



**Alaska  
Department of  
Transportation  
and  
Public Facilities**

---

**Alaska  
Right-of-Way  
Manual**

**October 2024**





# Alaska Right-of-Way Manual

October 2024



## Foreword

The purpose of this manual is to give guidance to Right-of-Way (ROW) professionals on the proper adjudication of property issues relevant to the Alaska Department of Transportation and Public Facilities (DOT&PF). This manual was produced with the guidance and input from each of the regional ROW sections. It is intended to serve as a reference and guide to the policies, procedures, and processes that affect ROW and land issues encountered by DOT&PF in the execution of its duties. This is not intended to be an exhaustive desk manual but instead sets forth clear expectations under our agreement and with our funding partners. While great care has been taken to ensure all the relevant citations have been provided to the reader, the onus is on the ROW professional to know and keep current on the laws and regulations affecting this manual.

This current version supersedes all prior versions of the *Alaska Right-of-Way Manual*. Among the changes in this version are:

- added language to Sec. 2.7 to provide additional guidance to the reader for project certifications, especially conditional certifications with references to 23 CFR 635.309, other Alaska DOT&PF Manuals, and the Stewardship & Oversight Agreement on Project Assumption and Program Oversight by and Between the Federal Highway Administration, Alaska Division Office, and the Alaska Department of Transportation and Public Facilities (DOT&PF) updated and issued August 2024 (hereafter Stewardship & Oversight Agreement);
- updates to Sec. 2.8 to reflect current practices;
- removal of Exhibit 2-2 Consolidated Annual Statistical Report (49 CFR Part 24 Appendix B) due to new reporting methods initiated annually by FHWA;
- and
- minor edits for clarification throughout Ch. 2.

This page intentionally left blank.

# Table of Contents

---

<b>1.</b>	<b>Introduction .....</b>	<b>1-1</b>
1.1.	Introduction .....	1-1
1.2.	Mission Statement and Responsibility .....	1-1
1.3.	History and Organization.....	1-1
	1.3.1. <i>History</i> .....	1-1
	1.3.2. <i>Organization</i> .....	1-1
1.4.	Project Funding.....	1-4
1.5.	Statutory and Regulatory Background.....	1-4
1.6.	Oversight Agreement .....	1-5
1.7.	Summary of Project Activities.....	1-5
	1.7.1. <i>Phase 2</i> .....	1-5
	1.7.2. <i>Phase 3</i> .....	1-6
<b>2.</b>	<b>Administrative Procedures .....</b>	<b>2-1</b>
2.1.	Introduction .....	2-1
	2.1.1. <i>State-Funded Projects</i> .....	2-1
2.2.	ROW Work Performed in Phase 2 .....	2-1
2.3.	ROW Work Performed in Phase 3 .....	2-2
	2.3.1. <i>Federal-Aid Highway Projects</i> .....	2-2
	2.3.2. <i>Federal-Aid Aviation Projects and Projects Funded Fully with State Funds</i> .....	2-2
	2.3.3. <i>Project Certification and Authority to Advertise</i> .....	2-2
	2.3.4. <i>Federal Project Advance and Early Acquisition</i> .....	2-2
	2.3.5. <i>Acquisition Incentive Program</i> .....	2-3
2.4.	Contracts with Local Public Agencies or Private Consultants .....	2-3
	2.4.1. <i>Local Public Agencies (LPAs)</i> .....	2-3
	2.4.2. <i>Private Consultants</i> .....	2-3
2.5.	Right-of-Way Project Files .....	2-3
	2.5.1. <i>Project Records Retention</i> .....	2-4
2.6.	Reporting Land Sales to the Internal Revenue Service .....	2-5
2.7.	Right-of-Way Certification and Relocation Program Assurances.....	2-5
	2.7.1. <i>Public Interest Finding (PIF) for Conditional Certification</i> .....	2-6
	2.7.2. <i>Documents for the Project Manager</i> .....	2-6
2.8.	Periodic Reports .....	2-7
2.9.	Pre-Audit Procedures.....	2-7
	2.9.1. <i>Current Cost Estimate</i> .....	2-7
	2.9.2. <i>Acquisition: Guidelines for Parcel Review Report</i> .....	2-7
	2.9.3. <i>Relocation: Guidelines for Relocation Parcel Review Report</i> .....	2-8
	2.9.4. <i>Funding, Encumbrance Processing, and Payment</i> .....	2-8
	2.9.5. <i>Federal-Aid Eligibility</i> .....	2-8
	2.9.6. <i>Condemnation Documentation</i> .....	2-9
	2.9.7. <i>Revenue Receipt Coding</i> .....	2-10
	2.9.8. <i>Project Closure</i> .....	2-10

2.10.	Attorney General's Office Review .....	2-10
<b>3.</b>	<b>Title and Plans.....</b>	<b>3-1</b>
3.1.	Introduction .....	3-1
3.2.	Title Search Report.....	3-1
3.2.1.	<i>Mandatory Standards for Title Search</i> .....	3-1
3.3.	Highway Right-of-Way Plans .....	3-1
3.3.1.	<i>Types of Title to be Acquired</i> .....	3-2
3.3.2.	<i>Title Sheet</i> .....	3-2
3.3.3.	<i>Symbols</i> .....	3-2
3.3.4.	<i>Tract Map</i> .....	3-2
3.3.5.	<i>Right-of-Way Plan Sheets</i> .....	3-2
3.3.6.	<i>Monument Summary Sheets</i> .....	3-3
3.3.7.	<i>Materials Source Plans</i> .....	3-3
3.4.	Airport Property Plans .....	3-3
3.5.	Parcel Plats .....	3-3
3.6.	Procedure for Plans Submittals .....	3-4
3.6.1.	<i>Submittal to Request Authority to Proceed with Appraisal and Acquisition from FHWA</i> .....	3-4
3.6.2.	<i>Plan Revisions</i> .....	3-4
3.6.3.	<i>Recording</i> .....	3-4
3.7.	Plan Changes.....	3-4
3.7.1.	<i>Design Changes</i> .....	3-4
3.7.2.	<i>Changes Found During Appraisal or Acquisition</i> .....	3-4
3.7.3.	<i>Disposal of Excess Land</i> .....	3-4
3.7.4.	<i>Condemnations</i> .....	3-4
3.8.	Parcelization and Numbering.....	3-5
3.8.1.	<i>Easement Parcelization</i> .....	3-5
3.8.2.	<i>Temporary Construction Permit/Temporary Construction Easement Parcelization</i> .....	3-5
3.8.3.	<i>Numbering of Areas Not Part of a Right-of-Way Parcel</i> .....	3-5
3.8.4.	<i>Numbering Material Sources</i> .....	3-5
3.8.5.	<i>Numbering Maintenance and Stockpile Sites</i> .....	3-5
3.8.6.	<i>Numbering Excess Parcels, Relinquishments, Vacations</i> ....	3-5
3.9.	Restricted Native Allotments.....	3-5
<b>4.</b>	<b>Appraisals &amp; Waiver Valuations.....</b>	<b>4-1</b>
4.1.	Introduction .....	4-1
4.1.1.	<i>Acceptable Appraisal</i> .....	4-2
4.1.2.	<i>Forms</i> .....	4-2
4.1.3.	<i>Market Value</i> .....	4-2
4.2.	General .....	4-2
4.2.1.	<i>Number of Appraisals Required</i> .....	4-3
4.3.	Appraisal Assignments and Contracts .....	4-3
4.3.1.	<i>Fee or Specialty Appraisal Contracts</i> .....	4-3
4.3.2.	<i>Information Provided to the Appraiser</i> .....	4-4
4.3.3.	<i>Intended Users' Pre-Appraisal Field Inspection</i> .....	4-4
4.4.	Routing and Retention of Reports.....	4-4



4.5.	Revisions, Updates, and Reappraisals.....	4-4
4.5.1.	<i>Request for Revisions or Updates</i> .....	4-5
4.5.2.	<i>Procedure</i> .....	4-5
4.5.3.	<i>Identification of Revisions</i> .....	4-5
4.5.4.	<i>Delivery of Revisions</i> .....	4-5
4.5.5.	<i>Updates with No Change in Value</i> .....	4-5
4.5.6.	<i>Request for New Appraisals or Appraisal Reviews</i> .....	4-5
4.5.7.	<i>Minor Change or Addition</i> .....	4-6
4.6.	Condemnation Appraisals .....	4-6
4.7.	Waiver Valuations .....	4-6
4.7.1.	<i>Procedures</i> .....	4-7
4.7.2.	<i>Updates or Revisions</i> .....	4-8
4.8.	Project Influence to Property Before Acquisition .....	4-8
4.9.	Determining the Larger Parcel .....	4-8
4.10.	Highest and Best Use .....	4-8
4.11.	Legal Considerations .....	4-8
4.12.	Contaminated Properties Appraisals .....	4-8
4.13.	Market Data Collections .....	4-9
4.13.1.	<i>Value Indicators</i> .....	4-9
4.13.2.	<i>Confirmation of Sales</i> .....	4-9
4.13.3.	<i>Date of Sale</i> .....	4-9
4.13.4.	<i>Use of Data Compiled by Others</i> .....	4-10
4.13.5.	<i>Comparable Sales Data</i> .....	4-10
4.13.6.	<i>Adjustments to Comparable Sales Data</i> .....	4-10
4.14.	Project and Market Data Book .....	4-10
4.14.1.	<i>Procedures</i> .....	4-11
4.15.	Types of Appraisal Reports Acceptable to DOT&PF .....	4-11
4.15.1.	<i>FNMA Reports and Forms</i> .....	4-12
4.15.2.	<i>Restricted Appraisal Report</i> .....	4-12
4.15.3.	<i>Appraisal Reports</i> .....	4-12
4.16.	Temporary Permit and Easement Appraisals .....	4-19
4.16.1.	<i>Temporary Permits</i> .....	4-19
4.16.2.	<i>Temporary Easements</i> .....	4-19
4.16.3.	<i>Procedures</i> .....	4-19
4.17.	Specialty Reports.....	4-19
4.17.1.	<i>Procedures</i> .....	4-20
4.18.	Damages .....	4-20
4.18.1.	<i>General</i> .....	4-20
4.18.2.	<i>Mitigation of Damages (Costs-to-Cure)</i> .....	4-20
4.18.3.	<i>Mitigation of Damages (Design Changes)</i> .....	4-21
4.18.4.	<i>Noncompensable Damages</i> .....	4-21
4.19.	Benefits.....	4-21
4.20.	Fixtures and Equipment .....	4-21
4.21.	Tenant-owned Improvements and Leaseholds.....	4-22
4.22.	Uneconomic Remnants.....	4-22
4.23.	Real Property/Personal Property.....	4-22

<b>5.</b>	<b>Appraisal Review .....</b>	<b>5-1</b>
5.1.	Introduction .....	5-1
5.2.	Appraisal Review Requirements.....	5-1
	5.2.1. <i>Pre-Appraisal Field Inspection</i> .....	5-2
	5.2.2. <i>Review Appraiser Assignment</i> .....	5-2
5.3.	Review Process.....	5-2
	5.3.1. <i>Compliance Check</i> .....	5-2
	5.3.2. <i>Post-Appraisal Field Inspection</i> .....	5-2
	5.3.3. <i>Desk Review of Appraisal/Appraisal Report</i> .....	5-2
	5.3.4. <i>Request for Corrections, Revisions, Explanations,</i> <i>or Supplements; Unacceptable Appraisals</i> .....	5-3
	5.3.5. <i>Findings of Unacceptability</i> .....	5-4
	5.3.6. <i>Corrections and Changes to the Appraisal by</i> <i>Review Appraiser</i> .....	5-4
	5.3.7. <i>Request for Additional Appraisal</i> .....	5-4
	5.3.8. <i>Review Appraiser May Establish Independent Value</i> .....	5-4
	5.3.9. <i>Uneconomic Remnants</i> .....	5-4
	5.3.10. <i>Basis for Just Compensation</i> .....	5-5
	5.3.11. <i>Documenting the Recommendation of</i> <i>Just Compensation</i> .....	5-5
	5.3.12. <i>Revisions to the Recommendation of</i> <i>Just Compensation</i> .....	5-5
5.4.	Routing of Appraisals .....	5-5
	5.4.1. <i>File Retention Schedule</i> .....	5-5
5.5.	Appraisal Reports for Condemnation.....	5-6
<b>6.</b>	<b>Acquisition .....</b>	<b>6-1</b>
6.1.	Introduction .....	6-1
6.2.	Approval for Acquisition.....	6-1
	6.2.1. <i>Minimum Just Compensation</i> .....	6-1
6.3.	Hiring of Consultants .....	6-1
6.4.	Assignment of Parcels to DOT&PF Staff .....	6-1
6.5.	Preparation by Acquisition Agent.....	6-2
6.6.	Document Preparation.....	6-2
	6.6.1. <i>Memorandum of Agreement (MOA)</i> .....	6-2
	6.6.2. <i>Conveyance and Related Documents</i> .....	6-2
	6.6.3. <i>Purchase Voucher</i> .....	6-4
	6.6.4. <i>Letter of Offer to Purchase</i> .....	6-4
6.7.	Initial Contact.....	6-4
	6.7.1. <i>Acquisition</i> .....	6-5
	6.7.2. <i>Explain the Impact of the Project</i> .....	6-7
	6.7.3. <i>Uneconomic Remnants</i> .....	6-8
	6.7.4. <i>Relocation Assistance Advisory Services</i> .....	6-8
	6.7.5. <i>Ending Initial Contact</i> .....	6-8
	6.7.6. <i>Corporate Ownership</i> .....	6-8
	6.7.7. <i>Owner Represented by Attorney</i> .....	6-8
	6.7.8. <i>Powers of Attorney (Owner Represented by</i> <i>Attorney-in-Fact)</i> .....	6-8
	6.7.9. <i>Owner Represented by a Fiduciary</i> .....	6-8

6.7.10.	<i>Owner of a Restricted Native Allotment or Town-site Lot</i> .....	6-9
6.7.11.	<i>Subsequent Occupants: Protective Lease Rental Agreement</i> .....	6-9
6.7.12.	<i>Record of Contact</i> .....	6-9
6.7.13.	<i>Valuation</i> .....	6-10
6.7.14.	<i>Revised Offer Letter or Withdrawal of Offer</i> .....	6-10
6.8.	Improvements in the Area to be Acquired .....	6-10
6.8.1.	<i>Owner/Tenant Retention</i> .....	6-10
6.8.2.	<i>Tenant/Leasehold Interests</i> .....	6-10
6.8.3.	<i>Notifying Property Management Unit</i> .....	6-11
6.8.4.	<i>Utilities</i> .....	6-11
6.9.	Counter Offers and Administrative Settlements.....	6-11
6.9.1.	<i>Mediation</i> .....	6-12
6.9.2.	<i>Land Exchange</i> .....	6-12
6.9.3.	<i>Donations</i> .....	6-13
6.10.	Conclusion of Negotiations .....	6-13
6.10.1.	<i>Title Clearance</i> .....	6-13
6.10.2.	<i>Reimbursement of Incidental Expenses</i> .....	6-13
6.10.3.	<i>Acquisition Package</i> .....	6-14
6.11.	Right of Entry .....	6-14
6.12.	Condemnation .....	6-14
6.12.1.	<i>Recommendation to Place a Parcel in Condemnation</i> .....	6-14
6.13.	Archaeologically Significant Sites.....	6-15
6.13.1.	<i>Identification of the Grave</i> .....	6-15
6.13.2.	<i>Permission of Heirs or Survivors</i> .....	6-15
6.13.3.	<i>Permits Required</i> .....	6-15
6.13.4.	<i>Notices and Public Health Protective Measures</i> .....	6-15
6.13.5.	<i>Procedures</i> .....	6-15
6.14.	Functional Replacement .....	6-16
6.15.	Acquisition from Federal and State Agencies, Including Native Interests through BIA .....	6-16
6.15.1.	<i>Applications to the BLM and the USFS</i> .....	6-16
6.15.2.	<i>Applications to the BIA for Trust or Restricted Lands</i> .....	6-18
6.15.3.	<i>Applications to USFWS</i> .....	6-18
6.15.4.	<i>Applications to the DNR Division of Mining, Land, and Water</i> .....	6-19
6.15.5.	<i>Application for Interagency Land Management Assignment (ILMA) and State Agency Leases</i> .....	6-19
6.16.	Early Acquisition .....	6-19
6.16.1.	<i>Acquisition Using State Funds with Project Matching Credit</i> .....	6-20
6.16.2.	<i>Early Acquisition Using Federal Funds</i> .....	6-20
6.16.3.	<i>State-Funded Early Acquisition Requesting Reimbursement</i> .....	6-22
<b>7.</b>	<b>Relocation</b> .....	<b>7-1</b>

7.1.	Introduction .....	7-1
7.2.	Definitions of Displaced Person and Persons Not Displaced .....	7-2
7.3.	Eligibility for Relocation Benefits.....	7-2
7.4.	Relocation Services Provided.....	7-2
7.4.1.	<i>Relocation Assistance Program Package</i> .....	7-3
7.5.	Relocation Planning.....	7-3
7.5.1.	<i>Project Information and Documentation</i> .....	7-3
7.5.2.	<i>Relocation Study</i> .....	7-4
7.5.3.	<i>Corridor Public Meeting</i> .....	7-5
7.5.4.	<i>Design Public Meeting</i> .....	7-5
7.5.5.	<i>Open House</i> .....	7-6
7.6.	Catalog of Comparable Replacement Housing .....	7-6
7.7.	Relocation Advisory Assistance Services .....	7-6
7.7.1.	<i>Replacement Housing to be Inspected</i> .....	7-6
7.7.2.	<i>Availability of Comparable Replacement Housing</i> .....	7-6
7.7.3.	<i>Eligibility</i> .....	7-6
7.7.4.	<i>Relocation Contact and Activities</i> .....	7-7
7.8.	90-Day Homeowner Occupants.....	7-9
7.8.1.	<i>Eligibility</i> .....	7-9
7.8.2.	<i>Amount of Payment</i> .....	7-9
7.8.3.	<i>Price Differential</i> .....	7-9
7.8.4.	<i>Increased Mortgage Interest Costs</i> .....	7-10
7.8.5.	<i>Incidental Expenses</i> .....	7-10
7.8.6.	<i>Rental Assistance Payment for 90-Day Homeowner</i> .....	7-11
7.9.	90-Day Occupants.....	7-11
7.9.1.	<i>Eligibility</i> .....	7-11
7.9.2.	<i>Rental Assistance Payment</i> .....	7-11
7.9.3.	<i>Down Payment Assistance</i> .....	7-12
7.10.	Replacement Housing of Last Resort .....	7-12
7.10.1.	<i>Methods of Providing Comparable Replacement Housing of Last Resort</i> .....	7-13
7.11.	Persons Ineligible to Receive Replacement Housing Payment.....	7-13
7.12.	Utilization of Payment by Displaced Person .....	7-13
7.13.	Voluntary Sale for Last Resort Housing .....	7-13
7.14.	Payment for Residential Moves and Related Expenses.....	7-14
7.14.1.	<i>Residential Moves: Actual Expenses</i> .....	7-14
7.14.2.	<i>Residential Moves: Fixed Payment for Moving Expenses</i> .....	7-14
7.15.	Owner-occupants of Multifamily Dwellings.....	7-15
7.16.	Payment for Nonresidential Moves and Related Expenses.....	7-15
7.16.1.	<i>Nonresidential Moves: Actual Reasonable Moving and Related Expenses</i> .....	7-16
7.17.	Nonresidential Moves: Preparation of Specifications, Notification, and Inspection.....	7-17
7.17.1.	<i>Nonresidential Moves: Self-Moves</i> .....	7-18
7.17.2.	<i>Nonresidential Moves: Eligible Reestablishment Expenses</i> .....	7-18
7.17.3.	<i>Nonresidential Moves: Ineligible Reestablishment Expenses</i> .....	7-19

7.17.4.	<i>Nonresidential Business Fixed Payment for Moving Expenses</i>	7-19
7.17.5.	<i>Determining the Number of Businesses</i>	7-19
7.17.6.	<i>Farm Operation Fixed Payment for Moving Expenses</i>	7-19
7.17.7.	<i>Nonprofit Organizations</i>	7-20
7.17.8.	<i>Average Annual Net Earnings of a Business or Farm Operation</i>	7-20
7.17.9.	<i>More Than One Move</i>	7-20
7.17.10.	<i>Advertising for Bids</i>	7-20
7.17.11.	<i>Transfer of Ownership</i>	7-20
7.17.12.	<i>Ineligible Moving and Related Expenses: Residential and Nonresidential</i>	7-21
7.18.	<i>Personal Property Only</i>	7-21
7.18.1.	<i>Mobile Homes</i>	7-21
7.18.2.	<i>Applicability</i>	7-21
7.18.3.	<i>Moving and Related Expenses--Mobile Homes</i>	7-21
7.18.4.	<i>Replacement Housing Payment for 90-Day Mobile Home Owner-Occupants</i>	7-22
7.18.5.	<i>Replacement Housing Payments for 90-Day Mobile Home Occupants</i>	7-23
7.18.6.	<i>Replacement Housing Payment Based on Dwelling and Site</i>	7-23
7.18.7.	<i>Cost of Comparable Replacement Dwelling</i>	7-23
7.18.8.	<i>Initiation of Negotiations</i>	7-23
7.18.9.	<i>Person Moves Mobile Home</i>	7-23
7.18.10.	<i>Partial Acquisition of Mobile Home Park</i>	7-23
7.19.	<i>Notice of Intent to Acquire</i>	7-23
7.19.1.	<i>Notification of Initiation of Negotiations</i>	7-24
7.19.2.	<i>Displaced Person Contact After Initiation of Negotiations</i>	7-24
7.19.3.	<i>Notice of Relocation Eligibility</i>	7-24
7.19.4.	<i>Request for Relocation Assistance</i>	7-24
7.19.5.	<i>Rental Agreement</i>	7-24
7.20.	<i>Business Services Provided</i>	7-24
7.21.	<i>Appeals</i>	7-25
7.22.	<i>Moving of Hazardous Materials</i>	7-25
7.22.1.	<i>Personal Property</i>	7-25
7.23.	<i>Eviction for Cause</i>	7-26
7.24.	<i>Parcels Acquired by Condemnation</i>	7-26
7.25.	<i>Administration Relocation Claim Processing</i>	7-26
7.25.1.	<i>Time for Filing</i>	7-26
7.25.2.	<i>Disapproval of Claim</i>	7-26
7.25.3.	<i>Purchase Voucher Preparation</i>	7-27
7.25.4.	<i>Payments</i>	7-27
7.25.5.	<i>Multiple Occupants of One Displacement Dwelling Unit</i>	7-27
7.25.6.	<i>Deductions from Relocation Payments</i>	7-27
7.25.7.	<i>Conversion of Payment</i>	7-27
7.25.8.	<i>Payment After Death</i>	7-27
7.25.9.	<i>Hardship</i>	7-27
7.25.10.	<i>No Duplication of Payments</i>	7-28

7.25.11.	<i>Relocation Payments Not Considered As Income</i> .....	7-28
7.26.	Civil Rights .....	7-28
7.27.	<i>Restrictions on Agent Establishing a Relocation Payment.</i>	7-28
<b>8.</b>	<b>Legal</b> .....	<b>8-1</b>
8.1.	Introduction .....	8-1
8.2.	Authorities .....	8-1
8.3.	General Procedures .....	8-2
8.3.1.	<i>Submission to Department of Law</i> .....	8-2
8.3.2.	<i>Declaration of Taking</i> .....	8-2
8.3.3.	<i>Attorney General Office Review</i> .....	8-2
8.3.4.	<i>Deposit</i> .....	8-2
8.3.5.	<i>New, Updated, or Revised Appraisals</i> .....	8-2
8.3.6.	<i>Settlement Justification</i> .....	8-2
8.3.7.	<i>Possession</i> .....	8-3
8.3.8.	<i>Interest</i> .....	8-3
8.4.	Authority and Necessity Hearing.....	8-3
8.5.	Masters' Hearings .....	8-3
8.5.1.	<i>Masters' Report</i> .....	8-3
8.6.	Trial .....	8-3
8.7.	Appeals to Supreme Court .....	8-3
<b>9.</b>	<b>Property Management</b> .....	<b>9-1</b>
9.1.	Introduction .....	9-1
9.2.	Retention Value Estimates .....	9-1
9.3.	Inventory and Control of Improvements .....	9-2
9.3.1.	<i>Assignment and Disposition of Improvements</i> .....	9-2
9.3.2.	<i>Property Management Project Status Report</i> .....	9-3
9.3.3.	<i>Inspection of Occupied Premises</i> .....	9-3
9.3.4.	<i>Owner's Agreement to Vacate Occupied Premises</i> .....	9-3
9.3.5.	<i>Final Inspection and Taking of Possession</i> .....	9-3
9.4.	Disposition of Improvements .....	9-3
9.4.1.	<i>Legal Notice</i> .....	9-3
9.4.2.	<i>Performance Security</i> .....	9-4
9.4.3.	<i>Bid Proposal</i> .....	9-4
9.5.	Bid Openings.....	9-4
9.5.1.	<i>Successful Bidders</i> .....	9-4
9.5.2.	<i>Noncompliance of Contract</i> .....	9-5
9.5.3.	<i>Improvements Cleared by General Contractor</i> .....	9-5
9.6.	Use of Highway Right of Way by Others.....	9-5
9.6.1.	<i>Rental Procedures</i> .....	9-5
9.6.2.	<i>Encroachments</i> .....	9-6
9.6.3.	<i>Other Permitted Uses</i> .....	9-9
9.7.	Highway Signs for the Traveling Public.....	9-10
9.7.1.	<i>General Eligibility Requirements for Businesses</i> .....	9-11
9.8.	Outdoor Advertising Control .....	9-11
9.8.1.	<i>Outdoor Advertising Control</i> .....	9-11
9.8.2.	<i>Removal of Illegal Signs</i> .....	9-11

9.9.	Junkyard Control.....	9-12
9.9.1.	<i>Inventory</i> .....	9-12
9.9.2.	<i>Junkyard Screening</i> .....	9-12
9.10.	Excess Land Management and Disposal .....	9-13
9.10.1.	<i>Inventory and Control</i> .....	9-14
9.10.2.	<i>Requests for Disposal</i> .....	9-14
9.10.3.	<i>Determination of Need</i> .....	9-14
9.10.4.	<i>Methods of Disposal</i> .....	9-14
9.10.5.	<i>Request for Authority to Appraise and Dispose of Excess Property</i> .....	9-15
9.10.6.	<i>Disposal of Controlled Access</i> .....	9-15
9.10.7.	<i>Sale of Structures and Excess Land on a Federal-Aid Highway Project</i> .....	9-15
9.10.8.	<i>Appeals</i> .....	9-15
9.10.9.	<i>Road Transfers</i> .....	9-15
9.11.	Materials Sources .....	9-16
9.12.	Civil Rights Statements for Deeds and Leases .....	9-16
<b>10.</b>	<b>Airports .....</b>	<b>10-1</b>
10.1	Introduction .....	10-1
10.2	Appraisals .....	10-1
10.3	Acquisition & Relocation .....	10-1
10.4	Potential Types of Title Held on Airport Lands .....	10-2
10.5	Title Certification Process for FAA Grants.....	10-4
	10.5.1. <i>Projects That Do Not Require Land Acquisition</i> .....	10-5
	10.5.2. <i>Projects That Require Land Acquisition</i> .....	10-5
10.6	Project Closeout .....	10-5
10.7	Relinquishment and Disposal of Airport Lands.....	10-5
<b>11.</b>	<b>Reserved .....</b>	<b>11-1</b>
<b>12.</b>	<b>Definitions.....</b>	<b>12-1</b>

This page intentionally left blank.



# 1. Introduction

---

- 1.1. Introduction
- 1.2. Mission Statement and Responsibility
- 1.3. History and Organization
- 1.4. Project Funding
- 1.5. Statutory and Regulatory Background
- 1.6. Oversight Agreement
- 1.7. Summary of Project Activities

## 1.1. Introduction

This manual is intended to guide Department of Transportation & Public Facilities (DOT&PF) staff and contractors through the right-of-way (ROW) acquisition, appraisal, relocation, and property management processes. The Department's ROW Group will use policies, procedures, and practices agreed upon with our funding partners as described in this manual to acquire and manage real property, whether for highways (including Federal-aid highways), airports, public facilities, transportation alternatives, or environmental mitigation.

This manual also applies to contractors and other agencies acquiring real property for DOT&PF.

Electronic copies of the manual incorporate hyperlinks for ease of use. If a hyperlink does not work, please notify the Statewide ROW Chief at 907-465-6954.

*Note:* The hyperlinks are to statutes and regulations as they existed on the date of this publication. Please verify whether a law has since been amended.

This chapter provides an overview and summary of the various ROW processes, including the statutory and regulatory background for those processes.

## 1.2. Mission Statement and Responsibility

DOT&PF's mission is "Keep Alaska Moving through Service and Infrastructure."

In managing the State's highway rights of way, DOT&PF has a legal obligation to serve the traveling public by protecting the safety and integrity of a highway's design, and to facilitate the

design, construction, maintenance, and operation of highways.

The ROW Group meets this obligation by providing engineering, appraisal, acquisition, relocation assistance, and property management services. DOT&PF is committed to furnishing cost-effective, sound, and reliable transportation systems and public facilities for all Alaskans.

ROW Agents have both the duty and the responsibility to serve the people of Alaska through exemplary conduct, patient explanation, and courteous treatment of all with whom they come in contact. Agents must have thorough knowledge of basic engineering practices; theories and techniques of real property appraisal, acquisition, and management; real property law; and pertinent regulations. Agents must be able to communicate effectively and must be honest, tactful, and innovative.

## 1.3. History and Organization

### 1.3.1. History

The Alaska Road Commission was created in 1905 and remained until 1959. The Department of Public Works was then created to oversee highways, airports, water and harbors, buildings, and other related functions.

The Governor established the Department of Highways and Public Works in 1962 by executive order. It remained as the parent organization of Aviation, Water and Harbors, Buildings, and the newly created Division of Marine Transportation.

The Department of Highways was eliminated in 1977 and the Department of Transportation & Public Facilities was established to combine the work of the two previous departments.

### 1.3.2. Organization

DOT&PF is organized geographically, with a statewide/headquarters office in Juneau and regional offices in Juneau (Southcoast Region), Anchorage (Central Region) and Fairbanks (Northern Region). There are also highway maintenance offices, design offices, marine facilities, airports, and public buildings scattered across the state. DOT&PF's Web site is located at: <http://dot.alaska.gov>.

ROW employees are located in the headquarters and regional offices.

are also available on the Internet at Workplace Alaska at <http://workplace.alaska.gov>.

Organization charts and position descriptions for ROW are available in the regional offices or from the Division of Statewide Design & Engineering Services at 3132 Channel Drive, Juneau, AK 99801. Position descriptions and qualifications for job series

The following chart gives an overview of the functions of each ROW Group, however regions may organize duties differently. Responsibilities are further detailed in succeeding chapters of this manual.

Position Title or Unit Name	Functions and Duties
Regional ROW Chief (Northern, Central, & Southcoast Regions)	<ul style="list-style-type: none"> <li>• represents their assigned region’s ROW Groups to promote and support statewide and regional ROW interests by coordinating with other State interests, funding partners, regulatory agencies, Department of Law, Legislature, various other agencies, and the public;</li> <li>• supports the Statewide ROW Chief in the promotion, maintenance, and defense of ROW activities, authorities, and obligations through various means including legislation, regulation, policies, and procedures;</li> <li>• supervises and delegates work and authorities to Regional ROW Groups and approved contractors (excluding ROW Review Appraiser);</li> <li>• coordinates early with project design staff by advising on acquisition consideration and challenges;</li> <li>• reviews waiver valuations and Review Appraisers’ Recommendations of Just Compensation and makes the Determination of Just Compensation;</li> <li>• approves administrative settlements for payments above market value;</li> <li>• approves relocations benefits payments;</li> <li>• in cooperation with other approved staff or Appraisal Review contractors approves payments to contractors, property owners (sellers/lessors), lessees/tenants, attorneys, contract negotiators, contract appraisers, and others involved in ROW and property management activities;</li> <li>• certifies projects as ready for construction; and</li> <li>• oversees the online permitting program.</li> </ul>
Statewide ROW Chief (Headquarters)	<ul style="list-style-type: none"> <li>• represents Statewide Design &amp; Engineering Services’ ROW Group to promote and support statewide and regional ROW interests by coordinating with other statewide interests and acting as a liaison for the regions with funding partners, regulatory agencies, Department of Law, Legislature, various other agencies, and the public when appropriate;</li> <li>• promotes, facilitates, maintains, and defends ROW activities, authorities, and obligations through the development, advice on, and support of advancing Department-approved ROW-related legislation, regulation, policies, and procedures, including coordinating periodic updates of the Alaska Right-of-Way Manual as required;</li> <li>• supervises and delegates work and authorities to Statewide/Headquarters ROW Appraisal Review staff and Appraisal</li> </ul>

Position Title or Unit Name	Functions and Duties
	<p>Review contractors where needed and approves payments to contract Review Appraisers;</p> <ul style="list-style-type: none"> <li>• acts as Statewide ROW training coordinator;</li> <li>• functions as designated Statewide Relocation Officer to facilitate formal, second-level appeal hearings with assistance from the Department of Law and the two regions not involved in the appeal; and</li> <li>• serves as the State’s voting member for AASHTO Committee on Right of Way, Utilities, and Outdoor Advertising and coordinates responses to various AASHTO and industry-related inquiries, except when otherwise delegated.</li> </ul>
ROW Pre-Audit Group (Regional)	<p>performs all ROW administrative functions, including:</p> <ul style="list-style-type: none"> <li>• tracking all funding and expenses for ROW Group (staff training and travel; payroll; normal office expenses; and specific project budgets);</li> <li>• preparing parcel review reports;</li> <li>• coordinating with DOT&amp;PF Finance Group to encumber funds;</li> <li>• processing payments to contractors, landowners, fee attorneys, fee negotiators or appraisers, or others involved in the ROW portion of a project;</li> <li>• coding all expenses to the proper ledger accounts according to State and Federal regulations; and</li> <li>• monitoring each project to ensure proper completion of conveyance documents, recording of ROW plans, and proper documentation of eminent domain proceedings (where appropriate);</li> <li>• preparing project close-out files and memo; and</li> <li>• submitting appropriate tax forms to landowners and IRS.</li> </ul>
ROW Engineering Group (Regional)	<ul style="list-style-type: none"> <li>• prepares or orders title reports;</li> <li>• prepares ROW plans;</li> <li>• prepares Parcel Plats;</li> <li>• prepares Subdivision Surveys;</li> <li>• prepares Records of Survey; and</li> <li>• obtains platting approval where necessary.</li> </ul>
ROW Appraisal Group (Regional)	<ul style="list-style-type: none"> <li>• conducts parcels valuations either in house by waiver valuations or coordinates administration of professional appraisal contracts;</li> <li>• coordinates with Statewide ROW Appraisal Review Group appraisal contractors, and Regional ROW staff to administer appraisal contracts; and</li> <li>• assists the Department of Law on condemnation and other ROW-related matters including providing expert testimony representing DOT&amp;PF where warranted.</li> </ul>
Statewide ROW Appraisal Reviewer (Headquarters)	<ul style="list-style-type: none"> <li>• either in house or by contract, exists behind the headquarters firewall to preserve the program’s integrity by preventing influence (including merely the appearance thereof) between negotiators/acquisition agents and appraisers/review appraisers in accordance with the State and Federal laws and regulations;</li> <li>• as the designated expert, provides unbiased quality control by directly receiving and reviewing for compliance all appraisals</li> </ul>

Position Title or Unit Name	Functions and Duties
ROW Acquisition Group (Regional)	<p>received by DOT&amp;PF, including both those commissioned or completed by DOT&amp;PF and those provided to DOT&amp;PF through other means;</p> <ul style="list-style-type: none"> <li>• provides guidance on appropriate appraisal scope, specifications, and standards;</li> <li>• coordinates with appraisers to ensure appraisals are completed in compliance with accepted professional industry, State, and Federal standards and the contract scope;</li> <li>• accepts or rejects all appraisal(s) received by DOT&amp;PF, including both those commissioned by DOT&amp;PF and those provided to DOT&amp;PF through other means, and approves only one appraisal per parcel;</li> <li>• provides to the Regional Right-of-Way Chief the Recommendation of Just Compensation for each parcel appraised;</li> <li>• at the direction of the Statewide ROW Chief administers contracts for and approves payments to fee Review Appraisers;</li> <li>• coordinates with Regional Right-of-Way Chiefs to approve payments to contractors Appraisers;</li> <li>• acts as subject-matter expert to provide policy and procedure guidance on Appraisal-, Appraisal Review-, and valuation-related matters; and</li> <li>• assists the Department of Law on condemnation and other ROW-related matters including providing expert testimony representing DOT&amp;PF where warranted.</li> </ul>
ROW Relocation Group (Regional)	<p>conducts relocation activities including working with approved relocation contractors and Environmental staff to:</p> <ul style="list-style-type: none"> <li>• prepare relocation studies for use in Environmental Documents;</li> <li>• determine eligibility of displaced entities;</li> <li>• assist property owners in relocation to another suitable property (housing, business, or farm) in accordance with FHWA guidance, industry-approved training, and applicable Federal and State laws and regulations;</li> <li>• inventory and monitor non-residential moves;</li> <li>• inspect and approve replacement housing;</li> <li>• determine amounts for eligible relocation payments; and</li> <li>• review relocation payment forms.</li> </ul>

Position Title or Unit Name	Functions and Duties
ROW Property Management Group (Regional)	<p>manages State-owned regional ROW, materials sources, and properties managed, acquired by, or transferred to the department including:</p> <ul style="list-style-type: none"> <li>• carrying out the provisions of the Highway Beautification Act of 1965 on areas in and adjacent to ROW;</li> <li>• making final inspections and taking possession of acquired properties;</li> <li>• arranging for and managing rental of properties after acquisition, where appropriate;</li> <li>• arranging for clearing of improvements from property before construction;</li> <li>• preparing determinations of surplus or excess property and related decisions and transferring or disposing of properties no longer needed when appropriate;</li> <li>• ensuring compliance with various Federal and State property management obligations including tracking, managing, and reporting on various property databases, inventories, and other records.</li> </ul>

#### 1.4. Project Funding

For the purposes of this manual, all real estate acquisitions, including those for public facilities, are referred to as ROW.

Funding for DOT&PF projects comes from the following sources:

- Alaska General Fund, through the Alaska Legislature;
- Federal Highway Trust Fund, through the Federal Highway Administration (FHWA);
- Airports and Airways Improvement Act of 1982 and the Airport and Airway Development Act of 1970, through the Federal Aviation Administration (FAA); and
- Federal Transit funding through the Federal Transit Administration (FTA).

#### 1.5. Statutory and Regulatory Background

The U.S. Constitution and the Alaska Constitution require that just compensation be paid to the owners of private property acquired for public use. The Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended applies to all real property acquisitions where Federal funds are involved in any phase of a project that involves these properties. The law has been amended several times, most significantly in

1987 as part of the Surface Transportation and Uniform Relocation Assistance Act (Public Law 100-17) and in 2012 as part of the Moving Ahead for Progress in the 21<sup>st</sup> Century Act (Public Law 112-141). Together, they are referred to as the “Uniform Act”.

The acquisition and relocation procedures described in this manual are based upon the Uniform Act. DOT&PF's statutory authority to hold title and manage land is contained in [AS 02](#), [AS 19](#), [AS 28.01](#), [AS 28.05](#), [AS 30](#), [AS 34.60](#), [AS 35](#), [AS 41.21](#), and [AS 36.30](#). DOT&PF's authority to acquire real property and to control outdoor advertising are contained in part under [AS 19](#). [AS 34.60](#) deals with relocation assistance and real property acquisition practices.

FHWA was the lead agency in writing regulations involving real property acquisition and relocation. The regulations are based upon the Uniform Act and are contained in [49 CFR 24](#). These regulations apply to all Federal agencies or to any project with any type of Federal funding. DOT&PF has adopted certain portions of [49 CFR 24](#) by reference in [17 AAC 81](#) (Relocation Assistance Services).

In addition to complying with State and Federal statutes and regulations dealing directly with acquisition and relocation requirements, as a condition to receiving funding from FHWA, DOT&PF must ensure compliance with the

provisions of the laws listed in [49 CFR 24.8](#), including but not limited to:

- Civil Rights Act of 1964 (Pub. L. 88–352, 78 Stat. 241, enacted July 2, 1964);
- [23 USC 324](#) (Prohibition of Discrimination on the Basis of Sex);  
[23 CFR 200](#) (Title VI Program and Related Statutes—Implementation and Review Procedures);
- [49 CFR 21](#) (Nondiscrimination in Federally-Assisted Programs of the U.S. Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- [49 CFR 27](#) (Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance); and
- Rehabilitation Act of 1973.

No person in the United States or alien who is lawfully present in the United States may, because of race, color, national origin, gender, age, income, or disability, be excluded from participation in, or be denied the benefits of, or otherwise be subjected to discrimination under any activity or program for which the State of Alaska receives Federal funding. The Alaska Department of Transportation & Public Facilities’ compliant Nondiscrimination Policy Statement is available online at [http://dot.alaska.gov/tvi\\_statement.shtml](http://dot.alaska.gov/tvi_statement.shtml).

Discrimination is also prohibited by the State in the selection and retention of contractors whose services are retained for (or incidental to) construction, property management, and ROW acquisition (including contracts for appraisal services, title reports, and title insurance and disposal of improvements).

## 1.6. Oversight Agreement

Section 106 of Title 23, United States Code ([23 U.S.C 106](#)) requires FHWA and the State to enter into an agreement to document a new delegation of responsibilities.

This [Stewardship and Oversight Agreement](#) sets forth the agreement between the FHWA Alaska Division and the Alaska DOT&PF with respect to

Title 23 project approvals and related responsibilities, and Federal-aid Highway Program oversight activities.

Several instances are specified in [23 CFR](#) where approval actions differ for interstate projects. See the current Stewardship and Oversight agreement for guidance on ROW project responsibilities.

FHWA’s approval of this Alaska Right-of-Way Manual constitutes FHWA determination that Alaska DOT&PF policies satisfy the provisions of [23 USC 106](#), [23 USC 107](#), [23 USC 108](#), and [23 USC 111](#), and [23 CFR 1.23](#), and the requirements of [23 CFR 710](#) and [49 CFR 24](#), and approves these policies for use on Federal-aid highway projects in Alaska.

## 1.7. Summary of Project Activities

This section includes a brief summary of the various phases of a highway project. Projects are developed according to the applicable Federal phases. Individual projects may vary and some phases are rarely, if ever, used.

Project phases are generally categorized as follows:

- Phase 0 – Placeholder: This is used to hold funds until they are ready to be allocated, sometimes when match comes from another entity;
- Phase 1 - Unprogrammed Legislative Authority;
- Phase 2 – Preliminary Engineering (Design): This generally includes pre- and post-Environmental Document work through Final Plans, Specifications, & Estimates (PS&E). Some ROW appraisal and acquisition activities may be conducted in this phase with pre-approval of the Regional Preconstruction Engineer, see Sec. 2.2);
- Phase 3 – ROW (some ROW appraisal and acquisition activities may be conducted in Ph. 2 with pre-approval of the Regional Preconstruction Engineer, see Sec. 2.2);
- Phase 4 - Construction;
- Phase 7—Utility Relocation;
- Phase 8 – Statewide Planning & Research; and



- Phase 9 – Other: This category is sometimes used for items such as Planning and Environmental Linkage (PEL) studies.

A more detailed flow chart is available in Chapter 4 of the [Alaska Highway Preconstruction Manual](#). Most ROW activities are accomplished during Phases 2 and 3.

### **1.7.1. Phase 2**

Project development for a Federal-aid highway project begins with FHWA’s Authority to Proceed (ATP) for Preliminary Engineering through Environmental Document Approval or ATP for Reconnaissance Engineering. An approval details the decision on how, or whether, to proceed with project design. Primary activities include engineering and environmental studies to identify and analyze reasonable alternative solutions to the problem or deficiency, and work necessary to produce an approved Environmental Document. ROW work in support of environmental studies is normally performed under the Preliminary Engineering authorization.

ROW’s first involvement in a project generally begins with review of the preliminary design plans to determine property, easement, and permit needs and costs or when the regional Environmental Group requests relocation studies for the proposed project. Using preliminary design plans provided by the Engineering Manager, ROW staff prepare estimates of the probable number of parcels for each alternative, their acquisition and relocation costs, and “incidentals” - the cost of performing ROW activities.

ROW and Environmental staff also assess the number and socio-economic effects of residential and business displacements it causes and report the results to the Engineering Manager.

If there is a public hearing on the Environmental Document where right-of-way acquisition is anticipated, ROW staff may attend and discuss the acquisition and relocation processes.

Under certain circumstances as set forth in Chapters 2 and 6 of this manual, DOT&PF may conduct certain ROW acquisition activities outside their usual phases. In most cases, FHWA issues the ATP through final PS&E after Environmental Document approval. The primary activity is engineering to identify and analyze principal design

features and design elements that will satisfy the project's purpose and need and produce final construction plans and specifications.

Some project support activities include such things as surveys; materials/foundation investigation; traffic/accident analysis; ROW plans; valuations and market data research including relocation studies (see Chapters 2 and 6); environmental re-evaluation; utility agreement development; and (on projects with bridges or major structures) coordination with the Bridge and Statewide Materials Sections.

Once the project has received design approval, the ROW Engineering Group identifies land needs based on design plans and completes a title search for the project (using either staff or a title company) and then prepares the ROW plans based upon project design and title information.

### **1.7.2. Phase 3**

DOT&PF generally requests from FHWA ATP for Appraisal and Acquisition after final ROW plans have been completed, unless this authority was requested under Phase 2. (See Chapters 2 and 6).

ROW activities under Phase 3 generally include the appraising, acquiring, and managing of property and relocating affected parties.

After FHWA has given ATP with appraisal and acquisition, the parcels on the project are valued, either by waiver valuation or appraisal with review) to establish Just Compensation for each parcel.

After approval by the Regional ROW Chief, the ROW Agent contacts each property owner and attempts to acquire the parcels with the offer of Just Compensation. If negotiations fail or title complications exist, and if administrative settlement at a higher-than-market price is imprudent or unsuccessful, eminent domain (condemnation) proceedings are initiated through the Department of Law. These proceedings may significantly affect project schedules and budgets. The proposed acquisition must be for the greatest public good and the least private injury and the Preconstruction Engineer must approve the decision to proceed with condemnation.

Property owners may request construction items be added to the plans. The ROW Agent submits such requests for Engineering Manager approval using

[Memorandum of Agreement \(MOA\)  
Form 25A-R605.](#)

If acquiring property necessitates relocating an affected party, the Negotiating Agent and Relocation Agent should be present at the initial meeting with a property owner. These agents will coordinate efforts until the property has been acquired and the party is relocated.

When a parcel with improvements is acquired, the Property Management Group is notified so they can make arrangements to clear the improvements from the property to prepare it for project construction. The Property Manager prepares an inventory of improvements and excess property acquired.

The Property Manager then arranges for clearing the acquired ROW of any improvements, controlling encroachments, and disposing of lands no longer necessary for public use.

When all necessary property rights have been obtained a (or otherwise noted) and all displaced parties have relocation housing made available to them, the Regional ROW Chief certifies the project and signs the appropriate [Project Certification Form](#) that is circulated by the Project Manager before requesting construction authority.



## 2. Administrative Procedures

---

- 2.1. Introduction
- 2.2. ROW Work Performed in Phase 2
- 2.3. ROW Work Performed in Phase 3
- 2.4. Contracts with Local Public Agencies or Private Consultants
- 2.5. Right-of-Way Project Files
- 2.6. Reporting Land Sales to the Internal Revenue Service
- 2.7. Right-of-Way Certification and Relocation Program Assurances
- 2.8. Periodic Reports
- 2.9. Pre-Audit Procedures
- 2.10. Attorney General's Office Review

### 2.1. Introduction

This chapter covers general administrative procedures for the ROW Section, such as obtaining Authority to Proceed (ATP), preparing and submitting periodic reports, maintaining project files, certifying the project ROW, contracting with private consultants, and managing employee training.

Chapters 3-11 each cover one major ROW activity (Title and Plans, Appraisals, etc.). However, administrative procedures are involved throughout the project. Therefore, this chapter covers activities that span the entire ROW process. The general processes and project phases are discussed in Chapter 1. For more detailed information on a particular ROW activity, please refer to the appropriate chapter.

#### 2.1.1. State-Funded Projects

State-funded projects are projects with no Federal funding for any phase (planning through construction) of the project. For uniformity, ROW procedures for State-funded projects are based on the Uniform Act and will generally follow the procedures set out in this Manual. However, since the Uniform Act does not specifically apply to State-funded projects, monetary incentives and streamlined authorization and approval levels should be implemented.

The process for projects designated as State-funded is set out in Sec. 490 of the [Alaska Highway Preconstruction Manual](#). The Project Development Authorization (PDA) designates the project funding source, i.e. State or Federal. (See Exhibit 2-1.)

As soon as the project corridor is identified, you may commence with ROW title work and ROW plans development.

### 2.2. ROW Work Performed in Phase 2

With approval from the Regional Preconstruction Engineer, or their designee, DOT&PF may conduct certain acquisition activities prior to Phase 3 including through and after Environmental Document Approval. Though these activities normally occur in Phase 3, it may be beneficial in some cases to conduct title searches, valuations (by waiver or appraisal), preliminary property map preparation, relocation planning activities, appraisal review, and other related ROW activities earlier. The guidelines for conducting this type of work early are outlined in [23 CFR 710.203](#). ROW activities involving contact with affected parties for purposes of negotiation and relocation assistance must normally be deferred until after the Environmental Document approval, except as provided in [23 CFR 710.501](#) (early acquisition) and [23 CFR 710.503](#) (protective buying and hardship acquisition).

Staff must carefully weigh the risks and benefits associated with conducting ROW activities early. Risks include delays to project delivery, increased expenses, excess acquisitions not eligible for reimbursement, and duplicative work due to:

- design changes affecting the parcels to be acquired;
- appraisals going stale (or market conditions changes affecting property values) before the initiation of negotiations; and
- comparability and availability of relocation properties changing.

Benefits to conducting ROW activities before a typical acquisition phase may include:

- expediting the acquisition process by engaging in preparatory activities early;
- beginning acquisition activities early in an off season when services are in lower demand or when weather is more compatible;
- acquiring when a parcel is offered for sale or as a donation (early acquisition);
- early relocations affording affected parties more time to identify replacement housing;

- protective buying (advance acquisition, see Sec. 2.3.4); or
- property owner hardship (advance acquisition, see Sec. 2.3.4).

When advising the Preconstruction Engineer to authorize early acquisition activities it is important to understand that the appraisal costs for any parcels not included within the final design for the project could be coded as nonparticipating costs. Another option would be to request authorization to appraise and advertise the appraisal contract but not award the contract until final design approval for the project has been given.

Authority to acquire parcels in full may also be authorized by FHWA in Phase 2 once they have approved the Environmental Document.

The design Project Manager must notify the ROW Section when to provide a cost estimate for preliminary ROW activities approved by the Preconstruction Engineer and incidental work in Phase 2 such as temporary construction easements or hardship acquisitions and when to begin working on a project. The ROW Agent or Pre-Audit Unit provides the cost information to the design Project Manager. This information is submitted on a PDA by the Project Manager to document certain ROW work done in Phase 2.

For projects where no permanent property rights are being acquired but temporary construction easements are necessary, those parcels may be acquired in Phase 2 provided all the following conditions are met:

- Environmental Document has been approved as a Categorical Exclusion (CE);
- temporary interest will not exceed 3 years;
- Phase 3 has not been opened and is not anticipated to be requested;
- value of the parcel is less than \$25,000 and the waiver valuation process will be utilized;
- total sum of the temporary construction easements for the project will not exceed \$150,000; and
- funding request clearly notes the acquisition of temporary construction easements (TCE) and that these conditions, as outlined, are met.

If any of these conditions cannot be met, then parcels will need to be acquired under Phase 3 authority.

## **2.3. ROW Work Performed in Phase 3**

### **2.3.1. Federal-Aid Highway Projects**

For Federal-aid highway projects, ATP for appraisal and acquisition must be obtained before beginning Phase 3 ROW work. ROW provides a current ROW cost estimate (Sec. 2.9.1) to be included with each request for ATP. Ch. 6 details the acquisition process.

### **2.3.2. Federal-Aid Aviation Projects and Projects Funded Fully with State Funds**

There is no formal Federal authority to proceed with acquisition required for aviation projects or for State-funded projects. Authorization is required from the Regional Preconstruction Engineer (typically after the Environmental Document is approved).

### **2.3.3. Project Certification and Authority to Advertise**

For FHWA and FAA projects, the Project Manager or contracts officer (depending on regional policy) prepares the Project Certification and the Authority to Advertise (ATA) when the PS&E is complete. The ATA only occurs after the Regional Preconstruction Engineer approves the Project Certification.

The Regional ROW Chief signs the Project Certification to confirm that the ROW has been certified. This means that all necessary ROW for a project has either been acquired or that provisions have been made for its acquisition (See Sec. 2.7).

### **2.3.4. Federal Project Advance and Early Acquisition**

In some cases, parcels may be purchased in advance of a project. Advance acquisition is acquiring one or more parcels for a project before the normal sequence of acquisition events, generally for a hardship case or protective buying, or by donation. Early acquisition is acquisition of real property interests prior to receiving a Federal-aid authorization to proceed to acquire property with Federal-aid funds, before completion of the environmental review process for a proposed transportation project, as provided under [23 CFR 710.501](#) and [23 USC 108](#). FAA does not have an early acquisition process. FHWA may approve advance or early acquisition for a highway project in certain situations, as explained in the remainder of this section.

FHWA approval of advance acquisition is specific *only* for each parcel listed as a hardship case or protective buying.

Other project parcels must receive the standard FHWA ATP with appraisal and acquisition.

Detailed, careful consideration of advance or early acquisition is necessary. The Regional ROW Chief should consider budget, staff, and other resource constraints (since early acquisition is a drain to both) and should clearly defend (and support in writing) the advantage of purchasing the properties before the normal sequence of acquisition events. See [23 CFR 710.501](#) for the justification requirements.

### **Hardship Cases and Protective Buying**

For hardship cases, the property owner must have documented health, safety, or financial reasons for determining that hardship exists.

Protective buying involves purchasing to prevent imminent development and increased costs for a future project, preserving a corridor for a future highway location, or providing access management.

The Regional ROW Chief may request Federal participation of a parcel within a proposed highway corridor before the NEPA process is complete, but the acquisition process must meet various conditions (See Sec. 6.16 and 6.16.2).

### **Corridor Preservation and Access Management**

To preserve a corridor for a future highway location, or to provide access management, DOT&PF may acquire ROW before executing a Federal-aid (project) agreement with FHWA. Acquisition costs are not eligible for Federal-aid reimbursement but they may become eligible as a credit toward the State's share of a Federal-aid project, with varying applicable criteria.

### **2.3.5. Acquisition Incentive Program**

The Acquisition Incentive Program is intended to reduce project time and potentially costs by offering property owners an incentive above the approved just compensation for timely acceptance of the offer to acquire their property. Sec. 6.7.1 prescribes procedures for approving and applying the Acquisition Incentive Program.

## **2.4. Contracts with Local Public Agencies or Private Consultants**

### **2.4.1. Local Public Agencies (LPAs)**

The Regional ROW Chief may enter into written agreements or contracts with local government entities.

Subgrantees must also follow the requirements of this manual and the applicable provisions within United States Codes, Code of Federal Regulations, Alaska Statutes, and Alaska Administrative Code. Contracts should reference this requirement and a statement that DOT&PF will oversee the work and review files.

### **2.4.2. Private Consultants**

The Regional ROW Chief may enter into contracts with private consultants to acquire ROW for Federal-aid projects. The Regional ROW Chief sends an informational copy of each appraisal contract to the Statewide ROW Chief or designee. The contract may be for individual project activities or the complete project, with the exception of the following functions:

- appraisal review function (which is conducted or overseen by DOT&PF headquarters except at the express permission given at discretion of the Statewide Right-of-Way Chief to contract to private consultants);
- preparation of waiver valuations unless specified in the contract and approved by the Regional ROW Chief; and
- approval of waiver valuations (which must be approved by the Regional ROW Chief).

The Regional ROW Chief ensures that consultants are in compliance with the contract, the Uniform Act, and this Manual. Regional ROW staff monitors all contract activities and payments for compliance except for contracts for appraisal review, which are monitored by Headquarters Appraisal Review staff.

Contractors must also follow the requirements of this manual and the applicable provisions within United States Codes, Code of Federal Regulations, Alaska Statutes, and Alaska Administrative Code. Contracts should reference this requirement and a statement that DOT&PF will oversee the work and review files.

## **2.5. Right-of-Way Project Files**

The Regional ROW Chief ensures that the official active project files are kept current with all necessary documentation.

Here is a list of the necessary information required for each project (in suggested filing order):

1. Project General Correspondence File: contains project authorities, plan approvals, multi-parcel correspondence, appraisals, waiver valuations, and negotiations, and negotiation assignments.
2. Parcel Acquisition Files:
  - a. left side of the parcel acquisition file contains general correspondence relating to the parcel. See Ch. 6 for more on acquisitions; and
  - b. right side of the parcel acquisition file is “built up” as follows (See Ch.6):
    - 1) title information;
    - 2) original appraisals;
    - 3) Recommendation of Just Compensation with tagged divider sheet on top;
    - 4) Acquisition Agent assignment;
    - 5) property management, if any, with divider sheet on top;
    - 6) retention value estimate;
    - 7) rental agreement(s);
    - 8) Bill(s) of Sale or Demolition Contract;
    - 9) negotiation correspondence, (market value letter, counteroffers, and administrative settlement approvals);
    - 10) [Notice to Relocation Form 25A-R607](#);
    - 11) Diary & Record of Negotiations;
    - 12) deeds or condemnation documents;
    - 13) purchase voucher(s); and
    - 14) parcel review report.
3. Relocation Parcel File: A separate relocation parcel file containing all required documentation (discussed in Ch. 7) is maintained for each parcel requiring relocation as follows:
  - a. left side of file folder: parcel relocation correspondence by date;
  - b. right side of file folder: completed relocation forms/purchase vouchers in chronological order. If there is more than one displaced

person, tabbed divider sheets should be used to separate displaced person units;

- c. [Relocation Parcel Review Report Form 25A-R240](#) should be on top of each unit; and
  - d. a copy of the relocation planning documents or reference to where the relocation study file is maintained and a log of updates to the study.
4. Appraisal Contract File: there is one contract file for each contract issued. The file contains the original contract, all amendments, notices to proceed, invoices, payment vouchers, etc. (See Ch. 4 for appraisals).
  5. Condemnation File: there must be a separate condemnation file containing all correspondence between DOT&PF and the Department of Law. This file is privileged and should be marked “CONFIDENTIAL-ATTORNEY-CLIENT PRIVILEGE” so that it is clear that release of the information is restricted from [Freedom of Information Act](#) requests in the manner prescribed by the Alaska Public Records Act ([AS 40.25.120\(a\)\(4\)](#) and [\(a\)\(12\)\(A\)](#)). (See Ch. 6 for condemnations.)

### **2.5.1. Project Records Retention**

ROW plans, property deeds, survey field books, and other documents that are evidentiary to property boundaries and ownership are vital records and must be permanently retained.

The regional office must retain documentation of land acquisition and disposition, including negotiated purchases, condemnation, and relocation, in accordance with [23 CFR 710.201\(e\)](#).

The Regional ROW Chief may dispose of original records otherwise retained on electronic or other media. The required length of retention applies, regardless of the media used. The Statewide Appraisal Group in the Statewide Right-of-Way Office acts as the official repository for and custodian of all appraisals, appraisal reviews, and associated work files, which must be maintained in accordance with the appropriate retention schedules. (See Sec. 4.4. for more information.)



## 2.6. Reporting Land Sales to the Internal Revenue Service

The ROW Agent must request the Tax Identification Number (TIN), which is generally the Social Security number, from each owner, sole proprietor, or partnership for each parcel being acquired with a market value or settlement of \$600 or more (a corporation's TIN is not required for IRS reporting). The \$600 or more acquisition cost applies to the transaction as a whole. Therefore, even if the settlement is divided among several owners, each must be reported. Only one TIN is needed for a husband and wife (See Ch. 6).

IRS Form 1099-S must be submitted to the IRS. Report each parcel acquired for \$600 or more in the calendar year in which title passed to DOT&PF. The amount of compensation to be reported is as follows:

- total acquisition amount, which could include cost-to-cure and damages (It is up to the property owner to confer with a tax person to define what portion of the payment is reported to the IRS as income. DOT&PF reports the total amount paid for each parcel when the transaction is settled without an eminent domain action.); and
- amount withdrawn from the court registry for each parcel when eminent domain action is necessary. (This may include the deposit made available to the condemnee at the time the Department of Law files the Declaration of Taking.)

Form 1099-S is required for acquisitions only, not for relocation payments. Mail the forms so that they reach the property owner by the date specified by the IRS.

At the end of each calendar year, the Regional ROW Section reviews the condemnation cases filed for that year, creating a list by Civil Case Number and calling the Clerk of Court for the judicial district within which the case was filed to verify what amount was withdrawn from the court during the calendar year. If money was withdrawn, the Pre-Audit Unit reports the amount. If no money was withdrawn, the Pre-Audit Unit tracks for the next calendar year.

## 2.7. Right-of-Way Certification and Relocation Program Assurances

To request ATP through Construction, the Regional ROW Chief completes the right-of-way section of the Project Certification Form. (See [Highway](#)

[Preconstruction Manual](#).) Using this form, the Regional ROW Chief signs certifying:

- the number of parcels and temporary construction easements and permits (indicated separately);
- that all individuals and families have been relocated to decent, safe, and sanitary housing, or adequate replacement housing in accordance with the provisions of the current FHWA directives has been made available to displaced persons; and
- which of the following four types of right-of-way certifications applies:

Cert. 1: All necessary rights-of-way, including control of access rights when pertinent, have been acquired including legal and physical possession or formal condemnation proceedings are underway (indicate the number of parcels in condemnation).

Cert. 2: Although all necessary rights-of-way have not been fully acquired, the right to occupy and to use all rights-of-way required for the proper execution of the projects has been acquired (indicate the number of parcels with right of entry only).

Cert. 3: The acquisition and right of entry of a few remaining parcels is not complete, but all occupants of the residences on such parcels have had replacement housing made available to them in accordance with [49 CFR 24.204](#). This is a conditional certification (indicate date of approval for Public Interest Finding (PIF)). (See Sec. 2.7.1 and 2.7.2 for more information.) This level of certification requires a two-step approval process and [23 CFR 635.309\(c\)\(3\)](#) provides two options:

- 1) ATP may be granted for advertising the project before all rights are acquired, on the condition that all the remaining parcels and/or rights of entry will be acquired before the start of construction (see [23 CFR 635.309\(c\)\(3\)\(i\)](#)); or
- 2) under certain conditions, authority to proceed to construction may be granted for the project without all acquisitions complete (see [23 CFR](#)

[635.309\(c\)\(3\)\(ii\)](#)) to allow the contractor to perform temporary work around the parcels. This option is rarely used as it is critical to carefully consider the risks of construction delays, which could potentially give rise to a contractor's claim for damages.

To advance a Cert. 3 conditional certification under either option above, see [23 CFR 635.309\(c\)](#) and the Stewardship & Oversight Agreement to determine if FHWA approval is needed.

- See [23 CFR 635.309\(c\)\(3\)](#) and Sec. 2.7.1 for the required analysis and documentation for conditional certification.
- When a PIF is required, follow [Policy & Procedure 10.02.013](#) and the other requirements for a PIF in this section.
- Include with the Project Certification form FHWA approval for conditional certification and a list of parcels that have not been cleared. Provide a date of when they are expected to be cleared and substantiation that such date is realistic.

Cert. 4: Construction will be contained within the existing right-of-way, including temporary or conditional acquisitions.

For conditionally-certified projects, prior to issuing to the contractor a notice to proceed to construction, provide an updated notification to the Construction Section and FHWA that either all parcels have been cleared or a depiction of all locations where right of occupancy and use has not yet been obtained. For the latter, include a realistic date when physical occupancy and use is anticipated for the remaining parcels. (See [23 CFR 635.309\(c\)\(3\)\(iv\)](#).)

### **2.7.1. Public Interest Finding (PIF) for Conditional Certification**

A PIF is required when FHWA approval is required to advance the project ahead of ROW clearance. Include the following information with the PIF and request for approval:

1. Identify and describe the project, including whether the project is on the NHS and which

agency has approval authority. (See Stewardship & Oversight Agreement.)

