real Property Owned by the State and Under the Custody and Control of Other State Agencies.

6.9.9 Legislative Action

When a district appraises a parcel requiring legislative action for the release of an easement or access control or for a direct sale, and the first appraisal exceeds \$5,000, the district must acquire two additional appraisals.

The statement for disposal and all other data submitted with the district's recommendation for disposal by legislative action is reviewed by CBLA. When appropriate, other central bureaus will also be given an opportunity to review and comment on recommended releases of easements or a direct sale. CBLA will also request approval of the disposal by the Federal Highway Administration when required. Due to the sensitive nature of requests for a direct sale, the district should first investigate the issues associated with the request before forwarding the request, including their recommendation, to CBLA for further review. CBLA will determine if a direct legislative sale is the appropriate method to use for disposal of the property.

After approval of the disposal by the director, a legislative bill is then prepared 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 for such release or sale. The General Assembly selects a "sale price" or value equal to the average value of the three appraisals. 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. All checks made out for the release of dedicated right of way or access control and direct sales should be made payable to the Treasurer of the State of Illinois and deposited in the Road Fund.

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.

In some cases, where it is proposed to release access rights to abutting property, the interested party may desire to develop the property before such legislation can be accomplished. The district may enter into an agreement with the developer, (Template [LA 694C](#), Agreement for Restoration of Access Rights), whereby the developer must agree to make the required payment of the appraised value of the access rights in advance and the department will then grant a temporary permit for an entrance to the highway and agree to initiate the required legislative process in the next session of the General Assembly.

When a legislative release of an easement or access rights is requested it is important the district inform the party in writing, the state of Illinois by this legislative action, merely releases its easement in and/or restores access rights to the land and will not name an owner in the bill, nor will the state guarantee a transfer of title. Each individual seeking 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.

A completed Legislative Action Request Letter ([LA 699](#) 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.

Legislative release and direct sale bills are typically introduced in the January to June session of each calendar year. Therefore, in order to ensure that a particular release or 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 finally passed in both houses and approved by the Governor, CBLA will be provided with a certified copy of the act from the Secretary of State. Upon receipt of the certified copy of the act, CBLA will forward it to the district for recording with the County Recorder. In the case of a direct sale, CBLA will also prepare a quitclaim deed and send it to the district along with the certified copy of the act. Both the quitclaim deed and certified copy of the act should be recorded and a copy returned 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" Form AA 644 and Accounts Receivable Remittance Statements" Form AA 646 is prepared by the district in accordance with procedures outlined in Section 7.5.2.

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.

6.9.10 Conveyance to Another Governmental Agency or Not for Profit Organization

A Statement for Disposal of Excess Land or Rights form ([LA 692](#)) submitted with the district's recommendation must include sufficient detail to assure that 605 ILCS 5/4-508(c) (see Section 6.9.5, Sale to Former Owner) is not applicable and that the excess parcel may be disposed of in accordance with the provisions of 605 ILCS 5/4-508(e). The following requirements must be met in order to complete a conveyance to another governmental agency or not for profit organization:

- In this instance, the disposal may be initiated by the department or an outside agency which qualifies under state law. In either case, the district

must determine that the disposal is in the department's best interest. Any conveyance should take into consideration the impact to adjacent property owners. Once the district is satisfied that the property in question may be conveyed, the transaction will be approved by the director and the FHWA, if required. The director's signing of the "Statement for Disposal of Excess Land or Rights" which is provided by the districts and contains the details of the disposal will indicate that all approvals have been obtained.

- Plats and surveys are obtained and all pertinent documents relating to the parcel are examined. These include titles, deeds, easements and possible permits currently existing on the property. (See Sections 2.5.2 and 6.9.4 for further details.)
- The information gathered is then forwarded to CBLA for final review and preparation of the conveyance documents. The director authorizes the conveyance, and a proposed deed, or under certain circumstances, a Bill of Sale (Buildings, Goods and Chattels) (LA 67 Template) is returned to the district for the grantee to approve. Federal approval is obtained when necessary.
- Once the grantee has agreed to the form and content of the proposed deed or under certain circumstances, LA 67 Template, it is returned to CBLA for final signatures by the department and the Governor. (If circumstances require a bill of sale, both the form LA 662 and the LA 67 Template will be signed by the regional engineer before returning to CBLA for final signatures.
- The completed document is then returned to the district for the closing. The district will then have the document recorded, if necessary, and send the original 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 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.

6.9.11 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.

6.10 MANAGEMENT OF RIGHT OF WAY FOR NON-HIGHWAY RELATED USE – GENERAL

Where the department has jurisdiction of operating highway right of way and portions of such right of way, or certain space within such right of way, is determined as not being required presently or in the foreseeable future for state highway purposes, the temporary use and occupation thereof may be granted for non-highway related uses by the department, subject to FHWA approval where applicable. Any non-highway related use will require a Right of Way Use Agreement (Lease) (LA 6102B). The department must also evaluate (utilizing form [BDE 2301](#)) the environmental effects of the proposed non-highway related use before the Right of Way Use Agreement is approved.. It is recommended to present the proposed action at the IDOT/FHWA coordination meetings with approval being obtained at that time. FHWA approval will also be required if the non-highway related use involves land or rights acquired in connection with the interstate system. For this proposed action involving the interstate system the department is

required to evaluate the environmental effects of the non-highway related use. In most cases a this action will be classified as a categorical exclusion. (FHWA approval is always required for non-highway use on the interstate system).

20 ILCS 2705/2705-555 and 605 ILCS 5/4.201.16, authorize the department to lease or rent land or other property under its jurisdiction, provided that no such lease be for longer than five years.

In counties with a population of not less than 500,000 and not more than 800,000, 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.

Each operating right of way parcel or rental unit is leased through the public solicitation of bids for not less than the current market rental rate as established by an appraisal. Exceptions to this policy may be considered where the property to be leased is inaccessible to other than the owner of only one abutting property, or when other unique circumstances exist.

Approval to waive the requirement to advertise for the solicitation of bids must, therefore, be recommended by the district at the same time as the application to lease is submitted to CBLA, clearly setting out the circumstances and conditions for justification of such a waiver on a case by case basis.

605 ILCS 5/9-113 also provides that the department may, by written consent, permit the use of land or other property under its jurisdiction for non-highway related uses.

6.10.1 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.

6.10.2 Procedure to Use Space – General

Any individual, company, organization, corporation or public agency desiring to use space as defined herein must submit an application to the appropriate regional engineer.

The application will be submitted in writing and 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. Such written application will be in the form shown as form [LA 6102A](#) (Application for Use of Surface Area Under Elevated Highway Structures or Adjacent to Highway Facilities).

The District determines (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, and (3) any adverse effects the proposed use of the area would have on the maintenance or operation of the highway facility. It is also necessary to prepare or cause to be prepared a lease agreement setting out the standard provisions and such other specific and/or unique conditions as to the use of the property to be leased. The lease agreement to be used is shown as form [LA 6102B](#) (Right of Way Use Agreement (Lease)).

A copy of the application and supporting documentation is sent to the district operations engineer with the proposed form of lease agreement for review, comment, and approval. After approval, two copies of the application and supporting documents are sent including the proposed form of lease 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. If the proposal to lease such space 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.

6.10.3 Lease Agreement

The occupancy and use of operating highway right of way for a non-highway use by lease agreement will be as shown in the Right of Way Use Agreement (Lease) form ([LA 6102B](#)) prepared in duplicate. Although the agreement may vary somewhat depending upon the type of use proposed, it will as a minimum contain the following provisions:

- The party responsible for occupying, developing and using the space.
- A general statement of the proposed use, the effective date and term of lease.
- 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 lease 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 lease agreement will be terminated by the department in the event that the space facility ceases to be used or is abandoned.
- The lease 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 which 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 lease will be terminated. If the lessee fails to submit proof to IDOT that the lessee has paid the taxes, penalties, and interest, we are to 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.

Within 60 days after entering into an agreement to lease IDOT owned real property, the district is to notify the county clerk of the county in which the real property is located of the name and mailing address of the lessee.

The effective date of the lease 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 leases 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.

6.10.4 Appraisal

Upon being authorized to proceed with the proposed leasing of space, the district obtains an appraisal to establish the current market rental rate. Appraisals are prepared in accordance with current appraisal policies and procedures. Appraisals are submitted to CBLA with a statement that the accepted or documented appraisal indicates the current market rental rate of the premises in question. Approval of the appraisal by CBLA is obtained before the lease can be executed.

6.10.5 Advertising and Notice to Bidders

The proposal is advertised by placing a notice in a local newspaper of general circulation. Publish this notice at least once each week for two consecutive weeks with the lease bidding to be held within a reasonable time, no less than 48 hours, after the date of the last publication of the notice.

