

# RIGHT OF WAY DIVISION OPERATIONS MANUAL



**Arkansas State Highway and Transportation Department  
Right of Way Division**

Revised November 2011

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# **SECTION 1**

## **ORGANIZATION**

### **1.1. GENERAL**

The Right of Way Division (Right of Way) of the Arkansas State Highway and Transportation Department (AHTD) has the responsibility of acquiring and managing all right of way necessary for the construction and maintenance of highways in the State of Arkansas.

Right of Way is under the direction of the Division Head of Right of Way (Division Head). The Division Head is responsible to the Assistant Chief Engineer-Design, who is in turn responsible to the Deputy Director and Chief Engineer.

The Division Head has the overall authority and responsibility for right of way functions. Each Section Head is given the authority and responsibility for the phase of right of way duties assigned to that specific section. All Right of Way operations are centralized and located in the Central Office Complex in Little Rock.

### **1.2. DIVISION HEAD**

The Division Head is responsible for the administration of all functions of Right of Way, coordination between Right of Way and other affected AHTD Divisions and the establishment of policies and procedures and performance of work in accordance with Federal Highway Administration (FHWA) regulations, State law and AHTD policies.

### **1.3. ASSISTANT DIVISION HEAD**

The Assistant Division Head assists the Division Head in carrying out the duties and responsibilities of the Division in all matters relative to the administration and operation of the Division, and acts as liaison officer in coordinating the work of the various Right of Way Sections. This position is in charge of the Division in the absence of the Division Head.

### **1.4. ACQUISITION SECTION (ACQUISITION)**

The Acquisition Section Head is responsible for the acquisition of real property for highway right of way. Acquisition maintains records on the status of each project, which enables this position to suggest a termination date for negotiations and to recommend condemnation. Responsibility for property management functions including the ultimate disposal of surplus real and personal property is assigned to Acquisition.

### **1.5. ADMINISTRATIVE SECTION (ADMINISTRATIVE)**

The Administrative Section Head is responsible for the administrative functions of Right of Way. These include maintaining and establishing the permanent record system, processing payments made by Right of Way and the Legal Division (Legal)

involving right of way activities, preparing documents necessary for reimbursement of funds expended for right of way, auditing right of way charges, and coordinating and finalizing uniform policies and procedures as directed by the Division Head. This position is also responsible for the delivery of state warrants and securing signatures on deeds.

#### **1.6. APPRAISAL SECTION (APPRAISAL)**

The Appraisal Section Head is responsible for the preparation, review, and approval of all appraisals submitted by staff and fee appraisers. This position advises the Division Head on complicated appraisal matters and assists with difficult appraisals. They also consult with and advise the Division Head and Legal for settlements and condemnation actions.

#### **1.7. ENGINEERING SECTION (ENGINEERING)**

The Engineering Section Head is responsible for the preparation of right of way plans and legal descriptions of property pertinent to the appraising and acquiring of right of way necessary for highway construction. Engineering maintains records on and researches existing right of way on state highways.

#### **1.8. RELOCATION SECTION (RELOCATION)**

The Relocation Section Head is responsible for the supervision of the relocation coordinators in the planning, scheduling and directing of the activities and functions in administering the relocation program on all projects where the displacement of individuals and operations are involved.

#### **1.9. UTILITIES SECTION (UTILITIES)**

The Utilities Section Head is the liaison between the utility companies and the AHTD and is responsible for the determination of required adjustments to clear highway projects and the initiation and completion of negotiations as required to make contractual arrangements for the relocation and adjustment of affected utilities.

#### **1.10. STEWARDSHIP AND OVERSIGHT AGREEMENT**

The Arkansas State Highway Commission (Commission) and FHWA have adopted a Stewardship and Oversight Agreement outlining the standards and procedures for the administration of those projects for which the AHTD has oversight responsibilities.

In accordance with 23 CFR 710, AHTD has overall responsibility for the acquisition, management and disposal of real property on Federal-aid highway projects. This responsibility includes assurance that acquisitions and disposals are made in compliance with legal requirements of State and Federal laws and regulations.

AHTD has prepared and maintains this Right of Way Operations Manual that describes the functions and procedures for all phases of its Right of Way Program including appraisal and appraisal review, negotiation and eminent domain, property management and relocation assistance. The functions and procedures contained in

the manual comply with 23 USC and 49 USC and implemented through 23 CFR and 49 CFR. The manual is updated and certified by AHTD every five years. These updates are coordinated with and approved by FHWA.

The functions and procedures contained in the manual are used by AHTD for both Federal-aid funded and non-Federal-aid funded highway projects.

#### **1.10.1. Right of Way Acquisition and Utility Adjustments – State Highway Projects**

The acquisition of right of way and the coordination of utility adjustment activities are performed by AHTD in adherence to this manual as follows:

- 1.10.1.1. Arterials – Proposed right of way, containing an Arterial as any part of the project, is acquired by AHTD. All necessary utility adjustment activities are coordinated by AHTD.
- 1.10.1.2. Collectors and Locals - AHTD acquires right of way in cooperation with appropriate County Judge and/or City official. All necessary utility adjustment activities are coordinated by AHTD.

In order to expedite project schedule, other entities may participate in project costs.

#### **1.10.2. Right of Way Acquisition and Utility Adjustments – Non-State Highway Projects**

The acquisition of right of way and the coordination of utility adjustment activities are performed by the project Sponsor (appropriate County or City) or by AHTD upon request of the project Sponsor. These activities will follow the functions and procedures contained in this manual.

#### **1.10.3. Project Authorization and Right of Way Certification**

- 1.10.3.1. Prior to submittal to FHWA for authorization, AHTD will ensure that the project is included in the STIP and subsequently satisfies National Environmental Policy Act (NEPA) requirements. AHTD will ensure that projects located in MPO areas are included in the applicable TIP.
- 1.10.3.2. AHTD provides Right of Way Certifications for all its projects. Federal oversight projects are certified to FHWA by the Division Head. State oversight projects are certified by the Division Head and concurred with by the Assistant Chief Engineer-Design and the Deputy Director and Chief Engineer. Copies of the certifications of State oversight projects are provided to FHWA.

## SECTION 2

### GENERAL PROCEDURES AND POLICIES

#### 2.1. GENERAL PROCEDURES

The AHTD has the responsibility for acquisition, management, and disposal of real property on all highway projects. Right of Way will take the necessary actions to assure compliance with applicable Federal and State laws and regulations for implementation of the AHTD's Right of Way Program.

The AHTD will acquire an interest in real property adequate for the construction, operation and maintenance of the highway facility and for the protection of both the facility and the traveling public.

When the location and design of a highway project have been finalized, Right of Way will undertake the following activities to acquire the needed right of way:

- 2.1.1. Engineering prepares right of way plans based on information furnished by the Roadway Design (Roadway Design) and the Surveys (Surveys) Divisions.
- 2.1.2. Appraisal prepares the appropriate valuation estimates. After the estimates or appraisals have been made, reviewed and approved, they are forwarded to Acquisition. If relocatees are involved, the estimate or appraisal is sent to Relocation.
- 2.1.3. Acquisition prepares the appropriate acquisition documents and initiates negotiations to acquire the property.
- 2.1.4. If displaced persons are involved, a Relocation Coordinator meets with the property owner to discuss relocation benefits.
- 2.1.5. Prior to or during the negotiation process, Administrative obtains the necessary ownership information to assure that the AHTD acquires clear title to the property.

#### 2.2. FEDERAL AID PROJECTS (FAP) – FUNDING AUTHORIZATION

- 2.2.1. A project is formally originated by a Minute Order approved by the Commission. This action authorizes the initiation of the necessary steps to establish federal participation in a project.
- 2.2.1. Upon receipt of the Minute Order, the Programs and Contracts Division (Programs and Contracts) will request project approval for additions to the Surface Transportation Improvement Program (STIP) from FHWA after a right of way cost estimate is furnished by Right of Way.
- 2.2.1. Upon STIP approval of the project by FHWA, an allotment is prepared by Programs and Contracts and all authorized activities, including right of way,

may begin. After preliminary right of way costs have been determined by field investigations, a project agreement authorizing the Federal-aid funding based on these estimates is transmitted to FHWA.

### **2.3. RIGHT OF WAY PROJECT AUTHORIZATION**

- 2.3.1. Upon completion of right of way plans and environmental handling, an authorization request for a project is prepared by the Administrative Section Head. This request contains an estimate of right of way cost furnished by Appraisal plus an estimate of relocation cost (if needed) furnished by Relocation.
- 2.3.2. This request is provided to the Programming and Scheduling Section of Programs and Contracts Division for the preparation of a Project Agreement.
- 2.3.3. Upon approval and return from the Programming and Scheduling Section, the Project Agreement and request for authorization is forwarded to FHWA for approval.
- 2.3.4. After notification of FHWA authorization, Administrative advises the Right of Way Sections concerned.

### **2.4. INITIAL RIGHT OF WAY ACTIVITIES**

Right of Way work preliminary to acquisition includes title searches, gathering of real estate market sales data and other necessary information pertinent to actual appraisals, the checking of plans as to correctness and accuracy, and the actual preparation of right of way plans.

Right of Way work preliminary to the adjustment of affected utilities includes field inspections and notification to the various utility companies that their facilities may require adjustment.

### **2.5. FIELD INSPECTION**

During plan preparations, representatives from Roadway Design and Right of Way and other affected Divisions or Districts conduct a joint field inspection in order to coordinate the various interests of the Divisions and to resolve any issues that may have arisen concerning the proposed improvement.

### **2.6. CONDEMNATION PROCEEDINGS**

Right of Way assists Legal as needed in the adjudication of lawsuits. This includes providing expert testimony primarily by appraisers, preparation of exhibits, and any other assistance requested by Legal.

### **2.7. ACQUISITION OF STATE OWNED LANDS**

Acquisition of State owned lands needed for highway purposes is made by deed, or condemnation when necessary, with no payment of compensation except in special

circumstances. When necessary, appraisals are made in the same manner as for acquisition of privately owned property.

## **2.8. ACQUISITION OF FEDERALLY OWNED LANDS**

Acquisition of Federally owned lands needed for highway purposes is made by deeds or easements prepared in conformity with the granting agency's legal requirements. These are Federal Land Transfers outlined in the "Manual for Federal Land Transfers for Federal-Aid Projects."

## **2.9. LAND FOR REPLACEMENT HOUSING**

The State has authority to acquire property outside the right of way on which to construct replacement sale or rental housing. If such acquisitions become necessary, the same procedures as used for all other right of way acquisitions will apply.

## **2.10. ACQUISITION FINANCED BY STATE FUNDS**

- 2.10.1. The authority for acquisition of right of way with State funds comes from the Director of Highways and Transportation (Director). A non-participating allotment is requested by Right of Way and upon approval of the allotment the acquisition may start and proceed through the appraisal process, to the negotiating phase, and when necessary, the condemnation action.
- 2.10.2. It is the policy of the AHTD to purchase uneconomic remnants with State funds.
- 2.10.3. When Federal funds participate in any phase of a project, all right of way functions shall be accomplished in accordance with 23 CFR and 49 CFR Part 24, Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs (Uniform Act) as described in this Manual.

## **2.11. CIVIL RIGHTS**

- 2.11.1. The AHTD's Title VI Program was established to ensure that no person shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in any program or activity on the grounds of race, color, sex, national origin or disability.
- 2.11.2. Consistent with this policy, all programs and activities administered by Right of Way shall comply with Title VI of the Civil Rights Act of 1964 and related statutes and regulations to include the Civil Rights Restoration Act of 1987 and the Americans with Disabilities Act of 1990.
- 2.11.3. Each Section has designated a Title VI Officer who is responsible for monitoring compliance within Right of Way. The Title VI Officers will monitor Title VI activities on a continuing basis to ensure that personnel implement procedures in a nondiscriminatory manner.



- 2.11.4. The EEO Section Head is the AHTD's Title VI Specialist. All complaints of alleged discrimination shall be reported to the EEO Section immediately. The investigation and processing of alleged complaints of discrimination will be accomplished in accordance with the procedure described in the AHTD's Title VI Plan.

## **2.12. RIGHT OF WAY OVERSIGHT AND COMPLIANCE**

In order to ensure right of way activities are conducted in accordance with the Uniform Act, Federal regulations, State law and AHTD policy, the following levels of responsibility have been established:

### **2.12.1. Section**

The Section Head is responsible for ensuring each Section's activities are performed in accordance with the Uniform Act, Federal regulations and the Right of Way Operations Manual. The Section Head accomplishes this by daily involvement in Section activities. This is supplemented by periodic review of specific process areas.

### **2.12.2. Division**

The Division Head, through the Assistant Division Head and Section Heads, is responsible for providing oversight of the activities of Right of Way, and ensuring that Right of Way activities are performed in accordance with the Uniform Act, Federal regulations and the Right of Way Operations Manual. The Division Head meets this responsibility by constant interaction with the Section Heads and Division personnel on right of way activities.

2.12.2.1. The Division Head directs periodic process reviews of selected functional areas of Right of Way.

2.12.2.2. The Division Head designates, as necessary, individuals to review and make recommendations of program areas within Right of Way activities. Designated individuals may include Right of Way, AHTD and FHWA personnel.

2.12.2.3. The Division Head assesses the level of expertise and knowledge of Right of Way personnel and develops a training program to maintain an appropriate level of expertise.

### **2.12.3. AHTD**

2.12.3.1. The Internal Audit Section (Internal Audit) periodically conducts a complete audit of Right of Way activities. Internal Audit makes a comprehensive review of the procedures and controls relating to all functions of Right of Way, including:

2.12.3.1.1. Interviews with Right of Way and AHTD personnel

- 2.12.3.1.2. Investigation of a sufficient number of records to determine the degree of financial accountability and compliance with existing laws and regulations. Consideration is also given to the efficiency, economy, and effectiveness of Right of Way operations.
- 2.12.3.1.3. The objective of the audit is to review and evaluate the procedures and controls to the extent necessary to provide a basis for the auditor to express an opinion as to the effectiveness of the discharge of Right of Way's fiscal responsibilities.
- 2.12.3.2. The auditor will report to AHTD management any actual or potential adverse conditions relative to the procedures and controls, propriety, validity and accuracy of cost, and compliance with State and Federal laws, regulations, policies and procedures.
- 2.12.3.3. On those projects that are not NHS or Interstate, the AHTD has oversight responsibility.

#### **2.12.4. Federal Highway Administration**

- 2.12.4.1. FHWA provides oversight by its approval of all Federal-aid project agreements and approval of Right of Way Certifications for Federal Oversight designated projects.
- 2.12.4.2. FHWA provides oversight with its technical assistance, training, and performance of process review in various functional areas. Process review teams can be composed of FHWA and AHTD employees.

### **2.13. RIGHT OF WAY CERTIFICATION**

Right of Way Certifications and other supporting documents are prepared by the Assistant Division Head for the Division Head's signature. The Director delegates the authority for the Division Head to certify that the project has been acquired in accordance with the Uniform Act.

- 2.13.1. Where all right of way has been acquired or legally placed at the disposal of the Commission in accordance with current FHWA directives, the certification will so state.
- 2.13.2. In those instances where right of way has not been fully acquired, the certification will list the tracts and indicate the date the acquisition will be complete.
- 2.13.3. In those instances where the right of way is not clear of improvements, the certification will indicate the date the improvements are to be removed under a demolition contract administered by Property Management, or that the improvements have been included as demolition items to be removed by the highway contractor.

- 2.13.4. The relocation statement of the certification will certify that adequate replacement housing is in place and has been made available to all residential displacees on the project, and that all applicable provisions of FHWA's relocation program have been complied with.
- 2.13.5. In instances where displacees remain on the project, the certification will list the tract number and the date that the right of way will be cleared.
- 2.13.6. Projects acquired by a Local Public Agency (LPA) are certified to the AHTD in accordance with the above criteria and the AHTD in turn certifies to FHWA. Information submitted to the AHTD from the LPA is maintained in the AHTD's files.

#### **2.14. PUBLIC HEARINGS ON FEDERAL- AID PROJECTS**

- 2.14.1. The Environmental Division (Environmental), in cooperation with Roadway Design and Surveys, schedules public hearings and public information meetings and notifies the affected Sections and Divisions of the date, time and location.
- 2.14.2. Representatives from Acquisition, Appraisal and Relocation attend the meetings to inform the public of the AHTD's policies and procedures of acquiring realty and providing relocation assistance.
- 2.14.3. Written information is supplied to the public in the form of public information brochures prepared by Acquisition and Relocation.

#### **2.15. EARLY ACQUISITION, HARDSHIP ACQUISITION AND PROTECTIVE BUYING**

- 2.15.1. Based on program and property considerations, the AHTD may choose to initiate the acquisition of real property at any time after it has the legal authority. This type of early acquisition will be paid with State funds and does not require any Federal action at the time of purchase. Subsequent Federal participation cannot occur unless all conditions and requirements included in 23 CFR 710.501 are met.
- 2.15.2. Prior to the AHTD's obtaining final environmental approval, the AHTD may request FHWA participation for advance acquisition of a particular parcel or a limited number of parcels to alleviate hardship to a property owner or owners on the preferred location (Hardship Acquisition), or to prevent imminent development and increased costs on the preferred location (Protective Buying), provided that all conditions and requirements contained in 23 CFR 710.503 are met.
- 2.15.3. Hardship acquisitions will be a determination by the AHTD, through the Division Head, with substantiated evidence that it is for the purpose of alleviating hardship to a property owner or owners on the preferred location. FHWA concurrence is requested by letter.

- 2.15.4. Protective buying will be a determination by the AHTD, through Right of Way, with substantiated evidence that it is the public interest to prevent imminent development and increased costs on the preferred location. FHWA concurrence is requested by letter.
- 2.15.5. The AHTD's request for hardship acquisition will be supported by a letter from the owner describing his/her particular hardship. The request will also be supported by information from persons knowledgeable in real estate values in the area, to support the decision that the owner is unable to sell their property at a reasonable price due to the development of the project.
- 2.15.6. The AHTD will document its request for protective buying with the circumstances surrounding the proposed advanced acquisition.

## **2.16. FUNCTIONAL REPLACEMENT OF REAL PROPERTY IN PUBLIC OWNERSHIP**

The acquisition of real property for highways or highway related projects from public ownership sometimes results in the necessity for functional replacement of land and/or facilities. In these instances, it becomes necessary to functionally replace the real property with realty of equivalent utility. This determination will be made at an early stage of project development and included in the AHTD's environmental assessments, negative declaration and Environmental Impact Statement. The guidelines for replacing real property are as follows:

- 2.16.1. The property to be functionally replaced will be in accordance with State Law and must be in public ownership.
- 2.16.2. The AHTD will secure concurrence and authorization from FHWA to proceed with functional replacement when this is in the public interest.
- 2.16.3. Replacement sites and improvements or construction will be in accordance with the local existing codes, laws and zoning regulations for the area in which the facility is located.
- 2.16.4. The AHTD will request concurrence and authorization from FHWA only when replacement will actually take place and costs are to be incurred.
- 2.16.5. The need and request for functional replacement sites will originate by request from the public facility being affected or from the AHTD's determination that the functional replacement need exists.
- 2.16.6. The need will be established by meetings with AHTD personnel and the officials of the public facility involved. These activities will be coordinated with the FHWA.
- 2.16.7. The determination will be made at an early stage of the project development and will be included in the AHTD's environmental assessments, negative declarations and Environmental Impact Statement.

## **2.17. EXCEPTIONS**

The Division Head may authorize exceptions for special circumstances. Exceptions must be documented in writing and supported with appropriate justification.

## SECTION 3

### ADMINISTRATIVE

#### 3.1. GENERAL

Administrative is responsible for the administrative functions of Right of Way such as maintaining and establishing a permanent record system, processing payments including those chargeable to highway projects; as well as title examination and preparation of legal documents relating to the transfer of property. Administrative is also responsible for delivery of state warrants; closing real estate transactions; document recording; preparation, reporting and distribution of 1099s for all real estate transactions; collection and payment of real estate taxes for whole takings and preparation of annual reports on productivity and expenditures associated with tracts appraised and acquired.

Administrative is responsible for maintenance of the necessary records to document expenditures and billing of funds in accordance with State and Federal laws and regulations. Administrative is responsible for the audit, verification and correction of all right of way charges prior to request for reimbursement under the provisions of the concurrent audit system.

Administrative coordinates acquisition, transfer, maintenance and disposal of minor fixed assets; prepares the Right of Way budget for Management's approval; orders office supplies; and distributes mail.

#### 3.2. PROJECT DEVELOPMENT

##### 3.2.1. Preliminary Engineering

Ownership research and appraisal activities may be conducted prior to environmental clearance and expenditures are charged to Function 3000 (Preliminary Engineering - Participating) or 3001 (Preliminary Engineering - Non-Participating)).

##### 3.2.2. Environmental Clearance

In order to establish funding for a project, Environmental must provide Right of Way with one of the following approved National Environmental Policy Act (NEPA) documents.

- EA – Environmental Assessment
- FONSI – Finding of No Significant Impact
- Tier 1 CatEx – Tier 1 Categorical Exclusion (Approved by Environmental Division Head)

- Tier 2 CatEx – Tier 2 Categorical Exclusion (Approved by Assistant Chief Engineer-Planning)
- Tier 3 CatEx – Tier 3 Categorical Exclusion (Approved by FHWA)
- EIS – Environmental Impact Statement
- ROD – Record of Decision

### **3.2.3. Request for Funding**

- 3.2.3.1. When right of way plans are 50% complete, Appraisal and Relocation submit an estimated job cost to Administrative. (These costs are submitted by the LPA, if they are performing those tasks.)
- 3.2.3.2. The Administrative Section Head submits a request for funding to Programs and Contracts. The amount requested is the total of the job estimates from Appraisal and Relocation plus an additional 1% to cover any administrative costs. Depending on the defined funding for the project, Programs and Contracts uses these values to request and establish allotments prior to negotiations.

### **3.2.4. Projects Requiring LPA Funds:**

- 3.2.4.1. Upon receipt of the Right of Way funding request for an LPA funded project, Programs and Contracts prepares a letter to the LPA requesting their portion of the funding.
- 3.2.4.2. Once these funds are received by the AHTD, any additional funding sources are addressed.
- 3.2.4.3. If AHTD is acquiring with only LPA funding, an allotment is established on the AHTD system for Function 3151 (Right of Way – Non-Participating); FAP # 9030.
- 3.2.4.4. If the LPA is acquiring with only LPA funding, no allotment is established.

### **3.2.5. Donations**

On LPA projects where the entity is seeking donations, Right of Way may request a nominal amount of federal funding be established to cover any administrative cost associated with acquisition. The request insures that should the LPA be unable to obtain donations resulting in a need for a negotiated settlement or condemnation, a possible reimbursement would not be jeopardized. Programs and Contracts reviews funding sources for the project to determine if federal funds are available for right of way acquisition and either rejects the request or submits a Federal-aid Project Agreement.

**3.2.6. Projects Requiring Federal Funds:**

- 3.2.6.1. Upon receipt of the Right of Way funding request for a Federally funded project, Programs and Contracts completes a Federal-Aid Project Agreement (Project Agreement) requesting authority. The original Project Agreement and two (2) copies are submitted to Administrative.
- 3.2.6.2. The Administrative Section Head prepares a cover memorandum noting details of the project such as Federal funding codes, number of tracts, whether relocation assistance is involved, etc. If the project is noted as Federal Oversight in the Staff Minutes (designated by an "F" following the project name), a complete set of right of way plans is attached.
- 3.2.6.3. The cover memorandum, the original and a copy of the Federal-Aid Project Agreement and right of way plans, if required, are submitted to FHWA for authorization of funds.
- 3.2.6.4. FHWA forwards an approved copy of the Project Agreement to Programs and Contracts for updating the AHTD allotment system, and a copy is sent to Right of Way. For all federally funded projects, the allotment is shown on the Allotment systems as Function 3150 (Right of Way – Participating); FAP # (Various).
- 3.2.6.5. Once an approved agreement is received by Right of Way, the Staff Minutes are updated with the authorization date.

**3.2.7. Projects Requiring State Funds:**

Upon receipt of the Right of Way funding request for a State funded project, Programs and Contracts establishes an allotment on the AHTD system, shown as Function 3151, FAP # 9990.

**3.3. TYPE OF RECORDS MAINTAINED**

Administrative maintains project records of varied types. These records and the nature of their scope are as follows:

- Job Cost Ledger itemizing cost incurred on a given project by tract number or incidental cost, where necessary.
- Court Deposit Register reflecting the status of money on deposit in the courts subsequent to a Declaration of Taking.
- Files containing deeds, correspondence, payments, and tract documents on right of way projects; as well as subject files containing information about a subject not related to a specific project; and county files containing information regarding land purchases for capital assets acquired for AHTD use. Administrative coordinates the scanning and long-term digital file storage of these documents.



- Minor fixed asset files containing information related to purchases, transfers and disposals, as well as bi-annual inventories.
- Federal and state reports documenting annual right of way activities.

### **3.4. RIGHT OF WAY PLANS**

When right of way plans are complete, Administrative receives a memorandum from Engineering documenting the computer link to access plans on the AHTD server. On Federal oversight projects, plans are submitted to FHWA with the request for funding authority. Any substantial plan revisions made subsequent to the receipt of the initial plans are also forwarded to FHWA. Right of Way Plans are not submitted to FHWA on jobs with state oversight status.

### **3.5. EXAMINATION OF TITLE EVIDENCE**

Title evidence examined for determination of resulting title status is normally of two classes.

- Certificates of Title supplied by title companies in the county where the property is located or by Right of Way Abstractors, and
- Title Commitments supplied by a State Licensed Abstractor within the county where the property to be acquired is located.

### **3.6. TITLE CERTIFICATES/ABSTRACTORS SEARCH**

- 3.6.1. Surveys furnishes current ownership title certificates to Right of Way. These title certificates are used by Engineering to prepare the initial right of way plans. In the case of a collector project, current ownership title certificates are provided by the Abstractors.
- 3.6.2. Once the plans are completed, the Administrative Section Head will assign an Abstractor to secure the needed certificates of title or if the workload necessitates, negotiate a contract with a local title company to furnish title work or issue a task order to an On-Call Consultant. The Abstractor will be responsible for verification that the legal description on the certificate's deed has been accurately shown on the plans. The Abstractor will verify the accuracy of the section, township and range used on that plans as well as location within the county.
- 3.6.3. The Abstractor will search county records for chain of title. This search may be accomplished by a search of the county records at the courthouse or using the tract books of an established title company in the area. The time span of the search is determined by the value of the property to be acquired. The search spans are as follows:

<b>Tract Value:</b>	<b>Title Information:</b>
\$500.00 or less (Current owner search)	Current owner deed Judgment and tax lien search on current owner for past 10 years (probate, chancery, and civil records) Current real estate property tax status
\$501.00 – \$2,500.00 (20 year search)	Current owner deed Copies of deeds and unreleased mortgages for past 20 years Judgment and tax lien search for past 10 years (probate, chancery, and civil records) Current real estate property tax status
\$2,501.00 - \$50,000.00 (40 year search)	Current owner deed Copies of deeds and unreleased mortgages for past 40 years Judgment and tax lien search for past ten years (probate, chancery, and civil records) Current real estate property tax status
Above \$50,000.00 - \$499,000.00 (40 year search)	Current owner deed Copies of deeds and unreleased mortgages for past 40 years Judgment and tax lien search for past ten years (probate, chancery, and civil records) Current real estate property tax status
\$500,000.00 and above (40 year search)	Order a title insurance policy with exceptions and requirements
AHTD Capital Assets (40 year search)	Order a title insurance policy with exceptions and requirements

- 3.6.4. The chain of title will include all instruments of conveyance (deeds, quiet title suits, partition orders, foreclosures, probates, etc. plus any supporting documents, court cases, deed reference, mortgages including assignments, modifications and releases). Also to be included in the search are documents such as certificates of death, affidavits, divorce decrees and property settlement agreements, declarations of trust, trust agreements, etc.
- 3.6.5. The Abstractor is to search for encumbrances on the property such as mortgages, deeds of trust, mechanic or materialmen liens, foreclosure suits, etc. Include any encumbrances against the owner of record, which will attach to the property; including, default judgments, deficiencies in foreclosure sales, support payments, state and federal taxes, etc.
- 3.6.6. The Abstractor will review county tax records to determine if real estate taxes are current and assessed in the name of the owner of record. (Certification to the State is considered a change in ownership.)
- 3.6.7. If the Abstractor finds that roads are indicated on the deeds in the chain of title, it may be necessary to have them added to the plans (consultation with a Sr. Abstractor and the Engineering Section Head is required).
- 3.6.8. The Abstractor should search for public road dedications in court orders. In some instances, it may be necessary to obtain a road affidavit from a County Judge or Mayor to attest to the roads impacting the area needed for right of way.
- 3.6.9. Once the search is completed, the Abstractor should prepare a title certificate using all of the above noted information. Also included on the title certificate are Abstractor's Notes, which explain any problems in the chain of title (i.e. gap in ownership, incomplete legal description, etc.) or call attention to issues in the instruments (i.e. subject to mortgage; undivided fractional interest, retain life estate, etc.).
- 3.6.10. The source documents are then organized into three categories: deeds, encumbrances and remaining documents. These are attached to the certificate.
- 3.6.11. All completed title certificates with support documentation are placed in the title work files maintained in the Sr. Abstractors' office to be used when the tract packet is received for title review. A copy of the title certificate is forwarded to Acquisition for use in property negotiations.
- 3.6.12. All title certificates and source documents with unresolved title issues are flagged with a title coversheet describing the issues and submitted to the Administrative Section Head. A copy of the certificate and coversheet are also provided to Acquisition.

- 3.6.13. The Administrative Section Head forwards the title certificates with unresolved issues to the Sr. Abstractor assigned to the project. The Sr. Abstractor will review the title, clear up any issues or, after consultation with the AHTD Title Attorney, recommend condemnation by memorandum to the Acquisition Section Head.
- 3.6.14. Title certificates showing a change of ownership, sell-off from an existing tract that affects the residual area or new tracts are submitted by the Abstractor to Engineering for review and update of right of way plans.
- 3.6.15. Right of way is ordinarily acquired in fee simple through the execution of a Warranty Deed. When appropriate, temporary or permanent easements for purposes of construction and/or maintenance are utilized. Title certificates are required on all tracts to be acquired.
- 3.6.16. On tracts in which the just compensation is less than \$2,500.00, title examination and document preparation will be the responsibility of the Sr. Abstractors. Upon completion of the search and preparation of documents, the tract packet will be forwarded to Legal for approval, and the Closing Agent will complete the acquisition.
- 3.6.17. The Title Attorney, under the supervision of the Chief Counsel, develops an opinion as to ownership of tracts to be acquired based on title certificates for tracts with an acquisition value of \$2,501.00 or more.
- 3.6.18. Tracts having an acquisition value of between \$2,501.00 and \$499,000.00 will have, at a minimum, a forty (40) year title search performed by a Division Abstractor or a title company, as need demands. This search must include the same information as a formal abstract search.
- 3.6.19. For property where the acquisition value exceeds \$500,000, or where it is otherwise determined to be necessary, a title insurance policy is ordered from a title company, which furnishes a preliminary title commitment showing requirements to acquire a clear title. After the closing transaction, the Warranty Deed is filed, and the title company will issue a title policy.
- 3.6.20. When purchasing real property for use as a capital asset, a title insurance policy is ordered from a local title company, which furnishes a preliminary title commitment showing needed requirements to acquire title. After the closing transaction, the Warranty Deed is filed, and the title company will issue a title policy. These documents are maintained in the Administrative county files.

### **3.7. CONTRACTS TO SELL**

The Contract to Sell is the document that details the negotiated settlement on parcels. The contract indicates the legal description and quantity of the acquisition; any items to be retained or salvaged and any administrative settlement agreed upon during negotiations. The Contract to Sell must be signed by all parties having interest in the

property as indicated on the title certificate and notarized. This document is included in the tract packet submitted by Acquisition and used as a source document in the requisition of a state warrant for payment.

### **3.8. AUDIT AND PAYMENT PROCEDURES**

Administrative personnel make a detailed audit of each payment request received to insure compliance with procedures and that the necessary documentation has been obtained for future Federal reimbursement:

#### **3.8.1. Procedures for Tracts Acquired Through Negotiated Settlements:**

##### **3.8.1.1. Administrative Audit:**

3.8.1.1.1. Administrative reviews the packet to insure all documents are signed (including acquisition agent's certificate and notes), the acceptance letter and administrative settlement memorandum for accuracy (property owner, address, job information, noted signed date matches contract date and amount). The administrative settlement memorandum is also reviewed for appropriate approval signatures:

- Settlement up to \$5,000                      Acquisition Section Head
- Settlement \$5,001 to \$50,000      Right of Way Division Head
- Settlement over \$50,000              Assistant Chief Engineer-Design

3.8.1.1.1.1. The original appraisal is attached to the original contract and returned to the packet.

3.8.1.1.1.2. Administrative returns deficient packets to Acquisition for completion and continues the review process on completed packets.

3.8.1.1.1.3. All tracts are logged in the Blue Book and the Weekly Job Status Report.

3.8.1.1.1.4. The dollar amounts on Contract to Sell, temporary & permanent easements (less any administrative settlement) are compared with the appraised value; the legal description on the Contract to Sell is compared with the appraisal report; and signed documents are reviewed for proper notarization. The packet is checked for inclusion of copies of the necessary documents indicating who can convey the property. A list of these items is included on the Acquisition Agent's Certificate, which is attached to the front flap of the tract packet.

3.8.1.1.1.5. The packet is reviewed for adequate copies of the signed documents. An original and two (2) copies of each signed document are required.

- 3.8.1.1.1.6. For transactions with an administrative settlement, verification is made that the administrative settlement memorandum and contract value match.
- 3.8.1.1.1.7. The original and one (1) copy of the Contract to Sell are stamped with the current date; closing statements for each tract are prepared; and the Mortgage Authorization is used to begin contacting the mortgage company to obtain a list of requirements for partial release of the mortgage, when necessary.
- 3.8.1.1.1.8. A tape detailing the amount of payment and the breakdown (appraised value, administrative settlement, TCE or PE) is attached to the original Contract to Sell plus one (1) copy; as well as the original appraisal.
- 3.8.1.1.1.9. The Contract to Sell is reviewed for oil and gas requirements. Property acquired for right of way should exclude oil and gas rights, but residual tracts (R tracts) and capital assets should include oil and gas rights.
- 3.8.1.1.1.10. The Contract to Sell is reviewed for proper notarization of the property owner's signature and properly prepared/executed W-9 Request for Taxpayer Identification Number and Certification. The contract is reviewed to insure disposition of all improvements is reflected properly as to removal, retention by the property owner or AHTD and true reflection of salvage value.
- 3.8.1.1.1.11. The AHTD voucher system is checked to determine if the Tax ID# on the W-9 is setup as a vendor for payment. If vendor is not on the system, the information is entered into the system and submitted to Fiscal Services. Only corporations, tax-exempt entities defined by the IRS, and government agencies are exempt for 1099 purposes. A copy of the W-9 is submitted to Fiscal Services.
- 3.8.1.1.1.12. Acceptance of file is noted on original contract and file copy. If packet is not acceptable, a justification memorandum is prepared, attached to the packet and submitted to the Administrative Section Head for return to Acquisition.
- 3.8.1.1.1.13. For acceptable packets, the tract information is entered into the closing database. For TCEs the Object Code is 244 on this form and for all other transactions the Object Code is 613.
- 3.8.1.1.1.14. The original Contract to Sell and one (1) copy and the original appraisal are removed from the packet and placed in the voucher basket for payment processing. The packet is placed in the

acceptance basket for title examination and document preparation.

3.8.1.1.1.15. The acceptance letter is submitted to the Division Head for approval.

3.8.1.1.1.16. The original acceptance letter is mailed to the property owner (in the case of multiple property owners a copy is mailed to each property owner), a copy is included in the tract packet, and a copy is placed in the reading file.

### **3.8.1.2. Title Review:**

3.8.1.2.1. The title certificate and source documents are placed in the tract packet.

3.8.1.2.2. The legal description from Engineering files on the "R" drive is checked using the Deed Plotter software to determine if it creates a closed parcel of property for acquisition.

3.8.1.2.3. The County Tax Collector records are reviewed and current tax information is noted on the title certificate.

3.8.1.2.4. Inquiries are made to the Bankruptcy Court, to see if the property owners have filed for bankruptcy causing a cloud on the title.

3.8.1.2.5. The packet is forwarded to the Sr. Abstractors for title review and clearance.

3.8.1.2.6. Each job is assigned to one of the Sr. Abstractors by the Administrative Section Head. This assignment allows for an overall knowledge of a job, since often times something may be noted in title work on a single tract that results in clouding the title on other tracts within the same locale.

3.8.1.2.7. The Acquisition Agent's Notes are reviewed to determine if there is a contract buyer, a lease or a bankruptcy, which will require additional signatures or action to clear.

3.8.1.2.8. The Contracts to Sell, easements, acceptance letters and appraisals are compared for consistency in dollar values.

3.8.1.2.9. The Contract to Sell is reviewed for correct signatures, proper acknowledgements, and notary seals.

3.8.1.2.10. The Mortgage Authorization completed by the property owner is compared with the title certificate. In cases where there is a difference between name on mortgage authorization and the title certificate, the property owner is contacted to reconcile the difference, often times there is an assignment of the mortgage.

- 3.8.1.2.11. If the Contract to Sell indicates that the payment is to be made to someone other than the property owners, the packet is reviewed for a Check Authorization form.
- 3.8.1.2.12. The title certificate and source documents are examined to verify whether the property owner has clear title to the tract.
- 3.8.1.2.13. The legal description included on the Contract to Sell is plotted and compared with the Right of Way plans. In cases where there is a discrepancy Administrative coordinates with Engineering to rectify any changes that need to be made in the description and/or plans regarding any sell-offs, change of ownerships, etc.

### **3.8.1.3. Legal Review and Document Preparation:**

#### **3.8.1.3.1. Fee Simple Acquisitions \$2,500.00 or Less:**

- 3.8.1.3.1.1. Once all documents are in order, an Abstractor's Review is prepared for fee simple property valued at \$2,500 or less. The review is attached to the title certificate and Administrative prepares closing documents (documents include warranty deed; affidavit of no liens, partial release, and notice of tax exception).
- 3.8.1.3.1.2. Once the closing documents are completed on fee simple property valued at \$2,500.00 or less, the tract packets are forwarded to Legal for approval and date is noted in the Blue Book and Closing Table Database.
- 3.8.1.3.1.3. Legal performs a cursory review of fee simple acquisitions valued at \$2,500.00 or less, initials and stamps the deed, and returns the tract packet to Administrative for closing.

#### **3.8.1.3.2. Fee Simple Acquisitions More Than \$2,500.00:**

- 3.8.1.3.2.1. If the fee simple property is more than \$2,500.00, an Abstractor's Checklist is completed and attached to the title certificate and placed in the packet for review and processing by Legal.
- 3.8.1.3.2.2. Legal prepares a title opinion for use in preparing the closing documents, as well as instructions to be followed in the closing process.
- 3.8.1.3.2.3. The packet is returned to Administrative for document preparation, and then submitted to Legal for approval.
- 3.8.1.3.2.4. The packet is returned to Administrative to begin closing procedures.



**3.8.1.4. Transaction Closing:**

- 3.8.1.4.1. The mortgage requirements and state warrant(s) are placed in the packet.
- 3.8.1.4.2. The Closing Agent reviews the packet, noting any special instructions on the Abstractor's Review and Title Opinion.
- 3.8.1.4.3. The Closing Agent conducts a final review of the legal documents for accuracy (i.e., names; amount; legal description), and the county tax offices are contacted to determine if real estate taxes are current. The packet is reviewed for inclusion of a closing statement; state warrant(s) and a notice to property owners on tracts valued at \$2,500.00 or less informing the property owners that the AHTD is not requiring a partial release deed and that they are responsible for forwarding any required funds to the mortgage company.
- 3.8.1.4.4. For tracts over \$2,500.00 encumbered by a mortgage, the Closing Agent will coordinate with the mortgage company(s) to satisfy payoff requirements and obtain executed partial releases.
- 3.8.1.4.5. Once all mortgage requirements are met and special instructions have been followed, the closing documents are either mailed to the property owner for execution or a closing appointment is made.
- 3.8.1.4.6. In cases where taxes are delinquent or whole takings are involved, real estate taxes are collected at closing. Delinquent tax payments are remitted to the county offices and pro-rated tax shares are submitted to the Administrative Section Head for documenting and deposit to general funds through Fiscal Services.
- 3.8.1.4.7. At closing, performance bonds are secured as required for the removal of improvements retained by the owner for salvage. The check and bond agreement are included in the file with the other executed documents. The monies collected are forwarded to Property Management in Acquisition for processing.
- 3.8.1.4.8. At closing, rent is collected if the property owners have not vacated the premises. The amount of rent is noted on the front page of the appraisal. A pro-rated share of rent is collected if the closing occurs with the first 15 days of the month. After the 15th day, a pro-rated share of the current month and next month's rent is collected. If the improvement is rental property, no rent is collected. Tenants are handled by Relocation. Rental checks are forwarded to Property Management for deposit with Fiscal Services.
- 3.8.1.4.9. If it is determined through title examination that outstanding encumbrances need to be satisfied by release documents requiring

payment, these documents are prepared under direction of the Title Attorney and satisfied at closing. Separate warrants are made for the mortgagee or lien holder only with the knowledge and consent of the owners.