2. State the purpose of the PIF and cite applicable regulations for the type of project certification sought:
  - a. ATA under [23 CFR 635.309\(c\)\(3\)\(i\)](#); or
  - b. Approval for physical construction under a contract or through force account work [23 CFR 635.309\(c\)\(3\)\(ii\)](#).
3. Provide adequate narrative to cover the following:
  - a. written justification for why it is in the public interest for the project to advance to the next step prior to having all parcels/land use rights acquired;
  - b. a list of parcels/land use rights not yet fully acquired, including status, remaining issues, and estimated dates of possession for each;
  - c. a discussion of risks and alternatives if the excepted land use rights cannot be authorized by the anticipated date to avoid construction delays/changes to the construction contract (change orders) due to remaining ROW acquisitions;
  - d. a ROW plan indicating which parcels are being certified as clear, which parcels are currently excluded from certification, and the restricted limits of construction; and
  - e. any other relevant information necessary to show benefit to the public.

### **2.7.2. Documents for the Project Manager**

At the time of ROW certification, the ROW Agent must transmit copies of the following to the DOT&PF Project Manager:

- [Form 25A-R605 Memorandum of Agreement \(MOA\)](#) for each parcel successfully negotiated;
- Pg. 1 of [Form 25A-R685 Record of Contact](#) providing names and contact information for the acquisition of interest. Any materials source agreements negotiated by ROW;
- any other instrument providing permanent or temporary interest in a property;
- any “Other Conditions” noted on the MOA or any material source agreement negotiated by ROW specific to the project will be included in the contract; and
- a copy of conditional certification approval with PIF if conditional certification is used.

A meeting is recommended between the Project Engineer and ROW staff *before* the construction project begins. Use this meeting to inform the Project Engineer of any arrangements made and any pertinent information helpful to the Project Engineer.

When it is not feasible to clear all encroachments ahead of construction on a Federal-aid project, the location of the any encroachment(s) not yet cleared shall be noted on the ROW certification. Construction plans and/or specification will note the location and the planned method of resolution for any encroachments that affect construction. Three common methods to resolve encroachments are removing, permitting, or vacating. All encroachments must be resolved prior to the close out of the project as required by [23 CFR 1.23\(b\)](#).

## 2.8. Periodic Reports

The Regional ROW Chief prepares the following reports annually:

- [Title VI Activity Report \(For Purposes of Compliance with the Civil Rights Act of 1964\) Form 25A-R210](#) (submit to the Statewide Civil Rights Office);
- State Fiscal Year Internal Annual Land and Right-of-Way Relinquishments Report (submit to the Statewide ROW Chief for consolidation and forwarding to the Finance DOT&PF Fix Assets Group);
- a list of any training Regions made available to ROW staff during the preceding calendar year (submit to the Statewide ROW Chief); and
- Consolidated Annual Statistical Report ([49 CFR Part 24 Appendix B](#)) (submit to the Statewide ROW Chief for consolidation and forwarding to FHWA).

Annually after October 1, the FHWA Alaska Division Office will call for the Consolidated Annual Statistical Report covering the Federal fiscal year (October 1 of the prior calendar year through September 30 of the current year) and provide a method and deadline for submission.

## 2.9. Pre-Audit Procedures

The ROW Pre-Audit Unit handles many of the administrative functions of the ROW Section, such as:

- tracking all funding and expenses;

- preparing Parcel Review Reports;
- coordinating with DOT&PF's Finance Section to encumber funds for projects;
- processing payments;
- coding expenses to the proper ledger account;
- monitoring each project to ensure proper completion of conveyance documents and proper documentation of eminent domain proceedings; and
- preparing project closeout documentation.

### 2.9.1. Current Cost Estimate

The project agreement between DOT&PF and FHWA must be supported by a [Cost Estimate Form 25A-R220](#). The cost estimate is a summary of the anticipated cost for each ROW Section.

FHWA will not participate in moneys expended over the programmed amount of the cost estimate.

Submit a current cost estimate when requesting ATP for appraisal and acquisition and explain any request for a modification to the project agreement. The cost estimate includes the entire cost of the ROW activities for the project, including work performed by authorized Review Appraisers and the Department of Law.

During the development of an aviation project, there is no Federal agreement until the project enters the construction stage. See Ch. 10 for FAA Requirements.

### 2.9.2. Acquisition: Guidelines for Parcel Review Report

The ROW Pre-Audit Unit must prepare a [Parcel Review Report Form 25A-R230](#) for each ROW parcel for which payment exceeds \$500. The guidelines on page 2 of the form explain the actions to be taken by the reviewer.

The Parcel Review Report provides documentary evidence of the review, verification of work performance, and the basis for segregation of participation and nonparticipation costs. The Parcel Review Report supplements the review steps being performed by various ROW Section personnel and becomes a part of the individual parcel file.

### **2.9.3. Relocation: Guidelines for Relocation Parcel Review Report**

The ROW Agent submits for payment each relocation payment claim to the Pre-Audit Unit, who will fill out a [Relocation Parcel Review Report Form 25A-R240](#) as set out in Ch. 7. The ROW Pre-Audit Unit reviews documentation, distributes costs, and signs as reviewer. This form helps determine coding of the distributed costs and provides a review of the work accomplished on the parcel.

### **2.9.4. Funding, Encumbrance Processing, and Payment**

The funding process is as follows:

1. ROW receives a notice of request from the design Project Manager for an estimate and a PDA for ROW incidental costs in Phase 2 and/or Phase 3 funding. See Ch. 1 for a description of project phases.
2. ROW prepares a Cost Estimate and submits them to the design Project Manager.

#### **Encumbrance Processing**

The ROW Pre-Audit Unit encumbers funds for requests from the ROW Agent. Some items for which Pre-Audit would encumber funds may include:

- approved professional services contracts;
- stock requests;
- approved waiver valuations/Reviewer's Recommendation of Just Compensation; and
- anticipated obligations for legal fees and relocation claims (derived from the cost estimate).

Pre-Audit also determines whether funding in Integrated Resource Information System (IRIS) is sufficient and requests that Finance encumber funds. If it is not, Pre-Audit refers to the funding process procedures.

Pre-Audit receives notice from Finance that funds are encumbered.

#### **Payments**

The Pre-Audit Unit receives, from ROW or Administrative staff, a request for payment on a contract, acquisition, condemnation, relocation, invoice or financial obligation. The Pre-Audit Unit evaluates the request for compliance, requests additional information, if necessary, then processes

the request for payment. Upon receipt of the warrant, follows through with appropriate action for disbursement.

### **2.9.5. Federal-Aid Eligibility**

#### **Participating Costs**

Federal participation (Federal reimbursement) is allowed in the cost of real property incorporated into the final project if those costs are incurred in conformance with State law and the project is included in the STIP with an executed project agreement.

Participating costs are detailed in [23 CFR 710.203](#).

#### **Nonparticipating Costs**

The Pre-Audit Unit staff must code transactions that are ineligible for participation (not eligible for Federal reimbursement) to a nonparticipating code.

Ineligible expenses include, but are not limited to:

- acquisition costs incurred before authorization;
- unsupported acquisition costs in excess of market value that are not supported. Examples include:
  - administrative settlement or mediated settlement approved as per delegation of authority, made before condemnation justifying the settlement as prescribed by Sec. 6.9;
  - [Pre-Trial Settlement Report and Recommendation Form 25A-R805](#) signed and approved by all parties and approved as per delegation of authority; or
  - trial report, signed by DOT&PF's attorney, and concurred by the Department of Law's Chief, Transportation Section and approved as per delegation of authority;
- costs of any acquisition and related incidental costs of \$10,000 or more where the value was established by the same person who made or directed the acquisition;
- cost of any acquisition and related incidental costs not supported by appraisal or waiver valuation as required by Ch. 4;
- administrative expenses of the ROW Section including salaries, travel, office expenses, etc., normally classified as overhead costs; and



- cost of appraisals that are not in accordance with Ch. 4.

### **Credits**

To be eligible for a Federal-aid credit, property donated by a local government or private party must have been acquired for transportation purposes in accordance with the Uniform Act.

The credit for advance or early acquisitions is limited to the market value. Acquisition expenses may not be included in the credit.

Credits are considered a project cost and applied to the total cost of the project before calculating the Federal/State share.

### **Credits for Donations**

Donations of real property (Sec. 6.9.3) may be credited to the State's matching share of the project. The property may be donated in exchange for construction features or services. The credit or exchange must be based on market value of the property on the earlier of the date of the donation or the date title is recorded to the State.

Donations from local governments or other State agencies may also be used as a credit toward the State's matching share of project costs. To receive credit, the donating agency must prepare a certification stating that the property was lawfully obtained in accordance with the provisions of the Uniform Act, was not parkland subject to [23 USC 138](#) or subject to Historic Preservation procedures under [16 USC 470](#), and that acceptance of the donation did not influence the environmental assessment for the project.

### **Credits Related to Corridor Preservation**

The allowable credit for acquisition costs incurred for property acquired for corridor preservation as described in Sec. 2.3.4 is the original cost DOT&PF paid for the property. If there has been a significant lapse in time since the property was acquired, or if it can be demonstrated by appraisal evidence that market conditions changed (unrelated to the project) since the property was acquired, it may be reappraised and the current market value may be used.

#### **2.9.6. Condemnation Documentation**

The following is a list of typical documentation in court cases. Copies of this documentation should be filed in the condemnation file.

- Complaint: (indicating court filing date and the date recorded in the recording district where the land is being acquired);
- Declaration of Taking: (indicating court filing date and the date recorded in the recording district where the land is being acquired);
- Order of Possession and Entry: (indicating court filing date);
- Masters' Report: (indicating court filing date) and a written statement from the Department of Law as to whether the Masters' Award was appealed and, if appealed, by whom;
- Negotiated Settlement: (Occurs before the matter is filed in court) and justification letter from the Department of Law, stating reasons for settlement and separating defendant's attorney fees and other nonparticipating items. The documentation for settlements in excess of the amount stated in Recommendation of Just Compensation must include a completed and signed [Pre-Trial Settlement Report and Recommendation Form 25A-R805](#);
- Stipulated Settlement: (indicating court filing date) and a justification letter from the Department of Law stating reasons for settlement and separating defendant's attorney fees and court costs. The documentation for settlements in excess of DOT&PF's current court deposit and/or appraisal shall include a completed and signed [Pre-Trial Settlement Report and Recommendation Form 25A-R805](#);
- Awards:
  - case caption;
  - approved estimate of value and date;
  - appraisal valuations and dates;
  - date, place, and length of trial;
  - brief report of the trial, including range of value testimony by the parties;
  - statement of the major issues involved and the development thereof; a description of the major differences, if any, in approaches to value among DOT&PF's witnesses and those of the landowner;

- explanation of any substantial variance between the Recommendation of Just Compensation and DOT&PF's testimony given at a higher amount, where relevant;
  - comments on possible legal error in the record and explanation of the court's rulings;
  - recommendations of DOT&PF's attorney regarding motions for new trial and/or appeal and reasons therefore;
  - signed statement of DOT&PF's attorney stating concurrence in the reasoning and disposition of the case; and
  - signed statement by the Regional Preconstruction Engineer (or designee) approving or concurring in the action of DOT&PF's attorney in not moving for a new trial or in not prosecuting an appeal;
- Final Judgment: Filed in court and recorded in the recording district where the land is being acquired.

See Ch. 8 for a more detailed discussion of the condemnation process.

### **2.9.7. Revenue Receipt Coding**

Revenue Receipt Coding Federal regulations allow states to retain income generated from the sale or lease of excess ROW if the income is used for Title 23 eligible projects. Only sale or lease revenues received after the FHWA date of final acceptance are eligible for retention by DOT&PF. Payments received must be credited back to the Federal-aid project from which the income was generated while the project remains open, using unrestricted revenue coding.

After a project is closed, restricted revenue codes apply to receipts for which all or part of the revenue must be collected under the Alaska Right-of-Way Manual Sec. 2.9 Pre-Audit Procedures [December 2015 Program Receipts OMB Fund Code 1108-Statutory Designated Program Receipts ([AS 37.05.146](#) (b)(3))]. The Statutory Designated Program Receipts are considered Receive and Expend Accounts for property management responsibilities.

Each region has established a Property Management Receive and Expend Account for Federal sale or lease revenues received after the FHWA fiscal close out of a project.

In accordance with [23 CFR](#) only expenses for highway-related activities may be funded by these revenues.

Revenues that exceed expenditures at the end of each fiscal year carry forward to the succeeding fiscal year. Coordinate with Regional Pre-Audit Unit staff to ensure accurate coding of Federal vs. State receipts and to confirm these revenues directly benefit Title 23-eligible activities.

Income derived from rental/lease agreements is covered in Sec. 9.6.1.

Income derived from encroachment permits is covered in Sec. 9.6.2.

Income derived from the sale of excess land is covered in Sec. 9.10.7.

Loan repayment receipts on last resort housing loans are covered in Sec. 7.10.1.

### **2.9.8. Project Closure**

Monitor each ROW project to completion and accomplish closure as soon as possible.

Before the ROW phase of a project is closed, confirm the following:

- conveyance documents have been filed within the recording district where each parcel of land was acquired;
- Final Judgments or Orders of Dismissal received for all parcels acquired through eminent domain proceedings. The Final Judgments and Orders of Dismissal is also recorded in the recording district where each parcel of land was acquired or dismissed;
- ROW plans have been recorded by the ROW Engineering Section; and
- all ROW Section supervisors have concurred in closure ([OK to Close ROW Phase 3, Form 25A-R250](#)).

### **2.10. Attorney General's Office Review**

See Ch. 8.



This page intentionally left blank.

## 3. Title and Plans

---

- 3.1. Introduction
- 3.2. Title Search Report
- 3.3. Highway Right-of-Way Plans
- 3.4. Airport Property Plans
- 3.5. Parcel Plats
- 3.6. Procedure for Plans Submittals
- 3.7. Plan Changes
- 3.8. Parcelization and Numbering
- 3.9. Restricted Native Allotments

### 3.1. Introduction

This chapter covers procedures for titles and plans. DOT&PF must have accurate and current title information on each project to ensure accurate ROW plans and successful appraisals, negotiations, and relocations.

The regional ROW Section develops the required project title information, beginning this work during the early stages of a proposed project. Based upon workload, available resources, and time limits for the project, the Regional ROW Chief must determine whether to use a ROW title specialist (ROW Agent) or a commercial title insurance company to secure necessary title information.

Due to differences in the requirements of local platting authorities, many platting procedures and monumentation requirements are region-specific and may be documented in supplements separate from the ROW manual.

### 3.2. Title Search Report

Unless otherwise specified, all instructions in this section refer to the ROW Agent designated to do this work or to the commercial title insurance company retained for a specific project.

For all acquisitions of fee, permanent easements and long term lease interests (excluding temporary construction easements) review and reference all instruments of record (use a [Title Search Report, Form 25A-R305](#)), including plats and surveys, for each parcel. List them in chronological order by recording date.

A title insurance policy should be obtained for all fee acquisitions. The Regional ROW Chief determines if title insurance is necessary and the amount on parcels.

#### 3.2.1. Mandatory Standards for Title Search

Prepare reports and maintain records in accordance with this section. The Title Unit may approve an exception on parcels with an estimated acquisition cost of \$2,500 or less, where a search of the last owner of record may suffice unless there appears to be some irregularity in title. A search of the last owner of record may suffice if only a temporary construction easement is being acquired.

Most title searches begin with the divestment of the land from the sovereign, by patent, treaty, or grant, etc. To assist in clearing the title and acquiring the parcel, title search files must contain all recorded instruments purporting to evidence the transfer of the fee simple title. Examples of such documents include the following:

- security for debt;
- direct deeds of conveyance;
- deeds by trustees, referees, guardians, executors, administrators, or masters;
- wills, decrees of descent, or orders determining heirs;
- decrees, judgments, or court orders purporting to quiet, confirm, or establish title in fee simple;
- mineral or other reservations or conveyances; and
- easements, rights of way, and other rights or interests affecting the title, (liens, exceptions, reservations, covenants, conditions, restrictions, limitations, etc.).

The ROW Engineering Section orders all title reports and updates. Maintain title reports, including all amendments, as part of the acquisition file.

If a title report is older than 6 months or information becomes available of any changes in ownership or interests, the report should be updated.

### 3.3. Highway Right-of-Way Plans

Unless otherwise specified, all instructions in the remainder of this chapter refer to each person in the ROW Engineering Section with responsibility for a particular project.



DOT&PF's Design Section provides the project's preliminary design plans to the regional ROW Engineering Section. The Title Unit provides a copy of the final title report.

Based on the design plans, title research, and survey data, the Engineering Section prepares the ROW plans as specified in this section.

The ROW plans must be accurate and contain sufficient engineering and survey information to locate the new and existing ROW limits and adjacent property boundaries on all properties along the project.

Prepare the plans in accordance with local platting and subdivision requirements. Except as otherwise directed by the ROW Engineering Supervisor, include a title sheet, a standard legend sheet, a tract map, the property plan sheets, and a monument summary sheet. Include the project title, Federal aid, and the State project number as appropriate on each sheet

### **3.3.1. Types of Title to be Acquired**

Determine whether to acquire ROW in fee simple or a permanent easement, if a temporary construction easement will not be sufficient. The title must be adequate for the construction, operation, and maintenance of the facility.

DOT&PF's policy is to acquire all ROW in fee simple title when feasible. DOT&PF will acquire temporary construction easement when property is needed only for the duration of the actual construction of the facility, but is not needed to protect the facility.

DOT&PF may acquire permanent easements for several reasons, such as, if sight clearance is needed or when a fee taking would leave the owner with less than a legally conforming lot.

If it is not feasible to obtain fee simple or a permanent easement, such as when a Federal agency owns the land, a long-term easement or lease is acceptable with funding agency concurrence.

### **3.3.2. Title Sheet**

On the title sheet (Exhibit 3-1) show the project information, scale, a location sketch, and sufficient identifying information, as directed by the ROW Engineering Supervisor, so that the project may be easily located on a map. Include signature spaces in the lower right-hand corner, providing for the date and signature of the Regional ROW Chief.

### **3.3.3. Symbols**

Identify all symbols used, or shown them in the legend or on a standard legend sheet (Exhibit 3-2) attached to each set of ROW plans.

### **3.3.4. Tract Map**

On the tract map (Exhibit 3-3), show as much of the entire ownerships as possible, the road systems, and major cultural details in a broad band for the length of the project. Show the centerline, ROW lines of the highway, and the boundary lines to give a general picture of the entire project and its possible effect on the properties. In urban areas, this map may be unnecessary if the plans show entire ownerships or if the project is small and the title sheet can show entire ownerships.

### **3.3.5. Right-of-Way Plan Sheets**

The basic purpose of ROW plan sheets (Exhibits 3-4A and 3-4B) is to show as much information as possible for the Appraiser, Review Appraiser, ROW Agent, and property owner. An important function is to show the ROW lines in relation to the property lines and improvements and to provide a reference for the instrument of conveyance.

#### **Right-of-Way Plan Sheets Scale**

Use the same scale on the ROW plan sheets as used on the design plans, if possible. This provides for ease in correlation and simplification of drafting. If there is too much detail on the plans to clearly demonstrate this, use a larger scale. To provide the required clarity, use the following scales, or another scale as directed by the ROW Engineering Supervisor:

- on rural projects through large land ownerships: 1" = 100' or 1" = 200';
- on suburban projects through small acreage tracts where required construction details are minimal: 1" = 50' or 1" = 100'; or
- on urban projects or projects where construction or topographic detail is such that a larger scale is necessary for complete clarity: 1" = 50'.

Draw each property plan sheet to scale and show a north arrow.

## Right-of-Way Plan Sheets General Information

Draft all ROW plan sheets so that all parcels, easements, permits, etc., can be readily identified. The plan sheets contain the following details:

- all existing property lines. All found corners must be tied to the project centerline. Add supplemental sheets showing detail as necessary;
- all rectangular surveys including aliquot parts, U.S. Surveys, subdivisions (by name or plat number), etc., that are used to identify ownership;
- all pertinent data that may affect the cost of the ROW, such as structures (culverts, etc.), land service or access roads, improvements (all owner buildings) and fences. Show centerline ties and dimensions of improvements and structures within local setback requirements of the new ROW line;
- all existing ROW;
- all existing utility facilities and all utility easements with the type and ownership labeled;
- new ROW line and all pertinent distances and bearings. Show centerline offset distances to all breaks in the ROW or, if constant width, the offset distance should be shown on each plan sheet. All distances should be surface distances instead of State plane grid distances;
- parcel information block located, in most cases, at the bottom of each sheet must show areas of each acquisition, existing rights of way, larger parcel, and remainders; show the type of each acquisition, and include recording information;
- access control lines and points of approved access; and
- easement lines.

Forward the appropriate exhibits to the Acquisition and Negotiation Unit for inclusion in the appraisal assignments, and for the information of the Acquisition Agents.

## Right-of-Way Plan Sheets Project Control and Construction Information

The ROW plans show the following:

- each main centerline and stationing (show auxiliary centerlines of subordinate roadways if

pertinent to acquisition or deed description. Show the beginning and end of the project's limits);

- limits of construction or slope limits; and
- drainage structures and other construction components that may affect valuation.

## Right-of-Way Plan Sheet Certification

The supervising professional land surveyor must stamp and certify the ROW plan sheets.

### 3.3.6. Monument Summary Sheets

The monument summary sheet (Exhibit 3-5) shows the following:

- horizontal control statement;
- recovered corners table;
- project centerline monuments table;
- work item table;
- ROW surveyor and location surveyor seal; and
- other notes as directed by the ROW Engineering Supervisor.

### 3.3.7. Materials Source Plans

Show all listed sources, maintenance, and stockpile sites with haul roads on a separate materials source sheet (pit sheet) prepared by the Design Section, rather than on the ROW plans.

## 3.4. Airport Property Plans

FAA [Advisory Circular 150/5100-17](#) contains the approved process for airport land acquisition and plan development. See the latest Change Order (Change Order 7 is the most current as of the publication date of this manual). FAA has authorized replacing "Exhibit A" mentioned in the circular with the airport property plan (Exhibit 3-6).

## 3.5. Parcel Plats

If possible, parcel plats (Exhibit 3-7) must be printed on 8½" x 11" or 8½" x 14" paper. The plats must be neat, legible, accurately dimensioned, and exhibit enough contrast so that copies made by the recording office leave no question as to the location of the property being transferred. Make the parcel conspicuous (heavily outlined, shaded, stippled, etc.) so as not to obscure dimension figures. If necessary,

use more than one page to show the entire ownership and details of the acquisition.

The following information is shown on the plats:

- location data to accurately locate property (lot, block, subdivision, survey or plat number, section or portion thereof, etc. If unsurveyed, tie property to the project centerline);
- north arrow;
- owner's acknowledgment;
- identification number for parcel, permit, easement, etc.;
- project ROW lines, parcel lines, and access control lines, properly labeled. Show the entire ownership and label the property lines;
- major improvements on the parcel;
- any existing ROW in proximity to the parcel properly labeled. Show existing ROW as hatched;
- pertinent centerline and associated data, stationing, equations, curve data, dimensions, and bearings, properly labeled; and
- project identification (name and numbers) and area acquired.

### **3.6. Procedure for Plans Submittals**

#### **3.6.1. Submittal to Request Authority to Proceed with Appraisal and Acquisition from FHWA**

On Federally-funded projects, when the ROW plans reflect the findings of the plans-in-hand review team, DOT&PF considers them to be "final plans." ROW will submit the final plans to FHWA.

#### **3.6.2. Plan Revisions**

If any changes are made in the ROW plans after receiving the ATP with appraisal and acquisition, show the changes on the original ROW plans. Also itemize the changes in a revision block on the original ROW plans, as shown on Exhibit 3-4.

### **3.6.3. Recording**

Check the ROW plans to ensure that the following are accomplished before recording the plans in the recording district:

- affected monuments were protected through construction. Monuments to be set were set and verified to be correctly placed;
- all appropriate certifications are on the plans; and
- original ROW plans prepared according to a local government platting ordinance were sent to the appropriate local government officials (otherwise, the Regional ROW Chief sent them directly to the recorder's office for filing).

### **3.7. Plan Changes**

#### **3.7.1. Design Changes**

As design plans are modified, change the parcel plat and the ROW plans; update the title information if needed; and advise the Regional ROW Chief, who must then advise the Appraisal and Acquisition Units of the changes.

#### **3.7.2. Changes Found During Appraisal or Acquisition**

The Regional ROW Chief must take appropriate action to correct omissions or changes noted during the appraisal or acquisition processes.

#### **3.7.3. Disposal of Excess Land**

The Regional Property Management Unit designates parcels subject to disposal. The regional director approves them (and FAA when obligated to FAA by Federal grant agreement).

When DOT&PF intends to dispose of, relinquish, or abandon excess ROW, the Engineering Section prepares a legal description or plat, revises the ROW plans, and determines the type of ownership. The conveyance document is prepared by the Property Management Unit. After the conveyance document is recorded, the Engineering Section must revise the ROW plans to reflect the disposal. See Sec. 9.10.

#### **3.7.4. Condemnations**

When a parcel is approved for condemnation, the Engineering Section prepares appropriate court exhibits. Place this material in the parcel file and provide it to the Acquisition Unit and the Department of Law.



### **3.8. Parcelization and Numbering**

All parcels on a ROW project are numbered in sequence as they appear on the ROW plans. The Engineering Section assigns the numbers (except for materials sources) when the ROW plans are developed. If a parcel is split or added, add an alphabet letter to the original assigned parcel number (for example, a split or addition to Parcel 1 would be designated 1A).

#### **3.8.1. Easement Parcelization**

Prefix all easements by the letter “E” followed by the number assigned to the ROW parcel for that particular larger parcel, or the next consecutive number. The parcel identification block must designate the type of easement and its purpose. Show and identify existing easements on the ROW plan sheet (Exhibit 3-4 A&B).

#### **3.8.2. Temporary Construction Permit/Temporary Construction Easement Parcelization**

Prefix all areas acquired for the duration of the project only (construction permits, waste areas, etc.) through the use of a temporary construction permit (TCP) or a temporary construction easement (TCE), by the letters “TCP” or “TCE” followed by the number assigned to the ROW parcel for that particular larger parcel.

#### **3.8.3. Numbering of Areas Not Part of a Right-of-Way Parcel**

For all easements or permit areas not associated with a parcel, assign a number in numerical sequence with the parcel numbers. When no numbers are available for the easements or permits, use the closest parcel number followed by a letter designation.

#### **3.8.4. Numbering Material Sources**

Number a material source in accordance with the number assigned by the Materials Section, preceded by “MS”.

On Federal-aid primary routes, the “MS” number must contain three dashes to separate the route number, the route section number, the location, and the region number (MS 21-1-243-1, MS 37-1-004-2, etc.).

On secondary routes, the “MS” number must contain two dashes to separate the route number, the location number, and the region number (MS 680-009-2, MS 937-101-3, etc.).

### **3.8.5. Numbering Maintenance and Stockpile Sites**

Designate all maintenance and stockpile sites by name rather than by number.

#### **3.8.6. Numbering Excess Parcels, Relinquishments, Vacations**

Number ROW excess parcels, relinquishments, and vacations in accordance with the property management numbering system (See Sec. 9.10).

### **3.9. Restricted Native Allotments**

When surveying and platting restricted Native allotments, be aware that Alaska Native lands have unique requirements.

Under no circumstance should entry be made upon restricted Native allotments without written permission from the landowner and the Bureau of Indian Affairs (BIA).

Many important records are found only at the Bureau of Indian Affairs offices. Special procedures have often been used for surveys on Native lands. Surveyors working with Native lands must be aware of cultural, jurisdictional, and permitting considerations. It is essential, that prior to the surveying or platting of restricted Native lands, the Regional BLM Indian Lands Surveyor (BILS) be contacted in order to determine the most current procedures necessary to accomplish the desired action.

PROJECT DESIGNATION: 311032/Z536100000  
 SHEET NO: R1  
 TOTAL SHEETS: R22

**STATE OF ALASKA  
 DEPARTMENT OF TRANSPORTATION  
 &  
 PUBLIC FACILITIES**

**RIGHT OF WAY ACQUISITION PLAT**

**ALASKA PROJECT**

**SEWARD HIGHWAY  
 MP 17 - 22.5 REHABILITATION  
 311032/Z536100000**

PLAT PREPARED AND CHECKED BY THE USUAL PERSONS AS REQUIRED BY THE ALASKA PUBLIC UTILITIES AND TRANSPORTATION COMMISSION IN ACCORDANCE WITH PERMITS GRANTED AT THE MEETING OF THE BOARD OF SUPERVISORS OF THE SEWARD RECORDING DISTRICT.

DATE \_\_\_\_\_

REGISTRAR OFFICIAL \_\_\_\_\_

FOR SURVEY AND CUSTODY DEPARTMENT INFORMATION SEE THE RECORDING DISTRICT RECORDS FOR PLAT 2819-2.

DEPARTMENT LOCALITIES SURVEYORS CERTIFICATE: I HEREBY CERTIFY THAT AS A PROFESSIONAL LAND SURVEYOR I HAVE BEEN LICENSED BY THE BOARD OF SUPERVISORS OF THE SEWARD RECORDING DISTRICT AND THAT THE SURVEY AND PLAT HEREON SUBMITTED HAVE BEEN MADE IN ACCORDANCE WITH THE PROVISIONS OF THE ALASKA PUBLIC UTILITIES AND TRANSPORTATION COMMISSION AS RELATED TO THE RIGHT-OF-WAY PLATS AND THAT THE PROJECT SURVEY CONTAINS BY ME OR UNDER MY SUPERVISION.



DATE \_\_\_\_\_ REGISTRATION NUMBER \_\_\_\_\_

ROBERT M. WEBER



DATE \_\_\_\_\_ REGISTRATION NUMBER \_\_\_\_\_

P. LOUISE HOOPER

DEPARTMENT OF TRANSPORTATION  
 AND PUBLIC FACILITIES

APPROVED: \_\_\_\_\_

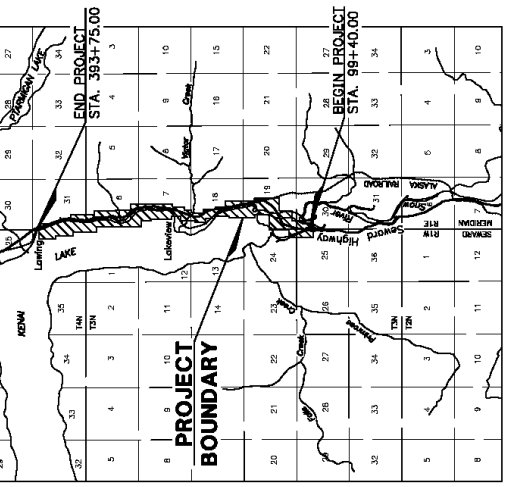
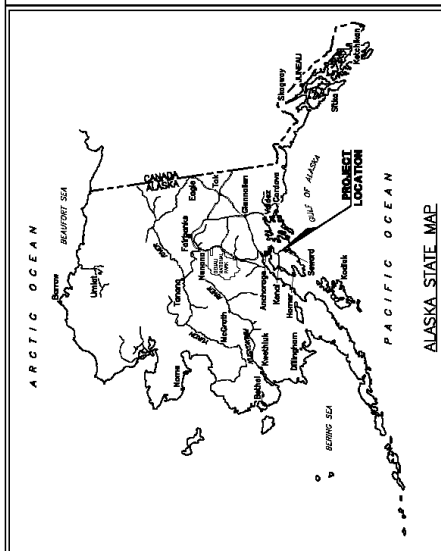
DATE \_\_\_\_\_

REGIONAL CHIEF RIGHT-OF-WAY AGENT \_\_\_\_\_

WITHIN A PORTION OF SECTIONS 8, 9, 10, 11N, 16E AND SECTIONS 28, 29, 30, 31N, 16E AND SECTION 2, 17N, 16E, SEWARD MERIDIAN

RECORD OF SURVEY - SEWARD RECORDING DISTRICT

STATE BUSINESS NOTE



ACQUISITION DATES: 2015 - 2017  
 CONSTRUCTION DATES: 2016  
 PROJECT LENGTH 6.67 MILES

Exhibit 3-1  
 Title Sheet



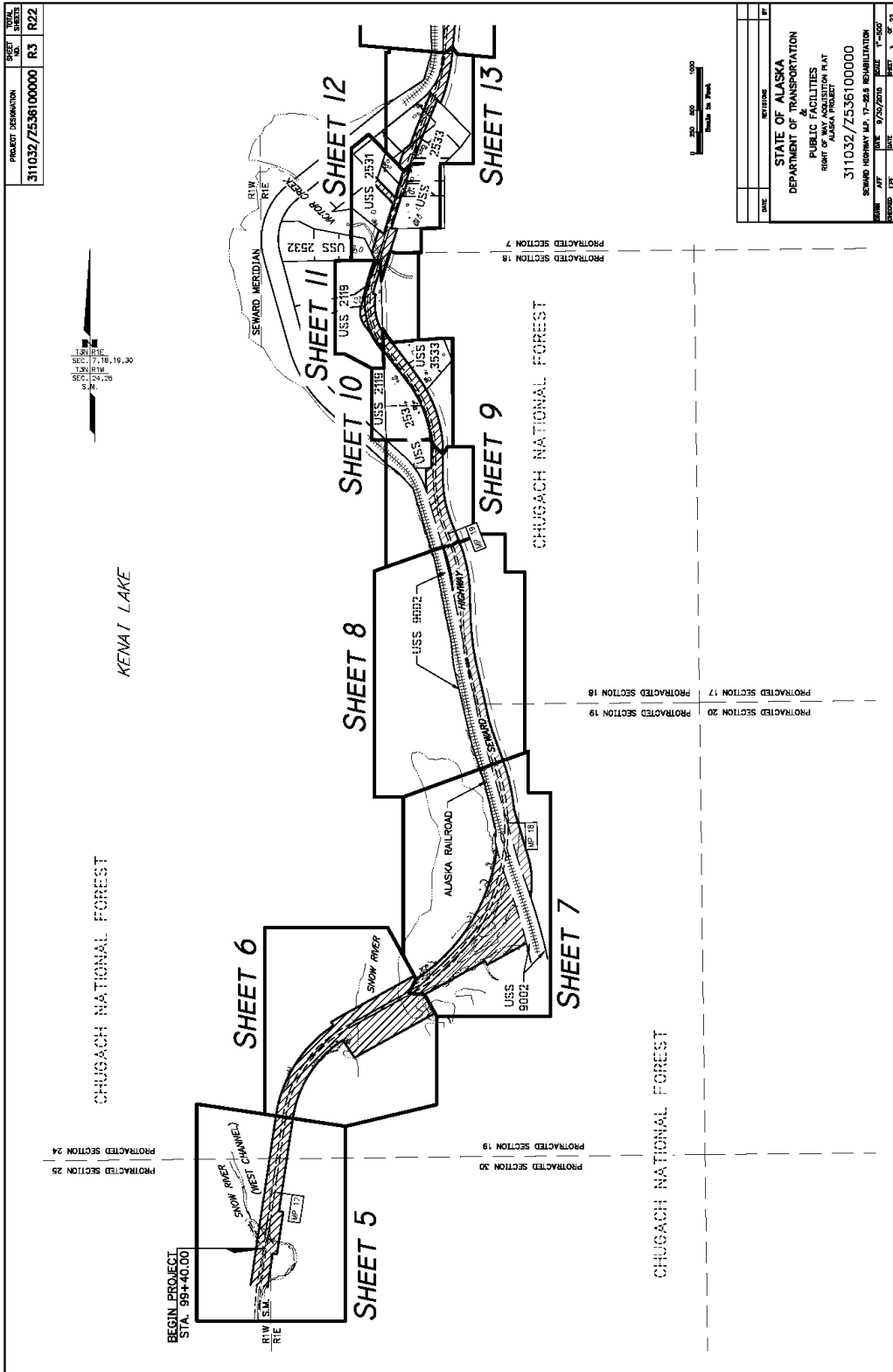
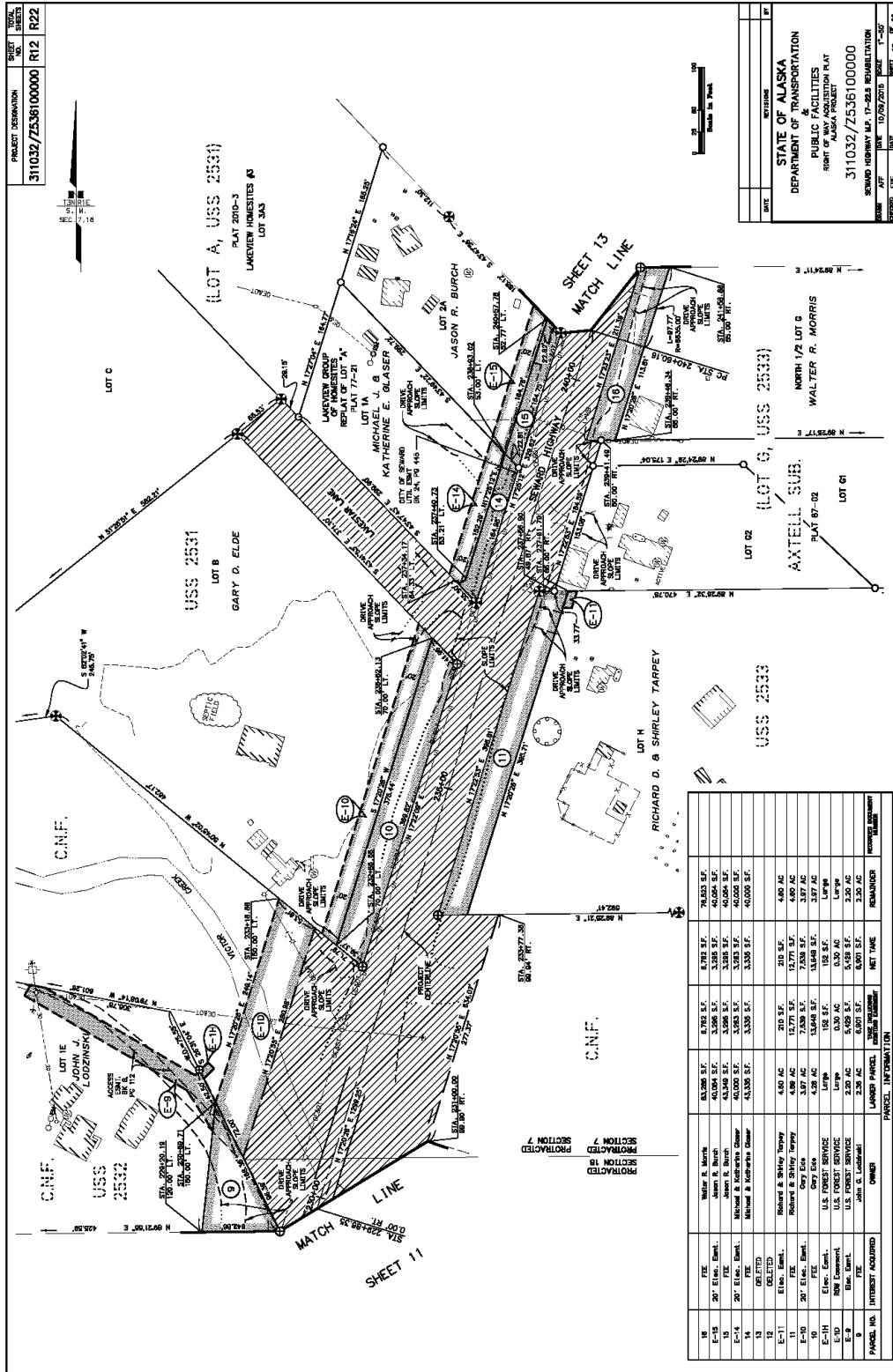


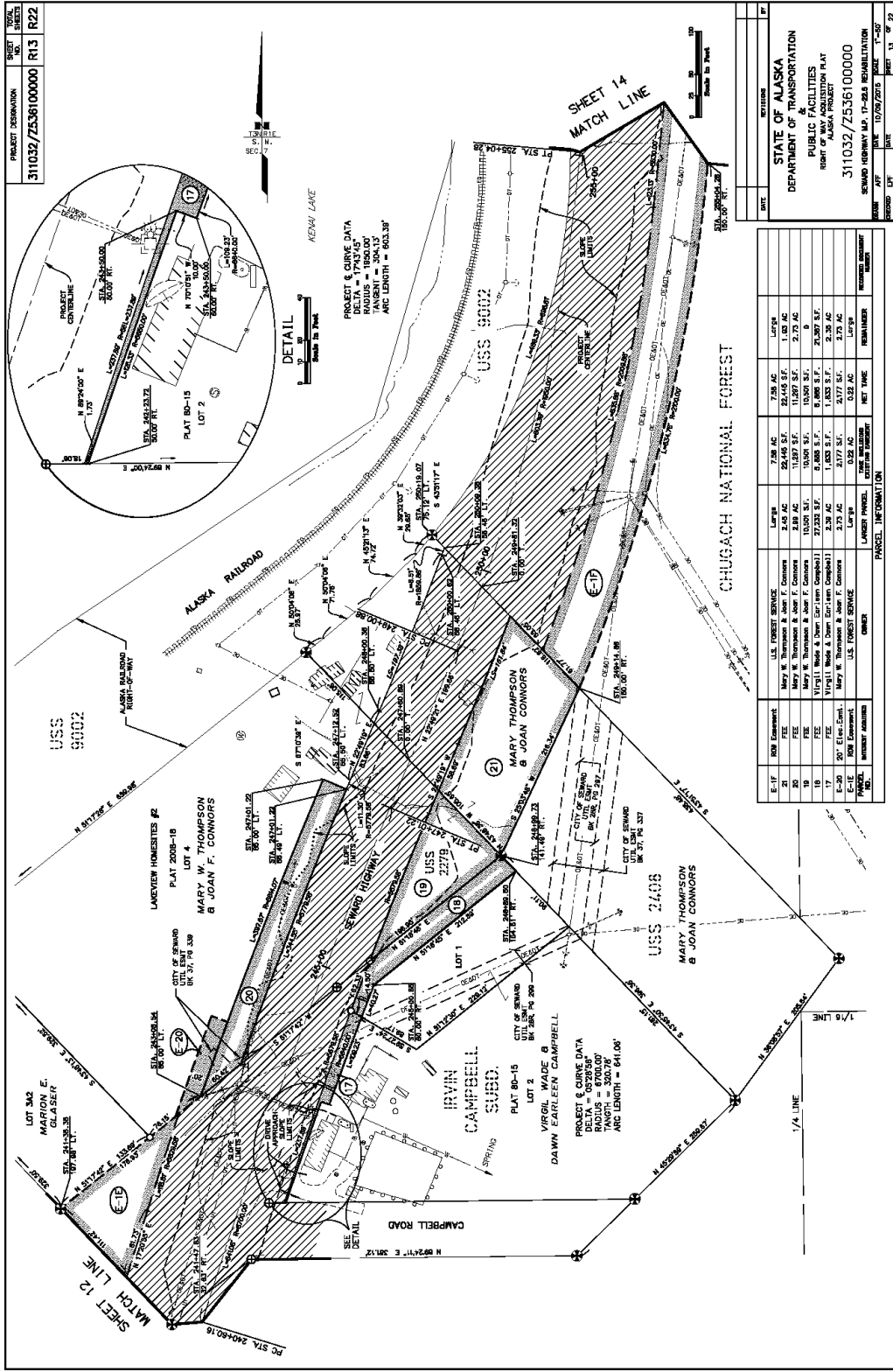
Exhibit 3-3  
Tract Map



PROJECT DESCRIPTION: 311032/2536100000 RT2 R22  
 SHEET NO.: RT2 R22  
 TOTAL SHEETS: 12  
 DATE: 10/05/2015  
 DRAWN BY: [Name]  
 CHECKED BY: [Name]  
 STATE OF ALASKA  
 DEPARTMENT OF TRANSPORTATION  
 PUBLIC FACILITIES  
 RIGHT OF WAY ACQUISITION PLAN  
 PROJECT NO.: 311032/2536100000  
 ROAD: SEWARD HIGHWAY W.P. 11-22.2 REMEDIATION  
 SHEET: 12 OF 22

PANEL NO.	INTEREST ACQUIRED	OWNER	LARGER PARCEL, ACRES	NET TIME	REMARKS
18	FEE	Nathaniel R. Morris	6,792 S.F.	76,833 S.F.	
15	20' Eas. Easmt.	John R. Burgh	3,206 S.F.	40,004 S.F.	
14	20' Eas. Easmt.	John R. Burgh	3,206 S.F.	40,004 S.F.	
13	DELETED	Richard & Shirley Tarpey	4,000 AC	4,000 AC	
12	DELETED	Richard & Shirley Tarpey	4,000 AC	4,000 AC	
11	Eas. Easmt.	Richard & Shirley Tarpey	3,877 AC	7,538 S.F.	
10	FEE	Orly Eise	13,648 S.F.	3,377 AC	
9	Eas. Easmt.	U.S. FOREST SERVICE	152 S.F.	152 S.F.	
8	20' Eas. Easmt.	U.S. FOREST SERVICE	4,330 AC	4,330 AC	
7	FEE	John R. Burgh	5,200 S.F.	5,200 S.F.	
6	FEE	John R. Burgh	5,200 S.F.	5,200 S.F.	

Exhibit 3-4A  
ROW Plan Sheet



E. I. F.	EASEMENT	OWNER	LAND AREA		NET TIME	REMARKS
			AC	S.F.		
21	100' EASEMENT	U.S. FOREST SERVICE	2.08	228,445	0	Large
22	FEE	Mary W. Thompson & Joan F. Connors	2.45	264,148	0	Large
23	FEE	Mary W. Thompson & Joan F. Connors	2.89	312,897	0	Large
24	FEE	Mary W. Thompson & Joan F. Connors	10.00	1,080,000	0	Large
25	FEE	U.S. Forest Service	27.23	2,928,387	0	Large
26	FEE	U.S. Forest Service	2.73	292,838	0	Large
27	20' EASEMENT	U.S. FOREST SERVICE	0.32	34,208	0	Large
28	100' EASEMENT	U.S. FOREST SERVICE	0.32	34,208	0	Large
29	100' EASEMENT	U.S. FOREST SERVICE	0.32	34,208	0	Large

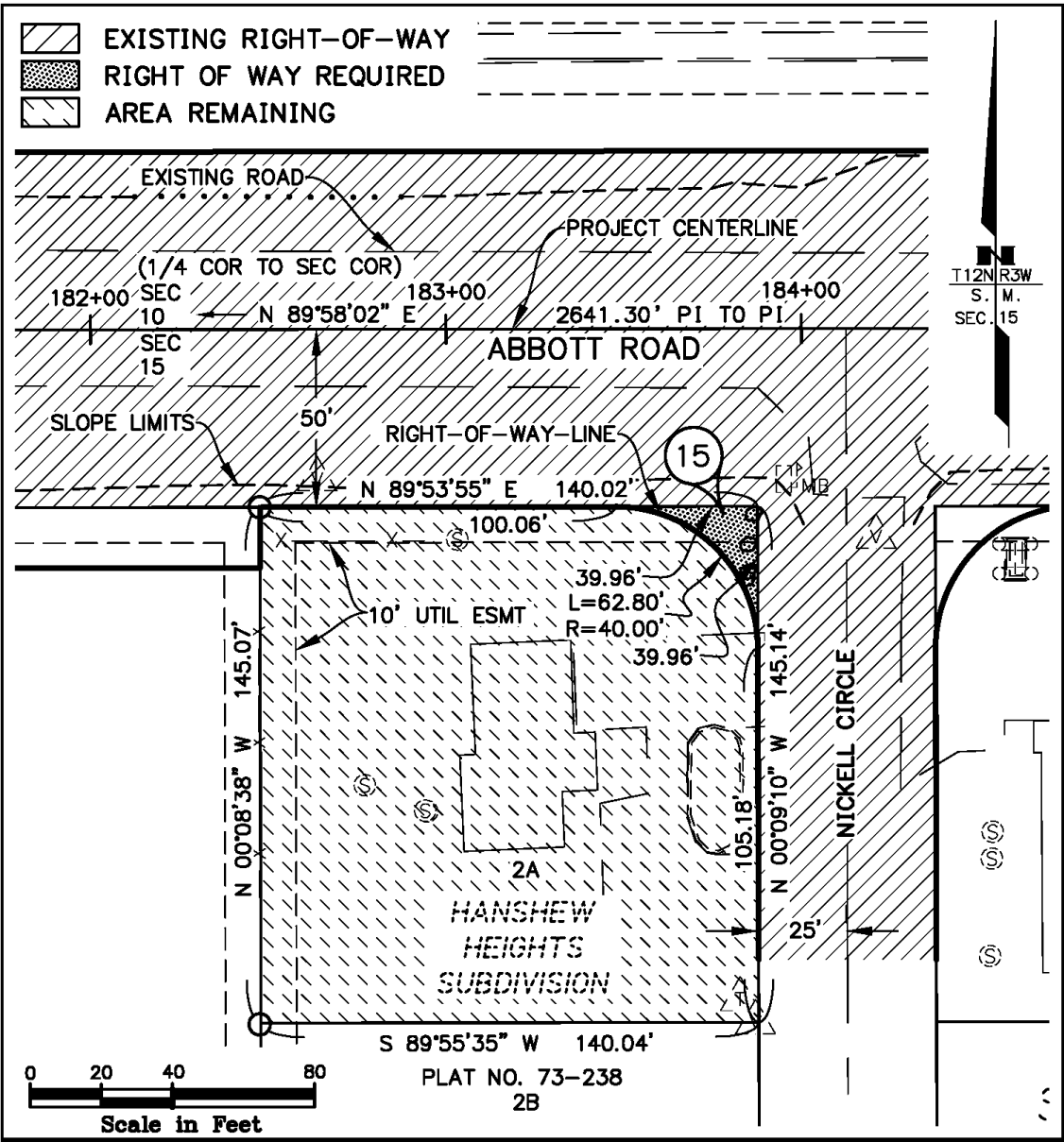
**Exhibit 3-4B**  
**ROW Plan Sheet**





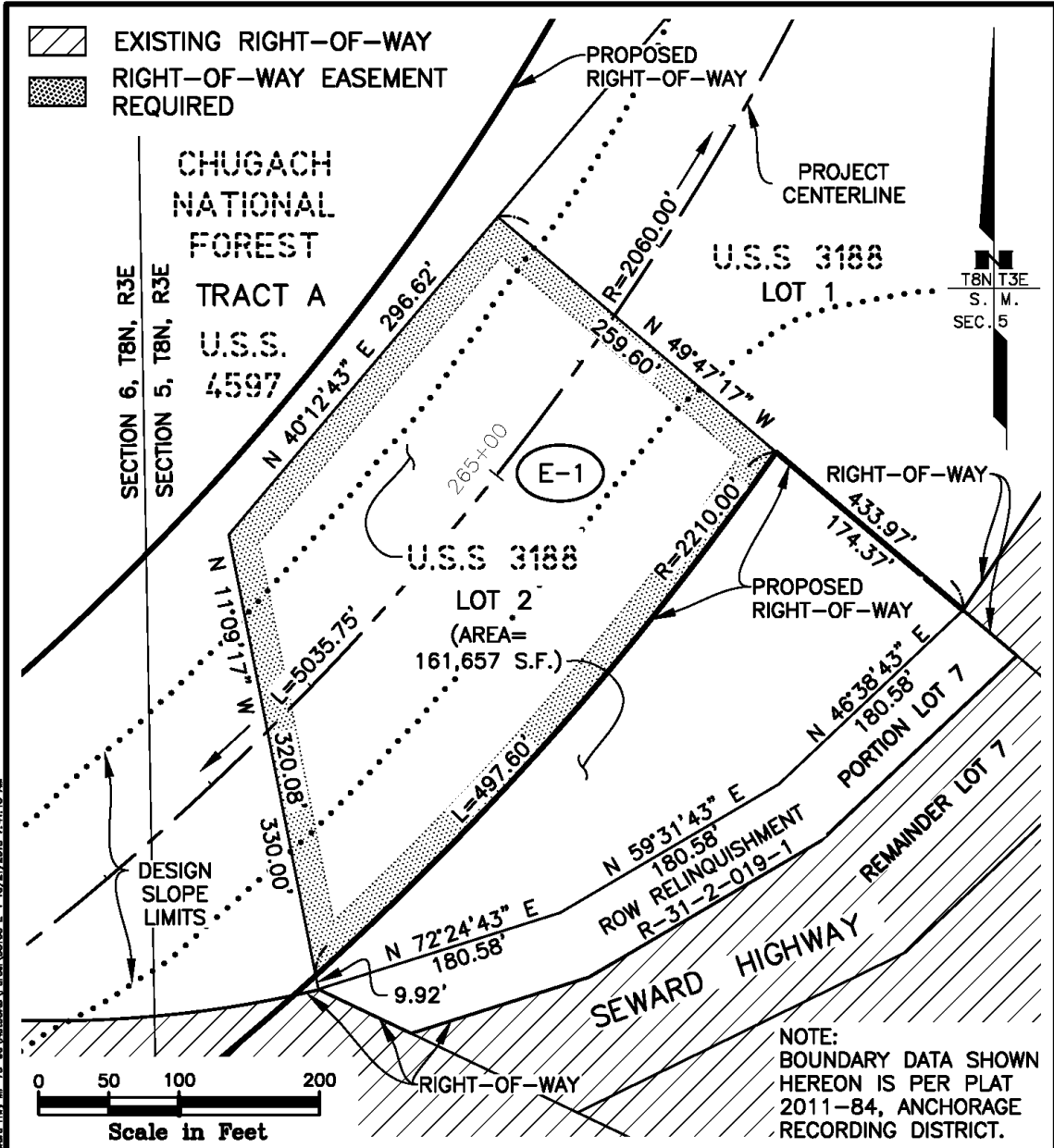






<b>STATE OF ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES</b>	
RIGHT OF WAY REQUIRED FOR <b>ABBOTT ROAD REHAB</b> LAKE OTIS TO BIRCH PROJECT NO. 53942	OWNER'S INITIAL _____ ATTACHED TO _____ PAGE ____ OF ____ DATED _____
PLAT 1 OF 1 DRAWN BY <u>    AFF    </u> DATE <u>    Oct 2015    </u>	GROSS TAKE <u>    343 S.F.    </u> NET TAKE <u>    343 S.F.    </u> REMAIN <u>    19,977 S.F.±    </u> PARCEL NO. <u>    15    </u>

**Exhibit 3-7**  
**Parcel Plat Examples**  
 Page 1 of 3



W:\Projects\Highways\SEWARD\_HIGHWAY\SR05\_Seward Hwy\_MP\_75-90\AutoCAD\Parcel\SR05 E-1 10/01/2015 2:41:15 AM

<b>STATE OF ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES</b>	
RIGHT OF WAY EASEMENT REQUIRED FOR NEW SEWARD HIGHWAY MP 75-90 OA31035/Z581050000	OWNER'S INITIAL _____ ATTACHED TO _____ PAGE ____ OF ____ DATED _____
PLAT 1 OF 1 EASEMENT AREA <u>106,156 S.F.</u> DRAWN BY <u>AFF</u> DATE <u>October 8, 2015</u>	PARCEL NO. <u>E-1</u>

Exhibit 3-7  
 Parcel Plat Examples  
 Page 2 of 3



## 4. Appraisals & Waiver Valuations

---

- 4.1. Introduction
- 4.2. General
- 4.3. Appraisal Assignments and Contracts
- 4.4. Routing and Retention of Reports
- 4.5. Revisions, Updates, and Reappraisals
- 4.6. Condemnation Appraisals
- 4.7. Waiver Valuations
- 4.8. Project Influence to Property Before Acquisition
- 4.9. Determining the Larger Parcel
- 4.10. Highest and Best Use
- 4.11. Legal Considerations
- 4.12. Contaminated Properties Appraisals
- 4.13. Market Data Collections
- 4.14. Project and Market Data Book
- 4.15. Types of Appraisal Reports Acceptable to DOT&PF
- 4.16. Temporary Permit and Easement Appraisals
- 4.17. Specialty Reports
- 4.18. Damages
- 4.19. Benefits
- 4.20. Fixtures and Equipment
- 4.21. Tenant-owned Improvements and Leaseholds
- 4.22. Uneconomic Remnants
- 4.23. Real Property/Personal Property

### 4.1. Introduction

This chapter is designed to guide persons involved in the preparation of appraisals and waiver valuations and the management of appraisal functions. It presents guidelines that:

- conform to State and Federal policies regarding the appraisal of real estate for the purpose of acquiring ROW;
- ensure that the appraiser has considered all the required elements in arriving at the conclusion of value; and
- provide a uniform method of appraisal report writing that conforms to industry standards and supports DOT&PF’s review, acquisition,

relocation, disposal, and property management functions.

The format and level of documentation required in a valuation are dependent on the assignment and the complexity of the valuation problem.

For the purposes of this chapter, the terms “appraisal” and “appraisal report” are used interchangeably.

Unless otherwise specified, all instructions in this chapter refer to the ROW Section designated to do this work or a contractor retained to perform one or more appraisals, or specialty appraisals. The person preparing an appraisal or specialty appraisal is generally referred to as the “Appraiser.” A person providing appraisal review services is referred to as the “Review Appraiser”. This chapter guides persons completing appraisals or waiver valuations. Chapter 5 guides Review Appraisers. Chapter 4 applies when the Review Appraiser must also act as an Appraiser and come to their own value conclusion. Note that a person preparing a Waiver Valuation is not necessarily an appraiser (see Sec. 4.7).

The term “Appraisal Supervisor” refers to the position that has supervisory authority over staff, regardless of titles used by the regions.

The Fifth Amendment to the United States Constitution states: “No person shall... be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.” The Alaska Constitution, Art. I, Sec. 18, Eminent Domain, reads in pertinent part: “Private property shall not be taken or damaged for public use without just compensation.”

Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (referred to as the “Uniform Act”) requires that real property be appraised before the initiation of negotiations.

The 1987 amendments to the Uniform Act define an appraisal as: “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.”

The State of Alaska, by adopting the Uniform Standards of Professional Appraisal Practice (USPAP), requires the appraiser to perform competently when completing the assignment. USPAP is the generally recognized ethical and performance standards for the appraisal profession in the United States. Adopted by Congress in 1989 and updated every two years, USPAP contains standards for all types of appraisal services including real estate, personal property, business, and mass appraisal. Compliance is required for State-licensed and State-certified appraisers involved in Federally-related real estate transactions. In lieu of appraisals waiver valuations may be permitted under certain circumstances (see Sec. 4.7).

For parcels that require an appraisal, the DOT&PF Review Appraiser must establish the recommendation of just compensation for the property in accordance with Chapter 5 of this manual. The Recommendation of Just Compensation may be no less than the approved appraisal of the property’s market value.

#### **4.1.1. Acceptable Appraisal**

The Appraisal Review staff (or authorized contractor) provides guidance on the acceptability of specific techniques or processes, policy, or technical guidance.

An acceptable appraisal will fulfill all the requirements of this chapter and the reports will contain enough factual support, documentation, and sound reasoning to make clear conclusions. An appraisal report that fulfills all requirements as to form may still be unacceptable due to substance (inadequate investigation or interpretation of market facts; improper application of appraisal techniques; analysis or conclusions based on misleading, inaccurate, or incomplete data, etc.).

For various reasons, DOT&PF may find more than one appraisal acceptable for a parcel, but there will be only one approved appraisal per parcel (Sec. 5.1).

All Appraisers must give the owner of the property or the owner’s designated representative the opportunity to accompany the Appraiser during the property inspection. Appraisers are required to use the [Opportunity to Accompany the Appraiser Form 25A-R405](#) or include equivalent information

in the report to document compliance. If unable to locate the owner, or if the owner refuses to sign the form acknowledging that they were given that opportunity, then the ROW Agent documents this and the documentation is placed in the appraisal report.

#### **4.1.2. Forms**

DOT&PF forms are preferred and in some cases mandatory. If elective DOT&PF forms are not used, replacement forms must include all of the elements required by DOT&PF’s forms.

#### **4.1.3. Market Value**

Each Appraisal Report must state the type, source, and definition of value that it intends to establish.

For purposes of Federal law, wherever the term “market value” is used in this manual, it means “fair market value.” The Uniform Act and [49 CFR](#) refer to “fair market value”, while the Appraisal Foundation refers to “market value”.

The Alaska Supreme Court has defined fair market value as “the price in (terms of) money that the property could be sold for on the open market under fair conditions between an owner willing to sell and a purchaser willing to buy, with a reasonable time allowed to find a purchaser” [*State v. 7.026 Acres*, Sup. Ct. Op. No. 601, 466 P.2d 364, 365 (1970)]. The opinion further reads, in part: “The highest and most profitable use for which the property is adaptable is to be considered, to the extent that the prospect of demand for such use affects the market value while the property is privately held.” Fair market value is normally based on a parcel’s fee simple value.

Do not consider (or allow for) the involuntary nature of the taking, the lack of desire of the owner to part with the property, or inconvenience and possible hardship caused to the owner. The Appraiser should be concerned exclusively with estimating market value. DOT&PF has established administrative, relocation, and property management programs to assist with “making the owner whole” and these considerations must not enter into the valuation process.

#### **4.2. General**

[49 CFR 24.102\(n\)\(2\)](#) provides that no person shall attempt to unduly influence or coerce an appraiser, Review Appraiser, or waiver valuation preparer



regarding any valuation or other aspect of an appraisal, review or waiver valuation.

In accordance with [49 CFR 24.102\(n\)](#), no person shall attempt to unduly influence or coerce an Appraiser, Review Appraiser, or waiver valuation preparer regarding any valuation or other aspect of an appraisal, review or waiver valuation. Persons functioning as negotiators may not supervise or formally evaluate the performance of any Appraiser or Review Appraiser who is performing appraisal or appraisal review work. FHWA may waive this requirement if it determines the requirement would create a hardship for DOT&PF.

#### **4.2.1. Number of Appraisals Required**

At least one appraisal is required for each parcel that will be acquired or damaged, except where a waiver valuation may be acceptable and prudent (see Sec. 4.7).

DOT&PF requires two appraisals when:

- the Appraiser or Review Appraiser reasonably expects the just compensation for an acquisition will exceed \$1,000,000; or
- where extensive damages or complex issues require a second opinion, particularly to bolster trust with the property owner or funding agency and mitigate risk.

When it is determined that a single appraisal is sufficiently reliable the Regional ROW Chief may, with concurrence from the Statewide ROW Chief or designee, waive the requirement for a second appraisal. The Regional Acquisition Supervisor or ROW Agent assigned to the project must present a written request, through the Regional ROW Chief or designee. The request must summarize the reasons a second appraisal is not necessary (such as vacant land without complex highest and best use issues, large acreage, small strip acquisitions, relatively simple analyses of parcels with a high-unit value, no apparent damages, etc.) and a statement that the agent does not reasonably expect that a second appraisal is necessary to maintain the credibility of the value estimate process and associated negotiations.

### **4.3. Appraisal Assignments and Contracts**

Appraisal reports shall be of sufficient detail, consistent with legal and professional requirements for format and documentation, to present a clear and accurate opinion of value.

For DOT&PF purposes, Appraisers (including Review Appraisers) and estimators are divided into three classifications: staff, fee (contract), and specialty.

#### **4.3.1. Fee or Specialty Appraisal Contracts**

DOT&PF may enter into a Professional Service Agreement (contract) with a certified Appraiser or Review Appraiser licensed by the State of Alaska [[49 CFR 24.103\(d\)](#)], professional estimator, or specialty appraiser for any of the following reasons:

- there are insufficient staff to perform the work within a reasonable time;
- the complexity or unusual nature of the assignment requires a specialized or experienced person; or
- the appropriate ROW Chief determines that DOT&PF's interests will be better served through employment of a contractor.

An Appraiser may not have any direct, indirect, present, or prospective interest in the property to be valued and is required to so certify when he/she signs the Certificate of Appraiser (Sec. 4.15.3).

The ROW Agent assigned to the project must handle contracts for professional services in accordance with the State Procurement Code and the [Professional Services Agreements Manual](#).

Compensation (fees) for appraisals must be on a parcel-by-parcel basis in the contract, rather than on a lump-sum or other basis. Other valuation, consultation, or appraisal review services may be contracted on an hourly basis as appropriate.

#### **Contract Extensions**

A contract Appraiser or Review Appraiser must submit any request for extension of the assignment due date to the ROW Agent, listing the reasons for the delay (design changes, change in appraisal scope, delay in response from the property owner,

etc.). The ROW Agent must provide all approvals in writing.

#### **4.3.2. Information Provided to the Appraiser**

The ROW Agent must provide the following information to the Appraiser (whether staff or fee):

- project and parcel numbers;
- appraisal (valuation) problem and recommended format (Appraisal Report or Restricted Appraisal Report);
- special appraisal instructions (proposed easement information, legal instructions, etc.);
- due date;
- pertinent information available to the department, such as current ROW plans, parcel plats, title report, design plans, profiles and cross sections, etc.; and
- specialist reports, estimates, and legal opinions.