As a minimum, newspaper advertisements contain the following information:

- General description and location of the property to be leased.
- The dates and times the property 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 the public auction will be conducted.
- Telephone number(s) of person(s) to be contacted for information concerning the lease.
- The district's fax number and TDD phone number.

The "Bidders Proposal for Leasing Operating Highway Right of Way (Non-Highway Related Use) by Sealed Bids or at Auction" form attached as [LA 6105](#) are prepared showing the required information for distribution to prospective bidders.

The lease notices are available on the department's Internet site located at <http://www.idot.illinois.gov/doing-business/sales/excess-property-sales/index>. When the ad is sent to the newspaper(s) in the local area a copy of the notice is e-mailed to the CBLA property manager who places it on the department Internet server.

6.10.6 Bidders Proposals and Performance Deposits

In the case of written sealed bids, each bid, is (1) for not less than the current market rental rate, either monthly or annual, as shown on the appraisal review certification, and (2) submitted on the form [LA 6105](#) (Bidders Proposal for Leasing Operating Highway Right of Way (Non-Highway Related Use) by Sealed Bids or at Auction), 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 the pending approval and execution of the lease agreement. The deposit checks of unsuccessful bidders are returned immediately following approval and execution of the lease agreement with the successful bidder.

In the case of auction bids, obtain a register of the names, addresses and drivers' license or social security number of all prospective bidders before commencing the auction. The successful bid must be for not less than the current market lease rate. At the conclusion of oral bidding, the prospective lessee executes the completed form [LA 6105](#). Obtain 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 from the successful bidder immediately after completion of bidding. The deposit check is retained by the district pending approval and execution of the lease 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 lease agreement transaction.

All performance deposit checks are in an amount equal to at least one-twelfth of the current market annual lease rate as established by the appraisal review certification. The amount may be increased at the discretion of the regional engineer.

6.10.7 After the Bidding

Upon the conclusion of bidding, complete the approved lease agreement, in duplicate, with the named lessee and the lease rate to be paid, and properly executed by the successful bidder. The duplicate original copies with an attached premise plat, drawings and other exhibits required to be attached to the lease, a report of bidding, if by auction, or a list of bids, if by sealed bids, a copy of the form [LA 6105](#) completed, together with a recommendation for the acceptance of the bid, to CBLA for review and to obtain execution of the lease agreement by the department.

In order to avoid any future misunderstanding concerning the transaction, assure the named lessee is exactly the same on the lease agreement as that shown on the bidder's proposal. Also, if the lease 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 lease agreement are forwarded to the district office for delivery of one executed copy to the lessee and completion of the transaction. CBLA forwards a copy of the fully executed lease to FHWA, if applicable. A copy of the fully executed lease is furnished to the district.

Immediately following delivery of the lease agreement and receipt of the required payment the district prepares an "Accounts Receivable Invoice" Form AA 644 and an "Accounts Receivable Remittance Statement" Form AA 646 in accordance with the procedures outlined in Section 7.5.2.

6.10.8 Soliciting New Lessees or Renewal of Leases

As soon as it is determined that the incumbent lessee occupants intend to vacate the leased space, every effort should be made to solicit for prospective lessees. Whether or not there is an existing waiting list of prospective lessees will determine the extent of solicitation required. It may be necessary to advertise locally for prospective lessees.

New applications by prospective lessees for space previously leased by others follow Sections 6.10.2 through 6.10.7.

Where prior approval was given to waive the public bidding requirement on behalf of an incumbent lessee, and the incumbent lessee requests that the lease agreement be renewed, a new formal application need not be submitted, provided the area and use of the space is to

remain unchanged. Such proposed renewal of a lease 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 for establishing the renewal rate must also be obtained.

6.10.9 Use of Space by Permit

605 ILCS 5/9-113 provides that the department may, by written consent, permit the use of land or other property under its jurisdiction for non-highway related uses.

Units of local government may therefore make application 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 6109](#) (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 give proper consideration to 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 fire- fighting 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 procedure for evaluation and processing of permit applications are the same and in accordance with Section 6.10.9. The provisions of Sections 6.10.3 through 6.10.8 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.

6.10.10 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.

An Inventory and Management of Right of Way Leases (LA 61010A Template) is to be used for this purpose, which provides information on each individual parcel or unit currently under lease 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 lease payment schedule for a five year term to be maintained on each lessee.

This template will be initiated by the district land acquisition staff as soon as a parcel or unit of space has been identified and considered available for leasing or permitted use. Line item instructions are also included with the Inventory and Management of Right of Way Leases (LA 61010A Template). Also, an index of all parcels or units of operating highway right of way space available for or currently in use, Template LA 61010B (Lease Index – Operating Highway Right of Way (Non-Highway Related Use), should be maintained as the district's inventory and for 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 data base as long as all necessary information is retained and available for update and review.

A parcel or unit file will also be maintained on each leased or permitted space containing the following information:

- 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 lease 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.

In addition to the specific policy and procedures set forth in this section all activities, operations and management of the leased or permitted space will be conducted in accordance with pertinent provisions and requirements of applicable sections, paragraphs and chapters of this manual.

6.11 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, 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:

1. Ensure the property to be jurisdictionally transferred is no longer needed for state highway use.
2. Ensure the property to be jurisdictionally transferred will not cause any adverse impacts to environment.
3. Ensure the property will be used for a public purpose.

Jurisdictional transfer agreements can be divided into two categories -- those executed (where we have transferred maintenance rights only) and those yet to be executed. Although quite similar, the procedure for conveyance of property is slightly different for each of these categories. The process to be followed is enumerated in the following sections. Flow charts, Exhibits [LA 611A](#) (Land Conveyance Procedures – New JT) and [LA 611B](#) (Land Conveyance Procedures –Past JT) are also included outlining the courses of action. Conveyances under this section must receive prior FHWA approval when appropriate.

6.11.1 Past Jurisdictional Transfer

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 Transfer of Land Rights Associated With a Jurisdictional Transfer form ([LA 694A](#)) for review and concurrence of other district bureaus and sections whose operations will be affected by the proposed transfer. This statement is similar to the Statement for Disposal of Excess Lands or Rights form ([LA 692](#)) A major difference is the inclusion of a review and concurrence by the DLRS.

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 694B](#) Template compatible with the department’s word processing network and titled “A Transfer of Land Rights Associated With a Jurisdictional Transfer LA 694A) 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, 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 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. 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, obtains the secretary's signature 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.

6.11.2 Future Jurisdictional Transfers - Jurisdictional Transfers Not Yet Executed

A question of jurisdictional transfer for a particular highway may arise in the course of planning or design. Should it be determined to be in the best interest of the public or 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 utilizing BLR Form 05210 (Rev. 04/08) or 05211 (Rev. 04/08). 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 appropriate BLR form 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 form [LA 694A](#) for review and concurrence of other district bureaus and sections whose operations will be affected by the proposed transfer. This statement is similar to the Statement for Disposal of Excess Land or Rights. A major difference is the inclusion of a review and concurrence by DLRS.

Upon concurrence by the affected district bureaus, the DLA or the LPA should now 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 the [LA 694B](#) Template by way of the department's word processing network 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. 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, obtains the secretary's signature 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.

6.11.3 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.

6.12 ANNEXATIONS

There are occasions when a municipality will approach the department requesting to annex property that is not operating right of way under 65 ILCS 5/7-1-2. The municipality will have prepared an ordinance to enact this annexation. This action may require prior approval of the Governor. 65 ILCS 5/7-1-10 covers the annexation of the department operating right of way. The consent of the Governor and the department is not required for the annexation of operating right of way. If the request for annexation requires the consent of the Governor and the department, the request for annexation will be 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.

7 ACCOUNTING FOR LAND ACQUISITION SERVICES

7.1 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. The district authorizes these payments through the Land Acquisition System (LAS) or the vendor's statement of goods or services rendered. The warrants are issued upon submittal of the invoice to BoBS.

7.2 TAX ISSUES (1099)

The Internal Revenue Service requires the department to report real estate transactions acquired by fee simple title, dedication, or permanent easement of \$600 or more on a 1099-S form. Temporary easements of \$600 or more must be reported on a 1099-Misc. form. IRS compliance requires that the negotiator obtain the tax identification number and addresses of all those parties in interest other than corporations and government agencies. If there are multiple owners, the negotiator should also request an allocation of the payment so the 1099-S or 1099-Misc. forms will reflect the actual payment going to each payee. The department is not required to report real estate transactions involving corporations and government agencies.

The Taxpayers Relief Act of 1997 has now excluded 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 written certification ([LA 72](#)) must be signed by each owner.

For more detailed information in regard to a 1099-S/1099-Misc., please see Exhibit [LA 72A](#).

7.3 WARRANT REQUISITION PROCEDURE

Upon completion of negotiations and execution of an instrument of conveyance or upon entering of a court order in condemnation proceedings, the districts generate the warrant requisition through the LAS Automated Invoice Writing System.

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 at the time of invoice processing.