3.8.1.4.10. Once the executed and notarized documents are received, signed closing statements are obtained and state warrants are distributed to property owners.

3.8.1.4.11. Closing date is noted in Administrative records.

### **3.8.1.5. Document Recording:**

3.8.1.5.1. Executed deeds, affidavits of no liens and partial releases are forwarded to the county offices for recording. A notice of tax exemption is included.

3.8.1.5.2. Once the recorded documents are returned to Administrative, they are scanned and saved to the AHTD server and the originals are placed in the job deed file.

### **3.8.2. Procedures for Tracts Acquired Through Eminent Domain:**

It may be necessary for the AHTD to acquire property through condemnation. This process is generally necessary because of title issues, inability to locate property owners, and inability to reach a settlement during negotiations.

#### **3.8.2.1. Initiation of Condemnation:**

3.8.2.1.1. After the Division Head makes a decision to proceed to condemnation, the Administrative Section Head requests by e-mail a court appraisal, updated title work and legal descriptions for TCEs with a requested completion date.

3.8.2.1.2. A condemnation letter to the property owner is prepared, and the Administrative Section Head reviews it for accuracy.

3.8.2.1.3. The letter and tract packet are forwarded to the Division Head for signature.

3.8.2.1.4. The signed letter is returned to Administrative for mailing and copies are placed in the reading file and tract packet.

3.8.2.1.5. The condemnation memorandum is prepared and attached to the front of packet.

#### **3.8.2.2. Section Review:**

3.8.2.2.1. The condemnation tract packet is forwarded to the Sr. Abstractor for title review.

3.8.2.2.2. The Sr. Abstractor updates the condemnation memorandum with title certificate information, and the tract packet is held until receipt of court appraisal and legal descriptions for TCEs.

3.8.2.2.3. Once all documents have been received, the condemnation memorandum is updated as to date and appraised value.

### **3.8.2.3. Condemnation Approval:**

3.8.2.3.1. The condemnation memorandum and tract packet are forwarded to the Division Head for signature.

3.8.2.3.2. A copy of the condemnation memorandum is included in tract packet.

3.8.2.3.3. The condemnation memorandum only is submitted to Assistant Chief Engineer-Design for approval.

3.8.2.3.4. The approved condemnation memorandum is returned to Administrative.

3.8.2.3.5. The approved condemnation memorandum and tract packet are forwarded to the Assistant Division Head for a requested filing date.

3.8.2.3.6. The tract packet is returned to Administrative and copies of the condemnation memorandum are placed in the reading file and tract packet. The original memorandum is attached to the front of the tract packet and the packet is scanned and placed in the Archives file for that job on the "R" drive.

3.8.2.3.7. The requested filing date is recorded in Administrative records; and a copy of condemnation memorandum and the original appraisal are pulled for the Administrative files.

3.8.2.3.8. The file and original condemnation memorandum are submitted to Legal for processing.

### **3.8.2.4. Condemnation Reporting and Records:**

3.8.2.4.1. Once the case is filed and the monies are deposited with the Circuit Court, Administrative receives a notification memorandum from Legal noting filing date and case information. Also included with the notification memorandum are scanned copies of the recorded Complaint, Declaration of Taking and Order of Possession, when it becomes available.

3.8.2.4.2. Administrative personnel record the voucher information into the job cost ledger and court deposit ledger.

3.8.2.4.3. Scanned copies of the recorded documents are placed in the Right of Way Archives, and paper copies are filed in the deed files.

**3.8.2.5. Judgments and Settlements:**

- 3.8.2.5.1. Once a consent judgment or judgment has been rendered, Legal submits a request for payment justification memorandum with a copy of the executed order, consent judgment or judgment and trial reports. Administrative calculates the additional amount of monies to be deposited to the court (including interest on jury trial judgments) and orders a state warrant through the normal payment procedures.
- 3.8.2.5.2. Once the warrant is received it is forwarded to Legal for remittance to the court.

**3.9. REQUISITIONS AND VOUCHERS**

Administrative personnel prepare all payment requisitions for land, relocation assistance payments or incidentals expenses incurred during the acquisition of right of way. Copies of all requisitions and vouchers are retained in Administrative for the purpose of reporting and posting prior to being placed in the job files.

**3.9.1. Requisitions:**

- 3.9.1.1. An adding machine tape is prepared detailing each land payment to be made, attached to source documentation and placed in the voucher basket. Appraisal, Relocation, Property Management, and Titles indicate payment instructions on their respective payments and place in the voucher basket.
- 3.9.1.2. The voucher payment requests are sorted according to job and type charge, i.e. land payment versus vendor payment. Separate requisitions should be prepared for land and vendor payments. Relocation payments are processed using a separate requisition and voucher for each payment in order to insure that the payments processes one state warrant rather than a state warrant for each line of coding.
- 3.9.1.3. A requisition is completed for each job using the job allotment page in the District books. The requisition number, date and total are noted along with allotment amount, job number, FAP number and payment coding information. These books function as a requisition log for each job. Payment coding includes:

Budget Charged = 880 State Road and Bridge Construction

Function Charged = 3150 Right of Way (Federal Participation)

Object Charged = Coded based on expense description as detailed in the AHTD Accounting Manual, Section 10.

Other functions which might be charged are 3000 Preliminary Engineering-State (Federal Participation); 3001 Preliminary Engineering-

State (State Funding); and 3151 Right of Way (State Funding) depending on how the allotment has been set up.

3.9.1.4. A requisition for each job is printed.

### **3.9.2. Vouchers:**

This voucher process creates two documents:

- Right of Way Purchase Voucher
- Voucher Expense Code Distribution-This form is used by Fiscal Services to input all coding information into the voucher system for cost distribution and record keeping purposes.

3.9.2.1. A voucher number is obtained from Fiscal Services. The voucher number identifies the type of funds to be spent.

3.9.2.2. Each line of the distribution sheet creates a state warrant; therefore, relocation payments are processed using a separate requisition for each payment so that all lines of code are combined into one state warrant. This line must include payee, payee address, federal tax identification number, budget, function, object, FAP, and amount.

3.9.2.3. The forms and source documents are reviewed for accuracy.

3.9.2.4. Corrections are made and the documents are submitted to the Division Head and Assistant Chief Engineer–Design for signature before being returned to Administrative for distribution. The original and a paid copy of each requisition, voucher sheet and voucher code sheet and a copy of the source documentation are submitted to Fiscal Services for payment. A set of the voucher and code sheet is kept as the issuing office copy. Attached are copies of each requisition and the source documents.

3.9.2.5. Once the paid copies are returned from Fiscal Services, warrant numbers are logged on the voucher sheet.

3.9.2.6. The issuing office copy is replaced with the paid copy for the requisition and filed along with original Contracts to Sell, TCEs, Appraisal Reports and W-9s. For vendor payments and relocation claims, the original source documents are placed in the payment files and a copy of the invoice is mailed out with the state warrant.

3.9.2.7. The original voucher sheet with the warrant numbers noted is scanned, stored on the AHTD server, and the paper copy is included in the payment files.

### **3.9.3. Additional Vouchers:**

Other requisitions also chargeable to a job and requisitions for payments of document recording fees are individually prepared and submitted to Fiscal Services. When the paid copies are returned to Right of Way, the Job Cost Ledger is updated by entering a new record for each voucher with all payment information.

Administrative also prepares all payment documents for general expenses charged to the Right of Way budget; as well as payments for land to be used by the AHTD as a capital asset.

### **3.9.4. Payment Cancellations:**

- 3.9.4.1. When a warrant is cancelled, the original warrant is stamped "Cancelled" and an "AASIS Non-payroll Warrant Cancellation Form" is completed.
- 3.9.4.2. The cancelled stamped warrant, a justification cover memorandum and the warrant cancellation form are forwarded to Fiscal Services for processing.
- 3.9.4.3. The cancellation memorandum is used to update the Job Cost Ledger to reflect the cancellation.

## **3.10. JOB COST FINALS**

Once all right of way acquisition and relocation claim payments (including final judgments) have been made on a project, a Final Right of Way Cost Estimate must be submitted to Fiscal Services to close out the allotment.

- 3.10.1. A report is created from the Job Cost Ledger for the job to be finalized. This report shows all payments for land, TCEs, vendors, condemnations, and filing fees charged to the job by function charged.
- 3.10.2. A review of charges to the job on the Job Status Report is made. Each function set up on the job shows FAP #, allotment, expenditures, and remaining funds. This report also incorporates payroll, equipment rental, and travel reimbursements charged to the job.
- 3.10.3. A reconciliation is made between the Job Cost Ledger and the Job Status Report utilizing the Federal Aid Billing Detail showing all charges and journal entries made to a project.
- 3.10.4. Once the two (2) reports are balanced, a memorandum for each function (and in some cases each FAP #) is submitted to the Chief Fiscal Officer, either releasing funds or requesting funds to obtain a \$0 balance.
- 3.10.5. Fiscal Services will post a journal entry closing the job.

## **3.11. PROPERTY CONVEYANCE**

Most conveyances of property rights (save and except the oil and gas rights) by deed to the Commission are made with warranty of title. In certain instances, title is

obtained by the securing of Quitclaim Deeds and in other instances by the conveyance of an easement, either through individual easement deeds, or through easement description based on a centerline description. Centerline easement descriptions are applicable only to collector projects and State-aid projects. All individual instruments of conveyance are prepared by Legal or by Administrative under the direction of the Title Attorney.

Right of way on all interstate projects is purchased in fee simple with the exception of TCEs. Other roadway projects are usually acquired in fee simple. Collector road projects are acquired through the county based on a County Court Order prepared from a centerline description. In these cases, AHTD acquires a perpetual easement on the property and pays fee simple value. Fee ownership is retained by the original property owner and use reverts back to the County should the AHTD cease use of the easement for highway purposes.

Other deeds, including deeds where the Commission is conveying to another party, must be composed to suit the particular occasion. The conveyance must be approved through Commission Minute Order, a copy of which accompanies the deed for recording.

### **3.11.1. DEEDS**

The usual form of a deed is comprised of the designation of the job and tract to be conveyed, together with the caption, the source of title contained in the granting clause, the consideration, the description, the Habendum clause, the covenant of warranty, the relinquishment of dower, if any, the testimonium clause, and the signature(s) of the grantor(s). The Acknowledgment is attached through which the grantor(s) make acknowledgment of their conveyance and of their relinquishment of dower or courtesy, if relinquished.

#### **3.11.1.1. Individual(s):**

The printed form of the deed used is dictated by the marital status of the grantor as is the form of the acknowledgment. In instances where title is conveyed by partnerships not incorporated, the partners together with their spouses, if any, are all signatories to the deed and there is a relinquishment of dower or courtesy by each spouse, if applicable. In some instances, the form of the deed used is dictated by circumstances found peculiar to and pertinent to the conveyance.

#### **3.11.1.2. Corporation(s):**

In the instance of a corporation making a conveyance for right of way purposes, a Corporation Deed is executed. The duly constituted corporation official, whose capacity it is to make sales and sign deeds, executes the deed for the corporation; the official's signature is attested by a corporate employee and a corporation acknowledgment executed.

### **3.11.1.3. Group Conveyance(s):**

In instances of a group conveyance, a determination is made as to the manner in which that particular group can make a conveyance both under its rules and regulations and under State law. That group in accordance with the determination makes the conveyance in fee simple.

### **3.11.2. RELEASES**

The procedure for the release of mortgages and other encumbrances is to secure either a Release Deed or a Quitclaim Deed of the premises so encumbered to the party conveying in fee simple to the Commission. A mortgage release is not required on property with a consideration of \$2,500.00 or less.

Leases on property being conveyed to the Commission are required to be released to the proposed grantor(s) or the release holder(s) are required to join in the deed of the grantor(s) to the Commission. In some cases, an Indemnity/Hold Harmless Agreement from the landowner agreeing to take responsibility for any or all loss with regard to leases will be signed.

In instances where easements exist, this interest in the property is either acquired through a release from the holder(s) of the easement to the grantor(s) prior to the taking of the deed of conveyance or is vitiated through a working agreement reached between the holder(s) of the easement(s) and Acquisition Section.

## **3.12. ACQUISITION OF MAJOR FIXED ASSETS**

Land may be purchased by the AHTD for purposes other than highway right of way. Land to be used for AHTD facilities, such as a District headquarters, county area headquarters, Resident Engineer offices, etc. is purchased and capitalized. The following procedures are followed for this type of land acquisition and in accordance with the AHTD Accounting Manual Section 40.

- 3.12.1. The District or Division office submits a memorandum to the State Maintenance Engineer recommending that certain property be considered for purchase.
- 3.12.2. The State Maintenance Engineer inspects the property and requests that Right of Way prepare an estimate of value.
- 3.12.3. If the proposed site meets all the requirements determined by the State Maintenance Engineer, Appraisal will prepare an appraisal report.
- 3.12.4. The State Maintenance Engineer prepares a Minute Order for purchase of the site and presents it to the Commission for approval.
- 3.12.5. Upon approval of the Minute Order, the District will prepare a Special Project Authorization (Form 19-196).



- 3.12.6. Upon receipt of Form 19-196, Fiscal Services sets up an allotment and Right of Way initiates the acquisition process.
- 3.12.7. Once a negotiated price has been accepted, Right of Way will obtain a title commitment.
- 3.12.8. Legal examines the title commitment for legal title, and prepares a letter of opinion.
- 3.12.9. Right of Way will request a survey of the property for preparation of a deed description.
- 3.12.10. Upon receipt of an acceptable title opinion and survey, Administrative prepares a requisition for the purchase of the land and submits to the State Maintenance Engineer for approval.
- 3.12.11. The requisition is then forwarded to Fiscal Services for issuance of a state warrant.
- 3.12.12. Administrative clears the title, obtains executed conveyance documents and pays the property owner through normal procedures.
- 3.12.13. The deed is recorded and a copy is sent to Fiscal Services to capitalize as an asset.

### **3.13. FEDERAL LAND TRANSFERS**

The procedures to be followed in event of a Federal Land Transfer are developed with reference to Chapter 1 and Chapter 2 of Title 23 United States Code, 23 CFR 710.601 and Memorandum of Understanding between FHWA and the U. S. Forest Service (FS) dated November 23, 1999 and in accordance with the Manual for Federal Land Transfers for Federal-Aid Projects dated February 27, 2009. Federal Land Transfers with agencies other than the three specified will use the procedures set forth for the National Park Service.

#### **3.13.1. Forest Service (FS):**

- 3.13.1.1. Environmental notifies the FS and FHWA by letter of the need for federal property in the construction of a highway project.
- 3.13.1.2. Environmental coordinates with FS to determine if the appropriation of the lands or interest in lands for the highway is consistent with the National Forest Land and Resource Management Plan (Forest Plan). If the proposal is consistent with the Forest Plan, a time schedule will be developed to assure that the requested appropriation will be processed within a reasonable time. If the proposal is not consistent with the Forest Plan, the FS will determine whether the proposal justifies a plan amendment. If so, then a time schedule will be developed for the completion of the plan amendment prior to processing the requested appropriation.

- 3.13.1.3. Roadway Design will coordinate a field inspection with the FS to aid in the determination of right of way and utility requirements. Roadway Design will submit the requirements to the FS and the AHTD.
  - 3.13.1.4. Environmental will provide an environmental analysis of the proposed project, and the FS will act as a cooperating agency or in limited situations, as a joint lead agency in the development of any required NEPA document. FHWA and the FS will coordinate on the determination of the appropriate environmental analysis.
  - 3.13.1.5. The FS will respond with a decision memorandum indicating any stipulations and conditions.
  - 3.13.1.6. Environmental and Roadway Design will review the FS response and determine if the AHTD can accommodate all stipulations and conditions. The two (2) Divisions will resolve any issues with the FS.
  - 3.13.1.7. Once agreement is made regarding stipulations and conditions, Right of Way will request, by memorandum, for Legal to prepare an easement deed.
  - 3.13.1.8. Upon receipt of the easement deed, the Administrative Section Head will prepare a letter of application to FHWA for the property including: copies of the plans; a legal description of the property needed; a copy of the environmental documentation and the easement deed for the transfer.
  - 3.13.1.9. FHWA will submit a letter to the FS requesting authority for the FHWA Division Administrator to execute the deed conveying the property to the AHTD along with a copy of the easement deed for their review.
  - 3.13.1.10. The FS's agreement will be in the form of a "Letter of Consent" stating any conditions and stipulations. This letter will also serve as a transfer of authority to FHWA to convey the property.
  - 3.13.1.11. FHWA will execute the highway easement deed and return the document to Right of Way.
  - 3.13.1.12. Administrative will have the deed recorded.
  - 3.13.1.13. Three (3) copies of the recorded deed will be returned to FHWA for distribution to the FS.
- 3.13.2. National Park Service:**
- 3.13.2.1. Environmental notifies FHWA and National Park Service (NPS) by letter of land needed for a proposed highway project.
  - 3.13.2.2. Environmental notifies the affected NPS facility of the proposed Federal Land Transfer.

- 3.13.2.3. Environmental prepares and develops the required NEPA evaluation and actions. The NPS will act as a cooperating or joint agency in developing the required NEPA document.
- 3.13.2.4. Right of Way submits a request for a federal land transfer to FHWA. The request includes: purpose for which land is to be used; the estate or interest in the land required for the project; the Federal-aid project number; the name of the Federal Agency exercising jurisdiction over the land and identity of the installation in possession of the land; a map showing the survey of lands to be acquired; legal description of the lands desired and a statement of compliance with NEPA and any other applicable Federal environmental laws.
- 3.13.2.5. FHWA requests consent from the NPS for the transfer of land to the AHTD.
- 3.13.2.6. If the NPS consents to the transfer, FHWA and the AHTD negotiate with NPS to reach a determination of mutually acceptable conditions, including stipulations. After conditions are decided, Legal drafts a deed including these conditions.
- 3.13.2.7. The draft deed is submitted to FHWA, which forwards the document to the FHWA Chief Counsel and the NPS along with all documentation, including plans and environmental documentation.
- 3.13.2.8. FHWA Chief Counsel reviews and determines whether the deed is legally sufficient, adequate and acceptable.
- 3.13.2.9. If the deed is acceptable, the FHWA Chief Counsel notifies the Division Administrator. In turn, the Division Administrator notifies the AHTD that the deed is acceptable.
- 3.13.2.10. Right of Way sends a final deed to FHWA. The Division Administrator executes the deed and returns it to the AHTD.
- 3.13.2.11. Administrative records the deed and sends three (3) copies to FHWA for distribution.

### **3.13.3. Department of the Army:**

Any property needed for a highway project involving property owned by the US Army is handled through a normal negotiation and payment process, not as a Federal Land Transfer.

## **3.14. CONTROL OF ACCESS REVISIONS OR ADDITIONS**

For partially controlled access facilities, the changes in the location of access breaks must be approved by AHTD and FHWA. The following procedures are followed to move access breaks on this type of facility.

- 3.14.1. The District Engineer sends a memorandum to the Division Head proposing a change in the control of access. Accompanying the memorandum is documentation supporting the change in the form of requests from the property owner and/or adjacent property owner(s).
- 3.14.2. Engineering prepares a set of plans showing the existing access breaks and the proposed change.
- 3.14.3. The Division Head forwards the request and tentative plans to the Assistant Chief Engineer-Design for approval.
- 3.14.4. Upon approval by the Assistant Chief Engineer-Design, Right of Way personnel review the proposed change to determine that private ownerships are not adversely affected; that the request is being made by the proper authority, and to determine if the change impacts the property and, if so, establish a value. Any increase in value will be billed to the requestor(s) and credited for use on Title 23 eligible activities.
- 3.14.5. A memorandum with attached supporting documents is submitted to Roadway Design and Environmental requesting concurrence in the proposed change.
- 3.14.6. Upon concurrence from Roadway Design and Environmental, a letter requesting concurrence in the change in control of access is submitted to the FHWA Division Administrator including copies of all supporting memorandums, letters and a copy of the proposed plans.
- 3.14.7. After review, the FHWA informs the AHTD by letter of the decision regarding the access revision.
- 3.14.8. Upon receipt of the approved access changes from FHWA, a memorandum is sent to the District Engineer and Engineering notifying of the approval.
- 3.14.9. Engineering revises the legal description to reflect the new access breaks.
- 3.14.10. Administrative prepares a revised deed (if the original owner still retains title) or a Modification Agreement (if property has been sold since the original acquisition).
- 3.14.11. Legal reviews the documents and stamps and initials their approval.
- 3.14.12. The documents are forwarded to the requestor(s) for execution and returned to Administrative.
- 3.14.13. Administrative files the properly executed and notarized documents.
- 3.14.14. Upon notification of the receipt of recorded documents, Engineering makes permanent revisions to the plans and forwards copies to the District Office.

### **3.15. FEDERAL TAX REPORTING (1099s)**

Administrative is responsible for mailing all 1099 tax forms for land transactions and miscellaneous. On the first working day in January, a computer request is submitted to Computer Services requesting the preparation of 1099S and 1099 forms for the previous calendar year.

#### **3.15.1. 1099S – Proceeds from Real Estate Transactions**

This tax document is sent to property owners who received \$600.00 or more for a land payment.

- If the property owner owned multiple tracts that together totaled \$600.00 (excluding TCEs) or more, they should receive a 1099S.
- If several individuals had interest in a land payment that totaled \$600.00 (excluding TCEs) or more, they should receive a 1099S.

##### **3.15.1.1. Preparation of 1099S forms:**

- 3.15.1.1.1. A copy of the closing database for transactions coded to Object 613 with a closing date for the calendar year is created.
- 3.15.1.1.2. The database is reviewed, and owners receiving payments under the \$600.00 cutoff are deleted.
- 3.15.1.1.3. Transactions to churches, corporations, and governmental entities are deleted.
- 3.15.1.1.4. The data is submitted to Computer Services by email.
- 3.15.1.1.5. Computer Services organizes the data and prints the 1099S forms for distribution.
- 3.15.1.1.6. The forms are forwarded to Administrative and mailed to the property owners prior to the January 31st deadline.
- 3.15.1.1.7. Computer Services reports the 1099S information to the IRS by the March 31st deadline.

#### **3.15.2. 1099 – Miscellaneous Income**

This tax document is sent to property owners who receive rental income (including TCEs) and vendors who are being paid for services. Any payments of or combination of payments for these type items that total \$600.00 or more should be reported to the IRS, and a 1099 is sent to the recipient.

##### **3.15.2.1. Preparation of 1099 forms:**

- 3.15.2.1.1. A copy of the closing database for transactions coded to Object 244 with a closing date for the calendar year is created.

- 3.15.2.1.2. Churches, Corporations and Governmental Entities are exempt from 1099 reporting; therefore these transactions are deleted.
- 3.15.2.1.3. Limited Liability Corporations are treated as a partnership, not a corporation, and should receive a 1099.
- 3.15.2.1.4. Payments to vendors are pulled from the Job Cost Ledger and added to the database.
- 3.15.2.1.5. The data is reviewed, and payments under the \$600.00 cutoff are deleted.
- 3.15.2.1.6. The data is submitted to Computer Services by email.
- 3.15.2.1.7. Computer Services organizes the data and prints the 1099 forms for distribution.
- 3.15.2.1.8. The forms are forwarded to Administrative and mailed to the property owners prior to the January 31st deadline.
- 3.15.2.1.9. Computer Services reports the 1099S information to the IRS by the March 31st deadline.

### **3.16. REAL ESTATE TAXES**

In situations where an entire parcel of property is being acquired, the AHTD has the statutory authority to collect real estate taxes.

- 3.16.1. The Closing Agent collects property taxes that are due and payable from the property owner and submits monies to the County Tax Collector.
- 3.16.2. The Closing Agent also collects a prorated share for the current tax year and remits to the Administrative Section Head. The collection is recorded and monies are submitted to Fiscal Services for deposit in the general funds.
- 3.16.3. The next year when the books are opened for the previous year's real estate taxes, a review of collected monies is made.
- 3.16.4. The County Tax Collector is contacted to determine if they will accept a partial year tax payment. Since the AHTD is tax exempt, no payment will be made for that portion of the year the property was owned by the AHTD.
  - 3.16.4.1. If yes, a requisition is submitted to Fiscal Services for issuance of a state warrant.
    - 3.16.4.1.1. A payment for the amount of collected taxes is remitted to the County Tax Collector.
    - 3.16.4.1.2. Payment is noted in the records, and a request for budget credit is sent to Fiscal Services.

3.16.4.2. If no, the monies are maintained in the General Fund.

### **3.17. ANNUAL RIGHT OF WAY REPORTING**

#### **3.17.1. Federal:**

Each year a Federal report of right of way activities is prepared for the period of October 1<sup>st</sup> through September 30<sup>th</sup>. The following information is included:

##### **3.17.1.1. Real Property Acquisitions:**

- Total Number of Parcels Acquired
- Number of Parcels Acquired by Condemnation
- Number of Parcels Acquired by Administrative Settlement
- Total Compensation Paid

##### **3.17.1.2. Residential Relocations:**

- Total Number of Residential Displacements (Households)
- Residential Moving Payments – Total Costs
- Replacement Housing Payments – Total Costs
- Number of Last Resort Housing Displacements
- Number of Tenants Converted to Homeowners
- Total Costs for Residential Relocation Expenses and Payments

##### **3.17.1.3. Nonresidential Relocations:**

- Total Number of Nonresidential Displacements
- Nonresidential Moving Payments – Total Costs
- Nonresidential Reestablishment Payments – Total Costs
- Total Costs for Nonresidential Relocation Expenses and Payments

##### **3.17.1.4. Relocation Appeals Under the Uniform Act**

- Total Number of Relocation Appeals (Residential and Nonresidential)

#### **3.17.2. State:**

Each year a state report of right of way activities is prepared for the period of January 1st through December 31st. All statistics on this report are shown based on non-participating and federally participating project funding. The following information is included:

**3.17.2.1. Arterial Projects:**

- Option Transactions: Tract Options Obtained; Appraised Value of Options; Consideration Paid; Options Closed at Appraised Value; Options Closed by Administrative Settlement
- Condemnation Transactions Filed: Number of Condemnations Filed; Appraised Value of Condemnations
- Condemnation Transactions Settled: Cases Settled Overall; Amount of Judgments; Appraised Value of Judgments
- Number of Cases Settled at Trial: Amount of Judgments; Interest Paid; Amount of Appraised Value
- Number of Cases Settled by Consent: Amount of Judgments; Amount of Appraised Value

**3.17.2.2. Collector and Local Projects:**

- Easements Obtained: Appraised Value of Easements Obtained; Consideration Paid for Easements;
- Appraisal Information: Acquired at Appraised Value; Amount of Appraised Value
- Administrative Settlement Information: Acquired by Administrative Settlement; Amount of Appraised Value

**3.17.2.3. Relocation Activities:**

These activities are categorized:

- Households (Families and Individuals)
- Business, Non-Profit and Personal Property moves
- Farms
- Total Relocations and Expense

**3.17.3. Legislative Audit Files:**

Each year Administrative must prepare a spreadsheet for the Legislative Audit review of "Land by County." This report is a record of all land acquisitions. This report shows all current year acquisitions by dollar amount and acreage and is reconciled to the Fiscal Services General Ledger Account for land purchases.



### **3.18. MONTHLY RECORD VERIFICATIONS**

#### **3.18.1. Job Charge Review:**

Each month Fiscal Services provides Right of Way with a “Federal Aid Billing Detail” showing all charges to a project by Function, FAP #, and Object Code. The charges include payroll; vouchers, equipment rental; journal entries, stock charges and payroll additives charged to a project. Each month this report is compared with the Right of Way Verification Report that is pulled from data entered to the Job Cost Ledger. This review also aids in the reconciliation of Right of Way records with Fiscal Services records. Any unauthorized charges should be reviewed and corrected by Journal Entry.

#### **3.18.2. Travel Expense Reconciliation:**

Each month Fiscal Services provides Administrative with a Monthly Expenditure Analysis Report for Budget 120. The Analysis Report is reconciled with the Travel Reimbursement forms. A summary report by function charged is completed and a copy is forwarded to the Office Administrative Assistant V along with the reimbursement forms. Administrative requests correction of any errant charges by memorandum to Fiscal Services.

#### **3.18.3. Court Deposit Reconciliation:**

Each month Fiscal Services provides Administrative with the Various General Ledger Accounts Report for Accounts 1371 and 1372. Account 1371 is used to record the court deposits for condemnations and Account 1372 is used to record property owner’s withdrawal of deposited funds. These activities are maintained on a monthly basis and a Journal Entry 4 is prepared, keyed and a paper copy submitted to Fiscal Services to update the AHTD’s Trial Balance.

Reconciliation between the closing database record of condemnations, the hand-written court deposit ledger and the Various General Ledger Account Report must take place each month; and entries made to keep all records in balance.

### **3.19. MINOR FIXED ASSETS**

Administrative is responsible for the acquisition, maintenance, transfer and disposal of all minor fixed assets. Minor assets are handled in accordance with the AHTD Accounting Manual Section 40.

### **3.20. PROCUREMENT OF SERVICES**

The following procedures are to be utilized when obtaining services from outside the AHTD.

**3.20.1. For services estimated to cost \$2,500.00 or less:**

- 3.20.1.1. A vendor(s) in the area is contacted for an estimate of cost. The estimate must be documented using the Telephone and Verbal Quotations (Form 19-186).
- 3.20.1.2. If the cost estimate is deemed reasonable, the 19-186 is submitted to the Section Head for approval.
- 3.20.1.3. Once approved, vendor is advised to proceed with the work.

**3.20.2. For services estimated to cost \$2,500.01 to \$5,000.00 (The limit of \$5,000.00 is absolute and should include all costs except tax.):**

- 3.20.2.1. Vendor(s) are contacted, three (3) quotes (by telephone or fax) are obtained and recorded on a Telephone and Verbal Quotations (Form 19-186). If three vendors for the type of service needed are not available, a notation to that effect is placed on the form.
- 3.20.2.2. A recommendation for the source to be utilized is made. If a source other than low bidder is recommended, note reasons at the bottom of the Form 19-186. Submit to Section Head for approval and then forward to the Administrative Section Head. For services of a complex nature, a contract should be prepared and submitted along with Form 19-186.
- 3.20.2.3. After review by the Administrative Section Head, the document(s) are submitted to the Division Head for authorization.
- 3.20.2.4. Once authorization is received, the vendor is advised to proceed with work. In the case where a contract is to be signed, the vendor and Division Head must execute the contract before notifying the vendor to begin work.

**3.20.3. Competitive Bidding:**

For services estimated to cost \$5,000.01 to \$25,000.00 (The limit of \$25,000.00 is absolute and should include all costs except tax.):

- 3.20.3.1. Vendor(s) are contacted; three (3) quotes (by telephone or fax) are obtained and recorded on Form 19-186. If three vendors for the type of service needed are not available, notation is made on the form. If one of the three quotes is under the \$25,000.00 limit, the award is to be made to the lowest bidder. However, if the vendor quote to be used is over \$25,000.00, the process must start again using the sealed bid procedures.
- 3.20.3.2. A recommendation for the source to be utilized is made, and a contract prepared. If source other than low bidder is recommended, reasons are noted at the bottom of the Form 19-186. Both the 19-186 and the

contract are submitted to Section Head for approval and then forwarded to the Administrative Section Head.

3.20.3.3. After review by the Administrative Section Head, Form 19-186 will be faxed to Equipment and Procurement for bid approval.

3.20.3.4. After approval is received, the quote sheet and contract are submitted to the Division Head for authorization.

3.20.3.5. The vendor and the Division Head execute the contract.

3.20.3.6. The vendor is advised to begin work.

#### **3.20.4. Sealed Bids:**

For services estimated to cost \$25,000.00 or more or when such bidding would result in better pricing for the AHTD:

3.20.4.1. A Requisition (Form 19-153) is prepared with a detailed description of needed good(s) or service(s), and a copy of the specifications is attached.

3.20.4.2. The Disadvantaged Business Enterprise (DBE) Directory is reviewed for possible bidders, and a list of vendors and their addresses to receive a "bid invitation" is prepared.

3.20.4.3. A requisition, specifications and list of vendors are forwarded to the Administrative Section Head for review.

3.20.4.4. The requisition and additional documentation is submitted to the Division Head for approval.

3.20.4.5. Once the Division Head has signed the requisition, the packet is forwarded to Equipment and Procurement for handling of the bid advertisement (14 day advertisement unless otherwise indicated), performance bond, and bid opening.

3.20.4.6. Bid results are sent to Right of Way for award recommendations. The Section Head making the request will prepare a memorandum for the Division Head's signature indicating the vendor whom they recommend for the award.

3.20.4.7. The signed memorandum and copy of all bids received are sent to the Equipment and Procurement Division Head for review and submission to the Purchasing Committee.

3.20.4.8. Once the Purchasing Committee has awarded the bid, an approved copy of the recommendation for award memorandum is returned to Right of Way.

3.20.4.9. The vendor and Division Head execute the contract.

3.20.4.10. The vendor is advised to begin work.

### **3.20.5. Emergency Purchases:**

If services are needed immediately and the circumstances are critical, arrangements may be made to provide the needed services.

3.20.5.1. The Division Head must be advised of the need for emergency services.

3.20.5.2. Once the Division Head gives authorization, Equipment and Procurement will be contacted in advance for approval, unless circumstances will not permit.

3.20.5.3. Once approval has been obtained, the Section will contact the vendor for arrangements and to authorize work.

3.20.5.4. The Section must immediately advise the Administrative Section Head of the arrangements made and the agreed upon price.

3.20.5.5. A complete written explanation including the name of Equipment and Procurement personnel granting permission must accompany the invoice when submitted for payment.

### **3.20.6. Appraisal Services:**

At the discretion of the Division Head, appraisal services may be obtained from a single provider without competitive bidding, in accordance with the AHTD Accounting Manual 30-27.

The hiring of appraisal services should be handled as an exempt item. This means this type work is exempt from the competitive bidding process and payment is to be made on a Confirmation Purchase Order (Form 19-151) and coded using the EL purchase code.

3.20.6.1. Quotes are obtained from at least three (3) vendors.

3.20.6.2. A recommendation and contract are submitted to the Division Head for concurrence.

3.20.6.3. A transmittal memorandum from the Division Head and the contract are forwarded to the Assistant Chief Engineer-Design for signature.

3.20.6.4. After receiving the necessary approvals, contract is signed by the vendor.

At the discretion of the Division Head, appraisal services may be obtained from a single provider without competitive bidding.

**3.20.7. Additional Work or Hidden Damage:**

If in the course of events more extensive work is required or hidden damage is discovered, it would be impractical to go through the procurement process again.

- 3.20.7.1. The Section Head immediately notifies the Division Head for authorization to continue work.
- 3.20.7.2. The Administrative Section Head contacts Equipment and Procurement for verbal approval.
- 3.20.7.3. The Section Head prepares a change order for authorization by the Division Head and submits with invoice for payment along with a memorandum containing a descriptive narrative of events including the name of Equipment and Procurement personnel who granted approval. The payment should be coded "SS" (Sole Source).

**3.21. PROCUREMENT OF SUPPLIES**

Administrative orders supplies every two (2) weeks. Mail and Supply furnishes a Supply Stock Catalog for regular orders (in-stock items). Special orders are items not stocked by the AHTD that are to be ordered from a vendor. These items are only ordered with the Administrative Section Head's approval.

There are three (3) categories of items that cannot be ordered from a vendor without using the competitive bidding process. Listed below are the three categories and what they include:

- Printing – printed paper documents: letterhead; envelopes; pamphlets; booklets and forms.
- Stationery – imprinted letterhead and envelopes used by the General Assembly and other Departments of State government to identify a Department, Agency, Board, Commission, etc.
- Supplies – paper and inks used to produce stationery (including computer printer cartridges).

**3.21.1. To order office supplies:**

A Transfer Request (Form 19-152) to Mail and Supply is completed for each office supply order. Special orders must be put on separate transfer request from regular orders. The request must include a purchase order (a.k.a. requisition) number.

- 3.21.1.1. For regular orders, the form is completed using item stock numbers, descriptions and units of measure from the Supply Stock catalog. A batch total of the stock numbers must be placed at the bottom of the form for control purposes, as well as a total quantity and an approximate expense. Both the employee placing the order and the Administrative Section Head must sign the Transfer Request (19-152).

- 3.21.1.2. For special orders, the form is completed using the vendor catalog description, vendor catalog item number, quantity, unit of measure and price per unit. A total quantity and estimated cost for the request should be indicated at the bottom of the form. If a vendor other than Office Depot is being used, note this on the Transfer Request (19-152). Most supply items will be coded to Account 4143; Budget 120; Function 810; Object 461.
- 3.21.1.3. Distribution of Request: Original, Paid, Shipper's Copy and Packing Slip are forwarded to Mail and Supply. Encumbrance Copy is submitted to Fiscal Services and Issuing Office Copy retained in Right of Way files.

### **3.21.2. To order stock supplies:**

When ordering items that are stocked by Equipment and Procurement, a Transfer Request (Form 19-152) must be completed. These items include hard hats, raincoats, de-icer and insect repellent. Equipment and Procurement supplies a catalog of these items. These type Transfer Requests (Form 19-152) are made to Equipment and Procurement and completed as the regular orders are to Mail and Supply as written above.

**Distribution of Request:** Original, Paid, Shipper's Copy and Packing Slip are forwarded to Equipment and Procurement. Encumbrance Copy is submitted to Fiscal Services and Issuing Office Copy retained in Right of Way files.

### **3.21.3. To order personalized business cards:**

All business card orders are submitted to Administrative.

- 3.21.3.1. A Request for Business Cards (Form 19-511) must be completed. For those who already have business cards but have changes to be made for new cards, the old card with changes noted should be attached.
- 3.21.3.2. The Form 19-511 is submitted to both the Division Head and Assistant Chief Engineer-- Design for approval.
- 3.21.3.3. The request is sent to Public Affairs and then to Reproduction Section for printing.
- 3.21.3.4. Reproduction Section calls Administrative or the individual on the business card to pick up completed order.

## **3.22. BUDGET PREPARATION**

In April each year, Fiscal Services sends out a listing of "Expenditures by Object." This listing shows current year expenditures by object and actual expenditures for the same period last fiscal year. This listing also shows a projected total for the current fiscal year based on historical data.

Fiscal Services requests that Right of Way develop a proposed budget for the upcoming fiscal year. The Administrative Section Head reviews this listing as well as the end of the year report "Fiscal Year to Date Comparison by Object." After reviewing these reports, the Administrative Section Head estimates the needed budget by object for the next fiscal year. These estimates are submitted to the Division Head for approval and forwarded to the Chief Fiscal Officer.

Once the budget is approved, Fiscal Services sends out a memorandum notifying Right of Way of the approved expense budget for the next fiscal year.

### **3.23. TITLE VI REPORTING**

An annual report is prepared with regard to Title VI – Preventing Discrimination in the Federal-Aid Project. This report documents the Right of Way's adherence to this program. Each Section is required to submit statistical data for the period of October 1<sup>st</sup> through September 30<sup>th</sup>, which is combined into a report and submitted to EEO. This report documents contracts and the inclusion of minorities, disadvantaged businesses, and women in the award process.

The following information is included in the report:

- 3.23.1. Number and basis of Title VI (discrimination) complaints received.
- 3.23.2. Number of contracts awarded for outside services.
- 3.23.3. Number of contracts awarded to a qualified Disadvantaged Business Enterprise (DBE), minority and/or female owned business.
- 3.23.4. Number of relocations and acquisitions.
- 3.23.5. Number and basis of any Title VI concerns raised by minority group members, elderly, disabled or low-income individuals.
- 3.23.6. Number of properties acquired through eminent domain.
- 3.23.7. A list of documents translated to Spanish.
- 3.23.8. A list of interpreters utilized to explain Right of Way documentation or procedure.
- 3.23.9. A list of appraisers qualified to perform work for the Right of Way Division. List must be annotated to show whether the individual or firm is a minority or non-minority owned firm and if certified as a DBE by the AHTD.
- 3.23.10. Ratio of contracts awarded to DBEs, minority firms and/or female owned firms, or individuals to the total number of contracts awarded.
- 3.23.11. If contracts were awarded, and DBEs, minority and/or female firms were not utilized, an explanation of good faith efforts made to solicit business from these firms.