The ROW Chief (or designee) must provide a copy of the appraisal report and the appraisal contract to the Review Appraiser.

#### **4.3.3. Intended Users' Pre-Appraisal Field Inspection**

As soon as the assignment is made the Appraiser and Review Appraiser should conduct a pre-appraisal field inspection of the project and discuss any potential problems and their effect on the appraisal or appraisal review scope. This is also a good time to note whether or not there may be significant value estimated in sand, gravel, minerals, timber, or other such resources that should be considered in the appraisal and possibly delineated in the appraisal scope.

#### **4.4. Routing and Retention of Reports**

The Appraiser sends the original appraisal report directly to the Statewide Right-of-Way Chief or designee. The ROW Agent may request a copy of the appraisal report for informational purposes but to avoid confusion if the Review Appraiser has any revisions, these copies must be destroyed when the approved original is received. For airport projects, a copy may need to be sent to FAA after appraisal review is approved (See Sec. 10.3). The ROW Agent retains a copy. Appraisers, Review Appraisers, contractors, and other consultants are responsible for

maintaining and securing their own confidential, identical copy of the report and work file to comply with USPAP or other professional requirements. Appraisal reports are subject to a review for contract compliance and general content and a formal appraisal review by an authorized Review Appraiser. The Appraiser and the Review Appraiser must directly respond to all requests for explanations, corrections, additional support, documentation, and revisions in a timely and complete manner. Failure to respond may result in cancellation of the contract without payment and ineligibility for future assignments. Waiver valuations, when completed as intended, are not subject to formal review. However, when a waiver valuation is actually an appraisal performed by a certified or licensed contract appraiser, that appraisal is subjected to a formal review.

When a report is approved, the Review Appraiser directs the Appraiser to submit clean (i.e. all corrections made) copies for final review (the number will depend on the assignment or contract). Submissions must not be stamped "Draft" or be otherwise incomplete. The Review Appraiser must then forward each appraisal report to the region with a [Review Appraiser's Recommendation of Just Compensation Form \(25A-R505\)](#) and a Recommendation for Payment of Appraisal Services.

The Review Appraiser must retain the original appraisal report, appraisal review report, and related work file in headquarters until project certification or final judgment (if condemned), and then may dispose of it. Retention schedules must comply with [23 CFR 710.201\(e\)](#) and USPAP.

#### **4.5. Revisions, Updates, and Reappraisals**

All changes, including minor corrections (such as spelling errors, etc.) shall be communicated to the Appraiser only through the Review Appraiser, who will evaluate timely requests and consider incorporating them into the Appraiser's required revisions. This section of the Right-of-Way Manual addresses substantive changes as the focus of the appraisal review function.

A revised appraisal report or revised appraisal review report nullifies the original report and all prior revisions. Revisions to a report are made by



inserting corrected pages or supplemental sheets in the original report.

#### **4.5.1. Request for Revisions or Updates**

The Review Appraiser or the appropriate ROW Chief may request an appraisal revision or update. The request, along with the due dates, should be in writing. A revision or update would be appropriate if:

- acquisition has been delayed and the valuation does not reflect current just compensation;
- Department of Law requests that the value be updated to the date of taking in a condemnation action;
- a design or ROW plan change occurs that may affect value; or
- new information is discovered that may change an existing valuation.

#### **4.5.2. Procedure**

When asked to update or revise a report, the Appraiser takes the following actions:

- contact the Appraisal Supervisor for any necessary modification to the contract or assignment; the Appraisal Supervisor must coordinate this action with the Review Appraiser (and the Department of Law, if necessary), through the appropriate ROW Chief;
- gather current information concerning ROW plans, construction features, title information, appraisal premise, pertinent legal opinions, and recommendations from the Review Appraiser;
- reexamine the market for any sales, rents, leases, costs, or other information that may be pertinent to the appraisal (valuation) problem; and
- reexamine the parcel being appraised for any changes (physical conditions, ownership, property rights, damages, etc.) and contact the owner, if necessary.

Prepare a package that contains a reason for the revision in a revised Purpose of Appraisal, any new information and analysis, and a new Certificate of Appraiser (Sec. 4.15.3).

#### **4.5.3. Identification of Revisions**

Make any revisions by correcting existing pages or supplementing the report with additional pages. You may use any sheets of the previous appraisal that remain pertinent to the appraisal. The Review Appraiser must mark replaced pages as VOID and fasten them to the back of the original appraisal report. Clean copies of the appraisals may not contain any void sheets or errors noted during the review.

#### **4.5.4. Delivery of Revisions**

The Appraiser delivers the revised appraisal report or supplemental pages to the Review Appraiser. When notified by the Review Appraiser that an appraisal is approved, the Appraiser submits the required number of clean copies of each report to the Review Appraiser for a final review and transmittal to the Region or designee as specified in their contract.

The Review Appraiser delivers the revised appraisal report and Recommendation of Just Compensation to the appropriate Right-of-Way Chief or designee as assigned.

#### **4.5.5. Updates with No Change in Value**

If the market indicates that no change is evident, inform the Review Appraiser of these findings by letter and include a revised Certificate of Appraiser (see Sec. 4.15.3) for each parcel. The date of the new certificate then becomes the date of valuation, unless otherwise stated.

#### **4.5.6. Request for New Appraisals or Appraisal Reviews**

The Review Appraiser or the appropriate ROW Chief should request a new appraisal or appraisal review when one or more of the following occurs:

- revised ROW plans nullify the previously reported value;
- legal advice from the Department of Law nullifies previous instructions;
- an appraisal (valuation) problem changes;
- additional appraisal requirements become apparent; or
- contract specifications, appraisal guidelines, or appraisal review guidelines have not been

satisfied and attempts to remedy the situation have been unsuccessful.

Mark the cover sheet and Summary Sheet of any revised report “VOID--See Revision Dated...”

Completely new reports do not require the “Revised” notation.

#### **4.5.7. Minor Change or Addition**

When the Regional ROW Agent notifies the Review Appraiser and Appraiser of a simple addition or reduction to the acquisition area that does not warrant an appraisal update, the ROW Agent engages the Appraiser to complete a recalculation. This minor revision is only permitted when the situation meets all of the following criteria:

- the change would not affect highest and best use or larger parcel and no new analysis is required;
- there are no apparent changes to damages or benefits;
- there has not been a change in market conditions that affect unit value; and
- the revision would not undermine the credibility or reliability of the appraisal.

The Appraiser follows the procedures in Sec. 4.5.2 and submits to the Review Appraiser an [Adjustment to an Approved Appraisal for Minor Change or Addition \(Form 25A-R415\)](#) formerly “Pink Sheet” and a new Certificate of Appraiser (see Sec. 4.15.3). The Review Appraiser reviews the information, signs the form, and transmits it to the appropriate ROW Chief with a revised [Review Appraiser’s Recommendation of Just Compensation Form \(25A-R505\)](#).

If the original Appraiser determines that the situation does not qualify for a Pink Sheet or a new appraisal or appraisal update is necessary, the Appraiser shall advise the ROW Agent and Review Appraiser in writing and request further written instructions.

#### **4.6. Condemnation Appraisals**

As soon as the DOT&PF’s attorney determines it is necessary, the Appraiser is directed to submit an updated condemnation appraisal to the Review Appraiser. This document is protected by the attorney-client privilege.

The Appraiser must personally reconfirm *all* market data once the appraisal report is in litigation. The Department of Law may request further updates or revisions through the Region (See Ch. 8).

To facilitate timely review of condemnation appraisals, the Appraisal Supervisor should routinely inform the Review Appraiser and Statewide Right-of-Way Chief or designee of masters’ hearings, trials, and settlements.

Unless otherwise instructed by the Department of Law, mark any comments and recommendations concerning the appraisal **CONFIDENTIAL ATTORNEY-CLIENT INFORMATION** and direct them to DOT&PF’s attorney.

The Department of Law requests that all confidential condemnation correspondence be maintained next to the parcel file in a separate, red, condemnation file folder.

The Review Appraiser transmits the appraisal and any needed revisions to the Department of Law. The Review Appraiser recommends final payment of the Appraisers’ fees when the report meets DOT&PF standards.

#### **4.7. Waiver Valuations**

Waiver valuations are a tool available to DOT&PF under certain circumstances. Subject to further guidelines and limitations:

- FAA has waived the requirement for an appraisal of an airport parcel with an estimated value of \$10,000 or less;
- FHWA has waived the requirement for an appraisal of a highway parcel with an estimated value of \$25,000 or less;
- FHWA has waived the requirement for an appraisal of a donated highway parcel unless the owner requests an appraisal; or
- DOT&PF has waived the requirement for an appraisal of a parcel for a State-funded project (Sec. 2.1.1) with an estimated value of \$50,000 or less.

Further guidelines and limitations include:

- The property owner must be offered the option of having an appraisal made on any parcel exceeding \$10,000 in value for a parcel in a

Federal-aid project. When determining whether or not this requirement must be met for a particular parcel, the ROW Agent should consider whether or not the project could be Federally funded in the future.

- The Regional ROW Chief must establish just compensation for the property from the estimate generated from the waiver valuation, which is stated on the [Value Estimate Form 25A-R420](#) in accordance with this chapter.
- The Waiver Valuation is completed by a qualified State employee, contractor, or subcontractor who is not a certified or licensed Appraiser or otherwise required to comply with USPAP or other similar professional practices that consider a waiver valuation as an appraisal.

Although a waiver valuation is not intended to be an appraisal, it retains many of the elements of an appraisal, including the use of comparable sales data, and may meet the Appraisal Foundation's definition of an appraisal under USPAP. Because waiver valuations are used in lieu of appraisals and are prepared in a similar (though significantly abbreviated) manner, they are discussed in this chapter.

Waiver valuations are not intended to be appraisals and do not require a Certificate of Appraiser (see Sec.4.15.3). However, signing the Waiver Valuation form is a certification that the person who estimated the parcel's value and the Regional ROW Chief who approved the valuation have no direct, indirect, present, or prospective interest in the property.

These abbreviated processes are intended to be simple, quick, and low cost, freeing up Appraisers to concentrate on more complex analyses. While DOT&PF does not intend to require an Appraiser complete waiver valuations, the person must have sufficient understanding of the local real estate market to be qualified to make the value estimate. A qualified contractor (or subcontractor) may be used if DOT&PF ROW Agents are unavailable. Certain contractors completing a waiver valuation may end up providing an appraisal (and charging the related fee for this additional service) because of their requirement to comply with USPAP. In the case of a contractor (or subcontractor) that must comply with USPAP, the resulting product is considered an appraisal and not a Waiver Valuation and it must be reviewed as an appraisal.

When completing a Waiver Valuation the preparer shall use the [Value Estimate Form 25A-R420](#) or an equivalent format that includes the form's information to value simple acquisitions under the permitted value limits. A waiver valuation includes:

- a description of the land to be acquired;
- nominal improvement values, the contributory values of which can be readily supported by estimates of depreciated replacement cost; each improvement to be acquired must be listed for property management purposes; and
- minimal costs to cure, supported by reference to research or documented discussions with professional estimators.

A waiver valuation shall not be used if any of the following conditions exist:

- highest and best use changes as a result of the acquisition, or the highest and best use is questionable;
- damages exist that cannot be mitigated by a minimal cost to cure (a construction cost to correct the damage caused by the partial acquisition);
- land values are not easily identified (e.g. requiring adjustments or not comparable);
- valuation issues exist that are complex or not uncomplicated; or
- the preparer is required to comply with USPAP or other applicable practices (as in the case of a certified or licensed Appraiser or affiliate or member of a professional organization whose definitions consider waiver valuation as an appraisal).

#### **4.7.1. Procedures**

1. If appropriate and practical, inspect and photograph the area to be acquired. If the estimated value is under \$10,000 owner contact for the inspection may not be required but may be advisable.
2. Complete each item on the required form (or an equivalent document providing the same information).
3. Obtain information from evaluations of similar properties, sale and comparable files,

Appraisers, current listings, and other informed real estate professionals to establish a unit value that adequately reflects the current market. Note: assessed value may or may not be a valid indicator and caution should be exercised if using this as the sole basis for value.

4. State the source of the unit value selected. Comparable data sheets, sales location maps, or tabulated sales should not be included in the report. Include the referenced source value for support.
5. Briefly explain:
  - a. necessity of any costs to cure (Sec. 4.18.2) and name their source;
  - b. depreciated value (and the source) of any improvements to be acquired; and
  - c. any specific contingent or limiting conditions, or any special circumstances relating to the parcel.
6. If damages or complex issues exist or if the value is likely to exceed the permitted limits, reassign the work as an appraisal.
7. Show all calculations, add any cost-to-cure items, and state the estimated value of the acquisition and the date of the estimate. The date of the estimate must be current.
8. Sign and submit the complete waiver valuation to the appropriate ROW Chief for review and approval. Approval by the ROW Chief constitutes the DOT&PF Recommendation of Just Compensation.

#### **4.7.2. Updates or Revisions**

For updates and revisions:

- complete and sign a new [Value Estimate Form 25A-R420](#);
- attach any new plats or photographs that show the changes; and
- submit the package to the appropriate ROW Chief for approval.

#### **4.8. Project Influence to Property Before Acquisition**

In a valuation, the consideration of any decrease or increase in the before value of a property attributable

to the pending project is generally prohibited ([AS 34.60.120](#)).

#### **4.9. Determining the Larger Parcel**

*The Dictionary of Real Estate Appraisal* (published by the Appraisal Institute) defines a larger parcel. The Appraiser is responsible for determining the larger parcel. The Appraiser should support a larger parcel decision using the principles of substitution, demand, and applied economics.

#### **4.10. Highest and Best Use**

The Appraiser must identify the highest and best use for which the property may be privately held, to the extent that the demand for that use affects market value.

Demonstrate highest and best use in the report, showing that the use meets the following criteria:

- physically possible;
- legally permissible;
- financially feasible; and
- maximally productive.

Estimate the value of the subject's land as though vacant, unless the land is improved with legally nonconforming improvements. Consider the highest and best use of the land as though vacant in relation to its existing use, as well as all potential uses.

#### **4.11. Legal Considerations**

The Appraiser must exercise care to see that all legal issues are clearly defined and resolved through early coordination with the Department of Law. Obtain legal opinions or advice early in the process.

Document in the report any legal opinions or advice involved in the valuation process. Provide copies of pertinent legal opinions to the Review Appraiser for distribution and coordination.

#### **4.12. Contaminated Properties Appraisals**

The Appraiser must not simply value the property impacted by a hazardous substance by deducting the typical remediation cost, or discovery cost, from the total value, as if "clean". Consider the possibility of other changes affecting value, such as a change in highest and best use, marketability, and stigma. See also Sec. 7.22 dealing with moving of hazardous materials.

### 4.13. Market Data Collections

Valuations must contain accurate, current comparable sales information. Data must be of sufficient quality and quantity to demonstrate that all conclusions are representative of the current market. Data must provide a sound basis for valuation of both the before and, in the case of a partial acquisition, the after-acquisition condition of the parcel.

Three comparable sales are generally considered the minimum acceptable market support for simple valuations; more are recommended when available, especially for complex appraisal (valuation) problems.

Improvements are valued as they contribute to the overall property value. If depreciated replacement costs are presented as a measure of value, include a demonstration showing that the market responds in that manner. The standard of valuation is the market value of the *entire* property. Simply totaling the independent money values of a property's separate parts is unacceptable.

The appraisal must contain an analysis of all recent sales of similar properties in the subject neighborhood. The Appraiser must discuss and analyze the existing supply of available similar properties. Discuss the sales history of pertinent comparables: time on the market, changes in the advertised price, repeated sales, or sales that fell through.

If a timely field inspection is not possible, the Appraiser must include additional documentation to demonstrate familiarity with the comparables (dates of previous inspections). Inspect the comparables at the earliest opportunity. Under extreme or unusual circumstances, the appropriate ROW Chief may grant a waiver of inspections of comparables. A waiver request must be in writing to the appropriate ROW Chief and must be fully explained or supported.

#### 4.13.1. Value Indicators

Include the following indicators of value in the body of the report *for the purpose of illustrating trends or extremes* (do not use them as the *sole* basis for value):

- listings;
- earnest money or other recent sale agreements;

- offers to purchase;
- lease or purchase options;
- sales to or from agencies with the power of eminent domain;
- estate sales and transactions between relatives or other influenced parties;
- trades and/or exchanges;
- transactions with generous financing terms;
- foreclosure sales;
- transactions made under duress;
- unconfirmed transactions;
- bankruptcy estate sales; and
- auctions.

Any deviation from the foregoing is unacceptable unless approved by the Review Appraiser. Sufficient market data are not always available to evaluate all properties. When market data are limited or weak in comparability demonstrate and document a legitimate, concerted effort to obtain other types of supporting data.

#### 4.13.2. Confirmation of Sales

The Appraiser is expected to personally confirm and inspect all market data. Exceptions must be supported by an explanation of the quality of the data (who collected it, independent verifications of the data, and the reliability of photos). All comparables used in the report must be personally verified if the case goes to court. DOT&PF considers comparables to be most reliable when the Appraiser verifies the facts with both buyers and sellers. If a sale cannot be confirmed by personal interview with the buyer and the seller, verify the data with other sources of reliable information and state the conditions of verification in the report. Discuss any special considerations motivating either the buyer or seller.

#### 4.13.3. Date of Sale

Use the date of the meeting of the minds or earnest money agreement date as the date of sale, if possible.

#### 4.13.4. Use of Data Compiled by Others

DOT&PF may share market data on file (with analysis removed) with no obligation on the part of DOT&PF for its accuracy or relevance. Any Appraiser who uses data obtained through DOT&PF work must verify, inspect, and further independently research the data. Appraised values, values from a Recommendation of Just Compensation, administrative settlements, waiver valuations, or other compensation or valuations or value analysis are not to be disclosed to third parties.

#### 4.13.5. Comparable Sales Data

For each market indicator referenced in the report include one [Comparable Sales Data Form 25A-R425](#) (or equivalent documentation), which must include all the information on the approved form. Descriptions must be clear enough to locate the comparable in the field.

Estimate the land and improvement allocation on each improved property. Provide the basis for the allocation (supporting data, reasoning, and correlation). A statement that the purchaser or seller allocated the values, or that the allocation came from another appraisal, is unacceptable without further support.

Include recent photographs of each comparable property to provide the reader with a clear view of the property. Use a [Photographic Sheet Form 25A-R430](#) or equivalent.

Include a [Summary of Comparable Sales Form 25A-R435](#).

Include a Sale Map (or maps) that show the location of the subject and (by comparable number) the location of each property involved in the referenced market transaction. The map must also show a north arrow and be clear enough to follow in the field.

#### 4.13.6. Adjustments to Comparable Sales Data

Make adjustments to comparable sales data when there is a *measurable* market reaction to a specific item. Support and document each adjustment and consistently express them in either percentage or dollar amounts. When there are a great number of adjustments or a larger-than-typical single adjustment, the comparability, validity, and acceptability of the comparable are lowered.

If a sale is not comparable, do not use it. Cumulative adjustments (multiplied by each other) are acceptable only if each factor has a causative relationship to the other. To encourage independent analysis DOT&PF sets no arbitrary limits on adjustments, either percentage or dollar.

If the Appraiser uses qualitative adjustments (for example, plus (+) and minus (-)) because of the lack of available data, provide some market-related basis to support the reasoning. Broad, unsupported statements such as “based on my vast experience...” or “a reasonable person would...” are not adequate support.

If a *small* item of comparison requires consideration, but the Appraiser cannot support the adjustment with market data but it is adequately supported in some other way, DOT&PF’s Review Appraiser may accept it. If a contract Review Appraiser is hired in lieu of a DOT&PF Review Appraiser, the Regional Right-of-Way Chief may accept it. Conference with a qualified appraiser is recommended.

In addition to time, location, and size consider the following elements as a minimum for an acceptable appraisal:

- Financing terms/cash equivalency: investigate the sale prices of comparable properties that were sold with apparent non-market financing to determine whether an adjustment to reflect typical market terms is warranted; and
- All of the following conditions of sale:
  - Compare the buyer’s and seller’s motivation and knowledge of market conditions.
  - How long was it on the market before sale?
  - Was a commission involved?
  - Did the commission affect the price?
  - Was it a bona fide arm’s-length transaction?
  - How did the availability of competing properties compare to typical market purchases?

#### 4.14. Project and Market Data Book

The Project and Market Data Book (also referred to as “the Book”) consolidates general data for larger projects such as comparable data, area and neighborhood descriptions, general exhibits, trend



studies, etc. The intent of the Book is to promote project consistency and avoid unnecessary duplication. The Book is limited to factual data and excludes analysis. Include the Book in each appraisal report by reference.

#### **4.14.1. Procedures**

Data collection (Sec. 4.13) continues through submission of the last appraisal on the project. The Book should contain the following:

- transmittal letter;
- Table of Contents;
- description of project, maps, aerial photos, etc.;
- [Summary of Acquisition Form 25A-R440](#);
- area and neighborhood analysis, including:
  - definition of the market area;
  - analysis of the current supply and demand of equivalent properties;
  - patterns of land use and trends, in the area first and the neighborhood second (new construction planned or under way, vacant sites as potential competition for the subject, adequacy of utilities, access, impaired sites nearby, etc.);
  - current economic factors affecting the area and neighborhood (population, employment, income characteristics, interest rates, zoning and other regulations, rents, etc.);
  - anticipated changes in the inventory of real property affected by the project; and
  - brief evaluation of any published economic, damage, cost, or other general studies used in any of the appraisals;
- assumptions and limiting conditions (if project-related);
- market data; and
- general exhibits.

Briefly describe the project. Include area maps and vicinity maps showing the location of the project, parcels, and comparable sales contained in the Book. Present a narrative discussion and analysis as follows:

- define and delineate the market area;
- identify and analyze the current supply and demand conditions that make up the specific real estate market;
- describe the existing supply of property for the specific uses within the defined market area affected by the project;
- discuss current patterns of land use and trends, first in the area then in the neighborhood (new construction planned or underway; vacant sites as potential competition for the subject, adequacy of utilities, access, impaired sites nearby, etc.);
- discuss current economic factors affecting the area and neighborhood (population, employment, income characteristics, interest rates, zoning and other regulations, rents, etc.);
- forecast how anticipated changes in the inventory of real property affected by the project will affect the subject neighborhood; and
- attach a brief evaluation of any published economic, damage, cost, or other general studies used in any of the appraisals.

If the data, market, trends, or references change during the valuation project, make appropriate additions to and modifications of the completed Project and Market Data Report. (Example: Pg. 21 - Revised October 21, 2001.)

#### **4.15. Types of Appraisal Reports Acceptable to DOT&PF**

There are three appraisal report formats acceptable on DOT&PF projects (waiver valuations are not appraisals). These are:

- Fannie Mae (FNMA) Uniform Residential Appraisal Report (URAR), condominium, or multi-family (1-4) units forms;
- Restricted Appraisal Report; and
- Appraisal Report.

### **4.15.1. FNMA Reports and Forms**

Although its use is not required by DOT&PF, whole acquisitions of residentially-improved properties may be reported on the FNMA URAR form, condominium, or multi-family (1-4 units) forms or their equivalent. However, the form should not dictate the scope of the analysis and may require supplemental data and attachments to comply with USPAP. For example, if the highest and best use is no longer the existing use, an addendum with a discussion of the highest and best use must be attached. The following should also be included:

- Certificate of Appraiser (Sec. 4.15.3);
- comparable land sales grid with brief explanation of direct sales comparison and adjustment support;
- photos and sketch;
- identification of fixtures and personal property included or excluded in the estimate of value (severable appurtenances);
- property owner contact letter;
- vacant land and improved comparables data sheets; and
- items not covered by an existing Project and Market Data Book (i.e. definition of market value, qualifications of the Appraiser, etc.).

### **4.15.2. Restricted Appraisal Report**

This format may be used when the client – DOT&PF or the Department of Law – are the only intended users of the report. The Adjustment to an Approved Appraisal for Minor Change or Addition (see Sec. 4.5.7) is a Restricted Appraisal Report.

### **4.15.3. Appraisal Reports**

For acquisitions that exceed the limits where waiver valuations are permitted or where value estimates are not uncomplicated (see Sec. 4.7) prepare an Appraisal Report (49 CFR 24.103-49 CFR 24.104). Appraisal Reports are also known as Narrative Appraisal Reports, Before-and-After Appraisals, or Detailed Appraisals (USPAP).

A comparison of a total comparable property to total subject property is acceptable for total acquisitions. For partial acquisitions, a breakout of land value supported by appropriate market data is required.

Personally inspect the property, including the interior and exterior of all improvements to be acquired or affected by the acquisition. The Appraiser must offer the owner or designated representative the opportunity to be present during the appraisal inspection [49 CFR 24.102(c)].

In general, the Appraiser should include the following items in the Appraisal Report:

- General Information and Appraisal Summary;
- Letter or Memorandum of Transmittal;
- Table of Contents; and
- Narrative Appraisal Report Summary.

Complete the following required items on the [Appraisal Report](#):

- project name;
- State and Federal project numbers;
- parcel number as shown on current ROW plans;
- DOT&PF ROW map sheet date;
- name, address, and telephone number of each owner of the parcel being appraised;
- property location by street address, or by reference to milepost, distance to cross-streets, roads, highways or landmarks;
- legal description: if the description is too lengthy, the Appraiser may cross reference the description (i.e.; “see attached title report, dated...”);
- zoning codes in force as of the date of valuation. Permissible uses restate the zoning (or restrictions) in words. If not zoned, state “none”;
- property rights being appraised;
- current use of property;
- date of inspection;
- highest and best use of the property (Sec. 4.10);
- effective date of the appraisal (date of value);
- parcel description: enter the area:
  - o of the entire property being appraised;



- o to be acquired;
- o remaining after acquisition;
- o subject to Public Land Order (PLO), Section-Line Easements, etc.;
- o to be encumbered by easement; and
- o to be placed under permit;
- market value of the larger parcel before acquisition:
  - o land value; and
  - o improvements: value improvements as they contribute to the overall property value. Depreciated replacement cost may be acceptable if a demonstration is included showing that the market responds in this manner. *Simply totaling the independent money values of a property's separate parts is unacceptable* (if there are no improvements, enter a zero);
- acquisition value (as part of the whole): value of the portion of land and improvements to be acquired as they contribute to the larger parcel;
- remainder value: value of the remaining property as a part of the whole;
- remainder value after acquisition: market value of the remaining property after acquisition (as a separate stand-alone parcel as if cost-to-cure items have been completed);
- damages: remainder value (as part of the whole) minus remainder value after acquisition;
- special benefits: remainder value after acquisition, minus remainder value as part of the whole. Under Alaska law, special benefits may only offset damages;
- net damages: determine by deducting special benefits from damages;
- cost-to-cure amount (if no cost-to-cure amount, enter zero);
- new permits: value of permits acquired (if no permits acquired, enter zero);
- new easements: value of easements acquired (if no easements acquired, enter zero);
- value of all existing easements converted to fee acquisitions (if no Public Land Order (PLO), section-line easement, or other easement acquired, enter zero);
- other: value of any other interests acquired (if no other interests acquired, enter zero); and
- market value of the acquisition.

### Certificate of Appraiser

DOT&PF's [Certificate of Appraiser Form 25A-R450](#) serves specific Federal and State requirements. Inclusion of its content in the Certificate is mandatory. Be fully aware of its language and intent and complete a certificate for each parcel.

The date of appraisal should be the date of the last inspection unless the report is retrospective.

The market value conclusion must be current (not subject to a time adjustment between the date of appraisal and the date of signature).

The date of appraisal and the date of signature should be reasonably close unless in condemnation proceedings. Furnish an explanation if the date of signature and date of appraisal are not reasonably close.

A new Certificate of Appraiser is required if a revision is necessary for a completed report or a change is made to an approved appraisal. Show each change on the [Adjustment to an Approved Appraisal for Minor Change or Addition Form 25A-R415](#) (Sec. 4.5.7).

If membership in a professional organization requires additional coverage, attach a supplement.

### Assumptions and Limiting Conditions

Assuming that the project will be constructed in accordance with the present design plan, state any assumptions applicable to valuing the parcel. Accurately disclose all extraordinary assumptions, hypothetical conditions and limiting conditions used in the appraisal. Include any special instructions or directions furnished by DOT&PF or the Department of Law.

## General Information

**Purpose and Function of the Appraisal.** Include the following wording in each appraisal:

1. The purpose of the appraisal is to estimate the market value of the property owner's rights acquired as defined by the Alaska Supreme Court, as follows: "the price in (terms of) money that the property could be sold for on the open market under fair conditions between an owner willing to sell and a purchaser willing to buy, with a reasonable time allowed to find a purchaser." State v. 7.026 Acres, Sup. Ct. Op. No. 601, 466 P.2d 364, 365 (1970). The opinion further reads, in part: "The highest and most profitable use for which the property is adaptable is to be considered, to the extent that the prospect of demand for such use affects the market value while the property is privately held." Fair market value is normally based on a parcel's fee simple value.
2. The function of the report is to provide a market value estimate for compensating the property owner for the acquisition of property rights acquired according to the Alaska Constitution, Art. I, Sec. 18, Eminent Domain, reads, in part: "Private property shall not be taken or damaged for public use without just compensation."

**Sales Data Collection:** State the extent of the process of collecting, confirming, and reporting data.

**Area and Neighborhood Analysis:** Briefly describe the subject's neighborhood and geographic area, as follows:

1. Define and delineate the market area under analysis (Sec. 4.14).
2. Identify and analyze the current supply and demand conditions that describe the specific real estate market.
3. Identify any anticipated development or changes in the neighborhood that might affect supply or demand.
4. Describe any historical uses or significance of the site.

## Parcel Identification

Describe the larger parcel's physical features, including any specific elements that might have a

significant effect on marketability. Discuss physical features, including:

1. Land area and shape: state the total area in English. Describe the larger parcel's general shape and dimensions.
2. Accessibility and road frontage: describe existing roads, streets, and trails serving the property; existing approaches, driveways, access limitations (water, trail or air), grade, property frontages, etc.
3. Topography, soils conditions, and utilities: generally describe the "lay of the land," including elevations, and describe obvious drainage patterns. Describe the soil types and conditions encountered on the property, such as muskeg, sandy loam, rock, etc. List public and/or private utilities (sewer, water, gas, electric power, etc.) available to the larger parcel, their locations, qualities, availability, or limitations.

For the description of the acquisition and remainder property, describe the area to be acquired, including any unusual features noted during the inspection. Describe how the acquisition will affect the property as a whole. If the property is improved and a land only appraisal is required, include a statement limiting the scope. Note, however, whether or not there may be significant value estimated in sand, gravel, minerals, timber, or other such resources or property that should be considered in the appraisal and possibly delineated in the appraisal scope.

State specifically, in an itemized listing, what is to be acquired (property interest and size), including items identified as personal property, landscaping, and all improvements listed separately for property management purposes, and the purpose of the acquisition (for example: "contain a fill slope," "build and maintain a bike path," etc.);

Explain the principal problems presented by the acquisition, and explain (in general terms) the principal differences in character and amenity between the parcel before acquisition and the portion remaining after acquisition. If more than one value premise is necessary, give an explanation of each premise;

Discuss any special, nonstandard situations that became apparent during the appraisal assignment;

Consider the effect of any known encumbrances (including existing easements), restrictions, exceptions, conditions, or limitations on the existing title that would affect the marketability or market value of the property.

### **Easements**

Describe easements affecting the larger parcel.

### **Present Use**

State all uses the larger parcel is presently supporting.

### **Present Zoning and Restrictions**

Since the zoning is included on the summary form, and a copy of the ordinance is included in the addenda, include this section only if the larger parcel meets one or more of the following criteria:

- does not comply with zoning;
- has grandfather rights (also known as a legal nonconforming use of record); or
- is affected by some other factor causing the larger parcel to be worth more or less because of zoning.

In any of these cases, include a discussion of these conditions and factors in this section.

### **Environmental Issues**

Reference any environmental studies performed on the property. Discuss any known hazardous materials on the larger parcel or adjoining properties, recent cleanup on the larger parcel or adjoining properties, or major cleanup in the neighborhood. Include information on pending actions that may affect the environmental standing of the larger parcel. (See also Sec. 7.22 dealing with moving of hazardous materials.)

### **Flood and Earthquake Activity**

Indicate whether the property is located within a flood plain or seismically active (earthquake) area.

### **Description of Improvements**

Identify each improvement on the parcel plat, including general interior and exterior dimensions. Include a narrative description of each improvement, including age, type and quality of construction, general condition, present use, etc., and note whether the Americans with Disabilities Act (ADA) applies. All the major fixtures and appliances which are

classified as ‘Realty’, and are intended to be acquired should be listed. All items that may be fixtures or equipment in the property need to be identified in the appraisal report regardless of whether it affects value.

### **Specialty Items, Fixtures, and Tenant-owned Improvements**

All machinery, equipment and fixtures that are treated as specialty items, should be listed; attach the approved Specialty Report (Sec. 4.17).

If in doubt as to whether an item constitutes a fixture or is personal property (Sec. 4.20), seek advice from the Department of Law through the Regional ROW Chief.

Do *not* arbitrarily add the value of specialty items to the value of the real property. Consider specialty items in terms of how, if at all, they contribute to the market value of the larger parcel. List and describe any tenant-owned improvements to be acquired (Sec. 4.21).

### **Assessed Value, Real Estate Taxes, Special Assessments, Trends**

Show the dollar amount of any special assessments against the property, current and delinquent real estate taxes, and the assessed value. Include a brief history of trends, if appropriate.

### **Parcel Plat**

A parcel plat (plot plan) of the property is required unless the detail on the ROW plan furnishes the same information. The plat need not be elaborate if it clearly depicts the parcel (Sec. 3.5) and the scope of the valuation problem. For a partial acquisition, show the limits of the proposed ROW.

At a minimum, show the following in the parcel plat:

- entire larger parcel, including perimeter dimensions, property lines, existing ROW lines (labeled), existing easements of record, ownership, and parcel area;
- street frontages;
- pertinent improvements and other significant features of the property, with approximate locations and approximate distances from the centerline; include alleys, driveways, and existing easements; notify DOT&PF if

improvements within 100 feet from the proposed ROW line (including encroachments) are inaccurately shown or omitted from the plans;

- north arrow; and
- access control or other restrictions.

### Photographs

Each appraisal report must include good quality color photographs, properly identified and taken at various angles, to show all significant features of the property and of the interior and exterior of all improvements to be acquired, or improvements that may be affected by the acquisition. Submit photographs using a [Photographic Sheet Form 25A-R430](#) or an equivalent document.

### Five-year Sales History

Discuss the sales history of the subject property within the previous 5 years as required by [49 CFR 24.103\(a\)\(2\)](#), using the [Five-Year Sales History Form 25A-R455](#) or equivalent within the report. If such sales have occurred, include comparable sales data in the market data section of the report as a comparable sale.

### Highest and Best Use

See Sec. 4.10.

### Property Valuation

#### Larger Parcel Value

Include the following information when arriving at the property valuation:

#### Land Valuation:

- consider all available data, and support larger parcel choice by reference to available market supply and demand (Sec. 4.8);
- use comparables (including recent subject sales) that are sufficiently similar to the subject property to be considered by a typical purchaser as a reasonable substitute or most equivalent area for the subject property;
- introduce a hypothetical or proposed subdivision, if appropriate, to support the market data and illustrate the amount a prudent purchaser would likely pay for raw subdivision land. However, due to the many variables and speculative elements, never base the estimate of

the subject's market value solely upon such a hypothesis; and

- for values based on anticipated rezoning:
  - o to determine the highest and best use of a parcel, consider only those uses permitted by existing zoning, unless there is a clear and reasonable probability that rezoning will take place. Attach copies of dated zoning change applications, maps, minutes of the zoning commission or board, etc., that demonstrate approval is reasonably probable;
  - o probability of rezoning must not be remote or speculative;
  - o DO NOT consider rezoning that may occur in anticipation of the proposed project in arriving at the before value of the property. If the property has already been rezoned to a higher use in anticipation of the proposed project, DO NOT consider that rezoning in arriving at the before value (however, do consider any rezoning that has occurred or may likely occur in anticipation of the impending project to determine the after value);
  - o analyze similar or related properties that have sold, where the price reflects the probability of similar rezoning. Present a factual analysis of what actual changes are occurring in the neighborhood and how these changes are progressing toward the subject property;
  - o if appropriate, value the property as if the rezoning has already occurred by applying a discount to that future value. Consider the probability of rezoning and the cost, potential for delays, political realities, and time involved in obtaining a rezoning, as well as allowance for the market's perception of similar properties; and
  - o analysis must be based upon factual data.

**Sales Comparison Approach:** The direct sales comparison, comparative, or market data approach is the most easily understood method for presentation to owners, courts, and juries; consequently, place greater reliance on this approach than all others. This is the only approach required for most parcels. It is of the utmost importance that the Appraiser analyzes

a sufficient amount of highly comparable data (including recent subject sales) to provide a sound basis for the conclusion from this approach (Sec. 4.13).

Show and explain all calculations and processes. If using a financial or programmable calculator or computer program, show the keystrokes or the program in the addenda. The reader must be able to duplicate calculations and processes. A comparative analysis in chart form (grid) is required. A conclusion must identify which comparable sale most closely approximates the value of the subject, and why the remaining evidence supports that conclusion. Broad, general statements without supporting analysis are unacceptable as a basis for value.

**Income Approach** (if applicable): An example of when the income approach might be used would be for an income property with limited comparables.

Analyze the current income stream. Using an appropriate market-derived capitalization rate, convert the property's anticipated Net Operating Income into a value. If appropriate, perform a yield analysis on the property's anticipated income, resale value, and reversion, converting each element into present value.

Present sufficient data to provide a sound basis for the conclusion. This is imperative. Support economic rent and expenses by market evidence. Show typical interest and capitalization rates available from comparable investments. Failure to support any one of these items renders the entire Income Approach questionable.

**Cost Approach** (if applicable): An example of when the cost approach might be used would be for a uniquely-developed property with limited comparables.

At a minimum apply the following steps in the cost approach:

- estimate the replacement cost of the improvements as of the date of appraisal;
- estimate the amounts of physical, functional, and economic (external) depreciation present in the improvements;

- deduct total depreciation from the estimated replacement cost to arrive at an indication of value; and
- add the value of the land to the indicated improvement value to arrive at the depreciated value by the cost approach.

Acceptable methods of estimating replacement costs:

- quantity survey method;
- unit-in-place (segregated cost) method;
- market (comparative-unit cost) method; and
- cost service method.

The methods of estimating replacement costs are listed in what DOT&PF considers their order of accuracy, the most accurate being the quantity survey method and the least reliable the cost service method. Do not use cost service estimates as a basis for value unless the lack of other sources can be demonstrated. Cost service manuals may serve to support an Appraiser's estimate of costs, but the most valid evidence comes from the market. In the report, show known costs of construction of like or competing improvements in the subject property's area to support and document estimates if possible.

Apply any method of estimating accrued depreciation generally accepted by the appraisal industry. Support estimates of accrued depreciation based on various age-life methods and income capitalization techniques with market data. Show all calculations and processes used in the cost approach. Include all references (copies of Marshall-Swift Valuation Service pages, computer input or work-up sheets, etc.) and supporting market data leading to the market value conclusions.

**Correlation and Conclusion** (if applicable): Include this only if more than one approach to value has been used. Explain the reliability and relative merits of each approach to market value; explain any limitations or notable variations between the approaches, and why and how each approach supports the final estimate of value.

**Allocation** (if applicable): Include this only for partial takes. Show the final estimate of value separated into land value and improvement value.

## Acquisition Value

### Value of the Acquisition as a Part of the Larger Parcel:

Describe what was acquired (property interests and size). Show the fee values of the land and improvements to be acquired as they contribute to the value of the larger parcel. If valuing easements, permits, or underlying fee interests, show the interests to be acquired (impact of the surface, subsurface or aerial easement on the remaining ownership, extinguishment of underlying fee, duration and extent of the permit, etc.). Base value on the extent of the rights acquired and the uses remaining after project completion. Show the total value (fee, easement, permit, etc.) of the acquisition as part of the whole.

### Remainder Value After Acquisition

**Description of Remainder:** Describe how the acquisition affected the remainder and how the remainder will appear when the project is completed, including cost-to-cure items if applicable (Sec. 4.18.2).

**Highest and Best Use After Acquisition:** If the remainder's highest and best use changes, furnish a full narrative discussion.

### Value of the Remainder as a Part of the Whole:

State the value of land and improvements that remain after deducting the fee value of the part taken from the value of the whole. Consider easement or leasehold interest rights that have been acquired, and the value of remaining rights.

### Value of the Remainder (as cured, if applicable) as an Independent Parcel:

Show the market value of land and improvements that remain after project completion. If the market data used in the valuation of the larger parcel are still comparable to the valuation of the remainder, they may be used. Identify the sale that is most comparable to the subject, and lead the reader to a logical and supportable conclusion of value. Show the final estimate of land value and improvement value.

If remainder retains the same value it had before the acquisition (is not damaged), skip the next section ("damages and/or special benefits") and go to the "market value of the acquisition" section. Provide a statement telling why it was not damaged.

Otherwise, if the remainder has a lesser unit value than in the before situation, continue.

## Damages and/or Special Benefits

**Analysis of Damages:** Damages, as such, are not appraised (Sec. 4.18). Analyze the difference between the value of the remainder property after the acquisition (as cured), and the value of the remainder as it was as a part of the larger parcel to determine damages and benefits. If eliminating comparable land sales or adding new ones along with new adjustments, submit a full narrative, including all approaches to value and correlation as applicable. Fully document and support damage estimates and adequately explain mitigations (costs to cure).

**Analysis of Special Benefits:** If a special benefit, like a highest and best use change or better access, occurs as a result of the project, briefly describe how the change benefits the property. State why and how the remainder enjoys special benefits (Sec. 4.19). Use special benefits *only* to offset damages.

**Net Damages:** Determine net damages by subtracting special benefits from the damages (assuming that the project is completed on schedule as shown on the project plans).

**Cost-to-cure analysis:** Support the necessity for costs to cure with estimates and justification for the expenditure. Cost to cure must only offset damage *unless otherwise required by ordinance or statute* (Sec. 4.18.2). Document cost-to-cure estimates over \$10,000 in writing.

### Market Value of the Acquisition

State the estimate of value, allocated as follows:

- land acquired (fee interests), plus
- improvements acquired (owner and tenant), if any, plus
- damages, if any, minus special benefits (if any) equals:
- net damages, if any, plus
- cost to cure, if any, plus
- permits acquired, if any, plus
- easements acquired, if any, plus
- fees underlying PLO or section-line easements acquired, if any, plus
- any other interests acquired, if any, equals

- total market value of acquisition.

### **Market Data**

See Sec. 4.13.

### **Addenda**

Attach any documentation or supporting data that may be pertinent to the report, including:

- Report of Contact with Owner;
- title report;
- specialty report;
- Special Instructions received from DOT&PF;
- legal opinions or references;
- cost-to-cure estimates; and
- copies of:
  - o zoning ordinances or restrictions;
  - o subdivision covenants, conditions, and restrictions;
  - o environmental or regulatory restrictions;
  - o leases;
  - o economic studies;
  - o maps: subdivision, planning and zoning, floodplain, wetlands, etc.; and
  - o exhibits: Design Study Report (Reference Project Description, and Environmental Analysis).

## **4.16. Temporary Permit and Easement Appraisals**

### **4.16.1. Temporary Permits**

If a temporary permit is obtained to construct an improvement for a landowner resulting in betterment to the property (such as a driveway, stairway, or sidewalk), DOT&PF will not pay the owner. No appraisal is required, but an explanation of the betterment and its effect on the property should be noted in the permit. All other temporary permits require an appraisal or waiver valuation.

### **4.16.2. Temporary Easements**

Prepare a waiver valuation or an appraisal, depending on the complexity of the valuation problem.

### **4.16.3. Procedures**

Fully explain the term and purpose of the easement or permit, and describe the area involved before its imposition. Describe improvements within the permit or easement area, such as fences, landscaping, native or domestic shrubs, etc. DOT&PF will acquire improvements that are affected or relocate them if feasible. Support this decision by a cost-to-cure analysis (Sec. 4.18.2.), or as they contribute to the value of the whole property (Sec. 4.13.1.).

Discuss the specific rights that must be acquired for the project (the right to clear and keep clear vegetation, structural improvements, trees over 25 feet tall, etc.). Discuss what rights the owner will retain after imposition of the easement (parking, fencing, lawn and garden, erecting moveable sheds, etc.). Discuss the uses and marketability of the remaining property. If sales of easements are available, include these in the analysis.

Easement values are normally based on market rental rates for comparable properties, plus the value of any improvements acquired or relocated.

Discuss the value of the property before the easement or permit, as compared to its value after the acquisition, leading the reader to a logical conclusion.

## **4.17. Specialty Reports**

Unless otherwise specified, all instructions in this section refer to the specialty Appraiser (specialist).

A specialty report values items that require specialized experience or training to evaluate, such as an engineer's or architect's reconstruction cost estimates, valuation of specialty fixtures, unique equipment or machinery meeting the tests of a fixture, etc. Specialty reports need to identify items of real and personal property. Normally, simple cost-to-cure estimates or bids (well or septic replacement, fencing, sign moving, etc.) are not considered specialty appraisals. Follow accepted industry methods for grading and valuing the property, consider all appropriate forms of depreciation, and analyze the appropriate market for the items valued. Complete a [Certificate of Specialist Form 25A-R460](#) as described in Sec. 4.17.1.



### 4.17.1. Procedures

Complete the report as follows:

1. **Certificate of Specialist Form 25A-R460:** The certificate serves specific requirements. The specialist must follow the language of this certificate. The date of valuation is the most recent date of property inspection by the specialist.
2. Assumptions, Contingent and Limiting Conditions, and any special instructions received.
3. Description of the property, its operation, ownership, and location: a complete listing of all items, each described to the extent that it is affected. Identify items of real and personal property.
4. Statement of the purpose of the report and definition of value(s) or cost(s) reported (replacement or reproduction cost new, less depreciation, salvage value, cost to cure, etc.).
5. Statement of the problem to be solved by the specialist.
6. Photo pages.
7. Descriptive material (maps, charts, price lists, catalog pages, etc.).
8. Floor plan.
9. A narrative analysis and evaluation, showing the methods used to grade and value the property.
10. The data and analysis to substantiate and document the estimate of value(s) or cost(s).
11. The estimate of value(s) or cost(s) and the date of valuation.
12. Breakdown of the total estimate, showing individual amounts for each item, such as material, labor, profit, and sales tax.

Submit specialty reports to the Appraisal Review Section for approval. The Review Appraiser then sends the reports to the Regional ROW Chief. The Review Appraiser also provides specialty reports to the appropriate Appraiser(s) for inclusion in the appraisal report(s) as provided in this chapter.

## 4.18. Damages

### 4.18.1. General

Damages are a loss in value to the remaining property after a partial acquisition. They are measured by the mathematical difference between the value of the remainder after the acquisition, and the value of the remainder as a part of the whole before the acquisition. These damages may be mitigated by a cost to cure. The Appraiser must fully explain the physical facts that cause the remainder to suffer damages and the market facts that justify the conclusion. As far as practicable, the Appraiser must estimate compensation for each source of damages ([AS 09.55.310](#)).

### 4.18.2. Mitigation of Damages (Costs-to-Cure)

If the Appraiser's analysis indicates that damages may be mitigated in whole or in part by a cost to cure, the Appraiser must demonstrate that the cost to cure is economically justified. The cost to cure must be less than the identified damages. An improvement lying partially within the ROW to be acquired is considered acquired in total unless the Appraiser can show that the improvement may be economically rehabilitated and its utility preserved. An acceptable method is a two-premise appraisal report assuming (1) no rehabilitation, and (2) rehabilitation (cost to cure) has been accomplished.

The Appraiser must:

- show that the cost to cure is monetarily less than the damages that would accrue without it, or that it is required by local ordinance, State law, Federal law (such as the Americans with Disabilities Act), etc.;
- adequately document any such requirements in the body of the report; and
- obtain accurate, usable cost to cure estimates, their analysis, and how they are to be used.

DOT&PF requires written estimates to document cost to cure estimates over \$10,000. For estimates below \$10,000, the Appraiser may reference a verbal quote that specifies the vendor or estimator and the telephone number and address. When the Appraiser can show a savings to the State, DOT&PF may negotiate for the purchase of property outside the ROW to be used in exchange for the required ROW to mitigate damages. The Appraiser determines the



amount of savings, supported by confirmed factual cost data. Certain types of mitigations may not be allowed in legal actions. The Regional ROW Chief must consult with the Appraisal Review Section and the Department of Law on cost to cure questions involving legal matters.

#### **4.18.3. Mitigation of Damages (Design Changes)**

Construction items or alterations, modifications, or additions to design plans may provide a viable option to paying damages. An Appraiser (or property owner through the Appraiser) who identifies a possible design mitigation measure should make a written recommendation to the Regional ROW Chief, with value evidence or sound economic reasoning supporting the recommended changes.

#### **4.18.4. Noncompensable Damages**

Appraisal reports approved by DOT&PF must exclude compensation for damage items not compensable under Alaska Statutes or case law, and are therefore ineligible for Federal reimbursement as prescribed by [23 CFR 710.203\(b\)\(1\)](#), such as:

- annoyance and inconvenience suffered by the public in common;
- injury to business: loss of profits due to the necessity of moving the business and loss of profits due to interruption of business by reason of and during construction of the public improvement (if the type of business is an integral part of, and closely related to, the land itself, the nature and amount of business and the income from the business may be admissible, if the owner or Appraiser can show it has a direct bearing on the value of the land);
- expenses for moving private and business personal property; or damages arising from the owner's inability to locate an acceptable substitute location;
- while an abutting owner has a right to ingress and egress, the loss of which will be compensated where there is either a physical injury to the property or impairment of access, the owner will *not* be compensated when DOT&PF, by proper exercise of the State's police power, installs traffic control devices and there results;
- rerouting or diversion of traffic;
- decrease in the amount of traffic on the highway;
- circuitry or impairment of travel caused by a divided highway;
- temporary impairment of access;
- loss of view;
- payment for illegal usage of the property, such as encroachments;
- generally, future plans for development; and
- in general, disregard damages that can be considered potential, speculative, remote, uncertain, and difficult to ascertain ([AS 09.55.310](#)).

The facts of a particular case, when viewed in the light of current laws, may result in some items stated above being treated as compensable under State law.

Questions regarding noncompensable items should be directed to the Department of Law.

#### **4.19. Benefits**

Value may be created or increased by a public improvement as follows:

- **Project Enhancement:** Appraisers must disregard any increase in real estate values in advance of ROW acquisition created by knowledge of a pending public improvement;
- **Special Benefits:** a project-related value increase that is special to a specific property, and not enjoyed by the general public along the project; and
- **General Benefits:** consider as general benefits any benefits that are not special.

**Alaska rule:** The Appraiser may use special benefits to the remainder only to offset damages to the remainder. If special benefits exceed damages, the landowner is still entitled to receive the full market value of the portion actually acquired (see notes [AS 09.55.310](#)).

#### **4.20. Fixtures and Equipment**

Identify and list in the appraisal report any fixtures and equipment to be acquired as real property (items intended to remain with the structure, built-in appliances, etc.). Base the value of fixtures and

equipment on their contribution to the overall value of the property. The Relocation and Property Management Units handle personal property. For complex or specialized items beyond the Appraiser's training or experience, DOT&PF may contract with a recognized expert to produce a specialty report that is made available to all Appraisers assigned to the parcel. The Appraiser may secure a separate specialty report. The Appraiser submits specialty reports to the Appraisal Review Section for approval. Include an analysis of the specialist's report within the text of the appraisal report. Do not arbitrarily adopt items or amounts shown by the specialist, but consider them for their effect on the property's value. Include the specialty report in the appraisal report regardless of the extent to which the report or its conclusions are used.

#### 4.21. Tenant-owned Improvements and Leaseholds

If a legal tenancy is involved, appraise the leasehold interest. If the lease has a condemnation clause, submit the lease to the Department of Law for a legal review of the compensability of the tenant's real property interests. Appraise improvements under the following two premises, disregarding any right or duty to remove them by the tenant. Consider the market value contribution to the whole property *based on the higher of the two premises*:

- market value of each item that contributes to the market value of the whole property. Depreciated replacement cost may be acceptable, if it can be demonstrated that the market responds in that manner. It is the market value of the *entire* property that is the standard of valuation (simply totaling the independent money values of its separate parts is an unacceptable technique); or
- market value of each item for removal or salvage (orderly liquidation value).

#### 4.22. Uneconomic Remnants

An uneconomic remnant is a portion of a property that the Review Appraiser determines has little or no utility *or* value to the owner (Sec. 5.3.9.). DOT&PF must offer to acquire a remnant that a Review Appraiser judges to be uneconomic, based on concern for owners left in a reduced economic position due to a DOT&PF project. The owner's comments, if any, concerning the usefulness (utility) of the remainder, and the Appraiser's analysis of the

value of the remainder, are included in the addenda to the appraisal narrative.

#### 4.23. Real Property/Personal Property

Identifying an item as real or personal property requires determining whether it constitutes a "fixture." The term "fixture" generally denotes an item of personal property that has become so annexed to land or buildings that it has become a part of the realty.

Identify the items considered to be real property as well as those major items identified as personal property in the appraisal report [49 CFR 24.103(a)(2)(i)].

For the purpose of this provision, items of no importance to the value still must be addressed by the relocation program, and the appraisal is the source document for identifying whether an item was purchased as part of the real estate or was excluded from the fair market value set by the State.

The determination of whether personal property has become a fixture can be made by the combined application of the following tests:

1. Has there been a real or constructive annexation of the item to the realty?
2. Has the item been fitted or adapted to the uses or purposes of the realty to which it is connected?
3. Did the party making the annexation intend the item to become permanent part of the realty?

Pay particular attention to the second test since the purpose or use for which the item was annexed to the realty must be considered.

When questionable items such as machinery, equipment, appliances, etc. are involved, determine whether they are real or personal property. Document this in the report.

When the report is submitted to DOT&PF for review, the Review Appraiser should identify which questionable items have been properly determined to be realty items.

Best practice is for the Review Appraiser to coordinate with the Relocation Agent assigned the parcel to be sure that the itemization clearly delineates the realty and the personality.

## 5. Appraisal Review

---

- 5.1. Introduction
- 5.2. Appraisal Review Requirements
- 5.3. Review Process
- 5.4. Routing of Appraisals
- 5.5. Appraisal Reports for Condemnation

### 5.1. Introduction

Before the ROW Agent begins negotiations, DOT&PF's Review Appraiser must conduct an appraisal review and establish a Recommendation of Just Compensation for each parcel to be acquired.

An appraisal review report shall be of sufficient detail, consistent with legal and professional requirements for format and documentation, to present a clear and accurate opinion of appraisal acceptability. DOT&PF requires the [Review Appraiser's Recommendation of Just Compensation Form 25A-R505](#) be completed and submitted for each appraisal review.

The Recommendation of Just Compensation is referred to as the "Reviewer's Recommendation" or simply "Recommendation." For total acquisitions, just compensation is based on the Department's approved appraisal of market value and may be no less than the recommendation established by the Department's authorized Right-of-Way Review Appraiser. For partial acquisitions, just compensation is based on the Department's approved appraisal of market value, giving consideration to compensable (severance) damages and/or special project benefits (if any), and may be no less than the recommendation established by the Department's authorized Right-of-Way Review Appraiser. The minimum just compensation for any interest acquired by DOT&PF must not be less than the minimums established in Section 6.2.1 of this manual.

To estimate the Recommendation of Just Compensation and determine whether each appraisal is acceptable, a Review Appraiser must review all appraisal reports received by DOT&PF including both those commissioned by DOT&PF and those provided to DOT&PF through other means (such as appraisals performed for and provided by property owners). After completing the review, the Review Appraiser must identify each report as approved, accepted, or not accepted.

An appraisal may be acceptable without being the approved appraisal for the parcel. For example, if DOT&PF has requested two appraisals for the same parcel, both may be acceptable (correct format, use of correct forms, complete supporting data, etc.), but only one can be the approved appraisal.

In addition to determining the Recommendation of Just Compensation, the Review Appraiser:

- provides technical assistance to DOT&PF, the Department of Law, and other State agencies, and to staff and fee Appraisers and Review Appraisers;
- acts as Headquarters' representative on appraisal or value-related issues;
- acts as the Headquarters' representative on project plans-in-hand inspections, appraisal contract selections, and appraisal plans; and reviews and approves specialty reports; and
- administers contracts for Review Appraisers when the Statewide Right-of-Way Chief deems it necessary and provides permission to hire contract reviewers;

Additionally, the Review Appraiser:

- under [49 CFR 24.102\(n\)\(2\)](#) may not be unduly influenced or coerced regarding any valuation or other aspect of an appraisal, review;
- may not be supervised or formally evaluated by a person functioning as a negotiator unless this requirement is specifically waived by FHWA under hardship to DOT&PF; and
- may not have any direct, indirect, present, or prospective interest in the property to be valued and is required to so certify when he/she signs the Certificate of Appraiser.

Unless otherwise specified, all instructions in this chapter refer to the Review Appraiser ("Reviewer") from the Headquarters' Appraisal Review Section or the contract Review Appraiser who has been assigned to the project.

### 5.2. Appraisal Review Requirements

For DOT&PF purposes, Appraisers (including Review Appraisers) and estimators are divided into three

classifications: staff, fee (contract), and specialty. (See Sec. 4.3.)

### **5.2.1. Pre-Appraisal Field Inspection**

Whenever possible a Review Appraiser should accompany the appraiser on a pre-appraisal field inspection of the project and discuss any potential problems.

### **5.2.2. Review Appraiser Assignment**

All appraisal reports, regardless of source, shall be timely transmitted directly to the Statewide ROW Chief, or delegate, who then assigns a Review Appraiser to each. Upon receipt, the Review Appraiser logs all appraisal reports on the appraisal review tracking system.

## **5.3. Review Process**

### **5.3.1. Compliance Check**

Check all mathematical computations in the appraisal report for accuracy; proofread the appraisal report, including for clarity and logic; check with the Regional Right-of-Way Agent for any concerns regarding credibility or outdated information; and complete the Conformance to Plans and the Appraisal Report Checklist as follows:

#### **Conformance to Plans**

Check the conformance of the appraisal report against the ROW plans by ensuring that the appraisal report reflects the following:

- accurate project number and parcel numbers;
- correct ownership;
- current ROW plans, design plans/profiles, and cross-sections;
- accurate areas;
- discussion of all encroachments; and
- existing easements, including identification of size, purpose, use, and interests.

#### **Appraisal Report Checklist**

Complete a [Narrative Appraisal Checklist Form 25A-R510](#) for each report to ensure that all of the required items specified in Ch. 4 are included.

For contracted reports:

- check the report against the contract to ensure that all requirements (scope of work, special

instructions, type of report, etc.) have been fulfilled; and

- if all applicable items in the checklist are present in the report, send a Recommendation for Payment of 75% to the Regional ROW Chief.

### **5.3.2. Post-Appraisal Field Inspection**

If feasible, conduct an onsite review of each assigned appraisal report and the comparable sales (with the appraiser if possible) as soon as possible after the appraisal reports are received. As part of the inspection, take the following actions:

- identify the scope of available data on the project, including relevant appraisals and comparable sales;
- perform spot checks to confirm the accuracy of sales data and the descriptions of both the subject and comparable sales;
- become familiar with zoning, local ordinances or codes, regional requirements, etc. to evaluate the appropriateness of the appraiser's analysis;
- conduct an overview of area and neighborhood economic trends;
- for a partial acquisition, examine cross sections and plans to thoroughly consider the effects of access, drainage, topography, design features, etc. on potential damages or benefits; and
- conduct spot check interviews of landowners, neighbors, assessors, real estate professionals, recording officers, media, previous owners, local appraisers, or other interested parties as necessary.

If it is not feasible to conduct a field inspection, place a written explanation for reasons in the project file (for example: “The appraisal is uncomplicated and involves small amounts of money”; “There are no significant improvements”; or “The Review Appraiser is familiar with the subject and comparable data from prior inspections.”).

### **5.3.3. Desk Review of Appraisal/Appraisal Report**

Analyze all aspects of the appraisal report. When reviewing a specialty report, disclose any training and experience limitations you may have and consult with appropriate technical specialists as necessary.

During the review, answer the following questions:

1. Are the sales or market data used comparable to the property under appraisal?
2. Does the appraisal represent current market value, or current in the context of market conditions that existed on the effective date of the appraisal?
3. Does the report include accurate information?
4. Does the report contain sufficient pertinent data to value the property adequately? Are all pertinent data incorporated in the analysis?
5. Are adjustments to the data supported, proper, and consistent?
6. Does the analysis of the data result in logical conclusions? Are the conclusions appropriate, fair, and reasonable?
7. Does the appraisal conform to acceptable appraisal methods, procedures, and techniques?
8. Does the appraisal conform to DOT&PF requirements?
9. Does the appraisal include all applicable approaches to value? If not, is there an adequate explanation why an approach was not used? Is each approach adequately supported?
10. Has the appraiser considered all compensable items, including damages and benefits, and excluded items considered noncompensable under Alaska law, or considered ineligible for Federal participation?
11. Does the appraisal identify or list:
  - a. All affected buildings, structures, and other improvements?
  - b. Fixtures considered a part of the real property acquired or damaged?
12. Does the appraisal give appropriate, fair, and reasonable treatment to tenant-owned improvements? Is there an allocation of fee-owned and tenant-owned interests?
13. Are opinions based on sound reasoning and explanations?
14. Has an uneconomic remnant been created in the remainder?

15. Is the value conclusion consistent with other appraisals of similar properties submitted to the Appraisal Review Section? If not, why?
16. Is the number of appraisals adequate?

If the scope of work includes special instructions for the appraiser, consult with the Regional ROW Chief and the appraisal supervisor or DOT&PF's counsel to determine whether the appraiser properly followed the instructions.

Consider any information available for the parcel and similar properties in close proximity, including DOT&PF waiver valuations and approved appraisals, private appraisals, appraisals submitted by property owners, etc. Consider any relevant data that are not included in the appraisal, such as unreported sales, general economic indicators and trends, changes in development patterns, and physical or social factors that may affect the site or neighborhood, etc.

#### **5.3.4. Request for Corrections, Revisions, Explanations, or Supplements; Unacceptable Appraisals**

If the Reviewer cannot accept the appraisal because of errors or insufficient documentation or analysis that may affect value conclusions, contact the appraiser and request additional consideration. Note minor errors and give the appraiser the opportunity to make adjustments.

If you have data that may affect value but is not included in the report, provide it and request further consideration. The appraiser will either supplement the appraisal report or provide written documentation to support a decision not to use the data.

Give due deference to the appraiser's opinions. Refer any unresolved differences of opinion on value-related technical appraisal issues to the appropriate Regional ROW Chief and staff for action. Document all reasons for not being able to accept the appraisal.



### **5.3.5. Findings of Unacceptability**

An appraisal is unacceptable if it does not meet the standards of this manual or is inconsistent with the Uniform Standards of Professional Appraisal Practice, and if reasonable efforts to obtain corrections, supplements, or revisions are ineffective.

Justifications for unacceptability include, but are not limited to:

- inadequate research, investigation, or interpretation of market facts has led to unsupported conclusions;
- the appraisal incorrectly used recognized methods and techniques necessary to produce a credible appraisal; or
- analyses, opinions, or conclusions are misleading.

Consider all necessary explanations, corrections, revisions, or supplements before issuing the Recommendation of Just Compensation. For an unacceptable appraisal, retain file notes until settlement or project certification, whichever is later.

Document all changes in the original reports and retain them in the parcel file until settlement or project certification.

Send written notification with the reasons for unacceptability of an appraisal and a recommendation for nonpayment to the Regional ROW Chief for action. The contracting officer makes the decision on whether to withhold payment.

### **5.3.6. Corrections and Changes to the Appraisal by Review Appraiser**

Make pen and ink corrections of any minor mathematical or structural errors if they don't affect the final conclusion of value. Initial and date each correction.

Include in the appraisal any changes for revised areas, minor design changes, delays between the effective date of the appraisal and Recommendation of Just Compensation dates, etc. by initial and date, if the appraiser is unable to make these changes within a reasonable time. Attach to the appraisal written support for any changes.

### **5.3.7. Request for Additional Appraisal**

It may be necessary to request an additional appraisal, if:

- original appraisal fails to meet minimum standards;
- there is an unresolved divergence among appraisers concerning value or interpretation of data; or
- Reviewer deems it necessary.

Coordinate the justification for an additional appraisal with the Regional ROW Chief, who has the ultimate authority to authorize additional appraisals.

### **5.3.8. Review Appraiser May Establish Independent Value**

If an appraisal has inadequate support for the Recommendation of Just Compensation and it is impractical to obtain an additional appraisal, develop additional documentation to support an independent value. The valuation must reflect the Reviewer's independent analysis and conclusions and meet applicable DOT&PF standards, criteria, or specifications. This valuation then becomes DOT&PF's approved appraisal.