CBLA will review the warrant request and the code stamp for accuracy. The warrant request will then be scheduled in the FOA by CBLA. At the time of scheduling, the Accounting Unit will enter the last four digits of the schedule number and the schedule date in the LAS payee screen. The schedule, invoice and code stamp 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 LAS payee screen. Upon completion, these warrants are then mailed to the appropriate districts and they enter the acknowledgement date.

7.3.1 Warrant Request for Right of Way

District submittals vary according to the type of acquisition, i.e., by negotiation, quick take, or court award (jury trial, bench trial, stipulated settlement). They are to include:

- Memorandum of transmittal is used not only to transmit the appropriate documents, but also to serve as authorization for the issuance of a state warrant (see [LA 731A](#)).
- One copy of the appraisal must be submitted for the following:
 - Compensation of \$50,000 or more
 - Appraisal with more than \$10,000 in damages excluding non-complex cost to cure
 - On federal-aid right of way projects involving either of the above, two copies are required. One copy is utilized by CBLA and one copy is forwarded to the Federal Highway Administration (FHWA).
- It is a district responsibility to enter information in LAS on the appraisal and negotiation screens prior to submittal to CBLA. Appraisals and reviewer certificates should be submitted as soon as approved by the regional engineer.
- A copy of the Administrative Documentation - applicable for Districts 2 through 9. Note: These submittals will be in duplicate if consideration is \$10,000 or more. (A copy is sent to the Office of Attorney General). If less than \$10,000 only one copy is required.
 - The Title Commitment. If over \$10,000, title commitments older than 90 days must be updated. If \$10,000 and under, title commitments are valid for 120 days.

Note: No title commitment is necessary for temporary easements whose consideration is \$2,500 or less.
 - Copies of the executed instrument(s) of conveyance
 - A copy of the Receipt and Disbursement Statement ([LA 4112A](#)).
 - Interest not of record, if any
 - Affidavit of Title, including the disclosure of the owners of beneficial interest of any entity
- In District One, purchases over \$10,000 require a letter of authorization by the Attorney General. For purchases under \$10,000, the staff attorney may approve authorization.
- One copy of the Quick Take Order fixing the amount of Preliminary Just Compensation or one copy of the Final Judgment Order - In the case of a Final Judgment Order, when judgment is over the appraised value, one copy of either of the following reports must be submitted:
 - A Trial Report in the case of a contested trial
 - A Settlement Report in the case of a stipulated settlement or non-contested trial

CBLA procedure for processing warrant request:

- Review of the warrant requisition invoice for proper accounting codes
- Review of the Administrative Documentation and the appraisal for improvements, when applicable
- Examination and approval of title on amounts of \$10,000 or less. Requests for amounts over \$10,000 are submitted to the Office of the Attorney General in Springfield for approval. (Does not apply to District One.) Signature authority for negotiated acquisitions of \$250,000 or more require 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 LAS on parcel screen (District One enters this date in LAS)
- Review of Quick Take Order and Final Judgment Order for correct payee and money ordered
- One Invoice Transmittal Schedule and one code stamp generated through the FOA automated accounting system along with the land acquisition invoice are submitted to the Bureau of Business Services for vouchering.

7.4 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 District Land Acquisition (DLA) for review and approval. The vendor's invoice should clearly show the type of service rendered or goods provided. It is the responsibility of DLA to code all vendor invoices and post in FOA. It is the responsibility of CBLA to review the code stamp for accuracy, the vendor's invoice for required data and approval signature.

In processing the vendor's invoice at CBLA, the invoice, schedule, and code stamp are forwarded to the Bureau of Business Services (BoBS) where a voucher number is assigned in the FOA system. BoBS assembles the vouchers and affixes the secretary signature and forwards them to the State Comptroller for payment. Unless otherwise requested, the State Comptroller will mail warrants for incidental expenses directly to payees.

Crop damage should be processed for payment as an incidental expense before the acquisition; otherwise, CBLA requires a written explanation. The function 336 should be used and documentation is required. See Section 4.20 (Entry on Lands to Make Surveys).

7.4.1 Legal Fees

7.4.1.1 Submittals

The Special Assistant Attorney General (SAAG) will submit to DLA on a monthly basis an original and one copy of the statement letter ([LA 7411](#)), an original and one copy of the detailed backup documentation signed by the SAAG indicating services rendered. An original receipt for all out of pocket expenditures must be attached for reimbursement.

Processing in DLA:

- Review of SAAG invoice by DLA engineer/manager or authorized representative - District personnel must sign and date the invoice for approval.
- Upon completion of the SAAG invoice review, it is to be posted to FOA. The invoice will be in HI (Held) status and will not be scheduled for payment at this time.
- After entering the data in FOA, a copy of the statement letter with the approval signature and detailed backup documentation are to be forwarded to the Attorney General's office for approval of payment.

Processing in CBLA:

- CBLA will receive a signed and approved invoice from the Attorney General. An attorney of the Office of Chief Counsel will review the invoice and forward to the Accounting Unit.
- The accountant shall review code stamps for accuracy and the SAAG invoices for the required data.
- The FOA generated Invoice Transmittal Schedules, invoice code stamps and invoices will be forwarded to the Bureau of Business Services.

7.4.2 Incidental Expenses Other Than Legal Fees

7.4.2.1 Submittals

Vendor invoices for services rendered or goods provided are to be submitted to DLA. All invoices with costs incurred by a SAAG, i.e. appraisers and negotiators, are to be submitted to the attorney's office for review and approval and then forwarded to DLA for payment.

7.4.2.2 Processing

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 posted to the FOA. One invoice transmittal schedule and one code stamp along with the vendor invoice are to be submitted to CBLA, Accounting Unit. One copy of the vendor invoice is to be retained in DLA files.

Processing in CBLA:

- Accounting Unit review of the invoice for accuracy and content
- The FOA generated Invoice Transmittal Schedules, invoice code stamps and invoices are forwarded to the Bureau of Business Services

7.5 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.

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 AA 644 and the "Accounts Receivable Remittance Statement" Form AA 646.

It is essential that one person receive all payment of Accounts Receivable. This individual acting in the capacity of a cashier will be located in the District Bureau of Administrative Services (DBAS). If DLA receives a payment, it is to be forwarded to DBAS.

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 may develop their own procedures for processing invoice billings and remittances of checks and cash. A copy of such procedures should be submitted for Accounts and Finance Section' review and approval. The Accounts and Finance Section will keep a copy of the exception on file for review by internal and external auditors.

7.5.1 Accounts Receivable Invoice

The Illinois Department of Transportation (IDOT) uses the accrual method for the accounting of revenue. An "Accounts Receivable Invoice" Form AA 644 must be prepared in DLA 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. An invoice form shall be prepared, processed, and distributed as soon as possible once it has been determined that a financial obligation to the department exists. 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 code the "Invoice" for posting in the computerized Central Accounting System. Any change or adjustment to the Accounts Receivable must be reported immediately to BBFM.

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.

7.5.1.1 Originating Office

- It is important to prepare invoices in numerical order from smaller to larger numbers. Numbers are assigned by the BBFM.
- The originating office will retain a copy or photocopy 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.

7.5.1.2 Processing Office

- Normally, Administrative Services of each organization is responsible for processing and distribution of the invoices.
 - The original of the invoice should be mailed to the debtor.
 - The second copy or a photocopy of all invoices, including originals of all voided invoices, shall be submitted to the Bureau of Accounting and Auditing, Accounts and Finance Section, on a daily basis. One copy of all invoices pertaining to land acquisition, except rentals, shall be sent to CBLA.
 - 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.)

7.5.1.3 Cut-Off Dates

- Annually, the Bureau of Business Services will issue cut-off instructions and dates for each month end. 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.

7.5.2 Accounts Receivable Remittance Statement

An "Accounts Receivable Remittance Statement" Form AA 646 is to be prepared in DBAS 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 "Remittance Statement" is used to transmit such payments as refunds from DBAS to the Bureau of Accounting and Administrative Services. Its basic function is to communicate the necessary data associated with the transaction. In all instances DBAS will prepare the remittance statement and forward copies to CBLA and DLA.

7.5.3 Refunds from Condemnation Deposits

An "Accounts Receivable Invoice" Form AA 644 is to be prepared in DLA and submitted upon receipt of the final court order if a refund is involved or if the final award is equal to the quick take deposit. 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.

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 DBAS; one copy is submitted to DBLA; and one copy to the Bureau of Accounting and Auditing.

When a refund check is received in a district, it should be 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 AA 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.

7.5.4 Rental Income

An "Accounts Receivable Invoice" Form AA 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. 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.

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.