- 3.23.12. A list of minority and/or female firms that have been contacted and encouraged to become certified by the AHTD as a DBE.
- 3.23.13. A list of training or assistance provided to DBEs, minority and/or female firms, or individuals concerning the AHTD right of way process and requirements.
- 3.23.14. The following information is attached to the report is information with regard to specific contracts awarded.
  - 3.23.14.1. Documents Translated: Type; Job/Tract Numbers and Date Awarded
  - 3.23.14.2. Interpreters Used: Name; Job/Tract Numbers and Date Awarded
  - 3.23.14.3. Contracts Awarded: Name; Job/Tract Numbers; Date Awarded and whether the company is owned by a minority or female or is classified as a disadvantaged business.
  - 3.23.14.4. Contacts: Name; Encouraged to become Certified; Assistance provided; and whether the company is owned by a minority or female or is classified as a disadvantaged business.

### **3.24. MONTHLY CELL PHONE VERIFICATION**

Many Right of Way field employees use an AHTD cell phone for work related purposes. Should an employee use the telephone for personal use, they are required to reimburse the AHTD for those calls.

- 3.24.1. Administrative receives monthly telephone bill.
- 3.24.2. Front page of bill is used for preparation of the CPO submitted for payment.
- 3.24.3. Administrative prepares a cover memorandum, indicating deadline for turning in reimbursement.
- 3.24.4. The additional pages of the bill are divided by cell phone number and attached to a blank telephone log for notation of personal calls and amount owed.
- 3.24.5. A copy of the deadline memorandum, a blank telephone log to note personal calls and the individual user page from telephone bill are distributed to those field employees assigned cell phones.
- 3.24.6. All cell phone documents and reimbursements are submitted to Administrative.
- 3.24.7. A summary of reimbursements is prepared and submitted with the money to Fiscal Services.
- 3.24.8. Cash receipts recording individuals reimbursements are received from Fiscal Services and distributed to those field employees.



3.24.9. All source documents are filed for audit purposes.

### **3.25. MAIL DISTRIBUTION**

Administrative is responsible for Right of Way mail distribution.

#### **3.25.1. 10th Floor Deliveries:**

3.25.1.1. Administrative personnel deliver and retrieve mail to/from the Assistant Chief Engineer-Design's Office at least three (3) times daily -- 9:00 am, 1:30 pm and 3:00 pm (occasionally more deliveries will be required).

3.25.1.2. Administrative personnel deliver warrants for judgments or consent judgments to the Chief Legal Counsel's Office for deposit with the courts.

#### **3.25.2. Division Mail:**

3.25.2.1. Mail and Supply personnel deliver mail to the Administrative Office three (3) times daily -- 8:30 am, 10:30 am and 2:30 pm.

3.25.2.2. Administrative personnel distribute mail received within the Administrative Office and deliver all other mail to the Division Management Office for receipt stamp and further distribution.

#### **3.25.3. FedEx:**

3.25.3.1. FedEx is contacted by telephone, 1-800-Go-FEDEX, and the contract number #0722-070-5; approximate weight of package(s) and the number of packages for pickup are reported.

3.25.3.2. Confirmation number is recorded.

3.25.3.3. FedEx packages are delivered to the Mail Room and placed in the FedEx basket. Any packages called in after 2:15 pm will not be picked up until the next day.

### **3.26. OFFICE MACHINE MAINTENANCE**

Administrative is responsible for maintaining Right of Way office machinery.

#### **3.26.1. Fax Machine:**

3.26.1.1. Administrative personnel distribute incoming faxes, by notifying the office receiving the fax and placing the document in the Section mail basket.

3.26.1.2. Administrative personnel order toner, drum units, paper, and fax address post-its.

3.26.1.3. Administrative personnel contact the vendor when the unit needs repair.

**3.26.2. Copiers:**

- 3.26.2.1. Administrative personnel stock 7th floor copier with paper on a daily basis. Upon request by Legal, Administrative will order paper for the 8th floor copier.
- 3.26.2.2. Administrative personnel maintain adequate supplies to keep copier running. Cartridges are ordered through Arkansas Copier Center (501-562-8297) and are part of the maintenance contract. When placing an order or service call, the serial number is #9400055.
- 3.26.2.3. Administrative personnel resolve any paper-jams or machine problems. If unsuccessful, the vendor is contacted and a service call is requested.
- 3.26.2.4. Administrative personnel report copier usage to the vendor each month for billing purposes.

## **SECTION 4**

### **ENGINEERING**

#### **4.1. GENERAL**

Engineering is responsible for the preparation and distribution of right of way plans, legal descriptions and title certificates for use in the appraisal and acquisition of property needed for construction and maintenance of state highway facilities. Appropriate detail is provided in the plans to facilitate an accurate assessment of the value of the property being acquired and to assist Right of Way personnel in the explanation to property owners of proposed impacts to the affected properties.

The Section writes legal descriptions of the proposed centerline and centerline station offsets on Secondary and State-Aide projects. Ownership information and acquisition areas are then added to the Construction plans and they are utilized as additional documentation for the County Court Order.

Engineering is responsible for cataloging and dissemination of existing right of way information on all highways within the Arkansas State Highway System; preparation of exhibits used in court cases on condemned tracts and preparation of plans and descriptions for the release of surplus property and changes in control of access.

#### **4.2. RIGHT OF WAY PLANS**

Right of way plans are based on three (3) essential elements:

- 4.2.1. Parcel surveys provided by Surveys are used as the foundation of the right of way plans. These surveys are performed by Licensed Professional Surveyors according to the Requirements and Procedures for Control Surveys, Design Surveys and Land Surveys, prepared by Surveys and the current version of *Standards of Practice, Arkansas Minimum Standards for Property Boundary-Surveys and Plats* published by the State Land Surveyor's Office.
- 4.2.2. Roadway Design provides the construction centerline and the right of way line based on construction limits.
- 4.2.3. All land surveys are to be performed using Grid Coordinates from the Arkansas State Plane Coordinate System Zone in which the project is located projected to ground coordinates. The ground coordinates shall be based on the combination adjustment factor assigned by or approved by the AHTD. The ground coordinate data is used as the basis of the right of way coordinate geometry database.

### 4.3. RIGHT OF WAY PLAN SHEETS

Close collaboration is maintained between Right of Way, Roadway Design and Surveys to insure the accuracy and completeness of the plans, as required for federal-aid and state highway projects. Right of way plans should contain the following:

- 4.3.1. Title Sheet (project name and number, vicinity map with township, range, begin and end project stationing)
- 4.3.2. Survey Control Detail Sheet (Survey Control and Construction Centerline Data)
- 4.3.3. Layout Sheets (reduced scale plan sheets used when total parcel cannot be shown on the plan sheets)
- 4.3.4. Plan Sheets (11" x 17") to contain the following, as applicable:
  - 4.3.4.1. Job number and name
  - 4.3.4.2. County name
  - 4.3.4.3. Scale
  - 4.3.4.4. Ownership Block
  - 4.3.4.5. North Arrow
  - 4.3.4.6. Subdivisions (name, lot and block numbers)
  - 4.3.4.7. Proposed right of way and easements
  - 4.3.4.8. Construction Centerline with bearing and curve data
  - 4.3.4.9. Construction limits
  - 4.3.4.10. Centerline Station Offsets on proposed right of way, existing right of way and easements
  - 4.3.4.11. Existing right of way on highways, county roads and city streets
  - 4.3.4.12. Property lines
  - 4.3.4.13. Bearings to the nearest second and distances to the nearest one hundredth of a foot on all property lines and along all sides of property to be acquired
  - 4.3.4.14. All relevant bearings and distances from the parcel surveys
  - 4.3.4.15. All topography and real estate improvements such as buildings, structures, fences, etc. that may affect the value of the proposed acquisition or damages to the residual property
  - 4.3.4.16. Recorded access easements

- 4.3.4.17. Tract number – The following suffix codes are used for special designations:
- Relocation tracts - X
  - Uneconomic Remnant tracts - R
  - Advanced acquisition tracts - H
  - Supplemental acquisition tracts - S
  - Mitigation tracts - M
  - Easement areas - E
- 4.3.4.18. Total area of each tract (to nearest one hundredth of an acre, or if subdivided, nearest square foot)
- 4.3.4.19. Area of acquisition of each tract (to nearest one hundredth of an acre, or if subdivided, nearest square foot)
- 4.3.4.20. Area of each easement (to nearest one hundredth of an acre, or if subdivided, nearest square foot)
- 4.3.4.21. Residual area of each tract (to nearest one hundredth of an acre, or if subdivided, nearest square foot)
- 4.3.4.22. Current owner information
- 4.3.4.23. Certificate of title number
- 4.3.4.24. Quarter Section, Section, Township and Range lines
- 4.3.4.25. Existing survey monuments
- 4.3.4.26. Lot schedule containing the total area of each lot, acquisition area in each lot, residual area of each lot
- 4.3.4.27. Revision box
- 4.3.4.28. Existing Right of Way Authority information
- 4.3.4.29. Access control (if any) including breaks in access control on partially controlled access facilities

#### **4.4. RIGHT OF WAY PLAN DEVELOPMENT**

##### **4.4.1. General**

- 4.4.1.1. When parcel surveys are completed and Roadway Design has set the proposed right of way limits, Right of Way personnel will jointly review the project design. The Engineering Section Head will meet with the

Roadway Design Engineer and discuss areas of concern found during the design review. Based on this discussion, revised Right of Way and Utility requirements may be submitted to Engineering.

- 4.4.1.2. Right of way plans and legal descriptions are prepared using the criteria, included in Sections 4.2 and 4.3 of this manual, and presented in a clear and concise manner using MicroStation CADD software. Bentley Inroads software is utilized to calculate total parcel, area to acquire, residual and stationing of centerline offsets on each tract to be acquired. Size of lettering, style and width of lines on right of way plans vary in relation to their importance.

#### **4.4.2. Stages of Right of Way Plan Development**

##### **4.4.2.1. 0%-10%**

- 4.4.2.1.1. The Engineering Section Head creates a project folder in Engineering's Jobs database
- 4.4.2.1.2. The project is assigned to the Right of Way Plans Designer III
- 4.4.2.1.3. The Right of Way Plans Designer III assigns the project to the Plans Designer who performs a preliminary review of the following information:
  - Existing right of way documents
  - Current owner title information
  - Electronic Roadway Design files
  - Electronic parcel survey and design survey files

##### **4.4.2.2. 10% - 20%**

- 4.4.2.2.1. Plans Designer Tasks:
  - 4.4.2.2.2. Determine the limits of the right of way project by comparing the electronic Roadway Design and Parcel Survey files. (If the limits of the design are found to be outside the parcel survey that has been provided. A sketch of the area is prepared and additional survey information is requested from Surveys by memorandum.)
  - 4.4.2.2.3. Create electronic design and geometry files and register on the Engineering Document Manager (EDM). (Design file name: eProject number.dgn; Coordinate Geometry file name: eProject Number.palg)
  - 4.4.2.2.4. Check for Relocation, Rail Road and Forest Service involvement.
  - 4.4.2.2.5. (Right of way plans and legal descriptions for Relocation and Railroad tracts are prepared at this time.)

**4.4.2.3. 20%-30%**

## 4.4.2.3.1. Plans Designer Tasks:

- 4.4.2.3.1.1. Review the current owner title work and compare the deed descriptions to the parcel surveys checking for gaps, overlaps and omissions. (Additional title work, existing right of way and parcel surveys are requested at this time.)
- 4.4.2.3.1.2. Electronic copies of the certificate of title are added to Engineering's Jobs database.
- 4.4.2.3.1.3. Review the existing right of way (The accuracy of the surveyed existing right of way is determined by comparing it to the existing right of way documents.)
- 4.4.2.3.1.4. Determine preliminary tract count and report to Right of Way Plans Designer III.

**4.4.2.4. 30%-40%**

## 4.4.2.4.1. Plans Designer Tasks:

- 4.4.2.4.1.1. Set proposed right of way offsets (coordinate with Roadway Design on proposed right of way adjustments)
- 4.4.2.4.1.2. Create Right of Way plan sheets

**4.4.2.5. 40%-50%**

## 4.4.2.5.1. Plans Designer Tasks:

- 4.4.2.5.1.1. Add station and offset drafting to the proposed right of way and easement lines
- 4.4.2.5.1.2. Create Title Sheet (Project name and number, Route and Section, County name, north arrow, Township and Range, vicinity map with begin and end project stationing)

**4.4.2.6. 50%-60%**

## 4.4.2.6.1. Plans Designer Tasks:

- 4.4.2.6.1.1. Set additional right of way points at the intersection of the proposed right of way and easement lines with the property lines
- 4.4.2.6.1.2. Calculate total parcel, area to acquire, residual, and easement areas on each tract
- 4.4.2.6.1.3. Calculate areas for the Lot Schedule

4.4.2.6.1.4. Prepare sign summary (calculate station and offset for each sign and determine if the sign is an encroachment or a sign tract)

#### **4.4.2.7. 60%-70%**

##### **4.4.2.7.1. Plans Designer Tasks:**

4.4.2.7.1.1. Create Survey Control Detail Sheet with Survey Control and Construction Centerline Coordinate data

4.4.2.7.1.2. Create Ownership sheet including, the following items:

- Tract number
- Current Owners name
- Certificate of Title number
- Total Parcel of Ownership
- Area of Acquisition
- Temporary and Permanent easement areas
- Sign Tracts
- Sheet numbers
- Project information

4.4.2.7.1.3. Incorporate the following elements into the Design and Plan models:

- Tract number
- Sign tract number
- Residual areas
- Scale
- Street and highway names
- Curve data
- Subdivision names
- Lot and block numbers
- North arrow
- Station offsets



- Control of access
- Bearings and distances
- Begin and end project stationing
- Label proposed right of way, existing right of way, existing control of access, proposed control of access, construction limits, construction centerline
- Easements
- Section and Quarter calls, Township and Range
- Lot Schedule
- Sign Summary
- Existing Right of Way Authority information

#### 4.4.2.7.1.4. Create Layout sheets:

- Tract numbers
- Highway and street names
- Township and Range
- North arrow
- Section and Quarter Section calls
- Crosshatch total parcel areas
- Project information
- Scale

#### **4.4.2.8. 70%-80%**

##### **4.4.2.8.1. Plans Designer Tasks:**

- 4.4.2.8.1.1. A metes and bounds legal description is written in a clockwise direction around the area of acquisition and easement areas on each tract. The legal descriptions are checked with the deed plotter. (Legal descriptions of temporary construction easements are not written unless the tract is recommended for condemnation)
- 4.4.2.8.1.2. All Engineering files are updated on EDM. Copies of the Right of Way plans and legal descriptions are printed for the project review.

**4.4.2.9. 80%-90% - Project Review**

4.4.2.9.1. The Right of Way Plans Designer III will review the following:

- Project information (job number, name, vicinity map, begin and end stationing)
- Current owner title information (name and property boundary)
- Existing right of way (how it was established and that it matches the existing right of way documents)
- Compare the Parcel Survey and Roadway Design file information (bearings and distances, monument call outs, Quarter calls, Township and Range, Subdivision names, Street names)
- Construction centerline
- Proposed right of way and easement calculations
- Station and offsets calculations and correlate with Roadway Design files
- Stored figures and area calculations
- Legal descriptions (compare to finished right of way plans and check with deed plotter)
- Sign Summary (check station and offset, advertisement information and encroachment)
- Lot schedule
- Survey Control Detail sheet
- Verify all drafting elements are on the appropriate level and all points have been stored with the correct feature
- Check labeling of the existing right of way, proposed right of way, construction limits, control of access, property lines, easements

4.4.2.9.2. The Plans Designer will make the review correction to the plans and legal descriptions

4.4.2.9.3. Final correlation with the Roadway Design is performed to insure that roadway plans and right of way plans match.

4.4.2.9.4. The electronic copies of the Right of Way Plans, Roadway Plan and Profile sheets, legal descriptions and sign summary are placed in the Project folder in Engineering's Jobs database and the files are updated on EDM. A memorandum stating that the Right of Way Plans

are complete is sent to Legal, the District Engineer, District Construction Engineer and other Right of Way Sections.

- 4.4.2.9.5. Appraisal will send a request to Engineering for staking of the proposed right of way. A memorandum is sent to Surveys requesting that the proposed right of way and easements be staked.

#### **4.4.2.10. 90%-100%**

- 4.4.2.10.1. When the project goes to contract the Right of Way plans are sent to the Reproduction Section for archiving in the Reproduction Section Archive database.

- 4.4.2.10.2. The project number and location are added to the existing right of way index map.

### **4.5. RIGHT OF WAY PLAN CHANGES**

#### **4.5.1. Request for Right of Way Plan Change**

- 4.5.1.1. Agreements made with the property owners, revisions and errors that affect the right of way or construction plans are submitted to Engineering in the form of a "Request for Right of Way Plan Change."
- 4.5.1.2. The Appraiser or Acquisition Agent first proposes the change to Roadway Design. If approved, the change is discussed with the Utilities Coordinator to assure that no adverse effect on utility relocations will occur.
- 4.5.1.3. The Request for Right of Way Plan Change, with the appropriate signatures, is then delivered to Engineering. The Office Administrative Assistant III logs the plan change request into Engineering's plan change database. A copy is given to the Engineering Section Head and the Right of Way Plans Designer III for review. The Right of Way Plans Designer III will direct the Plans Designer to make changes to the plans and descriptions.
- 4.5.1.4. After the changes have been reviewed and corrections have been made, Engineering's Jobs database is updated with the revised right of way plans, plan and profile sheets and legal descriptions and the files are updated on EDM. A memorandum will be sent to the appropriate AHTD personnel detailing the changes. If the change has modified the proposed right of way or easement area a request for a restake and a tiff image of the revised Right of Way plan sheet with the changes highlighted will be sent to Surveys.
- 4.5.1.5. The signed copy of the request for Right of Way Plan Change is scanned and added to the project folder in Engineering's Jobs database. The original is sent to Administrative.

#### **4.5.2. Updated Certificate of Title Information**

- 4.5.2.1. During the Appraisal, Negotiations and Abstractors research, changes in current owner title information are found. They are submitted to Engineering in the form of an updated Certificate of Title.
- 4.5.2.2. The Office Administrative Assistant III scans the cover letter explaining the certificate of title update and adds it to the project folder on Engineering's Jobs database. A copy is e-mailed to the Engineering, Appraisal and Acquisition Section Heads. The original cover letter and updated certificate of title are given to the Plans Designer III.
- 4.5.2.3. The Right of Way Plans Designer III reviews the updated certificate of title and provides the plans designer with the information.
- 4.5.2.4. The Plans Designer verifies that the updated certificate of title covers the area of acquisition. If additional parcel survey information is required a request for additional parcel survey and the updated Certificate of Title are submitted to Surveys by memorandum.
- 4.5.2.5. The Plans Designer revises the Right of Way Plans and legal descriptions according to the updated certificate of title and parcel survey information.
- 4.5.2.6. After review by the Right of Way Plans Designer III, Engineering's Jobs database is updated with the certificate of title, revised plans and legal description. The revised right of way files are updated on EDM. A memorandum is sent to the appropriate AHTD personnel detailing the changes.

#### **4.5.3. Roadway Design Changes**

- 4.5.3.1. Changes to the design that are not requested by Right of Way are submitted to Engineering by memorandum from Roadway Design.
- 4.5.3.2. The Engineering Section Head sends the request to the Right of Way Plans Designer III. The status of the affected tracts is determined and the appropriate Sections are notified.
- 4.5.3.3. Right of Way Plans Designer III directs the Plans Designer to revise the right of way plans according to the updated roadway design.
- 4.5.3.4. After review by the Right of Way Plans Designer III Engineering's Jobs database is updated with the revised plans and legal descriptions. The revised right of way files are updated on EDM. A memorandum is sent to the appropriate AHTD personnel detailing the changes.

#### **4.6. PLANS AND LEGAL DESCRIPTIONS FOR PROJECTS ACQUIRED THROUGH COUNTY COURT ORDER – COLLECTOR PROJECTS**

- 4.6.1. Engineering will receive a memorandum from Roadway Design requesting existing right of way on the project. The Right of Way Specialist creates a project folder in Engineering's Jobs database.
- 4.6.2. The Right of Way Specialist saves electronic copies of the right of way plans, plan and profile sheets, court orders, and deeds that establish the existing right of way on the requested area to Engineering's Jobs database. If no right of way of record exists, a request for an affidavit of right of way will be sent to the District Engineer. A link to the electronic file is e-mailed to Surveys.
- 4.6.3. Surveys will access this information and provide a survey of the existing right of way and centerline.
- 4.6.4. When notification is received from Roadway Design that the proposed right of way is set, the Design Technician, under the supervision of the Right of Way Specialist generates an electronic copy of the construction plans and places the quarter section grid on each sheet with each quarter section labeled. The files are renamed (Design File name: eProject Number.dgn; Coordinate Geometry File name: eProject Number.plg) and registered on EDM. Paper copies of the plans are furnished to Administrative for their use in researching property ownership on the project.
- 4.6.5. When the ownership information is received from Administrative, the Design Technician:
  - 4.6.5.1. Plots the property lines and add the ownership information to the design file
  - 4.6.5.2. Adds the surveyed existing right of way and land monument information to the coordinate geometry file and design file.
  - 4.6.5.3. Sets station and offset points on the proposed right of way and easements. The area to acquire on each ownership is calculated and added to the plans.
  - 4.6.5.4. Creates Survey Control Detail sheet including the survey control data, construction centerline data, coordinate data for the proposed right of way station and offset points.
  - 4.6.5.5. The design and coordinate geometry files are updated on EDM.
- 4.6.6. Right of Way Specialist reviews the following:
  - 4.6.6.1. Job number, name, and vicinity map, begin and end stationing
  - 4.6.6.2. Current owner title information (name and property boundary)

- 4.6.6.3. Construction centerline (stationing and coordinate geometry)
  - 4.6.6.4. Proposed right of way and easement calculations
  - 4.6.6.5. Station and offsets drafting on the proposed right of way and easements
  - 4.6.6.6. Survey Control detail sheet
  - 4.6.6.7. Area calculations
  - 4.6.7. The Design Technician corrects the electronic design and coordinate geometry files. The files are updated on EDM and electronic copies of the certificate of title, right of way plans, and plan and profile sheets are added to the project folder in Engineering's Jobs database.
  - 4.6.8. A memorandum is sent to Appraisal stating that the plans have been completed.
  - 4.6.9. Upon request from Appraisal, a memorandum is sent to Surveys requesting staking of the proposed right of way and easements.
  - 4.6.10. The Design Technician writes a centerline description. The description ties the project to a surveyed land monument and describes the construction centerline. The station and offsets for the proposed right of way and temporary easements are written in table form referenced from the construction centerline. The Right of Way Specialist then reviews the legal description. This description is included in a Court Order form that petitions the Court for the improvements and requests that an order be filed granting the necessary right of way.
  - 4.6.11. Upon notification of the completion of the appraisal process, an electronic copy of the court order legal description is added to the Project folder in Engineering's Jobs database. A memorandum is sent to Acquisition for recording of the court order in the county in which the project is located.
  - 4.6.12. After the court order has been recorded the right of way plans are sent to the Reproduction Section. The Reproduction Section Archive database is updated and the Job number and location are added to the Existing Right of Way Index Map.
- 4.7. PLANS AND LEGAL DESCRIPTIONS FOR PROJECTS ACQUIRED THROUGH COURT ORDER – STATE AID PROJECTS**
- 4.7.1. Engineering receives a memorandum from State Aid Division (State Aid) to prepare a Court Order legal description on the subject job.
  - 4.7.2. The Right of Way Specialist creates a project folder in Engineering's Jobs database.

#### 4.7.3. The Design Technician:

- 4.7.3.1. Makes electronic copies of the Construction design and coordinate geometry files.
- 4.7.3.2. Alters the construction plans to reflect Code “3” (Right of Way), removes the Engineers stamp and renumbers the sheets.
- 4.7.3.3. Adds the property line and ownership information provided by Acquisition’s Right of Way Coordinator to the design file.
- 4.7.3.4. Calculates the station and offsets points on the proposed right of way and easements.
- 4.7.3.5. Creates Survey Control Detail Sheet (Survey Control data, Construction Centerline data, coordinate data for the proposed right of way station and offset points).
- 4.7.3.6. Writes a centerline description that ties the project to a surveyed land monument and describes by metes and bounds each course of the construction centerline. The centerline station and offsets for the proposed right of way and temporary easements are written in table form referenced from the construction centerline.
- 4.7.3.7. The files are renamed (Design File name: eProject Number.dgn; Coordinate geometry File name: eProject Numberp.alg) and registered on EDM.

#### 4.7.4. The Right of Way Specialist reviews:

- 4.7.4.1. Job number, name, and vicinity map, begin and end stationing, “Code 3” designation
  - 4.7.4.2. Current owner title information (name and property boundary)
  - 4.7.4.3. Construction centerline (Stationing and coordinate geometry)
  - 4.7.4.4. Proposed right of way and easement calculations
  - 4.7.4.5. Station and offset drafting on the proposed right of way and easements.
  - 4.7.4.6. Survey Control Detail Sheet
  - 4.7.4.7. Area calculations
  - 4.7.4.8. Centerline description
  - 4.7.4.9. Correlation of the Construction and Right of Way plans
- 4.7.5. A paper copy of the “Code 3” plans and court order legal description are sent by memorandum to State Aid for review.

- 4.7.6. Upon completion of the review by the State Aid Engineer, Engineering's Jobs database is updated with the corrected information and the files are updated on EDM. A memorandum is sent to Acquisition stating that the "Code 3" plans and legal description is complete.
- 4.7.7. Upon notification from Acquisition that the court order has been recorded the "Code 3" plans are sent to the Reproduction Section. The Reproduction Section Archive database is updated and the job number and location are added to the Existing Right of Way Index Map.

#### **4.8. EXISTING RIGHT OF WAY**

The Right of Way Specialist maintains a current file and county index maps on all state highway projects. Requests for right of way information may be received in person, by memorandum, telephone, facsimile and E-Mail.

- 4.8.1. The Administrative Aide I, under the supervision of the Right of Way Specialist, locates the requested area on the index map and the corresponding job number is identified.
- 4.8.2. The Administrative Aide I collects the information (right of way plans, plan and profile sheets, court orders, and deeds) that will establish the existing right of way on the requested area. It is mailed, faxed or e-mailed to the person requesting the information. If the request is from a business, Engineering's Contact List is updated with the business information, date and information provided.
- 4.8.3. Requests for existing right of way information received from AHTD Division and District personnel are researched by the Right of Way Specialist. The existing right of way documents are sent to the requestor and saved in Engineering's Existing Right of Way Request database or in a project folder in Engineering's Jobs database.

#### **4.9. CONDEMNATIONS AND COURT EXHIBITS**

##### **4.9.1. Condemnations**

Engineering receives requests from Administrative to prepare plans and legal descriptions on tracts recommended for condemnation.

- 4.9.1.1. The Engineering Section Head and the Right of Way Specialist review the subject tract on the Right of Way plans.
- 4.9.1.2. The Right of Way Specialist sends a copy of the request to the Plans Designer III and the Plans Designer.
- 4.9.1.3. Bearings and distances are added to the Right of Way plans. Legal descriptions are written on the temporary easements on the subject tract.



- 4.9.1.4. After review by the Plans Designer III, Engineering's Jobs database is updated with the revised Right of Way plans and legal descriptions. The files are updated on EDM.
- 4.9.1.5. Legal requests 8½ x 11 inch copies of the Right of Way and Construction plans showing the tract(s) that is being condemned. The acquisition and easement areas are highlighted on the Right of Way plans. The highlighted copies of the Right of Way plans and the Plan and Profile sheets are delivered to Legal.

#### **4.9.2. Court Exhibits**

Court exhibits are prepared by Engineering when tracts are condemned by Legal.

- 4.9.2.1. When the request for a court exhibit is received from Legal, the Right of Way Specialist directs the Administrative Aide I to coordinate with Legal to identify the area needed for the exhibit.
- 4.9.2.2. A color copy of the right of way design covering the condemned tract is generated with an aerial photo attached.
- 4.9.2.3. The property owner's name and tract number are labeled. Total parcel area and area to acquire and easements are delineated by the use of different colored lines.
- 4.9.2.4. The Reproduction Section laminates the aerial photo on a foam board. The exhibit is delivered to Legal.

#### **4.10. SURPLUS PROPERTY**

Engineering receives requests for the release of surplus property.

- 4.10.1. When Engineering receives a request for release of surplus property the Right of Way Specialist creates a folder in Engineering's Surplus Property database. The Right of Way Specialist makes copies of all Court Orders, Deeds, Right of Way plans, and Plan and Profile sheets of the requested area. Electronic copies are filed in the Surplus Property database and paper copies are sent to Property Management.
- 4.10.2. When Property Management receives approval for the release of the surplus property a memorandum is sent to Engineering requesting that plans and a legal description be prepared on the area that has been declared surplus.
- 4.10.3. The Right of Way Specialist will coordinate with the Surveys Division Head to determine if (a) additional parcel surveys are needed and (b) AHTD or the property owner is responsible for the survey.
- 4.10.4. Utilizing the approved parcel survey data, the Right of Way plans are modified and a legal description is written covering the surplus property. The plans and description are submitted to Surveys for review. Copies of the approved plans

and descriptions are added to the Surplus Property database and paper copies are sent to Property Management.

- 4.10.5. The Minute Order number is added to the revised Right of Way plans when Property Management provides a copy of the approved Minute Order and recorded deed.
- 4.10.6. The revised plans are sent to the Reproduction Section and added to the Reproduction Section Archive database. The Minute Order number is added to the Existing Right of Way Index Map.

#### **4.11. CHANGES IN CONTROL OF ACCESS**

When Engineering receives requests for changes in the control of access on Partially Controlled Access Facilities:

- 4.11.1. The Engineering Section Head creates a project folder in Engineering's Control of Access database.
- 4.11.2. The Right of Way Specialist collects the Right of Way plans, deeds, and Plan and Profile sheets on the control of access location. A copy of the Right of Way plan is modified to show the proposed control of access break. Electronic copies are filed in the Control of Access database and paper copies are delivered to Administrative.
- 4.11.3. Upon receipt of the approved change in control of access, the legal description is modified and the right of way plan sheet is revised to show the change in control of access. The legal description is updated on Engineering's Jobs database. A paper copy of the legal description and Right of Way plan sheet are delivered to Administrative for deed preparation.
- 4.11.4. Engineering receives the recorded instrument from Administrative and updates the EDM and Engineering's Jobs database with the revised Right of Way plan information. The revised Right of Way plans are sent to the Reproduction Section and added to the Reproduction Section Archive database.
- 4.11.5. A memorandum and copies of the revised right of way plans are sent to the District Engineer.

## SECTION 5

### APPRAISAL

#### 5.1. GENERAL POLICIES

Appraisal is responsible for the appraisals on right of way projects; as well as providing cost for job cost estimates and alignment studies.

- 5.1.1. The format and level of documentation for the appraisal report are dependent upon the complexity of the appraisal.
- 5.1.2. All appraisals shall conform to the Uniform Act and appropriate Federal regulations, State Law and AHTD Policies.
- 5.1.3. Appraisals shall not include any payment of relocation assistance benefits or consider that such relocation payments will be made.
- 5.1.4. Appraisals shall be independently prepared and each appraisal must be signed by the individual(s) making the appraisal and include the appropriate certification prior to submittal for review.
- 5.1.5. Information and materials contained in AHTD files may be referenced by an appraiser in the support of the presentation and analysis made in setting forth the concluded opinion of fair market value.
- 5.1.6. Qualifications of all appraisers and all technicians who contribute to the report must be in AHTD files or in the report.
- 5.1.7. No appraiser shall have any interest, direct or indirect, in the real property being appraised and must sign a certificate to that effect.

#### 5.2. VALUATION FORMATS

The forms adopted by Appraisal shall be in compliance with the Uniform Appraisal Standards for Federal Land Acquisitions and 49 CFR Part 24. Three valuation formats are used.

##### 5.2.1. Compensation Estimate

This is an uncomplicated valuation and is discussed in Section 5.3. This method may be used for valuations of \$10,000.00 or less.

##### 5.2.2. Uncomplicated Appraisals

This form may be used when the acquisition is uncomplicated and compensation is estimated to be \$25,000.00 or less. The form includes a certificate and a three-page form that describes the property and the comparable sales used to arrive at the indicated value. In the event of condemnation, the appraiser will be required to provide a detailed appraisal showing the before and after value of the property.

### 5.2.3. Detailed Appraisals

This format is designed to include the more complex and difficult acquisitions. Appraisals in this category range from unimproved land to extensively improved properties. All applicable approaches to value are included. The reasons for omitting any one of the traditional approaches to value shall be clearly stated in the report.

The appraiser may be instructed to limit the appraisal analysis to one specific valuation approach. The AHTD may do this when inclusion of the additional approaches would not significantly add to the reliability and support of the final estimate of value.

### 5.3. COMPENSATION ESTIMATE

- 5.3.1. When an appraisal is unnecessary because the AHTD has determined the valuation problem is uncomplicated and the total compensation is estimated to be \$10,000.00 or less, based on analysis of available data, a two-page document will be prepared.
- 5.3.2. The compensation estimate is handled by Appraisal during the appraisal assignment process if the Review Appraiser or designated agent determines the appraisal problem is uncomplicated and the fair market value of the acquisition is estimated to be \$10,000.00 or less. At that point, compensation estimate procedures may be implemented.
- 5.3.3. The person preparing the compensation estimate or the person approving the compensation estimate shall have no interest, direct or indirect, in the real property being valued.
- 5.3.4. Payment and fees for making the compensation estimate shall not be based on the amount of the valuation.
- 5.3.5. Owner contact and invitation to be present during property inspection is not required for compensation estimates.
- 5.3.6. Even though an appraisal is not required, the AHTD must establish and offer just compensation for the property to be acquired. Appraisal will provide support for the amount to be offered, which may include sales and/or other market information in the project area.
- 5.3.7. The Appraiser/Negotiator or Acquisition Agent will make the offer to acquire the right of way after the compensation estimate is completed and has been approved and just compensation established. The approval may be by telephone and documented by memorandum.
- 5.3.8. The Appraiser/Negotiator will maintain adequate records of negotiations in sufficient detail to demonstrate compliance with Federal laws and regulations. The records are to be typed or written in ink and completed within a

reasonable time after each contact with the property owner. The information for each contact should include, but is not limited to, the date and place of contact, parties of interest contacted, offers made (dollar amounts), counteroffers, reasons settlement could not be reached, and any other pertinent data. The records shall be signed and dated.

- 5.3.9. When negotiations are unsuccessful and further attempts to negotiate appear to be futile, the records should be documented and contain recommendations for appropriate future actions. Upon completion of negotiations, the records shall become a part of the file.
- 5.3.10. If the property owner requests an appraisal of the property to be acquired, the value should be supported by an appraisal prepared by a qualified staff or fee appraiser. Since tracts to be acquired under this provision will normally be small and/or uncomplicated, only minimum value documentation is necessary.

## **5.4. APPRAISALS**

### **5.4.1. CONFLICT OF INTEREST**

- 5.4.1.1. No Appraiser or Review Appraiser shall have any interest, direct or indirect, in the real property being appraised that would in any way conflict with the preparation or review of the appraisal.
- 5.4.1.2. Payment and fees for making an appraisal shall not be based on the amount of the valuation.
- 5.4.1.3. No Appraiser or Review Appraiser shall act as a negotiator for real property, which that person has appraised or reviewed. The single agent concept can be utilized for the compensation estimate and will be handled in accordance with Section 5.3 of this manual.

### **5.4.2. APPRAISAL AND INVITATION TO OWNER**

- 5.4.2.1. As soon as feasible, the property owner shall be notified of the AHTD's interest in acquiring the real property, including the AHTD's obligation to secure an appraisal.
- 5.4.2.2. The property owner or the owner's designated representative shall be given an opportunity to accompany the appraiser during the appraiser's inspection of the property. The purpose of this requirement is to ensure that the owner has the opportunity to advise the appraiser of any features of the property which might affect the valuation of the property, as well as indicate any features of the property which might not be obvious to the appraiser.
- 5.4.2.3. It is preferable that the invitation be made in writing, with sufficient lead time for the owner to arrange to be present or to request an alternative time.

- 5.4.2.4. The appraiser will include in the appraisal report the date of the inspection and the name(s) of the person(s) who participated in the inspection of the property. If the owner declines the invitation to accompany the appraiser, a statement to that effect will be in the appraisal report.

### **5.4.3. JUST COMPENSATION**

Just Compensation represents a full and complete equivalent (usually monetary) for the loss sustained by the owner whose land has been taken or damaged. Just Compensation is what the owner has lost and not what the condemner has gained. Fair market value is usually the practical standard used to establish just compensation.

The Review Appraiser shall approve market value and recommend to the appropriate AHTD officials that this figure be used as the basis for establishing just compensation. This amount is in no event less than the AHTD's approved appraisal of fair market value and which:

- 5.4.3.1. Disregards any project caused decrease or increase in the fair market value of the real property taken.
- 5.4.3.2. Separately states the just compensation for real property acquired and the amount of damages, if any.
- 5.4.3.3. Identifies and includes allowable benefits.
- 5.4.3.4. Considers whether or not the remaining property or portion thereof is an uneconomic remnant.
- 5.4.3.5. Includes compensation for all buildings, structures and other improvements located upon the property that are required to be removed, including such buildings, structures, and other improvements owned by a tenant, even if classified as personal property under state law.

### **5.4.4. Appraisal Types**

#### **5.4.4.1. General Requirements**

After receiving tract assignments, the staff or fee appraisers:

- 5.4.4.1.1. Review the AHTD's Plans (Right of Way plans and Construction plans)
- 5.4.4.1.2. Prepare Scope of Work, which is a written document between the AHTD and the Appraiser describing the Appraiser's work and the assignment. This will be reviewed by the Review Appraiser and will be retained in Appraisal files.
- 5.4.4.1.3. Follow the Uniform Act for contacting property owners and property owner's inspection.

- 5.4.4.1.4. Conduct a field inspection of affected property
- 5.4.4.1.5. Define the exact property to be appraised and identify and measure all improvements.
- 5.4.4.1.6. Define value to be appraised.
- 5.4.4.1.7. Define rights to be acquired.
- 5.4.4.1.8. Review minimum appraisal requirements of the AHTD and FHWA.
- 5.4.4.1.9. Ascertain date of proposed valuation.
- 5.4.4.1.10. Determine data available from the AHTD.
- 5.4.4.1.11. Determine need for Specialty Report.
- 5.4.4.1.12. When applicable, the Appraiser and the Relocation Coordinator will meet with the property owner and determine items that are appraised as real estate and which items will be handled as personal property. This realty/personalty list will become a part of the appraisal. Legal counsel may be required if there is a question on any item.
- 5.4.4.1.13. Determine need of Legal or Engineering Opinion.
- 5.4.4.1.14. Determine zoning, zoning requirements and building set back lines.
- 5.4.4.1.15. Obtain 5 year Sales History of subject(s) and review title.
- 5.4.4.1.16. Obtain assessments and taxes.
- 5.4.4.1.17. Obtain all pertinent information on income producing properties.
- 5.4.4.1.18. Inspect comparables.

#### **5.4.5. Uncomplicated Appraisal**

This form may be used when the acquisition is uncomplicated and compensation is estimated to be \$25,000.00 or less. The form includes a Certificate of Appraiser, a property data page which describes the property and an abbreviated sales grid.

#### **5.4.6. Detailed Appraisal**

A detailed appraisal shall reflect nationally recognized appraisal standards, including, to the extent appropriate, the Uniform Appraisal Standards for Federal Land Acquisition and requirements found in 49 CFR Part 24. At a minimum, a detailed appraisal shall contain the following items:

- 5.4.6.1. The purpose and/or the function of the appraisal, a definition of the estate being appraised, a defined value, the value definition and a statement of the assumptions and limiting conditions affecting the appraisal.