### **5.3.9. Uneconomic Remnants**

Designation of a remainder as uneconomic is an administrative function unrelated to market value and is the responsibility of the assigned Review Appraiser (either staff or contract). Consider owner comments, regional or Department of Law recommendations, and appraisal issues. Document the decision on the [Review Appraiser's Recommendation of Just Compensation Form 25A-R505](#). Make this designation as a result of one or more of the following:

- analysis of the remainder property;
- meetings between the owner and DOT&PF during the pre-acquisition stage; or
- meetings between the owner and the Acquisition Agent.

Show the value of any uneconomic remnant on the right-hand side of the Recommendation of Just Compensation within the allocation section of the form and include it in the Federal participation section of the form. Do not add it to market value, since it

may reflect the use of the property rather than its value.

If the Review Appraiser designates a remainder as an uneconomic remnant, DOT&PF must make an offer to purchase the remainder.

### **5.3.10. Basis for Just Compensation**

In the basis section of the [Review Appraiser's Recommendation of Just Compensation Form 25A-R505](#), include a discussion of any significant divergence on parcels with more than one appraisal. If an adjustment to the appraiser's value is warranted, support and document its reasons. The Review Appraiser may round the sum of the components (land, buildings, and damages) and the total to an amount not less than the approved appraisal.

### **5.3.11. Documenting the Recommendation of Just Compensation**

Prepare the Recommendation of Just Compensation in an objective, independent, and unbiased manner, and document this by placing a signed and dated statement [Review Appraiser's Recommendation of Just Compensation Form 25A-R505](#) in the file setting forth the following:

1. The Recommendation of Just Compensation, concluded to a rounded amount not less than the approved appraisal, allocated to show:
  - a. value of the land to be acquired;
  - b. value of major improvements to be acquired (tenant-owned and owner);
  - c. value of easements, permits, underlying fee, etc. to be acquired;
  - d. cost-to-cure items;
  - e. net damages;
  - f. special benefits; and
  - g. uneconomic remnants, if appropriate.
2. An acknowledgment that the Recommendation of Just Compensation may be used in connection with a Federal-aid project, when appropriate and, if so, a list of any amounts in the Recommendation of Just Compensation that are ineligible for Federal reimbursement as prescribed by [23 CFR 710.203\(b\)\(1\)](#). Ineligible items are listed in Sec. 4.18.4.

3. A statement that a field inspection of the parcels to be acquired and the comparable sales was conducted, or the reasons an inspection was not conducted.
4. A statement that includes all of the following:
  - a. Reviewer's compensation is not contingent on the results of this review;
  - b. Reviewer will not benefit in any manner from the acquisition of the property being appraised; and
  - c. Reviewer has no direct, indirect, present, or prospective personal interest in the property.
5. A statement that the Review Appraiser arrived at the Recommendation of Just Compensation as a result of independent, personal, unbiased professional analysis, opinions, and conclusions, based upon a technical review of the appraisal and other available factual data, without collaboration or direction.

### **5.3.12. Revisions to the Recommendation of Just Compensation**

If additional value information becomes available to the region or the Department of Law after the review, update or revise the Recommendation of Just Compensation at any time before settlement on a separate [Review Appraiser's Recommendation of Just Compensation Form 25A-R505](#), indicating that it is a revision. If the Department of Law has filed a condemnation action, confer with the attorney assigned to the matter.

## **5.4. Routing of Appraisals**

After the review, if there have been any changes to the original appraisal, request changed pages and identify the original pages as "VOID," or clean copies (with original photographs, fully corrected, supplemented, or revised) of the approved appraisal report from the appraiser. The number of clean copies will be determined by the fee appraiser contract or by the Department of Law. Send the accepted or approved report and the Recommendation of Just Compensation to the appropriate Regional ROW Chief.

### **5.4.1. File Retention Schedule**

The Appraisal Review Section retains the following files until parcel settlement, project certification or, if condemnation is involved, until final judgment. The

following files are retained in compliance with Federal requirements:

- original appraisal report;
- all revised or corrected appraisal pages;
- original and revised comparable sales data and project books;
- all correspondence;
- copy of the [Review Appraiser's Recommendation of Just Compensation Form 25A-R505](#); and
- copy of the appraiser's contract or assignment.

### **5.5. Appraisal Reports for Condemnation**

When a new or revised appraisal is obtained by or for the Department of Law, the appraisal must first be reviewed if it is to be used as a basis for settlement. To facilitate timely review, the Department of Law should inform the regional and Headquarters' offices of the dates of masters' hearings or trials and of new or amended appraisal contracts when they are not the contracting office.

Report the findings, comments, and recommendations of the review directly to the attorney assigned to the matter and seek corrections in coordination with the Department of Law. Maintain the strictest level of the attorney-client relationship, and mark and treat all correspondence, including comments about the appraisal, as CONFIDENTIAL - ATTORNEY-CLIENT COMMUNICATION. Keep all correspondence with Department of Law in a separate but related file.

Review opposing appraisals in coordination with the Department of Law. Advise the Department of Law of the strongest aspects of a valuation witness' report, and which aspects DOT&PF may successfully challenge.

If additional value information becomes available after the case is filed, consult with the Department of Law to discuss updating or revising the Recommendation of Just Compensation before settlement.

Upon conclusion of the review process, do one of the following:

- issue a new or revised Recommendation of Just Compensation based on the date of taking as established by the court;
- advise the Department of Law that the appraisal is unacceptable and document the work file in accordance with USPAP; or
- if the appraisal is not required to be approved as the basis of value (that is, neither a revision of, nor a replacement for, the approved appraisal), discuss findings with the Department of Law and document in the file that the appraisal was reviewed before use in an eminent domain action.

After settlement, the Department of Law should send a copy of the Settlement Report to the Appraisal Review section.



## 6. Acquisition

---

- 6.1. Introduction
- 6.2. Approval for Acquisition
- 6.3. Hiring of Consultants
- 6.4. Assignment of Parcels to DOT&PF Staff
- 6.5. Preparation by Acquisition Agent
- 6.6. Document Preparation
- 6.7. Initial Contact
- 6.8. Improvements in the Area to be Acquired
- 6.9. Counter Offers and Administrative Settlements
- 6.10. Conclusion of Negotiations
- 6.11. Right of Entry
- 6.12. Condemnation
- 6.13. Archaeologically Significant Sites
- 6.14. Functional Replacement
- 6.15. Acquisition from Federal and State Agencies, Including Native Interests through BIA
- 6.16. Early Acquisition

### 6.1. Introduction

DOT&PF is responsible for securing property rights necessary to certify a project in a timely manner. Certification means that all interests in the property adverse to the State's use have either been cleared or DOT&PF has secured legal entry.

All acquisition discussions are directed toward just and fair compensation to both the property owner and the State; that every courtesy, consideration, and patience is extended the property owner, and that the property owner feels confidence and respect toward DOT&PF and its employees. All offers shall represent the best and most current estimate of market value as determined through sound, approved appraisal and acquisition practices.

The DOT&PF ROW Agent makes every reasonable effort to expedite acquisitions by agreement with owners, to minimize litigation, and to promote public confidence in DOT&PF's land acquisition program.

### 6.2. Approval for Acquisition

The Review Appraiser forwards all approved and accepted appraisals and Recommendations of Just Compensation to the Regional ROW Chief. Waiver valuations are forwarded to the Regional ROW Chief. The Regional ROW Chief stamps the

Recommendation "Approved for Acquisition" and signs it or signs the waiver valuation, thus establishing just compensation for parcels to be acquired.

#### 6.2.1. Minimum Just Compensation

Just compensation is primarily based on the accepted appraisal standards set forth in this manual (See Chapters 4, 5, and 9) and must be no less than the recommendation established by the Department's authorized Right-of-Way Review Appraiser under the standards and guidelines set forth in this manual. The minimum just compensation for interests acquired by DOT&PF must not be less than \$500 for temporary acquisitions and \$1,000 for permanent acquisitions.

### 6.3. Hiring of Consultants

The Regional ROW Chief makes the decision to hire consultants to supplement ROW staff under a Professional Service Agreement (PSA).

On a given project, consultants may be used to perform some or all of the Acquisition functions performed by ROW Agents. The extent of consultant use and level of responsibility will be detailed in the consultant contract. Consultants are expected to follow the policies and procedures detailed in this Manual for the particular functions they are performing unless otherwise directed within the terms of the contract.

### 6.4. Assignment of Parcels to DOT&PF Staff

The ROW Agent supervising acquisitions may not supervise, formally evaluate the performance of, or influence any Appraiser or Review Appraiser unless FHWA waives the requirement after determining that it creates a hardship for DOT&PF. Nor may the ROW Agent assign to the agent who prepared the appraisal for the parcel any acquisition or negotiation activities on that parcel. However the ROW Agent supervising acquisitions may assign to the agent acquisition or negotiation activities on a parcel for which they prepared a waiver valuation if the estimated parcel value is \$25,000 or less (\$10,000 for airport parcels and \$50,000 for State-funded projects).

## 6.5. Preparation by Acquisition Agent

Unless otherwise specified, all instructions in the remainder of this chapter refer to the ROW Agent (“Acquisition Agent”) assigned to acquire the ROW.

Be familiar with and be able to express the following:

- the role of DOT&PF and its acquisition functions;
- the necessity for the proposed project; and
- project design and how the proposed project will affect the property.

During the course of acquisition discussions, remember that you are representing the interests of the public as well as that of the property owner. Care should be exercised at all times, particularly if the property owner may be unfamiliar or inexperienced in real estate transactions and real estate values. Conditions or characteristics of the property that were not available to be considered in the appraisal shall be fully considered and evaluated before acquisition of the property is continued.

Before the Acquisition Agent’s first contact with the property owner, assemble the following:

1. Valuation (the Estimate of Just Compensation), including one of the following:
  - a. approved [Value Estimate Form 25A-R420](#);
  - or
  - b. approved appraisal and [Review Appraiser’s Recommendation of Just Compensation Form 25A-R505](#).
2. ROW plans and design plans;
3. current (within past six months) [Title Search Report Form 25A-R305](#) (or equivalent);
4. Letter of Offer to Purchase, as described in Sec. 6.6.4;
5. [Acquisition Incentive Program Form 25A-R604](#) (see Sec. 6.7.1), if approved for use on the project;
6. [Memorandum of Agreement Form 25A-R605](#) as described in Sec. 6.6.1;
7. Deed and/or other conveyance document with legal descriptions and plats listed in Sec. 6.6.2;

8. [Purchase Voucher Form 25A-R682](#) as described in Sec. 6.6.3;
9. [Record of Contact Form 25A-R685](#) as described in Sec. 6.7.12, or a document containing the same information);
10. Acquisition and Relocation Brochures; and,
11. If \$600 or more, IRS Form W-9 (Request for Social Security or Tax ID Number) (the property owner must complete the IRS forms) or Substitute W-9 DOT&PF Internal Form.

The title search will identify the individual or corporate ownership of the property.

The completed acquisition document package needs to be reviewed by the ROW negotiations and acquisition supervisor before presenting to the property owner.

## 6.6. Document Preparation

The ROW Agent will ensure that compliant forms are used to document property management and transfers. There are various approved forms provided throughout this manual and on the Alaska DOT&PF Right-of-Way website. ROW staff must also consult with DOT&PF’s [Title VI Non-discrimination Program Plan](#) (2020) to ensure the various appendices for contracts and deeds under [USDOT Order 1050.2A](#) are included as required. See <http://dot.alaska.gov/cvlrts/forms.shtml#titleVI>.

### 6.6.1. Memorandum of Agreement (MOA)

The [Memorandum of Agreement Form 25A-R605](#) (MOA) is the contract of sale between DOT&PF and the property owner. Each grantor or tenant must date and sign the MOA in ink.

The MOA should contain information on the land and improvements acquired, damages, total compensation due the owner, and any terms and agreements.

### 6.6.2. Conveyance and Related Documents

The deed to DOT&PF should, whenever possible, be a general warranty deed for a fee simple interest (see [AS 34.15.030](#)). (In some cases when a fee simple interest cannot be acquired, a permanent easement may suffice though it is not the policy of DOT&PF to acquire easements in lieu of fee simple interests merely for convenience. Refer to [AS 09.55.230](#) discussed in Section 6.7.2.) All parties with an

interest in the property need to execute the instrument. Conveyance and related documents can also be found on the DOT website at: [http://www.dot.state.ak.us/stwddes/dcsrow/pop\\_row\\_manual.shtml](http://www.dot.state.ak.us/stwddes/dcsrow/pop_row_manual.shtml).

Include the following in each conveyance document:

1. grantor's name (typed); show the name of the grantor exactly as it appears on the document that gave the grantor title. If differences appear, clearly identify the principals with an "AKA" (also known as) or "Nee" (maiden name);
2. grantor's legal capacity (executor, attorney-in-fact, guardian, etc.);
3. vesting (husband and wife, a single person, Alaska corporation, etc.) or how property is deeded;
4. grantor's mailing address;
5. amount of the consideration or a notation that consideration is exchanged; for example, "\$10 and other valuable consideration";
6. legal description;
7. project and parcel number;
8. page number for each attached plat;
9. area of the acquisition;
10. reservations or exceptions approved by DOT&PF (if land is to be conveyed subject to certain rights, such as easements or mineral rights, note those rights in the conveyance document; frame the document to convey all of the grantor's rights, title, and interests subject to those rights unless the MOA expressly provides otherwise);
11. other rights acquired by DOT&PF such as access control, etc.;
12. date the grantor signs the document; if numerous grantors are involved, the date of conveyance is the date of the final signature (add as many additional notary blocks to the form as necessary to accommodate persons signing on different dates); all signatures must be acknowledged; and
13. Access Control Clause (if portions of the access control clauses must be changed, carefully combine clauses in the deed so that the intent of

the deed is not changed. Request legal advice, if necessary, through the acquisition supervisor).

### Access Control

Use the following special warranty deeds to prepare deeds for controlled access facilities when only a portion of a property is acquired:

Use [Warranty Deed \(Standard/Partial Property/Controlled Access Without Frontage Road\) Form 25A-R615](#), [Warranty Deed \(Corporate/Partial Property/Controlled Access Without Frontage Road\) Form 25A-R622](#), or if the entire ROW is to be controlled access, [Warranty Deed \(Standard/Partial Property/Controlled Access With Frontage Road\) Form 25A-R618](#). Use the first two forms where no frontage road is provided and the other two where a frontage road will be built. If there is to be an opening, designate to which highway or roadway access is reserved and between specific engineers' stations ("...said highway" "B Avenue," "4th Street").

Use [Warranty Deed \(Standard/No Taking/Controlled Access\) Form 25A-R619](#) or [Warranty Deed \(Corporate/No Taking/Controlled Access\) Form 24A-R624](#) if there is no take area and only the access rights are to be acquired. Include access rights in all instruments necessary to clear the title. Modify the usual access clause as necessary to fit the situation. An example is:

"...the undersigned mortgagees do further release and discharge from the lien of said mortgage any and all rights or easements appurtenant to the remaining property..."

If acquiring an entire property for a controlled access facility, use [Warranty Deed \(Standard/Total Property\) Form 25A-R613](#) or [Warranty Deed \(Corporate/Total Property\) Form 25A-R621](#).

### Acknowledgments

Acknowledgments must be signed and sealed in accordance with [AS 09.63.100](#). All grantors and their spouses must sign the document in ink exactly as their names appear (as grantees) in the conveyance to them. Use "AKA" or "Nee," as appropriate. Add as many additional notary blocks to the form as necessary to accommodate persons signing on different dates.

If a corporation executes the document, it must be signed in the full and correct name of the

corporation by its duly authorized officer or officers, sealed with the corporate seal, and attested. The acknowledgment must specify the official designation of the corporate officers. The deed must be accompanied by a copy of the resolution authorizing the conveyance to DOT&PF.

If the document is executed by an attorney-in-fact, it must meet the following criteria:

- be signed in the name of the principal by the attorney;
- be properly acknowledged by the attorney as the free act and deed of the principal; and
- be accompanied by the original or a certified copy of the power of attorney in force at the time of its exercise, if there is not a prior recorded power of attorney in the appropriate recording district.

Organizations such as associations, clubs, and municipalities must have the appropriate acknowledgment attached to the deed, accompanied by a resolution authorizing the conveyance to DOT&PF.

### Exceptions in Deeds

A property owner may refuse to execute a warranty deed due to reservations in the owner's, or previous owner's patent, or from previous deed reservations. If this occurs, amend the warranty deed after consultation with the acquisition supervisor.

#### 6.6.3. Purchase Voucher

The [Purchase Voucher Form 25A-R682](#) is the method of payment from DOT&PF to the property owner. Fill it out to the extent that information is available.

#### 6.6.4. Letter of Offer to Purchase

A Letter of Offer to Purchase (Exhibit 6-1) sets forth the total amount of the approved just compensation and identifies the property interests and improvements being acquired. The compensation offered must be the total amount approved by the Regional ROW Chief.

### 6.7. Initial Contact

Promptly contact all persons with an interest in the property (land or improvements). Make the initial contact by a mail-out package offer or by personal contact. Make reasonable efforts to contact all

property owners, and document the type, date, and result of each attempt in the [Record of Contact Form 25A-R685](#) (see details in Sec. 6.7.12 "Record of Contact").

Determine that the person contacted has the authority to negotiate or convey the property to DOT&PF. If ownership differs from that shown on the title report, notify the appropriate persons for necessary changes to the title report, ROW plans, and documents. The owner may be represented by others. Sections 6.7.7 through 6.7.10 describe entities that may handle the acquisition instead of the owner.

Present the written offer package for the owner to read. This first presentation of a written offer to purchase is the "initiation of negotiations." Make sure that the owner understands all provisions. If there is concern that the owner does not understand, work with the DOT&PF Civil Rights Office to obtain assistance for the owner. Indicate where each owner or tenant-owner is to sign. If they choose not to sign at that point, allow them adequate time to consider the offer.

DOT&PF may not require any owner or tenant to surrender possession of real property before receiving the agreed purchase price or depositing with the court an amount not less than the approved Recommendation of Just Compensation.

Offer to tour the property with the owner during the first personal contact with them. If a translator is needed, work with the DOT&PF Civil Rights Office to select a translator with whom the owner is comfortable. Secure a signed affidavit from the translator that the owner is making any agreements knowingly, willingly, and without duress.

Make DOT&PF's offer in a clear and forthright manner. DOT&PF uses the one-offer method, which contemplates acquisition of the property based on DOT&PF's formal Recommendation of Just Compensation. When presenting the offer, thoroughly familiarize the owner with the approved appraisal or waiver valuation. Under no circumstances may condemnation be used as a threat or as a reason to accept DOT&PF's offer.

If questions arise that require clarification or further discussion, contact the Appraiser, Review Appraiser, or their supervisor, depending on the complexity of the issue.

Before making the first contact thoroughly read the appraisal and Review Appraiser’s Recommendation of Just Compensation. Be alert for any outdated information. Among other items consider market changes, new ownership information, and liens. If changes are necessary, submit a recommendation to the acquisition supervisor who will work with the Review Appraiser to obtain corrections.

**6.7.1. Acquisition**

The acquisition incentive program is intended to reduce project time and potentially costs by offering property owners an incentive above the approved just compensation for timely acceptance of the offer to acquire their property.

DOT&PF encourages “acquisition in person” as the procedure for all acquisitions. However, when not feasible, owners can be contacted by telephone with a package of information immediately mailed to them by certified mail, return receipt.

Give the owner at least two weeks to review the offer. If the owner does not respond within two weeks, make additional efforts to contact the owner.

If all reasonable measures fail, two offers sent in this manner to the last known address, followed by reasonable attempts to contact the owner personally or by telephone constitute a diligent attempt. If no response is received, send a third and final offer. If there is no response, consult with appropriate Regional ROW Chief to discuss options. The Regional ROW Chief will decide when it is appropriate to proceed to condemnation.

**Acquisition Incentive Program**

The use of acquisition incentives for a project requires prior written approval of the Pre-Construction Engineer. When multiple projects result from a single Environmental Document, incentives must be offered on either all or none of the projects. The Pre-Construction Engineer may grant exceptions where offers to parcel owners will be made at least one year after the bidding date of the adjacent project.

The incentive will be an amount of money above the approved just compensation. Incentives are to be applied to all parcels on approved projects except for parcels owned by governmental entities.

**Figure 1  
Incentive Offer Computation**

Where the Approved Compensation is:		The Incentive is Calculated as:	
Over:	But Not Over:	Incentive:	+ % of Amount Over
\$0	\$1,000	\$1,000	
\$1,000	\$2,500	\$1,000 base	+ 83.3% over \$1,000
\$2,500	\$5,000	\$2,250 base	+ 70% over \$2,500
\$5,000	\$7,500	\$4,000 base	+ 50% over \$5,000
\$7,500	\$10,000	\$5,250 base	+ 45% over \$7,500
\$10,000	\$20,000	\$6,375 base	+ 40% over \$10,000
\$20,000	\$30,000	\$10,375 base	+ 35% over \$20,000
\$30,000	\$100,000	\$13,875 base	+ 32.5% over \$30,000
\$100,000	\$300,000	\$36,625 base	+ 30% over \$100,000
\$300,000	\$513,500	\$96,625 base	+ 25% over \$300,000
\$513,500		\$150,000	

Note: Round incentive amount up to the next ten-dollar increment

**Example Part A:**

Approved Just Compensation on part acquired: \$150,000  
 Incentive amount  
 $\$36,625 + [(\$150,000 - \$100,000) \times 30\%] = \$51,625$

Incentive offer (rounded up to next \$10): \$51,630

Do not consider the uneconomic remnant value when calculating the incentive amount.

**Example Part B:**

Appraised value of part acquired (from Example Part A)	\$150,000
Incentive (calculated in Example Part A based on \$150,000)	+\$51,630
Appraised value of uneconomic remnant	<u>+\$20,000</u>

Total offer: \$221,630

If tenant-owned improvements require a separate offer, then the incentive is shared between the property owner and the tenant based on the percentage shares of the value for the whole property respectively attributable to each party.

**Example Part C:**

Approved Just Compensation on part acquired (from Example Part A) \$150,000

Allocated value of Tenant Improvement (as a portion of total above) \$30,000

Percentage of Incentive  
to Owner  $[1 - (\$30,000 / \$150,000)] =$  80%  
to Tenant  
 $[(\$30,000 / \$150,000)]$  OR (1-80% determined above) = 20%

Total Incentive Amount (calculated in Example Part A and rounded) \$51,630

Owner Portion of Incentive  
80% of \$51,630 (NOT rounded a second time) = \$41,304

Tenant Portion of Incentive  
20% of \$51,630 OR  $(\$51,630 - \$41,304) =$  (NOT rounded a second time) \$10,326

When there are multiple takings from the same parent tract (e.g. a fee and an easement) the incentive is based on the total just compensation for all the takings.

Incentives will be held open for 90 days from the date the initial offer is made. Advise property owners in writing of the expiration date of the incentives during the initial contact. Negotiations conducted after the expiration date of the incentive will be based on established just compensation without consideration of an incentive, unless the offer is formally withdrawn in writing and a revised “initial” offer is made due to alteration of the parcel being acquired. The revised “initial” offer will also have the incentive included and be held open for 90 days.

Incentive payments made based on the just compensation amount and settled within the 90-day period do not need additional approval. Any negotiated settlement above just compensation that

includes an incentive must be supported and approved according to this chapter.

Replacement housing payment (RHP) calculations for residential owners who have accepted offers with incentives will be based on the amount determined to be just compensation. The incentive will not be considered in the calculation and will not offset the amount of the RHP.

When parcels on the incentive projects must be acquired by eminent domain, suit will be filed based on approved just compensation. The incentive amount will not be included. The approved just compensation amount should be defended throughout the litigation process unless additional information or circumstances arise that alter the Department’s Recommendation of Just Compensation.



### 6.7.2. Explain the Impact of the Project

Explain the physical impact of the project on the property, the interest DOT&PF is seeking to acquire, and any interests DOT&PF will extinguish by the acquisition.

#### Physical Impact

Explain or reaffirm the public need and necessity of the project, and how the property fits into the overall project. Be positive. Inform the owner of the following:

- public necessity of the facility or improvement;
- positive effects the improvement will have on the neighborhood and the remaining property;
- engineering, environmental studies, and public hearings held that led to determining the final location; and
- impacts on the owner's property and DOT&PF's decisions or actions to deal with or mitigate those impacts.

Discuss the basic content of the acquisition's legal description with the owner and explain it on the ROW map. Avoid technical terminology as much as possible. Show the instruments of conveyance and explain them either during or after discussing the ROW map. Offer to walk with the owner around the acquisition.

Show the relationship between the layout of the proposed construction, the types and location of project improvements and the remaining land, including ingress and egress, proximity to the improvements, drainage patterns, relative elevation compared to the existing terrain, general details, the types and location of project improvements, etc. Point out where improvements or damages have been considered in the appraisal report, and what has been done about them (payment or mitigation measures).

#### Interest to be Acquired for the Project

It is the policy of Alaska DOT&PF to acquire fee simple interest whenever possible. [AS 09.55.230](#) allows for acquisition of fee simple interest for "public buildings or grounds, or for permanent buildings, for reservoirs and dams and permanent flooding occasioned by them, or for an outlet for a flow, or a place for the deposit of debris or tailings of a mine... and for "any of the purposes for which

the department, on behalf of the state, is authorized by law to acquire real property by condemnation." Under this same statute, easements are reserved "for any other use", including temporary uses.

Explain the interest to be acquired, such as fee simple, easement, access control, temporary construction permit, right of entry, etc. Explain the documents necessary to acquire that interest.

#### Split Estate Lands and Subsurface Easements:

Split estate lands acquired adjacent to most communities are generally owned by the ANCSA village corporation (surface) and the ANCSA regional corporation (subsurface). DOT&PF makes offers based on the fee value of the combined surface and subsurface estates. DOT&PF does not divide estate values, does not negotiate with subsurface owners, and does not split payments between surface and subsurface owners. Property owners are responsible for negotiating and dividing the compensation amongst themselves without DOT&PF's involvement.

Note that if there is significant value estimated in sand, gravel, minerals, or other such resources, the appraisal should consider this in the analysis of highest and best use and other valuation principles. It may be helpful to include this in the appraisal scope. See Ch. 4.

If the sale involves an Administrative Settlement, the same unit value must be presented in a written counteroffer from both corporations.

DOT&PF often ends up with a different quality of interest in the two different estates. While DOT&PF occasionally obtains deeds for subsurface interests, subsurface easements are more commonly obtained.

Subsurface easements come in two forms. First, those that are part of split estate acquisition (compensable) are adequate title if they convey material rights and sub-lateral, subjacent support to the DOT&PF facility. Secondly, there are also subsurface easements, generally titled Non-Development Covenants, that protect DOT&PF facilities where only an ANCSA surface estate is held.

#### Existing Interests to be Extinguished

Explain any other pre-existing interest that must be extinguished (utility easements, tenant-owned improvements, leaseholds, etc.). Adhere to the same

procedures in the acquisition of less-than-fee interests and take the following actions:

- ensure that the conveyance documents reflect the proper interest to be acquired;
- verify that current title information is correct; and
- obtain any information needed to clear the title to the property (satisfaction of judgments or liens, re-conveyances of deeds of trust, missing or unrecorded documentation, etc.).

### **6.7.3. Uneconomic Remnants**

If DOT&PF determines that a remainder is uneconomic, as noted on the [Review Appraiser's Recommendation of Just Compensation Form 25A-R505](#), include it in the offer. If the Appraiser has determined that the remainder is not an uneconomic remnant, but the owner advises that the remainder has little or no value or utility, advise the acquisition supervisor and the Appraisal Review Section.

Though DOT&PF is required to make an offer to purchase an uneconomic remnant the owner may choose to retain it.

### **6.7.4. Relocation Assistance Advisory Services**

If the parcel involves relocation, briefly explain the relocation assistance program to each property owner or tenant and explain that a Relocation Agent will be contacting the owner or tenant with more detailed information. Prepare the [Notice to Relocation Form 25A-R607](#) and transmit a copy to the Relocation Unit immediately following the initiation of negotiations. See Ch. 7.

### **6.7.5. Ending Initial Contact**

If the owner chooses not to sign the applicable documents, establish a date for a subsequent appointment, by mutual agreement.

### **6.7.6. Corporate Ownership**

Determine which officers are authorized to convey property and act in the corporation's behalf by requesting a copy of the corporation's articles of incorporation and bylaws for the files. If necessary, secure a corporate resolution authorizing conveyance of the property to DOT&PF. (Refer to the list of conveyance documents in Sec. 6.6.2. to find the forms intended for corporate use.)

### **6.7.7. Owner Represented by Attorney**

If the owner (or their authorized agent) advises DOT&PF to conduct all negotiations with an attorney, discuss the involvement of the attorney with the ROW Agent's supervisor, who will determine the need for the Department of Law (LAW) to attend meetings.

Following consultation with the ROW Agent's supervisor, make all contacts with the owner's attorney. Ask the owner or the owner's attorney to furnish written confirmation of the scope and fact of such representation, and place it in the parcel file. If the owner subsequently advises that an attorney no longer represents them, ask the owner to furnish a letter of notification for the file.

If the property owner employs someone as a representative to conduct discussions, including an attorney, thoroughly establish the extent of the authority of the owner's representative. Such authority or agreement must be in writing from the property owner.

### **6.7.8. Powers of Attorney (Owner Represented by Attorney-in-Fact)**

You may accept conveyance from the attorney-in-fact only after verifying the following conditions:

1. The power of attorney is current and recorded in the appropriate recording district; place a copy in the parcel file.
2. The power of attorney includes the authority to act for the principal in all matters relating to the property being conveyed.
3. A copy of the power of attorney is in the transaction package when transmitted for payment.

Even with an attorney-in-fact, you may accept conveyance directly from the individual or principal.

### **6.7.9. Owner Represented by a Fiduciary**

The title report or field work may indicate that a fiduciary (administrator, executor, guardian, trustee, personal representative, etc.) exists or is needed. The title report should note the existence of a court-appointed fiduciary if the court action was in (or was recorded in) the recording district where the property is located. If a fiduciary is needed, or if the existing court-appointed fiduciary does not have the power to convey, suggest that the party in interest (their heirs,



successors or assigns) obtain the services of an attorney.

When confirmed or appointed by a court, and acting under court order, a fiduciary may take the form of one of the following:

- administrator, executor, or personal representative of the estate of a decedent;
- court-appointed guardian of a minor, legally incompetent, or person with mental challenges;
- receiver of a corporation in receivership;
- referee or trustee of a person or business in bankruptcy; or
- a similar fiduciary role recognized under State law.

#### **6.7.10. Owner of a Restricted Native Allotment or Town-site Lot**

If the land being acquired is a restricted Native allotment or town-site lot, the Bureau of Indian Affairs (BIA) approves the conveyance with each owner's consent. Notify the BIA, or the Tribal Service Provider that provides real estate management for the land. Do this as early as possible, since BIA has its own mandated procedures that are time-consuming.

The requirements for obtaining a ROW (25 CFR 169) differ from those for acquiring a fee interest in restricted land (25 CFR 152). The BIA or the Tribal Service Provider can provide instructions for each process.

The BIA's Alaska Title Services Center can advise which entity to contact for a particular tract of land.

#### **6.7.11. Subsequent Occupants: Protective Lease Rental Agreement**

When a property contains rental units, there is the potential for the original tenants (in occupancy at the initiation of negotiations) to vacate the property and for new tenants to move in. Tenants who move in prior to final acquisition may become displaced persons entitled to relocation services and moving costs and replacement housing payments (see Ch. 7).

To avoid additional relocation payments, consider whether to enter into a [Protective Lease Rental Agreement Form 25A-R687](#) with the property owner for the vacated units.

Work with a Relocation Agent to analyze the cost effectiveness of this rental agreement. Consider the rental cost over the projected length of time to reach settlement with the owner versus the potential moving cost and availability of replacement housing (which might create the possibility of needing to make replacement housing payments under the provisions of last resort housing). The [Protective Lease Analysis Form 25A-R686](#) must be in writing, must be signed by the agents conducting the study, and must be approved by the Regional ROW Chief before any rental agreement may be entered into with the property owner.

If it is determined to be in the State's best interest to use a protective lease, negotiate a [Protective Lease Rental Agreement Form 25A-R687](#) with the property owner taking into consideration the following:

1. The rental amount should not exceed the market rent for similar units within the area.
2. The rent payments to the property owner are assured.
3. No cleanup, painting, or improvements are required prior to the lease.
4. The property owner will not be responsible for maintenance beyond that necessary to maintain the property in a safe and habitable condition.
5. The rental history of the unit being leased. Negotiations should begin at a rate equal to the average yearly occupancy rate multiplied by the most recent periodic rent previously paid for the unit.

The rental agreement is signed and dated by the Regional ROW Chief and the property owner. Send a copy of the agreement to the Pre-Audit Section for the purposes of making the monthly payments. The lease will continue on a month-to-month basis until the property is acquired, with the last periodic payment prorated to the date of closing or order of taking deposit, as appropriate. The cost of these payments will be coded as part of the settlement cost of the parcel.

#### **6.7.12. Record of Contact**

The agent assigned to acquire a property shall maintain a timely written record of all contacts (also sometimes referred to as the ROC or diary) with the property owner or owner's representative and any

tenants or lessees. ([Form 25A-R685 Record of Contact](#))

The purpose of the ROC is to record all contacts and efforts used by DOT&PF to acquire a parcel through settlement and negotiation prior to litigation. The ROC should indicate what has taken place during the negotiation.

Keep a current, detailed written diary for each parcel using the [Record of Contact Form 25A-R685](#), or a form that contains the same information. The Record of Contact contains questions regarding ethnicity and gender, required by FHWA.

During the interview, pay particular attention to the following things and consider including them in the ROC:

- owner's questions, requests, and responses to DOT&PF's offer;
- pertinent materials received from, or left with, the owner; list all documents given to each owner, such as the MOA, brochure, warranty deed, etc.;
- responses to specific questions or concerns, or promises made to the owner;
- problems noted or special requests made (construction features, etc.);
- specifics of any relocation benefits discussed with the owner;
- explanation of the owner's right to retain improvements, if applicable;
- offer to purchase uneconomic remnants, if any;
- explanation of the 90-day notice or rental provisions, if applicable;
- explanation of prepaid taxes or other reimbursable items;
- details of any counter-offers and the outcomes;
- explanation of any delays if a prompt offer was not made, and an explanation of any delays between subsequent contacts;
- any other information considered pertinent or helpful; and

- [Final Disposition Form 25A-R688](#) completed before transmitting for payment.

Make entries as soon as possible after each contact to assure accuracy. Since the ROC may be used as evidence in a court proceeding (including relocation assistance appeals) it is imperative that remarks in the ROC refer only to the negotiations and discussions with the owners/occupants and is limited to a recitation of the facts.

#### **6.7.13. Valuation**

Appraisals and waiver valuations are proprietary. Provide a copy of the valuation to the property owner or an authorized representative if requested, but leave the original in DOT&PF's possession until the parcel is settled or placed in condemnation. Retention schedules should comply with [23 CFR 710.201](#) (e).

#### **6.7.14. Revised Offer Letter or Withdrawal of Offer**

If the parcel is determined no longer required for a project, send a letter to the owner withdrawing the offer.

If the Review Appraiser issues a revised Recommendation of Just Compensation, or if the agent revises the waiver valuation, send a letter to the owner withdrawing the first offer, and present all revised offers in writing. Include one copy of each written offer with the paying documents or condemnation request for the region's files.

### **6.8. Improvements in the Area to be Acquired**

#### **6.8.1. Owner/Tenant Retention**

If the owner or tenant requests retention of an improvement, discuss it with the acquisition supervisor. If the supervisor determines it to be in DOT&PF's best interest, the Regional ROW Chief will establish a retention value, provided that it was not determined to deny owner retention on a project-wide basis during the plans-in-hand review. If the owner retains an improvement, withhold a deposit from the acquisition payment until the owner removes the improvement. Set a date and notify the owner for the removal of the improvement.

#### **6.8.2. Tenant/Leasehold Interests**

During the pre-appraisal contact, determine if there are any buildings, structures, or other improvements located upon the parcel to be acquired which are

held by a lessee. Often leases are not recorded or there may only be a memorandum of lease. The ROW Agent making the pre-appraisal contact should request copies of all leases and agreements that may be unrecorded. A title examination may also help determine if there is a recorded property lease.

When a lease is disclosed, DOT&PF deals separately with the owner for fee and leaseholder for their separated interests.

There must be a clearly separate and defined leasehold interest that can be distinctly appraised separate from the fee interest. DOT&PF will not be expected to attempt separate negotiations when the various interests cannot be clearly defined. The value of the leased fee and leasehold interests can only be estimated after the terms and conditions of the lease are determined.

The lease document should be reviewed for a “condemnation clause.” The condemnation clause often dictates the formula to be used in determining how much should be paid to the lessee.

Make separate offers to the owners of each legally recognized leasehold interest, and to owners of the underlying fee interests, identifying the property to be acquired. The interest acquired in any leasehold or tenant-owned improvement may not be less than the interest acquired in the underlying fee, regardless of the terms of the lease. With each letter, include one copy each of the acquisition brochure and the relocation brochure.

Conclude acquisition of tenant-owned improvements when:

- the fee owner disclaims all interest in the tenant-owned improvements, using the [Disclaimer of Interest Lessor-Lessee Release Form 25A-R683](#);
- the lessee conveys all rights, title, and interest in the improvements (and any leasehold interests in the land) via quitclaim deed; or
- the payment does not result in a duplication of compensation.
- If either offer is unacceptable, then both parties are joined in eminent domain proceedings. If a parcel has to be condemned, then a final offer letter is sent to the fee owner, with the consideration being the total approved value.

### 6.8.3. Notifying Property Management Unit

When improvements are acquired or if DOT&PF initiates condemnation action, prepare the [Assignment and Disposition of Improvements Form 25A-R690](#), listing all improvements, and deliver a copy to the supervising ROW Agent.

### 6.8.4. Utilities

In partial acquisitions, ensure that any affected utilities will be relocated or replaced. Set a completion date for utilities replaced by the owner.

## 6.9. Counter Offers and Administrative Settlements

An administrative settlement is any settlement made that differs from the approved waiver valuation or the Review Appraiser’s Recommendation of Just Compensation. Administrative settlements may be made when normal efforts to acquire have failed, and the Regional ROW Chief has determined that a negotiated settlement is reasonable, prudent, and in the public’s best interest.

If a property owner submits a counter offer requesting special construction items not shown on the plans, submit the request to the Project Manager for approval. The design Project Manager must approve the request in the space provided on the MOA. If the items requested might affect the value of the part to be acquired or the remainder, handle the request as an administrative settlement.

Prepare a memorandum to the Regional ROW Chief, through the supervising ROW Agent. For an administrative settlement, include a written counter offer from the owner in the documentation.

The memorandum may include the following attachments:

- all available indications of value, including any appraisals supplied by the owner;
- [Review Appraiser’s Recommendation of Just Compensation Form 25A-R505](#), or the approved waiver valuation;
- written diary ([Record of Contact Form 25A-R685](#)), also known as ROC;
- all justification for the settlement; and
- any additional information provided by the property owner with the written counter offer.

To be valid, the Regional Pre-Construction Engineer must approve the proposed settlement in writing. The Regional Pre-Construction Engineer may delegate the Regional ROW Chief to approve administrative settlements up to an increase of 10% above just compensation or \$50,000, whichever is more.

### 6.9.1. Mediation

Mediation may be used at the discretion of the Regional ROW Chief. Mediation is non-binding and may be formal or informal. Informal mediation may simply consist of the Regional ROW Chief assigning a Settlement Agent to the parcel who has no involvement with the current negotiations.

Formal mediation involves the Regional ROW Chief enlisting the services of a professional mediator, whose purpose is to arrive at a mutually agreeable settlement within a specified time. The owner must consent to formal mediation. The mediator has no power to enforce settlement, but DOT&PF expects the mediator to produce a settlement. The mediator should be a properly qualified, unbiased third party and should not be a DOT&PF employee.

### 6.9.2. Land Exchange

A land exchange is an alternative method of acquiring property for a DOT&PF project. It involves the acquisition of property rights needed by DOT&PF in exchange for a specific parcel of land desired by the property owner, who must initiate the request for a land exchange in writing.

The decision to acquire land by exchange is discretionary, and used only when it is clearly in the best interest of the State.

The Regional ROW Chief will forward the property owner's request to the Pre-Construction Engineer with a recommendation for either approval or denial. If the Pre-Construction Engineer denies the request, the Regional ROW Chief will notify the property owner of the right to appeal that decision to the Regional Director.

There are two general types of land exchanges; a Type 1 land exchange and Type 2 land exchange. A Type 1 land exchange involves land already owned by DOT&PF and that is exchanged as a part of the compensation for an acquisition. This exchange is considered a disposal of excess land. See Ch. 9 for the procedures to be followed in disposing of excess land. A Type 2 land exchange involves land

acquired by DOT&PF for the purpose of exchanging the land for property needed for the project. Type 2 exchanges are used primarily for a property owner whose principal business is holding land for long-term management (such as an ANCSA corporation or a land trust), and an exchange is essential to adhere to trust or corporate policy to maintain its land base. Type 2 land exchanges may also be used for environmental mitigation. DOT&PF will use the acquisition procedures in this chapter to acquire Type 2 exchange property.

Condemnation may be used only to clear title or if the condemnation action is non-hostile. The Uniform Act applies to the property needed for the project and to the acquired exchange land.

Federal-aid highway funds will only participate in the cost of property incorporated into a highway project; therefore the property needed for the project must be appraised, and the appraised value must be deducted from the cost of acquiring the exchange property. Any excess over the appraised value must be coded as nonparticipating.

If the land proposed for exchange is under the jurisdiction of the Alaska Department of Natural Resources or another State agency, follow the procedures in Sec. 6.15.4.

For both exchanges, the Commissioner must provide a formal declaration stating that the exchange is in the best interest of the public. Use the following form:

#### DECLARATION

The Commissioner of the Department of Transportation & Public Facilities hereby formally declares that the State's best public interest will be served by the Department acquiring Parcel Number \_\_\_\_\_ for exchange with Parcel Number \_\_\_\_\_ on Project Number \_\_\_\_\_, which will be used for transportation purposes.

#### RECOMMENDED FOR APPROVAL:

Chief Engineer, Division of Statewide Design and Engineering Services [or as delegated and described in the table of positions, units, and functions in Ch. 1 of this manual]

#### APPROVED:

Commissioner, Department of Transportation & Public Facilities

Date: \_\_\_\_\_

### 6.9.3. Donations

If the property owner elects to donate the property to DOT&PF, the department must inform the owner that under 23 CFR 710.505 they are entitled to receive just compensation for the property and that they have the right to an appraisal as described in Ch. 4 of this manual.

If DOT&PF has determined that no appraisal is necessary, or the owner waives an appraisal, the owner must sign this written statement:

*“(My/our) donation of (the above-referenced parcel) to DOT&PF is made voluntarily and with full knowledge of (my/our) entitlement to receive just compensation. (I/We) also release DOT&PF from the obligation of preparing an appraisal of this donated parcel.”*

If an appraisal is necessary, the owner must sign this statement:

*“(My/our) donation of (the above-referenced parcel) to DOT&PF is made voluntarily and with full knowledge of (my/our) entitlement to receive just compensation.”*

Advise the owner to consult with the Internal Revenue Service for guidance on potential tax liabilities related to the donation and related just compensation.

If independent appraisal/(s) is/(are) required, DOT&PF may charge the cost of the appraisal/(s) to the project.

If the owner requests an appraisal, follow Ch. 4 for valuation.

## 6.10. Conclusion of Negotiations

### 6.10.1. Title Clearance

Carefully analyze every encumbrance given or listed in a current title report or provided by the owner, and make a good faith effort to clear all encumbrances noted in the title report. For instance, the property may be involved in foreclosure, divorce proceedings, or bankruptcy, or there may be a lien on the property (such as a Federal tax lien filed by the IRS).

If an encumbrance or break in the chain of title cannot be cleared with reasonable effort, request a review by a title examiner through the appropriate

supervisor. The title examiner must make a written statement of the problem and an analysis of the potential liability to DOT&PF if the encumbrance or break is not cleared. The examiner may recommend one of the three following actions:

- The agent should continue the process, with recommended instructions for clearance of specific items;
- Condemnation for title purposes; or
- No further action should be taken due to limited potential liability to DOT&PF.

If the title examiner recommends that no further action be taken, written concurrence must be added to the recommendation by the acquisition supervisor, and the document must be approved by the Regional ROW Chief. The document is a part of the permanent parcel file, and the item is considered to be cleared for title purposes.

With the approval of the Regional ROW Chief, encumbrances to title may not need to be cleared for acquisitions valued at \$10,000 or less.

### 6.10.2. Reimbursement of Incidental Expenses

Prepare a separate purchase voucher (or equivalent document) for incidental expenses. The State will reimburse prepaid property taxes and special assessments prorated from the date of the warranty deed. Verify the tax payment status at the taxing authority's office, break the annual tax down to a daily rate, and multiply that rate times the number of days left in the calendar year from the date of the signature on the warranty deed. Apply this rate only to the portion of property actually acquired. For example:

Amount owner paid in property taxes (from tax receipt): \$1,200

$\$1,200 \times 20\%$  (percentage of property acquired) = \$240 (property tax on percentage of property acquired)  $\div 365$  days = \$0.66/day (the property tax paid per day)  $\times 165$  (the number of days owner owned parcel this year) = \$108.49 (taxes the property owner owes on acquisition)

Reimbursable expense: \$240 (property tax on percentage of property acquired) - \$108.49 (taxes the property owner owes on acquisition) =



\$131.51 (reimbursement for prepaid property taxes due to the owner).

If the owner prepaid the taxes, DOT&PF automatically refunds any pro rata amount over \$10 and smaller amounts only at the owner's request. DOT&PF must reimburse any other incidental payments (boundary surveys, title, prepayment penalties, re-conveyance fees, etc.) incurred by the owner in transferring the property. If the owner is dissatisfied with the calculated amount, advise the owner that they may make an appeal to the Regional ROW Chief.

### 6.10.3. Acquisition Package

Complete the acquisition package and include the following:

- [Memorandum of Agreement Form 25A-R605](#);
- Deed, Other Conveyance Documents, Easement, or Permit;
- [Final Disposition Form 25A-R688](#);
- [Record of Contact Form 25A-R685](#) (ROC);
- [Purchase Voucher Form 25A-R682](#) (if more than one, number "1 of \_\_," "2 of \_\_," etc.);
- Disclaimer of Interest (tenant-owned improvements);
- Report for Property Management Unit (Sec. 6.8.3);
- Appraisal/waiver valuation;
- Current title; and
- Any other pertinent or helpful documents.

Submit the package to the ROW Agent supervising acquisitions. Upon acceptance, ensure that all appropriate documents are recorded and submitted for payment.

### 6.11. Right of Entry

DOT&PF may obtain a right of entry for construction purposes before making payment to the owner. Use rights of entry only on an exceptional or emergency basis. Obtain prior approval from the Statewide Chief Engineer or designee for a right of entry on Federal-aid highway projects. Deliver an informational copy of the approval to the FHWA Division Administrator.

Do not use rights of entry solely to meet a predetermined construction schedule, unless the project itself is of an emergency nature.

Rights of entry are not acceptable for construction of FAA projects since they don't provide permanent interests.

### 6.12. Condemnation

Condemnation can be time-consuming and expensive for the State and for the property owner. Before turning a parcel over to LAW consider attempting mediation (Sec. 6.9.1.). If you are considering using mediation before turning a parcel over LAW, remember to obtain approval from Regional ROW Chief and FHWA.

There will be times when all honest efforts to reach agreement fail, and condemnation appears to be the only recourse.

Never threaten condemnation, even by inference or implication. Explain the condemnation process if asked. Describe the usual course of events in a condemnation proceeding, being careful not to provide any legal advice. Refer all legal questions to LAW and recommend that the owner secure legal advice through an attorney.

If condemnation becomes necessary, explain that the acquisition process is based upon certain constitutional and legislative protections.

If DOT&PF and the owner cannot reach an agreement, send a final letter of intent to condemn by certified mail, return receipt requested. Then proceed as outlined in Sec. 6.12.1.

Allow the owner adequate time to consider DOT&PF's offer. In exceptional circumstances, three contacts may be impractical. Take no action that might be considered coercive. (See Sec. 6.7.1 for reasonable measures)

#### 6.12.1. Recommendation to Place a Parcel in Condemnation

If the Regional ROW Chief determines that there is no reasonable alternative to legal action, then prepare a recommendation for their signature (see Ch. 8). Once this determination is made, formal condemnation proceedings must be initiated so the owner does not have to initiate legal proceedings to prove the fact of the taking of the real property.

Prepare a condemnation package that contains the following:

- list of all persons with an interest in the property and their addresses;

- written diary ([Record of Contact Form 25A-R685](#)), also known as ROC;
- Letter of Offer to Purchase;
- tract description, plat, and vicinity map;
- recently-updated title report;
- approved appraisals and the [Review Appraiser's Recommendation of Just Compensation Form 25A-R505](#) or approved waiver valuation;
- decisional document;
- all correspondence;
- appropriate relocation Benefit Statement if applicable ([Benefit Statement \(Owner-Occupant of 180 Days or More Form 25A-R730\)](#), [Benefit Statement \(Occupant Less Than 90 Days\) Form 25A-R733](#), [Benefit Statement - Residential \(Owner-Occupant More Than 90 Days But More Than 90 Days\) Form 25A-R735](#), [Benefit Statement \(Tenant of More Than 90 Days\) Form 25A-R738](#), [Benefit Statement \(Tenant of Less Than 90 Days\) Form 25A-R740](#), or [Benefit Statement \(Business\) Form 25A-R743](#));
- letter of final offer and intent to condemn; and
- [Purchase Voucher Form 25A-R682](#) to the Clerk of Court for the acquisition amount.

### 6.13. Archaeologically Significant Sites

If the remains of archaeological or paleontological significance are encountered during the project, DOT&PF must abide by the National Historic Preservation Act Archeological Resources Protection Act ([16 USC 470 et seq.](#) and [54 USC 300101](#)). If the grave is that of a Native American, DOT&PF must abide by the Native American Graves Protection and Repatriation Act ([25 USC 3001, et seq.](#)) and coordinate with the local contact person. Notify the Project Manager immediately that any activity in the area of the grave must be stopped and the grave protected.

#### 6.13.1. Identification of the Grave

Make every effort to identify each grave to be relocated. After a grave is identified, request a copy of the death certificate of the deceased from the Alaska Bureau of Vital Statistics (Division of Public Health, Department of Health and Social Services).

Include the person's name and the date and place of death if known. If unable to identify a grave, document it by an affidavit indicating that a diligent and prudent attempt was made.

#### 6.13.2. Permission of Heirs or Survivors

Heirs may have substantial legal and emotional interests in the buried remains of a deceased person. To protect the State's interests, make every effort to locate the closest heirs. If none can be found, locate the group with the closest cultural affiliations. When the heirs or cultural affiliates are located, secure a signed document stating consent to relocate the deceased. If heirs or a cultural group cannot be found, prepare an affidavit that sets out all of the details and extent of the search. If the gravesite is that of a Native American, obtain permission to relocate from the tribe, Native group, or group of closest known cultural affiliation.

#### 6.13.3. Permits Required

When a body is to be relocated, the Bureau of Vital Statistics requires a Burial-Transit Permit and a Disinterment Permit issued by the local magistrate or the Bureau of Vital Statistics ([AS 18.50.250](#)). The permit also authorizes transportation, interment, or other final disposition of the body ([7 AAC 05.540](#)).

#### 6.13.4. Notices and Public Health Protective Measures

Notify the Department of Health and Social Services of any disinterment plans. They may furnish special handling instructions. Obtain a letter of approval for disinterment from the Bureau of Vital Statistics by submitting a copy of the death certificate, if possible, and a brief statement of the proposed disinterment and interment plan.

#### 6.13.5. Procedures

Follow these procedures:

1. Identify the deceased.
2. Obtain the death certificate or prepare appropriate affidavit of identification.
3. Take photographs.
4. Locate and secure permission from heirs or closest cultural affiliates.
5. Agree with heirs on a location for interment.
6. Agree with heirs on a minimum casket and grave box.



7. Agree with heirs on a minimum grave marker (bronze or stone) if no existing marker is in place.
8. Obtain at least two estimates from licensed morticians; an estimate must include the following:
  - a. burial plot (closest cemetery);
  - b. minimum casket and grave box; if casket is not required, appropriate burial bags;
  - c. grave marker;
  - d. labor (detailed); and
  - e. other expenses as required (detailed).
9. Obtain a Burial-Transit Permit (Sec. 6.13.3) and approval letter.
10. Follow appropriate bid procedures.
11. Monitor the contract.

## 6.14. Functional Replacement

Functional replacement is an alternative acquisition available on Federal-aid highway projects. It means to replace publicly-owned real property (land, facilities, or both) acquired as a result of a Federal-aid transportation project with land, facilities, or both, that provide equivalent utility.

The State must have the property appraised, have the appraisal reviewed, and present an offer. The affected public agency may then request functional replacement of its facility as an alternative to a sale. FHWA must concur that the functional replacement is in the public interest, and grant authority to proceed before the land transaction takes place.

Replacement sites and construction must comply with existing codes, ordinances, and zoning regulations, and be functionally equivalent to the subject. Except for utilities or railroads, the replacement facility must be in public ownership and continue the function of the acquired facility.

## 6.15. Acquisition from Federal and State Agencies, Including Native Interests through BIA

For lands administered by the Army, Air Force, Navy, Veterans Administration, and General

Services Administration, apply directly to those entities.

For restricted lands administered by the Bureau of Indian Affairs (BIA), contact BIA or the appropriate service provider to determine the process for the interest you are acquiring. For more information see [25 CFR 169](#) – Rights of Way Over Indian Lands.

For lands administered by the National Park Service (NPS), the method is mutually determined after meeting with representatives of the NPS.

Applications under the authority of the Federal Land Policy Management Act (FLPMA) (P.L. 94-579, October 21, 1976) fall under Title V, 90 Stat. 2776 ([43 USC 1761](#)).

### 6.15.1. Applications to the BLM and the USFS

#### Sec. 317 Transfers

FHWA is authorized to appropriate and transfer certain public lands owned by the United States and managed by the Bureau of Land Management (BLM) or the U.S. Forest Service (USFS) to DOT&PF under the 1958 Highway Act ([23 USC 107](#) (d) and [23 USC 317](#)) for the following purposes for Federal-aid highways (commonly referred to as Sec. 317 Transfers):

- ROW;
- sources of materials for construction or maintenance;
- maintenance and stockpile sites; and
- roadside and landscape development.

Allow at least 120 days' lead time for processing and issuing rights of way or material sources.

Rights of way for utility relocation and, in some cases, trails or pathways are not covered by the above authorization. Apply for them using Standard Form 299. DOT&PF may also apply for highway ROW using this form.

The following sections outline the procedures for a Sec. 317 transfer.

#### Preliminary Meeting

Arrange a preliminary meeting with the agency head as soon as DOT&PF is aware of the need for the ROW or material site.

## Appropriation Request

The Regional ROW Chief must make a written request for appropriation to FHWA [see suggested format Exhibit 6-2 Sample Appropriation Request Letter (BLM)] or Forest Service [(see suggested format Exhibit 6-3 Sample Appropriation Request Letter (Forest Service))] and include the following:

- statement that the public land is essential for the ROW for the project;
- statement as to whether the land is under selection from the State or a Native corporation. If it is, include a letter of non-objection from the selecting agency;
- copy of the approved Environmental Document; and
- copy of the plat, which must include or have attached the signed Applicant's Certificate (Exhibit 6-4); and
- legal description.

## Materials Sources on BLM Property

Include a Mining and Reclamation Plan that consists of a map, plat, sketch, or aerial photograph showing the following:

- area applied for and its identification;
- area to be disturbed, including stockpile area;
- existing and proposed access; and
- names and locations of major topographic and known cultural features.

## Mining Plan

Include the following:

- description of proposed methods of operation;
- periods of operation, including starting date;
- description of measures to prevent hazards to public health and safety and unnecessary degradation;
- cross-section diagram showing pit design and original ground level;
- screening methods (if possible); and
- volume required.

## Reclamation Plan

Describe the proposed manner and time to complete rehabilitation, including re-vegetation methods, grade of back-slopes, backfill methods, and a map, plat, sketch, or aerial photograph showing the area to be reclaimed. Recommend future use.

## Letter of Consent

The agency issues a letter of consent to FHWA including any special stipulations. FHWA sends a copy of the letter to the Regional ROW Chief.

## Transfer of Use Rights

When the Regional ROW Chief receives the letter of consent, construction may proceed. After construction:

- the Regional ROW Chief must prepare a Highway Easement Deed for a highway right of way or a material source on BLM property (Exhibits 6-5 or 6-6) (Use a USFS Highway Easement Deed (Exhibit 6-7) for Forest Service property. Include in the deed as built plans and any additional stipulations from the letter of consent for the transfer to the State.);
- the region's Assistant Attorney General (AAG) reviews the deed for legal sufficiency and signs the appropriate space on the deed (the AAG returns the deed to the Regional ROW Chief, who transmits it to FHWA);
- FHWA must return the signed deed to the Regional ROW Chief for recording; and
- the region provides a copy of the recorded deed to the agency from which the property was appropriated.

FHWA administers the ROW or materials site grant as a nonexclusive right, subject to the reservation of leasable or salable minerals to the United States.

## Termination

The appropriation terminates if either of the following occurs:

- DOT&PF has not begun construction or use of the materials for highway purposes within 10 years (or less, if agreed upon between FHWA, the agency, and DOT&PF).

- DOT&PF notifies FHWA that the need for the ROW or materials no longer exists and the lands have been acceptably rehabilitated.

### **Applications Made to the BLM Town-site Trustee**

The Regional ROW Chief must make the request directly to the town-site trustee, and must also request issuance of a Trustee Deed.

### **Special Use Permit Applications Made to USFS**

Special Use permits are for materials sources, utilities relocation, trails, or pathways, or when the property is needed only for a short term such as restoration work on a slide, etc. Depending on the size and complexity of the project, allow at least 90 days' lead time for processing and issuing USFS permits. If possible, meet with the USFS District Ranger before or at the time of the application to discuss the project. Follow these procedures:

1. Submit the required number of copies of the application to the appropriate USFS office.
2. Prepare a legal description to accompany Special Use Permit applications. For materials sources, describe the area of the materials source and the haul road by metes and bounds.
3. Support each copy of the Special Use Permit application by a plat or map adequately showing the area to be acquired.
4. Obtain the estimated cost and estimated time to begin and complete the construction project and include this information on the Special Use Permit application.
5. Make available a copy of the Environmental Document, plus any further supporting documents such as U.S. Army Corps of Engineers permits, etc.

### **6.15.2. Applications to the BIA for Trust or Restricted Lands**

Allow at least 24 months for the processing and granting of BIA rights-of-way or deeds.

#### **Authority**

BIA grants actions affecting Native title on restricted land (owned by individual allotment or restricted town-site owners) primarily under the Act of February 5, 1948 (62 Stat. 17; [25 USC 323](#), [25 USC 324](#), [25 USC 325](#), [25 USC 326](#),

[25 USC 327](#), [25 USC 328](#)). See [25 CFR 169](#) for BIA's regulations. Regulations for materials sites are contained in [25 CFR 212](#) and [25 CFR 216](#).

### **BIA Right-of-Way Applications**

**Stage 1, Obtain Permission to Survey:** Since Trust and Restricted lands are not subject to [AS 34.65.020](#) and [AS 09.55.280](#) (entry upon land for survey purposes), DOT&PF must meet with or contact the BIA or the appropriate contract representative.

**Stage 2, Acquisition of Right of Way:** After a survey, or in the case of an existing ROW, the Acquisition Unit must proceed in accordance with BIA regulations, [25 CFR 169](#).

### **6.15.3. Applications to USFWS**

Applications to the U.S. Fish and Wildlife Service (USFWS) are time-consuming and require coordination as soon as possible.

#### **Permits for Special Uses (one year or less)**

USFWS prefers a written request in letter form for Special Use Permits.

#### **Right-of-Way Permits**

ROW permits are issued under the authority of the National Wildlife Refuge System Administration Act of 1966, Public Law 89-699 (80 Stat. 928, [16 USC 668dd](#)), as amended, or for oil and gas pipelines under Sec. 28 of the Mineral Leasing Act of 1920, 41 Stat. 449, [30 USC 185](#), as amended by Public Law 93-153.

General regulations for processing ROW permits are found in [50 CFR 29](#). Regulations specific to processing Transportation and Utility system ROW permits are found in [50 CFR 36](#). Both sets of regulations would be used to process ROW permit requests for most projects. Use Standard Form 299 for ROW permits.

Lands within the boundaries of a National Wildlife Refuge on December 18, 1971, the date of enactment of the Alaska Native Claims Settlement Act (ANCSA), [43 USC 1621](#), remain subject to the laws governing use and development of that refuge, as provided in ANCSA Sec. 22g. Sec. 22g does not apply until the land is actually conveyed.

Use of these lands may be authorized by the landowner (e.g. a Letter of Non-objection) in consultation with the USFWS.

#### **6.15.4. Applications to the DNR Division of Mining, Land, and Water**

Obtain applications referred to in this section from the Alaska Department of Natural Resources (DNR) Division of Mining, Land, and Water.

Submit applications to DNR Division of Mining, Land, and Water for the following:

- rights-of-way for Federal-aid highways;
- sources of materials for construction or maintenance of Federal-aid highways;
- temporary easements and construction permits; or
- State airport Interagency Land Management Assignments (ILMAs).

Applications are time-consuming and require coordination with DNR as soon as possible.

#### **Application Preparation**

Follow these procedures in preparing a DNR application:

1. Use the forms supplied by DNR. (The forms include an Application for Easement, Land Use Permit Application or Material Sale Application.)
2. Submit one original of all applications directly to the Regional Office Manager, Division of Mining, Land, and Water.
3. Coordinate all DNR applications with DOT&PF's Environmental Section.

Submit reports to DNR annually and indicate the quantity of materials extracted from pits under DNR contracts, using the appropriate accounting voucher. If a materials source is depleted or unnecessary, DOT&PF may need to relinquish that materials source back to DNR.

#### **6.15.5. Application for Interagency Land Management Assignment (ILMA) and State Agency Leases**

Use ILMAs for airports, building sites, temporary research sites, and State public facilities and institutions. DNR may issue ILMAs for varying terms, based on proposed use. ILMAs are not transferable or assignable.

Use leases for administrative sites, school sites, State-constructed projects with eventual ownership by others (e.g., hospital, port, and terminal facility), etc. Leases may be transferable and assignable, depending on their construction (see [AS 38.05.810](#)).

DOT&PF's Commissioner (or designee) must submit an application to the appropriate DNR regional office, consisting of the following:

- transmittal letter;
- Application for ILMA; and
- Environmental Risk Questionnaire.

DNR's Regional Manager submits a final finding for the authorized officer's signature and returns the original ILMA or lease to the Regional ROW Chief.

#### **6.16. Early Acquisition**

Early acquisition means acquiring parcels for a project before the normal sequence of acquisition events. FAA does not have an early acquisition process. FHWA may approve early acquisition for a highway project in certain situations, as explained in the remainder of this section. (See Sec. 2.3.4.)

Generally, any acquisition that occurs early (prior to approval of a project's Environmental Document) is not eligible for Federal participation. However the State may undertake early acquisition under [23 CFR 710.501](#) for corridor preservation, access management, or other purposes (See Exhibit 6-8). Prior approval from FHWA is necessary to ensure Federal-aid participation.

The following early acquisitions are available prior to an Environmental Document:

- Acquisition Using State Funds with Project Matching Credit;
- Federally Funded Early Acquisition;
- Protective buying;
- Hardship acquisition; and
- State-Funded Early Acquisition Requesting Reimbursement.

Regardless of the process chosen, early acquisition has risks. These risks include:

- project becoming ineligible for Federal funds because the procedures were not followed;
- potential to prejudice route selection, which threatens Federal funding to the overall project;
- perception that it circumvents or conflicts with environmental process. Acquisition of property can't influence the environmental assessment of a project, including the need for the project or route selection;
- design issues (total or partial, redesign, etc.);
- public opposition; or
- maintenance, lease, or disposal issue if project does not get built or other alternatives are chosen.

The Regional ROW Chief should evaluate these risks before recommending early acquisition activities.

Early acquisition procedures are the same as standard acquisition, except that the former requires additional documentation and possibly different funding sources.

If State funds are used for early acquisition, no demolition or development of the property shall occur until the environmental process is complete. If Federal funds are used under 6.16.2, no ground disturbance, demolition, or development of the property is allowed until final FHWA certification of the project is obtained. Parcels impacted by Sec. (4)(f) cannot be acquired until an Environmental Document has been approved.