7.5.5 Proceeds from Disposition of Excess Land Improvements or Other Rights

At the completion of a public sale of excess land or improvements and upon receiving either the fully executed land conveyance document or the executed Bill of Sale together with a copy of the secretary's letter to the successful bidder, the DLA shall prepare an "Accounts Receivable Invoice" Form AA 644, showing the description of the property sold and the full amount due the state. There may also be occasions when funds are to be received by the state in connection with an exchange transaction or in connection with legislative release of a dedication or access rights. The original and one copy of the 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 sale of excess land 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 land, 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 sale of improvements, deposits are returned to successful bidders upon satisfactory clearance of the premises in compliance with the sale and removal contract.

7.5.6 Miscellaneous Refunds

DLA shall prepare an invoice in the name of the party making the refund. It is necessary to make sufficient reference to identify the nature of the refund; for instance, refund of duplicate payment, forfeit of bid deposit in connection with the sale of land, buildings, etc. The original and one copy of the invoice are to be forwarded to DBAS. One copy will be retained in DLA.

7.5.7 Adjustment to Invoices

Any change to an existing "Accounts Receivable Invoice," Form AA 644 such as termination of a rental agreement, etc., should be reported immediately to DBAS. An "Accounts Receivable Invoice" Form AA 644 should be used to record this change 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. The Bureau of Claims will determine whether or not 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 AA 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.

7.5.8 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 prior to the expiration date.

Warrants not presented for payment within twelve months of the date of issuance shall become escheated. If the warrant becomes void, the state comptroller may issue a replacement warrant. A replacement warrant must be issued within five years from the date of the original warrant. Only the person entitled to the original warrant, or the 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.

Once it is determined that a warrant has become escheated, DLA shall obtain the warrant from the payee. The warrant is to be sent by memorandum, explaining why it was not cashed, to CBLA. The Accounting Unit will forward the escheated warrant to the state comptroller along with a Replacement Warrant Action Request resulting in an affidavit, Form SCO-061, being sent to the CBLA. The Accounting Unit will forward the affidavit to the district. When the affidavit is completed and signed by the original payee, it should be mailed to the state comptroller's office.

7.6 RIGHT OF WAY FUNCTION CODES

The Central Accounting System uses coded functions 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 76](#).

7.7 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 Fiscal Operations and Administration (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 07A.

7.8 GEOGRAPHICAL LOCATION CODES

The "Geographical Location Codes" (county code numbers), [LA 78A](#) 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 [BFM 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.

7.9 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.

7.9.1 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 Microfilm 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 note books
 - 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 Microfilm files contain all microfilmed records 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.

7.9.2 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, 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. The Record Retention Schedules that contain the authority for the retention and disposition of temporary land acquisition records were approved by the State Records Commission on June 5, 1985, Application No. 84-48M, and call for a thirty year retention period for all temporary land acquisition project files. Records of acquisition and relocation shall be retained at least three (3) years from either: (1) the date of Federal reimbursement of final payment made to each owner of a property and to each person displaced from a property, or (2) the date a credit toward the Federal share of a project is approved based on early acquisition activities.

The retention period of all temporary records is the time span that elapses 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 [BFM 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.

7.9.3 Disposition Procedures

Temporary records that have been closed are to be stored for the required retention period either at IDOT's own district facilities or at the State Record Center.

The State Record Center is a storage area under the jurisdiction of the Secretary of State. Closed files may be removed from the file cabinets and stored in record boxes.

All records that are to be transferred to the State Record Center for storage 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 the State 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.

The Archives Records Transfer Sheets, Form AR D-50.1 ([LA 793A](#)), prepared in original and four copies, one of which is retained by the submitting office, are to be forwarded to the Bureau of Business Services (BoBS), Quality and Document Management Services Section.

The boxes are to be consecutively numbered and affixed with labels, Form AR D-74 ([LA 793B](#)):

- The information on the labels for agency, division, box number, title and date, and disposal date must correspond to those on the transfer sheets.
- The completed labels are placed on the front of the boxes.

Records Transfer Sheets are to be submitted through BoBS to the State Records Center. The records center supervisor will return two copies of the completed transfer sheet to BoBS indicating where the boxes are stored. BoBS will file one copy and one copy will be returned to the originating office.

Records stored at the Records Center may be requested for viewing, should the necessity arise, by any of three methods:

- Telephone call to BoBS, Quality and Document Management Services Section. The requested information will be gathered and will be called or mailed to the requesting office.
- Written request
- Visit request - If desirable or necessary, the Records Center may be visited to look into stored records. Since many of the records stored are of confidential nature, authorization must be secured prior to such visits by contacting BoBS, Quality and Document Management Services Section.

Once the retention period expires, the records are eligible for disposal, at which time BoBS, Quality and Document Management Services Section, is so notified by the Records Center supervisor using Form SOS ARD-66.5, ([LA 793C](#)). The notification is then forwarded to the appropriate district or bureau by memorandum requesting the agency to indicate whether the records are to be destroyed or returned to the agency. If the Records Center supervisor does not receive instructions to return the records, they will make arrangements for the records to be removed from the Records Center and sold as waste paper.

IDOT personnel may dispose of records that are stored at the district for which the retention period has expired. Records of a personal or confidential nature, if sold, are to be accompanied to the scrap firm by a person authorized to witness their destruction by shredding.

No records may be destroyed without proper documentation regardless of age or utility. Such documentation shall indicate the applicable retention schedule (Application No. 84-48M), the person authorizing the destruction, a description or inventory, and the date of destruction. Record destruction documentations are maintained in permanent files.

Permanent Records that have been closed are stored either at IDOT's own facilities or at the State Archives. The Records Retention Schedules of all permanent land acquisition records provide for microfilming to protect against theft, fire or other loss. Security copies of the microfilm are submitted to the State Archives regardless as to the location at which permanent records are stored.

Procedures for the transmittal of permanent records to the State Archives are identical to those of temporary records, as pertains to packing boxes, Record Transfer Sheet preparation, labeling of boxes, contacting BoBS, etc.

Records stored at the State Archives may be obtained either by telephone call or written request to BoBS, Quality and Document Management Services Section.

7.9.4 Microfilming of Records

Temporary records may, after closing, be exposed on microfilm that will qualify as substitute for the original records. This method of retention may be preferable for certain type of records and is within the discretion of the DLA engineer/manager. Requirements for microfilming of files are that they be organized chronologically by category and topic as outlined in Section 7.9.4, have all staples and metal fasteners removed, packed in Records Center storage boxes and be transmitted with Records Transfer Sheets RM M-1.6 ([LA 794A](#)), to BoBS, Quality and Document Management Services Section, with the request for microfilming. The boxes are labeled and numbered consecutively in the same manner as outlined in Section 7.9.3 for Record Center Transmittals.

Permanent records are to be microfilmed upon closure to provide security copies as required according to the Record Retention Schedules. Right of way plans, plats, strip maps and other items larger than 8½" x 14" are photographed with planetary cameras. Legal documents and all items not exceeding the 8½" x 14" dimension are exposed on 16mm film by the use of a microfilm machine. Legal documents which have folded plats attached that are larger than 8½" x 14" are exposed on 16mm film. The folded plat, in such instances, is repeatedly run through the microfilm machine until all portions of the plat are recorded on the film.

Original tracings of plats, of surveys, right of way plats, right of way plans, strip maps and legal documents are submitted to the Microfilming Unit of the Quality and Document Management Section upon completion of a project and after the following steps have been taken:

- Removal of all sheets from binders
- Removal of metal fasteners (staples, clips, etc.)
- Organized in logical sequence by route and section
- Preparation of Microfilm Records Index Sheets ([LA 794B](#)).

7.10 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(b); 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(b), and that documentation justifies the amount of the credit.

8 CONTRACTING FOR LAND ACQUISITION SERVICES

8.1 OUTSOURCING LAND ACQUISITION SERVICES

Chapter 8 documents the department's policies and procedures to use when processing land acquisition services contracts.

Extensive land acquisition activity is required to complete the Transportation Improvement Program. To accomplish the program without appreciably increasing the number of IDOT personnel or performing services for which the department does not have specialized expertise, the department uses outside firms. Departmental Order 6-8 governs most of land acquisition services procurement.

8.2 CONTRACTS FOR LEGAL SERVICES

The attorney general appoints special assistant attorneys general (SAAGs) to represent the department in condemnation cases. After receiving approval of the governor's chief legal counsel, CBLA sends contracts to the attorneys for signature. Signed contracts are returned to CBLA. The contract is then forwarded to the Chief Counsel's Office for the required department signatures. The executed contract is returned to CBLA. A copy of the executed contract is mailed to the SAAG and district after contract and expenditure tracking numbers are assigned.

The attorney general's office may then assign condemnation cases to the SAAG. The SAAG will submit invoices to the district CBLA. After the district reviews and processes the invoice, it forwards the invoice to the attorney general's office through the Office of Chief Council for approval. When approved, the Office of Chief Council forwards to CBLA to review for accuracy, and to schedule the invoice for payment.