- 5.4.6.2. An adequate description of the physical characteristics of the property being appraised (in the case of a partial acquisition, an adequate description of the remaining property), a statement of the known and observed encumbrances, if any, title information, location, zoning, present use and at least a 5-year sales history of the property.
- 5.4.6.3. Highest and Best Use Analysis requires that the Appraiser define, identify and address the four tests of highest and best use, as follows:
  - 5.4.6.3.1. Legally Permissible – Which uses are legally allowed by zoning, government regulations, and uses permitted by deed restrictions and covenants?
  - 5.4.6.3.2. Physically Possible – What use would fit the size, shape, topography and other characteristics of the site?
  - 5.4.6.3.3. Financially Feasible – Which use would generate adequate revenue to justify the cost of the construction of the improvements plus provide a profit for the developer?
  - 5.4.6.3.4. Maximally Productive – Which use would maximize the highest net return (profit) to the developer?
- 5.4.6.4. All relevant and reliable approaches to value consistent with established Federal and Federally-assisted program appraisal practices. When sufficient market sales data are available to reliably support the fair market value for the specific appraisal problem encountered, the AHTD, at its discretion, may require only the market approach. If more than one approach is utilized, there shall be an analysis and reconciliation of approaches to value sufficient to support the appraiser's opinion of value.
- 5.4.6.5. A comparable sales data sheet, including:
- 5.4.6.6. A description of all relevant physical, legal, and economic factors such as parties to the transaction, source and method of financing, and verification by a party involved in the transaction. A photograph clearly depicting the comparable is required.
- 5.4.6.7. The appraiser is to verify the lease information on each comparable rental property, if applicable. The person with who the lease information is verified will be identified on the sales form.
- 5.4.6.8. Information about each rental is to include rental rate, lease term, occupancy and tenant information, operating expenses, and special lease terms, and the parties named in the lease. In the event that the rental is on a month-to-month basis, this rental information is to be included on the sales form.



- 5.4.6.9. A plat of the subject property indicating the location of the proposed right of way, size of the whole property, size and location of the acquisition area, and size and location of remaining property.
- 5.4.6.10. Drawings of all improvements acquired or affected by the acquisition.
- 5.4.6.11. Photographs of the whole property, acquisition area(s), easement(s), remainder property, and improvements (including interior and exterior) acquired or affected by the acquisition.
- 5.4.6.12. A statement of the value of the real property to be acquired and, for a partial acquisition, a statement of the value of the damages and benefits, if any, to the remaining real property, where appropriate.
- 5.4.6.13. The effective date of valuation, date of appraisal, signature, and Certification of the Appraiser.
- 5.4.6.14. Addendum items include the area data, plat(s), floor plan(s), construction plan(s), photographs of subject property, comparable sales information, title certificate and legal description. The addendum may also include any other relative information that supports the valuation within the report.

## **5.5. JOB COST ESTIMATES**

Job Cost Estimate refers to a preliminary estimate of right of way costs for a particular project to be used by the AHTD in considering budget priorities.

- 5.5.1. Engineering will furnish Appraisal with a set of preliminary Right of Way plans. These preliminary plans are used to establish an estimated cost of acquiring the needed right of way for the project.
- 5.5.2. A staff appraiser will make a field inspection of the proposed project and collect limited market information in order to determine estimated land and improvement values.
- 5.5.3. A memorandum is sent to Administrative indicating the estimated cost of acquiring the needed right of way.

## **5.6. DETERMINATION OF PERSONAL PROPERTY VERSUS REAL ESTATE**

The appraiser must identify items in the appraisal report considered to be “real property” as well as those items considered to be “personal property.” Accordingly, for each tract assignment, involving improvements to be acquired, the appraiser will be required to coordinate an “on-site” meeting with appropriate Relocation personnel in order to accommodate this requirement; unless informed on a per tract basis by Right of Way personnel that it has been determined such a required meeting is not necessary. The results of these meetings are to be included in the appraisal report(s) and will serve as guides in this area for the balance of the acquisition process. If needed, Legal is to be consulted when there are questions as to the status of a given item.

## 5.7. NUMBER OF APPRAISALS

- 5.7.1. The AHTD will make two reports on any tract, regardless of the amount, if warranted by the complexity of the appraisal problem when the Appraisal Section Head, after consultation with the Review Appraiser(s), believes it is justified.
- 5.7.2. The AHTD will make two reports on any tract, regardless of the amount on any appraisal problem deemed necessary by the joint determination of Legal and Right of Way.

## 5.8. COMPARABLE SALES

Staff Appraisers and Fee Appraisers may develop a Sales Brochure for larger projects; thereby, saving the time and expense of duplicate individual data searches. Sales shall normally be limited to transactions that have occurred during the past five years, unless there has not been sufficient market activity within this period of time. If subject property was a sale within the past five years and the appraisal value deviates from the sale price, the appraiser shall give adequate reasoning for the difference.

Individuals concerned about potential appraiser ethics conflicts between the Uniform Standards of Professional Appraisal Practice (USPAP) and the minimum appraisal standards required by FHWA should note that the Appraisal Standards Board has determined the provisions of 49 CFR 24.103 and 104 are consistent with USPAP.

### 5.8.1. Appraisers assigned to a project will take the following steps to prepare the Sales Brochure:

- 5.8.1.1. Decide on specific area of data search.
- 5.8.1.2. Identify sales in the area.
- 5.8.1.3. Locate sales on a map
- 5.8.1.4. Verify sales in compliance with CFR regulations.
- 5.8.1.5. Inquire whether the purchaser or seller has bought or sold any similar properties recently or has any under contract.
- 5.8.1.6. Verify zoning, availability of utilities, and ascertain how the buyer intends to use the property.
- 5.8.1.7. Verify when contract to sell or option to buy or contract for deed was executed.

### 5.8.2. The Sales Brochure may include some or all of the following items; to the extent they are pertinent to the immediate appraisal assignment.

- 5.8.2.1. Explanation of the scope of the data search.
- 5.8.2.2. Maps or photos of project area and comparable areas.

- 5.8.2.3. General Real Estate Market Analysis.
- 5.8.2.4. Neighborhood Analysis.
- 5.8.2.5. Census tract maps.
- 5.8.2.6. Map showing location of sales, listings and rentals.
- 5.8.2.7. Purpose of the appraisals (if consistent on project for groups of appraisals).
- 5.8.2.8. Zoning maps and copies of zoning classifications and requirements pertinent to the subjects and sales.
- 5.8.2.9. Individual data sheets for each sale that may be pertinent to the subject property(s) and sales.
- 5.8.2.10. Analysis of sales data to provide supported conclusions that are later specifically applied in the individual appraisals. Support for adjustments on the following may be included:
  - 5.8.2.10.1. Location
  - 5.8.2.10.2. Time
  - 5.8.2.10.3. Size
  - 5.8.2.10.4. Topography
  - 5.8.2.10.5. Utilities
  - 5.8.2.10.6. Access
- 5.8.2.11. Maps and classifications of soils and descriptions of the classifications and their qualities.
- 5.8.2.12. Load bearing capacities of soils.
- 5.8.2.13. Pertinent Environmental Protection Agency (EPA) air and water quality regulations and other pertinent wetland or flood area regulations.
- 5.8.2.14. An analysis of sales to result in ranges of value for different zoning.
- 5.8.2.15. Cost data applicable to multiple properties.
- 5.8.2.16. Contractors Cost Estimates.
- 5.8.2.17. Utilities description and/or Utility Maps.
- 5.8.2.18. Support of damages or benefits applicable to multiple tracts, i.e., landlocked areas, strip takings.

5.8.2.19. Maps showing location of project area in relation to central business district of town or nearest major business and shopping area or other areas that may substantially affect value.

5.8.2.20. Any other general data or exhibits relating to multiple tracts.

## **5.9. APPRAISAL REVIEW**

In accordance with 49 CFR 24.104, the Review Appraisers review appraisal and specialty reports of real property to be acquired in connection with State and Federal-aid programs or projects to establish an amount believed to be just compensation for such acquisition before the initiation of the negotiations or the exercise of eminent domain.

5.9.1. The Review Appraiser examines the appraisal report to determine that it:

5.9.1.1. Is completed in accordance with the AHTD's appraisal specifications and/or contract (for Fee Appraisers).

5.9.1.2. Adheres to accepted appraisal principles and techniques in the valuation of real property in accordance with State law and Federal regulations and requirements.

5.9.1.3. Contains or references the information necessary to explain, substantiate, and document the conclusions and estimate of fair market value.

5.9.1.4. Considers compensable items, damages and benefits, if any, and does not include compensation for noncompensable items.

5.9.1.5. Contains an identification or listing of the buildings, structures, and improvements on the land as well as the fixtures, which were considered as part of the real property.

5.9.1.6. Contains an estimate of fair market value for the acquisition, and where appropriate in the case of a partial acquisition, an allocation of the estimate of fair market value for the real property and for damages to the remaining property.

5.9.2. Prior to approving an appraisal and recommending just compensation, the review appraiser:

5.9.2.1. Requests and obtains from the appraiser any needed corrections or revisions.

5.9.2.2. Makes minor corrections, such as mathematical ones, and note and initial his/her action.

5.9.2.3. Makes comments and provides additional supporting data as necessary, then initialing.

- 5.9.3. Upon completion of the review, the review appraiser attaches a signed and dated certification to the appraisal report setting forth:
- 5.9.3.1. The estimate of just compensation including, when applicable, an allocation of compensation for the real property acquired and for damages to the remaining real property, and an identification or listing of the buildings, structures and other improvements on the land as well as the fixtures which are considered to be a part of the real property to be acquired, if such allocation or listing differs from that in the appraisal(s).
  - 5.9.3.2. Whether or not field inspections of the subject tract and the comparable sales were a part of the appraisal review. If a field inspection was not made, the reason(s) should be recited.
  - 5.9.3.3. That the review appraiser has no direct or indirect present or contemplated future personal interest in the property or in any monetary benefit from its acquisition.
  - 5.9.3.4. That the estimate of just compensation has been reached independently, without collaboration or direction, and is based on appraisals and other factual data.
  - 5.9.3.5. If appropriate, a value estimate of items compensable under State law but not eligible for Federal reimbursement.
- 5.9.4. Upon completion of the review process, the fair market value is approved by Review Appraiser and just compensation is established by the Division Head or LPA official, as required.

## **5.10. FEE APPRAISERS**

Fee Appraisers and specialists may be employed to provide cost studies, estimates or appraisals when:

- 5.10.1. AHTD staffing is insufficient to perform the work within a reasonable time.
- 5.10.2. A fee appraisal or specialist report is needed for use in a condemnation case.
- 5.10.3. The unusual character of the work requires the services of a person(s) with highly specialized knowledge and experience not available on the AHTD staff.
- 5.10.4. Fee Appraisers will conform to appraisal procedures included in Section 5.4 and 5.6-5.8 of this manual.
- 5.10.5. Contracts, agreements, or assignment letters for fee appraisal and specialist services will be handled in accordance with 23 CFR 635 Subpart A, 49 CFR 18.26 and Section 3.20 of this manual.

### **5.11. VALUATION OF LEASEHOLD INTERESTS**

A leasehold interest may exist in a property that is under a lease. A lease is distinguished from month to month rent by a time frame terminating the rent. A positive leasehold interest exists only when economic rent or market rent exceeds actual rent. The positive leasehold is an advantage to the tenant and creates an interest in the property. In the valuation of a property under lease, the appraiser will do the following:

- 5.11.1. Obtain a copy of the lease agreement
- 5.11.2. Conduct a market study to estimate market rent
- 5.11.3. Appraise the property as if un-encumbered
- 5.11.4. Estimate value of the leasehold using the following steps:
  - 5.11.4.1. Calculate the difference in actual and economic rent
  - 5.11.4.2. Calculate the remaining term of the lease
  - 5.11.4.3. Estimate the discount rate
  - 5.11.4.4. Discount the positive advantage of tenants, if any, to a present value
  - 5.11.4.5. Present value is equal to leasehold interest
- 5.11.5. Estimate the value of the leased fee by using the following steps:
  - 5.11.5.1. Conduct a market study to estimate discount rate
  - 5.11.5.2. Discount the actual net income stream to a present value
  - 5.11.5.3. Estimate the property value at the end of lease
  - 5.11.5.4. Estimate the reversionary value
  - 5.11.5.5. Present value of income plus reversion will equal the leased fee value

### **5.12. VALUATION OF TENANT-OWNED IMPROVEMENTS**

- 5.12.1. 49 CFR, 24.105 (c), requires that all buildings, structures and improvements located upon the property to be acquired, or which will be adversely affected, be considered real property, even if owned by a tenant who is required to remove such buildings, structures or improvements, at the expiration of the lease. This regulation will apply even if the buildings, structures or improvements are considered personal property under State law relating to landlord and tenants or taxation.
- 5.12.2. Any buildings, structures or other improvements which would be considered to be real property, if owned by the owner of the real property on which it is located, shall be considered real property for appraisal purposes.

- 5.12.3. Just compensation for a tenant-owned improvement is the amount the improvement contributes to the fair market value of the whole property or its salvage value, whichever is greater.
- 5.12.4. No payment shall be made to a tenant-owner for any real property improvement unless:
- 5.12.4.1. The tenant-owner, in consideration for the payment, assigns, transfers, and releases to the AHTD all of the tenant-owner's right, title, and interest in the improvements; and
  - 5.12.4.2. The owner of the real property on which the improvement is located disclaims all interest in the improvement; and
  - 5.12.4.3. The payment does not result in the duplication of any compensation otherwise authorized by law.

### **5.13. TEMPORARY AND PERMANENT EASEMENTS**

- 5.13.1. It is often necessary during highway construction to obtain land for temporary purposes. Since the AHTD does not wish to burden itself with excess property, land needed for these purposes is conveyed in the form of a temporary easement that reverts to the property owner upon completion of construction. When appraising property that is to be affected in this manner, the Appraiser will estimate the fair rental value and add any damages that may accrue as a result of the AHTD's use of the land.
- 5.13.2. Permanent easements may be required for purposes such as drainage, access or other highway purposes as determined by the AHTD. Permanent easements are appraised as if the fee interest is being acquired and the remaining lands are treated accordingly.

### **5.14. UPDATED OR REVISED APPRAISALS**

- 5.14.1. At the discretion of the Appraisal Section Head, an updated or new appraisal will be obtained should the following affect the property value:
- 5.14.1.1. additional information presented by the property owner,
  - 5.14.1.2. a material change in the character or condition of the property, or
  - 5.14.1.3. a significant time delay since the most recent appraisal.
- 5.14.2. Whenever an appraisal is updated or revised, the Appraiser or Review Appraiser will stamp the notation "Revised Appraisal" on the front of the report and include a brief note explaining the circumstances necessitating an updated or revised appraisal. The previous appraisal will be clearly marked "Void" by the Review Appraiser and retained for documentation purposes.

### **5.15. ROADSIDE SIGNS**

- 5.15.1. On-premise signs considered as real property to be acquired are recognized and itemized in the appraisal.
- 5.15.2. If the sign is a part of the real estate, it is appraised as any other improvement that is located on the property and a salvage value should be assigned.
- 5.15.3. Any sign or billboard that is erected on existing right of way is not eligible for consideration within the appraisal.
- 5.15.4. If any doubt or question arises concerning the payment for roadside signs, the matter should be resolved by Right of Way, Legal and Environmental.

### **5.16. DAMAGES AND BENEFITS**

- 5.16.1. Arkansas Case Law requires that just compensation is to be established by determining the difference between the fair market value of the whole property immediately before the taking and the fair market value of the remaining lands immediately after the taking.
- 5.16.2. The Arkansas Supreme Court has held that where the public use for which a portion of a property owner's land is taken so enhances the value of the remainder property so as to make it of greater value than the whole property before the taking, the property owner has received just compensation in the form of benefits.
- 5.16.3. In instances where the remainder is diminished in value by the taking, the courts have awarded "severance damage." Severance damage is the difference between the value of the remainder before the taking and the value of the remainder after the taking. Consequential damages are not recoverable in condemnation proceedings.
- 5.16.4. The following is a list of items which in and of themselves are not compensable in highway condemnation cases in Arkansas. This list is not inclusive of all non-compensable items.
  - 5.16.4.1. Loss of business profits (possible exception - farm property).
  - 5.16.4.2. Loss of goodwill.
  - 5.16.4.3. Interruptions of or loss of business, inconvenience, etc. during temporary period of construction.
  - 5.16.4.4. The loss of expected profits from a projected subdivision.
  - 5.16.4.5. Loss of tenants, business, etc. because of anticipated taking.
  - 5.16.4.6. Damage to personal property and moving expense.



- 5.16.4.7. Cost of obtaining or inability to obtain new quarters.
- 5.16.4.8. Annoyance, discomfort, dust, etc. during period of construction.
- 5.16.4.9. Diversion of traffic.
- 5.16.4.10. Circuitry of travel.
- 5.16.4.11. Inability to gain access to a newly located highway. (This does not necessarily exclude severance damages where a unit of land has been severed.)
- 5.16.4.12. Dust, and other such items incident to living on a public highway.
- 5.16.4.13. Bringing about the change in the character of the neighborhood.

## **5.17. CONDEMNATION**

When the Division Head and the Assistant Chief Engineer-Design have determined that property must be acquired by condemnation and the case resolved in Court, Appraisal coordinates with Legal to prepare for trial. In some cases, the attorney handling the case requests an additional appraisal through the Chief Legal Counsel.

## **5.18. RECORDS**

- 5.18.1. Project records are maintained by Appraisal personnel. The records are entered in a computer database file and contain, at a minimum, the following information:
  - 5.18.1.1. Job Number
  - 5.18.1.2. Tract Number
  - 5.18.1.3. Landowner's Name
  - 5.18.1.4. Total Compensation
  - 5.18.1.5. County
  - 5.18.1.6. Type of Format
  - 5.18.1.7. Appraiser
  - 5.18.1.8. Review Appraiser
  - 5.18.1.9. Date Signed
  - 5.18.1.10. Date Approved

## **5.19. SURPLUS PROPERTY**

The only specific reference to the valuation of surplus highway property is found at Arkansas Code Annotated 27-67-322(c)(3), which requires that "The market value of

the remnants or portions thereof shall be determined by three (3) competent appraisers." This applies to situations where a portion of a tract is being sold to a former owner or assignee.

#### **5.20. MISCELLANEOUS ITEMS**

- 5.20.1. An Appraiser may be assigned to assist on any valuation issues, project field inspections, right of way estimates and cost comparisons needed for any phase of project development.
- 5.20.2. Fences not shown on plans as construction items are included in the appraisal report.
- 5.20.3. Structures, water wells, driveways and entrances are considered in the appraisal report as to their contributory value to the property.
- 5.20.4. Merchantable timber on timberland is graded and quantified by a qualified appraiser and shown in appraisal report as to its market value.
- 5.20.5. Crop appraisals are made on crops which will not be harvested prior to entry by the contractor.
- 5.20.6. With the exception of capital assets and uneconomic remnants, oil and gas mineral rights are not acquired by the AHTD. Special appraisals may be necessary due to physical involvement of existing production facilities or due to disruption of proposed plans for production or exploration. Minerals such as rock and coal that involve extensive surface rights are considered in the appraisal report based on their contribution to the property.
- 5.20.7. Salvage values on all major improvements are estimated in accordance with market information.
- 5.20.8. Economic rents are estimated from market information and provided to Relocation.
- 5.20.9. The Review Appraiser will review appraisals submitted by property owners and comment by memorandum on the findings.

#### **5.21. HAZARDOUS WASTE SITES**

Hazardous waste is an area of concern, as the potential liability of a hazardous waste site or sites within the project alignment can seriously affect proposed projects.

- 5.21.1. The Appraiser must closely examine the subject property and every sale for issues related to possible contamination and be aware of the past uses of the property and the surrounding area. If past uses would indicate the potential of contamination, these sales will be subject to further investigation. The Appraiser should be aware of potentially hazardous uses of a property, including but not limited to:

- 5.21.1.1. Wood preservative manufacturing
  - 5.21.1.2. Bulk oil or gasoline terminals
  - 5.21.1.3. Insecticide manufacturing
  - 5.21.1.4. Electroplating
  - 5.21.1.5. Computer chip and/or printer circuit board manufacturing
  - 5.21.1.6. Coal gasification plants
  - 5.21.1.7. Sanitary landfills
  - 5.21.1.8. Machine shops with degreasing operations
  - 5.21.1.9. Chemical manufacturing and/or distribution
  - 5.21.1.10. Dry cleaning operations
- 5.21.2. When confirming sales, the Appraiser will ask buyers, sellers, and brokers if the property was or is contaminated and, further, if it was an issue in the sale of the property.
- 5.21.3. If the subject property or a sale was previously sold as contaminated, the Appraiser will ask the seller and/or broker if any purchase offers or agreements did not go through because of the disclosure of contamination. This step frequently yields the most difficult to obtain data of the entire sale: the value as unimpaired by contamination. If a property has been exposed for sale for a long time, it is quite likely that other brokers have previously held the listing. Interviews with these brokers may reveal purchase agreements (offers) that failed because of the discovery of contamination.
- 5.21.4. The Appraiser should obtain a listing of contaminated sites in the project area from the Arkansas Department of Environmental Quality (ADEQ) and be aware of the extent and nature of these contaminated areas.
- 5.21.5. The Appraiser should review newspaper articles and the internet for additional information on contaminated sites in the area.
- 5.21.6. In general terms, the market analysis of contaminated properties should include the following steps:
- 5.21.6.1. Establish unimpaired value
  - 5.21.6.2. Deduct cost of remediation
  - 5.21.6.3. Deduct actual impaired selling price
  - 5.21.6.4. Remainder is an indication of value loss due to stigma factors alone
  - 5.21.6.5. Express stigma loss as a percentage of unimpaired value

## SECTION 6

### ACQUISITION

#### 6.1. GENERAL

All negotiations are directed to accomplish the end result that the property owner will be paid just compensation in accordance with the Federal requirements contained in the Uniform Act. The following steps outline the general procedure for conducting negotiations for the purchase of right of way.

- 6.1.1. Negotiations begin on a project after authority to acquire has been received from FHWA, appraisals have been performed, and relocation studies, if necessary, have been completed. When consideration is being given for assignment of tract packets, the Acquisition Section Head will review the tract packet to determine its complexity. The more experienced Acquisition Agents will be assigned the complex acquisitions.
- 6.1.2. The Acquisition Agent will make reasonable efforts to locate and contact the property owner, heirs, or their designated representative(s). Appropriate legal proceedings will occur after sufficient attempts to locate and contact the property owner, heirs, or designated representative(s) have been documented and the Acquisition Section Head determines that all avenues of contact have been exhausted.
- 6.1.3. The Acquisition Agent will inform the property owner of the public necessity for the proposed highway improvement as it affects the property. The property owner will be presented with the following information: Acquisition Brochure, Offer Letter, copy of Compensation Estimate or Appraisal (as applicable), Right of Way Plans, Construction Plans, and Mortgage Authorization Form. Other information which may be provided includes, but is not limited to, the following: copies of cross sections, copies of applicable Standard Drawings, and/or copies of Standard Construction Specifications.
- 6.1.4. The property owner will be presented with an offer letter stating the summary of the basis of the total amount offered for the real property to be acquired and severance damages to the remaining property.
  - 6.1.4.1. The offer letter makes provisions for an appraised value of residuals, if applicable.
  - 6.1.4.2. The Arkansas Supreme Court has held that where the public use for which a portion of a property owner's land is taken so enhances the value of the remainder property so as to make it of greater value than the whole property before the taking, the property owner has received just compensation in the form of benefits. In this case, the offer letter will itemize the value of benefits applied to the remaining property.

- 6.1.5. The Acquisition Agent will explain the compensation estimate or appraisal to the property owner and advise them that the offer is the full amount of the compensation estimate or appraisal. Using caution not to express an opinion that could be interpreted as legal advice, the Acquisition Agent shall advise the property owner of their rights under the laws of eminent domain. They will further advise the property owner that, if no agreement can be reached and condemnation is necessary, just compensation will be determined by the Circuit Court.
- 6.1.6. The Acquisition Agent will advise the property owner that they will receive adequate time to consider the offer and provide information believed to be relevant in determining the value of the property. The AHTD will consider any additional information provided by the property owner, but there is no obligation to modify the offer of just compensation.
- 6.1.7. Support documents required to complete the transaction should be explained at the time the offer is presented. These may include a copy of the trust if property is held in trust, corporate resolution if held by a corporation, copy of partnership agreement if held by a partnership, et al.
- 6.1.8. If reasonable efforts to make a personal contact with the property owner have failed, or if the property owner resides out of state and personal contact is impractical, the property owner will be contacted by mail or other acceptable means, including fax or email. A letter, stating that attempts to contact the property owner have failed and requesting a timely response, will be mailed to the address shown on the county tax records.
- 6.1.9. In cases where the AHTD is unable to negotiate for the property, the property owner is mailed a condemnation letter restating the AHTD's intent to acquire and making a final offer of just compensation.
- 6.1.10. Leasehold interests or tenant-owned improvement interests are negotiated the same as are fee interests. Appropriate releases from the fee interest holder are obtained during the negotiation process.

## **6.2. NEGOTIATION REQUIREMENTS**

- 6.2.1. Negotiations will not begin until the AHTD has established just compensation for the property to be acquired.
- 6.2.2. When a compensation estimate is used for valuation, the same person may establish market value and negotiate on acquisitions with a value of \$10,000.00 or less.
- 6.2.3. In no event shall the AHTD, in order to compel an agreement on the price to be paid for a property:

- 6.2.3.1. Defer negotiations. Negotiations should be conducted in a timely manner including response to the property owner's inquiries and follow-up contacts once the initial offer has been presented.
- 6.2.3.2. Advance or defer condemnation. The Acquisition Section Head shall review the Acquisition Agent's progress periodically to ascertain when condemnation is appropriate.
- 6.2.3.3. Take any action that may be considered coercive in nature such as intimidation, deferring due diligence, undue duress, etc.

### **6.3. TRACT PACKETS**

- 6.3.1. Upon receipt of appraisals, the Office Administrative Assistants prepare tract packets containing the following:
  - 6.3.1.1. Acquisition Agent's checklist,
  - 6.3.1.2. Acquisition Agent's certification,
  - 6.3.1.3. two copies of appraisal or compensation estimate,
  - 6.3.1.4. original and one copy of the offer letter,
  - 6.3.1.5. original and one copy of the contract to sell with W9 form attached,
  - 6.3.1.6. mortgage authorization form,
  - 6.3.1.7. available title information, and
  - 6.3.1.8. Acquisition Brochure.
- 6.3.2. Prior to the initiation of negotiations, all tract packets with improvements to be acquired are transmitted to Property Management for review. In the event improvements will be retained by the property owner, Property Management will establish the amount of bond required.
- 6.3.3. Following review by Property Management, the tract packet will be assigned to an Acquisition Agent. The Acquisition Agent will verify that all documents prepared by the Administrative Assistant are accurate and agree with the appraisal and the right of way plans. The Acquisition Agent will then add the following information to be provided to the property owner:
  - 6.3.3.1. right of way plans,
  - 6.3.3.2. construction plans,
  - 6.3.3.3. cross sections,
  - 6.3.3.4. applicable fencing standard drawings, and

- 6.3.3.5. a list of support documents the property owner must provide to complete the transaction.
- 6.3.4. The Acquisition Agent signs and dates their Certification upon receipt of an executed Contract to Sell.
- 6.3.5. Tract packets are returned to the Administrative Assistant for updating of the Project Log, preparation of acceptance letters and transmittal memorandums, and submission to the Acquisition Section Head for review and approval.
- 6.3.6. Tract packets are then sent to Administrative for further handling.

#### **6.4. NEGOTIATION ACTIVITIES**

- 6.4.1. The Acquisition Section Head assigns acquisition agents to projects according to experience, background, ability and availability. When possible, agents who have attended the public meetings offered by Environmental will be assigned to the project due to their familiarity with the project.
- 6.4.2. The Acquisition Agent(s) and Reviewing Appraiser will make a pre-negotiation review of the project prior to individual contacts being made. The Acquisition Section Head will schedule pre-negotiation reviews. After the pre-negotiation review, the Acquisition Section Head will authorize the Acquisition Agent(s) to contact the property owners.
- 6.4.3. Acquisition maintains a Project Log of all current jobs including: the date the estimate or appraisal was received, the amount of just compensation, the date of agreement or date the tract was submitted for condemnation. Acquisition Agents will periodically review the Project Log throughout the negotiations to assure that the log reflects the proper status of each assigned tract.
- 6.4.4. Title discrepancies, requested design revisions or other modifications noted by the Acquisition Agent or landowner are discussed with the Acquisition Section Head before pursuing a Request for Right of Way Plan Change in accordance with Section 4.5 of this manual.
- 6.4.5. Acquisitions involving displaced persons are coordinated with Relocation so that the Acquisition Agent and Relocation Coordinator can schedule a simultaneous visit to the property owner, if possible. It is the Acquisition Agent's responsibility to notify Relocation of the first scheduled appointment with the property owners.
- 6.4.6. Acquisition Agents will complete checklist recording information pertinent to the tract including: job number, tract number, ownership, contact addresses, encumbrances and initial contact details. This checklist is signed and dated by the Acquisition Agent upon assignment and maintained in the tract packet.

- 6.4.7. Each contact related to the tract will be documented in the Acquisition Agent's Narrative and saved to the R: drive immediately after each contact. This record is available for review by Right of Way personnel and includes:
- 6.4.7.1. Person contacted
  - 6.4.7.2. Contact method (i.e. mail, email, fax)
  - 6.4.7.3. Place of contact
  - 6.4.7.4. Documentation of issues discussed
  - 6.4.7.5. Property owner's requests, opinions, counter offers, issues and concerns, proposed solutions and recommendations
  - 6.4.7.6. Explanations provided by the Acquisition Agent addressing property owner issues and concerns
  - 6.4.7.7. Recommendations concerning counter offers or initiation of condemnation proceedings
- 6.4.8. Negotiations are discontinued when any of the following occur:
- 6.4.8.1. The Acquisition Agent recommends and the Acquisition Section Head concurs that further contacts will not prove beneficial
  - 6.4.8.2. When the property must be acquired for construction without further delay
  - 6.4.8.3. When the property owner states that they do not wish to continue negotiations.

## **6.5. NEGOTIATION ACTIVITIES – COLLECTOR PROJECTS**

- 6.5.1. The Right of Way Coordinator will schedule a PRWC (Preliminary Right of Way Coordination) for the project upon receipt of the preliminary design plans. Those who are requested to attend the PRWC include the County Judge, District Engineer, representative of Roadway Design, and representatives from Acquisition and Utilities. The purpose of the PRWC is to allow each representative the opportunity to inspect the project with attention given to items such as drainage, road grade, home sites, improvements and utilities and the impact that the proposed acquisition will have on each of these. Necessary adjustments of the right of way limits or the alignment of the road can be recommended where it is deemed feasible.
- 6.5.2. At the PRWC, the Right of Way Coordinator will identify potential problem areas and suggest right-of-way revisions to be incorporated into the final right-of-way limits, and identify property lines, whenever possible, and indicate them on the construction plans. These marked plans will be sent to Engineering for further handling.



- 6.5.3. The Right of Way Coordinator is responsible for preparing a written report relative to the findings determined at the PRWC inspection. The report will note any changes to the plans that were agreed upon during the inspection. Improvements located within the proposed acquisition and any adjustment of man-made features, including utility facilities, will be identified so that the responsibility for handling these items can be stipulated within the report. A copy of this report is reviewed and approved by the Division Head and the Assistant Chief Engineer-Design and then distributed to those representatives who attended the inspection.
- 6.5.4. Roadway Design is responsible for completing the construction plans by establishing the needed right of way limits and will show the names of all the property owners with the assistance of the Right of Way Coordinator. The plans will then be forwarded to Engineering.
- 6.5.5. Upon completion of a preliminary review, Engineering provides Administrative with construction plans including right of way limits, section lines and property line information as provided by the Right of Way Coordinator.
- 6.5.6. Upon receipt of preliminary construction plans, Administrative personnel will research county tax records to determine the current ownership of each parcel of land abutting the proposed project and will furnish Engineering with current owner deeds and construction plans indicating approximate property lines.
- 6.5.7. Engineering sends construction plans and deeds to Appraisal. The construction plans will indicate tract numbers, property lines, ownership information, and areas to be acquired. The plans will indicate separate tracts for properties divided by a public road and the acquisition area will be calculated to the middle of the road.
- 6.5.8. Appraisal will provide Administrative with the estimated right of way costs needed to establish State allotment or request authority.
- 6.5.9. If displaced persons are involved, Relocation will provide estimated relocation costs to Administrative and make 15-B contacts.
- 6.5.10. Engineering prepares Court Order and delivers it to Acquisition.
- 6.5.11. Appraisal completes Estimates of Value and transmits them to Acquisition. If displaced persons are involved, appraisals are completed and sent to Relocation and Acquisition for handling.
- 6.5.12. After Environmental Clearance and authority to acquire (if necessary) has been received, Acquisition completes Negotiation Packets.
- 6.5.13. The Right of Way Coordinator will deliver the Court Order to the County Judge and explain the project. The Right of Way Coordinator will obtain

agreement from the Judge that, if condemnation is necessary, the Judge will execute the Court Order with the understanding that the AHTD will be responsible for all costs involved.

- 6.5.14. The Right of Way Coordinator will advise the Judge of the proposed letting date and schedule to acquire the needed right-of-way. The Right of Way Coordinator will invite the Judge to accompany him during the negotiations. If the Judge declines the invitation, the Right of Way Coordinator will make periodic reports to the Judge concerning the status of negotiations.
- 6.5.15. When displaced persons are involved, the Right of Way Coordinator and a Relocation Coordinator will meet together with the property owner to discuss the acquisition and relocation benefits.

## **6.6. REVISED APPRAISALS**

When a revised appraisal is necessary, the property owner is informed and will be contacted when the revised appraised value and just compensation of the property is determined.

## **6.7. CONTRACT TO SELL**

- 6.7.1. When an agreement is reached through negotiations, the property owner executes a Contract to Sell stating all terms of the transaction and containing a legal description of the property being acquired. Copies of the required supporting documents are obtained.
- 6.7.2. If an executed Contract to Sell includes improvements, it is reviewed by Property Management to determine if further handling is required as set forth in Section 8.5. The notarized Contract to Sell, an acceptance letter for execution by the Division Head, and a properly completed W9 form are included in the tract packet and sent to Administrative for further handling.

## **6.8. COMPENSATION DOCUMENTS**

- 6.8.1. When an agreement is reached through negotiations, the property owner signs a Compensation Document stating all terms of the transaction.
- 6.8.2. This document is dated, signed, acknowledged and notarized in order for the AHTD to requisition payment from the State Treasury and prepare the County Court Order to be recorded.
- 6.8.3. The Compensation Document provides for the owner to retain any improvements at the appraised salvage value and the date by which the improvements will be removed. In cases where the landowner does not retain improvements, the Compensation Document provides for an agreement as to the time the owner will give possession of said improvements.

- 6.8.4. The owner will post a bond, when required, at time of closing to insure that the premises are cleared of the above ground structures

## **6.9. ADMINISTRATIVE SETTLEMENTS**

- 6.9.1. Administrative settlements may be made upon consideration of counter offers received from the property owner after negotiations have been extended and exhausted at just compensation. These counter offers are received by the Acquisition Agent from the property owner and submitted to the Acquisition Section Head with recommendations for acceptance or rejection.
- 6.9.2. The Acquisition Section Head has authority to approve administrative settlements up to \$5,000.
- 6.9.3. The Division Head has authority to approve administrative settlements up to \$50,000.
- 6.9.4. The Assistant Chief Engineer-Design will approve administrative settlements greater than \$50,000.
- 6.9.5. Administrative settlements will consider the following:
  - 6.9.5.1. All available appraisals, including property owner's appraisal.
  - 6.9.5.2. The approved amount of just compensation.
  - 6.9.5.3. Recent court awards for similar type properties.
  - 6.9.5.4. Information recorded in the Acquisition Agent's Narrative.
  - 6.9.5.5. The range of probable testimony as to fair market value should condemnation be filed.
  - 6.9.5.6. The estimate of trial cost considered in conjunction with other information.
  - 6.9.5.7. The opinion of legal counsel when appropriate.

## **6.10. DONATIONS**

When a private property owner wishes to donate all or a portion of their property, the owner shall be informed of the right to receive just compensation for the property. The owner will also be advised of the right to an appraisal of the property by a qualified appraiser unless it is determined that the appraisal is unnecessary because the valuation problem is uncomplicated and the value estimate is no more than \$10,000. If the owner decides to donate, the owner will sign the Donation Agreement provided by the AHTD.

### **6.11. DONATIONS IN EXCHANGE FOR CONSTRUCTION FEATURES**

In accordance with 23 CFR 710.505(c), the AHTD may accept a property owner's offer to donate property, or a portion thereof, in exchange for construction features that will benefit the property owner. When the fair market value of the donation exceeds the cost of the construction feature, the property owner will be paid the difference. When the cost of the construction feature exceeds the fair market value of the donation, the property owner will be required to pay the additional cost.

### **6.12. CONDEMNATION – ARTERIAL PROJECTS**

- 6.12.1. The AHTD will take every available precaution to assure that it does not advance the time to condemnation, or defer negotiations or condemnation. If the AHTD and the property owner(s) are unable to reach an agreement, when the owners of record cannot be reached or other issues prevent the transfer of clear title, the AHTD will acquire the needed property through an eminent domain lawsuit as outlined in Section 3.82 of this manual.
- 6.12.2. On LPA projects for which the AHTD is acquiring the needed right of way, and the AHTD and the property owner(s) are unable to reach an agreement, when the owners of record cannot be reached or other issues prevent the transfer of clear title, the AHTD will recommend to the LPA that the needed property be acquired through an eminent domain lawsuit. A Condemnation Memorandum signed by the Acquisition or Appraisal Section Head recommending condemnation is sent to the appropriate LPA official for approval. The LPA will initiate an eminent domain lawsuit in accordance with State Law.

### **6.13. CONDEMNATION – COLLECTOR PROJECTS**

- 6.13.1. The Acquisition Section Head, after consultation with the Division Head, will recommend that condemnation proceedings be initiated.
- 6.13.2. A Condemnation Memorandum is signed by the Acquisition Section Head and sent to the County Judge for approval.
- 6.13.3. The tract packet is sent to Administrative for updating the title to the current date and ordering a voucher for County Road Fund. Once the state warrant is received, it is forwarded to the Right of Way Coordinator for delivery to the County Judge.
- 6.13.4. The Right of Way Coordinator will deliver the state warrant to the County Judge for deposit in the County Road Fund prior to the filing of the County Court Order. Additionally, three (3) copies of the County Court Order and one (1) copy of the Sheriff's Return will be delivered to the County Judge for recording.
- 6.13.5. The County Judge will direct the Sheriff to serve one (1) copy of the recorded County Court Order on each property owner condemned.

#### **6.14. RIGHTS OF ENTRY**

In exceptional circumstances, Rights of Entry are obtained from the property owner for construction purposes prior to transfer of the property.

## **SECTION 7**

### **LOCAL PUBLIC AGENCIES**

#### **7.1. RIGHT OF WAY AND UTILITY ADJUSTMENTS**

Whenever right of way acquisition is the responsibility of an LPA, Right of Way will assist by coordinating right of way inspections and supplying the LPA with the materials necessary to complete right of way activities.

Right of Way will verify that right of way acquisition and utility adjustments have been handled in compliance with all appropriate provisions of the Uniform Act, pertinent Federal Regulations, AHTD Right of Way Operations Manual, and the Stewardship and Oversight Agreement.

#### **7.2. PRELIMINARY RIGHT OF WAY CORRELATION (PRWC) INSPECTION**

7.2.1. The Right of Way Coordinator will schedule a field inspection on local road projects when Roadway Design has completed the preliminary design for the project. Individuals who may be involved with this inspection are:

7.2.1.1. County Judge or Mayor

7.2.1.2. District Engineer

7.2.1.3. Representative from Roadway Design

7.2.1.4. Representative from Utilities Section

7.2.1.5. Right of Way Coordinator

7.2.2. The project is inspected and the plans are reviewed with attention being given to items such as drainage, road grade, home sites, improvements, and utilities and the effect that the proposed right of way may have on each of these. Attendees should identify potential problem areas and suggest right of way revisions to be incorporated into the final design plans. If approved by the Design Engineer, suggested adjustments to the right of way limits or the alignment of the road may be made.

7.2.3. The Right of Way Coordinator will identify property lines, whenever possible, indicate them on the construction plans and provide the marked-up plans to Engineering for further handling.