All early acquisitions must be incorporated into a Federal-aid project within 20 years following the fiscal year for which the request is made, unless the US Department of Transportation Secretary determines that a longer period is reasonable.

### **6.16.1. Acquisition Using State Funds with Project Matching Credit**

DOT&PF may use its own funds to purchase right of way prior to approval of the Environmental Document and may apply the purchase price (or if donated, the fair market value) toward its share of project costs if it meets the requirements of [23 CFR 710.501](#) (c). This procedure is generally used to preserve a corridor for a future highway location, or to provide access management. While

the acquisition costs are not eligible for Federal-aid reimbursement, they may become eligible as a credit toward the State's share of a Federal-aid project. For that to happen, the following criteria apply:

- property was lawfully obtained;
- property was not parkland subject to [23 USC 138](#);
- property was not subject to National Historic Preservation Act procedures under [54 USC 100101](#);
- property was acquired in accordance with [49 CFR 24](#);
- DOT&PF complied with the Title VI of the Civil Rights Act of 1964;
- acquisition did not influence the environmental assessment for the project; and
- property will be incorporated into a Federal-aid project.

ROW Agents must follow the Uniform Act and [49 CFR 24](#) to preserve the project's eligibility for Federal participation.

To be eligible for the project cost credit, the Regional ROW Chief must demonstrate compliance with the Uniform Act and the requirements of [23 CFR 710.501](#) (c) to FHWA for each parcel acquired.

### **6.16.2. Early Acquisition Using Federal Funds**

When using Federal funds for early acquisition, the right-of-way acquisition is a stand-alone project with parcel-specific [Statewide Transportation Improvement Plan](#) (STIP) and Environmental Documents (National Environmental Policy Act ([42 USC 4321 et seq.](#) also known as NEPA)). The Regional ROW Chief must certify to FHWA, in writing, that:

- the State has authority to acquire the real property interest under State law; and
- the acquisition;
  - is for a transportation purpose;
  - won't cause a significant adverse environmental impact; and



- won't limit the choice of reasonable alternatives for the project or influence the decision of the Secretary on any approval required for the project;
- does not prevent an impartial decision on accepting an alternative considered in the environmental review process;
- is consistent with the STIP process;
- complies with other applicable Federal laws (*i.e.* the Uniform Act);
- will be acquired through negotiation, without the threat of condemnation; and,
- won't result in a reduction or elimination of benefits or assistance to a displaced person.

The environmental process and approved documentation must be completed on each real property acquisition before authorizing Federal funds for this method of advanced acquisition.

The Regional ROW Chief certification should be substantially similar to the following:

*"I certify that the early acquisition complies with applicable Federal laws and regulations and is only for transportation purposes. The advance purchase of right of way will not influence the outcome of alternatives considered during the future project's NEPA process nor will it cause any significant environmental impacts (to the property). The acquisition will not be done under threat of condemnation and the early acquisition will not reduce or eliminate relocation benefits. Demolition of any improvement on the property or other irrevocable actions will not be taken until NEPA for the overall project is complete and the need for right of way is documented."*

### **Protective Buying**

Protective buying involves using Federal funds to acquire land within an identified corridor when the owner has *known* plans to develop the property in a way that precludes future transportation uses. Property offered for sale within an area of rapid commercial, industrial, or residential development could also be purchased through this method. Protective Buying Acquisitions must meet the following conditions for Federal funding:

- project is included in the currently approved STIP;
- DOT&PF has complied with applicable public involvement requirements in [23 CFR 450](#) and [23 CFR 771](#);
- determination has been completed for any property subject to the provisions of [23 USC 138](#);
- procedures of the Advisory Council on Historic Preservation are completed for properties subject to [54 USC 100101](#); and
- acquisition may not influence the environmental process, including the decision to construct the project or the selection of a specific location [[23 CFR 710.503](#) (d)].

The Regional ROW Chief must clearly demonstrate that a development is imminent and such development would limit future transportation choices. Further guidance on Protective Buying can be found in [23 CFR 710.503](#).

### **Hardship Acquisition**

Hardship acquisitions are found in [23 CFR 710.503](#) (c). Hardship acquisitions are permissive and not mandatory. DOT&PF may elect to conduct hardship acquisitions or not to utilize this advance acquisition technique.

When the Regional ROW Chief accepts and concurs with a hardship acquisition request by a property owner, FHWA does not require DOT&PF to accelerate condemnation. If a negotiated agreement cannot be reached with the property owner, DOT&PF may defer acquisition of the property to the time it would occur in the normal project schedule. The ROW Agent should inform the property owner of this possibility when it accepts for processing a hardship acquisition request.

Generally, hardship acquisitions are initiated by property owners who will experience a justified hardship, based on health, safety or financial reasons, if they continue ownership of a parcel until the normal project acquisition phase. The owners' application must set forth the exact circumstances creating the hardship and conclude that the only appropriate action is an immediate sale. At a minimum, the property owner must demonstrate that remaining in possession of the property creates an undue hardship compared to other property owners and the property owner is unable to sell the property because of the impending project.

The acquisition must meet [23 CFR 701.503](#) to be eligible for Federal funds. The Regional ROW Chief must demonstrate the following conditions are met:

- project is included in the currently approved STIP;
- DOT&PF has complied with applicable public involvement requirements in [23 CFR 450](#) and [23 CFR 771](#); and
- acquisition may not influence the environmental process, including the decision to construct the project or the selection of a specific location [[23 CFR 710.503](#) (d)].

The Environmental Section determines:

- whether the property is parkland subject to [23 USC 138](#) (d) (1) [also known as Section 4 (f)];
- whether the property is subject to Historic Preservation procedures under [16 USC 470](#) and, if so, that those procedures are completed; and
- acquisition will not influence the environmental process.

The Regional ROW Chief must submit proper documentation to show that the acquisition is in the public interest and is necessary for one of the following reasons:

- to alleviate particular hardship to a property owner in contrast to others because of documented health, safety, or financial reasons, including an inability to sell the property at market value within the time that would be typical for property that is not impacted by the impending project (the property owner must

submit this in writing to the Regional ROW Chief); or

- to prevent imminent development of a parcel that may be needed for a proposed transportation corridor or site. Documentation must clearly demonstrate that development of the land would preclude future transportation use and that such development is imminent. Advance acquisition is not permitted for the sole purpose of reducing the cost of property for a proposed project.

The advance acquisition may not influence the environmental process, including the decision to construct the project or the selection of a specific NEPA alternative. All operating procedures affecting appraisal, negotiations, and relocation are applicable.

Use sound judgment in requesting approval of the acquisition. If the property is not incorporated (either in whole or in part) in the final ROW project, Federal funds will not participate in the cost of the property. If FHWA authorizes the acquisition, Project Control must process a PDA when it receives a current cost estimate that authorizes the region to proceed with the acquisition.

### **6.16.3. State-Funded Early Acquisition Requesting Reimbursement**

DOT&PF may use its own funds to purchase rights-of-way prior to an Environmental Document and be reimbursed. However, this requires meeting the very stringent conditions of [23 USC 108](#) (c) (3), as explained in [23 CFR 710.501](#) (d).

To be eligible for reimbursement the real property interests acquired must be incorporated into a project eligible for surface transportation program funds and the acquisition must be necessary to preserve environmental and scenic values.

Furthermore, in addition to the requirements contained in Sec. 6.16.1 the Regional ROW Chief must demonstrate, and FHWA must find that:

- any land acquired, and relocation assistance provided, complied with the Uniform Act;
- requirements of Title VI of the Civil Rights Act of 1964 have been complied with;
- State has a mandatory comprehensive and coordinated land use, environment, and transportation planning and the acquisition is



certified by the Governor or designee as consistent with the plan before the acquisition;

- acquisition is determined in advance by the Governor or designee to be consistent with the STIP;
- alternative for which the real property interest is acquired is selected by DOT&PF in consideration of the environmental impacts of various alternatives;
- NEPA and all other required environmental documentation is completed before the time that the cost incurred by DOT&PF is approved for Federal participation; and
- property acquired in advance of FHWA 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.

Due to the additional need to have executive branch involvement, the Regional ROW Chief should exercise sound judgment and planning when seeking reimbursement as opposed to credit for early acquisitions.

Date:

RE: Project Name \_\_\_\_\_  
State Project No. \_\_\_\_\_  
Federal-Aid Project No. \_\_\_\_\_  
Parcel Number \_\_\_\_\_ Unit Number \_\_\_\_\_

LETTER OF OFFER TO PURCHASE

Dear \_\_\_\_\_:

By now, you are aware that the State of Alaska, Department of Transportation & Public Facilities (DOT&PF) is preparing to [describe project] \_\_\_\_\_.

As part of the project, we need to purchase your property and/or property rights, since a portion of the new construction will extend approximately \_\_\_\_\_ feet onto your property. I am DOT&PF's Agent in completing this transaction.

Your property has been examined by qualified appraisers and appraisal reviewers who have carefully considered all of the elements that contribute to the market value of your property. The market value of your property has been determined to be \$ \_\_\_\_\_ for [insert appropriate Option and Clauses from Page 2 of this exhibit].

Please consider this a final offer to purchase your property.

The exact location and size of your property to be purchased is described on the enclosed Warranty Deed with the attached parcel plat. Other documents necessary to purchase your property are enclosed, including the Memorandum of Agreement, Purchase Voucher(s), Easement and Construction Permit. The enclosed brochure provides additional information about right-of-way acquisition procedures.

Your lending institution may require payment of funds for a partial release of those lands being acquired. After we have obtained all necessary releases, we will send the sale proceeds to you. The State of Alaska will reimburse prorated property taxes to you based on the percentage of your property acquired.

Please feel free to call me at [phone] \_\_\_\_\_, if I can be of assistance in this matter.

Sincerely,

\_\_\_\_\_  
Right-of-Way Agent

Enclosures

**Exhibit 6-1**  
**Sample Letter of Offer to Purchase**  
**Page 1 of 2**

ONLY THE OPTIONAL PARAGRAPHS THAT ARE APPLICABLE TO EACH INDIVIDUAL CASE ARE INCLUDED IN THE LETTER OF OFFER TO PURCHASE

OPTION 1: (Total Acquisition: Add Clause C as required)

... determined to be \$ \_\_\_\_\_ for fee simple interest in [square feet/acres] of land and [house, garage, pump house and pump, etc., as applicable in each case]

OPTION 2: (Partial Acquisition: Add Clauses A, B and C as required)

...determined to be \$ \_\_\_\_\_ for fee simple interest in [square feet/acres] of land [, access rights,] and [house, garage, etc.] including \$ \_\_\_\_\_ for all [severance or proximity] damages.

OPTION 3: (Used for less than fee acquisition: Add Clauses B and C as required)

... determined to be \$ \_\_\_\_\_ for [an easement/permit, etc.] across the portion of your property. This offer consists of \$ \_\_\_\_\_ for loss in market value (damages) to your property and \$ \_\_\_\_\_ for [list any improvements to be acquired].

OPTION 4: (Used for acquisition of access rights only: Add clauses A and B as required)

...determined to be \$ \_\_\_\_\_ for the purchase of access rights only.

OPTION 5: (Used for tenant-owned improvements: Add Clause C)

... determined to be \$ \_\_\_\_\_ for the purchase of improvement

Additional Clauses

CLAUSE A: (If there is an uneconomic remnant, add):

DOT&PF has determined that the acquisition of the needed right of way will leave you with a remainder containing an area of \_\_\_\_\_. If you wish to keep this remainder, you may do so; however, if you prefer to sell it, the State will pay you the market value of \$ \_\_\_\_\_ for this remainder. This would be in addition to the amount offered in this letter for the purchase of the needed property.

CLAUSE B: (Used in cases involving special benefits)

DOT&PF's Appraiser(s) conclude(s) that the completion of this project enhances the market value of your remaining property in the amount of \$(Item 1) \_\_\_\_\_; therefore, special benefits in the amount of \$(Item 2) \_\_\_\_\_ have been deducted from the damages of \$ \_\_\_\_\_.

Item 1: Enter the total amount of special benefits as shown on the approved Review Appraiser's Recommendation.

Item 2: Enter the amount of special benefits that have been deducted in computing the offer. This amount cannot exceed the amount of damages, if any, to the remainder of the property.

CLAUSE C: (If ROW Chief has approved owner's request to retain certain improvements in acquisition area – see Sec. 6.8.1.)

If you choose to keep the improvements and remove them from the site, you may retain them by paying the retention value of \$ \_\_\_\_\_ and by posting a performance deposit of \$ \_\_\_\_\_. Deducting them from the amount of the purchase price offered may pay both of these.

**Exhibit 6-1**  
**Sample Letter of Offer to Purchase**  
**Page 2 of 2**

Date \_\_\_\_\_

Project Name: \_\_\_\_\_

Project No. \_\_\_\_\_

Parcel No. \_\_\_\_\_

Division Administrator  
Federal Highway Administration  
P.O. Box 21648  
Juneau, AK 99802-1648

Dear Sir:

Enclosed is an application to the Bureau of Land Management for a \_\_\_\_\_ on Public Domain. The land(s) applied for is/are needed for construction and/or maintenance of a Federal-Aid (Highway)/(Airport) located at or near \_\_\_\_\_.

Please forward the application to the Bureau of Land Management with your recommendation for concurrence, based on the Interagency Agreement dated July 27, 1982.

We appreciate your assistance.

Sincerely yours,

Regional Right-of-Way Chief  
\_\_\_\_\_ Region

Enclosures

**Exhibit 6-2**  
**Sample Appropriation Request Letter (BLM)**

Date \_\_\_\_\_

Project Name: \_\_\_\_\_  
Project No. \_\_\_\_\_  
Parcel No. \_\_\_\_\_

Division Administration  
Federal Highway Administration  
P.O. Box 21648  
Juneau, AK 99802-1648

Dear Sir:

The Department of Transportation & Public Facilities hereby applies for right of way on Forest Service land located as hereinafter more particularly described, and states:

- This application is being filed under the Act of August 27, 1958 (72 Stat. 916, 23 USC 317).
- This application is an amendment to Application No. \_\_\_\_\_.
- That the rights-of-way sought to be acquired are necessary in order to construct and/or maintain a (highway) (airport) connecting the towns of (or located in) \_\_\_\_\_ in the State of Alaska.
- That the desired right of way will occupy a total of \_\_\_\_\_ acres, more or less.
- That the total centerline length of the desired right of way is \_\_\_\_\_ miles, more or less.
- That construction will be undertaken during the \_\_\_ construction season, scheduled to begin \_\_\_\_\_.
- The Department of Transportation & Public Facilities requests immediate right of entry pending final grant of right of way.

The Department of Transportation & Public Facilities agrees that the application, if approved, will be subject to the terms and conditions of the applicable regulations of the Department of Agriculture and agrees to utilize the right of way requested within ten (10) years following the transfer of the land.

In support of this application and in compliance with the rules and regulations of the Department of Agriculture governing rights-of-way, the following are attached and made a part thereof:

Four (4) parcel descriptions of this application, together with four (4) plats are submitted, showing the location of the land to be acquired. No field notes are attached, since all angles and dimensions constituting the field notes are shown thereon.

(Use one of the following statements as appropriate)

In accordance with Federal regulations, the project has been reevaluated and the project will not adversely affect the environment. A Finding of No Significant Impact (FONSI) is attached.

The final Environmental Assessment (Impact Statement) for this project has been (was) approved on \_\_\_\_\_.

WHEREFORE, the applicant requests that the right of way herein applied for be approved.

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

Regional Right-of-Way Chief

Region

**Exhibit 6-3**  
**Sample Appropriation Request Letter (Forest Service)**

**APPLICANT’S CERTIFICATE**

This is to certify that \_\_\_\_\_,  
who subscribed the statement hereon, is the person employed by the undersigned applicant to supervise the  
preparation of this map, which has been adopted by the applicant as the approximate final location of the project  
hereby shown; and this map is filed as part of the complete application and, in order that the applicant may obtain  
the benefits of the Act of August 27, 1958 (72 Stat. 885, 23 USC 317), and I further certify that the right of way  
herein described is desired for Alaska Project No. \_\_\_\_\_.

Director, Design and Construction  
\_\_\_\_\_ Region

Attest: \_\_\_\_\_

**Exhibit 6-4  
Applicant’s Certificate**

**HIGHWAY EASEMENT DEED**

**FOR HIGHWAY RIGHT OF WAY ON BLM PROPERTY**

THIS DEED, made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the UNITED STATES OF AMERICA, acting by and through the DEPARTMENT OF TRANSPORTATION, FEDERAL HIGHWAY ADMINISTRATION, hereinafter referred to as the DEPARTMENT, and the STATE OF ALASKA, DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES, hereinafter referred to as the STATE:

**WITNESSETH:**

WHEREAS, the STATE has filed application under the provisions of the Act of Congress of August 27, 1958, as amended (23 USC Sec. 317), for a right of way of a highway over certain Federal land under the jurisdiction of the DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT in the State of Alaska, and,

WHEREAS, the Federal Highway Administrator, pursuant to delegation of authority from the Secretary of Transportation, has determined that an easement over the land covered by the application is reasonably necessary for a right of way for \_\_\_\_\_, \_\_\_\_\_ Highway, \_\_\_\_\_, Project \_\_\_\_\_; and,

WHEREAS, the DEPARTMENT OF THE INTERIOR, acting by and through the BUREAU OF LAND MANAGEMENT, in its consent to the appropriation of the Federal land, has agreed to the transfer by the DEPARTMENT of an easement over the land to the STATE;

NOW, THEREFORE, the DEPARTMENT, as authorized by law and in compliance with all requirements imposed by or pursuant to Title 49 CFR , DEPARTMENT OF TRANSPORTATION, Subtitle A, Office of Secretary, Part 21, nondiscrimination in Federally-assisted programs of the DEPARTMENT OF TRANSPORTATION (49 CFR 21.2 - 21.23) pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 USC 2000d to 2000d-4), does hereby grant to the STATE an easement for a right of way for the construction and maintenance of the \_\_\_\_\_ Highway, a Federal-Aid \_\_\_\_\_ Highway, and use of the space above and below the existing ground surface for highway purposes on, over, across, in and upon the following described Federal land within \_\_\_\_\_, \_\_\_\_\_ Meridian, \_\_\_\_\_ Recording District, State of Alaska, as shown on the right of way plans dated \_\_\_\_\_, sheets \_\_\_\_\_, marked as Exhibit A, and attached hereto and made a part hereof, subject, however, to the following terms and conditions:

- 1) Outstanding valid claims, if any, existing on the date of this grant, and the STATE shall obtain such permission as may be necessary on account of any such claims.
- 2) Use of the right of way is to be undertaken by the STATE in compliance with the Act entitled "An Act for the Preservation of American Antiquities" approved June 8, 1960, (34 Stat. 225, 26 USC 432-433), and State laws where applicable.
- 3) The easement herein granted shall terminate 10 years from the date of the execution of this deed by the UNITED STATES OF AMERICA in the event development of the right of way has not commenced during such period.

**Exhibit 6-5  
Highway Easement Deed (Highway ROW on BLM Property)  
Page 1 of 4**



4) The easement herein granted is limited to use of the described right of way and the space above and below the existing ground surface for the purpose of development and maintenance of a right of way in accordance with the approved plans described in the following condition No. 5 and does not include the grant of any rights for non-highway purposes or facilities: Provided, that the right of the BUREAU OF LAND MANAGEMENT to use or authorize the use of any portion of the right of way for non-highway purposes shall not be exercised when such use would be inconsistent with the provisions of Title 23 of the United States Code and of the Federal Highway Administration Regulations issued pursuant thereto or would interfere with the free flow of traffic or impair the full use and safety of the highway, and in any case the DEPARTMENT shall be consulted prior to the exercise of such rights: and provided, further that nothing herein shall preclude the BUREAU OF LAND MANAGEMENT from locating DEPARTMENT OF THE INTERIOR information signs on the portions of the right of way outside of development limits as long as concurrence to do so is first obtained from the STATE.

5) The use of this right of way will be in accord with the provisions of Title 23, U.S. Code-Highways, and amendments; the provisions of regulations issued pursuant thereto; the construction specifications of the STATE highway department as approved by the DEPARTMENT for use on Federal-aid projects; and the following terms and conditions specified by the BUREAU OF LAND MANAGEMENT attached as Exhibit \_\_\_\_\_.

6) Consistent with highway safety standards, the STATE shall protect and preserve soil and vegetative cover and scenic and aesthetic values on the right of way outside of development limits.

7) The STATE shall maintain this right of way to acceptable standards of repair, orderliness, neatness, sanitation and safety.

8) The STATE shall maintain the right of way clearing by means of chemicals only after specific written approval has been given by the DEPARTMENT after consultation with the BUREAU OF LAND MANAGEMENT. Application for such approval must be in writing and specify the time, methods, chemicals and the exact portion of the right of way to be chemically treated.

9) When need for the easement herein granted shall no longer exist and the area has been reasonably rehabilitated to protect the public and environment, the STATE shall give notice of that fact to the DEPARTMENT and the rights herein granted shall terminate and the land shall immediately revert to the full control of the Secretary of the DEPARTMENT OF THE INTERIOR or his assigns.

The STATE, in consideration of the conveyance of said land, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns that:

(a) no person shall, on the grounds of race, color, national origin, gender, age, income, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such land hereby conveyed;

(b) that the STATE shall use said land so conveyed in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, nondiscrimination in Federally-assisted programs of the Department of Transportation, in effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended.

**Exhibit 6-5**  
**Highway Easement Deed (Highway ROW on BLM Property)**  
**Page 2 of 4**

In the event of breach of any of the above-mentioned nondiscrimination conditions, the DEPARTMENT shall have the right to enter said land and facilities on said land, and the above-described land and facilities shall thereupon revert to and vest in and become the absolute property of the Secretary of the DEPARTMENT OF THE INTERIOR and its assigns, as such interest existed prior to this instrument.

IN WITNESS WHEREOF, I, \_\_\_\_\_, Division Administrator for Alaska, pursuant to delegations of authority from the Secretary of Transportation and the Federal Highway Administrator, by virtue of authority in me vested by law, have hereunto subscribed my name as of the day and year first above written.

UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
FEDERAL HIGHWAY ADMINISTRATION

By:

Name: \_\_\_\_\_  
Division Administrator, Alaska Division

STATE OF ALASKA )

) ss.

FIRST JUDICIAL DISTRICT)

I, \_\_\_\_\_, a Notary Public in and for the State of Alaska, do hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared

\_\_\_\_\_,  
being to me personally known and known to me to be the Division Administrator for the Alaska Division, Federal Highway Administration, and acknowledged that the foregoing instrument bearing the date \_\_\_\_\_, 2\_\_\_\_, was executed by him in his official capacity and by authority in him vested by law, for the purposes and intents in said instrument described and set forth, and acknowledged the same to be his act and deed as Alaska Division Administrator, Federal Highway Administration.

Witness my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Notary Public for Alaska  
My Commission expires:

**Exhibit 6-5  
Highway Easement Deed (Highway ROW on BLM Property)  
Page 3 of 4**

In compliance with the conditions set forth in the foregoing deed, the STATE OF ALASKA, DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES, certifies and, by the acceptance of this deed, accepts the right of way over certain lands herein described and agrees for itself, its successors and assigns forever to abide by the conditions set forth in said deed.

STATE OF ALASKA  
DEPARTMENT OF TRANSPORTATION  
AND PUBLIC FACILITIES

By:

Name: \_\_\_\_\_  
Regional Right-of-Way Chief  
For the Commissioner

STATE OF ALASKA )

) ss.

\_\_\_\_\_ JUDICIAL DISTRICT)

I, \_\_\_\_\_, a Notary Public in and for the State of Alaska, hereby certify that \_\_\_\_\_, whose name is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he in his capacity as \_\_\_\_\_ executed the same voluntarily on this day.

Witness my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Notary Public for Alaska

My commission expires:

DEED APPROVED AS LEGALLY SUFFICIENT
DATE: _____, 20____
Signature: _____
Name: _____
Assistant Attorney General
Alaska Attorney General's Office
Alaska Bar Association No: _____

**Exhibit 6-5**  
**Highway Easement Deed (Highway ROW on BLM Property)**  
**Page 4 of 4**

HIGHWAY EASEMENT DEED  
FOR A MATERIAL SOURCE ON BLM PROPERTY

THIS DEED, made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the UNITED STATES OF AMERICA, acting by and through the DEPARTMENT OF TRANSPORTATION, FEDERAL HIGHWAY ADMINISTRATION, hereinafter referred to as the DEPARTMENT, and the STATE OF ALASKA, DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES, hereinafter referred to as the STATE:

WITNESSETH:

WHEREAS, the STATE has filed application under the provisions of the Act of Congress of August 27, 1958, as amended (23 USC Sec. 317), for a right of way for Material Source \_\_\_\_\_ over certain Federal land under the jurisdiction of the Department of the Interior, Bureau of Land Management in the State of Alaska, and,

WHEREAS, the Federal Highway Administrator, pursuant to delegation of authority from the Secretary of Transportation, has determined that an easement over the land covered by the application is reasonably necessary for a right of way for a material source; and,

WHEREAS, the Department of the Interior, acting by and through the Bureau of Land Management in its consent to the appropriation of the Federal land, has agreed to the transfer by the DEPARTMENT of an easement over the land to the STATE;

NOW, THEREFORE, the DEPARTMENT, as authorized by law and in compliance with all requirements imposed by or pursuant to Title 49 CFR , DEPARTMENT OF TRANSPORTATION, Subtitle A, Office of Secretary, Part 21, nondiscrimination in Federally-assisted programs of the DEPARTMENT OF TRANSPORTATION (49 CFR 21.2 - 21.23) pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 USC 2000d to 2000d-4), does hereby grant to the STATE an easement for a material source for the construction and maintenance of the \_\_\_\_\_ Highway, a Federal-Aid \_\_\_\_\_ Highway, and use of the space above and below the existing ground surface for highway purposes on, over, across, in and upon Federal land within \_\_\_\_\_ Meridian, \_\_\_\_\_ Recording District, State of Alaska, as shown on the plat dated \_\_\_\_\_, marked as Exhibit A, attached hereto and made a part hereof, subject, however, to the following terms and conditions:

- 1) Outstanding valid claims, if any, existing on the date of this grant, and the STATE shall obtain such permission as may be necessary on account of any such claims.
- 2) Use of the material source is to be undertaken by the STATE in compliance with the Act entitled “An Act for the Preservation of American Antiquities” approved June 8, 1960, (34 Stat. 225, 26 USC 432-433), and State laws where applicable.
- 3) The easement herein granted shall terminate 10 years from the date of the execution of this deed by the UNITED STATES OF AMERICA in the event development of the material source has not commenced during such period.

**Exhibit 6-6**  
**Highway Easement Deed (Material Source on BLM Property)**  
**Page 1 of 4**

4) The easement herein granted is limited to use of the described right of way and the space above and below the existing ground surface for the purpose of development and maintenance of a material source in accordance with the approved plans described in the following condition No. 5 and does not include the grant of any rights for non-highway purposes or facilities: Provided, that the right of the BUREAU OF LAND MANAGEMENT to use or authorize the use of any portion of the right of way for non-highway purposes shall not be exercised when such use would be inconsistent with the provisions of Title 23 of the United States Code and of the Federal Highway Administration Regulations issued pursuant thereto or would interfere with the free flow of traffic or impair the full use and safety of the highway, and in any case the DEPARTMENT shall be consulted prior to the exercise of such rights: and Provided, further that nothing herein shall preclude the BUREAU OF LAND MANAGEMENT from locating DEPARTMENT OF THE INTERIOR information signs on the portions of the right of way outside of development limits as long as concurrence to do so is first obtained from the STATE.

5) The use of this material source will be in accord with the provisions of Title 23, U.S. Code-Highways, and amendments; the provisions of regulations issued pursuant thereto; the construction specifications of the STATE highway department as approved by the DEPARTMENT for use on Federal-aid projects; and the following terms and conditions specified by the BUREAU OF LAND MANAGEMENT attached as Exhibit \_\_\_\_\_.

6) Consistent with highway safety standards, the STATE shall protect and preserve soil and vegetative cover and scenic and aesthetic values on the right of way outside of development limits.

7) The STATE shall maintain this material source to acceptable standards of repair, orderliness, neatness, sanitation and safety.

8) The STATE shall maintain the right of way clearing by means of chemicals only after specific written approval has been given by the DEPARTMENT after consultation with the BUREAU OF LAND MANAGEMENT. Application for such approval must be in writing and specify the time, methods, chemicals and the exact portion of the right of way to be chemically treated.

9) When need for the easement herein granted shall no longer exist and the area has been reasonably rehabilitated to protect the public and environment, the STATE shall give notice of that fact to the DEPARTMENT and the rights herein granted shall terminate and the land shall immediately revert to the full control of the Secretary of the DEPARTMENT OF THE INTERIOR or his assigns.

The STATE, in consideration of the conveyance of said land, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns that:

(a) no person shall, on the grounds of race, color, national origin, gender, age, income, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such land hereby conveyed;

(b) that the STATE shall use said land so conveyed in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, nondiscrimination in Federally-assisted programs of the Department of Transportation, in effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended.

**Exhibit 6-6**  
**Highway Easement Deed (Material Source on BLM Property)**  
**Page 2 of 4**

In the event of breach of any of the above-mentioned nondiscrimination conditions, the DEPARTMENT shall have the right to enter said land and facilities on said land, and the above-described land and facilities shall thereupon revert to and vest in and become the absolute property of the Secretary of the DEPARTMENT OF THE INTERIOR and its assigns, as such interest existed prior to this instrument.

IN WITNESS WHEREOF, I, \_\_\_\_\_, Division Administrator for the Alaska Division, pursuant to delegations of authority from the Secretary of Transportation and the Federal Highway Administrator by virtue of authority in me vested by law, have hereunto subscribed my name as of the day and year first above written.

UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
FEDERAL HIGHWAY ADMINISTRATION

By:

Name: \_\_\_\_\_

Division Administrator, Alaska Division

STATE OF ALASKA )

) ss.

FIRST JUDICIAL DISTRICT )

I, \_\_\_\_\_, a Notary Public in and for the State of Alaska, do hereby certify that on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_, being to me personally known and known to me to be the Division Administrator for the Alaska Division, Federal Highway Administration, and acknowledged that the foregoing instrument bearing the date \_\_\_\_\_, 2\_\_\_\_, was executed by him in his official capacity and by authority in him vested by law, for the purposes and intents in said instrument described and set forth, and acknowledged the same to be his act and deed as Alaska Division Administrator, Federal Highway Administration.

Witness my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Notary Public for Alaska

My Commission expires:

**Exhibit 6-6**  
**Highway Easement Deed (Material Source on BLM Property)**  
**Page 3 of 4**

In compliance with the conditions set forth in the foregoing deed, the STATE OF ALASKA, DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES, certifies and, by the acceptance of this deed, accepts the right of way over certain lands herein described and agrees for itself, its successors and assigns forever to abide by the conditions set forth in said deed.

STATE OF ALASKA  
DEPARTMENT OF TRANSPORTATION  
AND PUBLIC FACILITIES

By:

Name: \_\_\_\_\_  
Regional Right-of-Way Chief  
For the Commissioner

STATE OF ALASKA )

) ss.

\_\_\_\_\_ JUDICIAL DISTRICT)

I, \_\_\_\_\_, a Notary Public in and for the State of Alaska, hereby certify that \_\_\_\_\_, whose name is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he in his capacity as \_\_\_\_\_ executed the same voluntarily on this day.

Witness my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Notary Public for Alaska

My commission expires:

DEED APPROVED AS LEGALLY SUFFICIENT
DATE: _____, 20_____
Signature: _____
Name: _____
Assistant Attorney General
Alaska Attorney General's Office
Alaska Bar Association No: _____

**Exhibit 6-6**  
**Highway Easement Deed (Material Source on BLM Property)**  
**Page 4 of 4**



**HIGHWAY EASEMENT DEED  
FOR A HIGHWAY RIGHT OF WAY ON FOREST SERVICE LAND**

THIS DEED, made this \_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_, by and between the UNITED STATES OF AMERICA, acting by and through the DEPARTMENT OF TRANSPORTATION, FEDERAL HIGHWAY ADMINISTRATION, hereinafter referred to as the DEPARTMENT, and the STATE OF ALASKA; DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES; hereinafter referred to as the STATE:

W I T N E S S E T H:

WHEREAS, the STATE has filed application under provisions of the Act of Congress of August 27, 1958, as amended (23 USC Sec. 317), for a right of way of a highway over certain land owned by the United States in the State of Alaska which is under the jurisdiction of the Department of Agriculture, United States Forest Service; and,

WHEREAS, this transfer is further authorized under the provisions of the Act of Congress approved October 15, 1966 [80 Stat. 931, 937, Sec. 6 (a) (1) (A)]; and,

WHEREAS, the Regional Federal Highway Administrator, pursuant to delegation of authority from the Secretary of Transportation, has determined that an easement over the land covered by the application is reasonably necessary for a right of way for the existing Alaska Federal-Aid \_\_\_\_\_ Highway, Route \_\_\_\_\_; and,

WHEREAS, the Department of Agriculture, acting by and through the Forest Service, has agreed to the transfer by the DEPARTMENT of an easement over the land to the STATE:

NOW THEREFORE, the DEPARTMENT, as authorized by law, does hereby grant to the STATE an easement for a right of way for the construction, operation, and maintenance of a highway, and use of the space above and below the established grade lane of the highway pavement for highway purposes on, over, across, in and upon the following described lands of the United States within the \_\_\_\_\_ National Forest, State of Alaska:

SURVEYED

RANGE	TOWNSHIP	SECTION(S)	MERIDIAN
-------	----------	------------	----------

UNSURVEYED

RANGE	TOWNSHIP	SECTION(S)	MERIDIAN
-------	----------	------------	----------

and as shown on the following described plats:

Right-of-Way map, Alaska Project sheets marked "EXHIBIT A" attached hereto and made a part hereof, subject, however, to the following terms, conditions and covenants:

(1) Outstanding valid claims, if any, existing on the date of this grant, and the STATE shall obtain such permission as may be necessary on account of any such claims.

(2) The STATE and the Regional Forester shall make determinations as to the necessity for archaeological and paleontological reconnaissance and salvage to the extent determined necessary because of construction of the highway facility is to be undertaken by the STATE in compliance with the Act entitled "An Act for the preservation of American antiquities" approved June 8, 1906 (34 Stat. 225, 16 USC 432-433), and State laws where applicable.

**Exhibit 6-7  
Highway Easement Deed (Highway ROW on Forest Service Land)  
Page 1 of 4**

(3) Unless the STATE and Regional Forester stipulate as to a shorter time, the easement herein granted shall terminate ten (10) years from the date of the execution of this deed by the United States of America in the event construction of a highway on the right of way is not started during such ten year period.

(4) The easement herein granted is limited to use of the described right of way and the space above and below the established grade line of the highway pavement for the purposes of construction, operation and maintenance of a highway in accordance with approved plans and does not include the grant of any rights of non-highway purposes or facilities.

Provided, that the right of the Forest Service to use or authorize the use of any portion of the right of way for non-highway purposes shall not be exercised when such use would be inconsistent with the provisions of Title 23 of the United States Code and of the Federal Highway Administration Regulations issued pursuant thereto, would interfere with the free flow of traffic or impair the full use and safety of the highway, and in any case the STATE and the Federal Highway Administration shall be consulted prior to the exercise of such rights: And Provided, Further that nothing herein shall preclude the Forest Service from locating National Forest and other Department of Agriculture information signs on the portions of the right of way outside of construction clearing limits.

(5) Consistent with highway safety standards, the STATE shall:

(a) Protect and preserve soil and vegetative cover and scenic and esthetic values on the right of way outside of construction limits.

(b) Provide for the prevention and control of soil erosion within the right of way and adjacent lands that might be affected by the construction, operation or maintenance of the highway, and shall vegetate and keep vegetated with suitable species, all earth cut or fill slopes feasible for re-vegetation, or other areas on which ground cover is destroyed where it is deemed necessary during a joint review between the Regional Forester and the STATE, shall maintain all terracing, waterbars, lead-off ditches, or other preventative works that may be required to accomplish this objective. This provision shall also apply to slopes that are reshaped following slides that occur during or after construction.

(6) The STATE shall establish no borrow, sand, or gravel pits, stone quarry, or permanent storage areas, sites for highway operation and maintenance facilities, camps, supply depots or disposal areas within the right of way, unless shown on approved construction plans, without first obtaining approval of the Regional Forester.

(7) The STATE shall maintain the right of way clearing limits by means of chemicals only after specific written approval has been given by the Regional Forester. Application for such approval must be in writing and specify the time, method, chemicals, and the exact portion of the right of way to be chemically treated.

(8) The STATE, in consideration of the grant of this easement, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns that:

(a) No persons shall, on the grounds of race, color, national origin, gender, age, income, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over or under such lands hereby conveyed;

b) The STATE shall use said easement and right of way so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation, effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

**Exhibit 6-7**  
**Highway Easement Deed (Highway ROW on Forest Service Land)**  
**Page 2 of 4**

(9) When need for the easement herein granted shall no longer exist, the STATE shall give notice of that fact to the Secretary of Transportation and the rights herein granted shall terminate and the land shall immediately revert to the full control of the Department of Agriculture.

IN WITNESS WHEREOF, I, \_\_\_\_\_, Division Administrator for the Alaska Division, pursuant to delegations of authority from the Secretary of Transportation and the Federal Highway Administrator by virtue of authority in me vested by law, have hereunto subscribed my name as of the day and year first above written.

UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
FEDERAL HIGHWAY ADMINISTRATION

By:

Name: \_\_\_\_\_

Division Administrator, Alaska Division

STATE OF ALASKA )

) ss.

FIRST JUDICIAL DISTRICT )

I, \_\_\_\_\_, a Notary Public in and for the State of Alaska, do hereby certify that on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_, being to me personally known and known to me to be the Division Administrator for the Alaska Division, Federal Highway Administration, and acknowledged that the foregoing instrument bearing the date \_\_\_\_\_, 2\_\_\_\_, was executed by him in his official capacity and by authority in him vested by law, for the purposes and intents in said instrument described and set forth, and acknowledged the same to be his act and deed as Alaska Division Administrator, Federal Highway Administration.

Witness my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Notary Public for Alaska

My Commission expires:

**Exhibit 6-7**  
**Highway Easement Deed (Highway ROW on Forest Service Land)**  
**Page 3 of 4**

In compliance with the conditions set forth in the foregoing deed, the STATE OF ALASKA, DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES, certifies and, by the acceptance of this deed, accepts the right of way over certain lands herein described and agrees for itself, its successors and assigns forever to abide by the conditions set forth in said deed.

STATE OF ALASKA  
DEPARTMENT OF TRANSPORTATION  
AND PUBLIC FACILITIES

By:

Name: \_\_\_\_\_  
Regional Right-of-Way Chief  
For the Commissioner

STATE OF ALASKA )

) ss.

\_\_\_\_\_ JUDICIAL DISTRICT)

I, \_\_\_\_\_, a Notary Public in and for the State of Alaska, hereby certify that \_\_\_\_\_, whose name is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he in his capacity as \_\_\_\_\_, executed the same voluntarily on this day.

Witness my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Notary Public for Alaska

My commission expires:

DEED APPROVED AS LEGALLY SUFFICIENT
DATE: _____, 20_____
Signature: _____
Name: _____
Assistant Attorney General
Alaska Attorney General's Office
Alaska Bar Association No: _____

Early Acquisition/Corridor Preservation options allowable under 23 USC 108; 23 CFR 710.501 and 503; 23 CFR 771.113; and MAP-21	
Option 1	<b>State Funded with no match or reimbursement</b>
	<ul style="list-style-type: none"> <li>• Comply with the Uniform and Relocation Act (URA)</li> <li>• Comply with Title VI of the Civil Rights Act of 1964 (Title VI)</li> <li>• Cannot have an adverse environmental impact</li> <li>• Cannot limit the choice of reasonable alternatives</li> </ul>
Option 2	<b>State Funded with matching credit</b>
	<ul style="list-style-type: none"> <li>• Comply with the URA</li> <li>• Comply with Title VI</li> <li>• Cannot involve Section 4(f) lands</li> <li>• The State determines that the action doesn't influence NEPA</li> <li>• The FHWA concurs with the State's NEPA determination</li> <li>• Only the cost of the acquisition (not appraisal, title search, relocation, etc.) can be used as the match</li> <li>• The State needs to determine if the FMV or the historical value will be determined as match (this determination will apply every time match is requested)</li> <li>• The procedure for requesting and processing matching credit must be in an approved ROW Manual (DOT&amp;PF's manual is up for approval in December 2015 so an approved addendum would be acceptable at this time)</li> <li>• The credits to the State's matching share cannot exceed the State's matching share of the total cost of the project</li> <li>• "Excess" credits cannot be used on other projects</li> <li>• The State assumes the risk</li> </ul>
Option 3	<b>State Funded with Federal reimbursement</b>
	<ul style="list-style-type: none"> <li>• Comply with the URA</li> <li>• Comply with Title VI</li> <li>• Cannot involve Section 4(f) lands</li> <li>• The State must have a comprehensive and coordinated land use, environment and transportation planning process</li> <li>• The acquisition must be certified by the Governor or designee as consistent with the State plans before the acquisition</li> <li>• The acquired property must be included into the chosen alternative</li> <li>• The State determines that the action doesn't influence NEPA</li> <li>• The FHWA concurs with the State's NEPA determination</li> <li>• Environmental compliance is completed prior to reimbursement</li> </ul>
Option 4	<b>Federally Funded early acquisition</b>
	<ul style="list-style-type: none"> <li>• The acquisition must be programmed as a project in the approved STIP</li> <li>• The acquisition may be a single parcel or a corridor</li> <li>• The State must certify that the acquisition(s): <ul style="list-style-type: none"> <li>*is for a transportation purpose</li> <li>*does not cause adverse environmental impacts</li> <li>*does not limit the reasonable alternatives</li> <li>*does not prevent impartial decision making on the alternatives</li> <li>*was acquired without threat of condemnation</li> <li>*does not result in a reduction of benefits or assistance</li> <li>*has independent utility</li> <li>*does not limit consideration of alternatives for future transportation improvements</li> </ul> </li> <li>• NEPA review must be completed and approved by FHWA</li> <li>• The land(s) acquired may not be improved (developed)</li> </ul>
Other items of note:	
<ul style="list-style-type: none"> <li>• UT has developed a program which has created a revolving acquisition fund</li> <li>• Early acquisition can be considered a subset of corridor preservation</li> <li>• Other actions which can be taken to preserve corridors – building restrictions or zoning</li> </ul>	

**Exhibit 6-8  
Options for Early Acquisition/Corridor Preservation**

*This page intentionally left blank.*

## 7. Relocation

---

- 7.1. Introduction
- 7.2. Definitions of Displaced Person and Persons Not Displaced
- 7.3. Eligibility for Relocation Benefits
- 7.4. Relocation Services Provided
- 7.5. Relocation Planning
- 7.6. Catalog of Comparable Replacement Housing
- 7.7. Relocation Advisory Assistance Services
- 7.8. 90-Day Homeowner Occupants
- 7.9. 90-Day Occupants
- 7.10. Replacement Housing of Last Resort
- 7.11. Persons Ineligible to Receive Replacement Housing Payment
- 7.12. Utilization of Payment by Displaced Person
- 7.13. Voluntary Sale for Last Resort Housing
- 7.14. Payment for Residential Moves and Related Expenses
- 7.15. Owner-occupants of Multifamily Dwellings
- 7.16. Payment for Nonresidential Moves and Related Expenses
- 7.17. Nonresidential Moves: Preparation of Specifications, Notification, and Inspection
- 7.18. Personal Property Only
- 7.19. Notice of Intent to Acquire
- 7.20. Business Services Provided
- 7.21. Appeals
- 7.22. Moving of Hazardous Materials
- 7.23. Eviction for Cause
- 7.24. Parcels Acquired by Condemnation
- 7.25. Administration Relocation Claim Processing
- 7.26. Civil Rights
- 7.27. Restrictions on Agent Establishing a Relocation Payment

### 7.1. Introduction

Title II of the Uniform Act ([49 CFR 24](#), Subparts A, C, D, E & F) contains the relocation assistance

provisions required on projects financed with Federal funds. Even if Federal funds are not involved in the ROW phase, if Federal funding is used for any phase of the project, the Uniform Act applies.

The Uniform Act ensures that any person displaced as a direct result of a project is treated fairly, consistently, and equitably so as not to suffer disproportionate injuries. Any qualifying displaced person must be fully informed of all rights and entitlements to relocation assistance and payments provided in this chapter. DOT&PF may not propose or request that a displaced person waive any right or entitlement provided in this chapter.

### Recent Developments and Updates

In 2018 the State of Alaska's statutes regarding Relocations Assistance procedures were updated to match the Moving Ahead for Progress in the 21<sup>st</sup> Century (MAP-21) Federal Transportation Bill of 2012. Those statutory changes are reflected in this *Manual*. The new Alaska law under [AS 34.60](#) now refers directly to [42 USC 4622](#) as amended and [42 USC 4624](#) as amended. The primary changes revolve around higher maximum payments for relocation and re-establishment, purchase price differentials for homeowners, rental supplements for tenants, and eligibility for payments and mortgage differentials. Alaska is more generous than the Federal requirements with regard to mortgage differential eligibility, treating 90-day and 180-day occupants equivalently. The 2018 changes to [AS 34.60](#) are retroactive to 1 October 2014. In addition, effective 26 August 2021, the schedule for Fixed Residential Moving Costs raised the payments due to eligible persons (see Sec. 7.14.2 and [Claim for Fixed Moving Expenses and Dislocation Allowance \(Residential\) Form 25A-R753](#)). This chapter also draws attention to the Uniform Act's broad definition of "person" as it applies to both residential and non-residential parties (such as businesses and farms) and the requirement to comply with Housing of Last Resort.

### Administration

The Statewide ROW Chief is responsible for the statewide policies regarding the relocation program. The regional offices in the Central, Northern, and Southcoast each have a supervisory ROW Agent responsible for the application and tracking of the relocation program. These supervisory ROW Agents report directly to the Regional ROW Chief with one or



more Relocation Agents assigned to the relocation function.

Unless otherwise noted, all instructions in this chapter refer to the ROW Agent who has been assigned the duties of Relocation Agent for a particular project. The purpose of this chapter is to provide the reference necessary to provide advisory and relocation services required by the Uniform Act. This chapter is divided into sections that provide the agent with an understanding of their responsibilities regarding:

1. General planning and relocation expertise needed during project development and the public participation portions of Design.
2. Services to be provided to displaced individuals.
3. Determination of benefits.
4. Relocation of displaced occupants of dwellings (residential).
5. Relocation of businesses, farms and nonprofits (nonresidential).
6. Protocol for processing claims.

In addition, the agent needs to coordinate with the activities of the appraiser, Acquisition Agent, other DOT&PF staff, and contractors in order to provide straightforward and fair services to the impacted persons.

## **7.2. Definitions of Displaced Person and Persons Not Displaced**

Note that “person” is defined in [49 CFR 24.2\(a\)\(21\)](#) as “any individual, family, partnership, corporation, or association” and is thus not limited to residents. The definitions of displaced person and persons not displaced are further defined in [49 CFR 24.2\(a\)\(9\)](#).

## **7.3. Eligibility for Relocation Benefits**

In order to be eligible for benefits, the displaced person(s) must certify that they are either a U.S. citizen or national of the U.S., or an alien who is lawfully present in the United States (see [49 CFR 24.208](#)).

An exception to this eligibility rule is possible only if an alien who is not lawfully present in the United States can demonstrate that denying benefits would cause an exceptional and extremely unusual hardship to the alien’s spouse, parent, or child who is a U.S. citizen or a lawful resident alien.

If the moving claim form certification indicates that one or more members of a displaced family is an alien who is not lawfully present in the United States, prorate the moving expense payment based on the proportion of lawful occupants to the total number of occupants. For example, if four out of five members of a family to be displaced are lawfully present, the proportion of lawful occupants is 80% and that percentage is to be applied against the moving expenses payment that otherwise would have been received.

DOT&PF presumes that any eligible person who lawfully occupies the real property on the date of the initiation of negotiations is entitled to relocation payments and other assistance described in this manual, unless the Regional ROW Chief determines that the person received an eviction notice before 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 violation of material terms of the lease or occupancy agreement (in either case described, the landlord did not undertake the eviction for the purpose of evading the obligation to make available the payments and other assistance described in this manual).

For purposes of determining eligibility for relocation payments, the date of displacement is the date the displaced 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.

Clearing encroachments from a project right of way may require relocation assistance and benefits, particularly for the contents or occupants. Early coordination with Environmental and funding partners is essential when these are identified.

## **7.4. Relocation Services Provided**

DOT&PF must provide, at a minimum, those measures, facilities, or services that are necessary or appropriate to carry out the following:

- determine the relocation needs and preferences of each person to be displaced and explain the relocation payments and other assistance for which the person may be eligible, the related eligibility requirements, and the procedures to obtain assistance; this must include a personal interview with each person;

- advise any displaced person eligible for government housing assistance at the replacement dwelling of any requirements of the assistance program that would limit the size of the replacement dwelling, and of the long-term nature of such rent subsidy;
- provide current and continuing information on availability, purchase prices, and rental costs of comparable replacement dwellings, and explain that the displaced person cannot be required to move unless at least one comparable replacement dwelling is made available (See Sec. 7.6); and
- ensure that interviews with displaced business owners and operators contain, at a minimum, the following:
  - replacement site requirements, current lease terms, and other contractual obligations of the business;
  - financial capacity of the business to accomplish the move;
  - identification of any advance relocation payments required for the move, and whether DOT&PF has authority to provide them;
  - determination of the need for outside specialists to assist in planning the move, assist in the actual move, and assist in the reinstallation of machinery and other personal property;
  - identification and resolution of personalty/realty issues before or at the time of the appraisal;
  - estimate of the time required for the business to vacate the site;
  - estimate of the anticipated difficulty in locating a replacement property; and
  - assurance that the benefits from other agencies are not being impacted.

#### **7.4.1. Relocation Assistance Program Package**

The Relocation Assistance Program Package is given to eligible displaced persons to explain the relocation program. Although the content will vary among residential and nonresidential occupants, the materials may include:

- appropriate Relocation Brochure;
- [Certification Concerning Legal Residency in the United States](#);
- [Notice of Eligibility Form 25A-R723](#) stating kinds and amounts of benefits the specific displaced person may be eligible to receive;
- [Affirmation and Request for Relocation Assistance \(Residential\) Form 25A-R725](#) or [Affirmation and Request for Relocation Assistance \(Business\) Form 25A-R726](#) as appropriate; and
- other optional information pertinent to the specific type of eligibility involved; e.g., “Fair Housing” pamphlets and Small Business Administration loan information.

#### **7.5. Relocation Planning**

The scoping for project-related relocation activities facilitates the orderly relocation of everyone in the right of way and gives advance warning of special problems that may necessitate more lead time than normal.

##### **7.5.1. Project Information and Documentation**

1. Collect pertinent project related documents, i.e., plans, design study reports, environmental impact statements, etc.
2. Certification dates for the project.
3. Information contained in the relocation study.
4. Maintain correspondence, documentation, etc., relative to a specific parcel or project in the regional parcel file or the project general correspondence file. Maintain the following information in the Regional Relocation Unit:
  - a. current and continuing lists of replacement dwellings available to persons, without regard to race, color, national origin, gender, age, income, or disability, drawn from various

sources, suitable in price, size, and condition for displaced persons to the extent available;

- b. current and continuing lists for commercial properties and locations for displaced businesses;
- c. current data for costs such as security deposits, closing costs, typical down payments, interest rates and terms;
- d. maps showing the location of schools, parks, playgrounds, shopping, and public transportation routes in the areas, where applicable;
- e. schedules and costs of public transportation, where applicable;
- f. copies of the relocation brochure, local ordinances pertaining to housing, building codes, open housing consumer education literature on housing, shelter costs, and family budgeting;
- g. subscription for apartment directory services, neighborhood and metropolitan newspapers, and multiple listing services, where applicable;
- h. list of licensed and approved movers;
- i. list of insurance companies that will insure the personal property being moved;
- j. list of advisory information for the project to include contact information of key personnel, what the project will affect and outcomes; and
- k. other pertinent information of value to displaced persons.

### **7.5.2. Relocation Study**

Consult with Environmental staff early to ascertain the requirements for NEPA or other relevant reviews. The study should address, in detail, special relocation problems, timing considerations, relocation phasing, and general relocation alternatives.

At the regional environmental section's request, the Regional ROW Chief directs the preparation of a relocation study that will become part of the environmental document for the project. The study should recognize problems associated with the

displacement of individuals and develop solutions to minimize their adverse impacts.

When preparing the study, consider the number of displacements, type, availability or lack of affordable replacement housing or non-residential facilities, the likelihood of last resort housing payments, and special needs that will have to be addressed before negotiations begin.

Basic assumptions should be stated that could invalidate all or part of the study if changed:

- certification dates for the project will remain essentially unchanged;
- reservation that the design will remain essentially unchanged;
- critical recommendations in the relocation plan are implemented; and
- all approvals are obtained as scheduled.

When considering the availability of housing units versus the need—consider completing a table or spreadsheet that:

- compares by price range, number of bedrooms, and occupancy status;
- summarizes the total available dwellings by price range, number of bedrooms, and occupancy status; and
- outlines (one for each year of right-of-way acquisition for the project) the basis for relating the various kinds of housing and non-residential needs and the housing or non-residential facilities available to fulfill them.

If it is necessary to relocate people in mobile homes, provide a complete separate analysis, the results of which are correlated into the project relocation study.

Describe those types of housing where no special effort will be necessary, including areas where relocation assistance payments will easily accomplish relocation. Provide an analysis showing that displaced persons will be able to pay for their housing in the new area. Describe DS&S problems where the normal market may not have enough DS&S housing to absorb the demand within the time span allowed for relocation. Perform the same analyses for non-residential relocations.

If the time scheduled for acquisition and relocation is insufficient to allow orderly relocation based on what the market can absorb, state the best estimate of the time required and recommend changes that would allow for this additional time.

If there is scarcity in some types of housing or non-residential facilities, follow-up studies on previous projects with displaced persons may enable the report to generalize on the percentages of people by housing class or businesses who tend to leave the area completely. A reasonable estimate of people expected to leave the area, based on solid facts, may show that no availability problem exists where there initially appeared to be one.

If the survey indicates an area where there are or may be a large number of ineligible occupants in the right of way, note this along with any foreseeable problems connected with the displaced persons (examples include student housing and motel/hotel occupants).

State which parcels should be appraised and acquired first and include any appropriate special recommendations for handling them. Identify those parcels where extra time will solve special problems. If there is low availability of one type of unit more time may well solve the relocation problem. Such problems may involve rest homes, old hotels with permanent residents, housing for elderly, mobile home parks, specialized warehouses, medical facilities, farms, or other specialized or atypical properties.

If research indicates a lack of available business relocation sites or significant relocation problems, bring these issues to the attention of the Regional ROW Chief. Include a discussion of possible solutions to the identified problems.

During this study, contact property owners, if necessary, to develop data that includes the following:

1. Estimate of the number of households to be displaced, including information such as owner/tenant status, estimated value and rental rates of properties to be acquired, family characteristics, and special consideration of the impacts on minorities, the elderly, large families, and disabled persons when applicable. Some of this data is available from secondary sources such as government and utility records.
2. Estimate of the number of comparable replacement dwellings in the area (including price ranges and rental rates) that are expected to be

available to fulfill the needs of those displaced. When an adequate supply of comparable housing is not expected to be available, consider housing of last resort.

3. Estimate of the number, type, and size of the businesses, farms, and nonprofit organizations to be displaced and the approximate number of employees who may be affected.
4. Estimate of the availability of replacement business sites. If an adequate supply of replacement business sites is not expected to be available, the impacts of displacing the businesses should be considered and addressed. If relocation planning for displaced businesses is expected to involve complex or lengthy moving processes; or involve small businesses with limited financial resources or few alternative relocation sites; the relocation study should include an analysis of business moving problems.
5. Consideration of any special relocation advisory services that may be necessary from DOT&PF and other cooperating agencies.
6. Any other pertinent or helpful information.

This information is required for each of the design alternatives under consideration in the environmental document. After completing these activities, the Regional ROW Chief must submit the study to the regional environmental coordinator to include in the environmental document.

### **7.5.3. Corridor Public Meeting**

A Corridor Public Meeting is a meeting related to the project corridor. The Regional Environmental Section may request the Regional ROW Chief direct the preparation of the corridor presentation.

Present the following information at the corridor public meeting:

1. Information contained in the relocation study.
2. The relocation brochure.
3. If applicable, a discussion of the relocation program in terms of availability of relocation assistance and services, eligibility requirements and payment procedures under Alaska law and the Uniform Act.
4. The Public Statement (Exhibit 7-1).

#### **7.5.4. Design Public Meeting**

A Design Public Meeting is a meeting related to the project design. The Regional Environmental Section may request the Regional ROW Chief prepare information for the design meeting. The Regional ROW Chief must update the relocation study as a relocation plan for the selected alignment to identify any changes that have occurred in the number or type of displaced persons and any changes in the availability of replacement properties.

Present the following information at the design public meeting:

1. Eligibility requirements and payment procedures.
2. Discussion of the services available under DOT&PF's relocation advisory assistance program, including the address and telephone number of the local relocation office and cooperating local agencies, if any, by name.
3. Updated estimate of the number of individuals or families to be relocated;
4. Public Statement (Exhibit 7-1).
5. Relocation brochure.

#### **7.5.5. Open House**

The Regional Environmental Section may use an Open House concept in place of the Corridor Public Meeting and the Design Public Meeting. The Regional ROW Chief must make the same relocation information available to the open house attendees.

#### **7.6. Catalog of Comparable Replacement Housing**

Compile a catalog of comparable replacement housing using the [Comparable Housing Listing Form 25A-R713](#), and update it as project needs require and the local market dictates. The purpose of this catalog is to analyze the market in terms of rentals and homes for sale. Arrange the listing in terms of asking price and rents. Include only those dwellings that meet the criteria for a comparable replacement dwelling. Dwellings must pass the DS&S inspection to be part of the catalog.

#### **7.7. Relocation Advisory Assistance Services**

DOT&PF must provide relocation advisory assistance services to ensure that the maximum assistance

possible is provided to eligible persons required to relocate because of the project.

If the displaced person has limited English proficiency, secure through the DOT&PF's Civil Rights Office the assistance of a translator with whom the displaced person is comfortable. Obtain a signed affidavit from the translator attesting that the displaced person understood the information presented and is making any agreements knowingly, willingly, and in full understanding of their obligations.

These services are intended as a minimum to assist in relocation to DS&S housing that meets their needs. Provide the services by personal contact. If unable to make personal contact, include information in the files regarding the reasonable efforts made.

#### **7.7.1. Replacement Housing to be Inspected**

Inspect replacement housing to assure it meets the DS&S standard before making it available. If the replacement housing was found by the displaced person, DOT&PF may not make a replacement housing payment unless DOT&PF inspects it and finds it to be DS&S compliant. Refer to [Replacement Dwelling Inspection Report Form 25A-R780](#).

#### **7.7.2. Availability of Comparable Replacement Housing**

DOT&PF may not require any displaced person to move unless DOT&PF has made at least one comparable replacement property available. Where possible, make three or more comparable DS&S replacement properties available and list them on the Benefit Statement. A comparable replacement property will be considered to have been made available to a person if the Relocation Agent has:

1. informed the person of its location;
2. allowed the person enough time to negotiate and enter into a purchase agreement or lease for the property;
3. subject to reasonable safeguards, assured the person of receiving the relocation assistance and acquisition payment to which they are entitled in sufficient time to complete the purchase or lease; and
4. inspected replacement housing for DS&S and confirm at time of offer that comparable replacement housing is available and DS&S.

### 7.7.3. Eligibility

Services shall be offered to all persons occupying property:

- acquired or to be acquired;
- immediately adjacent to the acquired real property if DOT&PF believes they may have difficulty adjusting to changes resulting from the acquisition that was acquired, and choose to relocate their adjacent residence, business, or farm operation; and
- after it was acquired by DOT&PF, when such occupancy is permitted by a short-term rental agreement or an agreement subject to termination when the property is needed for a project.

No services shall be offered to persons or businesses not certified as lawfully present in the United States.

### 7.7.4. Relocation Contact and Activities

After receipt of Authority to Proceed with the acquisition phase, the Regional ROW Chief directs the Relocation Unit to proceed with the following subsections.

#### General Information Notice

Furnish any person scheduled to be displaced with [General Information Notice Form 25A-R705](#) and the relocation brochure. Notify the owner before contacting tenants. Advise the potential displaced persons that only U.S. citizens or aliens who are lawfully present in the United States are eligible for relocation benefits.

As required by [49 CFR 24](#), include, at a minimum, the following in the General Information Notice:

1. inform the person that they may be displaced for the project;
2. generally describe the relocation payments for which the person may be eligible, the basic conditions of eligibility, and the procedures for obtaining payment;
3. inform the person that, unless they are subject to #6 below, they will be given reasonable relocation advisory services, including referrals to replacement properties, help in filing payment claims, and other necessary assistance to help them successfully relocate;

4. inform the person that they will not be required to move without at least 90 days' written notice that meets the requirements of [49 CFR 24](#);
5. inform the person that they cannot be required to move permanently unless at least one comparable replacement property is made available and assure them that they will not be required to move earlier than 90 days after a replacement property is available (see [49 CFR 24](#));
6. 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 who is a citizen of the United States or an alien lawfully admitted for permanent residence in the United States; and
7. describe the person's right to appeal DOT&PF's determination of benefits or relocation services under [49 CFR 24](#) and [17 AAC 81](#). (For rules regarding appeals, see [49 CFR 24.10](#) and [17 AAC 85](#) and consult with the Regional and Statewide Right-of-Way Chiefs and DOT&PF's attorney at the Department of Law.)

#### Request for Relocation Assistance

For residential moves, obtain the signature of the displaced person on the [Affirmation and Request for Relocation Assistance \(Residential\) Form 25A-R725](#) or complete the [Agent's Affirmation of Presentation Form 25A-R728](#) if the displaced person will not sign the form. If they do not waive assistance, supply lists of replacement housing that meets the DS&S standard.

List the addresses of the comparable housing offered on the Record of Relocation Contacts. Offer all displaced persons transportation to inspect housing to which they are referred. The elderly, disabled, or financially-disadvantaged persons are among those that may need special assistance and require additional planning and coordination appropriate accommodations.

For a displaced business, obtain the signature of the owner on the [Affirmation for Request for Relocation Assistance \(Business\) Form 25A-R726](#) and supply lists of comparable commercial properties available.

Inform the displaced person of the different moving options available and inquire as to any moving plans.



## Owner-occupants of Multifamily Dwellings

An eligible owner-occupant of a multifamily dwelling is eligible to receive a residential moving expense payment for moving personal property from the owner-occupied dwelling unit. The owner-occupant is also eligible to receive moving payments for personal property owned in the other units of the multifamily dwellings in accordance with Sec. 7.15.

## Subject Dwelling Occupancy Report

Upon the initial contact with each displaced person, complete a [Displacement Dwelling Occupancy Report \(Residential\) Form 25A-R708](#) for residential displaced persons or a [Non-Residential Occupancy Report Form 25A-R710](#) for nonresidential displaced persons. These forms contain questions about the displaced person's ethnicity and gender. Explain to the owner that this information is required for all parcels by the Federal agency funding the project to fulfill its reporting requirements. File the form in the parcel relocation file, usually as the first entry.

## Notice of Relocation Eligibility

Eligibility for relocation assistance begins on the date of the issuance of a notice of intent to acquire, the initiation of negotiations for the occupied property, or the actual acquisition of the property, whichever occurs first.

Give the [Notice of Eligibility Form 25A-R723](#) to all occupants within two weeks after the offer is made for the property. If the Notice of Eligibility is sent by certified mail, make personal contact within 30 days after initiation of negotiations to furnish any additional explanations necessary. If appropriate, the applicable 90-day notice may be given at the same time as the Notice of Eligibility.

## Relocation Notices

Throughout the project either personally serve, or send by certified or registered first class mail, return receipt requested, the following notices (as applicable) to displaced persons, and document it in the Record of Negotiations and place a copy in the parcel relocation file:

- [General Information Notice Form 25A-R705](#);
- [Notice of Intent to Acquire Form 25A-R715](#);
- [Notice of Eligibility Form 25A-R723](#);
- an appropriate Benefit Statement (Benefit Statement ([Owner-Occupant of 180 Days or](#)

[More\) Form 25A-R730, Benefit Statement \(Occupant Less Than 90 Days\) Form 25A-R733, Benefit Statement – Residential \(Owner-Occupant more than 90 Days\) Form 25A-R735, Benefit Statement \(Tenant of More Than 90 Days\) Form 25A-R738, Benefit Statement \(Tenant of Less Than 90 Days\) Form 25A-R740, or Benefit Statement \(Business\) Form 25A-R743](#));

- [Moving Incentive Program Statement Form 25A-R744](#) if applicable for a State-funded project;
- 90-Day Notice to Vacate;
- 90-Day Informational Notice; and
- appropriate Affirmation Forms ([Affirmation and Request for Relocation Assistance \(Residential\) Form 25A-R725, Affirmation and Request for Relocation Assistance \(Business\) Form 25A-R726, and Agent's Affirmation of Presentation Form 25A-R728](#)).