8.3 CONTRACTS FOR TITLE SERVICES

Procurement of contracts for title services is performed by CBLA every three (3) years. The lowest responsible bidder is chosen from those submitting proposals. A permanent contract number is assigned to each title company. The district is sent a copy of the executed agreement. As need arises, the district contacts the title company under contract for services. By contract, each district who assigns title work to the firm receives a monthly status report of accomplishments on each order by county. Invoices are received by the district when services are provided. After review and approval, the district processes the invoice for payment.

8.4 CONTRACTS FOR LAND ACQUISITION SERVICES

The department may enter into contracts for the purpose of obtaining land acquisition services such as appraisal, negotiations, relocation assistance, or property management. Incidental land survey may also be a scope component. Contracts may also include appraisal review services; however, it is strongly recommended by FHWA that the appraisal review function be retained at the staff level.

A district in need of consultant land acquisition services submits a request to CBLA along with a completed scope of services options menu (available on the CBLA SharePoint site) indicating the scope of services needed.

CBLA prepares the request for proposal (RFP) and coordinates the procurement process.

8.4.1 Advertisement of Need

Official notice of the need for land acquisition services being procured by the department (RFP) is published in an IDOT Transportation Bulletin. Such notice describes the requirements of each project as they apply to:

- The project's scope of work;
- The time for completion;
- The necessary professional and technical expertise; and
- The required proximity of the consultant to the district, if applicable.

A copy of the bulletin is available for downloading from the Department's internet site.

At times, a mandatory pre-submittal meeting is necessary. The meeting may be held at the request of either the district or CBLA. This is an opportunity to answer any questions the interested parties may have, and to clarify the requirements of the RFP, both administrative and project scope, to all parties.

8.4.2 Submission of Proposals

All desiring to be considered as a prime for a project must submit a proposal by the date and method specified in the RFP. The types of information submitted in their proposal includes, but is not confined to the following:

- Staffing plan that designates the key personnel assigned to the project, along with their current office location;
- Any work that the Consultant proposes to subcontract;
- Estimated time requirements for completion using the proposed staff;
- Known work load of the Consultant's transportation staff;
- Existing office where the majority of the work will be performed; and
- Any other document required in the RFP.

8.4.3 Opening of Proposals

The names of all submitting proposals electronically will be read at the time and location designated in the RFP. Proposals submitted in paper form will be opened at the time and location designated in the RFP. CBLA will document the proceedings.

The consultant also submits a separate price proposal (either sealed envelope or electronic file) which is not opened until after selection.

8.4.4 Administrative Responsibility Review

After the opening of proposals, CBLA conducts an administrative review to determine whether each vendor's proposal complies with the submission requirements of the RFP. Vendors meeting the requirements are deemed in compliance and progress to the responsibility review. Vendors not meeting the requirements are deemed not in compliance, eliminated from further consideration, notified of the decision in writing and have their unopened price proposal returned.

After the administrative review, CBLA conducts a review to determine whether each vendor is responsible (i.e., a vendor with whom the department can or should do business with). When the RFP contains a Disadvantaged Business Enterprise (DBE) goal, CBLA verifies DBE certificate of firm.

Proposals deemed responsible progress to the selection committee. Proposals deemed not responsible are eliminated from further consideration, notified of the decision in writing and have their unopened price proposal returned.

8.4.5 Selection

The responsible proposals are evaluated by the selection committee in order to determine the quality of the response to the services requirements of the RFP. The selection committee is composed of five voting members, including:

- Director of Program Development, or designee, who serves as the Chairperson;
- Bureau Chief of CBLA, or designee, who serves as the Recording Secretary;
- Regional Engineer, or designee, of the originating district;
- Director of the Office of Finance and Administration (F&A), or designee; and
- Director of Program and Planning (OP&P), or designee.

The regional engineer presents each proposal to the selection committee, noting the strength and/or weakness of each proposal. The selection committee then discusses and numerically scores each proposal based on the evaluation criteria set forth in the RFP. The proposal with the highest score, and an acceptable DBE plan, is deemed the apparent successful vendor. CBLA notifies the apparent successful vendor.

CBLA then opens the price proposal submitted and forwards to the originating district for negotiation.

8.4.6 Negotiations/First Meeting

The term “negotiation” includes all of the steps necessary, following the selection, to arrive at a signed agreement and to authorize the work.

The district initiates price negotiations with the selected firm. The district attempts to negotiate a fair and reasonable range of prices for each pay item for the required services. If a successful conclusion cannot be obtained, negotiations are formally terminated with that consultant. Negotiations with the second choice are initiated. Similarly, if negotiations fail with the second choice, negotiations with the third are initiated. Prior to the next choice being contacted, the director’s concurrence is required.

Once negotiations are completed (district and firm agree on the unit price ranges), the pay item rate ranges are forwarded to CBLA for inclusion in the contract. The unit prices include all costs to complete the work item, including profit, overhead, etc.

Once price negotiations are successful, discussions may begin on all administrative aspects of the project. Additional scope may NOT be added to the advertised scope; however clarification of process and details on the process may need clarification. For example, how the work order will be issued, who are the major IDOT contacts, what procedures will be involved during the project, and clarification of any outstanding questions. It is vital that all parties become familiar with the project and are prepared to participate in the discussion. The end result of the negotiation process should be a well thought out and clearly documented understanding of the anticipated requirements and level of effort.

8.5 AGREEMENT PROCESSING

Upon receipt of the negotiated rates from the district, CBLA takes the following steps:

- Federal authorization is requested (when applicable).
- Notice of Award is published in the department's Transportation Procurement Bulletin a minimum of seven days prior to execution of a contract.
- Consultant disclosure information is sent to the Ethics Board; and
- Any other requirements are current, complete, and approved;

CBLA reviews and makes any needed modifications to the agreement after receiving input from OCC. Should an award protest be filed, the contract cannot be executed until such time as the protest is resolved.

The agreement is sent first to the consultant for signature. The consultant reviews, signs, and returns the agreement to CBLA. CBLA obtains the appropriate signature(s) on behalf of the department. The district is informed that the consultant is authorized to proceed. A fully executed copy is sent to the consultant; an original copy is placed on file in CBLA; a copy is sent to the district with an approved contract obligation document. Work done prior to authorization to proceed is not eligible for reimbursement.

8.6 FUNDING APPROVALS FOR FEDERAL AUTHORIZATION

When federal funds are used, CBLA secures federal authorization and FHWA's authority to proceed with the work. Once authorization is received, a copy of this request and the FHWA authorization furnished is included in the project file. Work done prior to FHWA authorization is not eligible for federal participation.

8.7 AGREEMENT ADMINISTRATION

Administration of the agreement is the responsibility of the district. The district is responsible for monitoring the execution and progress of the work. A liaison manager is assigned and all work, preliminary or completed, and all project correspondence is channeled through the liaison manager. The liaison manager is the department's contact with the consultant. They ensure any changes are negotiated in accordance with the terms of the agreement and the files are properly documented for all verbal instructions. The liaison manager is also responsible for documenting the consultant's performance throughout the project.

Subconsultants can be utilized upon approval. Districts must approve the subconsultant with concurrence by the Bureau Chief of Land Acquisition, before the contract is changed to add the subconsultant. A copy of the fully executed subcontract must be uploaded to the procurement site by the prime before any work is authorized. The subconsultant agreement must clearly define the scope of work, the schedule of completion, the payment basis and include any certifications required by law.

8.8 WORK ORDER ASSIGNMENT

Once a contract is executed, work is assigned to the consultant via work orders. Work orders shall list the land acquisition service(s) required, including parcel numbers, completion

dates, the negotiated fee for the service, and any other special requirements and fee for the service(s).

The fees included in the work orders are negotiated at the time the work order is assigned and must fall within the range of fees set forth in the contract. The particular fee is determined by the complexity of the services needed, number of parcels assigned, similarity of parcels, travel distance for the person actually performing the service, amount of information furnished by the district, and amount of information the assignee must obtain.

Once the scope, quantity, and fees are agreed to, the consultant and then the liaison manager, sign the work order. By signing the work order the parties agree the scope will be completed for the amount and within the time frame specified in the work order.

When the consultant is needed for pretrial conferences and court appearances as part of condemnation proceedings, the fee for such services will be based on the hourly rate set forth in the contract. When witnesses are retained by the Special Assistant Attorney General (SAAG) assigned to the case, the SAAG may use any form of contract they choose and the fees will be established therein.

8.9 DOCUMENTATION

Liaison manager maintains a complete log in the files of what was decided during all phone calls, meetings, visits, and inspections. Copies are furnished to the consultant and, for purposes of FHWA audit and/or of documenting performance.