7.2.4. The Right of Way Coordinator is responsible for preparing a written report relative to the findings as determined by the PRWC inspection.

7.2.4.1. The report will note any changes to the plans that were agreed upon during the inspection.

- 7.2.4.2. The report will identify the responsible party(s) for specific right of way activities and adjustment of man-made features, including utility facilities.
- 7.2.4.3. The report is reviewed and approved by the Division Head and Assistant Chief Engineer - Design and distributed to the parties that were present at the PRWC.

### **7.3. COURT ORDER PROCESS**

#### **7.3.1. Preparation Of The Court Order**

- 7.3.1.1. Upon receipt of preliminary construction plans from Roadway Design or State Aid, Right of Way will examine the county tax records to determine the correct owner of each parcel of land abutting the proposed improvement.
- 7.3.1.2. Upon receipt of ownership information and right of limits from Roadway Design or State Aid, Engineering will prepare the Right of Way plans and centerline description in accordance with Section 4.7 of this manual.
- 7.3.1.3. Upon receipt of the Right of Way plans and centerline description from Engineering, Acquisition will prepare the Court Order including a petition form listing all affected property owners. The Right of Way Coordinator will deliver the Court Order and acquisition documents to the LPA. Signatures must be secured for property owners donating or receiving just compensation for their property on the road project.

#### **7.3.2. Preliminary Acquisition Conference**

Upon delivery of the Court Order and acquisition documents to the LPA, the Right of Way Coordinator will:

- 7.3.2.1. Review the Court Order and acquisition documents addressing any issues and questions expressed by the LPA.
- 7.3.2.2. Review the Court Order making sure the local official is aware of what responsibilities he/she is to assume, and also what the AHTD will assume.
- 7.3.2.3. Explain the following items:
  - 7.3.2.3.1. Section 112 of the Federal Highway Amendments of 1974.
  - 7.3.2.3.2. Title III of the Uniform Relocations Assistance and Real Property Acquisition Policies Act.
  - 7.3.2.3.3. An outline of the right of way requirements that must be adhered to by the LPA official in the acquisition process.
  - 7.3.2.3.4. Information Sheet on Real Estate for County or City Acquisition
  - 7.3.2.3.5. Confidential records for files.

- 7.3.2.3.6. Petition for granting right of way.
  - 7.3.2.3.7. Compensation document.
  - 7.3.2.3.8. Sample letter for those refusing to donate.
- 7.3.2.4. The Court Order is delivered in triplicate and will be distributed when completed, as follows:
- 7.3.2.4.1. One of the copies, normally the original copy, will be for filing for record in the office of the County Clerk.
  - 7.3.2.4.2. The office initiating the order will keep a copy for their records, if needed.
  - 7.3.2.4.3. The third copy will be returned to the AHTD for their records. Should the initiating agency desire not to keep a copy of the order, two copies will then be returned to the AHTD.
- 7.3.2.5. A copy of the recorded order is sent to the appropriate District Engineer.

### **7.3.3. Acquisition Process**

- 7.3.3.1. Each LPA will, without exception, follow the provisions of the Uniform Act.
- 7.3.3.2. The LPA will obtain an estimate of value, from a person knowledgeable of real estate values in the area, on all property for which right of way will be needed. If this value is less than \$2,500.00, no appraisal will be required. If this value is more than \$2,500.00, an appraisal must be made by a qualified appraiser and approved by Right of Way prior to the beginning of negotiations with the property owner.
- 7.3.3.3. When requested by the LPA, the AHTD may consent to perform the appraisal work and provide it to them for further action.
- 7.3.3.4. Every owner will have the right to examine the plans on the project. All questions relative to the property or construction, which cannot be answered by the LPA, will be referred to the Right of Way Coordinator, Resident Engineer or District Engineer.
- 7.3.3.5. When a property owner wishes to donate all or a portion of their property, the owner shall be informed of the right to receive just compensation for the property. The owner will also be advised of the right to an appraisal of the property by a qualified appraiser unless it is determined that the appraisal is unnecessary because the valuation problem is uncomplicated and the value estimate is no more than \$2500. If the owner decides to donate, the owner will sign the Donation Agreement provided by the AHTD.



- 7.3.3.6. Filing of a condemnation order on any owner is done if, after repeated contacts and attempts to negotiate, the owner refuses to sign the petition or compensation document.
- 7.3.3.7. The LPA will be responsible to see that the condemned owner is properly and legally served the order as furnished by the AHTD.
- 7.3.3.8. In those cases where a value of just compensation is determined due to the taking of the right of way or being assigned damages, a petition is prepared whereby the owner agrees to accept the amount of the determined compensation. The LPA will make payment to the owner promptly upon receipt of the owner signing the petition.

#### **7.4. ARKANSAS TRANSPORTATION ENHANCEMENT PROGRAMS (ATEP)**

The AHTD and Local Sponsor, in cooperation with the FHWA, will participate in a cooperative program for implementation of enhancement projects. These projects are subject to the requirements of the Uniform Act.

##### **7.4.1. Project Initiation**

The general steps necessary to implement the right of way acquisition functions of an enhancement project are listed below.

- 7.4.1.1. Project application submitted by Sponsor.
- 7.4.1.2. Approval letters sent to Sponsors by Commission.
- 7.4.1.3. Sponsor's Consultant prepares plans, specifications and estimate.
- 7.4.1.4. If additional right of way is needed, authority to appraise and acquire will be obtained from FHWA upon completion of environmental handling.
- 7.4.1.5. Construction allotment issued by the AHTD.

##### **7.4.2. Sponsor Responsibilities**

- 7.4.2.1. Before acquiring additional property, the Sponsor will submit a letter to Right of Way which either:
  - 7.4.2.1.1. Stipulates the services relative to right of way acquisition, appraisal, relocation, and utilities that the Sponsor will assume, or
  - 7.4.2.1.2. Requests that the AHTD handle some or all of these services. Acquisition of property must be accomplished in accordance with the Uniform Act and Federal regulations.
- 7.4.2.2. The Sponsor will begin acquisition of right of way upon notification by the Right of Way Coordinator.

- 7.4.2.3. Sponsor submits a letter certifying the ownership of the needed right of way was acquired in accordance with Federal regulations.
- 7.4.2.4. After acquisition activities are complete, the Sponsor will submit a certification letter to the AHTD stating the Sponsor has clear and unencumbered title to any real property to be used for the project in accordance with the Right of Way Operations Manual, the Uniform Act and Federal regulations.
- 7.4.2.5. The Sponsor will retain all records relating to inspection and certification, and any other files necessary to document the acquisition and ownership of right of way in accordance with FHWA regulations.
- 7.4.2.6. The Sponsor will grant the right of access to Sponsor's records pertinent to this project and the right to audit by AHTD and FHWA officials.
- 7.4.2.7. Sponsor advertises for construction bids.
- 7.4.2.8. Sealed bids received by Sponsor and opened at public meeting.

### **7.4.3. Right Of Way Division Responsibilities**

- 7.4.3.1. When requested, provide the necessary services relative to right of way acquisition, appraisal, relocation, and utility adjustments in accordance with the Uniform Act and Section 6 of this manual.
- 7.4.3.2. When the Sponsor is acquiring right of way, the Right of Way Coordinator may periodically review the acquisition files for compliance with the Uniform Act, documenting the review by memorandum.
- 7.4.3.3. Upon receipt of the Sponsor's certification of right of way (property) ownership, the Right of Way Coordinator will conduct a final review of the acquisition file for compliance with the Uniform Act, documenting the review by memorandum.
- 7.4.3.4. Upon verification of compliance with the Uniform Act, the Right of Way Coordinator recommends certification of the project.
- 7.4.3.5. AHTD certifies right of way based on Sponsor's documentation and Right of Way Coordinator's review.

## **7.5. NEGOTIATION ACTIVITIES – COLLECTOR PROJECTS**

- 7.5.1. Roadway Design is responsible for completing the construction plans by establishing the needed right of way limits and will show the names of all the property owners with the assistance of the Right of Way Coordinator. The plans will then be forwarded to Engineering.
- 7.5.2. After Environmental Clearance and authority to acquire (if necessary) has been received, Acquisition completes Negotiation Packets.

- 7.5.3. The Right of Way Coordinator will deliver the Court Order to the County Judge and explain the project. The Right of Way Coordinator will obtain agreement from the Judge that, if condemnation is necessary, the Judge will execute the Court Order with the understanding that the AHTD will be responsible for all costs involved.
- 7.5.4. The Right of Way Coordinator will advise the Judge of the proposed letting date and schedule to acquire the needed right-of-way. The Right of Way Coordinator will invite the Judge to accompany him during the negotiations. If the Judge declines the invitation, the Right of Way Coordinator will make periodic reports to the Judge concerning the status of negotiations.
- 7.5.5. When displaced persons are involved, the Right of Way Coordinator and a Relocation Coordinator will meet together with the property owner to discuss the acquisition and relocation benefits.

## SECTION 8

### PROPERTY MANAGEMENT

#### 8.1. GENERAL

Property Management activities are performed by the Property Manager, under the direction of the Acquisition Section Head.

#### 8.2. RESPONSIBILITIES

Property Management is responsible for maintenance, management and disposition of properties acquired for proposed highway projects in a manner consistent with the public interest to reflect the maximum long-range public benefit. These responsibilities include, but are not limited to, the following activities:

- 8.2.1. Maintaining a current and accurate inventory of land and improvements needed as right of way in connection with each proposed highway project until the project is let.
- 8.2.2. Maintaining a current and accurate inventory of land and improvements acquired by the AHTD as uneconomic remnants in connection with a proposed highway project.
- 8.2.3. Collecting samples for asbestos testing and, when necessary, hiring an asbestos testing lab and/or asbestos abatement contractor in accordance with AHTD policies and procedures contained in Section 8.17.
- 8.2.4. Clearing the right of way for construction through the hiring of demolition contractors in accordance with AHTD policies and procedures contained in Section 8.6.
- 8.2.5. Leasing property acquired by the AHTD, collecting rents, and conducting no less than quarterly inspections of the leased property to assure that the property is being properly utilized and maintained in accordance with the lease.
- 8.2.6. Conducting no less than quarterly inspections of all acquired rights of way, vacant or improved, prior to construction to assure that the AHTD's property is free of debris and weeds.
- 8.2.7. Arranging for the cleanup, maintenance and security of AHTD right of way and property through coordination with the appropriate District, or through the hiring of an appropriate contractor in accordance with AHTD policies and procedures contained in Section 8. 5.
- 8.2.8. Disposal of surplus property in accordance with applicable AHTD policies and procedures, State law and Federal regulations.

### **8.3. PROPERTY INSPECTIONS PRIOR TO INITIATION OF NEGOTIATIONS**

Whenever the acquisition of right of way requires the AHTD to purchase real property, Property Management will complete the following steps prior to the initiation of negotiations:

- 8.3.1. Schedule a field inspection of the project area within thirty days after preliminary right of way plans are received to identify improvements that will be acquired or impacted by the proposed highway project, including a thorough investigation of each tract for other improvements such as: water wells and risers, septic systems and private lines.
- 8.3.2. Make a listing of all affected improvements identified during the field inspection noting the location of each improvement on the preliminary right of way plans. This listing shall include all improvements that could interfere with the proposed highway construction or relocation of utilities.
- 8.3.3. Photograph all improvements within the project area.
- 8.3.4. Search for evidence of USTs, tank pumping systems, and any other indications of other hazardous waste or materials in accordance with Section 8.18.
- 8.3.5. Review the appraisal or compensation estimate to identify improvements, above or below ground, located within the acquisition area.
- 8.3.6. Compare the improvement listing compiled during the field inspection with the improvements identified and listed in the individual reports to assure that all affected improvements have been included.
- 8.3.7. Include the information obtained from the reports on the Improvement Checklist and establish the bond amount required for any improvements that property owner may be given an option to retain. This information will be retained as a reference for identifying possible demolitions and for inclusion, if appropriate, in the Removal and Disposal (R & D) List provided to Roadway Design.
- 8.3.8. If a Cost-to-Cure amount is included in the report, determine a bond amount sufficient to cover the AHTD's cost to remove the referenced improvements, should the grantor fail to do so.

### **8.4. HAZARDOUS MATERIALS**

- 8.4.1. During the initial job inspection, the Property Manager must closely examine every tract for issues related to possible contamination and be aware of the past uses of the property. If these past uses would indicate the potential of contamination, further investigation should be conducted prior to the initiation of negotiations. Property Management should be aware of the following

current use or past use of a property concerning the following activities (this list is not intended to be all inclusive):

- 8.4.1.1. Wood preservative manufacturing
  - 8.4.1.2. Bulk oil or gasoline terminals
  - 8.4.1.3. Insecticide manufacturing
  - 8.4.1.4. Electroplating
  - 8.4.1.5. Computer chip and/or printer circuit board manufacturing
  - 8.4.1.6. Coal gasification plants
  - 8.4.1.7. Sanitary landfills
  - 8.4.1.8. Machine shops with degreasing operations
  - 8.4.1.9. Chemical manufacturing and/or distribution
  - 8.4.1.10. Dry cleaning operations
- 8.4.2. Property Management should, whenever possible, obtain a listing of contaminated sites (petroleum, solid/hazardous waste) located on or adjacent to the proposed highway project from the ADEQ.
- 8.4.3. If any of the foregoing steps cause Property Management to suspect contamination, further investigation should be conducted through contacting the appropriate environmental regulatory agency. Usually a phone call, identifying the property by owner's name and street address, is sufficient to find if the property has an environmental record.

## **8.5. PROPERTY MANAGEMENT ACTIVITIES AFTER ACQUISITION**

After the Acquisition Section has negotiated the purchase of the tract with the property owner or it has been determined that the tract must be acquired through condemnation under the power of eminent domain, the tract packet will be sent to the Property Manager for final review. The Property Manager will undertake the following actions, as appropriate:

- 8.5.1. Prior to closing, review the tract packet to ascertain the decision of the property owner regarding retention of the improvements.
  - 8.5.1.1. If the property owner has elected to remit the salvage value and posts the necessary bond at closing in order to retain the improvement, the Contract to Sell executed by the property owner will indicate that improvements retained must be removed within thirty (30) calendar days after closing.
  - 8.5.1.2. If the property owner has elected not to retain the improvement, and any portion of the structure to be removed lies outside of the proposed

acquisition area, an executed demolition easement has been included in the tract packet.

- 8.5.2. Make subsequent inspections to determine the progress of the removal of improvements that have been retained by the property owner and to formulate the method of disposal of the improvements not retained.
- 8.5.3. Complete an asbestos inspection upon notification from Administrative and Relocation that the property owner has been paid and vacated the property. This inspection should be completed within ten (10) calendar days after the date of notification.
- 8.5.4. Insure the removal of all improvements located within the project area in a timely manner to prevent delay of scheduling of projects to letting. In an effort to reduce erosion, retaining walls and concrete driveways may not be included in the demolition contract but will be listed in the R & D List.
- 8.5.5. Compile a final R & D List consisting of structures to be removed, including buildings, slabs, footings, foundations, wells, septic systems, storm cellars and any other man-made object within the project area.
- 8.5.6. Ascertain which tracts have been condemned to determine if any portion of a structure to be removed lies outside of the proposed acquisition area. If so, verify a legal description and sketch have been included in the tract packet and forward the information to Legal for inclusion in the condemnation file.
- 8.5.7. Maintain the Improvement Checklist until all improvements have been removed.

## **8.6. REMOVAL AND DISPOSAL OF IMPROVEMENTS**

Whenever the AHTD acquires an improved property, the following options for disposal will be considered.

### **8.6.1. Retention by Grantor**

The preferred method of removal of improvements is retention by the property owner. Under this method, the owner pays the salvage value determined by Appraisal, posts a performance deposit or bond, and then removes the improvements.

If the grantor elects to retain the improvements and the proposed letting date is scheduled to occur sixty (60) calendar days or more in the future, Property Management will proceed as follows.

- 8.6.1.1. If relocation assistance is not involved or displaced person vacates prior to closing, improvements are to be removed within thirty (30) calendar days of the closing date. If relocation assistance is involved, improvements are to be removed within thirty (30) calendar days of the final vacate date.

- 8.6.1.2. The grantor will be advised by certified mail of the specific date that the retained improvements must be removed or the performance deposit will be subject to forfeiture.
- 8.6.1.3. When the land is cleared, the grantor will notify Property Management. Upon such notification, Property Management will inspect the site within ten (10) calendar days to verify that it has been cleared. When the Property Manager has determined that clearance is satisfactory, the performance deposit will be released.

### **8.6.2. Public Sale**

If the grantor does not elect to retain the improvements and the proposed letting date is scheduled to occur sixty (60) calendar days or more in the future, Property Management will inspect the property to determine whether the improvements can be moved prior to the proposed letting date. If Property Management determines that the improvements can be sold and moved prior to the proposed letting date, a public auction will be held.

Prior to the sale of any improvements, Property Management will complete the necessary steps to have each improvement tested for asbestos. If positive results are obtained, the asbestos will be abated in accordance with Section 8.17.

- 8.6.2.1. Block advertisements that provide the job number, project name, date and time of the sale, physical address, and any other information needed to locate and identify the improvement are placed in a newspaper licensed to publish public notifications in the county where the project is located. These advertisements shall state if the sale will be through open bidding or sealed bidding.
- 8.6.2.2. Property Management maintains a list of prospective buyers and each is mailed a copy of the advertisement.
- 8.6.2.3. After the auction, the results of each sale are forwarded by memorandum from the Property Manager to the Division Head, through the Acquisition Section Head, recommending acceptance or rejection of the bid.
- 8.6.2.4. Upon acceptance of the bid, the successful bidder will be required to remove the improvements by a specified date and guarantee clearance with a performance deposit or bond to be determined by Property Management.
- 8.6.2.5. When the land is cleared, the bidder will notify Property Management that removal of the improvement has been completed. Upon such notification, the Property Manager will inspect the site within ten (10) calendar days to verify that it has been cleared. When the Property Manager has



determined the clearance is satisfactory, the performance deposit will be released.

### **8.6.3. Demolition Contract**

If options described in Sections 8.6.1 or 8.6.2 are not possible or practical, and the proposed letting date is scheduled to occur sixty (60) calendar days or more in the future, bids for demolition of improvements and clearance of the land will be solicited.

Prior to the demolition of any improvements, Property Management will complete the necessary steps to have each improvement tested for asbestos. If positive results are obtained, the asbestos will be abated in accordance with Section 8.17.

After it has been determined that the improvements will be removed through demolition, Property Management will compile a list of improvements to be removed, including buildings, slabs, footings, foundations, wells, septic systems, storm cellars or any other man-made object within the acquisition area and solicit bids from demolition contractors as specified in Section 3.20 of this manual.

- 8.6.3.1. The contractor will be required to clear the land by a specified date and guarantee clearance with a performance deposit to be determined by the Property Manager.
- 8.6.3.2. When the land is cleared, the contractor will notify Property Management that removal of the improvements has been completed. Upon such notification, the Property Manager will inspect the site to verify that it has been cleared. When the clearance is satisfactory, the performance deposit will be released.

### **8.6.4. Removal at Highway Construction**

Every effort shall be made by Property Management to remove improvements prior to the letting. However, the removal of improvements may be included in the Roadway Construction Contract as removal and disposal items when it has been determined to be feasible and necessary.

If the letting date is scheduled to occur less than sixty (60) calendar days after the property is acquired, improvements will be included in the R & D List. Prior to inclusion on the R & D List, Property Management will test each improvement for asbestos. If positive results are obtained, the asbestos will be abated in accordance with Section 8.17.

## **8.7. SEPTIC SYSTEMS**

When a functional septic system is encountered during construction, Property Management will take the following steps:

- 8.7.1. Advise the Acquisition Section Head of the discovery of the system.
- 8.7.2. Coordinate with Acquisition Section Head, Appraisal, other Sections and the Resident Engineer to determine if the septic system has been previously identified and addressed during the right of way acquisition process.
- 8.7.3. If not previously identified and addressed, contacts a designated representative (DR) of the County Sanitarian to perform a percolation test and prepare a design for the new system or modification of the existing system that is acceptable to the County Sanitarian and approved by the Arkansas Department of Health (Health Department).
- 8.7.4. Solicits bids from authorized septic system installers based on the approved design in accordance with Section 3.20 of this manual.
- 8.7.5. Prepares the contract with specifications, attachments, and sketches for septic tank installation or modification and then submits for approval by the Acquisition Section Head and Division Head.
- 8.7.6. Sends the approved contract to the successful bidder for execution.
- 8.7.7. Submits the bidder executed contract to the Division Head for signature.
- 8.7.8. Provides a copy to the successful contractor with the work order to proceed with the work.
- 8.7.9. Verifies that work was performed in accordance with the contract or requests that the contractor fulfill contractual obligations.
- 8.7.10. Upon satisfactory completion of the work, obtains a release from the property owner stating that the property owner will save and hold harmless the Commission, the AHTD and its employees, and its contractor from any further responsibility regarding the replacement or repair of the septic system.
- 8.7.11. Submits vendor invoice for payment.

## **8.8. WATER WELLS**

Compensation for the replacement of water wells is normally included in the appraisal as a cost-to-cure item. If pumping equipment is retained by the property owner, the Contract to Sell stipulates that the property owner must close the well in accordance with the Arkansas Water Well Construction Commission regulations. In addition to these regulations, the property owner will be required to post a performance deposit and comply with all other requirements in accordance with Section 8.6.1 of this manual.

When asked to assist in the replacement or closing of a water well, Property Management will perform the following steps:

- 8.8.1. Solicits bids from contractors licensed by the Arkansas Water Well Construction Commission in accordance with Section 3.20 of this manual.
- 8.8.2. Prepares the contract with specifications, attachments, and sketches for replacement or closing of water wells and then submits for approval by the Acquisition Section Head and Division Head.
- 8.8.3. Sends the approved contract to the successful bidder for execution.
- 8.8.4. Submits the bidder executed contract to the Division Head for signature.
- 8.8.5. Provides a copy to the successful contractor with the work order to proceed with the work.
- 8.8.6. Verifies that work was performed in accordance with the contract or requests that the contractor fulfill contractual obligations.
- 8.8.7. Upon completion, a release stating the owner will save harmless the Commission and or its contractor from any further responsibility regarding the well system, is prepared between the well owner and the Commission.
- 8.8.8. Submits vendor invoice for payment.

## **8.9. ENCROACHMENTS**

The District Engineer is responsible for the removal of encroachments within the existing right of way. Property Management should ascertain and note any encroachments on the initial project inspections and advise the District Engineer, by memorandum, of the type and location of the encroachments. If requested, Property Management will coordinate with the District Engineer and the Legal Division to complete the steps necessary to allow the encroachment to be included as an item on the R & D List.

## **8.10. RODENT CONTROL**

Property Management will inspect all vacant AHTD owned buildings to determine the need for rodent control. If deemed necessary, Property Management will secure rodent control services from a licensed and bonded exterminator within ten (10) calendar days after the building is vacated, in accordance with Section 3.20 of this manual. A copy of the exterminator's certification is to be maintained in the file.

Property Management's file will reflect any findings and any rodent control measures taken.

## **8.11. RENTAL OF AHTD-OWNED PROPERTY**

### **8.11.1. Short Term Rental Agreements**

Properties not immediately needed for highway construction may be temporarily leased to the grantor or occupant until the property is required for

the relocation of utilities or actual highway construction. The determination to rent property is made by the Division Head upon recommendation of Property Management and concurrence of the Acquisition Section Head. Most rentals are on a month-to-month basis pending final disposition of the property. Property Management will administer the rental of property as follows:

- 8.11.1.1. A copy of the fully executed rental agreement is provided to the tenant and the original is retained in Property Management's file.
- 8.11.1.2. Statements of rents due shall be prepared and mailed to each tenant no later than the 25th of each month for the upcoming month.
- 8.11.1.3. On the first business day of each month, Property Management shall complete a report of rents collected during the prior month and submit it to the Acquisition Section Head.
- 8.11.1.4. Rental income is submitted to Fiscal Services for deposit in the General Fund.

## **8.12. PROPERTY RENTAL BY AHTD PRIOR TO ACQUISITION**

- 8.12.1. If during the appraisal or negotiation phases of a project, Division personnel discover that an improved property located within the proposed right of way is vacant and available for rent, or will become vacant and available for rent prior to the final acquisition of the property, they will immediately furnish the following information to their Section Head:
  - 8.12.1.1. Number of available units and the correct address
  - 8.12.1.2. Rental amount
  - 8.12.1.3. Name of the property owner or managing agent, address, telephone number and any additional contact information
- 8.12.2. The Section Head will forward the information to the Assistant Division Head for review. The Assistant Division Head will consult with Appraisal and Relocation to determine if it is cost effective to rent the vacant unit. If not cost effective, the Assistant Division Head will advise the property owner or managing agent in writing of the decision not to rent.
- 8.12.3. If cost effective, the Assistant Division Head will:
  - 8.12.3.1. Direct Appraisal to determine the economic rent.
  - 8.12.3.2. Direct Acquisition to contact the property owner or managing agent to negotiate a mutually acceptable rental agreement, subject to cancellation by the AHTD after giving thirty (30) calendar days notice.
- 8.12.4. Property Management will initiate the processing and payment of the monthly rent to the property owner or managing agent.

### **8.13. RECEIPTS FROM PUBLIC SALES AND PERFORMANCE DEPOSITS**

Payments received from public sales are submitted to Administrative. Performance deposits are submitted to Fiscal Services for deposit in the General Fund.

The Fiscal Services Division acknowledges the receipt of these funds in a space provided on the bottom of the Performance Deposit form, and a copy is retained in Property Management files.

Performance deposits are refunded after satisfactory removal of and clean up of improvements.

### **8.14. MANAGEMENT OF AIRSPACE**

#### **8.14.1. GENERAL**

Use of airspace by a public or private entity may be permitted, if the use does not interfere with the operations of the road facility nor jeopardize its safety. The process is as follows:

- 8.14.1.1. An individual, company, organization, or public agency desiring to use airspace shall submit a written request to the District Engineer stating the proposed use.
- 8.14.1.2. The District Engineer shall confer with Planning, Roadway Design, any other AHTD Division or outside agency necessary to confirm that the proposed use will not interfere with the future use of the area for highway purposes, and will not affect the safe and proper operation and maintenance of the existing highway facility.
- 8.14.1.3. Upon an affirmative finding by the District Engineer, a memorandum recommending the approval of an Airspace Agreement is transmitted to the Assistant Chief Engineer-Design.
- 8.14.1.4. If the request is not approved, the Assistant Chief Engineer-Design will advise the District Engineer by memorandum, and the District Engineer will advise the requesting party in writing that their request has been declined.
- 8.14.1.5. If the request is approved, the Assistant Chief Engineer-Design will advise the District Engineer by memorandum and will direct the Right of Way Division to initiate the necessary steps to execute an Airspace Agreement.
- 8.14.1.6. Property Management through the Acquisition Section Head will request by memorandum that Environmental evaluate and document the effects of the proposed airspace usage.
- 8.14.1.7. Upon receipt of environmental clearance, the Property Manger will request by memorandum through the Acquisition Section Head, that

Engineering prepare a legal description of the proposed airspace boundaries.

- 8.14.1.8. Upon the receipt of the legal description, Property Management requests by memorandum through the Acquisition Section Head, that Legal prepare the Airspace Agreement and Commission Minute Order.

#### **8.14.2. Federal Oversight**

- 8.14.2.1. FHWA approval of the Airspace Agreement is required, if the airspace boundaries encompass any of the following right of way:

- 8.14.2.1.1. a bridge;
- 8.14.2.1.2. a controlled access facility; or
- 8.14.2.1.3. any part of the Interstate System.

- 8.14.2.2. The Division Head transmits the Airspace Agreements by letter to FHWA requesting approval.

- 8.14.2.3. Upon approval by FHWA, the Division Head transmits the proposed Airspace Agreement and Minute Order to the Assistant Chief Engineer-Design.

- 8.14.2.4. The Assistant Chief Engineer-Design submits the proposed Airspace Agreement and Minute Order to the Director for consideration by the Commission.

- 8.14.2.5. After the Commission has passed the Minute Order authorizing the Director to execute the Airspace Agreement, two original copies are transmitted to the requesting party for signatures.

- 8.14.2.6. After two signed copies have been returned, the Director will sign both copies.

- 8.14.2.7. One fully executed copy is returned to the requesting party, and the other copy is retained in Right of Way's permanent files.

#### **8.14.3. State Oversight**

- 8.14.3.1. Upon receipt from Legal, the Division Head transmits the proposed Airspace Agreement and Minute Order to the Assistant Chief Engineer-Design.

- 8.14.3.2. The Assistant Chief Engineer-Design submits the proposed Airspace Agreement and Minute Order to the Director for consideration by the Commission.

- 8.14.3.3. After the Commission has passed the Minute Order authorizing the Director to execute the Airspace Agreement, two original copies are transmitted to the requesting party for signatures.
- 8.14.3.4. After two signed copies have been returned, the Director will sign both copies.
- 8.14.3.5. One fully executed copy is returned to the requesting party, and the other copy is retained in Right of Way's permanent files.

## **8.15. RELINQUISHMENT OF RIGHT OF WAY**

- 8.15.1. Construction of a highway occasionally involves the taking or disruption of a part of another governmental agency's road system. When this occurs, replacement lands are acquired on behalf of that agency as a part of the main project for the purpose of reconstructing or reconnecting the other governmental agency's road system. After construction, the lands are relinquished to that agency and permanent maintenance becomes their responsibility.
- 8.15.2. Where the construction of a facility disrupts or necessitates the construction of a frontage road or similar facility for another governmental agency, the construction is sometimes accomplished as a joint project between the AHTD and the other governmental agency.
  - 8.15.2.1. The other governmental agency usually furnishes the right of way to the AHTD for construction of the project.
  - 8.15.2.2. After construction, the lands are relinquished to that agency and permanent maintenance becomes their responsibility.

## **8.16. SURPLUS PROPERTY**

### **8.16.1. General**

When right of way is no longer necessary or desirable for highway purposes, the property may be declared surplus by the Commission. The following steps are required for all surplus property releases:

- 8.16.1.1. All requests for declaring right-of-way surplus for disposal must originate by the interested party through the District Engineer's office.
- 8.16.1.2. The District Engineer inspects the area requested to be declared surplus and confers with Planning, Roadway Design, any other Divisions or outside agency necessary to determine if the area is needed or will be needed in the foreseeable future for highway purposes, and whether the subject area should be retained in order to preserve or improve the scenic beauty and environmental quality adjacent to the highway.
- 8.16.1.3. A written recommendation for declaring right-of-way surplus for disposal is submitted to the Division Head by the District Engineer.

- 8.16.1.4. Engineering researches the job to determine the manner in which the right-of-way was acquired upon request of Division Head.
- 8.16.1.5. Division Head submits information received from Engineering to the Assistant Chief Engineer-Design for review and concurrence.

#### **8.16.2. Non-controlled access highways:**

Upon approval by the Assistant Chief Engineer-Design, the Division Head will instruct the Acquisition Section Head to request Engineering prepare plans and legal descriptions of area(s) to be released.

#### **8.16.3. Interstate and limited access control highways:**

Upon approval by the Assistant Chief Engineer-Design, the Division Head will submit the recommendation from the District Engineer, a copy of the sketch and a legal description to FHWA requesting approval to release the surplus property.

#### **8.16.4. Fee Owned Land**

The party from whom the property was originally acquired, their heirs, successors, or assignees are offered the first right to repurchase the surplus property. If the party with the right of first refusal cannot be located and does not respond to public notification advising of the proposed disposal of the property within sixty (60) calendar days, the property may be disposed of at a public sale in accordance with State Law.

If an entire parcel is declared surplus, the original property owner may reacquire the property by refunding the price for which the Commission paid.

If the disposal is a remnant or portion of the original acquisition, the following steps apply:

- 8.16.4.1. Property Management transmits an assignment of interest form to the potential buyer to be signed by the property owner from whom the right-of-way was originally acquired, whenever necessary. (If the prospective buyer is unable to obtain an assignment, the property may be sold at public sale in accordance with State Law.)
- 8.16.4.2. If Surveys after consultation with Engineering determines a private survey is required, Property Management will notify the District Engineer. The District Engineer will then notify potential buyer.
- 8.16.4.3. When the private survey is received by the District Engineer, it is transmitted by memorandum to the Division Head.



- 8.16.4.4. The Division Head forwards the memorandum and survey to Property Management to submit to the Engineering Section Head for preparation of a sketch and legal description.
- 8.16.4.5. Environmental is requested to review the area to be released and provide a recommendation and environmental documentation regarding the proposed release.
- 8.16.4.6. A copy of the sketch and legal description are forwarded to the Appraisal Section for the preparation of an appraisal, if required. The fair market value will be determined by three (3) appraisers.
- 8.16.4.7. Property Management contacts the prospective buyer and presents the offer to sell at the appraised value.
  - 8.16.4.7.1. If the prospective buyer agrees to the value established by the AHTD, the District Engineer's memorandum, legal description and sketch, assignment form, the Environmental review and appraisal are transmitted to the Legal for preparation of Quitclaim Deed, if required, and a Commission Minute Order.
  - 8.16.4.7.2. If the potential buyer offers less than the current fair market value of the property, the AHTD may submit a request to FHWA recommending acceptance of the offer. If approved by FHWA, the District Engineer's memorandum, legal description and sketch, assignment form, the Environmental review and appraisal are transmitted to Legal for preparation of Quitclaim Deed, if required, and a Commission Minute Order.
- 8.16.4.8. The completed Minute Order and Deed are sent to Property Management for transmittal to the Assistant Chief Engineer-Design for presentation to the Commission.
- 8.16.4.9. Upon approval by the Commission and receipt of payment in full from the buyer, Property Management transmits the deed to Administrative to be recorded.
- 8.16.4.10. Once recorded the deed is scanned to the Right of Way Archives and the original is returned to Property Management for transmittal to the buyer.

#### **8.16.5. Right of Way Acquired By Court Order**

Right of way acquired through the Court Order process only acquires a surface easement necessary for construction and maintenance of the highway. While this property interest may be used for highway purposes, it cannot be sold. The Commission may abandon all or a portion of the easement obtained by court order effecting a reduction in width of the needed right-of-way. The Commission may then direct that the right of

way be reduced, re-monumented and the plans changed. This is the extent of the action available to the Commission.

- 8.16.5.1. All requests for declaring right-of-way surplus for disposal must originate by the interested party through the District Engineer's office.
- 8.16.5.2. The District Engineer inspects the area requested to be declared surplus and confers with Planning, Roadway Design, any other Divisions or outside agency necessary to determine if the area is needed or will be needed in the foreseeable future for highway purposes, and whether the subject area should be retained in order to preserve or improve the scenic beauty and environmental quality adjacent to the highway.
- 8.16.5.3. A written recommendation for declaring right-of-way surplus for disposal is submitted to the Division Head by the District Engineer.
- 8.16.5.4. Engineering researches the job to determine the manner in which the right-of-way was acquired upon request of Division Head.
- 8.16.5.5. Division Head submits information received from Engineering to the Assistant Chief Engineer-Design for review and concurrence.
- 8.16.5.6. If Surveys after consultation with Engineering determines a private survey is required, Property Management will notify the District Engineer. The District Engineer will then notify potential buyer.
- 8.16.5.7. When the private survey is received by the District Engineer, it is transmitted by memorandum to the Division Head.
- 8.16.5.8. The Division Head forwards the memorandum and survey to Property Management to submit to the Engineering Section Head for preparation of a sketch and legal description.
- 8.16.5.9. Environmental is requested to review the area to be released and provide a recommendation and environmental documentation regarding the proposed release.
- 8.16.5.10. The District Engineer's memorandum, legal description and sketch and the Environmental review are transmitted to Legal for preparation of a Commission Minute Order.
- 8.16.5.11. The completed Minute Order is sent to Property Management for transmittal to the Assistant Chief Engineer-Design for presentation to the Commission.
- 8.16.5.12. A certified copy of the Minute Order will be filed in the county court records and a copy furnished any interested person for use in establishing or acquiring clear title. This effectively returns the

easement to the county's jurisdiction and title thereto is to be resolved between the requesting party and the county.

## **8.17. ASBESTOS**

Asbestos inspection, sampling, abatement, and abatement monitoring will be initiated by Property Management as needed. The Arkansas Department of Environmental Quality (ADEQ) is the state agency with jurisdiction over asbestos removal. The Property Manager is required to be certified as an Accredited Asbestos Inspector by the ADEQ.

### **8.17.1. Inspection**

- 8.17.1.1. Prior to the sale or demolition of improvements (including mobile homes) located on tracts acquired by AHTD, each improvement must be inspected to determine the presence of asbestos. If asbestos is found in any improvement, it must be removed prior to sale or demolition.
- 8.17.1.2. The inspection process may be initiated prior to AHTD's obtaining possession of a property. Property Management will make every effort to obtain the grantor's permission to enter the premises to collect the necessary samples for laboratory testing and analysis. If permission cannot be obtained, the inspection should be completed within fifteen (15) calendar days after possession is obtained.

### **8.17.2. Abatement and Removal**

- 8.17.2.1. Property Management will inspect the property for the existence of asbestos. If asbestos is found to be present, they will solicit bids from contractors licensed by the ADEQ to remove asbestos in accordance with Section 3.20 of this manual.
- 8.17.2.2. Prepares the contract with specifications, attachments, and sketches for removal of asbestos and then submits for approval by the Acquisition Section Head and Division Head.
- 8.17.2.3. Sends the approved contract to the successful bidder for execution.
- 8.17.2.4. Submits the bidder executed contract to the Division Head for signature.
- 8.17.2.5. Provides a copy to the successful contractor with the work order to proceed with the work.
- 8.17.2.6. Verifies that work was performed in accordance with the contract or requests that the contractor fulfill contractual obligations.
- 8.17.2.7. Submits vendor invoice for payment.

**8.18. UNDERGROUND STORAGE TANKS (UST)**

When an underground storage tank (UST) has been discovered, Property Management solicits bids from contractors licensed by the ADEQ to remove or close the UST. Contracts will be awarded in accordance with Section 3.20 of this manual.

Property Management prepares the contract with specifications, attachments, and sketches for removal of the UST and then transmits it to the successful contractor for execution.

- 8.18.1. When the executed contract is returned, Property Manager executes it and provides a copy to the successful contractor with the work order to proceed with the work.
- 8.18.2. The successful contractor prepares and sends the Thirty Day Notice information to the ADEQ with a copy to Property Management.
- 8.18.3. Inspection is performed by Property Management or the Resident Engineer.

## **SECTION 9**

### **RELOCATION**

#### **9.1. PLANNING**

The initial relocation process for a specific job can be initiated from different sources: Relocation Cost Estimate Request, Conceptual Stage Study Request, or Relocation Determination/Field Inspection.

##### **9.1.1. Cost Estimates**

When right of way plans are 50% complete, Relocation submits a relocation cost estimate to Administrative for use to obtain authority to appraise or acquire right of way. Requests for cost estimates may be received for other purposes from Environmental, Roadway Design, and the Division Head.

Upon receipt of a request, the Relocation Section Head will assign a Relocation Coordinator to inspect the proposed right of way based upon available right of way and construction plans, aerial photograph or alignment maps. Some requests may include multiple alignments that will require a separate estimate for each.

To complete a cost estimate, the Relocation Coordinator will:

- 9.1.1.1. Conduct an on-site inspection and note all possible displacements on the mapping provided.
- 9.1.1.2. Estimate the relocation cost, prepare and submit a memorandum, along with maps and other supporting documents, to the Relocation Section Head for review.

Upon approval by the Relocation Section Head, the memorandum is forwarded to Administrative. For requests from the Division Head or other Divisions the memorandum, maps and other supporting documents will be forwarded to the Division Head for review and distribution.

##### **9.1.2. Conceptual Stage Relocation Statement (CSRS)**

At the request of Environmental, a CSRS including all designated alternate alignments will be developed by a Relocation Coordinator. Information in the CSRS is used in the Environmental Impact Statement (EIS) and Public Meetings. The following information will be included in the CSRS:

- 9.1.2.1. A summary of information recorded on the Conceptual Stage Inventory Record Forms, which includes:
  - 9.1.2.1.1. An estimate of the number of households to be displaced, including owner or tenant status.