For persons unable to read and understand the notice, provide appropriate translation/translator and counseling. Each notice must indicate the name and telephone number of the Agent who may be contacted for answers to questions or other needed help. Consult with the DOT&PF Civil Rights Office if there is concern that the property owner may not understand or may need assistance.

## Rental Agreement

Inform the displaced person of the requirement to pay rent to DOT&PF for the property after it is acquired, and that they must sign a rental agreement (Sec. 9.6.1). The rental agreement is authorized by the Regional ROW Chief.

## Benefit Statement

Within two weeks after initiation of negotiations, if possible, but by the time DOT&PF acquires the property, give the displaced person the appropriate benefit statement, showing the amount of replacement housing or rent supplement by use of one of the following forms:

- [Benefit Statement \(Owner-Occupant of 90 days or more\) Form 25A-R730](#);
- [Benefit Statement \(Owner-Occupant of Less Than 90 days\) Form 25A-R733](#);



- [Benefit Statement \(Tenant of More Than 90 days\) Form 25A-R738](#);
- [Benefit Statement \(Tenant of Less than 90 days\) Form 25A-R740](#); or
- [Benefit Statement \(Business\) Form 25A-R743](#).

### Replacement Housing

Dwellings considered as replacement housing must meet the DS&S standard as well as the applicable housing and occupancy codes, which may include requirements relating to potentially hazardous substances.

No dwelling located on, or in close proximity to, an identified hazardous waste site may be considered as a comparable replacement dwelling.

### 7.8. 90-Day Homeowner Occupants

In addition to other authorized payments, eligible individuals and families displaced from a dwelling (including a condominium or cooperative apartment) required for a Federal-aid project may be eligible for replacement housing payments. The displaced person is not required to relocate to the same occupancy status (homeowner vs. tenant) but has other options according to ownership status and tenure of occupancy as described in this chapter.

#### 7.8.1. Eligibility

A displaced person is eligible for the replacement housing payment for a 90-day homeowner-occupant if the person meets the following conditions:

1. actually owned and occupied the displacement dwelling for at least 90 days immediately before the initiation of negotiations; and
2. purchases and occupies a DS&S replacement dwelling within one year after the later of the following dates (the Regional ROW Chief may extend the one-year period for good cause):
  - a. date the person receives final payment for the displacement dwelling or, in the case of condemnation, the date DOT&PF deposits the full amount of the Recommendation of Just Compensation in the court; or
  - b. date DOT&PF meets its obligation under Sec. 7.7.2.

#### 7.8.2. Amount of Payment

Except under Housing of Last Resort, the replacement housing payment for an eligible 90-day homeowner-occupant may be as much as \$31,000 (see Sec. 7.10). Payment under this section is limited to the amount necessary to relocate to a comparable replacement dwelling within one year from the date the displaced homeowner-occupant is paid for the displacement dwelling, or the date a comparable dwelling is made available to that person, whichever is later. Calculate the payment as the sum of the following amounts:

1. The amount by which the cost of a replacement dwelling exceeds the acquisition cost of the displacement dwelling, as determined under Sec. 7.8.3.
2. The increased interest costs and other debt service costs incurred in connection with the mortgage(s) on the replacement dwelling as determined under Sec. 7.8.4.
3. The reasonable expenses incidental to the purchase of the replacement dwelling, as determined under Sec. 7.8.5.

See [Claim for Payment \(Replacement Housing Supplement\) Form 25A-R760](#) and Exhibit 7-2.

#### 7.8.3. Price Differential

##### Basic Computation

Add the price differential to be paid under Sec. 7.8.2 to the acquisition cost of the displacement dwelling to provide a total amount equal to the lesser of the following:

- reasonable cost of a comparable replacement dwelling and site; or
- purchase price of the DS&S replacement dwelling actually purchased and occupied by the displaced person.

##### Mixed-use and Multifamily Properties

If the displacement dwelling was part of a property that contained another dwelling unit or space used for nonresidential purposes, and/or is located on a lot larger than typical for residential purposes, consider only that portion of the acquisition payment actually attributable to the displacement dwelling as its acquisition cost when computing the price differential.

## Insurance Proceeds

Include in the acquisition cost of the displacement dwelling 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.). Doing this will avoid duplicate compensation when computing the price differential.

## Owner Retention of Displacement Dwelling

If the owner retains ownership of the dwelling, moves it from the displacement site, and reoccupies it on a replacement site, calculate the purchase price of the replacement dwelling as the sum of the following amounts:

1. The cost to move and restore the dwelling to a condition comparable to that before the move.
2. The cost to make the unit a DS&S-compliant replacement dwelling (see definitions).
3. The current market value for residential use of the replacement site unless the claimant rented the displacement site and has a reasonable opportunity to rent a suitable replacement site.
4. The retention value of the dwelling, if the retention value is reflected in the acquisition cost used when computing the replacement housing payment.

Use the [Claim for Payment \(Owner Retention of Dwelling\) Form 25A-R763](#) for a claim under this section. This is done by approval of the Regional ROW Chief on a case-by-case basis.

### 7.8.4. Increased Mortgage Interest Costs

The amount DOT&PF will pay under Sec. 7.8.2 is determined by the buy down method.

This method provides a lump sum payment that will reduce the mortgage balance on a new mortgage to an amount that could be amortized with the same monthly payment for principal and interest as that for the mortgage(s) on the displacement dwelling.

Include other debt service costs in the payments, if not paid as incidental costs, and base the payments only on bona fide mortgages that were valid liens on the displacement dwelling for at least 90 days before the initiation of negotiations.

Use the following guidelines in the computation of the increased mortgage interest costs payment, which is

contingent upon the owner placing a mortgage on the replacement dwelling:

1. Base the payment on the unpaid mortgage balance(s) on the displacement dwelling.
2. However, if the person obtains a smaller mortgage than the mortgage balance(s) computed in the buy down determination, prorate the payment and reduce it accordingly.
3. For a home equity loan, determine the unpaid balance as that which existed 90 days before the initiation of negotiations, or the balance on the date of acquisition, whichever is less.
4. Base the payment on the remaining term of the mortgage(s) on the displacement dwelling or the term of the new mortgage, whichever is shorter.
5. Ensure that the interest rate on the new mortgage does not exceed the prevailing fixed interest rate for conventional mortgages currently charged by mortgage lending institutions local to the replacement dwelling.

DOT&PF must pay purchaser's points and loan origination or assumption fees, but not seller's points, to the extent that the following criteria are met:

- they are not paid as incidental expenses;
- they do not exceed rates normal to similar real estate transactions in the area; and
- the Regional ROW Chief determines them to be necessary.

Compute the points and fees based on the unpaid mortgage balance on the displacement dwelling, less the amount determined for the reduction of the mortgage balance under this section.

Advise the displaced person of the approximate amount of this payment and the conditions that they must meet to receive the payment (i.e. obtain a mortgage of at least the same amount as the old mortgage and for at least the same term).

Inform the person of the interest rate and points used to calculate this payment.

It is suggested that DOT&PF may make the payment available (or place it in an escrow account) at or near the time of closing on the replacement dwelling, with the goal of reducing the new mortgage as intended.

Use the [Computations for Incidental Expenses and Increased Interest Costs Form 25A-R765](#) for purposes of this section.

Check for updated Federal Housing Authority (FHA) programs (i.e. reverse mortgage program).

#### **7.8.5. Incidental Expenses**

The incidental expenses DOT&PF will pay under Sec. 7.8.2 or Sec. 7.9.3 are those necessary and reasonable costs *actually incurred* by the displaced person incident to the purchase of a replacement dwelling and customarily paid by the buyer. They include the following:

1. legal, closing, and related costs, including those for title search, preparing conveyance documents, notary fees, preparing surveys and plats, and recording fees;
2. lender, FHA, or VA application and appraisal fees;
3. loan origination or assumption fees that do not represent prepaid interest;
4. certification of structural soundness and termite inspection when required;
5. credit report;
6. owner's and mortgagee's evidence of title (such as title insurance), not to exceed the costs for a comparable replacement dwelling;
7. escrow agent's fee; and
8. other costs the Regional ROW Chief determines are incidental to the purchase.

Use the [Computations for Incidental Expenses and Increased Interest Costs Form 25A-R765](#).

#### **7.8.6. Rental Assistance Payment for 90-Day Homeowner**

A 90-day homeowner-occupant who could be eligible for a replacement housing payment under Sec. 7.8.1, but who elects to rent a replacement dwelling, is eligible for a rental assistance payment. The rental assistance payment limit under Sec. 7.9.2 does not apply to this category of displaced person. Instead, the payment is limited to the amount the displaced person would have received had they elected to purchase and occupy a comparable replacement dwelling. Compute and disburse the payment in accordance with Sec. 7.9.2.

## **7.9. 90-Day Occupants**

Except under Housing of Last Resort, a tenant or owner-occupant displaced from a dwelling may be entitled to a payment of as much as \$7,200 for rental assistance or down payment assistance (see Sec. 7.10).

### **7.9.1. Eligibility**

To be eligible for 90-day occupant assistance, the occupant must meet the following criteria:

1. Actually and lawfully occupied the displacement dwelling for at least 90 days immediately before the initiation of negotiations.
2. Has rented, or purchased, and occupied a DS&S replacement dwelling within one year (unless the Regional ROW Chief extends this period for good cause). For a tenant, that date is the date they move from the displacement dwelling.

### **7.9.2. Rental Assistance Payment**

Except under Housing of Last Resort, an eligible displaced person who rents a replacement dwelling is entitled to a payment of as much as \$7,200 for rental assistance (see Sec. 7.10). This limit does not apply to a 90-day homeowner-occupant described in Sec. 7.8.6. Calculate the payment by taking 42 times the amount obtained by subtracting the base monthly rental for the displacement dwelling from the lesser of the following amounts:

1. The monthly rent and estimated average monthly cost of utilities for a comparable replacement dwelling.
2. The monthly rent and estimated average monthly cost of utilities for the DS&S-compliant replacement dwelling actually occupied by the displaced person.

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

1. The annual average monthly cost for rent and utilities at the displacement dwelling for the year before displacement. (For an owner-occupant, use the fair market rent for the displacement dwelling. For a tenant who paid little or no rent for the displacement dwelling, use the fair market rent, unless its use would result in a hardship because of the displaced person's income or other circumstances).
2. Thirty percent of the displaced person's average-gross-household income if the amount is classified

as “low income” by the U.S. Department of Housing and Urban Development’s (HUD) Annual Survey of Income Limits for the Public Housing and Sec. 8 Programs. HUD’s Annual Survey of Income Limits can be found at FHWA’s link:

<https://www.huduser.gov/portal/datasets/il.html>.

For persons whose income exceeds the survey’s “low income” limits, or for dependents or those refusing to provide income information, the base monthly rental must be established solely on the criteria in Item 1 above.

Assume a full-time student or a resident of an institution to be a dependent, unless they demonstrate otherwise.

3. The total of the amounts designated for shelter and utilities if the displaced person receives a welfare assistance payment from a program that designates the amounts for shelter and utilities.

Disburse the payment under this section in a lump sum, unless the Regional ROW Chief determines that the payment should be made in installments. If installments are chosen, except as limited by Sec. 7.25.8, the full amount vests immediately, regardless of whether there is any later change in their income or rent, or in the condition or location of their property.

DOT&PF intends that the full amount of the replacement housing payment for rental assistance should be applied to the rental of the replacement dwelling. DOT&PF may make payment to the owner of the rental replacement housing if the Regional ROW Chief determines it to be necessary for placement into a rental situation and obtains the written consent of the displaced person.

Use the following forms for purposes of this section:

- [Payment Evaluation \(Rent Supplement\) Form 25A-R768](#); and
- [Claim for Payment \(Rent Supplement\) Form 25A-R770](#).

### **7.9.3. Down Payment Assistance**

A displaced person who purchases a replacement dwelling and qualifies as a 90-day tenant or 90-day homeowner-occupant, may receive a down payment in the amount they would have received as rental assistance under Sec. 7.9.2. If the computed down

payment is less than \$7,200 (for 90-day occupant), the Regional ROW Chief may increase the down payment amount to as much as \$7,200. The increase is applied in a uniform and consistent manner to all displaced persons in like circumstances. (See also, Sec. 7.10 Replacement Housing of Last Resort.)

The displaced person must apply the full amount of the replacement housing payment for down payment assistance to the purchase price of the replacement dwelling and related incidental expenses. DOT&PF may make the payment to an escrow account before closure of the loan if the following criteria are met:

- loan agency agrees to return the payment should the sale not be consummated; and
- replacement dwelling meets the necessary DS&S inspection requirements.

Use the following forms for purposes of this section:

- [Payment Evaluation \(Down Payment\) Form 25A-R773](#); and
- [Claim for Payment \(Down Payment\) Form 25A-R775](#).

## **7.10. Replacement Housing of Last Resort**

In accordance with [49 CFR 24.404\(a\)](#), whenever a project cannot proceed on a timely basis because comparable replacement dwellings are not available within the monetary limits for owners or tenants as specified in [49 CFR 24.401](#) or [49 CFR 24.402](#), the Regional ROW Chief must provide additional or alternative assistance, which is termed “last resort housing assistance.”

The Regional ROW Chief must adequately justify and concur in a Relocation Agent’s decision to provide last resort housing assistance. The method selected for providing last resort housing assistance must be cost effective, considering all elements that contribute to total project costs. (Will project delay justify waiting for less expensive comparable replacement housing to become available?)

DOT&PF may not require any eligible person (Sec. 7.3) to move unless a comparable replacement property is available to that person. No person may be deprived of any rights the person may have under the Uniform Act ([49 CFR 24](#)). DOT&PF may not require any displaced person to accept a replacement property under these procedures (unless DOT&PF



and the displaced person have entered into a contract to do so) instead of any acquisition payment or any relocation payment for which the displaced person may otherwise be eligible.

If the replacement housing claim form indicates any members of the displaced family are unlawfully present in the United States, do not count them as a part of the family, and reduce the family size accordingly. Select comparable replacement housing to reflect the makeup of the remaining persons and compute the replacement housing payment accordingly.

### **7.10.1. Methods of Providing Comparable Replacement Housing of Last Resort**

DOT&PF has broad latitude in implementing this section, but it must implement it for reasonable cost on a case-by-case basis, unless an exception to case-by-case analysis is justified for an entire project. State procurement regulations must be complied with if contracting directly for goods or services. Consult with the regional procurement office. The Statewide ROW Chief must approve any methods other than payment in excess of the established limits.

The methods of providing replacement housing of last resort include the following:

1. A replacement housing payment in excess of the limits in Sections 7.8.2, 7.9.2, or 7.9.3, as appropriate. DOT&PF may provide a rental assistance subsidy in installments or in a lump sum as determined by the Regional ROW Chief.
2. Rehabilitation of, or additions to, an existing replacement dwelling.
3. The construction of a new replacement dwelling.
4. The provision of a direct loan that requires regular amortization or deferred repayment. The loan may be unsecured or secured by the real property and may bear interest or be interest-free. See Sec. 2.9.7.
5. The relocation of a dwelling and, if necessary, rehabilitation of that dwelling after relocation.
6. The purchase of land or a replacement dwelling by DOT&PF and subsequent sale or lease to, or exchange with, a displaced person.
7. The removal of barriers to disabled persons.

8. The change in status of the displaced person with their concurrence from tenant to homeowner when it is more cost effective to do so, as in cases where a down payment may be less expensive than a last resort rental assistance payment.

Under special circumstances, consistent with the definition of a comparable replacement dwelling, DOT&PF may consider modified methods of providing replacement housing of last resort based on space and physical characteristics different from those in the displacement dwelling. This includes upgraded, but smaller replacement housing that is DS&S compliant and adequate to accommodate individuals or families displaced from marginal or substandard housing with probable functional obsolescence.

Use a variation from the usual methods of obtaining comparability only if the variation does not result in lower housing standards or in a lower quality of living style. However, in no event may DOT&PF require a displaced person to move into a property that is not functionally equivalent in accordance with the definition of “Comparable Replacement Dwelling” (49 CFR 24). A mobile home may be used in extreme circumstances to replace a very substandard conventional dwelling in an area where comparable conventional dwellings are not available. If only a portion of a large dwelling is being used, a smaller dwelling may be used as replacement housing.

### **7.11. Persons Ineligible to Receive Replacement Housing Payment**

DOT&PF must provide assistance under this section to an otherwise eligible displaced person who is not eligible to receive a replacement housing payment because of failure to meet the length of occupancy requirement when comparable replacement rental housing is not available at rental rates within the person’s financial means (see Sec. 7.9.2). DOT&PF must provide assistance to cover 42 months.

### **7.12. Utilization of Payment by Displaced Person**

Whenever DOT&PF provides monetary assistance, the displaced person must apply the money to the intended purpose.

### **7.13. Voluntary Sale for Last Resort Housing**

Relocation benefits are inapplicable to an owner-occupant who voluntarily sells property to the State

for last resort housing, and the owner-occupant so certifies in a statement maintained in DOT&PF's files.

## 7.14. Payment for Residential Moves and Related Expenses

A displaced person's actual, reasonable, and necessary moving expenses for moving personal property from a dwelling (including a mobile home) may be determined based on the cost of one or a combination of the following methods:

- commercial moves performed by a professional mover; and
- self moves performed by the displaced person in one or a combination of the following methods:
- Fixed Residential Moving Cost Schedule under Sec. 7.14.2; and
- actual cost of the move, supported by receipted bills for labor and equipment. Hourly labor rates may not exceed the cost paid by a commercial mover to employees performing the same activity. Equipment rental fees should be based on the actual cost of renting the equipment but may not exceed the cost paid by a commercial mover for the same equipment.

Non-residential self moves based on the lower of two bids or estimates are not eligible for reimbursement under this section.

The occupant of a mobile home may elect to move the contents by the schedule or on an actual cost basis. DOT&PF must make any payment for moving the mobile home itself on an actual cost basis. Also see Sec. 7.18.3.

If the moving claim form certification indicates that one or more members of a displaced family is an alien who is not lawfully present in the United States, DOT&PF must prorate the moving expense payment based on the proportion of lawful occupants to the total number of occupants. For example, if four out of five members of a family to be displaced are lawfully present, the proportion of lawful occupants is 80% and that percentage is to be applied against the moving expenses payment that otherwise would have been received.

### 7.14.1. Residential Moves: Actual Expenses

Any displaced owner-occupant or tenant of a dwelling who qualifies as a displaced person is entitled to payment for actual moving and related expenses as the

Regional ROW Chief determines to be reasonable and necessary, including expenses for the following:

- transportation of the displaced person and personal property (costs may be on a mileage basis, not to exceed the current IRS mileage rate for business expenses, or reasonable actual fees if commercial transport is used. Transportation costs for a distance beyond 50 miles are not eligible unless the Regional ROW Chief determines that relocation beyond 50 miles is justified, based on written support);
- packing, crating, unpacking, and uncrating of the personal property;
- disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances and other personal property;
- storage of the personal property for up to 12 months, unless the Regional ROW Chief determines that a longer period is justified based upon written support;
- insurance for the replacement value of the property in connection with the move and necessary storage;
- 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 the loss, theft, or damage is not reasonably available; and
- other moving related expenses (unless ineligible under Sec. 7.17.12) that the Regional ROW Chief determines are reasonable and necessary.

The following forms are required for a claim under this section:

- [Claim for Actual Moving Expenses Form 25A-R745](#); and
- [Tabulation of Actual Moving Expenses \(Nonresidential\) Form 25A-R750](#).

### 7.14.2. Residential Moves: Fixed Payment for Moving Expenses

Any eligible person displaced from a dwelling, a seasonal residence, or a dormitory-style room is entitled to receive a fixed residential moving cost payment, based on room count, as an alternative to a

payment for actual moving and related expenses covered under Sec. 7.14.1. Determine the room count when requested.

In some cases, a displaced person will have an unusually large amount of furniture in one or more rooms (such as in a basement or attic). In this case the number of rooms and the Fixed Residential Moving Cost Schedule payment may be adjusted to reflect this situation. The definition of “Counted room” and the Fixed Residential Moving Cost Schedule for either occupants moving from unfurnished units or from furnished units where the occupant does not own the furniture are set forth on the [Claim for Fixed Moving Expenses and Dislocation Allowance \(Residential\) Form 25A-R753](#).

Occasionally, a displaced person may store personal property outdoors, yet still choose to move the property as a scheduled move. In this case, you may determine the reasonable cost of moving this outdoor property and add it to the schedule as additional rooms or as a moving cost finding.

The expense and dislocation allowance to a person whose residential move is performed by an agency at no cost to them shall be limited to \$100.

If an owner-occupant chooses to retain the home and leaves personal property in the dwelling while the dwelling is being moved, the displaced person is eligible to receive the moving costs by the schedule outlined above. If the move by schedule option is selected, the displaced person is not eligible to receive payments for any other moving expenses, storage costs, nor the cost of temporary lodging.

The expense and dislocation allowance to a person with minimal personal possessions who occupies a dormitory-style room shared by two or more other unrelated persons shall be limited to \$100.

### **7.15. Owner-occupants of Multifamily Dwellings**

An eligible owner-occupant of a multifamily dwelling is eligible to receive a residential moving expense payment for moving personal property from the owner-occupied dwelling unit in accordance with Sec. 7.14. The owner-occupant is also eligible to receive moving payments for personal property owned in the other units of the multifamily dwellings in accordance with Sec. 7.16.

### **7.16. Payment for Nonresidential Moves and Related Expenses**

Personal property as determined by an inventory from a business, farm, or nonprofit organization may be moved by one or a combination of the following methods:

1. Commercial move based on the lower of two bids or estimates prepared by a commercial mover. DOT&PF may accept a single bid for a low-cost or uncomplicated move. A self-move payment may be based on one or a combination of the following:
  - a. lower of two bids or estimates prepared by a commercial mover or the Relocation Agent; and
  - b. actual cost of the move, supported by receipted bills for labor and equipment (hourly labor rates may not exceed the rates paid by a commercial mover to employees performing the same activity and, equipment rental fees should be based on the actual rental cost of the equipment but not to exceed the cost paid by a commercial mover).
2. A fixed payment instead of a payment for actual moving and related expenses (“payment in lieu” or “in lieu of” payment).

The prohibition of benefits payments to an alien who is not lawfully present in the United States (Sec. 7.3) must be applied differently to the differing ownership situations found in sole proprietorships, partnerships, or corporations.

In a sole proprietorship, the eligibility of the business is synonymous with the residency status of the proprietor. Therefore, if the proprietor is an alien who is not lawfully present in the United States, the business is not eligible.

In a partnership, if any of the owners are illegal aliens, DOT&PF may make no relocation payment to those owners. Reduce the total relocation payment by a percentage based on the proportion of ineligible owners.

A corporation, which is considered a “person” under State law, need only certify that it is authorized to conduct business in the United States.



### **7.16.1. Nonresidential Moves: Actual Reasonable Moving and Related Expenses**

Any business or farm operation that qualifies as a displaced person (see 49 CFR 24) is entitled to payment for those actual moving and related expenses as the Regional ROW Chief determines are reasonable and necessary, including expenses for the following:

1. Transportation of personal property; limited to 50 miles unless the Regional ROW Chief determines that relocation beyond 50 miles is justified, based on written support.
2. Packing, crating, unpacking, uncrating of the personal property.
3. Disconnecting, dismantling, removing, reassembling, and reinstalling relocated machinery, equipment, and other personal property, including substitute personal property described under #13 of this section; includes connecting to nearby utilities; also includes modifying personal property (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.
4. Modifications necessary to adapt the utilities at the replacement site to the personal property; include expenses for providing utilities from the ROW to the building or improvement when the Regional ROW Chief determines they are actual, reasonable, and necessary.
5. Storage of the personal property for up to 12 months. Regional ROW chief may extend this based on written support.
6. Insurance for the replacement value of the personal property in connection with the move and necessary storage.
7. Any license, permit, or certification not covered in the appraisal, required of the displaced person at the replacement location. Payment may be based on the remaining useful life, as of the date of the move, of the license, permit, or certification.
8. 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) when insurance covering the loss is not reasonably available.
9. Professional services necessary for planning the move of the personal property, such as consultants, professional services performed prior to the purchase or lease of a replacement site to determine its suitability for the displaced person's business operation are included if the Regional ROW Chief determines they are actual, reasonable, and necessary. Examples include:
  - a. feasibility surveys, soil testing, and marketing studies; and
  - b. professional services in connection with the purchase or lease of a replacement site.
10. Relettering signs and replacing stationery on hand at the time of displacement that is made obsolete as a result of the move.
11. Actual direct loss of tangible personal property incurred as a result of moving or discontinuing the business or farm operation; payment shall consist of the lesser of the following:
  - a. market value of the item for continued use at the displacement site, less the proceeds from its sale; (The claimant must make a good faith effort to sell the personal property, unless the Regional ROW Chief determines that such effort is unnecessary. When payment for property loss is claimed for goods held for sale, base the market value on the cost of the goods to the business or farm operation, not on the potential selling price.) or
  - b. estimated cost of moving the item, with no 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 business or farm operation is discontinued, base the estimated cost on a moving distance of 50 miles.)
12. The reasonable cost incurred in attempting to sell an item that is not to be relocated.

13. Purchase of substitute personal property; if an item of personal property 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 displaced person is entitled to payment of the lesser of the following:
  - a. cost of the substitute item, including installation costs at the replacement site, minus any proceeds from the sale or trade-in of the replaced item; or
  - b. estimated cost of moving and reinstalling the replaced item, but with no allowance for storage. The estimated cost for a low-cost or uncomplicated move may be based on a single bid or estimate.
14. Searching for a replacement location; a displaced business or farm operation is entitled to reimbursement for actual expenses, not to exceed \$2,500, as the Regional ROW Chief determines to be reasonable, that are incurred in searching for a replacement location including the following:
  - a. transportation, meals, and lodging away from home;
  - b. time spent searching, based on \$25 per hour;
  - c. 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 the site;
  - d. time spent obtaining permits and attending zoning hearings; and
  - e. time spent negotiating the purchase of a replacement site, based on a reasonable salary or earnings.
15. Advertising signs; the amount of a payment for direct loss of an advertising sign that is personal property shall be the lesser of the following:
  - a. depreciated reproduction cost of the sign, as determined by the Regional ROW Chief, less the proceeds from its sale; or
  - b. estimated cost of moving the sign but with no allowance for storage.
16. If the personal property to be moved is of low value and high bulk, and the Regional ROW Chief determines that the cost of moving the property

would be disproportionate to its value, the allowable moving cost payment may not exceed the lesser of the following:

- a. amount that would be received if the property were sold at the site; or
- b. replacement cost of a comparable quantity delivered to the new business location.

17. Impact fees or one-time assessments for anticipated heavy utility usage.
18. Other moving related expenses (unless ineligible under Sec. 7.17.12 of this manual) as the Regional ROW Chief determines are reasonable and necessary.

The following forms are required for a claim under this section:

- [Claim for Actual Moving Expenses Form 25A-R745](#); and
- [Tabulation of Actual Moving Expenses Form 25A-R750](#).

### **7.17. Nonresidential Moves: Preparation of Specifications, Notification, and Inspection**

The Regional ROW Chief must inform the displaced person, in writing, of the necessity of preparing move specifications. This should be done as soon as possible after negotiations begin. The move specification is a detailed agreement between the displaced person and DOT&PF on how the move is to be accomplished. The displaced person prepares this document (with DOT&PF assistance if necessary). The displaced person should be informed that he or she may hire a professional to prepare the document and include the cost of preparation as part of the displaced person's moving expenses. The document becomes the basis to prepare the bids or estimates because it informs the person preparing the move estimate of what must be done to accomplish the move.

The move specifications should address such items as the following:

- order of the move;
- advance notification of the date of the move;
- special handling required;
- detach and reinstallation instructions;

- inventory;
- unique circumstances of the move; and
- location to which the property will be moved.

For low-cost or uncomplicated moves, the Regional ROW Chief may waive the move specifications requirement.

Make reasonable and timely inspections of the personal property at the displacement and replacement sites and monitor the move.

#### **7.17.1. Nonresidential Moves: Self-Moves**

If the displaced person elects to take full responsibility for all or part of the move of the business, farm operation, or nonprofit organization, the Regional ROW Chief may approve a payment for the moving expenses. Before the move, the displaced person must complete the [Self-Move Agreement \(Business\) Form 25A-R755](#).

The amount may not exceed the lower of two acceptable bids or estimates obtained by the ROW Section, or prepared by a qualified, authorized DOT&PF representative. The person preparing these bids or estimates must sign and date them and indicate the replacement location. A self-move payment does not require the displaced person to submit any additional documentation of moving expenses actually incurred in the move.

Monitor the move to ensure the property is actually moved to the replacement site and that the payment to the displaced person was based upon costs that were actual, reasonable, and necessary. This can be documented in the file by pre- and post-move inventories and the agent's move monitoring report contained within the [Self-Move Agreement \(Business\) Form 25A-R755](#).

For an uncomplicated move of less than \$2,500, the Regional ROW Chief may determine that a single bid or estimate is required. If, in the Regional ROW Chief's opinion, bids or estimates cannot be obtained or if circumstances (such as large fluctuations in inventory) prevent reasonable bidding, DOT&PF may pay the displaced owner the actual reasonable moving costs, supported by receipts or other evidence of expense incurred.

The allowable expenses of a self-move under this provision may include the following:

- amounts paid for truck and/or equipment hired;
- if vehicles or equipment owned by a business being moved are used, a reasonable amount to cover gas and oil, and the cost of insurance and depreciation directly allocable to hours and/or days the equipment is used for the move;
- wages paid for the labor of persons who physically participate in the move; labor costs are to be computed on the basis of actual hours worked at the hourly rate paid (the hourly rate may not exceed that of commercial movers or contractors in the locality for each profession or craft involved); and
- if a business proposes to use working foremen or group leaders regularly employed by the business to provide supervisory services in connection with the move, the amount of their wages covering time spent in actual supervision of the move may be included as a moving expense.

#### **7.17.2. Nonresidential Moves: Eligible Reestablishment Expenses**

In addition to the payments available above, a small business, farm, or nonprofit organization may be eligible to receive a payment not to exceed \$25,000 for expenses actually incurred in relocating and reestablishing the small business, farm, or nonprofit organization at a replacement site. The Regional ROW Chief determines reasonable and necessary reestablishment expenses, supported by evidence of expenses actually incurred. Examples include, but are not limited to, the following:

1. Repairs or improvements to the replacement real property as required by Federal, State, or local law, code, or ordinance.
2. Modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business.
3. Construction and installation costs for exterior signing to advertise the business.
4. Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, paneling, or carpeting.

5. Advertisement of replacement location.
6. Estimated increased costs of operation during the first two years at the replacement site, for items such as lease or rental charges, personal or real property taxes, insurance premiums, and utility charges, excluding impact fees.
7. Other items the Regional ROW Chief considers essential to reestablishment.

**7.17.3. Nonresidential Moves: Ineligible Reestablishment Expenses**

The following is a nonexclusive listing of reestablishment expenditures DOT&PF does not consider to be reasonable, necessary, or otherwise eligible:

1. Purchase of capital assets such as office furniture, filing cabinets, machinery, or trade fixtures.
2. Purchase of manufacturing materials, production supplies, product inventory, or other items used in the normal course of the business operation.
3. Interest on money borrowed to make the move or purchase the replacement property.
4. Payment to a part-time business in the home that does not contribute materially (see definitions) to the household income.

**7.17.4. Nonresidential Business Fixed Payment for Moving Expenses**

A displaced business may be eligible to choose a fixed payment instead of the payments for actual moving and related expenses, search expense and reestablishment expense (“in lieu” payment). Determine the fixed payment amount by computing the average annual net earnings of the business in accordance with Sec. 7.17.8. The payment may not be less than \$1,000 or more than \$40,000.

The displaced business is eligible for the payment if the Regional ROW Chief determines that:

1. The business owns or rents personal property that must be moved in connection with the displacement and for which an expense would be incurred in the move; and the business vacates or relocates from its displacement site.
2. The business cannot be relocated without a substantial loss of its existing patronage (clientele or net earnings); a business is assumed to meet this test unless the Regional ROW Chief

determines that it will not suffer a substantial loss of its existing patronage.

3. The business is not part of a commercial enterprise with at least one other establishment that is not being acquired by DOT&PF [AS 34.60.040 (c)(2)], and that is engaged in the same or similar business activities.
4. The business is not operated at a displacement dwelling solely for the purpose of renting the dwelling to others.
5. The business is not operated at the displacement site solely for the purpose of renting the site to others.
6. The business contributed materially (see definitions) to the income of the displaced person during the two taxable years before displacement.

Use the following forms for a claim under this section:

- [Request for Determination of Entitlement for Payment in Lieu of Moving Costs \(Business or Farm\) Form 25A-R757](#); and
- [Claim for Payment Income Basis in Lieu of Moving Expense \(Business or Farm\) Form 25A-R758](#).

**7.17.5. Determining the Number of Businesses**

To determine whether two or more displaced legal entities constitute a single business that is entitled to only one fixed payment, consider all pertinent factors, including the extent to which:

- same premises and equipment are shared;
- substantially identical or interrelated business functions are carried out and business and financial affairs are co-mingled;
- entities are held out to the public, and to those customarily dealing with them, as one business; and
- same person, or closely-related persons own, control, or manage the affairs of the entities.

**7.17.6. Farm Operation Fixed Payment for Moving Expenses**

Any displaced farm operation (see definitions) may choose a fixed payment instead of the payments for actual moving and related expenses, search expense

and reestablishment expenses (“in lieu” payment). Determine the fixed payment amount by computing the farm’s average annual net earnings in accordance with Sec. 7.17.8. The payment may not be less than \$1,000 or more than \$40,000. For a partial acquisition of land that was a farm operation before the acquisition, DOT&PF must make the fixed payment only if the Regional ROW Chief determines that one of the following applies:

- acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land; or
- partial acquisition caused a substantial change in the nature of the farm operation.

Use the following forms for a claim under this section:

- [Request for Determination of Entitlement for Payment in Lieu of Moving Costs \(Business or Farm\) Form 25A-R757](#); and
- [Claim for Payment Income Basis in Lieu of Moving Expense \(Business or Farm\) Form 25A-R758](#).

### **7.17.7. Nonprofit Organizations**

The amount DOT&PF must use 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, receipts from sales, or other forms of fund collection that enable the nonprofit organization to operate. Administration expenses are those for administrative support such as rent, utilities, salaries, advertising, and other like items, as well as fundraising expenses. Operating expenses to carry out the purposes of the nonprofit organization are not administrative expenses. Verify the monetary receipts and expense amounts with certified financial statements or financial documents required by public agencies.

A displaced nonprofit organization (see definitions) may choose a fixed payment of \$1,000 to \$40,000, instead of the payments for actual moving and related expenses, search expense, and re-establishment expenses (“in lieu” payment), if the Regional ROW Chief determines that relocation will result in substantial loss of existing patronage (membership or clientele). A nonprofit organization is assumed to meet this test unless the Regional ROW Chief demonstrates otherwise. The organization must support any payment in excess of \$1,000 by

submitting financial statements for the two 12-month periods before acquisition.

### **7.17.8. Average Annual Net Earnings of a Business or Farm Operation**

The average annual net earnings of a business or farm operation are one-half of its net earnings before Federal, State, and local income taxes during the two taxable years immediately before the taxable year in which it was displaced.

If the business or farm was not in operation for the full two taxable years before displacement, then base the net earnings on the actual period of operation at the displacement site during the two taxable years before displacement, projected to an annual rate.

The Regional ROW Chief may decide that average net earnings from a different time period are 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 must furnish DOT&PF with proof of net earnings through income tax returns, certified financial statements, or other reasonable evidence that the Regional ROW Chief determines is satisfactory.

### **7.17.9. More Than One Move**

If it is in the public interest, DOT&PF may allow more than one move. The Regional ROW Chief must furnish complete written justification for the moves.

### **7.17.10. Advertising for Bids**

DOT&PF may pay the expenses incurred in advertising for packing, crating, and transportation when the Regional ROW Chief determines that advertising is necessary. Advertising should be limited to complicated or unusual moves where advertising is the only method of securing bids.

### **7.17.11. Transfer of Ownership**

Upon request and in accordance with applicable law, the displaced person or entity must transfer to the State, ownership of any personal property that has not been moved, sold, or traded in. This may be done by a waiver.



### **7.17.12. Ineligible Moving and Related Expenses: Residential and Nonresidential**

A displaced person is not entitled to payment for the following:

1. The cost of moving any structure or other real property improvement in which the displaced person reserved ownership; this does not preclude the computation under “Owner Retention of Displacement Dwelling” (Sec. 7.8.3).
2. Interest on a loan to cover moving expenses.
3. Loss of goodwill.
4. Loss of profits.
5. Loss of trained employees.
6. Any additional operating expenses of a business or farm operation incurred because of operating in a new location, except as provided in Sec. 7.17.2.
7. Personal injury.
8. Any legal fee or other cost to prepare a claim for a relocation payment or to represent the claimant before DOT&PF.
9. Expenses for searching for a replacement residential dwelling.
10. Physical changes to the real property at the replacement location of a business or farm operation, except as provided in Sections 7.16 and 7.17.2.
11. Costs for storage of personal property on real property owned or leased by the displaced person; the Regional ROW Chief may approve rental of van storage when the displaced person or entity provides support in writing.
12. Refundable security and utility deposits.

### **7.18. Personal Property Only**

The eligible expenses for a person required to move personal property items from real property but are not required to move from a dwelling (including a mobile home), business, farm, or nonprofit organization, include those expenses described in Sections 7.14 and 7.16. An example is personal property located on property that is being acquired, but the business or residence will not be taken and can still operate.

### **7.18.1. Mobile Homes**

The occupant of a mobile home may elect to move the contents by the schedule or on an actual cost basis. DOT&PF must make any payment for moving the mobile home itself on an actual cost basis.

Mobile homes are usually considered personal property; however, if a particular mobile home is considered real property, it will be valued as such in the appraisal.

Whether a particular object is personal or real property depends on whether it can be easily moved and what has been the owner’s intent. If it has been held out for tax purposes as personal property, then in all likelihood it would be personal property.

For a mobile home to be considered real property, it would have to demonstrate the characteristics of real property, such as being set on a cement block foundation; having numerous additions and modifications of a permanent nature; not being easily moved; and being taxed as real property.

### **7.18.2. Applicability**

This section describes the requirements governing the provision of relocation payments to a person displaced from a mobile home or mobile home site who meets the basic eligibility requirements of this chapter. Except as modified by this section, such a displaced person is entitled to a moving expense payment and a replacement housing payment to the same extent and subject to the same requirements as persons displaced from conventional dwellings.

The same prohibition on relocation payments to illegal aliens (Sec. 7.3) that apply to residents of permanent structures apply to residents of mobile homes.

### **7.18.3. Moving and Related Expenses-- Mobile Homes**

An eligible non-occupant owner of a rented mobile home is eligible for actual cost reimbursement under Sec. 7.16.1. An eligible owner-occupant displaced from a mobile home or mobile home site is entitled to a payment for the cost of moving the mobile home on an actual cost basis in accordance with Sec. 7.14.1. If the mobile home is not acquired but the homeowner-occupant obtains a replacement housing payment under one of the circumstances described at Sec. 7.18.4, the owner is not eligible for payment for moving the mobile home but may be eligible for a payment for moving personal property from the mobile home.

The following three paragraphs apply to payments for actual moving expenses under Sec. 7.14.1:

1. A displaced mobile home owner who moves the mobile home to a replacement site is eligible for the reasonable cost of disassembling, moving, and reassembling any attached appurtenances such as porches, decks, skirting, and awnings that were not acquired; anchoring of the unit; and utility disconnect and reconnect charges.
2. If a mobile home requires repairs and/or modifications so that it can be moved and/or made DS&S-compliant, and it would be economically feasible to incur the additional expense, DOT&PF may reimburse the reasonable cost of such repairs and/or modifications.
3. Mobile Home Park Entrance Fee. DOT&PF may reimburse a nonrefundable mobile park entrance fee if it does not exceed the fee at a comparable mobile home park, if the person is displaced from a mobile home park, or if payment of the fee is necessary to effect relocation. DOT&PF will not reimburse any refundable deposit.

#### **7.18.4. Replacement Housing Payment for 90-Day Mobile Home Owner-Occupants**

Except under Housing of Last Resort (see Sec. 7.10), a displaced owner-occupant of a mobile home may be entitled to a replacement housing payment of as much as \$31,000 under Sec. 7.8 if the following conditions are met:

1. The person owned the displacement mobile home and occupied it on the displacement site for at least 90 days immediately before the initiation of negotiations to acquire it, if the mobile home is real property, or if the mobile home is personal property, but the person owns the mobile home site.
2. The person owned and occupied the mobile home at least 90 days before DOT&PF notified them in writing that they were determined to be a displaced person.
3. The person meets the other basic eligibility requirements at Sec. 7.8.1.
4. DOT&PF acquires the mobile home or mobile home site, or DOT&PF does not acquire the mobile home but the owner is displaced from the mobile home because DOT&PF determines that

the mobile home meets one of the following criteria:

- a. is not and cannot economically be made DS&S compliant;
- b. cannot be relocated without substantial damage or unreasonable cost;
- c. cannot be relocated because there is no available comparable replacement site; or
- d. cannot be relocated because it does not meet mobile home park entrance requirements.

If DOT&PF does not acquire the mobile home, and the Regional ROW Chief determines that the owner-occupant is displaced and eligible for a replacement housing payment, the payment for a comparable replacement mobile home is the lesser of the following:

- net cost to purchase a replacement mobile home (the purchase price of the replacement mobile home, less trade-in or sales proceeds from the displacement mobile home); or
- cost of DOT&PF's selected comparable mobile home, less DOT&PF's estimate of the salvage or trade-in value of the displacement mobile home.

If the displacement mobile home site is leased or rented, a displaced 90-day owner-occupant is entitled to a rental assistance payment computed as described in Sec. 7.9.2. The rental assistance payment may be used in one of the following ways:

- applied to lease a replacement site;
- applied to the purchase price of a replacement site; or
- applied with any replacement housing payment attributable to the mobile home to the purchase of a replacement mobile home or conventional DS&S dwelling.

If the Regional ROW Chief determines a mobile home is personal property and may be relocated to a comparable replacement site, but the owner-occupant elects not to do so, the owner is not entitled to a payment for the purchase of a replacement mobile home. However, the owner is eligible for moving costs and replacement housing payment for the purchase or rental of a comparable site.



### **7.18.5. Replacement Housing Payments for 90-Day Mobile Home Occupants**

Except under Housing of Last Resort (see Sec. 7.10), a displaced tenant or owner-occupant of a mobile home or site is eligible for a replacement housing payment of as much as \$7,200, under Sec. 7.9 if the following conditions are met:

1. The person actually occupied the displacement mobile home on the displacement site for at least 90 days immediately before the initiation of negotiations.
2. The person meets the other basic eligibility requirements at Sec. 7.9.1.
3. DOT&PF acquires the mobile home or mobile home site, or DOT&PF does not acquire the mobile home, but the owner is displaced from the mobile home because of one of the circumstances described in item 4 in Sec. 7.18.4.

### **7.18.6. Replacement Housing Payment Based on Dwelling and Site**

Consider both the mobile home and mobile home site when computing a replacement housing payment. For example, an occupant may own the mobile home and rent the site or may rent the mobile home and own the site. Also, a person may elect to purchase a replacement mobile home and rent a replacement site or rent a replacement mobile home and purchase a replacement site. In such cases, DOT&PF must make the total replacement housing payment for a dwelling and a payment for a site, each computed under the applicable paragraph in Sections 7.8.2, 7.9.2, or 7.9.3.

DOT&PF shall make the applicable replacement housing payments due to a displaced person. These payments may total as much as \$31,000 under Sec. 7.18.4 or \$7,200 under Sec. 7.18.5, or more under Housing of Last Resort (see Sec. 7.10).

### **7.18.7. Cost of Comparable Replacement Dwelling**

If a comparable replacement mobile home is not available, compute the replacement housing payment based on the reasonable cost of a conventional comparable replacement dwelling. If the Regional ROW Chief determines that it would be practical to relocate the mobile home, but the owner-occupant elects not to do so, the Regional ROW Chief may determine that, for purposes of computing the price differential under Sec. 7.8.3, the cost of a comparable

replacement dwelling is the sum of the following amounts:

- value of the mobile home as established by the market;
- cost of any necessary repairs or modifications; and
- estimated cost of moving the mobile home to a replacement site.

### **7.18.8. Initiation of Negotiations**

If DOT&PF does not acquire the mobile home but the occupant is considered displaced, the initiation of negotiations is the date negotiations were initiated to acquire the land. If DOT&PF does not acquire the land, the initiation of negotiations is the date the [Notice of Eligibility Form 25A-R723](#) is signed.

### **7.18.9. Person Moves Mobile Home**

If the owner is reimbursed for the cost of moving the mobile home under this chapter, they are not eligible to receive a replacement housing payment to assist in purchasing or renting a replacement mobile home. The person may, however, be eligible for assistance in purchasing or renting a replacement site.

### **7.18.10. Partial Acquisition of Mobile Home Park**

The acquisition of a portion of a mobile home park property may leave the remainder deemed an uneconomic remnant by the Review Appraiser. If the Regional ROW Chief determines that a mobile home located in the remaining part of the property must be moved as a direct result of the project, DOT&PF will consider the owner and any tenant as a displaced person entitled to relocation payments and other assistance if they are otherwise eligible under Sec. 7.3.

### **7.19. Notice of Intent to Acquire**

If, in rare instances, after authority to acquire is received and before initiating negotiations for a parcel, the Regional ROW Chief determines that it is necessary to establish eligibility for relocation payments for a parcel, issue a [Notice of Intent to Acquire Form 25A-R715](#), accompanied by a relocation brochure.

A notice of intent to acquire is DOT&PF's written communication provided to a person to be displaced, clearly setting forth the intent to acquire the property and establishing eligibility for relocation assistance.

Furnish a copy of the notice to each tenant within 15 days and notify the owner that this was done. To prevent possible subsequent occupancy and minimize rental problems for the owner, use discretion in issuing the notice.

### **7.19.1. Notification of Initiation of Negotiations**

Federal law requires that the relocation brochure and a brief explanation of the relocation program be given to owners at the first acquisition contact. If a written offer to acquire is given to the owner, this is the “initiation of negotiations.” While this *may* be done by the Acquisition Agent (see Ch. 6), because the Relocation Agent is more knowledgeable of the program, it is recommended that the Relocation Agent accompany the Acquisition Agent at this time.

### **7.19.2. Displaced Person Contact After Initiation of Negotiations**

Contact the owner and any tenants as soon as possible after initiation of negotiations. Contact new tenants as their tenancy is known. Note and initial the details of *all* contacts (date, time, persons present, items discussed, questions raised and resolved) on the [Record of Relocation Contacts Form 25A-R720](#). A complete record is important in case the displaced person files an appeal or a different agent has to handle portions of the relocation.

Explain the eligibility requirements to receive payments, increased interest costs, incidental expenses, and the option to rent replacement housing, relocation services available, and where they may be obtained. Give a relocation brochure if not given previously.

### **7.19.3. Notice of Relocation Eligibility**

Eligibility for relocation assistance begins on the date of the issuance of a notice of intent to acquire, the initiation of negotiations for the occupied property, or the actual acquisition of the property, whichever occurs first. Give the [Notice of Eligibility Form 25A-R723](#) to all occupants within two weeks after the offer is made for the property. If the Notice of Eligibility is sent by certified mail, make personal contact within 30 days after initiation of negotiations to furnish any additional explanations necessary. If appropriate, the applicable 90-day notice may be given at the same time as the Notice of Eligibility.

### **7.19.4. Request for Relocation Assistance**

For residential moves, obtain the signature of the displaced person on the [Affirmation and Request for Relocation Form 25A-R725](#) or complete the [Agent’s Affirmation of Presentation Form 25A-R728](#) if the displaced person will not sign the form. If the displaced person requests assistance, supply lists of replacement housing that meets the DS&S standard.

List the addresses of the comparable housing offered on the Record of Relocation Contacts. Offer all displaced persons, especially the elderly and disabled persons, transportation to inspect housing to which they are referred. Work with the DOT&PF’s Civil Rights Office to ensure compliance and accommodation.

For a displaced business, obtain the signature of the owner on the [Affirmation and Request for Relocation Assistance \(Business\) Form R25A-R726](#) and supply lists of comparable commercial properties available.

Inform the displaced person of the different moving options available and inquire as to any moving plans.

### **7.19.5. Rental Agreement**

If a displaced person remains on the displacement property after it has been acquired, inform the displaced person of the requirement to pay rent to DOT&PF for the property after it is acquired, and that the person must sign a rental agreement (Sec. 9.6.1).

## **7.20. Business Services Provided**

DOT&PF must provide, at a minimum, those measures, facilities, or services that are necessary or appropriate to carry out this subsection.

Determine the relocation needs and preferences of the business to be displaced and explain the relocation payments and other assistance for which they may be eligible, the related eligibility requirements, and the procedures to obtain assistance; this must include a personal interview.

Provide current and continuing information on availability, purchase prices, and rental costs of comparable sites.

Ensure that interviews with displaced business owners and operators contain, at a minimum, the following:

- replacement site requirements, current lease terms, and other contractual obligations of the business;

- financial capacity of the business to accomplish the move;
- determination of the need for outside specialists to assist in planning the move, assist in the actual move, and assist in the reinstallation of machinery and/or other personal property;
- identification and resolution of personalty/realty issues. Every effort must be made to identify and resolve these issues before or at the time of the appraisal;
- estimate of the time required for the business to vacate the site;
- estimate of the anticipated difficulty in locating a replacement property; and
- identification of any advance relocation payments required for the move, and whether DOT&PF has authority to provide them.

### 7.21. Appeals

Any person who is dissatisfied by DOT&PF's benefits or relocation services may file a written appeal with DOT&PF, using the procedures in [17 AAC 81.020](#), including (if necessary) the procedures for a relocation appeals board hearing in accordance with [17 AAC 85.040](#) (d)-(e).

Advise every eligible displaced person of the right to appeal. Explain the procedures for making an appeal verbally when the benefit statement is delivered, if not before. A displaced person may file a written appeal in any case in which they believe DOT&PF failed to properly determine eligibility for, or the amount of, a relocation payment required under this chapter.

### 7.22. Moving of Hazardous Materials

There is a significant distinction between "hazardous materials" (permissible legal materials such as paint and oil) and "hazardous wastes" (byproducts of industrial and commercial uses, legal or otherwise). This distinction may be significant in a legal sense and cause other complications that will need to be resolved at the earliest possible stage.

For purposes of this general discussion, the term "hazardous materials" is used for general identification purposes. Early and close coordination with the Alaska Department of Environmental Conservation (DEC) is a necessity for resolving these complex issues.

DOT&PF must determine and provide relocation payments separate and apart from consideration of liability for hazardous materials treatment or removal. In other words, DOT&PF cannot withhold relocation payments because of a hazardous materials problem (except as noted in 7.22.1).

A displaced person (individual, business, or farm) cannot be forced to move hazardous materials when the person is displaced, and the person may abandon it when they move from the acquired property. However, the displaced person remains liable for the control, treatment, or removal of any abandoned hazardous materials under the applicable Federal, State, or local laws.

#### 7.22.1. Personal Property

Nothing in the Uniform Act or this manual affects a displaced person's responsibility for hazardous materials under Federal, State, or local law.

If the removal of items of personal property would cause or contribute to contamination at the displacement or the replacement site (because of leakage, improper storage, etc.), do not consider those items removable personal property, and do not allow them to be moved until the Regional ROW Chief coordinates with DEC regarding proper disposition of the materials before moving/disposal, and if possible, before assumption of State ownership of the materials.

A displaced person may be compensated for moving hazardous materials to that displaced person's new location or to a certified or licensed disposal or recycling center within 50 miles. The displaced person is responsible for obtaining all necessary permits and fulfilling their legal obligations. They coordinate these actions with DEC.

If the displaced person elects to abandon the hazardous materials rather than move them, pay the displaced person the actual cost of moving their other personal property in accordance with Sections 7.14 or 7.16. The person may also be entitled to a payment for actual direct loss of tangible personal property for the hazardous materials unless the Regional ROW Chief determines that the displaced person's use or ownership of the materials before displacement was in violation of applicable law.

If otherwise eligible, provide the displaced person a fixed or "in lieu" payment pursuant to Sections 7.14.2 or 7.17.4 in place of the payments described above.

### 7.23. Eviction for Cause

DOT&PF presumes that any eligible person who lawfully occupies the real property on the date of the initiation of negotiations is entitled to relocation payments and other assistance described in this manual, unless the Regional ROW Chief determines that the displaced person received an eviction notice before 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 violation of material terms of the lease or occupancy agreement. In either case described, the landlord did not undertake the eviction for the purpose of evading the obligation to make available the payments and other assistance described in this manual.

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.

### 7.24. Parcels Acquired by Condemnation

When the State initiates eminent domain proceedings, eligible owner-occupants are still eligible for replacement housing supplements. Compute the provisional advance replacement housing payment and pay it on the basis that DOT&PF's maximum offer for the property is the acquisition price. If the owner does not agree to the adjustment, DOT&PF must defer the replacement housing payment until a legal settlement is reached.

The replacement housing payment may be made only upon the owner-occupant's signed agreement that:

- upon final acceptance of the condemnation or stipulated settlement or judgment, DOT&PF will re-compute the replacement housing payment; compare the settlement amount to the actual price paid or the amount determined by the Regional ROW Chief to be necessary to acquire a comparable DS&S-compliant dwelling; and
- if the settlement amount plus the amount of the provisional replacement housing payment advanced exceeds the price paid for a comparable dwelling or DOT&PF's determined cost, the displaced person agrees to refund to the State, from the settlement, an amount equal to the amount of the excess; in no event, however, may

the State require the displaced person to refund more than the advanced replacement housing payment (this potential action needs to be in the agreement signed by the displaced person).

### 7.25. Administration Relocation Claim Processing

To obtain a relocation payment, the displaced person must file a written claim for payment on the appropriate form provided by DOT&PF. The regional relocation supervisor must review all claim forms before requesting approval by the Regional ROW Chief. No more than one replacement housing payment will be made for each dwelling unit, except in the case of multifamily occupancy of a single-family dwelling, as shown in Sec. 7.25.5. Inspect all replacement housing before occupancy whenever possible, but certainly before payment is made.

With certain limited exceptions, relocation payments to illegal aliens are prohibited. By signing a relocation claim form, the displaced person certifies residence status.

#### 7.25.1. Time for Filing

A displaced person must file all claims for a relocation payment with the regional ROW Section within 18 months after the following:

- for tenants, the date of displacement; and
- for owners, whichever is later:
  - date of displacement;
  - date of the final payment for acquisition of the real property (for condemnations, the date the full amount of the Recommendation of Just Compensation is deposited in the court); or
  - date DOT&PF meets its obligation under Sec. 7.7.2 of this manual.

The Regional ROW Chief may waive this time period for good cause.

#### 7.25.2. Disapproval of Claim

If the Regional ROW Chief disapproves all or a part of a payment claimed or denies the claim because of untimely filing or other grounds, they must promptly notify the claimant in writing, providing the basis for the determination and the appeal procedures (Sec. 7.21).

### **7.25.3. Purchase Voucher Preparation**

A purchase voucher prepared for payment must reference the type of document authorizing the payment (Claim for Actual Moving Expenses Form, Claim for Rent Supplement Form). The date of agreement must be the date the claim is approved for payment. Attach the original approved claim form to the processed purchase voucher and file it in the parcel relocation file.

### **7.25.4. Payments**

DOT&PF must make payments for replacement housing supplements directly to the displaced person or family or upon written instruction from the displaced person, directly to the lessor for rent or the seller toward the purchase of a DS&S dwelling. If an applicant otherwise qualifies for a replacement housing payment, and upon specific request, DOT&PF must make payments into escrow before the displaced person moves.

DOT&PF must make payments for moving expenses directly to the displaced person. By written prearrangement between DOT&PF, the displaced person, and the mover, the displaced person may present an unpaid moving bill to DOT&PF for direct payment to the mover.

### **7.25.5. Multiple Occupants of One Displacement Dwelling Unit**

Two or more occupants of a dwelling may move to separate replacement dwellings. If they do, each occupant is entitled to a reasonable prorated share, as determined by the Regional ROW Chief, of any relocation payments that would have been made if the occupants moved together to a comparable replacement dwelling.

However, if two or more occupants of a dwelling maintain separate households within that dwelling, they each have separate entitlement to relocation payments.

The Regional ROW Chief must determine the number of households in a dwelling, based on the use of the dwelling, the relationship of the occupants, and any other relevant information. The payment computation for each household should be based on the part of the dwelling each household occupies and the space shared with others. For owner-occupants, the acquisition price to be used as the basis for replacement housing payment computations is that amount each owner received from the total payment for the property to be acquired.

### **7.25.6. Deductions from Relocation Payments**

The Regional ROW Chief shall deduct the amount of any advance relocation payment from each relocation payment to which a displaced person is otherwise entitled. The Regional ROW Chief shall not withhold any part of a relocation payment to a displaced person to satisfy an obligation to another creditor.

### **7.25.7. Conversion of Payment**

A displaced person who initially rents a replacement dwelling and receives a rental assistance payment under Sec. 7.9.2 is eligible to receive a payment under Sec. 7.8 or Sec. 7.9.3 if they meet the eligibility criteria for such payments, including purchase and occupancy within the prescribed one-year period. Deduct any portion of the rental assistance payment that is disbursed from the payment computed under Sec. 7.8 or Sec. 7.9.3.

### **7.25.8. Payment After Death**

A replacement housing payment is personal to the displaced person and, upon his or her death, DOT&PF may not pay an undisbursed portion of any such payment to the heirs or assigns, except that DOT&PF must:

- pay the amount attributable to the displaced person's period of actual occupancy of the replacement housing;
- in any case in which a member of a displaced family dies, disburse the remaining payment to the remaining family members of the displaced household; and
- disburse to the estate 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.

### **7.25.9. Hardship**

If a person demonstrates the need for an advance relocation payment to avoid or reduce a hardship, the Regional ROW Chief may approve the payment, subject to such safeguards as are appropriate to ensure that the objective of the payment is accomplished. The purchase voucher authorizing payment must reference the specific claim form or other documentation justifying payment.

#### **7.25.10. No Duplication of Payments**

No person shall receive any payment under this chapter if that person receives another payment under Federal, State, or local law that is determined to have the same purpose and effect as a payment under this chapter.

#### **7.25.11. Relocation Payments Not Considered As Income**

A relocation payment received by a displaced person under this chapter is not considered income for the purpose of the Internal Revenue Code of 1954 or for the purpose of determining the eligibility or the extent of eligibility for assistance under the Social Security Act or any other Federal law, except for any Federal law providing low-income housing assistance ([49 CFR 24](#)).

#### **7.26. Civil Rights**

DOT&PF must select prime contractors and subcontractors on a nondiscriminatory basis and as required by Title VI of the Civil Rights Act of 1964 and Executive Orders 11246 and 11625.

#### **7.27. Restrictions on Agent Establishing a Relocation Payment**

The agent who establishes the estimate of value of a moving or replacement housing payment may not negotiate for the acquisition of the parcel nor deliver payments to the displaced person.

## **PUBLIC STATEMENT**

### **Department of Transportation & Public Facilities Right-of-Way Acquisition Procedures**

Any property required for the construction of a project will be appraised either by a staff appraiser of this Department, a fee appraiser, or both. After the Department has an approved appraisal, negotiations for the purchase of the property with the property owner begin. The approved appraisal is the basis for the fair market value offer.

“Market value” is defined as the price a willing buyer would pay for a property offered by a willing seller with neither party having any obligation to either buy or sell. This is known as the willing buyer--willing seller concept and is the basis for “market value.”

For the State to pay less than market value would be unfair to the property owner. For the State to pay more than the market value of the property would be unfair to the taxpayer who provides the money for improvements.

Title 34, Ch. 60, of the Alaska Statutes defines the Federal-aid project benefits available to persons displaced from their homes, farms, and businesses, and benefits that nonprofit organizations may receive. These benefits are not a part of the market value of the property acquired but are in addition to the payment for property.

The State of Alaska offers the following benefits under the relocation program. The benefits are explained more fully in the relocation brochure available for you to take with you after the meeting:

- (1) Relocation advisory assistance is available for all individuals, families, businesses, farms, or nonprofit organizations displaced as a result of a public improvement, as well as for adjacent property owners who suffer substantial economic damage resulting from acquisition.
- (2) A moving payment is available for individuals, families, businesses, farms, and nonprofit organizations in occupancy on the first negotiating call or in occupancy at the time the State obtains legal possession of the property. This payment is for actual and reasonable costs to move personal property up to 50 miles. As an alternative to actual costs of moving, an individual or a family living in a dwelling is eligible to receive a moving expense and relocation allowance, that is based on the number of rooms of furniture and/or personal property to be moved.
- (3) Under certain conditions, displaced farms, businesses, and nonprofit organizations may be eligible for benefit payments of up to \$40,000 in lieu of actual moving costs.
- (4) For owner-occupants of dwellings for more than 90 days prior to the start of negotiations, under certain conditions, an additional payment may be available for the additional cost necessary to purchase a replacement house, to compensate the owner for increased interest costs in financing a replacement house, and to reimburse the owner for incidental expenses to the purchase of replacement housing, the combination of which may not exceed \$31,000.
- (5) For owners and renters for more than 90 days prior to the start of negotiations who prefer to rent, a rental replacement housing payment of up to \$7,200 may be made to allow the rental of a decent, safe, and sanitary dwelling.

**Exhibit 7-1  
Public Statement  
Page 1 of 3**



- (6) For owner-occupants and renter occupants of dwellings for 90 days prior to the start of negotiations who elect to purchase a decent, safe, and sanitary house, an alternate benefit to apply on the down payment of as much as \$7,200 without entering Housing of Last Resort is available.

The Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act and the State Relocation Assistance and Real Property Acquisition Practices operating procedures are very complex. The dollar figures just quoted are maximum figures. You are cautioned that benefits must be computed in accordance with these laws and regulations and on an individual basis. Usually, the benefits do not reach the maximums quoted.

**THE FOLLOWING INFORMATION IS TO BE GIVEN AT CORRIDOR MEETINGS:**

- (1) The approximate number of individuals, families, businesses, farms and nonprofit organizations that would be displaced for each proposed route.
- (2) A projection of the probable availability of decent, safe, and sanitary replacement housing within the means of those displaced is to be made up to the anticipated year of the project. In addition, any alternate plans for replacement housing displaced persons are to be presented.

**THE FOLLOWING INFORMATION IS TO BE PRESENTED AT DESIGN MEETINGS:**

The time required for right-of-way acquisitions and relocation is estimated at \_\_\_\_\_ months from date of authorization to appraise and acquire property for the project. This will permit adequate appraisal and negotiation time and provide at least 90 days for relocation of the displaced persons affected after notice of acquisition. In addition, no persons will be displaced until they have been relocated to decent, safe, and sanitary housing, have obtained the right of possession of comparable replacement housing, or have been offered decent, safe, and sanitary housing that is available for immediate occupancy. No owner-occupant will be required to move until receiving payment for the property or the money is deposited in the Registry of the Court.

It is estimated that \_\_\_\_\_ individuals or families will need to be relocated.

Alternate housing for this project is readily available. A search of the residential market reveals that \_\_\_\_\_ dwellings are for sale by real estate brokers and private owners. Also, a search of the rental market reveals that \_\_\_\_\_ single-family dwelling units in multiple housing complexes are available for rent. Mobile home courts have vacancies available and mobile home dealers have large inventories of replacement dwellings. Further studies indicate this amount of housing can reasonably be expected to be (as many, more, or less) than indicated here during the foreseeable future.

(Note: The above language may be changed to suit the replacement housing situation for each separate project.)

The replacement dwelling units mentioned are decent, safe, and sanitary, and are functionally equivalent and substantially the same as those to be acquired: fair housing, open to all persons regardless of race, color, national origin, gender, age, income, or disability in areas not less desirable than the dwellings to be acquired in regard to public utilities and public and commercial facilities, reasonably accessible to the displaced person's place of employment, adequate to accommodate the displaced person in an equal or better neighborhood, and within that person's financial means.