8.10 FILING AND PAYING AGREEMENTS

Payments for contractual service agreements are to be made against an approved Contract Obligation Document (COD), which specifically obligates funds for payment to the contract vendor. COD must be established in FOA and approved within thirty (30) days after execution of the contract. If the contract is not filed on time, then a late filing affidavit ([LA 810](#)) must accompany the contract. To comply with the filing requirements, the original executed contract must be submitted to CBLA. CBLA will establish the obligation in FOA and forward one copy of the contract and COD to the Bureau of Business Services (BoBS) and the district. The district completes processing of the invoice in FOA. The district sends the processed invoice in a schedule to CBLA.

Expenditure tracking numbers are then assigned and become permanent tracking numbers applicable to the agreement. The computer assigned contract numbers and vendor tracking numbers are required data when processing invoices for payment and must be on the invoice before submittal to CBLA.

8.11 CONSULTANT INVOICES

Work may be invoiced either as the work is completed or as percentage complete of the work unit. This will be at the discretion of the liaison manager and as set forth during negotiations.

Invoices and progress reports are received and approved by the liaison manager. An itemized summary of the work accomplished during the invoice period is included with the invoice.

Invoices are processed for payment only when the reported work is complete or percentage of completion is approved. The liaison manager promptly notifies the consultant if a lesser percentage should be used. Total costs in excess of the approved percentage of completion times the upper limit of compensation are not approved for partial or final payments.

When such higher costs are billed, the liaison manager determines if this is due to consultant inefficiency and, if so, takes appropriate steps to correct the problem. All work by subconsultants must be included in the invoice.

After invoices are found reasonable, or are corrected to reasonable, and in accordance with the terms of the agreement, the liaison manager signs as approving the costs and promptly processes it for payment.

To process for payment the district submits a copy of the detailed invoice to CBLA. CBLA reviews for accuracy, verifies sufficient funds, adds the appropriate dollar amounts with the associated parcel numbers to FOA if needed, and forwards to BOBS to complete the process.

8.12 AMENDMENTS

Contracts may be amended when allowed in the contract. Amendments or revisions to a contract, including changes in the terms, must be sent to CBLA for approval. When an amendment or change order to an existing contract is necessary, it shall be in accordance with Title 44, Illinois Administrative Code, Part 660, et seq. CBLA publishes contract amendments in the department's Transportation Procurement Bulletin a minimum of 14 days prior to execution of the amendment.

8.13 EVALUATION OF CONSULTANT'S PERFORMANCE

8.13.1 General

The department formally evaluates all work performed. The evaluations are made for both prime consultants and subconsultants. Performance evaluations are provided to the selection committee and are used as a basis for future procurements. During the life of a project, the liaison manager informally evaluates the work by keeping lines of communication open, and keeping everyone aware of any problems or concerns the department has with its performance. Among the areas evaluated are:

- Timeliness
- Completeness of Product
- Cooperation/Management
- Quality/Accuracy
- Public Relations

8.13.2 Interim Evaluations

All interim evaluations are sent to consultants at the same time they are transmitted to CBLA. An interim evaluation accompanies a submittal when returned to the consultant due to excessive errors/corrections. The evaluations are a very important tool for both the consultant and the Department. They provide timely feedback to the consultant concerning performance on an active project. The interim evaluation allows the consultant to correct any deficiencies during the life of the project, in some cases turning what would otherwise have been a bad experience for all involved, into a good one. The district is responsible for completing the evaluations.

8.13.3 Final Evaluations

After the agreement is completed, final evaluations are prepared by the district for the prime and subconsultant in appropriate service areas. The final evaluations must be complete prior to an agreement being finalized.

8.14 COMPLETION AND TERMINATION PROCEDURES

When any agreement is ended, whether by completion of the work or by termination procedures stipulated in the agreement, copies of the final voucher request, request for audit, final performance evaluations, and the final invoice with all its attached documentation are resubmitted to CBLA. CBLA will prepare a COD deobligating excess funds for jobs that have reduced costs. This completes the closeout procedures for projects, which are not programmed for federal fund participation. The district must submit the following additional documentation to the CBLA for all programmed federal-aid projects:

- Date all work was completed or the Agreement was terminated;
- List of all authorization dates from the FHWA, for work authorized on the project, to verify that it is participating; and
- Method of payment stipulated in the Agreement. Note: All the methods and areas of application are necessary if several methods of payment are used.

9 OUTDOOR ADVERTISING

9.1 GENERAL

The purpose of this chapter is to provide the procedures for registrations, permit applications and revocations and the requirements for the erection and maintenance of signs along interstate or primary highways in Illinois.

Outdoor advertising signs, also known as billboards, are controlled (permitted) by the department adjacent to specified highways by both federal and state statutes. The Administrative Rule that applies to outdoor advertising in Illinois is Title 92 Illinois Administrative Code Part 522 – Control of Outdoor Advertising Adjacent to primary and Interstate Highways. The State’s control provisions are found within the Highway Advertising Control Act of 1972 (Act).

Statutes state that no person shall place or cause to be placed, any sign or billboard or any advertising of any kind or description upon any state highway or on any other highway outside the corporate limits of any municipality (605 ILCS 5/9-112).

9.2 CONTROLLED ROUTES

Signs placed on one of the following five types of routes require permitting, registration and approval:

- Interstate Highway System- a connected network of continuous routes designated as part of the National System of Interstate and Defense Highways. They are fully access controlled and constructed for higher design speeds. (including a tollway),
- National Highway System - a network of principal arterial routes identified as essential for international, interstate, and regional commerce and travel, national defense, and the transfer of people and goods to and from major intermodal facilities
- Primary Highway - any highway (other than an interstate highway) which is part of the Federal-Aid Primary System (in existence prior to June 1, 1991) or any highway other than an interstate highway on the National highway system,
- Expressway - a primary highway constructed either as a free way or a tollway with full access control
- Scenic Byway - portion of a highway with the designation National Scenic Byway or All-American Road.

9.3 SIGN TYPES REQUIRING CONTROL

Signs are registered in one of the following five categories:

- Registered Red Tag Non-Conforming Signs (considered grandfathered) – Signs erected prior to the effective date of the Act in non-conforming areas and are allowed remaining as long as not modified or destroyed greater than 60% (based upon their uprights). Requires a new permit if modified or re-erected.

- Registered Blue Tag Conforming Signs(considered grandfathered) – Signs erected prior to the effective date of the Act in conforming areas and are allowed remaining as long as not modified or destroyed greater than 60% (based upon their uprights). Requires a new permit if modified or re-erected.
- Approved Yellow Tag Signs – Signs categorized as “directional or other official” and “religious” or “service club”.
- Permitted Green Tag Signs – Signs erected in conforming areas.
- Illegal Signs (No Tag) – Signs erected adjacent to a controlled route without a permit or prior approval.

9.4 SIGN CONTROL CRITERIA

All signs located adjacent to a designated controlled route and within 660 feet of the right of way of a controlled route in an urban area (as defined by the Act and rules) are controlled. Signs not in urban areas must be visible and erected with the intent of being read from the main traveled way of the controlled route.

Criteria for controlled signs include the size of the sign face, lighting and spacing provisions. The following are prohibitions for signing along a controlled route system:

- Commercial advertising signs cannot be placed within state right of way.
- Signs cannot attempt to direct traffic or resemble a traffic control device.
- Signs cannot contain oscillating, rotating, flashing, intermittent or moving light(s).
- Signs cannot be painted or drawn upon any natural features.
- Signs cannot be obsolete or advertise for something no longer in existence.
- Signs cannot be unsafe, need repair or abandoned.
- Signs cannot contain lighting features that present a hazard to the motorist.
- Signs cannot be within 1,000 feet of approaching, merging or intersection traffic; be within 1,000 feet of an official traffic sign, signal or device; be within 500 feet of an interchange, rest area or weigh station (if outside of an incorporated area).
- Signs cannot be erected without a permit or registration if they are considered within control.
- Signs cannot advertise anything illegal.
- Signs cannot contain animated or moving parts.

- Signs cannot violate public airport safety (whether due to lighting, location or a runway safety zone).
- Signs cannot be located adjacent to a designated scenic byway unless they are directional signs, official signs, religious notice or public service signs, for sale or lease signs or on premise signs.

9.4.1 Requirements for Signs Located on or along the Interstate System (Including Tollways)

Zoning, or the commercial/industrial attributes of proposed sign sites, is one of the most significant control elements:

- A sign location adjacent to the interstate must have been within municipal limits as they existed on September 21, 1959, and must be currently zoned commercial or industrial, or
- The sign site must have been used for commercial or industrial purposes from September 21, 1959 to the present with no interruption of commercial or industrial use.

Off-premise signs:

- An off-premises sign can be up to 1,200 square feet in counties with population greater than 2M, or 800 square feet in populations of less than 2M (maximum height not greater than 30 feet, maximum length not greater than 60 feet).
- They cannot be less than 500 feet apart from like signs, whether inside or outside municipalities (outside of incorporated municipalities signs cannot be within 500 feet of an interchange, weigh station or rest area).
- They also must meet September 21, 1959 “business area” requirements.