- 9.1.2.1.2. An estimate of the price ranges and rental rates for the displaced residences.
- 9.1.2.1.3. An estimate of the displaced family's characteristics, with special consideration of the impacts upon minorities, the elderly, large families, and persons with disabilities. The family characteristics of the displaced households will be estimated by a visual inspection of the potential displacements by one or more Relocation Coordinators. The Relocation Coordinator utilizes observation of the neighborhood and property as well as past experience and knowledge to make the estimate. Published area demographic information may also be used to aid in these estimates.
- 9.1.2.1.4. An estimate of the number, type, and size of businesses, farms, and nonprofit organizations to be displaced, and the approximate number of employees that may be affected.
- 9.1.2.2. An 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 if the households are displaced. If adequate replacement housing is not available the agency will consider replacement housing of last resort actions.
- 9.1.2.3. An estimate of the availability of replacement commercial and farm properties. If an adequate supply of replacement commercial and/or farm properties are not expected to be available, the impacts of the displacement of those businesses, farms, and/or nonprofit organizations will be considered and addressed.
- 9.1.2.4. A description of special relocation advisory services that will be necessary for identified unusual conditions and a description of the actions proposed to remedy insufficient replacement housing, including, if necessary, Housing of Last Resort.

The Relocation Coordinator will prepare the CSRS, attach the Conceptual Stage Inventory Record Forms and other supporting documentation and submit to the Relocation Section Head for review. The Relocation Section Head will approve the CSRS and forward by memorandum to the Division Head for distribution.

### **9.1.3. Public Meetings**

The Relocation Section Head and/or Relocation Coordinators attend public meetings to answer specific and general questions about relocation payment eligibility and advisory services. Relocation Coordinators will discuss the relocation program and benefits with potential displaced persons, the general public, and/or public officials that attend the meetings. Relocation Assistance Program booklets will be distributed for informational purposes. Attending these meetings also provides Relocation preliminary project and area information.

#### 9.1.4. Initial Relocation Contact

The Relocation Section Head will determine the personnel needs for each relocation project and assign Relocation Coordinators to interview potential displaced persons. Upon direction of the Relocation Section Head, the Relocation Coordinator will interview persons determined to be displaced.

The Relocation Coordinator should interview the potential displaced person at the displacement site. Meeting at the subject property will allow the Relocation Coordinator to become more familiar with the displaced persons and the property to be acquired. If an on-site interview is not possible, then an off-site or telephone interview will be conducted. The Relocation Coordinator will perform the following tasks at the time of the interview:

- 9.1.4.1. Emphasize that the project plans are not final and may change
- 9.1.4.2. Explain that the relocation contact is being made to determine the replacement housing needs of those who may be displaced by the proposed highway project.
- 9.1.4.3. Complete the relocation occupancy and property forms.
- 9.1.4.4. Explain the potential relocation payments and assistance based on the type of occupancy including that Relocation Assistance includes advisory services, help in filing claims for relocation payments, and referrals to potential replacement properties.
- 9.1.4.5. Explain that each displaced person seeking relocation payments or relocation advisory services shall, as a condition of eligibility, certify that they are a citizen or national of the United States, or an alien who is lawfully present in the United States as discussed in Section 9.20.
- 9.1.4.6. Emphasize to the potential displaced person(s) that the AHTD is not suggesting they move now and if they do move in advance of the initiation of negotiations for the acquisition they will most likely lose their eligibility for relocation payments and assistance.
- 9.1.4.7. For residential displacements, explain that the displaced person cannot be required to move unless at least one comparable replacement dwelling has been made available.
- 9.1.4.8. Explain that the displaced person cannot be required to move without at least 90 days advance written notice from the AHTD.
- 9.1.4.9. Deliver a Relocation Assistance Program booklet, a copy of the certification of lawful presence form, and a business card to the displaced person(s).
- 9.1.4.10. Forward a notice of the initial contact including occupancy information to the Appraisal Section Head.

## 9.2. RELOCATION NOTICES

### 9.2.1. General Information Notice.

Persons determined to be displaced will be contacted as soon as feasible. After the initial contact, the potentially displaced persons will be provided a general written description of the AHTD's relocation program that does the following:

- 9.2.1.1. Informs the person that he or she may be displaced for the project and generally describes the relocation payment(s) for which the person may be eligible, the basic conditions of eligibility, and the procedures for obtaining the payment(s).
- 9.2.1.2. Informs the displaced person that he or she will be given reasonable relocation advisory services commensurate with his or her needs including housing referrals, help in filing payment claim(s), and other necessary assistance to help the person successfully relocate.
- 9.2.1.3. Informs the person to be displaced from a dwelling that he or she cannot be required to move without at least a 90-day advance written notice and unless at least one comparable replacement dwelling has been made available.
- 9.2.1.4. Informs the person that any person, who is an alien not lawfully present in the United States, is ineligible for relocation advisory services and relocation payments, unless such ineligibility would result in exceptional and extremely unusual hardship to a qualifying spouse, parent, or child, as defined in Section 9.20 of this manual.
- 9.2.1.5. Describes the person's right to appeal the AHTD's determination as to a person's application for relocation assistance as described in Section 9.21.

### 9.2.2. Ninety-Day and Final Vacate Notices.

Displaced persons will be given the following notices:

#### 9.2.2.1. Ninety-Day Notice:

Relocation will prepare and give to lawful occupants of improvements on a project, a 90-day written notice. This notice will specifically state that the occupant will not be required to vacate and/or give possession of the tract and/or improvement, and/or remove personal property before 90 days from the date of the notice. The notice will inform the occupant that they will receive a further written notice, at least 30 days in advance of the specific date by which the property must be vacated and/or personal property removed. If the 90-day notice is issued before a comparable replacement dwelling is made available, the notice will state that the occupant will not have to move earlier than 90 days after such a dwelling is made available.



For residential owners, this notice will be delivered at the initiation of negotiations. For residential tenants, businesses, farms, nonprofit organizations, and personal property owners, this notice will be delivered as soon as feasible after the initiation of negotiations.

#### 9.2.2.2. **Final Vacate Notice:**

The final vacate notice cannot be given until the AHTD has control of the property. The AHTD is considered to be in control if the following has occurred:

- 9.2.2.2.1. In cases of negotiated settlement, the displaced person has been paid for the acquired property.
- 9.2.2.2.2. In cases of condemnation, the acquisition amount has been deposited in the Court.

Final vacate dates that exceed the minimum required advance written notification, by more than 30 days, must have the concurrence of the Division Head. Final vacate notices will not be required if an occupant moves on their own volition prior to the time the notice is to be given.

#### 9.2.2.3. **Urgent Need:**

An occupant may be required to vacate the property on less than 90 days' advance written notice if the AHTD determines that a 90-day notice is impracticable, such as when the person's continued occupancy of the property would constitute a substantial danger to the person's health or safety. The case file shall be documented accordingly.

### 9.2.3. **Notice of Relocation Eligibility.**

- 9.2.3.1. Eligibility for Relocation begins on the earliest of the notice of intent to acquire, the initiation of negotiations, or actual acquisition. When relocation eligibility occurs, the occupants will be notified in writing of their eligibility for applicable relocation assistance.
- 9.2.3.2. The Notice of Relocation Eligibility is delivered in conjunction with the 90-Day Notice following the initiation of negotiations or in conjunction with the Notice of Intent to Acquire.
- 9.2.3.3. The Notice of Relocation Eligibility includes the following information:
  - 9.2.3.3.1. The type of payments for which the displaced person is eligible.
  - 9.2.3.3.2. The calculation and maximum amount of any specific payment that has been determined.
  - 9.2.3.3.3. For residential occupants, the location and price of the listing on which their payment is calculated.

#### **9.2.4. Notice of Intent to Acquire.**

This notice, along with the brochure, shall be furnished to owners and tenants when the AHTD establishes eligibility for relocation benefits prior to the actual initiation of negotiations for acquisition of the tract. When a notice of intent to acquire is issued and the displaced person moves prior to the initial offer, the moving date is used as the date for "initiation of negotiations" for relocation eligibility purposes.

- 9.2.4.1. This notice may be issued prior to the FHWA authorizing initiation of negotiations on the project or authorizing acquisition of individual tracts solely for protective buying or because of hardships.
- 9.2.4.2. The notice shall contain the statement of eligibility and any restrictions thereto; the anticipated date of the initiation of negotiations for acquisition of the property and how additional information pertaining to relocation assistance payments and services can be obtained.
- 9.2.4.3. The AHTD will not utilize the notice of intent to acquire unless its acquisition of the tract is imminent. When such notice is issued, every effort will be made to commence negotiations as soon as practicable to prevent possible subsequent occupancy and/or minimize rental problems for the owner.
- 9.2.4.4. When a notice of intent to acquire is furnished to a tenant, it will be done with the knowledge of the property owner and a copy of the notice will be delivered to the property owner.

### **9.3. COORDINATION WITH OTHER SECTIONS**

#### **9.3.1. Inspection with Appraiser**

The Relocation Coordinator may attend the Appraiser's inspection in order to distinguish personal property from real property. Real and personal property distinctions will be discussed and resolved between the Appraiser and Relocation Coordinator prior to the completion of the appraisal, and with the approval of the Appraisal and Relocation Section Heads. The Appraisal and Relocation Section Heads will also review the property in question when the Appraiser and Relocation Coordinator do not agree or cannot establish the nature of the property, real or personal. The Division Head will make the final determination when the Section Heads do not agree. On this inspection, the Relocation Coordinator will determine and identify unusual situations, further establish relocation needs, and current occupancy. The Relocation Coordinator and Appraiser will inspect the property separately when scheduling will not allow the Appraiser and the Relocation Coordinator to inspect the property together. Any potential property, occupancy, rental rates, or general discrepancies will be discussed prior to the review and release of the appraisal. If the occupant is present, complete tasks as described in Section 9.4.1.1 and 9.4.1.2.

### **9.3.2. Receipt and Review of Appraisal**

- 9.3.2.1. On tracts involving displaced persons, the original appraisal is delivered to Relocation from Appraisal and recorded in the logbook.
- 9.3.2.2. The Relocation Section Head conducts a general review and verifies that a rental agreement is present in the case of a displaced tenant.
- 9.3.2.3. The Relocation Section Head forwards the appraisal to the Relocation Coordinator assigned to the displaced person. The Relocation Section Head and Relocation Coordinator discuss the relocation needs, schedule, and potential problems, solutions and expectations for the displaced person.
- 9.3.2.4. The Relocation Coordinator reviews the appraisal and makes copies of necessary information for the relocation packet (ReloPac).
- 9.3.2.5. For Personal Property, NPO, and Business Displacements, the appraisal can be released to Acquisition for the initiation of negotiations, once the Relocation Coordinator has completed the review and obtained all preliminary information necessary to begin the relocation process. The release date is recorded in the logbook.
- 9.3.2.6. The Relocation Coordinators will prepare all necessary "Relocation Studies" at this time. When the appropriate "Relocation Studies" are complete, the appraisal for the affected tract will be released to the Acquisition Section for negotiations. The release date is recorded in the log book.

### **9.3.3. Presentation of Offers and Relocation Eligibility**

To assure that residential owner occupants are offered relocation assistance and payments simultaneously with the offer of just compensation, and to assure that residential tenant occupants are offered relocation assistance and payments in a timely manner, it will be necessary for the Acquisition Agent and Relocation Coordinator to coordinate the timing of their calls. Displaced businesses, farms, nonprofit organizations and personal property owners will be contacted in a timely manner following the initiation of negotiations.

## **9.4. RESEARCH AND PREPARATION FOR RELOCATION ELIGIBILITY PRESENTATIONS**

### **9.4.1. General:**

After the initial interview but prior to the relocation presentation, the Relocation Coordinator contacts displaced persons to:

- 9.4.1.1. Determine and verify actual and lawful occupancy

- 9.4.1.2. Inform the displaced persons of the requirements included in Section 9.20 of this manual if occupancy has changed since the initial interview or the legal status was not previously explained to the displaced persons.
- 9.4.1.3. Present form and obtain the required signature(s) if a signed certification of lawful presence form was not obtained at the time of the initial interview.
- 9.4.1.4. Verify length of occupancy

#### **9.4.2. Residential Owners:**

- 9.4.2.1. The Relocation Coordinator visually inspects the property to further review the displaced dwelling, dwelling site, and exterior attributes.
- 9.4.2.2. The Relocation Coordinator conducts a market survey to determine the Replacement Housing Payment (RHP) for which the displaced person is eligible in accordance with CFR 49 24.401-4 and Section 9.17 of this manual.
- 9.4.2.3. The replacement housing study is submitted along with the relocation file, 90-day notice, and relocation eligibility notices to the Relocation Section Head for approval.
- 9.4.2.4. Upon approval, the original appraisal will be released to the Acquisition Section. The Acquisition Agent and the Relocation Coordinator will schedule an appointment with the displaced person in accordance with Section 9.3.3 of this manual.

#### **9.4.3. Residential Tenants:**

- 9.4.3.1. The Relocation Coordinator contacts the displaced person and visually inspects the property to:
  - 9.4.3.1.1. Review the displaced dwelling, dwelling site, and exterior attributes.
  - 9.4.3.1.2. Verify rental rates through copies of rental or lease agreements and receipts
  - 9.4.3.1.3. Verify average utility expenses through copies of bills or receipts
  - 9.4.3.1.4. Determine displaced persons eligibility for government housing assistance
- 9.4.3.2. The Relocation Coordinator conducts a market survey to determine the Replacement Housing Payment for which the displaced person(s) are eligible in accordance with CFR 49 24.402 and Section 9.17 of this manual.
- 9.4.3.3. The study is submitted along with the ReloPac, 90-day notice, and relocation eligibility notice to the Relocation Section Head for approval.

- 9.4.3.4. Upon approval the original appraisal will be released to Acquisition. The Relocation Coordinator will make an appointment with the displaced person subject to the initiation of negotiations. In some cases the original appraisal will be released prior to the completion of the study for residential tenants in accordance with Section 9.3.2 of this manual.

#### **9.4.4. Business, Farm, and NPOs:**

- 9.4.4.1. The Relocation Coordinator will meet with the displaced persons and visually inspect the property to
- 9.4.4.1.1. Review the site and improvements
  - 9.4.4.1.2. Obtain copies of documentation verifying the displaced person's status. At least one of the following must be provided in order to determine eligibility for reestablishment or fixed payments:
    - 9.4.4.1.2.1. Tax Returns for the operation
    - 9.4.4.1.2.2. Business License for subject location
    - 9.4.4.1.2.3. Articles of Incorporation
    - 9.4.4.1.2.4. Certified Financial Statements
    - 9.4.4.1.2.5. Sales Tax Identification Number
    - 9.4.4.1.2.6. Other reasonable evidence that the operation is a viable and legal business entity
  - 9.4.4.1.3. Review any changes in the operation since the initial interview. Discuss tenant improvements if applicable.
  - 9.4.4.1.4. Review personal property and verify ownership of personal property.
  - 9.4.4.1.5. Obtain copies of applicable documents such as rental or lease agreements, tenant improvements, special licensing, etc.
- 9.4.4.2. The Relocation Coordinator submits the file including the 90-day notice, relocation eligibility notice and any other pertinent forms to the Relocation Section Head for approval.
- 9.4.4.3. Upon approval, the original appraisal will be released to the Acquisition Section. The Relocation Coordinator will schedule an appointment with the displaced person in accordance with Section 9.3.3 of this manual.

#### **9.4.5. Personal Property Owners:**

- 9.4.5.1. The Relocation Coordinator meets with the owner of the personal property at the displacement site to establish their eligibility and ownership of the personal property.

- 9.4.5.2. The Relocation Coordinator submits the file including the 90-day notice, relocation eligibility notice and any other pertinent forms to the Relocation Section Head for review.
- 9.4.5.3. Upon completion of the review, the original appraisal will be released to the Acquisition Section. The Relocation Coordinator will schedule an appointment with the displaced person in accordance with Section 9.3.3 of this manual.

## **9.5. RELOCATION ELIGIBILITY PRESENTATIONS**

### **9.5.1. Residential Owners**

The Relocation Coordinator and Acquisition Agent will meet jointly with the residential owner occupants. After the offer to acquire the real property is made to the owners, the Relocation Coordinator will explain the relocation assistance program and present the following information:

#### **9.5.1.1. Ninety-day Notice**

- 9.5.1.1.1. Displaced persons cannot be required to move less than ninety (90) calendar days from the date of the delivery.
- 9.5.1.1.2. Displaced persons will receive another vacate notice at least thirty (30) calendar days in advance of the specific date by which they must move.
- 9.5.1.1.3. Explain that the relocation vacate notice and date do not coincide with the monthly rent for the acquired dwelling. As explained by the Acquisition Agent, the displaced persons will be required to pay rent once the property is acquired until the property is vacated.

#### **9.5.1.2. Relocation Eligibility Notice**

- 9.5.1.2.1. Explain the Price Differential Payment
- 9.5.1.2.2. Explain the Incidental Expense Payment
- 9.5.1.2.3. If the owner occupant still holds a mortgage on the property, explain the Mortgage Interest Differential Payment

#### **9.5.1.3. Requirements for Receiving the RHP**

- 9.5.1.3.1. A replacement dwelling must be purchased and occupied within 12 months of the date they receive payment for the displaced dwelling.
- 9.5.1.3.2. The replacement dwelling must pass a decent, safe, and sanitary inspection
- 9.5.1.3.3. Documentation, such as real estate contracts, settlement statements, recorded deeds, and good faith estimates, may be requested

throughout the process so that the Relocation Coordinator can document the file and provide them with appropriate advice regarding the eligibility of certain expenses

9.5.1.4. **Moving Cost Payment:** The displaced person is eligible for a payment to cover actual, reasonable, and necessary costs for moving personal property based on the policy and procedures outlined in Section 9.8 and 9.9. Explain the moving expenses eligibility including the following:

9.5.1.4.1. Displaced persons may choose to perform a self-move and receive a payment based on the Fixed Residential Moving Costs Schedule published in the Federal Register and/or Actual Cost based on the policy and procedures in Section 9.9.2.1., or

9.5.1.4.2. Displaced persons may choose to hire a commercial mover. The payment for a commercial move is made in accordance with Section 9.9.2.2. of this manual, or

9.5.1.4.3. A combination of self and commercial move.

9.5.1.5. **Relocation Assistance**

9.5.1.5.1. Offer to assist in locating listings of potential replacement property

9.5.1.5.2. Offer to assist in locating a mortgage for the purchase of potential replacement property

9.5.1.5.3. Determine if the displaced person needs transportation to or from replacement property

9.5.2. **Residential Tenants**

After the offer to acquire the real property is made to the owners, the Relocation Coordinator will meet with the displaced person to explain the relocation assistance program and present the relocation notices.

9.5.2.1. **Ninety-day Notice**

9.5.2.1.1. Occupants cannot be required to move less than ninety (90) calendar days from the date of the delivery

9.5.2.1.2. Occupants will receive another vacate notice at least thirty (30) calendar days in advance of the specific date by which they must move.

9.5.2.2. **Rental Agreement**

9.5.2.2.1. Emphasize that the displaced person will owe the monthly rent, per this rental agreement, to the AHTD Right of Way Division after the owner is paid for the acquisition. The Ninety-Day and Final Vacate

Dates and Notices do not affect the rent due to the current owner or the AHTD upon closing.

9.5.2.2.2. Request head of household to sign agreement

9.5.2.2.3. If they are not willing to sign the agreement at this time leave copies of agreements and a return envelope. Follow up will be done during future contacts until rental agreement is received or occupants have moved.

9.5.2.2.4. Upon receipt of signed rental agreement, make copy for relocation file and forward original to Acquisition, Property Management.

### 9.5.2.3. **Relocation Eligibility Notice**

9.5.2.3.1. Explain the Replacement Housing Payment

9.5.2.3.2. Explain that the Rental Assistance Payment may alternatively be used to purchase a replacement dwelling in lieu of continuing to rent. The full amount of Down Payment Assistance must be applied to the purchase of the replacement dwelling and related incidental expenses.

9.5.2.3.3. Explain the requirements for receiving a Rental Assistance or Down Payment Assistance Payment

9.5.2.3.3.1. They must rent or purchase and occupy a replacement dwelling within 12 months of the date they move from the displacement dwelling

9.5.2.3.3.2. The replacement dwelling must pass a decent, safe, and sanitary inspection

9.5.2.3.3.3. Documentation, such as real estate contracts or lease or rental agreements, settlement statements, recorded deeds, and good faith estimates, may be requested throughout the process so that the Relocation Coordinator can document the file and provide them with appropriate advice regarding the eligibility of certain expenses

9.5.2.4. **Moving Cost Payment:** The displaced person is eligible for a payment to cover actual, reasonable, and necessary costs for moving personal property based on the policy and procedures outlined in Section 9.8 and 9.09. Explain the moving expenses eligibility including the following:

9.5.2.4.1. Displaced persons may choose to perform a self-move and receive a payment based on the Fixed Residential Moving Costs Schedule published in the Federal Register and/or Actual Cost based on the policy and procedures in Section 9.9.2.1., or



9.5.2.4.2. Displaced persons may choose to hire a commercial mover. The payment for a commercial move is made in accordance with 9.09.2.2. of this manual, or

9.5.2.4.3. A combination of self and commercial move.

#### **9.5.2.5. Relocation Assistance**

9.5.2.5.1. Offer to assist in locating listings of potential replacement property

9.5.2.5.2. Offer to assist in locating a mortgage for the purchase of potential replacement property

9.5.2.5.3. Determine if the displaced person needs transportation to or from replacement property

### **9.5.3. Businesses, Farm, and Nonprofit Organizations**

The Relocation Coordinator will meet with the displaced persons or their designated representative to explain the relocation assistance program and to present the relocation notices.

#### **9.5.3.1. Ninety-day Notice**

9.5.3.1.1. Displaced persons cannot be required to move less than ninety (90) calendar days from the date of the delivery,

9.5.3.1.2. Displaced persons will receive another vacate notice at least thirty (30) calendar days in advance of the specific date by which they must move

9.5.3.1.3. The relocation vacate dates do not coincide with the monthly rent for any acquired building.

#### **9.5.3.2. Rental Agreement**

If the displaced person is a tenant the Relocation Coordinator will deliver and complete the following:

9.5.3.2.1. Emphasize that the displaced person will owe the monthly rent, per this rental agreement, to the AHTD Right of Way Division after the owner is paid for the acquisition. The Ninety-Day and Final Vacate Dates and Notices do not affect the rent due to the current owner or the AHTD upon closing.

9.5.3.2.2. Request the displaced person or the designated representative to sign agreement

9.5.3.2.3. If they are not willing to sign the agreement at this time the Relocation Coordinator will leave copies of agreements and a return envelope.

Follow up will be done during future contacts until rental agreement is received or occupants have moved.

- 9.5.3.2.4. Upon receipt of signed rental agreement, make copy for relocation file and forward original to Property Management

### 9.5.3.3. **Notice of Eligibility**

#### 9.5.3.3.1. **The Reestablishment Payment**

The displaced person is eligible for reestablishment expense payments that are incurred for eligible, reasonable, and necessary expenses associated with the reestablishment of the displaced person. The payment and eligibility will be established by the policy and procedures outlined in Section 9.15.

- 9.5.3.3.1.1. The maximum reestablishment benefit for any displaced business, farm or nonprofit organization is \$10,000.00.
- 9.5.3.3.1.2. Reestablishment expense eligibility should be established by the Relocation Coordinator prior to authorizing the displaced person to incur expenses in accordance with Section 9.15 of this manual.

#### 9.5.3.3.2. **Moving Expense Payment**

The displaced person is eligible for a payment to cover actual, reasonable, and necessary costs for movement of personal property. The payment and eligibility will be based on the policy and procedures outlined in Section 9.8 and 9.10: Moving expense eligibility will be explained including the following:

- 9.5.3.3.2.1. Displaced persons may choose to perform a self-move and receive payment based on the Fixed Residential Moving Costs Schedule published in the Federal Register or Actual Cost, or
- 9.5.3.3.2.2. Displaced persons may choose to hire a commercial mover, The payment for a commercial move is made in accordance with Section 9.10 of this manual, or
- 9.5.3.3.2.3. A combination of self and commercial move.
- 9.5.3.3.2.4. Searching Expense Payment - the displaced person is entitled to reimbursement for actual, reasonable expenses, which are incurred in searching for a replacement location as described at Section 9.12.18. The maximum eligibility is \$2,500.00.

#### 9.5.3.3.3. **Fixed Payment**

The displaced person is eligible for a fixed payment in lieu of payments for reestablishment and moving expenses, including searching expenses.

The fixed payment eligibility will be explained as described under Section 9.16.1.1. including the following:

9.5.3.3.3.1. The fixed payment is equal to the average of the last two years income from the business, and

9.5.3.3.3.2. The fixed payment has a maximum eligibility of \$20,000.00

**9.5.3.3.4. Relocation Assistance**

9.5.3.3.4.1. Offer to assist in locating listings of potential replacement property

9.5.3.3.4.2. Offer to assist in locating a mortgage for the purchase of potential replacement property

9.5.3.3.4.3. Determine if the displaced person needs transportation to or from replacement property

**9.6. RELOCATION ASSISTANCE**

Subsequent contacts will be made throughout the relocation process by the Relocation Coordinator for purposes of obtaining and furnishing assistance and information. This will be accomplished by offering advisory services that are necessary and appropriate in order to:

**9.6.1.** Determine, for nonresidential (businesses, farm and nonprofit organizations) displacements, the relocation needs and preferences of each displaced person and explain the relocation payments and other assistance for which the displaced person may be eligible, the related eligibility requirements, and the procedures for obtaining such assistance. This shall include a personal interview with each displaced person to include, at a minimum, the following items:

9.6.1.1. Replacement site requirements, current lease terms and other contractual obligations and financial capacity to accomplish the move.

9.6.1.2. Need for outside specialists to assist in planning the move, assistance in the actual move and in the reinstallation of machinery and/or other personal property.

9.6.1.3. An estimate of the time required for the displaced person to vacate the site.

9.6.1.4. Advance relocation payments that may be required for the move

**9.6.2.** Determine, for residential displacements, the relocation needs and preferences of each displaced person and explain the relocation payments and other assistance for which the person may be eligible, the related eligibility requirements, and the procedures for obtaining such assistance. This shall include:

- 9.6.2.1. Provide current and continuing information on the availability, purchase prices, and rental costs of comparable replacement dwellings.
- 9.6.2.2. Whenever possible, minority persons shall be given reasonable opportunities to relocate to decent, safe, and sanitary replacement dwellings, not located in an area of minority concentration, that are within their financial means. This policy, however, does not require the AHTD to provide a person a larger payment than is necessary to enable a person to relocate to comparable replacement dwelling.
- 9.6.2.3. The AHTD shall offer all displaced persons transportation to inspect housing to which they are referred.
- 9.6.2.4. Any displaced person that may be eligible for government housing assistance at the replacement dwelling shall be advised of any requirements of such government housing assistance program that would limit the size of the replacement dwelling as well as of the long term nature of such rent assistance, and the limited (42 month) duration of the relocation rental assistance payment.
- 9.6.3.** Provide, for nonresidential moves, current and continuing information on the availability, purchase prices, and rental costs of suitable commercial and farm properties and locations. Assist the displaced person in obtaining and becoming established in a suitable replacement location.
- 9.6.4.** Minimize hardships to displaced persons in adjusting to relocation by providing counseling; advice as to other sources of assistance that may be available, and such other help as may be appropriate.
- 9.6.5.** Supply displaced persons with appropriate information concerning federal and state housing programs, disaster loan and other programs administered by the Small Business Administration, and other Federal and State programs offering assistance to displaced persons, and technical help to persons applying for such assistance.
- 9.6.6.** The AHTD shall carry out a relocation assistance advisory program that satisfies the requirements of Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Order 11063 and CFR 49 part 24. If the AHTD determines that a person adjacent to the real property acquired for the project is caused substantial economic injury because of such acquisition, it may offer advisory services to the person.
- 9.6.7.** The amount and extent of the advisory services shall be administered on a reasonable basis commensurate with the displaced person's needs.
- 9.6.8.** No waiver of relocation assistance: The AHTD shall not propose or request that a displaced person waive his or her rights or entitlement to relocation assistance and benefits provided by the Uniform Act.

## 9.7. RELOCATION PAYMENTS:

### 9.7.1. General

- 9.7.1.1. **Certification:** A signed Certification of Lawful Presence in the United States of America form is required before any relocation payments can be made to a displaced person.
- 9.7.1.2. **Documentation:** Any relocation payment shall be supported by such documentation as may be reasonably required to support expenses incurred, such as bills, certified prices, appraisals, or other evidence of such expenses. The Relocation Coordinator will provide assistance in obtaining the supporting documentation when needed.
- 9.7.1.3. **Time Period For Filing Claims:** Displaced persons must file all claims for relocation payments within 18 months after:
- 9.7.1.3.1. For tenants, the date moved
  - 9.7.1.3.2. For owners, the date moved or the date paid for the acquisition, whichever is later. In cases of condemnation, the date the just compensation is deposited in court.
  - 9.7.1.3.3. For owners and tenants determined to be displaced but the acquisition does not demand the physical move of the occupant, the date moved will be the date the basis for the displacement occurs. For example, loss of parking, loss of access, and loss of utilities.
- 9.7.1.4. **Expeditious payments:** The Relocation Section Head shall review claims in an expeditious manner. The displaced person shall be promptly notified as to any additional documentation that is required to support the claim. Payment for a claim shall be made as soon as feasible.
- 9.7.1.5. **Advanced payments:** If a displaced person demonstrates the need for an advanced relocation payment in order to avoid or reduce a hardship, the AHTD may issue the payment, subject to such safeguards as are appropriate to ensure the objective of the payment is accomplished. The need for the advanced payment will be documented by the Relocation Coordinator on an Advance Payment Approval Form, approved by the Relocation Section Head and authorized by the Division Head. A notation will be made on the claim form indicating an “advanced payment.”
- 9.7.1.6. **Delivery of warrants:** The Administrative or Relocation Sections will make delivery of payment warrants. Payments will be made by either of the following methods.

- 9.7.1.6.1. By mail to the displaced person or the closing agent of replacement dwellings.
- 9.7.1.6.2. Delivered to the displaced person by a third party.
- 9.7.1.6.3. Delivered to the displaced person by the Relocation Coordinator in urgent situations.
- 9.7.1.7. **Deductions from relocation payments:** The AHTD shall deduct the amount of any advance relocation payment from the relocation payments to which a displaced person is otherwise entitled. The AHTD shall not withhold any part of a relocation payment to a displaced person to satisfy an obligation to any other creditor.
- 9.7.1.8. **Duplicate Payments:** Arkansas State law does not provide for payments to persons under eminent domain proceedings, which would duplicate payments made to persons under the Uniform Act. Also, no person shall receive any payment under the Uniform Act if that person receives a payment under Federal, State, or local law, or insurance proceeds which are determined to have the same purpose and effect. An exhaustive search for other payments is not required.
- 9.7.1.9. **Payments nontaxable:** No relocation payment received by a displaced person shall be considered as income for the purpose of the Internal Revenue Code of 1954, which has been redesignated as the Internal Revenue Code of 1986 (Title 26, U.S. code), or for the purpose of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act (42 U.S. Code 301 et seq.) or any other Federal law, except for any Federal law providing low-income housing assistance.
- 9.7.1.10. **Expenditure of payments:** Payments, provided pursuant to the Uniform Act, shall not be considered to constitute Federal financial assistance.
- 9.7.1.11. **Payment After Death:** A replacement housing payment is personal to the displaced person and upon his or her death the undisbursed portion of any such payment shall not be paid to the heirs or assigns, except that:
  - 9.7.1.11.1. The amount attributable to the displaced persons period of actual occupancy of the replacement housing shall be paid.
  - 9.7.1.11.2. The full payment shall be disbursed in any case in which a member of a displaced family dies and the other family member(s) continue to occupy a decent, safe and sanitary replacement dwelling.
  - 9.7.1.11.3. Any portion of a replacement housing payment necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by or on behalf of a deceased person shall be disbursed to the estate.

### 9.7.2. Claim Forms

Relocation payments processed by a claim form must be signed by the displaced person, approved by the Relocation Section Head and authorized by the Division Head. Relocation payments are made to or on the behalf of the displaced person as eligible relocation expense payments. The Relocation Coordinator determines the eligibility and amount of relocation payments and provides assistance in obtaining necessary bids. The following information or documents are applicable to these types of claims.

- 9.7.2.1. **Taxpayer Identification:** The Relocation Coordinator will obtain a completed Request for Taxpayer Identification Number and Certification (W-9) before any payment can be processed.
- 9.7.2.2. **Claim Form Preparation:** The Relocation Coordinator will prepare a payment claim form for eligible relocation expenses based on adequate support documentation. The claim form will be delivered to and explained to the displaced person for their signature.
- 9.7.2.3. **Relocation claim form payments to third party vendors:** Payments can be made to the vendor and processed with a claim form. The following process shall be followed when ordering a payment payable to the vendor.
  - 9.7.2.3.1. Claim forms shall be signed by the displaced person and include instructions for payment to the vendor.
  - 9.7.2.3.2. Vendors name and the last four digits of the Taxpayer Identification number shall be included on the claim form as reflected on the vendor's W-9.
- 9.7.2.4. Claim form shall be submitted with a check authorization that includes a description of the services to be completed and instructions for the delivery of the payment. Check authorization must be signed by the displaced person and the vendor.
- 9.7.2.5. Upon completion of the services, the check will be forwarded to the displaced person and it is the displaced person's responsibility to deliver the payment to the vendor upon their satisfaction of the services rendered.
- 9.7.2.6. The contractual agreements for the services rendered by a third party are between the displaced person and the service provider.

### 9.7.3. Other than Claim Forms

Payments to a third party by a vendor's invoice that are not processed on a relocation claim form are handled in accordance with Section 3.20 of this manual.

**9.8. MOVING AND RELATED EXPENSES - GENERAL:**

Any person required to move because of the acquisition and who moves from real property or moves his or her personal property from the real property is entitled to a payment of his or her actual moving and related expenses, as the AHTD determines to be reasonable and necessary. This includes a person who occupies the real property prior to its acquisition, but who does not meet the length of occupancy requirements of the Uniform Act as described at 49 CFR 24. When the acquisition of real property causes a person to vacate or move personal property from an improvement or other real property not acquired, the expenses of moving personal property are eligible for the appropriate moving payments. The AHTD will determine the necessity for this type of move.

- 9.8.1.** Moving expense payments will be supported by a personal property inventory or list of the items to be moved and completed prior to determining the eligible moving payments. The owner and the Relocation Coordinator will sign all inventories. After the move, a notation is made at the bottom of the inventory that all has been relocated. If a substantial amount of the items in the inventory were not moved the moving expense will be appropriately adjusted for payment.
- 9.8.2.** Any personal property that the displaced person does not intend to move should be noted on an Abandoned Personal Property Agreement as soon as possible. The Relocation Coordinator shall make a reasonable attempt to encourage the displaced person to move all personal property unless the estimated cost of the potential abandoned items would be considerably less when removed by Property Management.
  - 9.8.2.1. The Abandoned Personal Property Agreement shall be signed by the displaced personal property owner and include a description of the items abandoned.
  - 9.8.2.2. A copy of the Abandoned Personal Property Agreement will be furnished to Property Management as soon as possible. Any items with potential hazardous waste or environmental concerns shall be referenced.
- 9.8.3.** The displaced person shall provide reasonable advance notice of the approximate date of the start of the move or disposition of the personal property. However, the AHTD may waive this notice requirement after documenting the file. (The displaced person will be informed of the inventory and advance notice requirements in the Relocation Eligibility Notification.)
- 9.8.4.** The AHTD may determine that more than one move will be allowed for a displaced person. The eligible moving expenses may apply to part or all of the move.
- 9.8.5.** When the AHTD determines it is necessary, applicable surveillance will be conducted on the move. This will allow the AHTD to make timely inspections



of the personal property at both the acquired and replacement sites and to monitor the move.

## **9.9. RESIDENTIAL MOVES - ELIGIBLE MOVING EXPENSES:**

**9.9.1. Eligible Moving Expenses** - Any displaced person who moves from a dwelling is entitled to a payment for actual moving and related expenses as the AHTD determines to be reasonable and necessary, including, but not limited to Section 9.12.1-8. Any displaced person who moves from a mobile home that is personal property and moves the mobile home for the replacement dwelling is also eligible as specified in Section 9.12.9-11.

### **9.9.2. Moving Cost Methods**

A displaced person may be compensated for moving their personal property as determined by one or a combination of the following methods:

#### **9.9.2.1. Self-moves**

##### **9.9.2.1.1. Fixed Schedule:**

- 9.9.2.1.1.1. A Fixed Schedule Claim Form can be used to request payment based on room count.
- 9.9.2.1.1.2. The rooms on this claim should agree with the number indicated on Relocation Coordinator's Interview Form. Any person displaced from a dwelling (including a mobile home), a seasonal residence, or a dormitory style room is entitled to receive a fixed payment (includes a dislocation allowance) in lieu of a payment for actual moving and related expenses. (See schedule on back of the Residential Fixed Schedule Claim Form).
- 9.9.2.1.1.3. The schedule is to be based on the "number of rooms of furniture" owned by a displaced individual or family. In the interest of fairness and accuracy, and to encourage the use of the schedule (thereby simplifying the computation and payment of moving expenses) the AHTD may increase the room count for purposes of applying the schedule if the amount of possessions in a single room or space actually constitute more than the normal contents of one room of furniture or other personal property. For example, a basement may count as two rooms if there is the equivalent of two rooms worth of possessions located in the basement. In addition, the AHTD may elect to pay for items stored outside of the dwelling unit by adding the appropriate number of rooms.
- 9.9.2.1.1.4. If the displaced person elects to accept the allowable payment under the fixed residential moving cost schedule they will complete the move and file a written claim for payment of the exact amount determined from the schedule. Supporting

evidence of the cost incurred or information as to how the move was accomplished is not required.

- 9.9.2.1.1.5. **Owner Retention Move:** When an owner retains their dwelling, the cost of moving it onto remainder or replacement land is not eligible for reimbursement as part of the cost of moving personal property. However, if the owner chooses to use the dwelling as a means of moving personal property the cost of moving personal property may be considered eligible for Federal Participation. Payment in these cases would be on a fixed schedule basis.

9.9.2.1.2. **Actual Costs:**

In the case of a self-move the displaced person may be paid actual moving costs, supported by receipted bills for labor and equipment or other evidence of expenses incurred. Such payment may not exceed the estimated cost of moving commercially based on bids or estimates prepared by qualified moving companies and obtained by the AHTD.

- 9.9.2.2. **Commercial Moves:** Eligible expenses for professional movers are determined by bids and/or estimates prepared by commercial movers. Payment will be based on the lower of the bids or estimates. The following procedures are to be utilized when determining these eligible expenses.

- 9.9.2.2.1. An inventory of the displaced person's personal property to be moved will be made prior to obtaining estimates. The Relocation Coordinator and the displaced person will both review and sign the personal property inventory. The eligible moving expense will be based on the lower estimate.
- 9.9.2.2.2. For uncomplicated moves up to \$2,500.00, the payment can be based on one bid or estimate prepared by a commercial mover. Two commercial bids or estimates must be obtained for complicated moves and/or for moving expenses as determined by the Relocation Coordinator.
- 9.9.2.2.3. For moves between \$2,500.00 and \$10,000.00, the payment can be based on two bids or estimates prepared by commercial movers. If the Relocation Coordinator is unfamiliar with the moving expenses or the bids/estimates are not competitive, additional bids or estimates must be obtained. The Relocation Coordinator will prepare the bid/estimate form with recommendation and submit to the Relocation Section Head for approval.
- 9.9.2.2.4. For moves above \$10,000.00 obtain three bids or estimates prepared by commercial movers. If three commercial movers are not available, note this on the bid/estimate form with an explanation. The eligible

moving expense is based on the lower of the bids/estimates. Prepare bid/estimate form with recommendation and submit to the Relocation Section Head for approval. The Relocation Section Head will forward the bid/estimate form to the Division Head for review and concurrence when the payment eligibility exceeds \$25,000.00.

- 9.9.2.2.5. If the displaced person does not select the moving company with the lowest bid/estimate the AHTD will offer to pay the low bidder for preparing the bid/estimate.

## **9.10. BUSINESS, FARM AND NONPROFIT ORGANIZATION MOVING EXPENSES**

**9.10.1. Eligible Expenses:** Any business, farm operation, or nonprofit organization that qualifies as a displaced person is entitled to a payment for such actual moving and related expenses as the AHTD determines to be reasonable and necessary, including personal property described at Section 9.12.1-8 and 12-20. Personal property moves may be moved by one or a combination of the following methods.

### **9.10.2. Moving Cost Methods:**

A displaced person may be compensated for moving personal property as determined by one or a combination of the following methods:

#### **9.10.2.1. Self-Move:**

9.10.2.1.1. The lower of bids and estimates: Same process and procedures described at Section 9.9.2.2.1-4 with the option that estimates developed by the Relocation Coordinator may be used in place of or in conjunction with commercial estimates.