If the displaced person is dissatisfied with the payment benefits, he or she may initiate the relocation appeals procedure within 60 days after notification of eligibility or payment amount, through a request in writing for a determination from the Chief Engineer of the Division of Design and Engineering Services. If, within 30 days after the Chief Engineer's determination, the displaced person is still dissatisfied, an appeal may be made to the Regional Director. In turn, the Regional Director will appoint a three-member appeals board that will provide each appellant an opportunity to be heard. Any additional appeals actions must be made through civil litigation.

The Regional Right-of-Way Agent will render the appellant assistance in each step of the procedure. Initiating the appeals procedure does not invalidate the benefits for which the displaced person is eligible.

The Right-of-Way program for this project will be under the supervision of \_\_\_\_\_, whose office is located at \_\_\_\_\_ in \_\_\_\_\_, Alaska. Their telephone number is: \_\_\_\_\_.

**THIS COMMENT IS TO BE MADE AT ALL PUBLIC MEETINGS:**

The benefits available under the laws and the eligibility requirements for such benefits are outlined in the relocation brochure. Copies of this brochure are available at this meeting and, if your property will be affected by the project, I suggest you take a copy with you when you leave. The Right-of-Way Agent will explain the program in full at the time of negotiations. Eligibility for the various benefits under the program will have been determined and will be explained fully at that time.

**COMPUTATION EXAMPLE FOR DETERMINING  
REPLACEMENT HOUSING PAYMENT**

**(If dwelling is located on land appraised at a higher value use than residential)**

**Sample Computation:**

Total Acquisition Price	\$110,000
Comparable Replacement Housing	\$90,000
Less Acquisition Price of Acquired Dwelling	(\$30,000)
Less Acquisition Price for that portion of acquired land representing a typical <u>residential tract in the area</u>	(\$50,000)
Replacement Housing Payment	\$10,000

If the mortgage is obviously based on the higher use, reduce the interest payment to the percentage ratio that the estimated residential value has to the before value:

In the above example, the acquired dwelling (\$30,000) plus the associated land portion (\$50,000) total \$80,000 that, divided by the acquisition price (\$110,000), represents 72% of the total acquisition price. To determine the interest differential, the remaining principal balance and the monthly mortgage payment would each be reduced to 72% of the actual amount.

**Old Mortgage:** (30 years on \$80,000 with 25 years remaining term)

Remaining Principal Balance:  $\$78,988 \times 72\% = \$56,871.36$

Monthly Payment (principal and interest):  $\$812.38 \times 72\% = \$584.91$

Interest Rate: 12% (commercial rate)

**New Mortgage:**

Interest Rate:	10% (residential rate)
Principal Balance	\$56,871.36
Monthly Payment (principal & interest)	\$516.78

No interest differential payment is due in the above example since the monthly payment for the new mortgage is less than the monthly payment for the old mortgage.

**Exhibit 7-2  
Computation Examples**

## 8. Legal

---

- 8.1. Introduction
- 8.2. Authorities
- 8.3. General Procedures
- 8.4. Authority and Necessity Hearing
- 8.5. Masters' Hearings
- 8.6. Trial
- 8.7. Appeals to Supreme Court

### 8.1. Introduction

DOT&PF must make every reasonable effort to expeditiously acquire real property by negotiation as required by [AS 34.60.120](#) and the Uniform Act. The Uniform Act further requires an attempt to expedite the acquisition by agreements with owners and to avoid litigation and relieve congestion in the courts.

Before the Regional ROW Chief submits a parcel for condemnation they should meet with representatives of the Department of Law's (LAW) Attorney General's Office (AGO) staff to discuss the parcel and determine if there are any approaches to settlement that have not been attempted, including such options as redesign or acquiring a lesser property interest.

There will be instances where all efforts to reach agreement with the owner fail, or where in order to clear title, condemnation is necessary. Once this determination has been made, formal condemnation proceedings must be initiated so that it will not be necessary for the property owner to institute legal proceedings (inverse condemnation) to prove the fact of the taking of the real property.

Although condemnation is expensive, both for the State and property owner, once a parcel is referred to LAW for condemnation expect that a trial will occur to resolve the factual issues in the case. The Regional Pre-Construction Engineer has the final authority for instituting condemnation actions. When the case is referred to LAW, the Regional ROW Chief will provide a ledger code against which to charge the attorney's time.

LAW's Transportation Section represents DOT&PF in eminent domain proceedings and provides legal assistance as requested. Assistant Attorneys General (AAG) are located in Juneau, Anchorage, and Fairbanks. A Section Chief, who reports to LAW's local office Chief, supervises these AAGs. These

AAGs bill their time via an Agency Journal Entry (AJE) transaction.

The Attorney General (AG) may request private (fee) co-counsel to handle a particularly complex or unique case, or to handle additional workload. DOT&PF has prior approval of this method.

The Attorney General (AG) or their designee at LAW will select fee counsel. The State will base fees on the usual and customary fees charged for handling cases of similar complexity. DOT&PF may claim Federal-aid participation in these costs if LAW shows that employment of fee counsel is in the public interest and that the fee is reasonable and not on a percentage basis.

LAW is responsible for providing quarterly status reports of pending cases to the Regional ROW Section. The Regional ROW Chief notifies headquarters of the scheduling of hearings, trials, or other proceedings, based upon these quarterly reports and other communications between LAW and the region.

Of note, LAW has confirmed that "merger of title" does not occur when two agencies of the same government hold interest in the same parcel of land because each of the agencies has different statutory rights in the management of the land. Generally speaking the Alaska Department of Natural Resources (DNR) manages the subsurface rights and DOT&PF manages the surface rights acquired by DOT&PF. Note that tidelands may or may not be managed by DNR. For transportation corridors, DNR has historically concurred that DOT&PF manages the right of way through tidelands.

### 8.2. Authorities

Eminent domain cases, in general, are subject to the [Alaska Constitution](#), [AS 02.15.060](#), [AS 02.15.070](#), and Alaska Supreme Court decisions. [Alaska Rules of Civil Procedure Rule 72](#), governs the special procedures for eminent domain cases. [AS 19.05.040](#) (3), [AS 19.05.080-AS 19.05.110](#), [AS 35.20.010-AS 35.20.040](#), and [AS 44.42.020](#) (b) grant DOT&PF the authority to acquire land through the State's power of eminent domain.

### 8.3. General Procedures

The region's acquisitions supervisor prepares a recommendation for condemnation to the Regional ROW Chief, setting forth the results of the negotiations and number of contacts made, and attaching a copy of the Record of Contact (ROC).

The Regional ROW Chief reviews the case and determines whether legal action is justified. If so, they prepare a recommendation to the regional Pre-Construction Engineer for filing an eminent domain case.

When the Pre-Construction Engineer approves the recommendation, they must request the Design Section to prepare a draft decisional document and forward it to the Regional ROW Chief for review.

In no event may DOT&PF advance the date of condemnation or take any coercive action to induce an agreement over the price to be paid to a property owner.

This process is reversible at any time.

#### 8.3.1. Submission to Department of Law

The Regional ROW Chief must provide the following to LAW:

1. Draft decisional document in hard copy and electronic format, allowing for easy editing.
2. Record of Contact.
3. Market Value Letter with a copy of purchase vouchers.
4. Updated title report.
5. List of defendants who have an interest in the property, including their addresses.
6. Parcel description, plat, and vicinity map.
7. All appraisals that have been prepared for the parcel.
8. Reviewer Appraiser's Recommendation of Just Compensation.
9. Recommendation for Condemnation memorandum.
10. All correspondence.
11. A letter of final offer and intent to condemn.

12. Warrant, or a copy of the purchase voucher to the Clerk of Court, showing DOT&PF has requested the Market Value Deposit.

13. Relocation Benefit Statement (if applicable)

#### 8.3.2. Declaration of Taking

The Declaration of Taking vests title of the real property interest in the State of Alaska. The Regional Pre-Construction Engineer must sign the Declaration of Taking and transmit it with the deposit to LAW. Under [AS 09.55.440](#), title vests when eminent domain proceedings have been instituted in the proper court; however, a certified copy, from the Superior Court, must be recorded immediately in the recording district in which the land being acquired or condemned is located, date stamped as filed in the trial court.

#### 8.3.3. Attorney General Office Review

A legal requirement for all indemnification clauses/agreements/sovereign immunity waivers must be approved by Deputy Attorney General.

#### 8.3.4. Deposit

When LAW files the Declaration of Taking, it must deposit a State warrant with the court for the owner's (or other claimants of interest) benefit, in an amount not less than the Recommendation of Just Compensation.

When all necessary documents have been filed in court, LAW will forward a copy of the filed documents with the filing date to the Regional ROW Chief.

#### 8.3.5. New, Updated, or Revised Appraisals

DOT&PF or LAW must procure any additional valuation or updates to the original valuations for condemnation in accordance with Ch. 4. In accordance with Ch. 5 the Appraiser must forward the report to the Appraisal Review Section (or Appraisal Review Contractor designated by the Statewide Right-of-Way Chief) for review before acceptance for litigation. The purpose of this review is to ensure that the report complies with accepted and applicable appraisal practices.

#### 8.3.6. Settlement Justification

LAW may make a legal settlement if it is in the public interest. For settlements in excess of the Recommendation of Just Compensation, LAW must submit them in a Pre-Trial Settlement Report that justifies expenditure of additional State and Federal money.

### **8.3.7. Possession**

The ROW phase is not complete until the courts give DOT&PF possession of all parcels. The attorney assigned to the case must advise the Regional ROW Chief of the date that (1) the Declaration of Taking and the deposit were filed with the Clerk of the Court, and (2) the State has been given legal and physical possession.

The Regional ROW Chief and LAW should maintain active communication so that these dates are made available to DOT&PF. This information is critical to advancing the project through plans, specifications, and estimate and to the authority to advertise for construction.

### **8.3.8. Interest**

In the absence of a final judgment setting out interest due, DOT&PF pays interest as follows:

- on the amount by which an award exceeds the amount deposited into court;
- at the rate prescribed by law;
- from the date of the original deposit in court up to, but not including, the day the final payment is received in the court registry; and
- based on a 365-day calendar and calculated to two significant decimals.

## **8.4. Authority and Necessity Hearing**

After LAW files the Declaration of Taking, the owners have 20 days to challenge the State's Authority and Necessity for taking the parcel. If challenged, DOT&PF presents evidence to show it has the authority to condemn the parcel and there is no reasonable alternative to taking the parcel. The court determines authority and necessity for the public use by weighing the greatest public good against the least private injury.

## **8.5. Masters' Hearings**

If the court condemns the parcel, Masters are appointed by the court under [Civil Rule 72 \(h\)\(3\)](#). The Master will determine just compensation in the proceedings under the provisions of [AS 09.55.310](#). A Masters' Hearing may not be waived unless all parties agree, in which case, the matter valuation is resolved by a jury trial under [AS 09.55.300 \(b\)](#), using the methodology set forth in [AS 09.55.310](#).

A Masters' Hearing is an informal proceeding where the rules of evidence and testimony are relaxed. The hearings are governed by [Civil Rule 37](#) and [Civil Rule 45](#). Each side has the right to examine and cross-examine witnesses. All testimony is under oath. The court may or may not record the Masters' Hearing.

Either side may appeal the award of damages and the valuation of the property, as set forth in the Masters' Report, for a new trial in Superior Court.

### **8.5.1. Masters' Report**

The Master will prepare a report that summarizes and documents the amount of compensation. If neither party objects to the Masters' finding, the Masters' report becomes final 15 days after the clerk of court makes the Notice of Filing the report. DOT&PF should appeal an award if it is in the State's best interests. However, before making a decision to file an appeal or accept a settlement offer, LAW must obtain the regional director's approval.

## **8.6. Trial**

If the parties to the action object to the appointment of a Master, or if the Masters' Award has been appealed, the court will proceed with a jury trial, unless a jury is waived by all parties to the action.

## **8.7. Appeals to Supreme Court**

A party to an eminent domain proceeding may appeal the final judgment to the Supreme Court. The appeal is limited to factual or legal issues that they believe Superior Court erred in its decision.

Whether DOT&PF should appeal a case is a decision that ultimately rests with LAW. LAW's decision will only be made after consultation with the DOT&PF regional director.

Issues considered before appealing include the impact upon the Recommendation of Just Compensation in the particular action and precedence setting impact on future eminent domain cases conducted by the State and other agencies.

This page intentionally left blank.



## 9. Property Management

---

- 9.1. Introduction
- 9.2. Retention Value Estimates
- 9.3. Inventory and Control of Improvements
- 9.4. Disposition of Improvements
- 9.5. Bid Openings
- 9.6. Use of Highway Right of Way by Others
- 9.7. Highway Signs for the Traveling Public
- 9.8. Outdoor Advertising Control
- 9.9. Junkyard Control
- 9.10. Excess Land Management and Disposal
- 9.11. Materials Sources
- 9.12. Civil Rights Statements for Deeds and Leases

### 9.1. Introduction

The Property Management Unit manages State-owned ROW and materials sources and carries out the provisions of the Highway Beautification Act of 1965 on areas adjacent to the highway ROW.

Although there are regional differences in designating position titles, for purposes of this manual the term “property management supervisor” refers to the person with supervisory responsibilities over the Property Manager. The term “Property Manager” denotes the ROW Agent who has been assigned property management responsibility.

Unless otherwise specified, all instructions in this chapter refer to the Property Manager.

The property management supervisor must manage the State’s ROW for the greatest long-range public benefit. This includes, but is not limited to, the following:

- maintaining and protecting State-owned improvements;
- clearing each ROW of encroachments for projects;
- renting buildings and lands not immediately needed for construction purposes;
- disposing of improvements by sale or demolition;

- selling excess fee-owned parcels of land not needed for DOT&PF purposes; and
- routinely patrolling each ROW to keep it free of encroachments and in a clean and orderly condition.

Maintain current records of excess real property and adequate fiscal and internal control of all real property, fixtures, and equipment acquired, managed, and disposed of as part of the ROW.

DOT&PF owns a variety of interests in materials sources across the state. If DOT&PF acquires a source in fee simple title, the procedures in Ch. 3-6 apply. If DOT&PF acquires a source from another government agency, the procedures in Sec. 6.15 apply. DOT&PF should only acquire lesser interests after consulting with the Design Project Manager or the Maintenance Superintendent.

The Highway Beautification Act of 1965 requires the control of outdoor advertising and junkyards adjacent to the interstate and primary highway systems ([23 USC 131](#)). These control requirements were reiterated in [AS 19](#) and extended the coverage to secondary highway systems.

The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) replaced the interstate and primary systems with the National Highway System. For purposes of outdoor advertising and junkyard control, routes classified as interstate and primary as of June 1, 1991 were to retain that designation. State regulations ([17 AAC 20.011](#)) address these changes to Federal law through DOT&PF’s publication *Federal Aid Highways: Interstate, Primary, and Secondary Highways of Alaska* adopted by reference in [17 AAC 20.950](#). Sec. 9.7, 9.8, and 9.9 of this manual cover the property management functions under these laws.

### 9.2. Retention Value Estimates

The Property Management function typically does not commence until after DOT&PF has acquired the ROW for the project. The exception to this is when establishing retention values for improvements within the acquired ROW in case an owner decides to retain the improvements and move them from the ROW.

DOT&PF may allow an owner of improvements, including buildings, fences, sheds, etc., on lands being acquired, to retain those improvements at the discretion of the Regional ROW Chief. Before the ROW Agent's first contact with the property owner, you complete the [Retention Value Estimate Form 25A-R905](#) and have it approved by the Regional ROW Chief.

Compute retention values based on a comparison of what three comparable properties have sold for, if available. These comparables are generally improvements acquired by DOT&PF and later sold and removed. Each region must maintain a [Register of Improvements Sold Form 25A-910](#) from previous projects statewide to aid in establishing retention values.

Compare the improvements to the subject based on the following:

- type of improvement;
- approximate square footage;
- condition of roof;
- condition of siding and interior;
- number of rooms;
- overall condition; and
- ease of moving.

Indicate the sale prices of the three comparable properties, and identify them by their project and parcel numbers if they were acquired and removed from a DOT&PF project.

With each retention value estimate, attach a narrative that explains and analyzes each comparison.

When comparable sales are not available, determine retention value by inspecting and analyzing whether the improvement is movable, and what value it will have on a replacement site, less the cost to move it. Set out the findings in a narrative on Pg. 2 of the [Retention Value Estimate Form 25A-R905](#). The Property Manager and the Property Management Supervisor must sign the form. Submit the form to the Regional ROW Chief. After approval, retain the form in the regional parcel files.

Set one retention value for structures with common walls, such as zero-lot-line units. No retention values

are necessary on fixtures and equipment unless the property owner specifically requests retention.

To assure removal of improvements as specified in an MOA with the property owner, DOT&PF must withhold a minimum of \$500 from the purchase price paid to the owner until removal is accomplished. If an increased or decreased withholding amount is warranted, estimate removal cost if DOT&PF is required to remove it.

Make these retention values the first entry on the [Property Management Project Status Report Form 25A-R915](#) described in Sec. 9.3.2.

### **9.3. Inventory and Control of Improvements**

For each negotiated parcel with improvements, the Regional ROW Chief must give the Property Manager a copy of the executed MOA. The Pre-Audit Section asks the Finance Section to mail a warrant to the property owner, with a return receipt requested to the Pre-Audit Section.

When the Pre-Audit Section receives the certified return receipt, they must notify the Property Manager of the payment receipt date. This date establishes the beginning of the rent-free period for the owner-occupant and begins the Property Manager's responsibilities for the property.

On improved parcels in condemnation, the Regional ROW Chief must secure Orders of Possession from the Department of Law and furnish a copy to the Property Manager.

When the Property Manager becomes responsible for a building improvement, ascertain the actual or tentative letting date of the related construction contract. This date is the primary determining factor as to whether to rent the property for the interim period before actual construction or whether to dispose of it by sale or demolition.

#### **9.3.1. Assignment and Disposition of Improvements**

Enter the acquired improvements on the [Assignment and Disposition of Improvements Form 25A-R690](#) as soon as that form and the executed MOA are received from the Acquisition Agent (Sec. 6.8.3). The form provides an itemized listing of each acquired improvement and fixture as listed in the appraisal or as purchased by administrative settlement (Sections 4.6, 4.15.3, and 6.8.3). Include all items

such as stoves, refrigerators, drapes, etc. Record the disposition of each acquired improvement and the inspection date.

Total the parcel's property management credits and expenses for accounting purposes.

Obtain authorization for payments pending removal of improvements using this form instead of a written memorandum. After disposition, sign the form, give it to the Pre-Audit Section for payment, if applicable, and file it in the parcel file.

### **9.3.2. Property Management Project Status Report**

The [Property Management Project Status Report Form 25A-R915](#) is required for each project with property management responsibilities. Use it as a quick reference tool and keep it up to date. When the project is cleared of all improvements, file it with the project files for historical purposes.

### **9.3.3. Inspection of Occupied Premises**

Within two weeks after acquisition of the property, all improvements shall be inspected. The physical presence and condition of the structures, fixtures, and equipment are a primary concern. Coordinate with the Relocation Agent to determine the owner's or occupant's plans to vacate the property, and making arrangements for final inspection and physical possession by DOT&PF.

### **9.3.4. Owner's Agreement to Vacate Occupied Premises**

Possession of the premises is controlled by the terms of the MOA or by court order (in condemnation proceedings) granting right of possession to the State. While the MOA speaks for itself, the terms and conditions in a condemnation suit are not always spelled out in the order granting right of possession. Monitor condemnation suits involving improvements and maintain a liaison with the Department of Law attorney who is prosecuting the suit to determine not only when right of possession is granted but also upon what terms and conditions the right of possession is granted.

Normal procedure is to allow an owner-occupant to continue to live in the premises, rent free for 30 days after receipt of payment for the property. However, DOT&PF does not extend this rent-free courtesy to tenants. Where the property is not immediately

required for construction purposes, it may be beneficial to rent it. (Sec. 9.6.1)

### **9.3.5. Final Inspection and Taking of Possession**

On the date of the agreed vacation of the property, make a final inspection and take physical possession. Use the [Check-In/Out Inspection Form 25A-R920](#) for this inspection. Do the following:

- determine that all fixtures and equipment acquired by DOT&PF remain on the property;
- report discrepancies in writing to the Regional ROW Chief; and
- recommend in writing the feasible disposition of all improvements to the Regional ROW Chief.

Disconnect all utility facilities that would not endanger the value of the structure.

Post a sign stating that the property is owned by the State of Alaska and that the State will prosecute any person trespassing, stripping or vandalizing the property. Padlock and secure the premises, if necessary, as a protection against vandalism. Alert police and request that they keep watch.

### **9.4. Disposition of Improvements**

If conditions do not warrant short-term rental as discussed in Sec. 9.6.1, determine whether the improvements should be advertised for sale or demolition by sealed bid or auction, or included in the general construction contract (Sec. 9.5.3).

Make the appropriate entry on the [Assignment and Disposition of Improvements Form 25A-R690](#) and the [Property Management Project Status Report Form 25A-R915](#).

#### **9.4.1. Legal Notice**

If DOT&PF will sell the improvements, publish a notice of the sale property in accordance with DOT&PF regulations [17 AAC 10](#).

As shown on [Specifications and Award for the Sale and Removal of Structures \(Form 25A-R925\)](#) and [Specifications and Award for Demolition of Structures \(Form 25A-R930\)](#) the notice must state the following:

- location and description of buildings and improvements offered for sale;

- date, time, and place of bid opening;
- specifications unique to the sale;
- DOT&PF reserves the right to reject any and all bids;
- bids must be accompanied by a performance security deposit;
- DOT&PF must receive payment before giving possession;
- DOT&PF can award demolition contracts only to a licensed contractor; and
- bidding on buildings to be moved is open to all; however only a licensed general contractor experienced in moving structures may move the building over public thoroughfares.

#### 9.4.2. Performance Security

All bids must be accompanied by a performance security deposit in the form of a U.S. postal money order, cashier's check, or certified check, made payable to the State of Alaska. The deposit must be sufficient to reasonably assure completion of the contract and must be a minimum of \$5,000. Set the deposit at a different amount if appropriate. Support this in writing and obtain approval of the Regional ROW Chief. DOT&PF returns the successful bidder's deposit when the contract is properly complete. "Performance security deposits" are returned to unsuccessful bidders.

#### 9.4.3. Bid Proposal

When preparing the notice, prepare enough of the following bid proposal forms to provide copies to the expected number of bidders:

1. Invitation for Bid (Structures to be Sold and Removed).
2. Invitation for Bid (Demolition of Structure).
3. [Specifications and Award for Sale and Removal of Structures Form 25A-R925](#).
4. [Specifications and Award for Demolition of Structures Form 25A-R930](#).

Give bidders every opportunity to inspect the property being sold. Become familiar with the property to be able to intelligently answer all inquiries from the bidders. Pay special attention to any specifications peculiar to a given sale.

## 9.5. Bid Openings

The Regional Contract Section must receive and open all bids and must take the following actions:

- record all bids and notify all bidders of the status of their bid upon acceptance of the successful bid;
- return unsuccessful bidders' deposits; and
- after each bid sale, complete the [Register of Improvements Sold \(25A-910\)](#) and distribute it to the other regional offices.

### 9.5.1. Successful Bidders

The Regional ROW Chief must provide the name and address of the successful bidder or bid contractor, and the [Demolition Contract Form 25A-R935](#) approved and signed by the procurement officer. DOT&PF must retain the performance security deposit until the terms of the contract are fulfilled.

Contact the successful bidder to arrange payment of the full amount of the purchase price. After payment has been received, send the buyer a [Bill of Sale Form 25A-R940](#), executed by the regional director to authorize removal of the property from the ROW. Handle revenue received in accordance with Sec. 9.10.7.

Ensure that all buildings sold by DOT&PF as dwelling units meet the conditions of [AS 34.03.100](#) and contain working smoke and carbon monoxide detection devices installed in accordance with [AS 18.70.095](#) before the agreement is consummated. Request the demolition contractor sign the contract. The contract must include appendices that contain the requirements set out in Appendix A of (US)DOT Order 1050.2A (Ex. 9-1).

Continue to observe the property and report, either by use of the [Assignment and Disposition of Improvements Form 25A-R690](#) or by memorandum, to the Regional ROW Chief if and when the structures in question have been satisfactorily removed or demolished from the ROW in accordance with the specifications.

If the improvements are not removed or demolished on the agreed date, notify the Regional ROW Chief at once so that proper legal steps may be taken to effect compliance.

The performance deposit is refunded to the purchaser when the Property Manager certifies, either with the



[Assignment and Disposition of Improvements Form 25A-R690](#) or by memorandum, to the Regional ROW Chief that the ROW has been satisfactorily cleared.

### **9.5.2. Noncompliance of Contract**

If the terms of the contract have not been complied with and the bid item remains on the ROW, stripped of salvage, arrange for the item to be removed by DOT&PF and the deposit credited to the general fund or to the receive and expend account if authorized. Include the removal in the general contract and credit the deposit to the project, if appropriate.

### **9.5.3. Improvements Cleared by General Contractor**

It may be in DOT&PF's best interest to have the items to be removed included in the general contract for the construction of the project. This method usually is adopted to clear the ROW of miscellaneous fences, boardwalks, platforms, wells, etc. It should be used if cost effective and if the improvements do not present a health hazard. Advise the Design Section of improvements to be included in the general contract specifications.

### **9.6. Use of Highway Right of Way by Others**

There are three situations where property belonging to the State may be used by others:

- rental of property during the short term between the date of acquisition and the date of project construction;
- permitted encroachment; and
- other permitted uses, such as driveways and utilities.

#### **9.6.1. Rental Procedures**

Real property acquired by the State may be rented to the current occupants between acquisition of the property and clearing of the improvements. If the construction schedule permits a substantial delay in the clearing of improvements, DOT&PF may rent the property to short-term subsequent occupants. Rent improvements, when feasible, to provide a monetary return and serve as a measure of protection against vandalism.

Ensure that all buildings rented by DOT&PF as dwelling units meet the requirements of [AS 34.03.100](#)

and contain working smoke and carbon monoxide detection devices installed in accordance with [AS 18.70.095](#) before the agreement is consummated.

### **Fair Market Rental Determination**

Determine the amount of fair rental of the property using the [Fair Market Rental Determination Form 25A-R945](#). Determine the fair rental value by using comparable rentals in the area, adjusted to reflect the conditions of the rental agreement, including short-term occupancy. In adjusting the rental figure, consider the fact that DOT&PF will assume no responsibility for utilities or for fire insurance, other than what is provided in the State's blanket insurance coverage.

In some cases, it may be necessary for DOT&PF to pay utilities, such as for multifamily structures. Reflect this in the rental rate. Submit the [Fair Market Rental Determination Form 25A-R945](#) to the Regional ROW Chief for approval. If comparable rental rates are not readily determined, set the monthly rent at 0.7% (seven-tenths of one percent) of the market sale value.

### **Rental Agreement**

After the Regional ROW Chief approves the fair rental value, prepare the [Rental Agreement \(Residential\) Form 25A-R950](#) or [Rental Agreement \(Business\) Form 25A-R951](#) in duplicate. The prospective tenant must complete an [Application for Month-to-Month Rental Agreement Form 25A-R955](#).

If the tenant is not a displaced person from the project, they must also complete the [Addendum to month-to-month Rental Agreement Form 25A-R956](#), acknowledging they are not displaced and not entitled to benefits.

Assign a control number to each rental agreement. Contact the tenant and arrange to accompany them in completing the [Check-In/Out Inspection Form 25A-R920](#). After the inspection, the tenant must sign the rental agreement.

Rent payments must be made in U.S. funds, with checks payable to the State of Alaska preferred. Arrange for the deposit to be credited to the general fund or to the receive and expend account if authorized. Submit rent payments to the regional Property Management Unit for coding and submission to the Finance Section. Whenever possible, provide pre-addressed envelopes.

If payment is not received within 10 days of the due date, the Property Management Unit is to contact the tenants about paying rent.

After approval by the Regional ROW Chief, send a fully executed rental agreement to the tenant and retain one to file in the appropriate parcel file.

### **Revenue Coding for Rental/Lease Agreements**

Code revenue from rental/lease agreements for property purchased solely with State funding to each region's "receive and expend" fund source.

For Federally-funded projects, code the revenue from rental/lease agreements to an unrestricted revenue account.

Return the Federal share of the income to the original Federal-aid project when the Federal project is closed out by Statewide Project Control.

If the project has been closed by FHWA and CIP Management and Finance, code the revenue to the "receive and expend" fund source and a designated program receipt account, showing that the revenue is used only for [Title 23](#) projects as prescribed in [Sec. 2.9.7](#).

### **Default or Breach of Rental Agreement**

The Finance Section will notify the Property Manager of any default. Refer defaults or breaches of agreements to the Department of Law after all avenues of relief have been exhausted as set out in the Rental Agreement or other document.

#### **9.6.2. Encroachments**

Encroachments are defined under [AS 19.25.200](#) (a). The regulations in [17 AAC 10](#) sets out the requirements for obtaining an encroachment permit.

Any non-highway use within the ROW, except for a mailbox or a newspaper box attached to a mailbox, is considered to be an encroachment. The encroachment should be removed or should be covered under a permit. Application requirements are set out in the "Request for Encroachment Permit" portion of this section.

The Regional ROW Chief may be made aware of the location and nature of the suspected encroachment. The Regional ROW Chief will assign a ROW Agent (Property Manager) to determine if the suspected encroachment is within the ROW, who the owner is, and whether an encroachment permit has been issued.

If it is an unpermitted encroachment, send the owner an Unpermitted Encroachment Notice Letter.

An encroachment permit is issued using either the short form, [Encroachment Permit \(Short Form\) Form 25A-R965](#), or the long form, [Encroachment Permit \(Long Form\) Form 25A-R966](#). The majority of permits use the short form. Use the long form when mitigating issues may make a short form inappropriate, such as environmental issues.

When an encroachment permit is issued, record the pertinent information on the Encroachment Permit Log. This log will be permanently maintained in the region's ROW files.

When required by the Stewardship & Oversight Agreement, obtain FHWA approval for encroachments allowed under [17 AAC 10.011](#). Under [17 AAC 10.012](#), DOT&PF may grant an encroachment permit (that includes any conditions imposed under [17 AAC 10.014](#)) after determining that the following standards are met:

- integrity and safety of the highway is not compromised;
- encroachment will not cause a break in access control for the highway;
- land will not be necessary for a highway construction project during the initial term of the permit; and
- issuing the permit is in the State's best interest.

In addition to meeting the standards listed above, the proposed use must be consistent with the continued operation, maintenance, and safety of the highway and must not expose highway users or others to any hazards [[23 CFR 710.403](#) (b)].

Use restrictions for encroachment permits are set out in [17 AAC 10](#). Additionally, the applicant may not possess illegal signs, driveways, or other unpermitted ROW activities. Storage of flammable, explosive, or hazardous material is prohibited within the permit area.

Code revenue as provided in the section entitled "Revenue Coding for Encroachment Permits" below.

### **Encroachment Permits at No Cost for Government Agencies Not Acting in a Business Capacity**

Encroachment permits may be issued at no cost for local, State, and Federal agencies that are not acting in

a business capacity. Permitted uses include flags of states or nations, decorative banners, and signs, without logos or names of sponsors that are intended to inform motorists that they are entering a municipality, community, or state.

The agency requesting a permit under this provision must sign an indemnification clause in the permit to hold DOT&PF harmless. DOT&PF may deny a permit if it would cause a safety risk for the traveling public

Application for a permit under this section is made using the [Application/Renewal for Encroachment Permit \(General\) Form 25A-R960](#) or the [Application for Encroachment Permit for Encroachment in Existence on or Before January 1, 2005 Form 25A-R961](#), as applicable. Application requirements are set out in the “Request for Encroachment Permit” portion of this section. Use either the [Encroachment Permit \[Short Form\] Form 25A-R965](#) or the [Encroachment Permit \[Long Form\] Form 25A-R966](#), as applicable.

### **Encroachment Permits for Owners or Lessees of Land Contiguous to Right of Way (Including Government Agencies Acting in a Business Capacity)**

Encroachment permits may be issued for owners or lessees of land contiguous to the ROW, including government agencies acting in a business capacity. An encroachment permit described in this section may be issued for any lawful use, with these exceptions:

1. Any permanent structure located partially or completely in the ROW.
2. A new water and sewer facility that is not permitted under a utilities permit ([17 AAC 15](#)).
3. A tank of any size.
4. Fueling facilities.
5. A use that is not in the State’s best interest.
6. A land use on a ROW that allows development on contiguous land that would not otherwise be possible without the use of the ROW.

The land area described in the encroachment permit may not be used to meet minimum requirements for a contiguous land use under applicable municipal land use standards or under regulations adopted by the Department of Environmental Conservation (DEC). The contiguous land use must meet those minimum

requirements without regard to the land contained within the encroachment permit. The use of the land described in the encroachment permit must be an accessory use to the contiguous land use.

A permit issued under this regulation requires a \$100 nonrefundable application fee and an annual fee. The permit is valid for no more than 5 years but may be renewed at DOT&PF’s discretion. The annual fee for the permit is based upon economic rent or is \$100, whichever is greater. The nonrefundable reapplication fee is \$100. Other provisions regarding renewal and revocation are set out in [17 AAC 10](#), while [17 AAC 10.013](#) sets out the method for establishing economic rent.

[17 AAC 10](#) allows an encroachment permit of a defined period of time for an existing structure or portion of a structure, or for an existing water or sewer facility that has not been issued a utility permit under [17 AAC 15](#) if the following standards are met:

- The encroachment does not present a risk to the health or safety of the public
- The construction of the encroachment occurred in good faith
- The denial of the permit would create a hardship for the owner of the encroachment

Use either the [Encroachment Permit \(Short Form\) Form 25A-R965](#) or the [Encroachment Permit \(Long Form\) Form 25A-R966](#), as applicable.

### **Beautification Encroachment Permits**

The department may issue at no cost a beautification permit to allow planting of trees, shrubs, grasses, or flowers that do not endanger those in the highway right of way.

Application for a beautification permit is made using the [Application/Renewal for Beautification Encroachment Permit Form 25A-R962](#). Application requirements are set out in the “Request for Encroachment Permit” portion of this section. Use the [Encroachment Permit \[Short Form\] Form 25A-R965](#) to issue the permit.

### **Encroachment Permits for Commemorative Plaques, Historical or Interpretive Markers, and Informational Signs**

The department may issue an encroachment permit at no cost to a government agency for the installation in highway rest stops or pullouts of commemorative



plaques, historical or interpretive markers, and informational signs. The plaques, markers, and signs may be permitted only if they cannot be read from the highway.

Application for a permit under this section is made using the [Application/Renewal for Encroachment Permit \(General\) Form 25A-R960](#). Application requirements are set out in the “Request for Encroachment Permit” portion of this section. Use the [Encroachment Permit \[Short Form\] Form 25A-R965](#) to issue the permit.

### **Encroachment Permits for Advertising on Bus Benches, Bus Shelters, and Adjacent Trash Receptacles**

An encroachment permit is required for advertising on bus benches, bus shelters, and adjacent trash receptacles under [17 AAC 20.005](#). (See [AS 19.25.105](#) (d)(1), which requires a permit issued under [AS 19.25.200](#), encroachment permits.) A request for proposal process is required to select a permittee ([17 AAC 20.005](#) (c)). A permit may be issued at no cost to a nonprofit corporation under [17 AAC 20.005](#) (e).

Application for a permit described in this section is made using the [Application/Renewal for Encroachment Permit for Advertising on Bus Benches, Bus Shelters, Trash Receptacles Form 25A-R964](#). Application requirements are set out in the “Request for Encroachment Permit” portion of this section. Use the [Encroachment Permit \[Short Form\] Form 25A-R965](#) to issue the permit.

### **Request for Encroachment Permit**

A request for an encroachment permit or for the renewal of such an encroachment permit, must include the fee, if any, required by [17 AAC 10](#), or by [AS 19.25.200](#) (d) for an encroachment in existence on or before January 1, 2005, as applicable. The initial request must also be accompanied by an [Application/Renewal for Encroachment Permit \(General\) Form 25A-R960](#), an [Application for Encroachment Permit for Encroachment in Existence on or Before January 1, 2005 Form 25A-R961](#), an [Application/Renewal for Beautification Encroachment Permit Form 25A-R962](#), or an [Application/Renewal for Encroachment Permit for Advertising on Bus Benches, Bus Shelters, Trash Receptacles Form 25A-R964](#).

For a general encroachment permit, the Regional ROW Chief may require the applicant to furnish

drawings stamped by a professional engineer registered in Alaska.

Upon receipt of a request, the Regional ROW Chief will assign the request to a ROW Agent who will be responsible for processing the application.

The agent first determines whether the encroachment was in existence on or before January 1, 2005, or is a new encroachment. If the encroachment existed on or before January 1, 2005, in addition to determining whether the encroachment meets the standards in Sec. 9.6.2, the agent must also determine whether (1) the applicant has demonstrated that the encroachment was erected with the good faith belief that it was lawful to erect and maintain the encroachment in its location and (2) denial of the encroachment permit would pose a hardship on the applicant.

If the agent determines that the encroachment fails to meet any applicable standard, the agent will sign a statement to that effect and attach it to the application and notify the applicant.

If the agent determines that the encroachment meets all applicable standards, the agent will circulate the request to pertinent regional sections for comments. After receiving comments from the reviewers, the agent will complete the [Encroachment Permit Processing Checklist Form 25A-R957](#) and attach it to the region’s copy of the permit application, together with [Encroachment/Beautification Permit Comment Sheet Form 25A-R968](#). A permit issued under this section will use either the [Encroachment Permit \[Short Form\] Form 25A-R965](#) or the [Encroachment Permit \(Long Form 25A-R966](#), as applicable.

The term of a permit, including any renewal, may not exceed the limits set in [17 AAC 10](#) provided that a permittee under that subsection must pay a fee based upon economic rent established under [17 AAC 10.013](#), or \$100 annually, whichever is greater, for use of the land.

[17 AAC 10.013](#) provides: “For purposes of [17 AAC 10](#), the department will establish economic rent for a right of way held in fee simple by the use of commonly accepted real estate appraisal techniques. For rights of way held as easements, the consideration for the issuance of the permit is 90% of the economic rent established under this section for a right of way held in fee simple. A permittee shall reimburse the department for appraisal costs incurred to determine economic rent.”

### **Public Notice of Proposed Encroachment Permit**

If the issuance of an encroachment permit might be controversial, or if DOT&PF determines that public notice would be beneficial to the adjudication process, issue a public notice as explained in Sec. 9.4.1. The applicant is responsible for the cost of this notice.

### **Expiration or Revocation of Encroachment Permit**

DOT&PF may revoke an encroachment permit as provided in [17 AAC 10](#). When a permit expires or is revoked, the permittee is responsible for the cost of removing improvements unless the permit provides otherwise (see [17 AAC 10.015](#)).

If an encroachment is destroyed, the associated encroachment permit is extinguished. Any subsequent encroachment would require a new application.

### **Request for Federal Highway Administration Approval**

Any use of Federal-aid highway ROW other than the rental described in Sec. 9.6.1 must be approved by FHWA, unless otherwise noted by the Stewardship and Oversight Agreement. The Regional ROW Chief sends the request for approval to the FHWA Division Office. It must include the following information, using the [Encroachment/Beautification Permit FHWA Checklist Form 25A-R967](#):

1. An indication as to whether the encroachment was in existence on or before January 1, 2005, or is a new encroachment.
2. A copy of the letter and application requesting use of ROW.
3. A project plan showing the Federal-aid project number and/or other map locating the proposed areas.
4. A scale drawing of the proposed activity and/or pictures of the area.
5. The distance the permitted area will be from the traveled way.
6. If the activity includes a supporting structure, information regarding whether the clear zone and site distance were considered.
7. Zoning information (if applicable), including a brief description of the allowed uses for the adjacent property.
8. An analysis of why the permitted activities must be in the ROW, rather than on adjacent property.

9. An analysis of why the encroachment permit should be granted rather than reducing the ROW.
10. A copy of the comments received from circulating the request to the various DOT&PF sections,.
11. A copy of the agent's findings regarding the application ([Encroachment Permit Processing Checklist Form 25A-R957](#)).
12. Pertinent correspondence between the applicant and DOT&PF.
13. A copy of the draft permit, containing the Federal-aid project number, that has been signed or that has the written concurrence of the regional environmental analyst.
14. A copy of the public notice advertisement, if applicable.
15. Any additional pertinent information available.

### **Revenue Coding for Encroachment Permits**

Encroachment permit fees are collected under the Statutory Designated Program Receipts OMB Fund Code 1108 - Statutory Designated Program Receipts ([AS 37.05.146](#) (b)(3)). These funds are appropriated by the legislature for highway-related activities within the ROW Section. The Statutory Designated Program Receipts revenue is receive and expend authority for each region to meet property management responsibilities.

Code the revenues to the accounts shown below. Expenses for highway-related activities are offset by revenues. Expenditures and revenues related to these activities are collected by the Statewide Right-of-Way Chief and submitted periodically to FHWA. Authorized activities include management of highway-related activities such as appraisals, negotiations, and management of permits and lease agreements.

See Sec. 2.9.7 for procedures for revenue from land acquired with Federal funding, showing that the funding is used for [Title 23](#) projects.

See regional Pre-Audit staff for revenue coding.

### **9.6.3. Other Permitted Uses Driveways and Approach Roads**

If a person wants to place a driveway or approach road within the State ROW, the law requires that person to obtain a permit from DOT&PF under [17 AAC 10](#), after submitting the [Application to](#)

[Construct and Maintain a Driveway or an Approach Road on Highway Right of Way Form 25A-R969](#). The person must submit the application to the regional office, which issues the permit, if appropriate. A [Permit to Construct and Maintain a Driveway or an Approach Road on Highway Right of Way Form 25A-R970](#) allows the construction, continued presence, and maintenance of the driveway within the ROW. (See Sec. 1190 of the *Alaska Pre-Construction Manual*.)

DOT&PF may grant approval of an existing non-permitted driveway or approach road encountered during a construction project by issuing a permit or by depicting it on a construction as-built plan, if the driveway or approach road meets current standards. If it does not meet those standards, notify the property owner of the need to bring the driveway or approach road up to standards and to apply for a permit under [17 AAC 10](#). A property owner who wants to change an existing driveway or approach road must obtain a permit under [17 AAC 10](#).

Applicants must provide traffic control in accordance with the directions on DOT&PF's driveway permit Web site: <http://dot.alaska.gov/permits/index.shtml>.

Instructions for coding revenue from permit fees can be found in Sec. 9.6.2, "Revenue Coding for Encroachment Permits."

### Temporary Uses of Right of Way

Encroachment permits for temporary use of the ROW include:

Highway Events Permits -- issued under [17 AAC 20.015](#) for events such as a race, athletic contest, or similar event that require use of a highway ROW. Use [Highway Event Application Form 25A-R971](#). The permit is issued using [Highway Event Permit Form 25A-R972](#).

Lane Closure Permits -- issued under [17 AAC 20.017](#) for access to, or construction and maintenance activities related to, physically contiguous land during the construction, alteration, or maintenance of improvements, or to allow access to utility facilities for which a permit has been issued under [17 AAC 15](#). Use [Lane Closure Application Form 25A-R973](#). The permit is issued using [Lane Closure Permit Form 25A-R974](#).

Special Use Permits - issued for activities that require entering onto a highway ROW for a temporary, short-term period, but that do not require lane closure, such

as geotechnical investigations, monitoring wells, tree clearing or other activity not related to State projects outside the clear zone. Use [Application for Temporary Construction Permit Form 25A-R975](#) and [Temporary Construction Permit Form \(Property Management\) Form 25A-R976](#).

### Utilities and Mailboxes

Utility permits are issued under [17 AAC 15.011](#). Mail and newspaper boxes within the ROW are not considered encroachments, but must be installed according to current U.S. Post Office and DOT&PF design standards.

## 9.7. Highway Signs for the Traveling Public

Alaska law dealing with highway signs for the traveling public, including outdoor advertising, is set out in [AS 19](#), [17 AAC 20](#), and in [17 AAC 60](#).

In Alaska, outdoor advertising is very restricted. The only signs that are permitted in the ROW and along the traveled way are the following:

- those described in the statutes, regulations, and documents adopted by reference in the regulations, including the *Alaska Traffic Manual*; and
- those approved by the State Traffic Engineer - these signs are not considered outdoor advertising.

The authority listed below for issuing sign permits resides in the ROW section in each regional office. Application forms must be completed, signed and submitted to the appropriate regional DOT&PF office by mail, fax or in person at (<http://www.dot.state.ak.us/stwddes/permits/>). FHWA approval is not required.

Regulatory information is available regarding the following:

- Memorial Sign Program at [17 AAC 08.005](#) - [17 AAC 08.055](#);
- Tourist-oriented Directional Sign Program at [17 AAC 60.001](#) - [17 AAC 60.020](#);
- Logo Sign Program at [17 AAC 60.101](#) - [17 AAC 60.120](#);
- Recreational and Cultural Interest Area Sign Program at [17 AAC 60.201](#) - [17 AAC 60.215](#);

- Traveler Information Kiosk Program at [17 AAC 60.401](#) - [17 AAC 60.420](#);
- standards for manufacture, installation, maintenance, and removal of signs at [17 AAC 60.905](#);
- requirements regarding sign contractors at [17 AAC 60.910](#);
- designs and specifications for tourist signs at [17 AAC 60.915](#);
- symbols at [17 AAC 60.920](#);
- sign permit duration and renewal at [17 AAC 60.925](#);
- permits for existing signs at [17 AAC 60.930](#);
- permit transfers at [17 AAC 60.935](#);
- one sign permit per activity at [17 AAC 60.940](#);
- more restrictive local controls at [17 AAC 60.945](#);
- standards for signs relating to gas, food, lodging, and camping activities at [17 AAC 60.950](#);
- sign permit issuance and sign relocation at [17 AAC 60.955](#);
- two signs per permit at [17 AAC 60.957](#);
- violations at [17 AAC 60.960](#);
- definitions used in the regulations at [17 AAC 60.995](#).

### 9.7.1. General Eligibility Requirements for Businesses

The general eligibility requirements for placement of signs and sign design standards are contained in referenced statutes and regulations and in the *Alaska Traffic Manual* [which consists of the Manual of Uniform Traffic Control Devices (MUTCD) and the Alaska Supplement to the MUTCD (ATM)]. To be eligible, a business must be in compliance with all applicable Federal, State, and local laws. Fees and other requirements for signs are set out in 17 AAC 60 (see list of specific regulations above) and the statutes underlying those regulations.

### Disapproved Applications

The applicant may appeal the denial of a permit in accordance with [17 AAC 10.950](#). If DOT&PF denies an application for a specific reason that is considered

correctable with modification, the Regional ROW Chief will advise the applicant of the necessary modifications.

## 9.8. Outdoor Advertising Control

The statutes dealing with outdoor advertising are set out at [AS 19](#), and the regulations are set out at [17 AAC 20](#). The statutes prohibit all outdoor advertising that is within 660 feet of the nearest edge of the ROW and that is visible from the main-traveled way of an interstate, primary, or secondary highway, except as otherwise provided in [AS 19.25.105](#) (Sec. 9.1). Except for information posted on traveler information kiosks this prohibition also applies to highway rest stops and pullouts on the State highway system.

Regulatory information is available regarding the following:

- management of permissible outdoor advertising at [17 AAC 20.005](#) (including signs advertising an event or activity, signs advertising the sale or lease of a site, and advertising on bus benches, bus shelters, and adjacent trash receptacles);
- highway designation at [17 AAC 20.011](#);
- removal of outdoor advertising located in highway rights of way at [17 AAC 20.012](#); and
- removal of outdoor advertising located outside highway rights of way at [17 AAC 20.013](#).

### 9.8.1. Outdoor Advertising Control

Outdoor advertising along the interstate, primary, and secondary routes must be controlled. (See Sec. 9.1.) Effective control is accomplished as follows:

- conduct a periodic inspection of all routes to ensure an updated inventory;
- maintain ongoing surveillance by ROW personnel, with the cooperation of maintenance personnel;
- implement an illegal sign removal program; and
- prepare a report on signs.

### 9.8.2. Removal of Illegal Signs

All illegal signs are subject to prompt removal. Except as provided in [17 AAC 20.012](#), when a sign is determined to be illegal, the regional office must give notice to the owner as required by [AS 19.25.150](#). In



addition, DOT&PF recommends personal contact with the owner, in company with the maintenance station foreman, as necessary, to explain why the sign is illegal.

If the sign is not removed by the owner within 30 days, DOT&PF may remove it and bill the owner for costs incurred as authorized under [AS 19](#) and [17 AAC 20.012](#) and [17 AAC 20.013](#). Removal operations will be coordinated, as necessary, with the regional maintenance superintendent.

If removed by DOT&PF, the signs must be stored at the nearest maintenance station for 30 days and then disposed of. Property management personnel must affix the date of removal to the sign in a nondestructive manner. The owner may reclaim the sign within the 30 days upon payment of removal and storage costs.

## 9.9. Junkyard Control

Junkyards (see [23 CFR 751.7](#)) located within 1,000 feet of the nearest edge of the ROW of interstate, primary, or secondary highways (see Sec. 9.1) are illegal except as otherwise provided in AS 19. Effective control is accomplished as follows:

- conduct a periodic inspection of all routes to ensure an updated inventory;
- maintain ongoing surveillance by ROW personnel, with the cooperation of maintenance personnel;
- implement an illegal junkyard removal or screening program; and
- prepare reports on junkyards, using the [Junkyard Control Report Form 25A-R990](#).

### 9.9.1. Inventory

The Property Management Unit must make a complete inventory of all illegal junkyards and keep it current. For each junkyard appearing on the inventory, a completed [Junkyard Control Report Form 25A-R990](#) must be on file in the appropriate regional office.

### 9.9.2. Junkyard Screening

Screening, as required by AS 19, means the use of any vegetative planting, fencing, ornamental wall of masonry, or other architectural treatment, earthen embankment, or a combination of these that renders

invisible any deposit of junk from the main traveled way.

After the screen is established, the junk must not be stacked high enough to be visible above the screen. No junk may be placed outside of the screened areas.

The screening must be located on the owner's land and not on any part of the highway ROW. Screening must be located so it is not hazardous to the traveling public.

The construction of screening must be uniform, not a patchwork type of construction. Acceptable fencing materials for screening include fences of steel or other metals, durable woods, or other woods treated with a preservative or walls of masonry.

Screening must be painted where the composition is such that painting is required. The paint used must be of a color that blends into the environs of the highway ROW.

Screening must be designed and constructed to withstand adverse wind pressures. It must have gates that are kept closed except for ingress and egress of moving vehicles, or gateways that screen the junk and operation from the highway user at all times.

Acceptable planting materials for screening include shrubs, trees, flowering plants, and foliage. Plant material is subject to the following standards:

- should be native to the area and long lived;
- should provide for landscaping that is relatively maintenance free;
- can provide a living screen that may be used in conjunction with a fence or wall; and
- must be watered, cultivated, or mulched and given any required maintenance including spraying for insect control, to keep the planting material healthy.

The owner must remove dead plant material immediately and replace it during the next spring or fall planting season. The replacement plants must be at least as large as the initial planting.

The owner may consider earthen embankments for screening such as berms or mounds. After grading, the owner must landscape the area to maintain a natural environmental appearance.

Embankments may be used in conjunction with fences and plant materials.

## 9.10. Excess Land Management and Disposal

The procedure for a land interest disposal depends upon the authority by which it was created. In terms of Federal highway rights of way, a disposal means the sale of real property or rights therein; including access or air rights, when no longer needed for highway right of way or other uses eligible for funding under [Title 23 of the United States Code](#).

[[23 CFR 710.105](#) (b)] Federal & State Statutes and regulations governing disposals of land interests are set out in:

- interests acquired under Title 2 - Aeronautics: [AS 02.15.070](#). Acquisition and disposal of property (see Ch. 10);
- interests acquired under Title 19 - Highways and Ferries authority: [AS 19.05.070](#). Vacating and disposing of land and rights in land; [17 AAC 10.100](#) – [17 AAC 10.130](#) Land Disposal;
- highway rights of way established under Public Land Orders, '47 Act patent reservation and easements by prescription: [AS 19.05.070](#). Vacating and disposing of land and rights in land; [17 AAC 10.100](#) – [17 AAC 10.130](#) Land Disposal;
- interests acquired under Title 35 - Public Works authority: [AS 35.20.070](#) Vacating of Land or Rights in Land;
- interests acquired under Titles 14 and 35 for Schools: [AS 14.08.151](#) (b) - Upon request the responsible department shall convey title to the regional school board;
- interests acquired from the Department of Natural Resources (DNR) under [AS 38.05.030](#) (b) "...shall be returned to the management of the division of lands...";
- interests acquired with [Title 23 USC](#) funds: [23 CFR 710.409](#);
- rights of way dedicated under [43 USC 932](#) (RS 2477 Trails, repealed) - [AS 19.30.410](#) Vacation of rights of way; [11 AAC 51.065](#) Vacation of Easements;
- section-line easements dedicated under [43 USC 932](#) or [AS 19.10.010](#); [AS 19.30.010](#) ("If the highway is vacated..."); [11 AAC 51.065](#) Vacation of Easements;
- rights of way dedicated under Title 29 - Municipal Government: [AS 29.40.160](#). Title to vacated area and municipal government platting ordinances;
- rights of way dedicated under [Title 38](#) - Public Land: [11 AAC 51.065](#) Vacation of Easements;
- rights of way dedicated under [Title 40](#) - Subdivisions and Dedications (DNR platting authority in unorganized borough): [11 AAC 51.065](#) Vacation of Easements;
- other State-owned public access easements managed by DNR: [11 AAC 51.065](#) Vacation of Easements;
- changes or disposal (break) of an Access Control line requires FHWA approval according to the Stewardship and Oversight Agreement; and
- transfer of operating ROW (Relinquishment): A relinquishment is defined as the conveyance of a portion of a highway ROW or facility by a State highway agency (SHA) to another Government agency for transportation use. [[23 CFR 710.105](#) (b)] While ownership changes, the land interest remains a highway ROW. A relinquishment is subject to the terms of [23 CFR 620.201-23 CFR 620.203](#) and FHWA approval and/or concurrence according to the Stewardship and Oversight Agreement.

Some excess lands shall be transferred to DNR under [AS 41.21.020](#) (a) when appropriate as park and public recreation lands (see Sec. 9.10.4.)

The land disposal regulations at [17 AAC 10](#) were established to deal with the disposal of "highway" rights of way and do not apply to land interests acquired under [Title 2](#), [Title 35](#), RS 2477 trail easements, section line easements, statutory or common law dedications by plat and others.

In certain circumstances where rights of way are layered (i.e. right of way by Public Land Order and plat dedication) the disposal process may require more than one procedure. (i.e. [Commissioner's Deed of Vacation Form 25A-R997](#) and a platting action).

If the land interest is in fee, it must be conveyed to

another party using a [Commissioner's Quitclaim Deed Form 25A-R996](#). If the land interest is an easement, the [Commissioner's Deed of Vacation Form 25A-R997](#) releases the easement returning the unencumbered use of the land to the fee owner.

### Public Notice

Sec. VIII of the [Alaska Constitution](#) requires public notice before the disposal of State-owned land or an interest in State land. Lands returned to DNR do not require public notice as the lands are not leaving State ownership however, public notice in these cases might be warranted if the disposal may be controversial.

### Reversion, Abandonment, Non-use and Municipal Authority

A public easement or less than fee right of way cannot be terminated by apparent abandonment or non-use. An affirmative act, in the form of a [Commissioner's Deed of Vacation Form 25A-R997](#) or [Commissioner's Quitclaim Deed Form 25A-R996](#) is required to release the interest.

A municipal platting authority may not vacate DOT&PF managed rights of ways over the objection of DOT&PF.

- reversions to DNR and Municipality Entitlements under [AS 38.05.030](#);
- disposal of erroneously acquired real property under [17 AAC 05.020](#);
- land disposal at [17 AAC 10](#);
- disposal by negotiated sale to an adjoining property owner at [17 AAC 10.105](#);
- disposal by competitive sale at [17 AAC 10](#);
- disposal through brokers at [17 AAC 10](#);
- land exchanges at [17 AAC 10](#);
- conveyance documents at [17 AAC 10](#);
- land outside of right-of-way limits at [17 AAC 10](#);
- appeals at [17 AAC 10](#); and
- definitions used in the regulations at [17 AAC 10](#).

#### 9.10.1. Inventory and Control

If property is excess, complete the [Property Management Land Inventory Form 25A-R995](#). Maintain appropriate land inventory records.

Make periodic inspections throughout the region to determine if any of these properties are excess property that should be disposed of under Sec. 9.10.4. If an inspection reveals that any property is illegally occupied, notify the occupant that they must vacate the property or apply for an encroachment permit.

#### 9.10.2. Requests for Disposal

When a request for the disposal of excess property is received, the ROW Agent should request the applicant to submit an [Application for Disposal of State Land and Relinquishment of Land Interests Form 25A-R992](#). When the completed application is received, the Property Manager will start a [Checklist for Processing Excess Property Disposal Applications Form 25A-R993](#) and use the form throughout the process.

#### 9.10.3. Determination of Need

Before disposal of any property, consult the various sections within the region (Design, Planning, Maintenance, etc.) to ascertain if there is any foreseeable need for the property. If so, consider permitting the non-DOT&PF use of the land rather than disposing of the property. If there is likely to be any adverse effect, permitting may not be allowed.

Consider for permitted uses only those lands that are to be used by DOT&PF in the foreseeable future. Consider all other excess lands for disposal as promptly as possible in accordance with [17 AAC 10.100 - 17 AAC 10.130](#).

#### 9.10.4. Methods of Disposal

If land or rights in land are excess to DOT&PF's needs, the Regional ROW Chief must determine whether the land has a potential use for parks, conservation, recreation, or a related purpose. If it does, the Regional ROW Chief will notify each appropriate Federal, State, and local agency and the Regional and Statewide Environmental Sections. If no agencies are interested in developing the land for parks, etc., DOT&PF may dispose of the land by one of the following methods, some of which have additional regulatory requirements:

- if the land is being sold, prepare a [Commissioner's Quitclaim Deed Form 25A-R996](#);
- if an easement was acquired and the rights are being vacated, prepare a [Commissioner's Deed of Vacation \(Form 25A-R 997\)](#);



- if the property was acquired through inadvertence or mistake, depending on the type of title acquired, prepare a [Commissioner's Quitclaim Deed Form 25A-R996](#) or a [Commissioner's Deed of Vacation Form 25A-R 997](#);
- if the land was acquired from DNR or another State agency by Interagency Land Management Assignment (ILMA), prepare a [Commissioner's Quitclaim Deed Form 25A-R996](#) (this formalizes the transfer and requires a comprehensive review process);
- if the land was acquired from a Federal agency with a reversionary clause, request the appropriate means of transferring the property back to the Federal agency; and
- if a section of roadway is being transferred to a municipality for continued use as a transportation facility, prepare a [Commissioner's Deed of Relinquishment Form 25A -R999](#). See Sec. 9.10.9 of this manual regarding road transfers.

#### **9.10.5. Request for Authority to Appraise and Dispose of Excess Property**

Prepare the disposal for the Regional ROW Chief's signature. The Regional ROW Chief then requests authority to appraise and dispose of the excess land by memorandum to the Regional Director, accompanied by the [Excess Property Certification Form 25A-R998](#).

If Federal funds participated in the original purchase, direct the request through the director to the Federal agency involved, unless FHWA is the agency. If FHWA is the funding agency, an informational copy of the DOT&PF approval should be sent to the FHWA Division Administrator (see Stewardship and Oversight Agreement).

#### **9.10.6. Disposal of Controlled Access**

Controlled Access (or access control) is a property right considered part of the highway ROW, and it must be disposed of in the same manner as any other property right. If a portion of any access control on a Federal-aid highway is to be disposed of, ensure compliance with the Stewardship & Oversight Agreement and obtain any required FHWA approval.

#### **9.10.7. Sale of Structures and Excess Land on a Federal-Aid Highway Project**

Receipts from the sale or rents of excess property obtained with Federal-aid funding must be used for transportation purposes. Arrange for the deposit

credited to the general fund or to the receive and expend account if authorized.

#### **Revenue Coding for the Sale**

Code revenue from the sale of structures, excess land, or a combination of both to the designated program receipts if the structure or land was purchased with State funds.

Code revenue to designated program receipts if the structure or land was purchased with Federal highway funds and the highway project is closed. Sec. 2.9.7 has coding instructions for these projects, including showing that revenues were used for [Title 23](#) projects.

If the sale occurs while the Federal project is still open, code the revenue to the Federal project collocation code and ledger code and unrestricted revenue account.

For FAA projects, the Federal participating share of the sale *must* be returned to the original project if the project is still open.

FAA has agreed to allow Federally-eligible participating expenditures (actually belonging to closed projects) to be coded to currently active Federal projects with the same participating rate/ratio.

See regional Pre-Audit staff for revenue coding.

#### **9.10.8. Appeals**

No appeal is available if DOT&PF determines that a parcel of ROW is not excess and is not available for disposal.

#### **9.10.9. Road Transfers**

Road transfers occur when DOT&PF and another government agency agree that it is mutually beneficial to formally transfer ownership and control for a road or section of road from DOT&PF to that agency. A Memorandum of Understanding (MOU) formalizing the transfer is entered into between the two agencies, setting out the conditions and responsibilities of each party necessary to affect the transfer. The MOU also sets out the design life of the latest construction project for local, rural minor collectors, or TRAAK (Trails and Recreational Access for Alaska) projects.

## **9.11. Materials Sources**

The Property Management Unit should maintain a complete inventory of all materials sources within the region in which DOT&PF has any ownership interest. The inventory should include at least the following:

- name or number;
- location;
- type of interest held;
- restrictions on use;
- time limits on use;
- reversionary requirements; and
- size.

## **9.12. Civil Rights Statements for Deeds and Leases**

Include the following clauses in Ex. 9-2, 9-3, and 9-4 in all deeds and relinquishments entered into by the State of Alaska pursuant to provisions of the Civil Rights Act of 1964.

APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, (Title of Modal Operating Administration), as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21. **[Include Modal Operating Administration specific program requirements.]**
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin. **[Include Modal Operating Administration specific program requirements.]**
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, information, and its facilities as may be determined by the Recipient or the (Title of Modal Operating Administration) to be pertinent to ascertain compliance with such Acts, Regulations, and directives. Where any information required of a contractor is in the exclusive possession and control of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the (Title of Modal Operating Administration), as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the (Title of Modal Operating Administration) may determine to be appropriate, including, but not limited to:
  - a. withholding payments to the contractor under the contract until the contractor complies; and/or
  - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the (Title of Modal Operating Administration) may direct. **That if the contractor becomes involved in, or is threatened with litigation by a subcontractor or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into any litigation to protect the interests of the United States.**

A

Exhibit 9-1  
Appendix A of DOT Order 1050.2A dated April 11, 2013

APPENDIX B

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of Assurance 4:

NOW, THEREFORE, the U.S. Department of Transportation as authorized by law and upon the condition that the (Title of Recipient) will accept title to the lands and maintain the project constructed thereon in accordance with (Name of Appropriate Legislative Authority), the Regulations for the Administration of (Name of Appropriate Program), and the policies and procedures prescribed by the (Title of Modal Operating Administration) of the U.S. Department of Transportation in accordance and in compliance with all requirements

Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 6200d to 6200d-4), does hereby remit title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached

pertaining to and effectuating the project described in Exhibit A attached, does hereby remit title and interest of the U.S. Department of Transportation hereto and made a part hereof.

(HABENDUM CLAUSE)

lands and interests therein unto (Title of Recipient) and its successors forever, on the conditions, restrictions and reservations herein contained as follows, which shall survive the recording hereof and shall bind the real property or structures are used for a purpose for which provided or for another purpose involving the provision of similar services or (Title of Recipient), its successors and assigns.

TO HAVE AND TO HOLD said lands and interests therein unto (Title of Recipient) and its successors forever, on the conditions, restrictions and reservations herein contained as follows, which shall survive the recording hereof and shall bind the real property or structures are used for a purpose for which provided or for another purpose involving the provision of similar services or (Title of Recipient), its successors and assigns.

in consideration of the conveyance of said lands and interests in lands, does hereby grant unto (Title of Recipient) and its successors and assigns, that (1) no person shall be discriminated against on the basis of race, color, sex, or national origin, in the exercise of participation in, or the enjoyment of benefits of, any facility located wholly or in part on, over, or under said lands and interests in lands and (2) that the (Title of Recipient) will use the lands and interests in lands and facilities on said land, and that above described land and facilities will thereon revert to the United States Department of Transportation and its assigns as such [and the (Title of Recipient) shall be bound to comply with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Subtitle A, Office of the Secretary, Part 21, Non-discrimination programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended], and (3) that in the event of a breach of any of the above-mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to the United States Department of Transportation and its assigns as such [and the (Title of Recipient) shall be bound to comply with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Subtitle A, Office of the Secretary, Part 21, Non-discrimination programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended].\*

The (Title of Recipient), in consideration of the conveyance of said lands and interests in lands, does hereby grant unto (Title of Recipient) and its successors and assigns, that (1) no person shall be discriminated against on the basis of race, color, sex, or national origin, in the exercise of participation in, or the enjoyment of benefits of, any facility located wholly or in part on, over, or under said lands and interests in lands and (2) that the (Title of Recipient) will use the lands and interests in lands and facilities on said land, and that above described land and facilities will thereon revert to the United States Department of Transportation and its assigns as such [and the (Title of Recipient) shall be bound to comply with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Subtitle A, Office of the Secretary, Part 21, Non-discrimination programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended], and (3) that in the event of a breach of any of the above-mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to the United States Department of Transportation and its assigns as such [and the (Title of Recipient) shall be bound to comply with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Subtitle A, Office of the Secretary, Part 21, Non-discrimination programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended].\*

language to be used only when it is determined that such a clause is necessary in accordance with the provisions of Title VI.)