On-premise signs (outside of “Business Areas”):

- Sites may have only one sign greater than 50 feet from the advertised activity, up to 150 square feet, not greater than 20-foot height, width or length (one face per direction).
- They cannot have flashing, intermittent or moving lights, except if they meet the Multiple Message Sign criteria.

On-premise signs (within business areas):

- This type of sign must be tagged.

Food, gas, lodging, outdoor recreational signs:

- These can be up to 150 square feet (length, wide or height not greater than 20 feet).
- They cannot be within two miles from an interchange approach, or 1,000 feet beyond;

- No more than six such signs within two to five miles of an interchange, no more than two per mile and not less than 1,000 feet apart;
- One sign per mile when greater than five miles from an interchange.
- Can only have one such sign advertising same activity per direction.
- Sign site must be legitimately zoned or unzone commercial/industrial areas.

For sale or lease signs (within business areas):

- These are not required to meet size or spacing requirements.
- They must be tagged.

For sale or lease signs (outside of a “business area”):

- Sizes up to 150 square feet (length, width or height not greater than 20 feet).
- No more than one sign per direction.
- The activity and the site must be one and the same.

Directional signs:

- Sizes up to 150 square feet (length and/or height not greater than 20 feet).
- Over 2,000 feet of an interchange or intersection if adjacent to an interstate highway or expressway;
- Not within 2,000 feet of a rest area, parkland or scenic area;
- Less than three such signs erected along a route approaching the activity, and not more than two spaced less than one mile apart.
- Within 75 air miles of the activity.

Official signs:

- Erected within the respective territorial or zoning jurisdiction.
- There are no sizes, lighting, spacing or site requirements.

Service clubs and religious notice signs:

- Largest sign dimension is eight feet.
- Message content limited with no pictorials.

9.4.2 Rules for Signs Located Adjacent to Non-Interstate NHS Routes

Off-premise signs:

- Size up to 1,200 square feet in counties with populations greater than 2M; or 800 square feet in counties less than 2M (maximum height not greater than 30 feet; maximum length not less than 60 feet).
- At least 500 feet from like signs outside municipalities, or 300 feet inside municipalities.
- In areas zoned commercial or industrial, or in areas considered unzone commercial or industrial (for unzone commercial or industrial areas, signs must be within 600 feet of the commercial or industrial activity—this unzone commercial or industrial area can be “mirrored” to the other side of the highway).

Directional signs:

- Sizes up to 150 square feet (length and height not greater than 20 feet).
- Lighting not presenting a safety hazard (see airport restrictions).
- Not within 2,000 feet of a rest area, parkland or scenic area;
- Maximum of three such signs erected along a route approaching the activity, and not more than two spaced less than one mile apart.
- When along a non-interstate NHS route such signs must be within 50 air miles of the activity.

Official signs:

- There are no sizes, lighting, spacing or site requirements.
- Signs within the respective territorial or zoning jurisdiction.

Service clubs and religious notices:

- Sizes up to eight square feet.
- Message content limited with no pictorials.

9.4.3 Rules for Signs Located Adjacent to Scenic Byways

On-premise, directional, official and religious and service club signs only are allowed adjacent to scenic byways, unless a sign location falls within a “gapped” area. On-premise signs adjacent to the non-interstate NHS route are not controlled; therefore, they will not require any field work. Off-premise advertising is not allowed unless in a gapped area. Scenic byway designations and requirements being a relatively new development, many off-premise signs are present and considered red tag signs and allowed to remain.

9.5 SIGN PERMIT APPLICATION PROCESS

Permit applications (forms [LA 9001](#), [LA 9002](#), [LA 9003](#), [LA 9004](#), [LA 9005](#) or [LA 9008](#)) are received by CBLA from the applicant, or sent to CBLA by the district for review and approval. All data is reviewed by CBLA. CBLA will verify the applicant is not on the State's illegal or abandoned sign owner's list and the application meets requirements. CBLA will also review land ownership by conducting a review of county records, either online (if available) or in person.

Upon review, if the application is incomplete, a notice of intent to deny is sent to the sign owner ([LA 951A](#)).

Upon review and approval of the application a notice is sent to the sign owner ([LA 951B](#)). The sign and location is entered into the database. Once the sign is erected, CBLA will inspect the sign and, if in compliance with the permit, attach the appropriate tag.

The permit application and instructions for completing the application are located at <http://www.idot.illinois.gov/doing-business/permits/outdoor-advertising/index> (see forms [LA 9001](#), [LA 9002](#), [LA 9003](#), [LA 9004](#), [LA 9005](#) or [LA 9008](#)).

9.6 SURVEILLANCE OF SIGNS

Periodic surveillance is conducted by CBLA to review compliance. Surveillance also occurs as a result of or a follow-up to a phone call or written inquiries reporting possible illegal action. District personnel report any potential unpermitted actions to CBLA.

9.7 ILLEGAL SIGN CONTROL

A sign owner erecting a sign without an approved permit receives a 30-day letter ([LA 97A](#) or [LA 97A-1](#)) notifying the sign owner to bring the illegal sign into compliance by either submitting a permit application or by the sign's physical removal. A review of the application is made upon submittal. Should the application be denied, notification is made to the sign owner.

Modification, without permit, alters a sign's legal status from registered conforming or non-conforming to illegal. Illegal modifications to a permitted sign will require an intent to revoke letter ([LA 97B](#)).

A registered or permitted sign damaged greater than 60 percent, can only be re-erected after reapplying for a new permit and meeting current permit requirements. Abandoned or obsolete signs (advertise a business that is no longer in existence), an intent to revoke letter is generated. This letter puts the sign owner on notice to either remove the sign or demonstrate that obsolescence is no longer a factor.

When no remedy is made, the intent to revoke letter will suffice for the 30-day letter and the sign removal process ensues.

9.8 RELOCATING ADVERTISING SIGNS

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.

As off premise advertising signs are considered personal property, the following provisions 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, shall 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 shall be based on a moving distance of 50 miles.

If the sign owner elects to relocate the sign, the sign owner will be paid the actual and reasonable costs to move the sign as a personal property only move. Refer to Section 5.9.12 in Chapter 5.

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 (if the sign owner so elects) to a legal site, either along a controlled route or a non-controlled route.

It should be noted that off-premises advertising sign companies are not eligible to receive reestablishment expenses because the definition of a small business expressly disqualifies sites occupied solely by outdoor advertising signs, displays or devices.

9.9 ACQUISITION OF OUTDOOR ADVERTISING SIGN SITE

9.9.1 Valuation of Signs Located on Property to be Acquired

Signs located on right of way to be acquired are classified as personal property. As such, the sign itself is not included in the valuation of the property. Legal sign sites may enhance the value of the real property as a result of their desirability for this use. Appraisers should give consideration to a sign site's effect, if any, on the 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 (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.

If condemnation is necessary to acquire any parcel containing an advertising sign, both the land owner and sign owner is 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 SAAG assigned to the condemnation case.

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 Interest and Agreement to Vacate Advertising Sign (LA 420A) or
- Lessee's Release of Lease and Bill of Sale for Advertising Sign or Billboard (LA 420B).

For off-premise signs:

- Tenant's Release of Lease (Template LA 410R).

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 program.

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. Refer to Section 5.9.12 in Chapter 5.

Legal non-conforming (red tag) signs cannot be relocated to another non-conforming location; however, they may be relocated (if the sign owner so elects) to a legal site.

Off-premises advertising sign companies are not eligible to receive reestablishment expenses. The definition of a small business expressly disqualifies sites occupied solely by outdoor advertising signs, displays or devices.

9.9.2 Valuation of Legal Non-Conforming (Red Tag) Signs

The department may purchase a red tag sign. The valuation of such signs is based on the Signboard and Site Valuation Manual. A letter will be sent to notify the sign owner a sign has been destroyed and registration is no longer valid ([LA 9102](#)).

9.10 OUTDOOR ADVERTISING CONTROL SYSTEM (OACS)

OACS is a SQL database with a MS Access front end user interface. The purpose of OACS is to catalog all outdoor advertising signs that are controlled by the Department. For help using OACS, please refer to the OACS Desktop User's Manual.

10 SPECIAL WASTES

10.1 General

This chapter establishes procedures for managing land acquisition activities where there is a suspected presence of regulated substances on properties to be acquired, managed or disposed of by the department. Any contaminated or suspected contaminated parcels will be acquired through fee simple title. While acquiring property containing special waste exposes the department to potential liability for associated cleanup costs, taking of lesser interest does not limit the department's liability. Parcels suspected of being contaminated, must be screened/assessed for special waste as described in the Bureau of Design and Environment's Manual Chapter 27. This applies to any parcel whether it is a partial or a whole taking, and whether the contamination is by petroleum products or by other contaminants, including underground storage tanks and leaking underground storage tanks.