9.10.2.1.1.1. The displaced person will be notified of the eligible moving expense determination. The displaced person will have the option of rejecting or accepting the amount. If accepted, a moving cost claim form will be prepared and forwarded to the displaced person for their signature. The approved moving expense may be paid to the displaced person without supporting evidence for actual expenses incurred.

9.10.2.1.1.2. The Relocation Coordinator is responsible for monitoring and verifying the move. If the displaced person rejects the moving expense determination the estimates and personal property will be reviewed. Revised estimates and or additional estimates will be obtained if necessary. If an agreement cannot be reached the displaced person can utilize the commercial move option as explained in Section 9.9.2.2.

9.10.2.1.2. Actual moving costs: supported by receipted bills for labor and equipment or other evidence of expenses incurred. Such payment

may not exceed the estimated cost of moving commercially based on bids or estimates prepared by qualified moving companies and obtained by the AHTD. Hourly labor rates should not exceed the commercial rates paid to employees performing the same activity. Rates and rental fees charged for equipment should be based on actual cost and should be comparable to market rates and fees for these expenses.

9.10.2.2. **Commercial Moves:** Same process and procedures described at Section 9.9.2.2.

### **9.11. PERSONAL PROPERTY ONLY MOVING EXPENSES:**

**9.11.1.** Eligible Expenses - Any displaced person who is required to move personal property, including mobile homes, from real property but is not displaced from a dwelling, business, farm, or nonprofit organization is entitled to a payment for actual moving and related expenses as the AHTD determines to be reasonable and necessary, including, but not limited to those expenses described at Section 9.12.1-8 and 19.

**9.11.2.** Moving Cost Methods Same process and procedures described at Section 9.10.2.

### **9.12. TYPES OF ELIGIBLE MOVING EXPENSES:**

**9.12.1.** Transportation of the displaced person and personal property to the new location up to 50 miles.

9.12.1.1. Such costs may be on a mileage basis, not to exceed the per mile rate established by the AHTD.

9.12.1.2. If commercial transport is used, including special services such as the costs of an ambulance, the actual cost will be paid up to 50 miles.

**9.12.2.** Meals and lodging when the AHTD determines that such costs are required because of owner retention and reoccupation or because of unforeseen circumstances or the practical necessities of the moving operation are also eligible. Temporary lodging is to be for a period not to exceed thirty-days.

**9.12.3.** Packing, crating, unpacking and uncrating of the personal property.

**9.12.4.** Disconnecting, dismantling, removing, reassembling and reinstalling relocated household appliances and other personal property.

**9.12.5.** Storage of personal property not to exceed 12 months.

**9.12.6.** Insurance for the replacement value of the property in connection with the move and necessary storage.

- 9.12.7.** The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, or damage is not reasonably available.
- 9.12.8.** Other moving expenses that are not listed as ineligible expenses in Section 9.13.
- 9.12.9.** Reasonable and actual cost of disassembling, moving and reassembling any attached appurtenances (such as porches, decks, skirting and awnings) which were not acquired and anchoring of the unit are eligible expenses. Utility "hook-up" charges are also reimbursable.
- 9.12.10.** Reasonable costs for repairs or modification to render a mobile home suitable for moving and/or meeting the decent, safe, and sanitary requirements.
- 9.12.11.** A non-returnable mobile home park entrance fee is reimbursable to the extent it does not exceed the fee at a comparable mobile home park, if the person is displaced from a mobile home park or the AHTD determines that payment of the fee is necessary to effect relocation.
- 9.12.12.** Any license, permit, or certification required of the displaced person at the replacement location. However, the payment may be based on the remaining useful life of the existing license, permit, or certification.
- 9.12.13.** Professional services (e.g. specifications and bids) necessary for
- 9.12.13.1. Planning the move of the personal property,
  - 9.12.13.2. Moving the personal property, and
  - 9.12.13.3. Installing the relocated personal property at the replacement location.
- 9.12.14.** Re-lettering signs and replacing stationary, business cards and etcetera that are rendered obsolete because of the move. The expense shall be based on the quantities on hand at the time of the displacement.
- 9.12.15.** Actual direct loss of tangible personal property incurred as a result of moving or discontinuing the business, farm or NPO is an eligible moving expense. The payment shall consist of the lesser of:
- 9.12.15.1. The fair market value of the item for continued use at the displacement site, less the proceeds from its sale. (To be eligible for payment, the claimant must make a good faith effort to sell the personal property, unless the AHTD determines that such effort is not necessary. When payment for property loss is claimed for goods held for sale, the fair market value shall be based on the cost of the goods to the business, not the potential selling price.) or

- 9.12.15.2. The estimated cost of moving the item, but with no allowance for storage, or for reconnecting a piece of equipment if the equipment is in storage or not being used at the occupied site. (If the operation is discontinued, the estimated cost shall be based on a moving distance of 50 miles.)
- 9.12.16.** The reasonable cost incurred in attempting to sell an item that is not to be relocated.
- 9.12.17.** Purchase of substitute personal property. If an item of personal property which is used as part of a business or farm operation is not moved but is promptly replaced with a substitute item that performs a comparable function at the replacement site, the displaced person is entitled to payment of the lesser of
- 9.12.17.1. The 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
- 9.12.17.2. The estimated cost of moving and reinstalling the replacement 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.
- 9.12.18.** Searching for a replacement location for a displaced business, farm operation, or nonprofit organization is entitled to reimbursement for actual expenses, not to exceed \$2,500.00, as the AHTD determines to be reasonable and incurred in searching for a replacement location. Expenses incurred prior to initiation of negotiations may be allowed at the AHTD's discretion.
- A certified statement of the type and amount of the expense incurred searching for a replacement location shall be submitted with the moving cost claim form. Support for such expenses must be attached to the certified statement. Statements must identify person(s) conducting the search, the amount of time spent searching, the dates and hours spent searching, and their hourly wage. Eligible expenses include:
- 9.12.18.1. Time spent searching, based on reasonable salary or earnings of the person conducting the search.
- 9.12.18.2. Fees paid to a real estate agent or broker to locate a replacement site, exclusive of any fees or commissions related to the purchase of such site.
- 9.12.18.3. Time spent obtaining permits and attending zoning hearings.
- 9.12.18.4. Time spent negotiating the purchase of a replacement site based on a reasonable salary or earnings.

9.12.18.5. Transportation cost based on:

9.12.18.6. Actual costs supported by receipts

9.12.18.7. Mileage based on the current reimbursement rate per mile established by the AHTD.

9.12.18.8. Meals and lodging away from home.

**9.12.19.** Low Value/High Bulk: When the personal property to be moved is of low value and high bulk and the cost of moving the property would be disproportionate to its value in the judgment of the AHTD, the allowable moving cost payment shall not exceed the lesser of:

9.12.19.1. The amount that would be received if the property were sold at the site, or,

9.12.19.2. The replacement cost of comparable quantities delivered to the new business location.

9.12.19.3. Examples of personal property covered by this provision include, but are not limited to, stockpiled sand, gravel, minerals, metals and other similar items of personal property as determined by the AHTD.

**9.12.20.** Related nonresidential eligible expenses:

9.12.20.1. Connection to available nearby utilities from the right of way to improvements at the replacement site.

9.12.20.2. Professional services performed prior to the purchase or lease of a replacement site to determine its suitability for the displaced person's business operation including but not limited to, soil testing, feasibility and marketing studies (excluding any fees or commissions directly related to the purchase or lease of such site). At the discretion of the AHTD, a reasonable pre-approved hourly rate may be established.

9.12.20.3. Impact fees or one-time assessments for anticipated heavy utility usage, as determined necessary by the AHTD.

### **9.13. INELIGIBLE MOVING EXPENSES.**

A displaced person is not entitled to payment for:

**9.13.1.** The cost of moving any structure or other real property improvement, or any item paid for as real property that is owned by the displaced person; or

**9.13.2.** Interest on a loan to cover moving expenses; or

**9.13.3.** Loss of goodwill; or

**9.13.4.** Loss of profits; or

- 9.13.5. Loss of trained employees; or
- 9.13.6. Any additional operating expense of a business, farm or nonprofit organization incurred because of operating in a new location except as provided under the re-establishment payment; or
- 9.13.7. Personal injury; or
- 9.13.8. Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the AHTD; or
- 9.13.9. Expenses for searching for a replacement dwelling; or
- 9.13.10. Physical changes to the real property at the replacement location of a business, farm or nonprofit organization, or
- 9.13.11. Costs for storage of personal property on real property owned or presently leased by the displaced person; or
- 9.13.12. Refundable security and utility deposits.

#### **9.14. NOTIFICATION OF MOVES:**

When the displaced person no longer occupies the acquisition area and the personal property has been moved the following actions shall be taken:

- 9.14.1. Notify Property Management by memorandum.
- 9.14.2. Notify the Division Head during staff meeting. If the move is priority for the project the Division Head will be advised as soon as possible.
- 9.14.3. Update displaced persons status for staff minutes.

#### **9.15. BUSINESS, FARM AND NPO REESTABLISHMENT EXPENSES**

##### **9.15.1. General**

In addition to the moving cost payments available as described in Section 9.10, a small business, farm or nonprofit organization may be eligible to receive a payment, not to exceed \$10,000.00, for expenses actually incurred in relocating and reestablishing such small business, farm or nonprofit organization at a replacement site.

- 9.15.1.1. For reestablishment expenses up to \$2,500.00 that are uncomplicated the payment can be based on one bid or estimate prepared by a tradesperson. Two bids or estimates must be obtained for complex expenses and/or expenses that are unfamiliar to the Relocation Coordinator. Payment eligibility is based on the lower of the bids or estimates. Prepare bid/estimate form with recommendation and submit to the Section Head for approval.



- 9.15.1.2. For reestablishment expenses between \$2,500.00 and \$10,000.00 the payment can be based on two bids or estimates prepared by tradespersons. If the Relocation Coordinator is unfamiliar with the reestablishment expenses or the bids/estimates are not competitive additional bids or estimates must be obtained. Payment eligibility is based on the lower of the bids or estimates.
- 9.15.1.3. If the displaced person does not select the tradesperson with the lowest bid/estimate the AHTD will offer to pay the low bidder for preparing the bid/estimate. In some cases all of the tradespersons preparing bids can be compensated preparing the bid/estimate. Example: Bids/Estimates obtained to establish a payment after the displaced person completed eligible reestablishment expenditure. The charge for preparing the bid/estimate(s) should be reasonable and based on the actual time spent preparing the bid/estimates.

### **9.15.2. Reasonable And Necessary Expenses**

Reestablishment expenses must be reasonable and necessary, as determined by the AHTD including, but not limited to:

- 9.15.2.1. Repairs or improvements to the replacement real property as required by Federal, State or local law, code or ordinance.
- 9.15.2.2. Modifications to the replacement property to accommodate the business operation or to make replacement structures suitable for conducting the business.
- 9.15.2.3. Construction and installation costs for exterior signing to advertise the business.
- 9.15.2.4. Refurbishment or replacement of soiled or worn surfaces at the replacement site, such as paint, paneling, or carpeting.
- 9.15.2.5. Advertisement of replacement location.
- 9.15.2.6. Increased costs of operation during the first two years at the replacement site for such items as:
- 9.15.2.6.1. Lease or rental charges,
  - 9.15.2.6.2. Personal or real property taxes,
  - 9.15.2.6.3. Insurance premiums, and
  - 9.15.2.6.4. Utility charges, excluding impact fees.
- 9.15.2.7. Other items the AHTD considers essential to the reestablishment of the business.

**9.15.3. Expenses Not Considered Reasonable And Necessary:**

The following is a non-exclusive listing of reestablishment expenditures that are not considered to be reasonable, necessary, or otherwise eligible:

- 9.15.3.1. Purchase of capital assets, such as, office furniture, filing cabinets, machinery or trade fixtures.
- 9.15.3.2. Purchase of manufacturing materials, production supplies, product inventory or other items used in the normal course of the business operation.
- 9.15.3.3. Interest on money borrowed to make the move or purchase replacement property.
- 9.15.3.4. Payment to a part-time business in the home that does not contribute materially to the household income.

**9.15.4.** The Relocation Coordinator will stay in close contact with the business, farm, or nonprofit organization in order to assist with and organize the information and documentation necessary to establish eligible payments and complete reestablishment expenses. It is important to emphasize the importance for the Relocation Coordinator and displaced person to communicate often and clearly regarding all reestablishment expenses especially construction items. The Relocation Coordinator will verify and help communicate reestablishment expenses that are eligible because of requirement by Federal, State or Local law, code or ordinance.

**9.16. FIXED PAYMENT IN LIEU OF MOVING AND REESTABLISHMENT EXPENSES**

A displaced business, farm operation or nonprofit organization may be able to choose a fixed payment in lieu of moving and reestablishment expenses.

**9.16.1. Types of Operations****9.16.1.1. Displaced Business Eligibility:**

9.16.1.1.1. The fixed payment will be equal to the average annual net earnings of the business except that such payment shall be not less than \$1,000.00 or more than \$20,000.00. This includes a partial taking, if it is determined by the AHTD that total displacement could occur as a result of the acquisition. The AHTD must determine that the additional qualification requirements outlined below are fully satisfied:

9.16.1.1.1.1. The business owns or rents personal property that must be moved in connection with such displacement and for which an expense would be incurred in such move (via sale or removal), and the business vacates or relocates from its displacement site. If the business is totally displaced it may rebuild or relocate on the

residual and still be eligible for the payment as long as it vacates the right of way; and

9.16.1.1.1.2. 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 AHTD determines that it will not suffer a substantial loss of its existing patronage; and

9.16.1.1.1.3. The business is not part of a commercial enterprise having more than three other entities, which are not being acquired by the AHTD, and which are under the same ownership and engaged in the same or similar business activities; and

9.16.1.1.1.4. The business is not operated at a displacement dwelling solely for the purpose of renting such dwelling to others; and

9.16.1.1.1.5. The business is not operated at the displacement site solely for the purpose of renting the site to others (commercial property), mainly for their long term use; and

9.16.1.1.1.6. The business contributed materially to the income of the displaced person during the two taxable years prior to displacement.

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

9.16.1.1.2.1. The same premises and equipment are shared;

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

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

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

#### 9.16.1.2. **Displaced Farm Eligibility:**

9.16.1.2.1. The fixed payment will be an amount equal to the farm operation's average annual net earnings except that such payment shall not be less than \$1,000.00 or more than \$20,000.00. Farms that meet all eligibility requirements for this type of payment are qualified even though they have no personal property that would have to physically be moved if the farm could be relocated.

9.16.1.2.2. The farm operation must have contributed materially to the income of the displaced person during the two taxable years prior to displacement.

9.16.1.2.3. In the case of a partial acquisition of land that was a farm operation before the acquisition, the displaced farm payment shall be made only if the AHTD determines that:

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

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

**9.16.1.3. Displaced Nonprofit Organization Eligibility:**

9.16.1.3.1. The fixed payment will be an amount not less than \$1,000.00 or more than \$20,000.00. If the AHTD determines that it cannot be relocated without a substantial loss of existing patronage (membership or clientele). A nonprofit organization is assumed to meet this test, unless the AHTD demonstrates otherwise.

9.16.1.3.2. The amount used for the payment is the average of 2 years gross revenues less administrative expenses.

9.16.1.3.3. Any payment in excess of \$1,000.00 must be supported with financial statements for the two 12 month periods prior to the acquisition.

9.16.1.3.4. Annual gross revenues may be based on a different period of time when the AHTD determines it to be more equitable, and if the organization has not been in operation for the full 2 years, the actual period of operation may be projected as in the Displaced Business Payment.

**9.16.2. Request for Consideration:**

The displaced person will be required to request the fixed payment through written correspondence explaining their reasoning and verification of the requirements. The Relocation Coordinator will prepare a memorandum along with the displaced person's request with all the pertinent information and calculation based on supporting financial information for the operation.

**9.16.3. Review:**

The Relocation Coordinator will review and establish that the necessary factors have been met. If so, the Relocation Coordinator will prepare a memorandum to the Relocation Section Head regarding the displaced persons eligibility to claim the in-lieu payment.

**9.16.4. Determination:**

Upon review, the Relocation Section Head will concur with the Relocation Coordinator's decision or object to the decision pending further documentation. If it is determined that the displaced operation is eligible for the payment then the necessary income information will be obtained.

**9.16.5. Verification of income:**

This information can be provided through the following documentation.

9.16.5.1. Tax returns

9.16.5.2. Certified Profit and Loss Statements

9.16.5.3. Other reasonable evidence the AHTD determines is satisfactory. Other evidence can be used when income tax returns are provided but additional profit and loss information is necessary to determine specific earnings for the displaced location or when income tax returns and/or certified financial statements cannot be provided for documented and justifiable reasons.

**9.16.6. Business or Farm Operation - Average Annual Net Earnings:**

9.16.6.1. The average annual net earnings of a business or farm operation is one-half of its net earnings before Federal, State and local income taxes during the two taxable years immediately prior to the taxable year in which it was displaced.

9.16.6.2. If the business or farm was not in operation for the full 2 taxable years prior to displacement, net earnings shall be based on the actual period of operation at the displacement site during the two taxable years prior to displacement, projected to an annual rate. Therefore, if the business was in operation less than 12 months the amount of income for this period will be projected for a 12 month period and the payment would be computed by dividing the net earnings by the number of months in operation and multiplying by 12.

9.16.6.3. Examples:

9.16.6.3.1. In business for less than 12 months

Computation: Income projected to 12 months (if business was in operation for 1 month and made \$2,000.00 projected annual income would be \$24,000.00) \$2,000.00 divided by 1 (months in operation) x 12 = \$24,000.00 - payment not to exceed \$20,000.00.

9.16.6.3.2. In business for 12 months or more but less than 24 months

Computation: Net earnings divided by number of months in operation x 12 = payment not to exceed \$20,000.00.

9.16.6.3.3. Average annual net earnings may be based upon a different period of time when the AHTD determines it to be more equitable.

9.16.6.3.4. Net earnings include any compensation obtained from the business or farm operation by its owner, the owner's spouse and dependents.

#### **9.16.7. NPO - Average Annual Net Revenues:**

9.16.7.1. The amount to be used for the payment is the average of 2 years annual gross revenues less administrative expenses.

9.16.7.2. Gross revenues include membership fees, class fees, cash donations, tithes, receipts from sales or other forms of fund collection that enables the nonprofit organization to operate.

9.16.7.3. Administrative expenses are used for administrative support such as rent, utilities, salaries, advertising and other like items as well as fund raising expenses.

9.16.7.4. Operating expenses for carrying out the purposes of the NPO are not included in administrative expenses.

9.16.7.5. The monetary receipts and expense amounts may be verified with certified financial statements or financial documents required by public agencies.

### **9.17. REPLACEMENT HOUSING PAYMENTS**

#### **9.17.1. Comparable Replacement Housing**

The AHTD may provide equal or better housing than the displacement dwelling in regard to the number of rooms, square footage, age, construction and etc., if it is available. If not available, housing meeting the minimum requirements as specified and defined in this manual for comparable replacement housing will be utilized.

Mobile homes may be utilized as comparable housing when the displacement dwelling is not decent, safe and sanitary or the displaced person(s) are displaced from marginal or substandard housing with functional obsolescence. However, a displaced person(s) will not be required to move to a replacement dwelling that is not functionally equivalent as specified and defined in this manual for comparable replacement housing. Comparables with a higher density may also be utilized.

Comparable replacement housing will be made available prior to displacement with sufficient time to negotiate and enter into a purchase agreement or lease agreement for the replacement property. Relocation

assistance and acquisition compensation to which the displaced person is entitled will be provided so that in sufficient time to complete the purchase or lease of the replacement property can be completed in a timely manner.

### **9.17.2. 180 Day - Residential Owner Occupants**

The Replacement Housing Payment (RHP) for an eligible 180-day owner-occupant is the sum of the three payments; Price Differential Payment, Increased Mortgage Interest Cost Payment, and Incidental Expenses Payments. If the sum of the three payments exceeds \$22,500.00 the RHP is classified a Housing of Last Resort (HLR) payment and handled as set forth in Section 9.18.

#### **9.17.2.1. Eligibility**

The Relocation Section will be responsible for the determination of eligibility and amount of RHP's. An owner occupant is entitled to RHP's if:

- 9.17.2.1.1. The displaced person has actually owned and occupied the displacement dwelling for at least 180 days immediately prior to the date of initiation of negotiations;
- 9.17.2.1.2. The property was acquired from the person by the AHTD, or the AHTD issued an order to vacate even though the property is not acquired;
- 9.17.2.1.3. The person purchases and occupies a decent, safe and sanitary dwelling within a 1-year period beginning on the later of the following dates. The AHTD may extend such one year period for good cause.
  - 9.17.2.1.3.1. The date the person receives final payment for the acquired dwelling or, in the case of condemnation, the date the amount is deposited in the court, or
  - 9.17.2.1.3.2. The date the AHTD presents the RHP eligibility notice which must include at least one available comparable replacement dwelling.

If the displaced person locates a prospective replacement dwelling and finds it necessary to make an offer before an inspection has been made, he/she does so at the risk of the dwelling not meeting the requirements necessary to receive part or all of a RHP. The displaced person should seek advice from their real estate agent and/or attorney before making the offer contingent on receiving any funds from the AHTD.

#### **9.17.2.2. Price Differential Payment (PDP)**

The PDP is the lesser of the difference between the actual cost that the displaced person pays for a decent, safe and sanitary dwelling and the acquisition amount paid by the AHTD for a displaced person's dwelling, or

the amount determined by the AHTD as necessary to purchase a comparable replacement dwelling.

#### 9.17.2.2.1. Upper Limit Determination

The upper limit of the PDP is determined by a replacement housing study (RHS) and based on the cost of a comparable replacement dwelling. A thorough search of the market will be completed by the Relocation Coordinator to locate the most comparable replacement dwelling. If available at least three comparable replacement dwellings will be researched and included in the RHS. The Relocation Section Head or their designee will review and approve the RHS. A justification memorandum will be included with the study when PDP calculations exceed \$22,500.00, HLR. PDP calculations exceeding \$37,500.00 require Division Head approval prior to presentation. Variations to typical PDP determinations may include, but are not limited to, the following:

#### 9.17.2.2.2. Major Exterior Attributes:

If the acquired dwelling has what is determined to be a major exterior attribute, such as a detached garage, swimming pool, extra-large lot (that is considered typical for the area), golf course or lake frontage, etc., a search will be made for comparable dwellings that contain the particular attribute to compute the PDP. If a replacement dwelling with similar attributes cannot be located then the compensation attributed to the attribute will be deducted from the compensation for the acquired dwelling when computing the price differential payment.

Example:

Total Acquisition Price	\$52,500.00	
Depreciated Value of Major Exterior Attribute	<u>- 2,500.00</u>	
Value of Dwelling and Dwelling Site	\$50,000.00	
Comparable Dwelling and Dwelling Site	\$60,000.00	
Value of Acquired Dwelling and Dwelling Site	<u>- 50,000.00</u>	
	\$10,000.00	= PDP

#### 9.17.2.2.3. Uneconomic Remnant:

When the acquisition of a portion of the dwelling site causes the displacement of the owner from the dwelling, the after value of the remainder dwelling site and improvements will be included in the



original PDP calculation when the acquisition offer includes an uneconomic remnant. If the owner does not sell the uneconomic remnant to the AHTD, the after value of the remainder dwelling site and improvements will not be added to the acquisition cost of the displacement dwelling in determining the actual PDP.

#### 9.17.2.2.4. Buildable Residential Lot Remnant:

When the acquisition of a portion of a typical residential property causes the displacement of the owner from the dwelling and the remainder is a buildable residential lot, the AHTD may offer to purchase the entire property. If the owner refuses to sell the remainder to the AHTD, the market value of the remainder may be added to the acquisition cost of the displacement dwelling for purposes of computing the RHP.

#### 9.17.2.2.5. Mixed-use and Multi-Family Properties Acquired:

If the acquired dwelling was part of a property that contained another dwelling unit and/or space used for non-residential purposes, and/or is located on a lot larger than typical for residential purposes, only that portion of the acquisition payment which is actually attributable to the acquired dwelling (which will be determined by Appraisal) shall be considered its acquisition cost when computing the PDP.

#### 9.17.2.2.6. Multi Occupants of One Acquired Dwelling:

If two or more occupants of the acquired dwelling move to separate replacement dwellings, each occupant is entitled to a reasonable prorated share, as determined by the AHTD, of any relocation payments (RHP and/or moving) that would have been made if the occupants moved together to a comparable replacement dwelling. However, if the AHTD determines that two or more occupants (families or individuals) maintained separate households within the same dwelling, such occupants have separate entitlements to relocation payments. These payments would be based on housing which is comparable to the quarters occupied by each occupant plus a pro-rata share of community rooms that have been shared with other occupants.

#### 9.17.2.2.7. Partial-Ownership of Acquired Dwelling

The RHP for displaced residential occupant(s) with a partial ownership interest in the acquired house and dwelling site will be computed in the same manner as described in Section 9.17.2.2.5. The residential occupant's actual portion of the compensation for the acquisition of the house and dwelling site will be used in conjunction with the actual purchase price of the replacement dwelling to determine the actual

price differential payment. The displaced person's eligibility for a price differential payment begins once the price for the replacement dwelling exceeds the displaced person's compensation for their portion of the acquired dwelling.

Example price differential computations:

Residential Owner Occupant with 50% ownership interest in acquired house and dwelling site.

\$ 125,000.00 = Listing Price, Comparable Replacement Dwelling

\$ 108,000.00 = Total compensation, Acquired Dwelling

\$ 17,000.00 = Price Differential Payment Eligibility

\$ 70,000.00 = Actual Purchase Price, Replacement Dwelling

\$ 54,000.00 = Occupants compensation for interest in Acquired Dwelling

\$ 16,000.00 = Actual Price Differential Payment

#### 9.17.2.2.8. Life Estate in Acquired Dwelling:

The PDP for displaced residential occupant(s) with a life estate interest in the acquired dwelling and dwelling site will be computed in the same manner as described in Section 9.17.2.2.5. Legal determines the value of the life estate and the displaced person's portion of the acquisition compensation in accordance with Arkansas State Law. The residential occupant's actual portion of the compensation for the acquisition of the dwelling and dwelling site will be used in conjunction with the actual purchase price of the replacement dwelling to determine the actual price differential payment. The displaced person's eligibility for a price differential payment begins once the price for the replacement dwelling exceeds the displaced person's compensation for their portion of the acquired dwelling.

#### 9.17.2.2.9. Recomputation of Payment:

When the displacement dwelling has been acquired or condemned within a reasonable amount of time from the initiation of negotiations and the displaced person voluntarily remains in the dwelling, the AHTD is under no obligation to recompute the PDP when the displaced person(s) moves. However, if the property is not acquired for a long period of time, then housing within the same price range may be offered or, if it is not available, a new PDP may be prepared and presented.

#### 9.17.2.2.10. Actual Price Differential Payment

To receive a PDP the cost of the replacement must exceed the acquisition cost of the acquired dwelling. The following shall be considered in determining the acquisition cost of the displaced dwelling and the actual cost of the replacement dwelling:

##### 9.17.2.2.10.1. Acquisition Cost

###### 9.17.2.2.10.1.1. Acquisition Amount Increased:

If the residential portion of the acquisition amount is changed through an administrative settlement, appraisal revisions, consent or court judgment, the PDP will be recalculated based on the revised compensation for the dwelling and dwelling site.

###### 9.17.2.2.10.1.2. Condemnation Agreement

The displaced person shall sign a "Condemnation Agreement" (along with the RHP Claim), prior to final adjudication of an eminent domain action to claim the RHP. The agreement stipulates that upon adjudication, the PDP will be recomputed using the amount attributable to the dwelling and dwelling site awarded through the proceedings as the new acquisition value. If the revised PDP is reduced the displaced person will refund the difference derived from the condemnation judgment.

##### 9.17.2.2.10.2. Actual Cost of Replacement Dwelling Determination:

For purposes of computing the price differential payment, the actual cost of the replacement dwelling can include, but is not limited to, the following:

###### 9.17.2.2.10.2.1. Purchase price of a dwelling; or

###### 9.17.2.2.10.2.2. Purchase price and rehabilitation cost of a substandard dwelling; or

###### 9.17.2.2.10.2.3. Cost of a relocated dwelling the displaced person owns or purchases, including the displaced dwelling if retained.

###### 9.17.2.2.10.2.3.1. Cost of the dwelling

###### 9.17.2.2.10.2.3.2. The moving expenses and the cost of necessary restoration cost.

###### 9.17.2.2.10.2.3.3. The cost of making the replacement dwelling and site decent, safe and sanitary.

###### 9.17.2.2.10.2.4. The actual cost of the replacement site and site improvements. If the retained dwelling is moved to the residual or a site previously owned by the displaced

person, the FMV of the site and site improvements will be used for the replacement cost. The guidelines for determining FMV are established in Section 9.17.2.2.10.2.6.

9.17.2.2.10.2.5. Construction of a dwelling on a site the displaced person owns or purchases

9.17.2.2.10.2.6. FMV of a currently owned dwelling and/or site

The Relocation Coordinator will obtain records and data to verify the ownership of the property and submit to the Relocation Section Head. Upon review and approval, the Relocation Coordinator will obtain market data for the previously owned property and prepare a FMV analysis for review by the Relocation Section Head.

9.17.2.2.10.2.6.1. If approved, the FMV will be incorporated into the actual replacement property calculation.

9.17.2.2.10.2.6.2. If not approved or there is insufficient data or knowledge to complete the FMV analysis, the Relocation Section Head will send a memorandum with the FMV analysis to the Appraisal Section Head requesting a valuation for the property in question.

### 9.17.2.3. **Incidental Expenses:**

9.17.2.3.1. Incidental expenses are those necessary and reasonable costs actually incurred by the displaced person incident to the purchase of a replacement dwelling, and customarily paid by the buyer including:

9.17.2.3.1.1. Legal, closing and related costs, including those for title search, abstracting and preparing conveyance instruments, notary fees, surveys and plats, and recording fees.

9.17.2.3.1.2. Lender, FHA, or VA application and appraisal fees.

9.17.2.3.1.3. Loan origination, points or assumption fees that do not represent prepaid interest. Payment will be based on the lesser mortgage balance. If there was no mortgage on the displacement dwelling then these costs would not be considered necessary costs.

9.17.2.3.1.4. Certification of structural soundness, professional home inspection and termite inspection.

9.17.2.3.1.5. Credit Report.

9.17.2.3.1.6. Owner's and mortgagee's evidence of title, e.g. title insurance, not to exceed the costs for a comparable replacement dwelling.

- 9.17.2.3.1.7. Escrow agent's fee.
  - 9.17.2.3.1.8. State revenue or documentary stamps, sales or transfer taxes (not to exceed the costs for a comparable replacement dwelling).
  - 9.17.2.3.1.9. Conventional loan application and appraisal fees if not a part of the debt service charge or finance charge.
  - 9.17.2.3.1.10. Mortgage Insurance Premiums - Reimbursement should be limited to an amount based on the unpaid mortgage balance on the displacement dwelling or the new mortgage amount, whichever is less. If there were no mortgage on the displacement dwelling then this cost would not be considered a necessary cost.
  - 9.17.2.3.1.11. Such other costs as the AHTD determine to be incidental to the purchase.
- 9.17.2.3.2. Any displaced person who is qualified for an RHP is entitled to receive an incidental closing cost payment, except as limited by Section 9.17.3.
- 9.17.2.3.3. A displaced owner occupant who meets the qualification requirements for an RHP, but does not receive the price differential payment because he or she purchased a decent, safe and sanitary replacement dwelling for an amount less than the acquisition payment for his or her dwelling and dwelling site, or did not have a higher interest rate on the loan on the replacement dwelling, shall qualify for an Incidental Closing Cost payment (including mortgage insurance, loan origination fees and other debt service charges based on the lesser mortgage balance). The same is true for a displaced person who is eligible for down payment assistance.
- 9.17.2.3.4. Incidental Closing Cost payments may be claimed subsequent to the closing on a separate claim form from the RHP or down payment assistance.
- 9.17.2.4. Increased Mortgage Interest Costs:**
- 9.17.2.4.1. Increased mortgage interest costs are payments available under the Relocation Program to displaced residential owners to compensate for the additional expense they will encounter, if any, by paying higher interest rates for a new mortgage on a replacement property than they were paying on an existing mortgage on the property acquired from them by the AHTD, plus other debt service costs paid by the displaced person, if not paid as incidental costs.

- 9.17.2.4.2. The payment shall be an amount that will reduce the mortgage balance on the replacement dwelling 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.
- 9.17.2.4.3. Payment Qualification Requirements. The following conditions must exist before a displaced person can qualify for an increased interest payment:
- 9.17.2.4.3.1. The displaced person must meet all basic qualification requirements necessary to be eligible for a RHP. The displaced person would not be disqualified for an increased interest payment even though they did not actually receive a RHP for the reason that comparable replacement property was available for an amount that did not exceed the acquisition cost, if otherwise qualified, and
  - 9.17.2.4.3.2. The subject owner-occupied residential property being acquired by the AHTD must have been encumbered, not less than 180 days prior to the initiation of negotiations, by a bona fide mortgage which was a valid lien on such property, and
  - 9.17.2.4.3.3. The replacement is also encumbered by a bona fide mortgage that bears a higher interest rate than the mortgage on the property being acquired by the AHTD.
- 9.17.2.4.4. Payment Computations:
- 9.17.2.4.4.1. The increased interest payment computation will be made by the Relocation Coordinator handling the subject tract with the approval of the Relocation Section Head.
  - 9.17.2.4.4.2. The displaced person shall be advised of the approximate amount of this payment as soon as the facts relative to the person's current mortgages are known and, if all pertinent documents are provided by the displaced person, the payment shall be made available at or near the time of the closing on the replacement dwelling.
  - 9.17.2.4.4.3. The interest rate on the mortgage for the replacement dwelling to be used in the computation shall be the actual rate but may not exceed the prevailing interest rate currently charged by mortgage lending institutions in the vicinity of the replacement dwelling.
  - 9.17.2.4.4.4. The payment shall be based on the unpaid mortgage balances on the displacement dwelling; however, in the event the displaced person obtains a smaller mortgage than the mortgage

balance computed in the buy down determination, the payment will be prorated and reduced accordingly.

- 9.17.2.4.4.4.1. In the case of a home equity loan the unpaid balance shall be that balance which existed 180 days prior to the initiation of negotiations or the balance on the date of acquisition, whichever is less.
- 9.17.2.4.4.4.2. The payment shall be based on the remaining term of the mortgage (s) on the displacement dwelling or the term of the new mortgage, whichever is shorter.
- 9.17.2.4.4.4.3. The actual payment computation will be determined by utilizing the Increased Interest Computation Sheet form.
- 9.17.2.4.4.5. Debt Service Costs: Purchaser's points and loan origination or assumption fees, but not seller's points, shall be added to the increased interest payment to the extent:
  - 9.17.2.4.4.5.1. They are not paid as incidental expenses:
  - 9.17.2.4.4.5.2. They do not exceed rates normal to similar real estate transactions in the area;
  - 9.17.2.4.4.5.3. The AHTD determines them to be necessary; and
  - 9.17.2.4.4.5.4. The computation of such points and fees shall be based on the unpaid mortgage balance on the displacement dwelling, less the amount determined for the reduction of such mortgage balance under this Section.
- 9.17.2.4.5. Partial Acquisition:
  - 9.17.2.4.5.1. Where the dwelling is located on a tract normal for residential use in the area, the interest payment shall be reduced to the percentage ratio that the acquisition price bears to the before value; except the reduction shall not apply when the mortgagor required the entire mortgage balance to be paid because of the acquisition and it is necessary to refinance.
  - 9.17.2.4.5.2. Where a dwelling is located on a tract larger than normal for residential use in the area, the total mortgage balance shall be reduced to the percentage ratio that the value of the residential portion bears to the before value for computational purposes. This reduction shall apply whether or not it is required that the entire mortgage balance be paid.
- 9.17.2.4.6. Multi-Use Properties: The interest payment on multi-use properties shall be reduced to the percentage ratio that the residential value of the multi-use property bears to the before value.

- 9.17.2.4.7. **Other Highest and Best Use:** If a dwelling is located on a tract where the fair market value is established on higher and better than residential use, and if the mortgage is based on residential value, the interest payment shall be computed as provided in the appropriate paragraphs above. If the mortgage is based on the higher use; however, the interest payment shall be reduced to the percentage ratio that the estimated residential value of the parcel has to the before value.
- 9.17.2.4.8. **To Whom Payment Made:** The payment may be made directly to the displaced individual or family; or upon written instructions from the displaced individual or family, directly to the mortgagee of the replacement dwelling.
- 9.17.2.4.9. **Multi Mortgages:** If the displaced person has had a first and second mortgage on the displacement dwelling and obtains a first and second mortgage on the replacement dwelling then two increased interest payment computations may be made. If only a first mortgage on the replacement dwelling is obtained, only one computation will be made. If the displaced person has one mortgage on the displacement dwelling and obtains a first and second mortgage on the replacement dwelling only one computation will be made.

### **9.17.3. Rental Assistance Payments**

#### **9.17.3.1. General**

Individuals and families displaced by an AHTD project from dwelling units who rent rather than purchase, are entitled to a rental assistance payment if they meet the payment qualification requirements noted below.

Rental assistance payments that exceed \$5,250.00 are HLR. Rental assistance payment calculations exceeding \$12,000.00 require Division Head approval prior to presentation.

The "three comparable method" of determining the rental rates of comparable housing will be used by the Relocation Section as outlined in Section 9.4.3.

#### **9.17.3.2. Payment Qualification Requirements:**

##### **9.17.3.2.1. Tenants, ninety-day or more occupants:**

- 9.17.3.2.1.1. The displaced person must have actually and lawfully occupied the subject dwelling unit for at least ninety (90) days immediately prior to the initiation of negotiations for the property.
- 9.17.3.2.1.2. Decent, Safe and Sanitary Replacement Housing must be rented and occupied within one year from the date the displaced



person moves from the acquired property (unless the AHTD extends this period for good cause).

9.17.3.2.2. Short Term Owners, 90 to 179 day Occupants:

9.17.3.2.2.1. The displaced person must meet the same qualifications set out for a tenant except that the one-year period allowed for renting and occupying a replacement unit shall be measured from the latest of the following dates (unless the AHTD extends this period for good cause):

9.17.3.2.2.1.1. The date which they received the payment for the acquisition, or in the case of condemnation, the date the deposit was made in court; or

9.17.3.2.2.1.2. The date the displaced person moves from the acquired property.

9.17.3.2.2.2. The rental assistance payment cannot exceed the amount the displaced person would have been entitled to receive as a PDP

9.17.3.2.3. Less Than Ninety-Day And Subsequent Occupant

9.17.3.2.3.1. These occupants are entitled to receive rental assistance as provided under Replacement Housing of Last Resort as described in Section 9.18.2.4.

9.17.3.2.3.2. The displaced person must meet the same qualifications set out for a tenant except that the 90 day occupancy time requirement is not applicable.

9.17.3.2.3.3. The one-year period allowed for occupying a replacement dwelling shall be measured from the following dates. :

9.17.3.2.3.3.1. For Owner Occupants, the later of

9.17.3.2.3.3.1.1. The date the displaced person receives final payment for the acquired dwelling or, in the case of condemnation, the date the amount is deposited in the court or

9.17.3.2.3.3.1.2. The date the AHTD presents the RHP eligibility notice.

9.17.3.2.3.3.2. For Tenant Occupants, the date on which the displaced person actually moves from the acquired dwelling.

9.17.3.2.4. Long Term Owners, 180 Occupants:

9.17.3.2.4.1. The displaced person must meet the same qualifications set out for a tenant except that the one-year period allowed for renting and occupying a replacement unit shall be measured from the

latest of the following dates (unless the AHTD extends this period for good cause):

- 9.17.3.2.4.1.1. The date which they received the payment for the acquisition, or in the case of condemnation, the date the deposit was made in court; or
- 9.17.3.2.4.1.2. The date the displaced person moves from the acquired property.
- 9.17.3.2.4.2. A long-term owner qualified for a RHP can elect to rent in lieu of purchasing a replacement dwelling. The rental assistance payment would be made in lieu of the PDP and is based on an economic rent determined by the Appraisal Section.
- 9.17.3.2.4.3. The rental assistance payment cannot exceed the amount the displaced person would have been entitled to receive as a PDP.
- 9.17.3.2.4.4. The displaced person remains eligible during the one-year occupancy period for the amount of the PDP less the rental assistance claimed.
- 9.17.3.2.5. Sleeping Rooms:
  - A displaced tenant of a sleeping room who meets the payment qualification requirements is entitled to a rental assistance payment.