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary in accordance with the provisions of Title VI.)

B

Exhibit 9-2  
Appendix B of DOT Order 1050.2A dated April 11, 2013

APPENDIX C

CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the (Title of Recipient) pursuant to the provisions of Assurance 7(a):

- A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that:
  - 1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Non-discrimination covenants, (Title of Recipient) will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.\*

Non-discrimination covenants, the (Title of Recipient) will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.\*

- C. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, (Title of Recipient) will have the right to enter or re-enter, and repossess said lands and facilities will there upon revert to (Title of Recipient) and its assigns.\*

ed only when it is determined that such a clause is necessary to

(\*Reverter clause and related language to be used to make clear the purpose of Title VI.)

C

Exhibit 9-3  
Appendix C of DOT Order 1050.2A dated April 11, 2013



**USES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM**

CLA

...ing clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by (Title of Recipient) pursuant to the provisions of Assurance 7(b):

The follow into by (T

grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby grant and agree (in the case of deeds and leases add, "as a covenant running with the land") that (1) no

A. The ( repre cover

person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.

B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above Non-discrimination covenants, (Title of Recipient) will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.\*

...into property of (Title of Recipient) and ... will be used and related language to be used and shall make clear the purpose of Title VI.)

...on it is determined that such a clause is necessary to ...

make clear the purpose of Title VI.)

D

**Exhibit 9-4  
Appendix D of DOT Order 1050.2A dated April 11, 2013**

## 10. Airports

---

- 10.1 Introduction
- 10.2 Appraisals
- 10.3 Acquisition & Relocation
- 10.4 Potential Types of Title Held on Airport Lands
- 10.5 Title Certification Process for FAA Grants
- 10.6 Project Closeout
- 10.7 Relinquishment and Disposal of Airport Lands

### 10.1 Introduction

DOT&PF holds title interest to the majority of airports that it maintains and operates under authority of Alaska Statute, Title 2 ([AS 02](#)), and Alaska Administrative Code, Title 17 ([17 AAC](#)). Most of these airports are in remote areas. Title to property outside airport boundaries is generally held in private ownership. Private ownership, with few exceptions, consists of Native corporations and allotments.

Situations arise wherein DOT&PF has rights to maintain and operate airports where no substantive title is held. Air Navigations Sites and Interim Agreements are examples of such situations and are discussed in detail later in this section. Because of Federal Aviation Administration (FAA) requirements and the type of ownership involved in acquisition, this chapter supplements the acquisition procedures contained in this manual.

Airport development and improvements are frequently funded by the FAA and, as such, are governed by the Airport Improvement Program, [Title 49 USC Sec. 47171](#) (Public Law 103-272) in addition to the Uniform Act. These public laws require that a Federally-assisted airport project cannot be approved until DOT&PF (the sponsor) holds acceptable title to the airport lands, or gives satisfactory assurance that acceptable title will be acquired prior to construction.

### 10.2 Appraisals

The Design Project Manager will let ROW know what amount and type of interest is needed for an airport project. Typically, they have already discussed their needs with FAA.

There is no "authority to appraise and acquire" with FAA projects as there is in the FHWA system. The

ROW Section is first notified of a project when the Design Project Manager requests a scope schedule and budget for the project. At this time, each regional ROW section provides its input, and the Design Project Manager uses it to complete the force account cost estimate.

The time frames for an airport project are different from those for highway projects. The schedule for airport projects is abbreviated.

Prior to environmental document approval, preliminary real estate market information can be gathered for the purpose of alternative analysis. ROW will receive approval from the Pre-Construction Engineer to appraise and acquire once the environmental document is approved.

The Appraisal Section will produce appraisals or contract for appraisals needed. FAA has limited the waiver valuation to parcels with an estimated value of \$10,000 or less.

When completed, they will send the appraisal for review. When the Reviewer's Recommendation of Just Compensation is received, they provide an original to Regional ROW Chief for final approval.

Appraisals that include Functional Replacement (See 5100.37B Sec. 3-42(d) require appraisal approval from FAA. If you are considering less than fee simple acquisition, you must work through the Project Manager to make sure other title interest is approved by FAA (i.e. Avigation Easements, etc.). Before requesting an appraisal for any large-dollar acquisitions you should check with FAA for special instructions.

### 10.3 Acquisition & Relocation

Airport sponsors must comply with [49 CFR Part 24](#) (the Uniform Act) for AIP-assisted airport development. The ROW Agent working on an airport project should become familiar with the [FAA Airport Improvement Program \(AIP\) Handbook 5100.38D](#); Land Acquisition and Relocation Assistance for Airport Projects 5100.37B; and Advisory Circular 150/5100-17. Acquisition and Relocation for airport projects follows the Uniform Act (see Ch. 7). FAA may require different (or additional) forms be used (see <http://www.faa.gov/airports/resources/forms/> - Land



Acquisition/Relocation Assistance chart. Confirm with the FAA which forms must be used.

Acquisition and Relocation for FAA projects are completed under Phase 2. Prior to environmental document approval preliminary real estate market information can be gathered and initial contacts made with any service providers to discuss their process. Following approval of the environmental document appraisal and acquisition activity proceed in the same manner as for highway projects.

When the acquisition/relocation is completed the Project Manager will apply to FAA for a project grant. The grant includes reimbursement for actual costs for Design and ROW and estimates for the Construction costs.

The airport sponsor must maintain adequate records, including real estate appraisals, acquisition, relocation, and property management records, and other documentation necessary to show compliance to [49 CFR Part 24](#). Documentation must be in an easily retrievable form and must available during regular business hours for inspection by representatives of the FAA. The airport sponsor must retain title documents permanently. Other records must be kept for at least 3 years after FAA grant closeout.

#### 10.4 Potential Types of Title Held on Airport Lands

DOT&PF must acquire real property rights that are adequate for the construction, operation, and maintenance of the grant-assisted project. Normally, fee title to all land within airport boundaries will be acquired.

If fee acquisition for the Runway Protection Zone (RPZ) is not practical, then an avigation easement is required. This easement must secure the right of flight, with inherent noise and vibration, above the approach surface, the right to remove existing obstruction, and a restriction against the establishment of future obstructions. The goal is to preclude public congregation within the RPZ.

Generally, where less than fee title is acquired, the property rights acquired must be sufficient to encumber the remainder real estate with provisions that will ensure full use of the property as needed for airport construction and safe airport operations. The minimum interest FAA will accept is a 20-year lease. DOT&PF may not enter into a lease with corporations or individuals for airport lands.

Other types of title held on airports include the following:

1. **U.S. Patent:** The following portions of Federal law allow airport patents to be granted to the State of Alaska: Sec. 16 of the Federal Airport Act of 1946, Sec. 23 of the Airport and Airway Development Act of 1970, and Sec. 516 of the Airport and Airway Improvement Act of 1982.

Airport patents represent fee title from the United States. Patents contain a reversionary clause (a stipulation that the land reverts to the Federal government when it ceases to be used for airport purposes).

2. **General Services Administration (GSA) Deeds:** Fee title with a reversionary clause as described in (1) above. Relinquishments must be approved by FAA and are subject to disposal through the Federal Surplus Property Act.
3. **Omnibus Act Deeds:** Fee title issued under Sec. 45 of the Omnibus Act to the State of Alaska at Statehood. Since airports covered by these types of conveyances were originally Federal installations, there is often Federal reservation areas designated inside facility boundaries. Until a release of the Federal interest is issued and recorded, the State does not have use of those areas.
4. **Bureau of Land Management (BLM) 20-Year Public Airport Leases:** These leases are renewable and are granted under authority of [43 CFR 2911](#). Rental payments can be made lump sum with the use of grant money. The BLM appraises the land and usually charges 50% of market value.
5. **Trustee Deeds:** Fee title was granted by the BLM Townsite Trustee for Airports within surveyed Federal town sites. It may contain exclusions for oil and gas in the patent.
6. **Air Navigation Site (ANS) Withdrawals:** A realty action taken in the past by BLM to segregate land from other appropriations and to protect them for airport purposes. However, they are withdrawals and do not provide a title interest. Interim Conveyances (ICs) to Native corporations are not subject to these withdrawals. Airports covered by these withdrawals are normally reconveyed under the Alaska Native Claims

Settlement Act (ANCSA), P.L. 92-203, Sec. 14(c)(4).

7. **U.S. Forest Service (USFS) Permits:** The terms will vary according to the activity.
8. **Interagency Land Management Assignments (ILMA):** These are agreements issued by the Alaska Department of Natural Resources (DNR), transferring management of State-owned lands not already owned or held by DOT&PF. ILMAs replaced Interagency Land Management Transfers (ILMT) (see [AS 38.05.020](#)) and are for nonexclusive use. They are often acquired over submerged lands. ILMA lands must be returned to DNR when no longer needed for airport purposes. These assignments are not transferrable to any other agency or municipality.
9. **Avigation and Hazard Easements:** Obtained for areas around an airport to maintain safe and efficient use of navigable airspace and compatible land use. The language of the document must be acceptable to FAA (see [Advisory Circular 150/5100.17](#), [FAA Order 5190.6B](#), and Federal Aviation Regulations-(FAR) [14 CFR 77](#)). These easements are not advisable--they should only be acquired when no other title interest is feasible (such as for graves or an old landfill in the approach). FAA prefers DOT&PF to acquire a greater quality interest in the runway protection zones.
10. **BIA Deeds:** Obtained by BIA or BIA's contractor for the benefit of the Allottee. [25 CFR 169](#) outlines the procedures and rules. BIA deeds are acquired for highway projects as well. It is preferable to acquire a deed, not a Right of Way for Restricted Lands on Airports. See Ch. 6.
11. **Department of Commerce, Community and Economic Development (DCCED)/Municipal Land Trustee (MLT) Leases and Grants of Right of Way (airport access roads):** Under ANCSA, P.L. 203, Sec. 14 (c)(3) ([43 USC 1601 et seq.](#)), as amended, each village corporation must convey surface estate in lands in and around the village to its municipality or, if no municipality exists, the State has provided an option to unincorporated communities to allow for expansion. DCCED may receive lands in trust for any future municipality "as is necessary for community expansion, and appropriate rights of

way for public use and other foreseeable community needs."

12. **Leases from other government agencies:** Leases for airport facilities vary in term from a minimum of 20 years to perpetual. "Public agencies" such as the Alaska Railroad Corporation, State-chartered municipalities, DCCED, and Tribal Governments are allowed to enter into leases for airport facilities. (See [14 CFR 152](#)). A lease from a private corporation does not comply with Federal rules for sufficiency of title.

Any agreement, lease, contract, or title interest obtained from a tribal government requires the acceptance of an approved Waiver of Sovereign Immunity by the tribe. These are written in conjunction with the Department of Law and are specifically crafted for the individual tribe based on its constitution, if it has one.

13. **Split Estate Lands and Subsurface Easements:** Split estate lands acquired adjacent to most communities are generally owned by the ANCSA village corporation (surface) and the ANCSA regional corporation (subsurface). DOT&PF makes offers based on the fee value of the combined surface and subsurface estates. DOT&PF does not divide estate values. Property owners are responsible for dividing the compensation amongst themselves without DOT&PF's involvement.

Note that if there is significant value estimated in sand, gravel, minerals, or other such resources, the appraisal should consider this in the analysis of highest and best use and other valuation principles. It may be helpful to include this in the appraisal scope. See Chapter 4.

If the sale involves an Administrative Settlement, the same unit value must be presented in a written counteroffer from both corporations. Settlements are processed as outlined in Ch. 6.

DOT&PF often ends up with a different quality of interest in the two different estates. While DOT&PF occasionally obtains deeds for subsurface interests, subsurface easements are a more commonly obtained.

Subsurface easements come in two forms. First, those that are part of split estate acquisition (compensable) are adequate title if they convey

material rights and sub-lateral, subjacent support to the DOT&PF facility. Secondly, there are also subsurface easements, generally titled Non-Development Covenants, that protect DOT&PF facilities where only an ANSCA surface estate is held.

14. **Road Dedications:** Part of the entire title clearance process for an FAA Grant is securing public access from the community to the airport facility. This is generally accomplished through a road dedication by the city or corporation, and not necessarily by acquisition of the lands encompassing the road. Should a purchase of those lands be needed, FAA considers it a participating expense when the road is exclusively used for airport use.

15. **Other Types of Title for Airport Access Roads:**

- a. Title V-FLPMA grants, issues or renews rights of way for transportation purposes. With airports, these interests are usually 20 years for airport access roads.
- b. Title 23 Grant through a Highway Easement Deed. FHW A is authorized to transfer certain public lands under the Federal-Aid Highway Act of 1958, Title 23.
- c. RS 2477 enacted in 1866 for construction of highways across public lands.

16. **ANCSA, Sec. 14(c)(4), Village Airport Reconveyances:** A project may require acquisition of land upon which an airport existed as of December 18, 1971. Under ANCSA, Sec. 14(c)(4), each village corporation “shall convey to the ... State ... title to the surface estate for existing airport sites, airway beacons, and other navigational aids, together with such acreage and/or easements as are necessary to provide related services and to insure safe approaches to airport runways.” The physical airport boundaries are based upon the boundary that existed on December 18, 1971, the date of the ANCSA enactment.

The ROW Agent assigned to an airport project must obtain a copy of the current airport property plan as the baseline exhibit for negotiations, and the plan must show the boundaries as they existed on December 18, 1971 as the area to be conveyed. Title will be conveyed to DOT&PF from the village corporate entity, as it was conveyed from

the Federal government. There are very few airports where this entitlement has not been previously exercised.

17. **Interim Maintenance Agreements:** Occasionally situations arise where a title interest to a facility will lapse entirely. If the facility is to be retained as a public airport but the funding for any land acquisition may be years off, DOT&PF crafts an Interim Maintenance Agreement, sometimes called a Limited Lease, with the owners of the airport land. The most common use for such an agreement is at the expiration of a BLM Lease that has been administratively waived to the village corporation.

Until DOT&PF can acquire a more long-term title interest, these agreements allow the State to continue the operations and maintenance of the facility. Leases for long terms are not possible nor do they constitute sufficient title for grant funding. These interim agreements or limited leases are not to be used within the 20-year grant obligation period. DOT&PF should advise the village municipality that it may undertake no new improvement projects at an airport operated under a limited lease.

### 10.5 Title Certification Process for FAA Grants

The Aviation Design Group (and M&O) will ask ROW to "Certify" a project before submitting the grant request to FAA. ROW's portion is to certify that real property was acquired in conformance to the Uniform Act and we have sufficient title for the proposed project. This certification is required to be provided concurrently with a sponsor's request for reimbursement and shall cover the specific parcels for which the sponsor is requesting reimbursement of costs. (See Fig. 8-1 and 8-2 in [Advisory Circular 150/5100-17](#) for sample certification documents.)

FAA requires DOT&PF to have sufficient title for the project. “Sufficient” depends on what type of grant DOT&PF is requesting. For example to purchase a piece of equipment may only require a 5-year grant life while runway improvements may require 20 years. 14 years left on an airport lease would be sufficient for a snow removal equipment grant but it would not be sufficient for a runway improvement project).

### **10.5.1. Projects That Do Not Require Land Acquisition**

Complete an abbreviated title check as follows:

1. Complete the FAA Form 5100-100, Part II, Sec. C, (see the FAA [AIP Handbook](#)) and submit it to the Project Manager. Item 4 on the form requires a listing of the property interest in areas of land shown on the property plan (Ex. A). The data should include all title interests held on the airport, the date of acquisition, the date of the last title opinion or certification, and the latest property plan.
2. If any title interest is not permanent, detail the expiration and remaining years of interest. Maintain this data on an ongoing database, and update it each time a new acquisition is made.
3. Complete the [5100-133 Real Property Acquisition AIP Sponsor Certification](#). The Project Manager will obtain the Regional Director's signature and submit to FAA.
4. Complete a cursory review of the title by reviewing the BLM Master Title Plats for possible new Native Allotment Applications and by reviewing the public records at the recorder's office database for recent sales.
5. Check the Airport Property Plan to ensure it is updated and produce a copy for FAA.
6. Retain copies for the appropriate grant file in the regional ROW project files and submit the original to the Design Project Manager. They will complete their portions of the Grant Application and submit to the FAA as one package.

To see a listing of AIP Grants, check the AIP Grant History listing produced by FAA (begins 1982).

### **10.5.2. Projects That Require Land Acquisition**

Complete the abbreviated title check noted in Sec. 10.4.1.

If there has been unusual activity, or if the acquisition involves a large number of parcels, the FAA may ask for an actual Title Opinion to be completed by the Attorney General's office. The title opinion should include a narrative explaining the grant and title history of the airport, and an explanation of the chain of title documents. If there is a previous title opinion, report only on those documents received since the

date of the previous opinion. Detail any exceptions to the title that may affect the quality of the title assurance.

Consult with your Regional ROW Chief about the necessity of a Title Opinion to avoid unnecessary delays to the project.

When acquisition is completed, update the Property Status Block on the Property Plan (Ex. A) to include new acquisition information.

Retain copies for the appropriate grant file in the regional ROW project files and submit the original to the Design Project Manager. They will complete their portions of the Grant Application and submit to the FAA as one package.

## **10.6 Project Closeout**

The regional Pre-Audit Agent will participate in the project closeout and coordinate with the Project Manager. Sec. 8 of the AIP Handbook outlines the Grant Closeout procedures.

## **10.7 Relinquishment and Disposal of Airport Lands**

Airport land acquired with Federal assistance under the Airport Improvement Program is Federally obligated in perpetuity. The FAA Administrator has authority to grant a release, a formal, written authorization, to consent to the disposal of airport property. The FAA Administrator has delegated to FAA airports district offices (ADOs) and regional airport divisions to review the release request and to execute the release document.

ADOs and regional airport divisions do not have the authority to modify the list of assurances in a grant agreement or bring about a release permitting the abandonment, sale, or disposal of a complete airport.

Any release having the effect of allowing the abandonment, sale, or disposal of a complete airport must be referred to the Director of Airport Compliance and Field Operations for approval by the Associate Administrator for the Office of Airports.

FAA guidance for disposal of land subject to FAA grants can be found in the [FAA Airport Compliance Manual – Order 5190.6B](#) “Chapter 22, Releases from Federal Obligations.” (See FAA Modernization and Reform Act of 2012, Sec. 817, for additional information - aka PL 112-95 and [AS 02.15.070](#) Acquisition and Disposal of Property).

Review the chain of title, in addition to all grant agreements, for any limitations on disposals or relinquishments. Obtain the necessary permissions and authorizations from inter-Department and the FAA. DOT&PF does not entertain the relinquishment or sale of airport lands until these approvals are obtained.

Depending on the chain of title, the lands may have to be returned to FAA or DNR. Convey relinquishment of patented property using the Federal relinquishments form. Prepare other disposals using a Commissioner's Quitclaim Deed. Provide public notice, as required by the Alaska Constitution. ([AS 02.15.070](#) Acquisition and Disposal of Property and [17 AAC 45.700](#) Airport Abandonment or Closure). Reminder that ILMAs can only be held by a State Agency.

The State of Alaska, as sponsor, may relinquish an entire airport to a city or municipality only if the city or municipality will operate the airport in accordance with grant assurances. If no airport grant is received, then the airport may be relinquished in accordance with State law.

Permanent closure of a rural State airport is addressed in [17 AAC 45.700](#) Airport Abandonment or Closure.

**11. Reserved**

---

This page intentionally left blank.



## 12. Definitions

---

**access management** - the control of access to a highway or airport achieved by acquiring adjoining property;

**Act of February 5, 1948** - An act to empower the Secretary of the Interior to grant rights of way for various purposes across lands of individual Indians or Indian tribes, communities, bands or nations.

**acquired** - DOT&PF has obtained legal possession of a property;

**acquisition** - the process of buying property; also refers to the property being acquired, preferred term to “take”;

**Acquisition Agent** - the ROW Agent who meets with property owners to buy their property;

**acquisition value** - the value of the portion of land and improvements to be acquired as they contribute to the larger parcel;

**activity or site of significant interest to the traveling public** - a motorist service, a tourist attraction, or a commercial activity that derives a major portion of income during the normal business season from motorists who do not reside in the immediate area of the business or activity;

**administrative closure** - the official closing of a project by submitting a final cost billing to the Federal agency participating in the project cost;

**administrative expenses** - overhead costs such as salaries and travel involved in acquiring ROW;

**administrative settlement** - a nonjudicial acquisition of property for an amount other than the established market value;

**advance acquisition** - acquiring one or more parcels for a project before the normal sequence of acquisition events, generally for hardship case or protective buying, or by donation; see also hardship case, protective buying, and early acquisition;

**Agency Journal Entry (AJE)** - an accounting entry for income and expenditures;

**agent** - a person (including a DOT&PF employee, a contractor, or a Local Public Agency employee) who represents DOT&PF or uses funds administered by DOT&PF to acquire property;

**Air Navigation Site** - a site being used for, or proposed for, an airport;

**Airport Improvement Project (AIP)** - an FAA program that funds improvements to airports, [Title 49 USC Sec. 47171](#) (Public Law 103-272);

**AIP (Airport Improvement Program) Handbook** – provides guidance and sets forth policy and procedures used in administering the Airport Improvement Program.

**Airport Sponsor Guide** - a supplement guide to administer the AIP grant program used in some other FAA regions and previously used in Alaska. Alaska currently uses the AIP Handbook.

**AKSAS number** - the project number assigned from the Alaska State Accounting System (AKSAS), the former repository for project financial records. Integrated Resource Information System (IRIS) and IRIS numbers are replacing AKSAS and AKSAS numbers;

**alien who is lawfully present in the United States** - an alien who is “lawfully present” in the United States as defined in [8 CFR 103.12](#);

**allottee** - the owner of a Native American land allotment;

**ANCSA** - the Alaska Native Claims Settlement Act;

**appraisal** - a written statement independently and impartially prepared by a qualified appraiser that sets 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 review** - the formal review of all phases of an appraisal for the purpose of determining just compensation;

**arterial** - a major highway;

**Assistant Attorney General** - a lawyer employed by the State of Alaska Department of Law;

**authority and necessity** - a proof by the State that it has the authority to condemn a specific parcel and that condemnation is necessary for the project;

**authority to appraise and acquire** - authority issued by FHWA, allowing DOT&PF to proceed with the appraisal and acquisition portion of a project;

**Authority to Proceed (ATP)** - the FHWA or DOT&PF approval to proceed with a project at different stages of development; ATP is effective when FHWA or DOT&PF approves the request;

**automobile graveyard** - an establishment or place of business that is maintained, used, or operated primarily to store, keep, buy, or sell wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts, and that has 10 or more such vehicles at the establishment;

**average annual net earnings** - one-half of the net earnings of a business or farm operation, before Federal and State income taxes, during the two taxable years immediately preceding the taxable year in which the business or farm operation moves from the real property acquired for a project; it includes compensation paid by the business or farm operation to the owner, spouse, or dependents during the two-year period;

**avigation** - use of air space above a property for the flight of aircraft;

**before and after appraisal** - a means of measuring the difference in value between the entire property prior to a taking and the value of the remainder after a taking;

**benefit** - the advantageous factors that accrue to a property because of a public improvement;

**betterment** - physical improvements that add to the value of the structure or land and that are more than mere repairs;

**BIA** - the Bureau of Indian Affairs, United States Department of the Interior;

**BIA Deed** - a deed obtained by BIA for the benefit of a Native American allottee;

**BLM** - the Bureau of Land Management, United States Department of the Interior;

**business** - any lawful activity, except a farm operation, that is conducted:

1. primarily for the purchase, sale, lease and/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;

2. primarily for the sale of services to the public;
3. primarily for outdoor advertising display purposes, when the display must be moved as a result of the project; or
4. by a nonprofit organization that has established its nonprofit status under applicable Federal or State law;

**case caption** - the designation of parties and the court-assigned case number for a condemnation case;

**cash equivalency** - the market value of each sale in terms of cash to the seller; if the terms and financing of the sale are not cash or reasonable terms that would give the seller cash at closing, then the appraiser must consider the cash equivalency of the terms of the sale;

**CERCLA** - Comprehensive Environmental Response Compensation and Liability Act of 1980 (Public Law 96-510, or “Superfund”)

**certificate** - the part of an appraisal report containing the appraiser's estimate of market value, the date of appraisal, and specific conditions under which the value was reached;

**CFR** – the Code of Federal Regulations, the codification of the general and permanent rules and regulations (sometimes called administrative law) published in the Federal Register by the executive departments and agencies of the Federal government of the United States. The CFR is divided into 50 Titles that represent broad areas subject to Federal regulation. The CFR is searchable online at <https://www.ecfr.gov>;

**Chief Engineer** - the title of the person so designated by DOT&PF as head of Design & Engineering Services;

**Commissioner’s Deed of Vacation (CDV)** - a deed from DOT&PF transferring title and agreeing to abandon use of a property;

**Commissioner’s Quitclaim Deed (CQD)** - a deed from DOT&PF conveying any interest it might have in a property;

**comparable replacement dwelling** - a dwelling that is:

1. decent, safe, and sanitary.

2. functionally equivalent to the displacement dwelling so that it performs the same function, 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, but in determining whether a replacement dwelling is functionally equivalent to the displacement dwelling, the Regional ROW Chief may consider reasonable trade-offs for specific features when the replacement unit is “equal to or better than” the displacement dwelling.
3. adequate in size to accommodate the occupants.
4. in an area not subject to unreasonable adverse environmental conditions.
5. 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.
6. 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.
7. 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.
8. within the displaced person’s financial means:
  - a. replacement dwelling purchased by a homeowner in occupancy for at least 90 days before initiation of negotiations is considered to be within the homeowner's financial means if the homeowner will receive the full price differential as described in Sec. 7.8.3 of this manual, all increased mortgage interest costs as described in Sec. 7.8.4 of this manual, and all incidental expenses as described in Sec. 7.8.5 of this manual plus any additional amount required to be paid under Sec. 7.10 of this manual (Replacement Housing of Last Resort);
  - b. replacement dwelling rented by an eligible displaced person is considered to be within that person’s financial means if, after receiving rental assistance under this part, that person's monthly rent and estimated average monthly utility costs for the replacement dwelling do not exceed that person's base monthly rental for the displacement dwelling as described in Sec. 7.9.2 of this manual; and
  - c. 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 DOT&PF pays that portion of the monthly housing costs of a replacement dwelling that exceeds the person’s base monthly rent for the displacement dwelling as described in Sec. 7.9.2 of this manual; this rental assistance must be paid under Sec. 7.10 of this manual (Replacement Housing of Last Resort); and
9. for a person receiving government housing assistance before displacement, a dwelling that may reflect similar government housing assistance; any requirements of the government housing assistance program relating to the size of the replacement dwelling shall apply.

**compensable damages** - damages (in eminent domain) that a condemnor is legally required to compensate a person (or entity) with an interest in the property being wholly or partially condemned; the Alaska Constitution, Sec. 18, provides that “Private property shall not be taken or damaged for public use without just compensation”, and Alaska courts have interpreted this liberally in favor of the private property owner;

**compensation** - See just compensation;

**condemnation** - the act or process of enforcing the right of eminent domain;

**condemnation appraisal** - an appraisal prepared specifically for an eminent domain action;

**condemned** - the taking of real property by a public agency through an eminent domain action;

**consequential damages** - damage to private property as a consequence of a taking or construction on other land;

**consideration** - the actual price for which a property is transferred; in appraising, usually the actual dollar price;

**contingent and limiting condition** - a listing of specific uses for an appraisal;

**contract manager** - a ROW Agent who manages professional services agreements;

**contribute materially** - during the two taxable years prior to the taxable year in which displacement occurs, or during some other period the Regional ROW Chief determines to be more equitable, a business or farm operation:

1. had average annual gross receipts of at least \$5,000;
2. had average annual net earnings of at least \$1,000; or
3. contributed at least 33-1/3% of the owner's or operator's average annual gross income from all sources.

If the application of the above criteria creates an inequity or hardship in any given case, the Regional ROW Chief may approve, in writing, the use of other criteria as determined appropriate on a case-by-case basis.

**conveyance document** - a document such as a deed or an easement that transfers title to DOT&PF;

**corridor preservation** - the acquisition of property for a future highway location;

**cost approach** - an appraisal method that uses the cost of construction to value an improvement;

**cost estimate** - the anticipated project cost;

**cost-to-cure** - an estimate of the cost to rebuild, rehabilitate, or replace an improvement to new or nearly new condition, to avoid or mitigate damages;

**damages** - in condemnation, the loss in value to the remainder resulting from a partial taking of a property; three types of damages are recognized: direct, consequential, and severance; damages are the mathematical difference between the value of the remainder as a part of the whole before the

acquisition, and the value of the remainder after the acquisition (as cured), disregarding any special benefits;

**date of appraisal** - the effective date on which the valuation is valid; it may be current (the date of the appraiser's last inspection is typically the date of appraisal), prospective (a future value), or retrospective (a "Date of Taking" established by the court in an eminent domain action);

**date of final acceptance** - the date that FHWA accepts the final billing on a project and closes the project;

**decent, safe, and sanitary (DS&S)**— a dwelling that meets applicable housing and occupancy codes; however, any of the standards found in [25 CFR 700.55](#) that are not met by an applicable code shall apply unless waived for good cause by the Federal agency funding the project.

**declaration of taking** - a document filed with the court in a condemnation action that vests title in the State;

**demolition contract** - a contract issued by DOT&PF to demolish improvements on acquired ROW;

**Department of Law** - the State of Alaska, Department of Law who employs lawyers as Assistant Attorneys General and the Attorney General, some of whom are assigned to assist DOT&PF with transportation matters;

**depreciated value** - the value of an improvement, taking into consideration its age and condition;

**design life** - the length of time that a construction project is expected to function at its designated capacity without major repairs;

**diary** - also known as the Record of Contact (ROC), a chronological written record of the Acquisition/Relocation Agent's activities regarding a parcel;

**displaced person** - any person who moves from real property or moves personal property from real property, including a person who occupies the real property before its acquisition, but who does not meet the length of occupancy requirements of the Uniform Act as described at Sec. 7.3 of this manual as a direct result of:

1. written notice of intent to acquire, the initiation of negotiations for, or the acquisition of, the real property in whole or in part for a project;
2. 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 under Sec. 7.4 of this manual and moving expenses under Sec. 7.14 of this manual.

A person is **not** considered displaced if they:

1. move before the initiation of negotiations, unless the Regional ROW Chief determines, in writing, that the person was displaced as a direct result of the program or project;
2. enter into occupancy of the property after the date of its acquisition for the project;
3. have occupied the property for the purpose of obtaining assistance under the Uniform Act;
4. are not required to relocate permanently as a direct result of a project, as determined by DOT&PF in accordance with any guidelines established by the Federal agency funding the project;
5. are an owner-occupant who moves as a result of a voluntary transaction or as a result of the rehabilitation or demolition of the real property, unless they are a tenant displaced as a direct result of any acquisition, rehabilitation or demolition for a Federal or Federally-assisted project as described in this manual;
6. are not displaced as a direct result of a partial acquisition as determined by the Regional ROW Chief;
7. after receiving a notice of relocation eligibility (described in Sec. 7.4 of this manual), are notified in writing that they will not be displaced for a

project (this notice may not be issued unless the person has not moved and the Regional ROW Chief 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);

8. are an owner-occupant who voluntarily sells their property after being informed in writing that if a mutually satisfactory agreement of sale cannot be reached, DOT&PF will not acquire the property, unless they are a tenant displaced as a direct result of any acquisition, rehabilitation or demolition for a Federal or Federally-assisted project as described in this manual;
9. retain the right of use and occupancy of the real property for life after its acquisition by DOT&PF;
10. are determined to be an unlawful occupant before or after the initiation of negotiations, or a person who has been evicted for cause, under applicable law, as provided in Sec. 7.4 of this manual (however, DOT&PF may provide advisory assistance to an unlawful occupant in order to facilitate a project); or
11. are not lawfully present in the United States and have been determined to be ineligible for relocation assistance in accordance with [49 CFR 24.208](#).

**Division Realty Officer** - the FHWA ROW Specialist located in the Alaska Division Office;

**disposal** - the sale of DOT&PF-owned property, or the rights therein, including access rights, when the property is no longer needed for DOT&PF or other transportation purposes, see also excess land and surplus land;

**DNR** - the State of Alaska, Department of Natural Resources;

**donation** - the voluntary transfer of privately owned real property, by a property owner who has been informed in writing by the acquiring agency of rights and benefits available to owners under the Uniform Act and this section, for the benefit of a public transportation project without compensation or with compensation at less than fair market value ([23 CFR 710.105](#));



**DOT&PF** - the State of Alaska, Department of Transportation & Public Facilities;

**dwelling** - the place of permanent or customary and usual residence of a person, according to local custom or law, including a single-family house; a single-family unit in a two-family, multifamily, 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;

**early acquisition** - acquisition of real property interests by an acquiring agency before completion of the review process required for the project under the National Environmental Policy Act of 1969 ([42 USC 4321](#) et seq.) and prior to receiving a Federal-aid authorization to proceed to acquire property with Federal-aid funds, before completion of the environmental review process for a proposed transportation project, as provided under [23 CFR 710.501](#) and [23 USC 108](#); generally early acquisition refers to acquisition other than advance purchases for hardship cases or protective buying; see also hardship case, protective buying, and advance acquisition;

**easement** - non-possessory interest in real property that conveys use, but not ownership, of a portion of an owner's property rights;

**economic rent** - the amount for which similar property is renting (market rent);

**egress** - the means of exiting a property;

**eminent domain** - the right of government to take (acquire) private property for a public purpose upon the payment of just compensation, see also condemnation;

**encroachment** - trespassing on the property of another;

**encroachment permit** - a written permit issued by DOT&PF to allow use of ROW;

**Environmental Assessment (EA)** - a document used on Federal-aid highway projects when the extent of environmental impact is uncertain; the EA results in either a Finding of No Significant Impact (FONSI) or a decision to develop an Environmental Impact Statement (EIS);

**Environmental Impact Statement** - also known as EIS, the formal statement included in every recommendation or report on proposals for major Federal describing significant effects on the quality of the human environment. EIS is "a detailed statement by the responsible official on:

- (i) the environmental impact of the proposed action,
- (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,
- (iii) alternatives to the proposed action,
- (iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and
- (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented." ([42 USC 4332](#));

**estimate** - in appraising, an adequately supported and documented opinion based upon analysis of market data by a qualified appraiser; a preliminary opinion of the cost of doing specified work;

**excess land** - land that is not needed to serve or support the existing project. The highest and best use of the excess land may or may not be the same as the highest and best use of the improved parcel. Excess land has the potential to be sold separately and must be valued separately, see also surplus land for differentiation of terms;

**excess real property** - real property that is not needed to serve or support the existing project, see also excess land and surplus land;

**expressway** - a divided arterial highway for through traffic, with full or partial control of access and with at-grade intersections;

**FAA** - Federal Aviation Administration, United States Department of Transportation;

**FAST Act (Fixing America's Surface Transportation Act)** - a funding and authorization bill to govern Federal surface transportation spending. PL 114-94, signed into law on December 4, 2015;

**fair market value** - market value and the basis for just compensation; the final estimate of value that most nearly represents what the typical, informed, rational purchaser would pay for the subject property if it were available for sale on the open market as of

the date of the appraisal, given all the data available to the appraiser in their analysis.

Of note, [23 CFR 710.403](#) (e) states, "...The term fair market value as used for acquisition and disposal purposes is as defined by State statute and/or State court decisions..." The Alaska Supreme Court has defined fair market value as "the price in (terms of) money that the property could be sold for on the open market under fair conditions between an owner willing to sell and a purchaser willing to buy, with a reasonable time allowed to find a purchaser." *State v. 7.026 Acres, Sup. Ct. Op. No. 601, 466 P.2d 364, 365* (1970). The opinion further reads, in part: "The highest and most profitable use for which the property is adaptable is to be considered, to the extent that the prospect of demand for such use affects the market value while the property is privately held." Fair market value is normally based on a parcel's fee simple value.

The Uniform Act and [49 CFR 24](#) refer to fair market value, while the Appraisal Foundation (USPAP) refers to market value. (See [49 CFR 24 Appendix A](#), and the current [USPAP](#).)

**family** - two or more individuals living together in a single-family dwelling unit who are related by blood, adoption, marriage, or legal guardianship, and who live together as a family unit, plus all other individuals regardless of blood or legal ties who live with and are considered a part of the family unit;

**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 these 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 Federal government, any wholly-owned Federal corporation, and the Architect of the Capitol, the Federal Reserve Banks, and branches thereof;

**Federal-aid project** - a project funded in whole or in part under, or requiring an FHWA approval pursuant to provisions in [Chapter 1 of Title 23, United States Code](#), [[23 CFR 710.105](#) (b)];

**Federally assisted** - a project or program that receives grant funds under [Title 23, United States Code](#), [[23 CFR 710.105](#) (b)];

**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;

**fee simple** - the highest type of private ownership, subject to the limitations of eminent domain, escheat, police power and taxation; an inheritable estate;

**fee simple title** - a property title that signifies ownership of all the rights in a parcel of real property;

**FHWA** - the Federal Highway Administration, United States Department of Transportation;

**FHWA Division Office** - the FHWA office located in Juneau, Alaska;

**final conclusion of value** - the dollar amount that reflects the type of value sought; fair market value;

**final environmental impact statement** - the document prepared after circulation of a draft EIS, with consideration of comments thereon, and identifying the preferred alternative;

**final estimate of value** - final conclusion of value;

**final judgment** - a court order establishing the value of a property;

**Finding of No Significant Impact (FONSI)** - the document issued by the Federal agency involved when an Environmental Assessment indicates there are no significant impacts caused by the project;

**fixture** - a tangible thing that once was personal property, and that has been attached to land or installed in a structure in such a way as to become a part of the real property, as defined by current law and guidelines; in deciding whether a thing is personal or real property, consider:

1. intention of the party to leave it permanently attached or to remove it at some time;
2. manner in which it is attached; and
3. purpose.

See also; **personal property**;

**freeway** - a divided arterial with full access control and no at-grade intersections;



**function of the appraisal** - to assist in establishing the compensation to be paid a property owner for the acquisition of property interests required by DOT&PF;

**general benefits** - any benefits that are not special benefits;

**grandfather rights** - a legal nonconforming use of record;

**hardship case** - when property is acquired in advance of the remainder of a project because a property owner has established appropriate health, safety, or financial reasons; one example of advance acquisition;

**hazardous materials** - petroleum products and other substances designated as “hazardous” by the United States Environmental Protection Agency;

**Highway Beautification Act of 1965** - signed into Federal law on October 22, 1965 as part of the America the Beautiful Initiative (Public Law 110-456), called for control of outdoor advertising, including removal of certain types of signs, along the Nation's growing Interstate System and the existing Federal-aid primary system, required certain junkyards along Interstate or primary highways to be removed or screened, and encouraged scenic enhancement and roadside development; see also [AS 19.25.075-AS 19.25.180](#);

**historic preservation procedures** - practices designed to protect historic sites, structures, and districts;

**household income** - the 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 or full-time students under 18 years of age;

**illegal junkyard** - a junkyard established after the effective date of State law governing junkyards; it must be screened, removed, or eliminated at the owner's expense; this is accomplished under the State's police power;

**income approach** - an appraisal method using a property's income and expense data;

**Indirect Cost Allocation Plan (ICAP)** - a system of dedicating a percentage of project funds for nonspecific project activities;

**industrial activities** - activities permitted only in an industrial zone, or in a less restrictive zone by the nearest zoning authority but generally recognized as industrial by other zoning authorities, except that none of the following shall be considered industrial activities:

1. outdoor advertising structures;
2. agricultural, forestry, ranching, grazing, farming, and related activities, including, but not limited to, wayside fresh produce stands;
3. activities normally and regularly in operation less than three months of the year;
4. transient or temporary activities;
5. activities not visible from the traffic lanes of the main traveled way;
6. activities more than 300 feet from the nearest edge of the main traveled way;
7. activities conducted in a building principally used as a residence;
8. railroad tracks, minor sidings and passenger depots; and
9. junkyards, as defined in [23 CFR 751.7 \(a\)](#);

**ingress** - the means of entering a property;

**initiation of negotiations** –

1. When displacement results from the acquisition of the real property, “initiation of negotiations” means the delivery of the initial written offer of just compensation by a Federal agency or DOT&PF to the owner or the owner's representative to purchase real property for a project; however, if a Federal agency or DOT&PF 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.
2. When displacement is caused by rehabilitation, demolition, or privately undertaken acquisition of real property (and there is no related acquisition by a Federal agency or DOT&PF), the “initiation

of negotiations” means the 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.

3. For a permanent relocation to protect the public health and welfare, under the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA, Public Law 96-510, or “Superfund”) the “initiation of negotiations” means the formal announcement of such relocation.
4. For a permanent relocation of a tenant as a result of an acquisition of real property, the initiation of negotiations means the actions described in (1) or (2) of this definition, except that the initiation of negotiations does not become effective, for purposes of establishing eligibility for relocation assistance for those tenants until there is a written agreement between DOT&PF and the owner to purchase the real property.

**Interim Conveyance** - a temporary title conveyance from BLM to a Native corporation until final title passes;

**International Right-of-Way Association** - an international professional organization dedicated to the advancement of ROW and land acquisition work as a fully-recognized profession;

**Interstate Highway System** - a network of limited access, divided highways within the United States;

**IRIS number** - the project number assigned from the Integrated Resource Information System (IRIS), the current repository for project financial records. IRIS and IRIS numbers are replacing Alaska State Accounting System (AKSAS) and AKSAS numbers;

**IRS** - the United States Internal Revenue Service;

**junk** - used or scrap rope, rags, batteries, paper, trash rubber, debris or waste, junked, dismantled, or wrecked automobiles, or parts thereof, or used or scrap iron, steel, copper, brass and other ferrous or nonferrous metals;

**junkyard** - an establishment or place of business, private or public, that is maintained, operated, or used primarily for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard; the term includes garbage dumps and

sanitary fills, and gatherings in equivalent volume of 10 or more vehicles;

**just compensation** - in condemnation, the amount of loss that a property owner is to be compensated for when property is taken or acquired for a public purpose; market value is an appropriate measure of just compensation as guaranteed by the Alaska Constitution;

**land/improvement allocation** - the property value split between land value and improvement value;

**land valuation** - an appraisal method for determining how much land is worth;

**larger parcel** - as defined by *The Dictionary of Real Estate Appraisal* (published by the Appraisal Institute) means:

- “1. *In condemnation, that tract or tracts of land which are under the beneficial control of a single individual or entity and have the same, or an integrated, highest and best use. Elements for consideration by the appraiser in making a determination in this regard are contiguity, or proximity, as it bears on the highest and best use of the property, unity of ownership, and unity of highest and best use.*
- “2. *In condemnation, the portion of a property that has unity of ownership, contiguity, and unity of use, the three conditions that establish the larger parcel for the consideration of severance damages in most states. In Federal and some State cases, however, contiguity is sometimes subordinated to unitary use.”*

**last resort housing** - housing provided when comparable replacement housing is not available for an owner or tenant;

**leasehold interest or lessee** - a person who occupies real property under a lease;

**legally conforming lot** - a lot that is of sufficient size and shape to meet local zoning requirements;

**legal nonconforming use of record** - a parcel that is subject to grandfather rights;

**letter of final offer and intent to condemn** - the last formal contact from DOT&PF to a property owner before beginning an eminent domain action;

**Local Public Agency (LPA)** - a city or borough government acting in DOT&PF's place and stead in carrying out the purposes of this manual;

**logical boundary** - partial acquisition of a parcel with the boundary extended beyond what is needed for the project to a point where the remainder property is viable by itself;

**MAP-21 (Moving Ahead for Progress in the 21<sup>st</sup> Century Act)** - a funding and authorization bill to govern Federal surface transportation spending. PL 112-141, signed into law on July 6, 2012 (effective October 1, 2014) affecting acquisition and relocation benefits under the Uniform Act;

**market value** - see fair market value;

**Market Value Deposit** - the amount that DOT&PF deposits with the court for an eminent domain action;

**Masters' Award** - compensation that is due a property owner after a hearing by a court-appointed Master;

**Masters' Report** - the document issued by a court-appointed Master after a hearing;

**materials agreement** - an agreement between DOT&PF and a property owner for the property owner to supply construction materials;

**material source (MS)** - the location of natural building materials such as gravel, rock, and sand;

**mediated settlement** - an acquisition agreement reached with a property owner by someone other than the ROW Agent before initiating a condemnation action;

**mitigation** - an effort by DOT&PF to minimize damages to the remainder of a partial acquisition;

**mitigation property** - real property interests acquired to mitigate for impacts of a project eligible for funding under [Title 23, United States Code](#), [23 CFR 710.105 (b)];

**mobile home** - includes manufactured homes and recreational vehicles used as residences;

**mortgage** - classes of liens commonly given to secure advances on, or the unpaid 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;

**move specifications** - a detailed agreement between a displaced person and DOT&PF on how a move will be accomplished;

**NEPA** - National Environmental Policy Act of 1969 (NEPA) is "a national policy intended to encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality" ([42 USC 4321](#) et seq.);

**narrative appraisal report** - a formal property valuation document;

**National Highway Institute (NHI)** - A branch of FHWA that provides training, and funding for training, in transportation-related subjects;

**negotiated settlement** - an acquisition agreement between DOT&PF and a property owner;

**National Highway System (NHS)** - developed by the US Department of Transportation in cooperation with the States, local officials, and metropolitan planning organizations, consists of roadways important to the nation's economy, defense, and mobility, including the Interstate System; Other Principal Arterials; Strategic Highway Network (STRAHNET), Major Strategic Highway Network Connectors, and Intermodal Connectors subsystems;

**net damages** - the amount that is arrived at by deducting special benefits from damages;

**noncompensable damages** - items of property damage that are excluded from payment by State or Federal rules;

**nonconforming appraisal** - an appraisal that is not in conformance with the standards for appraisals set out in this manual;

**nonconforming junkyard** - a junkyard that was lawfully established, but that does not comply with the provisions of State statutes or regulations passed at a later date or that later fails to comply with State statutes or regulations due to changed conditions; an example of changed conditions would be a junkyard lawfully in existence in an area that at a later date becomes nonindustrial and thus subject to control or a junkyard established on a non-primary highway later

upgraded to a primary highway; illegally established or maintained junkyards are not nonconforming junkyards; a nonconforming junkyard may continue if it is not abandoned, destroyed, or voluntarily discontinued; if a junkyard is abandoned, destroyed, or voluntarily discontinued for six months or more, it becomes subject to laws applicable to a new junkyard;

**nonconforming use** - a property usage that does not conform to zoning;

**nonparticipating funds** - expenses on a State-funded or Federally-funded project that are ineligible for reimbursement by the funding agency;

**nonprofit organization** - an organization that is incorporated under the applicable laws of Alaska as a nonprofit organization, and exempt from paying Federal income taxes under Sec. 501 of the Internal Revenue Code ([26 USC 501](#));

**notice of intent to acquire or notice of eligibility for relocation assistance** - written notice furnished to a person to be displaced, including a person to be displaced by rehabilitation or demolition activities from property acquired before a commitment of Federal financial assistance to the activity, that establishes eligibility for relocation benefits before the initiation of negotiation and/or before the commitment of Federal assistance;

**OMB** - the State or Federal Office of Management and Budget;

**order of dismissal** - a court-ordered dismissal of a condemnation action;

**order of possession and entry** - a court order that vests title to property in a condemnation action;

**orderly liquidation value** - value for removal or salvage;

**oversight agreement** - an agreement between FHWA and DOT&PF that sets out the responsibilities that DOT&PF will assume on behalf of FHWA under Title 23 for design, plans, specifications, estimates, ROW certification statements, contract awards, and final inspection of projects;

**owner** - the holder of a legal or equitable title interest or leasehold interest;

**owner of a dwelling** - a person 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:

1. fee title, a life estate, a 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;
2. an interest in a cooperative housing project that includes the right to occupy a dwelling;
3. a contract to purchase any of the interests or estates described in subparagraphs (1) or (2) of this paragraph; or
4. any other interest, including a partial interest, which in the judgment of DOT&PF warrants consideration of ownership;

**parcel** - a DOT&PF defined area of real estate from which some right of interest must be acquired for a particular project in order to satisfy all State or Federal requirements. After the area of the parcel has been determined, the type of title needed by DOT&PF is determined and the acquisition is designated as one of the following:

- parcel - indicates an acquisition in fee title. The instrument is recorded;
- easement - indicates DOT&PF will have some acquired use of the property, but less than full title. The instrument is recorded;
- tract - indicates a fee title (usually) acquisition for airport projects. The instrument is recorded;
- temporary construction permit - for an area to be used during construction of a project, and is of mutual benefit to the owner and DOT&PF. After completion of construction, use of the property reverts to the original owner. No recording is necessary; and
- temporary construction easement - for an area needed by DOT&PF for construction of a project, but DOT&PF does not require title to the property after construction. The instrument is usually recorded.

**parcel plat** - a drawing of a property that shows physical details;

**parcel file** - the official file that contains all documents pertaining to a particular parcel on a project;

**parcel review report** - the report prepared by the Pre-Audit Agent to ensure that all documentation is present and in agreement before transmitting payment to the owner;

**parkland** - publicly-owned park or recreation area;

**partial acquisition** - the acquisition of less than an entire property;

**participating funds** - an expense on a Federally-funded project that is eligible for reimbursement by the funding agency;

**PDA** - Project Development Authorization, an authorization form that establishes or revises funding for a project;

**permanent document file** - the file containing all property transfer documents that are to be retained permanently under the Alaska's records retention laws;

**perpetual easement** - an easement that remains affixed permanently to a property;

**person** - any individual, family, partnership, corporation, or association;

**personal improvement** - non-real property items on a property, such as a mobile home, trade fixtures, etc.

**personal property** - identifiable portable and tangible objects that are considered by the general public as being "personal"; generally, and with exceptions, items remain personal property if they can be removed without serious injury to the real property or to the item itself; if doubt exists, contact the Department of Law, see also fixture;

**Phase 2** - for funding purposes, the phase of a project when project design is completed;

**Phase 3** - for funding purposes, the phase of a project when the project property acquisition is complete;

**plans-in-hand inspection** - a team review of project plans, generally onsite;

**plot plan** - parcel plat;

**Pre-Construction Engineer** - the person in the DOT&PF position that supervises project activities from design to construction;

**preliminary engineering** - a phase of project development that may include reconnaissance,

environmental documentation, design, and development;

**pre-trial settlement report and recommendation** - a document prepared by the Department of Law on parcels that have been referred to that agency for condemnation action;

**primary highway system** - the principal State Highway System before establishment of the National Highway System;

**professional services contract** - a contract with a private contractor to perform ROW activities for DOT&PF;

**Project and Market Data Book** - a compilation of comparable sales data used to appraise properties on a project;

**project certification** - a formal statement that all ROW for a project has been acquired or is accounted for, and all persons and businesses have been relocated, and is free and clear of all encroachments;

**Project Development Authorization (PDA)** - an authorization form that establishes or revises funding for a project;

**Project Engineer** - the DOT&PF engineer in charge of constructing a project;

**project enhancement** - an increase in real estate values in advance of acquisition that is created by knowledge of a pending public improvement;

**protective buying** - purchasing a parcel to prevent imminent development and increased costs for a future project, preserving a corridor for a future highway location, or providing access management; one example of advance acquisition;

**Property Management Unit** - the ROW unit that is responsible for property acquired for a project before construction of a project, managing encroachments and permits after a project is completed, and for property that is in excess of project needs;

**public facility** - a facility owned by the State of Alaska;

**purchase voucher** - the means by which payment is made for acquired ROW;

**purpose of the appraisal** - the reason for performing an appraisal (as stated in the appraisal assignment); i.e., to define the real property interests and value to

be appraised; the purpose of an appraisal is based on DOT&PF's need for information about the value of a real property interest; the purpose of an appraisal report defines the type of value being sought (e.g. “to estimate market value of the real property being appraised”); for partial acquisitions, the purpose of the appraisal is to:

1. estimate the market value of the entire parcel;
2. estimate the market value of the part acquired as a part of the total parcel before the acquisition; and
3. estimate the market value of the remainder property plus damages (offset by special benefits, if any) and any applicable “cost to cure”.

**quarterly condemnation report** - a document prepared by the Department of Law each quarter, describing the status of parcels involved in condemnation actions;

**range of value testimony** - testimony presented at a condemnation hearing by appraisers regarding property values;

**real improvement** - a structure permanently attached to the land;

**real property or real property**

**interest** - [23 CFR 710.105](#) (b) defines real property or real property interest as “any interest in land and any improvements thereto, including fee and less-than-fee interests such as: temporary and permanent easements, air or access rights, access control, options, and other contractual rights to acquire an interest in land, rights to control use or development, leases, and licenses, and any other similar action to acquire or preserve ROW for a transportation facility. As used in this part, the terms “real property” and “real property interest” are synonymous unless otherwise specified”;

**receive and expend account** - an account used by Property Management Unit to handle project revenues and expenditures;

**record of contact** - an acquisition or Relocation Agent’s diary for a parcel;

**Record of Decision** – also known as ROD, the formal decision document recorded by FHWA for the public, the ROD signals formal federal approval of an Environmental Impact Statement (EIS) or Environmental Assessment (EA) concerning a proposed highway project and is the final action prior to implementation. The ROD authorizes the respective

state transportation agency to proceed with design, land acquisition, and construction based on the availability of funds;

**Recorder’s Office** - the State of Alaska offices located in the various recording districts where documents affecting real estate are recorded;

**recording district** - a statewide recording system that consists of 34 districts serviced by 14 recording offices, including three administered by the Court System;

**Regional Design Section** - a DOT&PF section responsible for designing projects to be constructed;

**Regional Director** - appointed by the Commissioner to manage all aspects of DOT&PF activities within each of the three regions in Alaska; Northern, Central and Southcoast.

**Regional ROW Chief** - the ROW Agent in charge of one of DOT&PF’s regional ROW sections;

**relinquishment** - the conveyance of a portion of a transportation facility from DOT&PF to another government agency for transportation purposes;

**Relocation Agent** - the ROW Agent with responsibility for relocation activities regarding relocating displaced parties;

**relocation benefits** - the payments and assistance provided by DOT&PF to individuals and businesses displaced by the acquisition of property for a project;

**relocation plan or relocation planning** - the advance project plan for how individuals and businesses displaced by a project will be relocated;

**remainder** - in eminent domain, property remaining in possession of the owner after a partial taking;

**remainder value** - the value of the remaining property as a part of the whole;

**remainder value after acquisition** - the market value of the remaining property after acquisition (as a separate stand-alone parcel, as if cost-to-cure items have been completed);

**restrictive covenant** - an agreement that restricts the use and occupancy of real estate;

**retention value estimate** - the salvage and removal value that is established if a property owner wants to keep an improvement;



**reversionary clause** - the right to repossess and resume full and sole use and ownership of real property;

**Reviewer’s Recommendation of Just Compensation (formerly determination)** - the amount of just compensation established by the Review Appraiser after review of all available appraisal data;

**right of way (ROW) vs. rights of way** – industry-specific terms used to differentiate between the physical noun (a property or location/site “right of way”) versus the rights of use held (“rights of way”); hyphenation is applied only when the terms are used as adjectives ( “right-of-way limit”, etc.);

**right-of-way (ROW) certification** - the statement signed by the Regional ROW Chief before construction, certifying project certification. [23 CFR 710.105](#) (b) defines *ROW use agreement* as “real property interests, defined by an agreement, as evidenced by instruments such as a lease, license, or permit, for use of real property interests for non-highway purposes where the use is in the public interest, consistent with the continued operation, maintenance, and safety of the facility, and such use will not impair the highway or interfere with the free and safe flow of traffic (see also [23 CFR 1.23](#)). These rights may be granted only for a specified period of time because the real property interest may be needed in the future for highway purposes or other purposes eligible for funding under [Title 23, United States Code](#)”;

**road dedication** - a voluntary gift of private property to be used as a public road;

**road transfer** - the transfer of ownership of a road from DOT&PF to another government agency;

**rural environment** - a sparsely populated area where the majority of land is:

- not subdivided;
- located outside corporate city limits; or
- located inside the corporate limits of a city with a population of 5,000 or less;

**sales comparison approach** - an appraisal method that uses the sales of properties comparable to the subject property;

**sale of excess land** - the sale of land acquired for a project that is beyond what is needed for project construction;

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

**scope of the appraisal** - a description of the extent of the process of collecting, confirming, and reporting data;

**screening** - shielding from view;

**set-off rule** - in eminent domain, the rule governing the “setting off” of special benefits against the part taken or damages; Alaska's rule allows setting off special benefits against damages to the remainder only;

**settlement** - an agreement with a property owner to sell property to DOT&PF, [23 CFR 710.105](#) (b) defines settlement as “the result of negotiations based on fair market value in which the amount of just compensation is agreed upon for the purchase of real property or an interest therein. This term includes the following:

- (1) An *administrative settlement* is a settlement reached prior to filing a condemnation proceeding based on value related evidence, administrative consideration, or other factors approved by an authorized agency official.
- (2) A *legal settlement* is a settlement reached by an authorized legal representative or a responsible official of the acquiring agency who has the legal power vested in him by State law, after filing a condemnation proceeding, including agreements resulting from mediation and stipulated settlements approved by the court in which the condemnation action had been filed.
- (3) A *court settlement* or *court award* is any decision by a court that follows a contested trial or hearing before a jury, commission, judge, or other legal entity having the authority to establish the amount



of just compensation for a taking under the laws of eminent domain”;

**severance damages** - in a partial taking, a decline in the market value of the remainder that arises from the taking (severance) and/or construction of the proposed improvement;

**small business** - a business with at least one, but not more than 500 employees working at the site being acquired or displaced by a program or project;

**special benefits** - benefits that are specific to the property remaining after a partial taking, and not generally benefiting other properties on the project;

**specialty report** - an appraisal report requiring technical expertise for an uncommon property;

**split estate lands** - where different people own rights to a property, such as one owning the surface rights and another owning the subsurface rights;

**Statewide ROW Chief** - the person who is in charge of the DOT&PF ROW headquarters office;

**Statewide Transportation Improvement Program (STIP)** - DOT&PF’s four-year plan for initiating Federal-aid highway project activities, by phase, for a given year;

**statutory designated program receipts** - money received by DOT&PF that is covered by a specific Alaska statute governing that money;

**stipulated settlement** - an acquisition made by the Department of Law before going to trial;

**subject** - the property being appraised;

**subsurface easement** - the right to use the property below the land surface;

**surplus land** - land that is not currently needed to support the existing improvement but cannot be separated from the property and sold. Surplus land does not have an independent highest and best use and may or may not contribute to the improved parcel, see also excess land for differentiation of terms;

**Surplus Property Transfer** - a means of disposing of property that is excess to the project needs;

**take or taking** - the ROW needed from a property for a ROW project;

**Tax Identification Number (TIN)** - a number assigned by the IRS and used to identify a person

receiving some type of payment; often the person’s Social Security number;

**Technology Transfer Section** - DOT&PF’s section that is responsible for coordinating training for the department and LPAs;

**tenant** - a person who has the temporary use and occupancy of real property owned by another; a subsequent tenant is one who moves into the property being acquired before it is actually acquired, but does not meet the 90-day occupancy requirement;

**Tentative Approval (TA)** - passes title of land from BLM to the State prior to cadastral survey. This gives the State full management authority of the land. Once surveyed, the deed is issued as a Quit Claim Deed;

**third-party interest** - any person other than a tenant or owner who holds an interest in real property;

**title examiner** - a person who determines ownership of property;

**title report** - also referred to as a title opinion, title search, or title search report; the report of a title examiner;

**transitional slope** - the change from the original ground level to the built-up area of a project;

**Transportation Attorney** - an Assistant Attorney General at the Department of Law assigned to assist DOT&PF with transportation matters;

**transportation enhancement activity or site** - an activity or site covered by the Transportation Enhancement program for the purpose of preserving and enhancing significant natural and cultural resources and transportation decisions; eligible activities include land acquisition, construction, and certain non-construction costs; categories are:

1. facilities for bicycles and pedestrians;
2. acquisition of scenic easements and scenic or historic sites;
3. scenic or historic highway programs;
4. landscaping and other scenic beautification;
5. historic preservation;
6. rehabilitation and operation of historic transportation buildings, structures or facilities, including historic railroad facilities and canals;

7. reservation of abandoned railway corridors, including conversion and use for pedestrian and bicycle trails;
8. control and removal of outdoor advertising;
9. archaeological planning and research;
10. mitigation of water pollution due to highway runoff or vehicle caused wildlife mortality while maintaining habitat connectivity;
11. provision of safety and education activities for pedestrians and bicyclists; and
12. establishment of transportation museums;

**trial de novo** - a new trial;

**trial report** - a document prepared by the Department of Law after a condemnation trial;

**trustee deed** - a deed from BIA as trustee for a Native American allottee;

**uneconomic remnant** - property that is of little or no value or use to the owner after a partial acquisition;

**Uniform Act** - Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1894; [42 USC 4601 et seq.](#); Pub. L. 91-646), as amended (amended in 1987 as part of Public Law 100-17; in 1991 as part of Public Law 102-240; and in 1997 as part of Public Law 105-117, and together referred to as the “Uniform Act”);

**Uniform Standard of Professional Appraisal Practices (USPAP)** - the generally recognized ethical and performance standards for the appraisal profession in the United States. Adopted by Congress in 1989 and updated every two years, USPAP contains standards for all types of appraisal services including real estate, personal property, business, and mass appraisal. Compliance is required for State-licensed and State-certified appraisers involved in Federally-related real estate transactions. USPAP may be obtained online from the Appraisal Foundation at <https://appraisalfoundation.org>;

**unlawful occupancy or unlawful occupant** - a person is considered to be in unlawful occupancy if the person has been ordered to move by a court before the initiation of negotiations or is determined by DOT&PF to be a squatter occupying the real property without the owner’s permission and otherwise has no legal right to occupy the property; the Regional ROW

Chief may, after consulting with the Department of Law, consider the squatter to be in lawful occupancy;

**unzoned industrial area** - the land occupied by the regularly-used building, parking lot, storage or processing area of an industrial activity, and that land within 1,000 feet thereof that is:

1. located on the same side of the highway as the principal part of said activity;
2. not predominately used for residential or commercial purposes; and
3. not zoned by State or local law, regulation or ordinance.

**USC** – United States Code; the Code of Laws of the United States of America (also sometimes abbreviated to Code of Laws of the United States, United States Code, U.S. Code, U.S.C., or USC), the official compilation and codification of the general and permanent Federal statutes of the United States. The USC is searchable online at <http://uscode.house.gov/search/criteria.php>;

**USFS** - United States Forest Service, Department of Agriculture, United States Department of Agriculture;

**USFWS** – United States Fish and Wildlife Service, United States Department of the Interior;

**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; any 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 project undertaken by DOT&PF; it includes removing and reinstalling the facility, including necessary temporary facilities; acquiring necessary ROW on a new location; moving, rearranging or changing the type of existing facilities; and taking any necessary safety and protective measures; it also means 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;

**valuation** - the estimate of just compensation;

**value indicator** - an item that suggests the worth of something;

**value premise** - in appraisal, one of three indicators of value: the cost approach, the income approach, and the market approach;

**voluntary transaction** - a person is considered not to be displaced who voluntarily sells property if all of the following conditions are present:

1. no specific site or property needs to be acquired, although DOT&PF may limit its search for alternative sites to a general geographic area; if DOT&PF wishes to purchase more than one site within an area, all owners are to be treated similarly;
2. the property to be acquired is not part of an intended, planned, or designated project area where all or substantially all of the property within the area is to be acquired within specific time limits;
3. DOT&PF will not acquire the property if negotiations fail to result in an amicable agreement, and the owner is so informed; and
4. DOT&PF shall inform the owner of what it believes to be the fair market value of the property.

**waiver valuation** - the abbreviated alternative valuation process permitted and the resulting product when DOT&PF determines that a full appraisal is not required.

This page intentionally left blank.