10.1.1 Evaluation of Properties for Special Wastes

The BDE administers procedures for evaluating whether properties along proposed highway projects contain elevated levels of regulated substances (see Chapter 27 of BDE Manual). Emphasis is given to the importance of addressing, coordinating and resolving regulated substance issues between the district environmental section, land acquisition, and Office of Chief Counsel (OCC). Early coordination with the district environmental staff allows for identification of parcels to be acquired with potential for special waste.

10.1.2 Acquisition

District Land Acquisition contacts the District Special Waste Coordinator (SWC) and documents the results of any environmental studies, screening and/or inquiries including any management and/or monitoring requirements of the contaminated areas of required remediation plan. Land acquisition proceeds only upon receiving the following applicable information from the District's SWC:

- The date of the completed ESR when the site passed either Level I or Level II screenings;
- Any PESA recognized environmental conditions, date of findings and any required remedial action;
- Date AAI was performed if applicable; and
- Date of the final Preliminary Site Investigation Report and any required management and monitoring of the contaminated areas.

When the SWC provided information is more than six months old, district SWC is contacted again for any updated evaluations of the project area. When advancing the parcel for title review or for condemnation the reevaluated dates and subsequent findings are included with the documentation. DLA visually inspects the property prior to closing to confirm the findings are unchanged (i.e., there are no new indicators of contamination at the site). If new indicators are identified, DLA immediately informs the district environmental coordinator. The district Environmental Coordinator determines whether the new indicators warrant rechecking the property through the CBDE Special Waste Procedures.

Provide copies of any findings to the appraisers as well as the review appraisers. Instructions for appraising contaminated properties can be found in Chapter 3.

The portions of the PSI pertaining to the parcel are furnished to each property owner, tenant or operator in order 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 NFR letter from USEPA or IEPA approving the plan and the report constitute adequate documentation.

If a negotiated agreement for purchase cannot be reached between the property owner, tenant or operator and IDOT, eminent domain proceedings commence. The data for condemnation includes all pertinent and available reports and data 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 quick take hearing, IDOT 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 IDOT does not waive its right to pursue future costs of remedial action.

If contamination has migrated from the acquired property onto the existing right of way, provisions make to take the necessary legal action to hold the owner liable. Cleanup costs associated with remedial action on existing right of way cannot, however, be taken into account in valuing the property in an eminent domain proceedings. 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.

10.1.3 Underground Storage Tanks

Acquisition involving underground storage tanks and associated piping requires additional coordination. Give the owner of the property the opportunity to remove the tank and piping prior to the pre-established vacation date and apply the appropriate retention value.

The removal of underground storage tanks containing petroleum or other hazardous substances (415 ILCS 5/3.14) requires a permit from the Office of State Fire Marshal. The application for this permit is a legal document and reviewed by the OCC before filing with the Office of State Fire Marshal.

10.1.4 No Further Remediation (NFR) Letters

When the property owner has obtained a NFR letter prior to acquisition of the property by the department, the NFR letter accompanies the title package paperwork to OCC. When the property is subject to a conditional NFR letter, the district assesses the impact of the acquisition 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 verify the adherence to the conditions.

Should adherence to those conditions appear to be adversely affected by the acquisition and might even cause 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 IDOT's impact upon the conditions in the owner's NFR is not severe.

10.1.5 Enforcement

When the department must acquire contaminated land, the preferred method is to have the owner, tenant or operator clean up the regulated substances prior to the acquisition. When not possible to do so, the department obtains the services of a prequalified contractor to clean up the regulated substances after acquisition. When also not possible, the regulated substances may be managed and disposed of as a part of the construction project and in accordance with IEPA rules and regulations.

10.1.6 Property Management

The rental or lease agreement ensures, by means of an indemnity clause, no liability is incurred by the department because of actions of lessees/tenants or their agents. Also evaluate the environmental conditions of the department's rental properties during annual inspections and the excess land statements reports these inspections.

Do not voluntary lease back or rent property to the owner, tenant or operator from whom the department is acquiring title on parcels where regulated substances will be handled on the property or where the source of regulated substances is located on the parcel.

If an underground storage tank (UST) or a leaking underground storage tank (LUST) is found on right of way owned by the department, the districts shall comply with Section 669 of "Standard Specifications for Road and Bridge Construction."

10.1.7 Safety

All operations in connection with environmental assessments and remedial actions of regulated substances shall be performed in a manner so as not to expose department employees and others to health or safety risks. These operations shall comply with all federal and state statutes, rules and regulations including Departmental Order 5-1 and other guidelines issued by the Bureau of Design and Environment.

Appendix A – Definitions and Acronyms

DEFINITION

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 river bed, 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 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.

Act – The Highway Advertising Control Act of 1971 [225 ILCS 440].

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 Service 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 value of the remaining property after the acquisition considering the impact on 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 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 United States Attorney General, and an alien who is present in the United States after the expiration of the period-of-stay authorized by the United States Attorney General 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 defined 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: Cost Approach, Income Approach, Market Value (comparable) Approach (also known as Sale Comparison 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 his opinion as to the 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 of the Central Bureau of Land Acquisition of the Order and Approval to Dispose of Excess State Property, ([LA 662](#)), 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 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. 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 consequential 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. 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.

- Within the financial means of the displaced person:
 - A replacement dwelling purchased by a homeowner in occupancy at the displacement dwelling for at least 180 days prior to the initiation of negotiations (180-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 Section 5.6.7.

- 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 5.
- 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 5. Such rental assistance must be paid under replacement housing of last resort provisions as described in Chapter 5.
- 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 relating to the size of the replacement dwelling shall apply.

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.

Condemnation Value – Market value paid upon condemnation.

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 offer 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 value to remaining property after a portion of the property is taken rather than the value of the property taken.

Damage to the Remainder – An appraiser’s view of the decrease in 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 local housing 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 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. In the case of a housekeeping dwelling, 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 – An environmental approval by the department and the FHWA of the design recommended as a result of a design study and a design public hearing.

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 Program Development, 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 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, the initiation of negotiations for, or the acquisition of such real property in whole or in part for a project. This includes a person who does not meet length of occupancy requirements.

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 Program Development

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 non-housekeeping unit; 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 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 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 contingent 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 deceased, 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 Value – Price that probably would be negotiated between a willing seller and willing buyer in a reasonable time. Usually arrived at by comparable sales in the area.

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 government, any wholly 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 or insurance 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 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 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 the 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 deed 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 be terminated 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 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 and full time students less than 18 years of age. 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 R_o . $(N.O.I./R_o-v)$.

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 - The following unless a different action is specified in applicable federal program regulations:

- 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 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.

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 sworn 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 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 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 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 so 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 is that it is a writ commanding a governmental body to do something, such as issue a building permit.

Market Data Approach – Appraising the 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 (a/k/a Sales Comparison Approach).

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.

Market Price – The price a property brings in a given market. Commonly used interchangeable with market value, although not truly the same.

Market Value – The highest price a willing buyer would pay and a willing seller accept, both being fully informed, and the property exposed for a reasonable period of time. The market value may be different from the price a property can actually be sold for at a given time.

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-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 - Person is an individual, trust, firm, joint stock company, joint venture, consortium, commercial entity, corporation, (including a government corporation), partnership, association, state, municipality, commission, political subdivision of a state, or any interstate body including the United States Government and each department, agency and instrumentality of the United States (415 ILCS 5/58.2).

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 5;
- 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 5. 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 5; or
- Tenants required to move as a result of the sale of their dwelling to a person using down payment assistance provided under the American Dream Down payment Initiative (ADDI) authorized by Section 102 of the American Down payment Act (Pub. L. 108-186; codified as 42 U.S.C. 1282).

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 of 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 for no less than the fair appraised value, 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.

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.

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 or 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.

SAAG 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 IDOT when it becomes necessary to acquire land by eminent domain proceedings.

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 or 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 Chapter 5.

Sole Proprietorship – Individual ownership of a business as opposed to a partnership or corporation.

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 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.

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 or 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.

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 electric, gas, water, steam power, or materials transmission or distribution system; and transportation system; any communications system, including cable television; and any fixtures, equipment or other property associated with the operation, maintenance, or repair of any such system. A utility facility may be publicly, privately, or cooperatively owned.

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 estimating of value. Appraisal.

Value After the Taking – In the case of a partial taking under eminent domain, the value of the part not taken.

Value Before the Taking – The market value of a property before condemnation.

Value in Place – The 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 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 the division determines 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 the implementation of programs subject to these provisions:

- BCIS. Bureau of Citizenship and Immigration Service.
- CBLA. Central Bureau of 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.
- MIDP. Mortgage interest differential payment.
- RHP. Replacement housing payment.
- STURRA. Surface Transportation and Uniform Relocation Act Amendments of 1987.
- URA. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.
- USDOT. U.S. Department of Transportation.
- USPAP. Uniform Standards of Professional Appraisal Practices.