#### 9.17.3.3. **Computation of Payment:**

- 9.17.3.3.1. An eligible displaced person who rents a replacement dwelling is entitled to a rental assistance payment. Such payment shall be forty-two (42) months times the amount obtained by subtracting the base monthly rental for the displacement dwelling from the lesser of:
  - 9.17.3.3.1.1. The monthly rent and estimated average monthly cost of utilities for a comparable replacement dwelling; or
  - 9.17.3.3.1.2. The monthly rent and estimated average monthly cost of utilities for the DS&S replacement dwelling actually occupied by the displaced person. However, if the monthly rent alone is enough to qualify the displaced person for the full payment, the utilities need not be added.
- 9.17.3.3.2. The base monthly rental for the displacement dwelling is the lesser of:
  - 9.17.3.3.2.1. The average monthly cost for rent and utilities at the displacement dwelling for a reasonable period prior to displacement (last three months prior to initiation of negotiations). For an owner occupant, use economic rent (as determined by the Appraisal Section), plus utility cost for the

displacement dwelling. For a tenant who paid little or no rent for the displacement dwelling due to services provided or family relation, use economic rent (plus utility cost) unless its use would result in a hardship because of the person's income or other circumstances; or

- 9.17.3.3.2.2. Thirty (30) percent of the displaced person's average monthly gross household income if the amount is classified as "low income" by the U. S. Department of Housing and Urban Development's Annual Survey of Income Limits for the Public Housing and Section 8 Programs. The base monthly rental shall be established solely on the criteria in b.1) above for persons with income exceeding the survey's "low income" limits, for persons refusing to provide appropriate evidence of income, and for persons who are dependents. A full time student or resident of an institution may be assumed to be a dependent, unless the displaced person demonstrates otherwise, or,
- 9.17.3.3.2.3. The total of the amount designated for shelter and utilities if receiving a welfare assistance payment from a program that designates the amounts for shelter and utilities.

**9.17.3.4. Unfurnished Versus Furnished Dwellings:**

In order to compare like situations, comparables obtained for an unfurnished displacement dwelling will be unfurnished and comparables for a furnished displacement dwelling will be furnished. Partially furnished dwellings will be considered unfurnished unless the landlord's furnishings are more numerous than the tenant's. When a displacement dwelling is furnished and all that is available is unfurnished comparables then an appropriate amount for rental of furniture will be added to the rent of the comparable.

**9.17.3.5. Utility Costs:**

The average monthly utility costs for the displacement dwelling, the comparable or the replacement dwelling are established with the best information available. The estimated average utility costs are based on the projected usage for the displaced person. Data to determine the estimated monthly utilities include current usage and costs at the displaced dwelling, applicable utility companies and rates for the displaced dwellings, and average usage and/or costs from respective utility companies based on occupancy. If a well and/or septic system are involved, nothing will be added to the rents unless there is a specific charge for these services.

**9.17.3.6. Change of Occupancy:**

If a tenant, after moving to a decent, safe and sanitary dwelling, relocates within a one-year period, to a higher cost rental unit, he or she may present another claim for the amount in excess of what was originally claimed, but not to exceed the total rent supplement computed by the AHTD.

**9.17.3.7. Multiple Occupants of One Acquired Dwelling Unit:**

Provisions for this paragraph are the same as Section 9.17.2.2.5.

**9.17.3.8. Manner of Disbursement:**

A rental assistance payment may, at the AHTD's discretion, be disbursed in either a lump sum or in installments. However, except as limited in the paragraph entitled "Payment After Death" in this manual, the full amount vests immediately, whether or not there is any later change in the displaced person's income or rent, or in the condition or location of the displaced person's housing.

**9.17.4. Down payment Assistance****9.17.4.1. Amount of Payment:**

9.17.4.1.1. Any displaced tenant, who meets the eligibility requirements for a rental assistance payment and elects to purchase in lieu of renting a replacement dwelling, is eligible to receive down payment assistance in the amount determined as their rental assistance payment eligibility. The full amount claimed must be applied toward the purchase price of the replacement and/or incidental expenses. The total payment will not exceed \$5,250.00 unless the rental assistance payment was originally HLR. The replacement dwelling must be decent, safe, and sanitary. The displaced person must occupy the replacement as their residence. The one year period for occupying the replacement is the same as for the Rental Assistance Payment.

9.17.4.1.2. A displaced owner-occupant otherwise eligible for a PDP except that he/she has owned and occupied the dwelling for less than 180-days but not less than ninety-days (short term owner) may receive down payment assistance in an amount based on a rental assistance computation. However, the payment to a short-term owner shall not exceed the amount the owner would receive if they met the 180-day occupancy requirement.

9.17.4.1.3. A displaced person eligible to receive a PDP as a 180-day owner occupant is not eligible for this payment.

- 9.17.4.2. **Application of Payment:** The full amount of the RHP claimed for the down payment assistance must be applied to the purchase price of the replacement dwelling and/or related incidental expenses. Eligible costs for down payment assistance include, but are not limited to:
- 9.17.4.2.1. Purchase of a dwelling, or
  - 9.17.4.2.2. Construction of a replacement dwelling; or
  - 9.17.4.2.3. Purchase of a mobile home and purchase or rental of a replacement site; or
  - 9.17.4.2.4. Purchase of a replacement site and occupancy of a dwelling on that site; or
  - 9.17.4.2.5. Purchase of dwelling and movement to a replacement site; and
  - 9.17.4.2.6. Expenditures to correct decent, safe and sanitary deficiencies in a replacement dwelling.
- 9.17.4.3. **Multiple Occupants:** In cases of multiple occupants of one acquired dwelling that move separately the eligible payment will be based on a pro rata share.
- 9.17.4.3.1. It is permissible for one of the displaced persons to elect to purchase a replacement and receive a down payment assistance payment and another to rent and receive a rental assistance payment.
  - 9.17.4.3.2. This payment computation will be determined by the Relocation Coordinator and reviewed by the Relocation Section Head prior to delivering the claim form to the displaced persons.

#### **9.17.5. Mobile Homes - Replacement Housing Payments:**

Replacement Housing Payments for occupants displaced from a mobile home, and/or from the acquired mobile dwelling site: Both the mobile home and mobile dwelling site must be considered when computing a replacement housing payment.

- 9.17.5.1. An owner-occupant displaced from a mobile home or site is entitled to a price differential payment, if:
- 9.17.5.1.1. The person occupied the mobile home on the displacement site for at least 180 days immediately before:
    - 9.17.5.1.1.1. The initiation of negotiations to acquire the mobile home, if the person owned the mobile home and the mobile home is real property.

- 9.17.5.1.1.2. The initiation of negotiations to acquire the mobile dwelling site if the mobile home is personal property, but the person owns the mobile dwelling site; or
  - 9.17.5.1.1.3. The date of the AHTD's written notification to the owner-occupant that the owner is determined to be displaced from the mobile home as described in Section 9.2.3.
- 9.17.5.1.2. The displaced person meets the other basic eligibility requirements under RHP's in Section 9.17.
- 9.17.5.1.2.1. The AHTD acquires the mobile home as real estate, or acquires the mobile dwelling site from the displaced owner, or the mobile home is personal property but the owner is displaced from the mobile home because the AHTD determines that the mobile home:
    - 9.17.5.1.2.1.1. Is not, and cannot economically be made decent, safe, and sanitary;
    - 9.17.5.1.2.1.2. Cannot be relocated without substantial damage or unreasonable cost;
    - 9.17.5.1.2.1.3. Cannot be relocated because there is no available comparable replacement site; or
    - 9.17.5.1.2.1.4. Cannot be relocated because it does not meet mobile home park entrance requirements.
- 9.17.5.1.3. The PDP for an eligible displaced 180-day owner is computed as described in Section 9.17.2.2. incorporating the following, as applicable:
- 9.17.5.1.3.1. If the AHTD acquires the mobile home as real estate and/or acquires the owned site, the acquisition cost used to compute the price differential payment is the actual amount paid to the owner as just compensation for the acquisition of the mobile home, and/or site, if owned by the displaced mobile homeowner.
  - 9.17.5.1.3.2. If the AHTD does not purchase the mobile home as real estate, but the owner is determined to be displaced from the mobile home and eligible for a RHP, the eligible price differential payment for the purchase of a comparable replacement mobile home is the lesser of the displaced mobile homeowner's net cost to purchase a replacement mobile home (i.e., purchase price of the replacement mobile home less trade-in or sale proceeds of the displacement mobile home); or, the cost of the AHTD's selected comparable mobile home less the AHTD's

estimate of the salvage or trade-in value for the mobile home from which the person is displaced.

- 9.17.5.1.3.3. If a comparable replacement mobile dwelling site is not available, the price differential payment shall be computed on the basis of the reasonable cost of a conventional comparable replacement dwelling.
  - 9.17.5.1.4. If the displacement mobile home site is leased or rented, a displaced 180-day owner-occupant is entitled to a rental assistance payment computed as described in Section 9.17.3.3. This rental assistance payment may be used to lease a replacement site; may be applied to the purchase price of a replacement site; or may be applied, with any replacement housing payment attributable to the mobile home, to the purchase of a replacement mobile home or conventional decent, safe and sanitary dwelling.
  - 9.17.5.1.5. If the AHTD determines that a mobile home is personal property and may be relocated to a comparable replacement site and the owner-occupant does so or elects not to do so, the owner is not entitled to a replacement housing payment for the purchase of a replacement mobile home. However, the owner is eligible for moving costs described under moving costs in Sections 9.8 and 9.9 and any replacement housing payment for the purchase or rental of a comparable site.
  - 9.17.5.1.6. If the mobile home is not acquired but the owner is eligible for a PDP, the owner is not eligible for payment of moving expenses for moving the mobile home, but may be eligible for a payment for moving personal property from the mobile home.
- 9.17.5.2. Rental Assistance Payments for Ninety-Day Mobile Home Occupants (Tenants and Short Term Owner).

A displaced tenant or owner-occupant of a mobile home and/or site is eligible for a replacement housing payment, if:

- 9.17.5.2.1. The person actually occupied the displacement mobile home on the displacement site for at least 90 days immediately prior to the initiation of negotiations;
- 9.17.5.2.2. The person meets the other basic eligibility requirements under rental assistance payments in Section 9.17.3.
- 9.17.5.2.3. The AHTD acquires the mobile home and/or site, or the mobile home is not acquired by the AHTD, but the AHTD determines that the occupant is displaced from the mobile home.

## 9.17.5.3. Situations Concerning Mobile Home Payments:

- 9.17.5.3.1. A Mobile Home Occupant who owns a mobile home (determined to be personalty), rents the site, and meets qualifications, may be eligible for:
  - 9.17.5.3.1.1. Rental Assistance Payment based on comparable site; or
  - 9.17.5.3.1.2. Down payment assistance for a site.
- 9.17.5.3.2. A Mobile Home Occupant who owns a mobile home (determined to be realty), rents the site, and meets qualifications may be eligible for:
  - 9.17.5.3.2.1. Replacement Housing Payment based on comparable mobile home; and
  - 9.17.5.3.2.2. Rental Assistance Payment based on comparable site; or
  - 9.17.5.3.2.3. Down payment assistance for a site.
- 9.17.5.3.3. A Mobile Home Occupant who owns a mobile home (determined to be realty), owns the site, and meets qualifications may be eligible for:
  - 9.17.5.3.3.1. Replacement Housing Payment based on comparable site and mobile home combined; or
  - 9.17.5.3.3.2. Rental Assistance Payment based on comparable site and mobile home combined if he or she chooses.
- 9.17.5.3.4. A Mobile Home Occupant who owns a mobile home (determined to be personalty), owns the site, and meets qualifications may be eligible for:
  - 9.17.5.3.4.1. Price Differential Payment based on comparable site; or
  - 9.17.5.3.4.2. Rental Assistance Payment based on comparable site if he or she chooses.
- 9.17.5.3.5. A Mobile Home Occupant who rents a mobile home (determined to be personalty), rents the site, and meets qualifications may be eligible for:
  - 9.17.5.3.5.1. Rental Assistance Payment based on comparable mobile home and site combined; or
  - 9.17.5.3.5.2. Down payment assistance for a mobile home and site combined.
- 9.17.5.3.6. A Mobile Home Occupant who rents a mobile home (determined to be realty), rents the site, and meets qualifications, may be eligible for:



- 9.17.5.3.6.1. Rental Assistance Payment based on comparable site and mobile home combined; or
- 9.17.5.3.6.2. Down payment assistance for a site and mobile home combined.

#### **9.17.6. Occupancy Requirements for Displacement or Replacement Dwelling:**

No person shall be denied eligibility for a RHP solely because the person is unable to meet the occupancy requirements set forth in these regulations for a reason beyond his or her control, including:

- 9.17.6.1. A disaster, an emergency, or an imminent threat to the public health or welfare, as determined by the President, the Federal Agency funding the project, or the State; or
- 9.17.6.2. Another reason, such as a delay in the construction of the replacement dwelling, military reserve duty, or hospital stay, as determined by the AHTD.

### **9.18. HOUSING OF LAST RESORT**

#### **9.18.1. Use of Housing of Last Resort:**

- 9.18.1.1. Whenever a program or project cannot proceed on a timely basis because comparable replacement dwellings are not available within the monetary limits for owners or tenants, the AHTD shall provide additional or alternate assistance under the provisions of this Section. Any decision to provide last resort housing assistance must be adequately justified either:
  - 9.18.1.1.1. On a case-by-case basis, for good cause, which means that appropriate consideration has been given to:
    - 9.18.1.1.1.1. The availability of comparable housing in the project or program area; and
    - 9.18.1.1.1.2. The resources available to provide comparable housing; and
    - 9.18.1.1.1.3. The individual circumstances of the displaced person; or
  - 9.18.1.1.2. By a determination that:
    - 9.18.1.1.2.1. There is little, if any, comparable replacement housing available to displaced persons within an entire project or program area; and therefore, last resort housing assistance is necessary for the area as a whole; and
    - 9.18.1.1.2.2. ii. A project or program cannot be advanced to completion in a timely manner without last resort housing assistance; and

9.18.1.1.2.3. The method selected for providing last resort housing assistance is cost effective, considering all elements that contribute to total project or program costs.

9.18.1.2. Notwithstanding any provision of this Section: No person shall be required to move from a displacement dwelling unless comparable replacement housing is available to such person. No person may be deprived of any rights the person may have under the Uniform Act or 49 CFR Part 24. The AHTD shall not require any displaced person to accept a dwelling provided by the AHTD under these procedures (unless the AHTD and the displaced person have entered into a contract to do so) in lieu of any acquisition payment or any relocation payment for which the person may otherwise be eligible.

**9.18.2. Methods of Providing Replacement Housing as a Last Resort:**

9.18.2.1. The AHTD shall have broad latitude in implementing this Section, but implementation shall be for reasonable cost, on a case-by-case basis unless an exception to case-by-case analysis is justified for an entire project.

9.18.2.2. The methods of providing HLR include, but are not limited to:

9.18.2.2.1. Replacement Housing and Rental Assistance payments in excess of the limits set forth in this regulation. A Rental Assistance payment may be paid in installments or in a lump sum at the AHTD's discretion.

9.18.2.2.2. Rehabilitation of and/or additions to an existing replacement dwelling.

9.18.2.2.3. The construction of a new replacement dwelling.

9.18.2.2.4. The provision of a direct loan, which 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.

9.18.2.2.5. The relocation, and, if necessary, rehabilitation of a dwelling.

9.18.2.2.6. The purchase of land and/or a replacement dwelling by the AHTD and subsequent sale or lease to, or exchange with a displaced person.

9.18.2.2.7. The removal of barriers to the handicapped and any other DS&S deficiency.

9.18.2.2.8. The change in status of the displaced person 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.

9.18.2.3. Under special circumstances consistent with the definition of a comparable replacement dwelling, modified methods of providing HLR

permit consideration of replacement housing based on space and physical characteristics different from those in the displacement dwelling including upgraded, but smaller replacement housing that is decent, safe and sanitary and adequate to accommodate individuals or families displaced from marginal or substandard housing with probable functional obsolescence. In no event, however, shall a displaced person be required to move into a dwelling that is not functionally equivalent.

- 9.18.2.4. The AHTD shall provide assistance under this subpart to a displaced person who is not eligible to receive a RHP 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. As defined herein. Such assistance shall cover a period of 42 months.

### **9.19. EVICTION FOR CAUSE**

Eviction for cause must conform to applicable State and local law. Any person who occupies the real property and is not in unlawful occupancy on the date of the initiation of negotiations, is presumed to be entitled to relocation payments and other assistance set forth in this regulation unless the AHTD determines that:

- 9.19.1.** The person received an eviction notice prior to the initiation of negotiations and, as a result of that notice is later evicted; or
- 9.19.2.** This person is evicted after the initiation of negotiations for serious or repeated violation of material terms of the lease or occupancy agreement; and
- 9.19.3.** In either case the eviction was not undertaken for the purpose of evading the obligation to make available the payments and other assistance set forth in this regulation.

### **9.20. ALIENS NOT LAWFULLY PRESENT IN THE UNITED STATES**

- 9.20.1.** Each person seeking relocation payments or relocation advisory assistance shall, as a condition of eligibility, certify:
- 9.20.1.1. In the case of an individual, that he or she is either a citizen or national of the United States, or an alien who is lawfully present in the United States.
- 9.20.1.2. In the case of a family, that each family member is either a citizen or national of the United States, or an alien who is lawfully present in the United States. The certification may be made by the head of the household on behalf of other family members.
- 9.20.1.3. In the case of an unincorporated business, farm, or nonprofit organization, that each owner is either a citizen or national of the United

States, or an alien who is lawfully present in the United States. The certification may be made by the principal owner, manager, or operating officer on behalf of other persons with an ownership interest.

- 9.20.1.4. In the case of an incorporated business, farm, or nonprofit organization, that the corporation is authorized to conduct business within the United States.
- 9.20.2.** In computing relocation payments under the Uniform Act, if any member(s) of a household or owner (s) of an unincorporated business, farm, or nonprofit organization is (are) determined to be ineligible because of a failure to be legally present in the United States, no relocation payments may be made to him or her. Any payment(s) for which such household, unincorporated business, farm, or nonprofit organization would otherwise be eligible shall be computed for: 1) the household, based on the number of eligible household members, or 2) the unincorporated business, farm, or nonprofit organization, based on the ratio of ownership between eligible and ineligible owners.
- 9.20.3.** The AHTD shall consider the certification provided pursuant to Part A of this Section to be valid, unless the AHTD determines in accordance with Part D of this Section that it will be invalid based on a review of an alien's documentation or other information that the AHTD considers reliable and appropriate. Any review by the AHTD of the certification to be provided pursuant to Part A of this Section shall be conducted in a nondiscriminatory fashion. The AHTD will apply the same standard of review to all such certifications it receives, except that such standard may be revised periodically.
- 9.20.4.** If, based on a review of an alien's documentation or other credible evidence, the AHTD has reason to believe that a person's certification will be invalid (for example a document reviewed does not on its face reasonably appear to be genuine), and that, as a result, such person may be an alien not lawfully present in the United States, the following information shall be obtained before making a final determination.
- 9.20.4.1. Evidence of United States citizenship or nationality from such person and, if considered necessary, verified with the issuer.
- 9.20.4.2. Verification of the alien's status shall be obtained from the local Bureau of Citizenship and Immigration Service (BCIS) Office.
- 9.20.5.** No relocation payments or relocation advisory assistance shall be provided to a person who has not provided the certification described in this Section or who has been determined to be not lawfully present in the United States, unless such person can demonstrate to the AHTD's satisfaction that the denial of relocation benefits will result in an exceptional and extremely unusual hardship to such person's spouse, parent, or child who is a citizen

of the United States, or is an alien lawfully admitted for permanent residence in the United States. Exceptional and extremely unusual hardship means that the denial of relocation payments and advisory assistance to such person will directly result in:

- 9.20.5.1. A significant and demonstrable adverse impact on the health or safety of such spouse, parent, or child;
- 9.20.5.2. A significant and demonstrable adverse impact on the continued existence of the family unit of which such spouse, parent, or child is a member; or
- 9.20.5.3. Any other impact that the displacing agency determines will have a significant and demonstrable adverse impact on such spouse, parent, or child.

## **9.21. APPEALS**

### **9.21.1. General**

- 9.21.1.1. Any person(s) may file a written appeal with the AHTD in any case in which the person believes that the AHTD has failed to properly determine the person's eligibility for or the amount of a relocation payment as prescribed by the Uniform Act. The Appeal procedures shall be conducted in an orderly manner with the person or his selected representative giving evidence showing why the relocation payment involved is not satisfactory. The appeal will be conducted in accordance with the Arkansas Administrative Procedure Act.
- 9.21.1.2. Statutory or regulatory maximum payment amounts and payment limitations as prescribed in the Uniform Act and 49 CFR, Part 24, cannot be appealed.

### **9.21.2. Relocation Appeal Procedures**

- 9.21.2.1. The Relocation Coordinator will explain the Appeal Procedure to the appellant.
- 9.21.2.2. The appellant will submit a written request for review to the Relocation Section Head. The request can be in any form, but must include an explanation of the application for relocation assistance the appellant believes the AHTD has failed to properly consider under the relocation program.
- 9.21.2.3. The Relocation Section Head will review the request upon receipt in a timely manner.
- 9.21.2.4. If the Relocation Section Head concurs with the request, the Relocation Coordinator will be advised to begin the process to provide the relocation assistance.

- 9.21.2.5. If the request is rejected, the Relocation Section Head will notify the appellant(s) in writing.
- 9.21.2.6. The time period for the appellant to file an appeal request is 60 days from the notice of rejection.
- 9.21.2.7. The appellant may file an appeal by completing the Appeal Request Form along with any other supporting documentation to support their appeal. The AHTD shall consider a written appeal regardless of form. The appeal request must be forwarded to the Division Head.
- 9.21.2.8. The Division Head will review the appeal request in a timely manner.
- 9.21.2.9. Appeal Hearing
  - 9.21.2.9.1. Appeal Hearing Panel shall consist of three persons:
    - 9.21.2.9.1.1. At least one member that possesses a good working knowledge of the Uniform Act appointed by the Division Head,
    - 9.21.2.9.1.2. The District Engineer, or their appointee, from the District in which the respective highway project is located,
    - 9.21.2.9.1.3. A Staff Attorney appointed by the Chief Legal Counsel. The Staff Attorney will serve as Chairperson of the Panel.
      - 9.21.2.9.1.3.1. The Chairperson or their appointee will make arrangements for the appropriate clerical personnel and accommodations for the appeal hearing, as well as the scheduling, communications, notifications, and coordination for the hearing.
      - 9.21.2.9.1.3.2. The Chairperson shall preside over the appeal hearing and meetings of the Panel.
  - 9.21.2.9.2. The AHTD shall permit the appellant to inspect and copy all materials pertinent to their appeal, except materials that are exempt from disclosure as defined in the Arkansas Freedom of Information Act (FOIA). The AHTD may impose reasonable conditions on the appellant's right to inspect, consistent with applicable laws.
  - 9.21.2.9.3. The Appeal Hearing shall be conducted in an orderly manner with the appellant or their selected representative giving evidence showing why the AHTD has failed to properly consider the person's eligibility for or the amount of a relocation payment prescribed by the Uniform Act. Any legal counsel will be solely at the appellant's own expense. The hearing will be conducted in accordance with the Arkansas Administrative Procedure Act.

- 9.21.2.9.4. The Appeal Hearing Panel will review and consider the available information, pertinent justification, evidence, and material submitted and needed to ensure a fair and full review. The Panel will make a written determination which will include an explanation of the basis on which the decision was made within 30 days after the hearing.
- 9.21.2.9.5. If any part of the appeal is upheld, the Chairperson will notify the appellant and the Division Head of the decision.
- 9.21.2.9.6. Upon notification that the appeal or any part thereof was upheld, the Division Head will notify the Relocation Section Head to begin the process of providing relocation assistance in accordance with the Panel's decision.
- 9.21.2.9.7. If the entire appeal or any part of the appeal is denied, the Chairperson will notify the appellant and advise them of their right to seek judicial review of the decision.

## SECTION 10

### DEFINITIONS

**Accepted Appraisal** - An appraisal accepted by the AHTD review appraiser.

**Acquired:** The time at which the Department or government agency with jurisdiction obtains legal possession of the real property; legal possession occurs at closing in negotiated settlements and at the date of deposit in court in litigated cases.

**Acquiring Agency:** A State Agency, as defined in this Section, which has the authority to acquire property by eminent domain under State law, and a State Agency or person which does not have such authority.

**Agency:** The Federal Agency, State, State Agency or person that acquires real property or displaces a person.

**Alien Not Lawfully Present in the United States:** The phrase "Alien not lawfully present in the United States" means an alien who is not "lawfully present" in the United States as defined in 8 CFR 103.12 and includes:

An alien present in the United States who has not been admitted or paroled into the United States pursuant to the Immigration and Nationality Act and whose stay in the United States has not been authorized by the United States Attorney General, and

An alien who is present in the United States after the expiration of the period of stay authorized by the United States Attorney General or who otherwise violates the terms and conditions of admission, parole or authorization to stay in the United States.

**Appraisal** - A written statement or report 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 data.

**Approved Appraisal** - An accepted appraisal that is approved by the AHTD review appraiser and used in support of the recommended just compensation.

**Building** - A constructed structure designed to stand, more or less, permanently, covering a space of land, usually covered by a roof and more or less, enclosed by walls and serving as a dwelling, storage building, factory or shelter for animals and thus generally designed for some type of occupancy.

**Business:** Any lawful activity, except a farm operation, that is conducted:

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; or

Primarily for the sale of services to the public; or



By a nonprofit organization that has established its nonprofit status under applicable Federal or State Law (will obtain legal opinion as to status if the Department deems it necessary).

**Citizen:** Includes both citizens of the United States and noncitizen nationals.

**Comparable Replacement Dwelling:** The term "comparable replacement dwelling" means a dwelling that is:

Decent, safe and sanitary as defined in this manual.

Functionally equivalent to the displacement dwelling. The term "functionally equivalent" means that it performs the same function and provides the same utility. While a comparable replacement dwelling need not possess every feature of the displacement dwelling, the principal features must be present. Generally, functional equivalency is an objective standard, reflecting the range of purposes for which the various physical features of a dwelling may be used. However, in determining whether a replacement dwelling is functionally equivalent to the displacement dwelling, the Department may consider reasonable trade-off for specific features when the replacement unit is "equal to or better than" the displacement dwelling.

Adequate in size to accommodate the occupants.

In an area that is not subject to unreasonable adverse environmental conditions, and is not generally less desirable than the location of the displaced person's dwelling with respect to public utilities and commercial and public facilities, and is reasonably accessible to the person's place of employment.

On a site that is typical in size for residential development with normal site improvements, including customary landscaping. The site need not include special improvements such as outbuildings, swimming pools and greenhouses. If the exact size home site in the same type of neighborhood cannot be found after a search, then what is available (even if smaller) may be utilized. If the difference in size is not significant then no adjustment will be made to the purchase price.

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. In such cases the displaced person will be advised of any requirements of the government housing assistance programs related to the size of the replacement dwelling as well as of the long term nature of the rent subsidy and the limited (42 month) duration of the rental assistance payment.

Within the financial means of the displaced person.

A replacement dwelling purchased by a homeowner in occupancy for at least 180 days prior to initiation of negotiations (180-day homeowner) is considered to be within the homeowner's financial means if the homeowner is paid the full RHP, all increased mortgage interest cost, and all eligible incidental expenses, plus any additional amount required to be paid under housing of last resort.

A replacement dwelling rented by a displaced person is considered to be within his or her financial means if, after receiving rental assistance the person's monthly rent and estimated utility costs for the replacement dwelling do not exceed the person's base monthly rental for the displacement dwelling.

For a displaced person who is not eligible to receive a replacement housing payment because of the person's failure to meet length-of-occupancy requirements, comparable replacement rental housing is considered to be within the person's financial means if the Department pays that portion of the monthly housing costs of a replacement dwelling which exceeds the person's base monthly rent for the displacement dwelling. Such rental assistance must be paid under Replacement Housing of Last Resort.

Fair housing---open to all persons regardless of race, color, religion, sex or national origin and consistent with the requirements of Title VIII of the Civil Rights Act of 1968.

**Contributes Materially:** Means that during the two (2) taxable years prior to the taxable year in which displacement occurs, or during such other period as the (Department) determines to be more equitable, a business or farm operation:

Had average annual gross receipts of at least \$5,000.00; or

Had average annual net earnings of at least \$1,000.00; or

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 (Department) may approve the use of other criteria as determined appropriate.

**Contributory Value** - The dollar amount that buildings, structures, or other improvements contribute to fair market value of the total property. Contributory value is normally synonymous with "value in place".

**Decent, Safe and Sanitary (DSS): DECENT, SAFE AND SANITARY HOUSING**

The term "decent, safe and sanitary dwelling" means a dwelling that meets applicable housing and occupancy codes. However, if any of the following standards are not met by an applicable code, such following standards shall apply, unless waived for good cause by the FHWA. The following minimum standards shall apply:

Be structurally sound, weather tight, and in good repair.

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

Contains a heating system capable of sustaining a healthful temperature (of approximately 70 degrees) for a displaced person, except in those areas where local climatic conditions do not require such a system.

Be adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced person. The number of persons occupying each habitable room used for sleeping purposes shall not exceed that permitted by local housing codes or, in the absence of local codes, the policies of the Department. In addition, the Department shall follow the requirements for separate bedrooms for children of the opposite gender included in local housing codes. The following will be used to determine the number of bedrooms required to accommodate a family of a given size and composition if local codes do not apply:

No. of Bedrooms	No. of Persons	
	Minimum	Maximum
1	1	3
2	2	5
3	4	7
4	6	9

An unborn child will not be counted as a person.

Dwelling requirements will be of sufficient size that it will not be necessary, (a) for persons of opposite sex other than husband and wife and children under 12 years of age, to occupy the same bedroom, (b) for room other than a bedroom to be used regularly as a bedroom unless it is used in this manner at acquired dwelling.

There shall be a separate, well lighted and ventilated bathroom that provides privacy to the user and contains sink, bathtub or shower stall, and a toilet, all in good working order and properly connected to appropriate sources of water and to a sewage drainage system. In the case of a housekeeping dwelling, there shall be a kitchen area that contains a fully usable sink, properly connected to potable hot and cold water and to a sewage drainage system, and adequate space and utility service connections for a stove and refrigerator.

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

For a displaced person(s) with a disability, be free of any barriers that would preclude reasonable ingress, egress, or use of the dwelling by such displaced person.

The decent, safe and sanitary inspection is made solely for the purpose of determining the eligibility of displaced individuals and families for payment for replacement housing and are not intended to be, nor do such constitute, warranties or guarantees by the Department and the officers, agents and employees thereof, that a dwelling is decent, safe and sanitary.

**Density:** As used in the context of replacement housing for relocation purposes, it pertains to the number of units in a multifamily dwelling or structure.

**Displaced Person:** Except as provided in the definition of persons not displaced, any person who moves from the real property or moves his or her personal property from the real property. (This includes a person who occupies the real property prior to its acquisition, but who does not meet the length of occupancy requirements of these regulations.):

As a direct result of a written notice of intent to acquire, the initiation of negotiations for, or the acquisition of, such real property in whole or in part for a project.

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

As a direct result of a written notice of intent to acquire, or the acquisition, rehabilitation, or demolition of, in whole or in part, other real property on which the person conducts a business or farm operation, for a project. However, eligibility for such person under this paragraph applies only for purposes of obtaining relocation advisory services and moving expenses.

**Displacing Agency:** Any Federal Agency carrying out a program or project, and any State, State Agency, or person carrying out a program or project with Federal financial assistance, which causes a person to be a displaced person.

**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, multi-family, or multi-purpose property; a unit of a condominium or cooperative housing unit; 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.

**Fair Market Value** - The most probable price in terms of money which the real property would bring if exposed for sale in the open market, with reasonable time allowed in which to find a purchaser, buying with knowledge of all of the uses and purposes to which it is adapted and it is capable of being used.

**Family:** Two or more individuals living together in a single family dwelling unit who:

Are related by blood, adoption, marriage, or legal guardianship 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, or

Are not related by blood or legal ties but live together by mutual consent.

**Farm Operation:** Any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

**Federal Agency:** Any Department, Agency, or instrumentality in the Executive Branch of the Government, any wholly owned Government corporation, the Architect of the

Capitol, the Federal Reserve Banks and branches thereof, and any person who has the authority to acquire property by eminent domain under Federal law.

**Federal Financial Assistance:** A grant, loan, or contribution provided by the United States, except any Federal guarantee or insurance and any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual.

**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 and full time students less than 18 years of age.

**Improvement –** Buildings or other relatively permanent structures or developments located or attached to the land.

**Initiation of Negotiations:** Unless a different action is specified in applicable Federal program regulations, the term initiation of negotiations means the following:

Whenever the displacement results from the acquisition of the real property by a Federal Agency or State Agency, the initiation of negotiations means the delivery of the initial written offer of just compensation by the Agency to the owner or the owner's representative to purchase the real property for the project. However, if the Federal Agency or State Agency issues a notice of its intent to acquire the real property, and a person moves after that notice, but before delivery of the initial written purchase offer, the initiation of negotiations means the actual move of the person from the property.

**Lead Agency:** The Department of Transportation acting through the FHWA.

**Less than 90 - Day Occupant:** An occupant who rented or owned the displacement dwelling for less than 90 days immediately prior to the initiation of negotiations.

**Mobile Home:** Includes manufactured homes and recreational vehicles used as residences.

**Mortgage:** Such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of the State in which the real property is located, together with the credit instruments, if any, secured thereby.

**90 - Day Tenant:** A person who has rented and occupied the displacement dwelling for at least 90 consecutive days immediately prior to the initiation of negotiations.

**Nonprofit Organization:** An organization that is incorporated under the applicable laws of a State as a nonprofit organization, and exempt from paying Federal Income Taxes under Section 501 of the Internal Revenue Code.

**Notice of Intent to Acquire or Notice of Eligibility for Relocation Assistance:** Written notice furnished to a person to be displaced from property acquired prior to the commitment of Federal financial assistance to the activity that establishes eligibility for

relocation benefits prior to the initiation of negotiation and/or prior to the commitment of Federal financial assistance.

**180 - Day Owner-Occupant:** A person who has owned and occupied the displacement dwelling for at least 180 consecutive days immediately prior to the initiation of negotiations.

**Owner** - Any persons, corporation, agency or body having an interest in the real property, including not only the fee owner(s), or owners of various interests or estates in the property as well as leasehold and/or tenant owner(s). "Owners" also includes a contract purchaser of any estate or interest or one who possesses such other proprietary or equitable interest in the property acquired which, in the judgment of the head of the agency, should be considered an ownership.

**Owner of a Dwelling:** A person who is considered to have met the requirement to own a dwelling if the person purchases or holds any of the following interests in real property acquired for a project:

Fee title, a life estate, a 99-year lease, or a lease including any options for extension with at least 50 years to run from the date of acquisition; or

An interest in a cooperative housing project which includes the right to occupy a dwelling; or

A contract to purchase any of the interests or estates described in subparagraphs 1 or 2 of this definition, or

Any other interest, including a partial interest, which in the judgment of the Department warrants consideration as ownership.

**Person:** Any individual, family, business, farm, nonprofit organization, partnership, corporation, or association.

**Personal Property** - Generally, movable items; that is, those not permanently annexed to and a part of real estate. In deciding whether or not a thing is personal property or real estate, usually there must be considered (1) the manner in which it is affixed; (2) the intention of the party who made the annexation (that is, to leave permanently or to remove at some time); (3) the purpose for which the premises are used. Generally, and with exceptions, items remain personal property if they can be removed without serious injury either to the real estate or to the item itself.

**Persons not Displaced:** The following is a non-exclusive listing of persons who do not qualify as displaced persons:

A person who moves before the initiation of negotiations, unless the (Department) determines that the person was displaced as a direct result of the program or project;

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

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

A person who the Department determines is not displaced as a direct result of a partial acquisition;

A person who, after receiving a notice of relocation eligibility is notified in writing that he or she would not be displaced for a project. Such notice shall not be issued unless the person has not moved and the Department agrees to reimburse the person for any expenses incurred to satisfy any binding contractual relocation obligations entered into after the effective date of the notice of relocation eligibility;

An owner - occupant who voluntarily sells his or her property after being informed in writing that if a mutually satisfactory agreement of sale cannot be reached, the Department will not acquire the property. In such cases, however, any resulting displacement of a tenant is subject to these regulations;

A person who retains the right of use and occupancy of the real property for life following its acquisition by the Department; or

An owner who retains the right of use and occupancy of the real property for a fixed term after its acquisition by the Department of Interior under P.L. 93-477 or P.L. 93-303, except that such owner remains a displaced person for purposes of subpart D of 49 CFR Part 24; or

A person who is determined to be in unlawful occupancy prior to or after the initiation of negotiations or a person who has been evicted for cause, under applicable law. However, advisory assistance may be provided to unlawful occupants at the option of the agency in order to facilitate the project.

A person who is not lawfully present in the United States and who has been determined to be ineligible for relocation benefits in accordance with the "Aliens not lawfully present in the United States" section of these regulations.

A person who is not required to relocate permanently as a direct result of a project. Such determination shall be made by the Agency in accordance with any guidelines established by the Federal Agency funding the project;

An owner-occupant who moves as a result of an acquisition of real property as described in 49 CFR §§24.101(a)(2) or 24.101(b)(1) or (2), or as a result of the rehabilitation or demolition of real property. (However, the displacement of a tenant as a direct result of any acquisition, rehabilitation or demolition for a Federal or federally assisted project is subject to this part.)

**Program or Project:** Any activity or series of activities undertaken by a Federal Agency or with Federal financial assistance received or anticipated in any phase of an undertaking in accordance with the Federal funding agency guidelines.

**Real Property** - Land and any improvements including but not limited to fee interests, easements, air or access rights, and the rights to control use, leasehold and leased fee interests.

**ReloPac:** A file of information for each Displaced Person including but not limited to the Relocation Coordinator's log of contacts with the displaced person and associated parties, copies of written correspondence, relocation claims and supporting documentation.

**Salvage Value:** The probable sale price of an item offered for sale to knowledgeable buyers with the requirement that it be removed from the property at a buyer's expense. This includes items for re-use as well as items with components that can be reused or recycled when there is no reasonable prospect for sale except on this basis.

**Short Term Owner:** A person who has owned and occupied the dwelling from which he/she is being displaced for less than 180 days, but not less than 90 consecutive days immediately prior to the initiation of negotiations.

**Small Business:** A business having not more than 500 employees working at the site being acquired or displaced by a program or project, which site is the location of economic activity. Sites occupied solely by outdoor advertising signs, displays, or devices do not qualify as a business under 49 CFR § 24.304.

**State:** Any of the several States of the United States, the District of Columbia; the Commonwealth of Puerto Rico, any territory or possession of the United States, or a political subdivision of any of these jurisdictions.

**State Agency:** Any Department, Agency or instrumentality of a State or of a political subdivision of a State, any department, agency or instrumentality of two or more States or of two or more political subdivisions of a state or States, and any person who has the authority to acquire property by eminent domain under State law.

**Structure** - Includes other things that are built covering or upon a space of land, such as fences, monuments, fixtures, paving and signs, regardless of whether considered real or personal property under local laws.

**Subsequent Occupant:** A person (Owner or Tenant) who occupied the dwelling from which he/she is being displaced after the initiation of negotiations but before the Department acquired the property.

**Tenant:** A person who has the temporary use and occupancy of real property owned by another.

**Uneconomic Remnant:** A parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property, and which the Department has determined has little or no value or utility to the owner.

**Uneconomic Remnant** – A parcel of real property that as a result of a partial acquisition has little or no utility or value to the owner, as determined by the review



appraiser. The test is whether the review appraiser determines that the remnant has little or no utility to the owner, not whether there is value in the marketplace.

**Uniform Act:** The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1894; 42 U.S.C. 4601 et seq.; P.L. 91-646), and amendments thereto.

**Unlawful Occupant:** A person who occupies without property right, title or payment of rent or a person legally evicted, with no legal rights to occupy a property under State Law. The Department, at its discretion, may consider such person to be in lawful occupancy.

**Utility Costs:** Expenses for gas, electricity, other heating and cooking fuels, water and sewer.