

# **RIGHT OF WAY OPERATIONS MANUAL**



**Arkansas Department of Transportation  
Right of Way Division**

Revised January 2019

## Table of Contents

<b>SECTION 1</b> .....	<b>1</b>
ORGANIZATION .....	1
<b>SECTION 2</b> .....	<b>6</b>
GENERAL PROCEDURES AND POLICIES .....	6
<b>SECTION 3</b> .....	<b>15</b>
ADMINISTRATIVE.....	15
<b>SECTION 4</b> .....	<b>34</b>
ENGINEERING.....	34
<b>SECTION 5</b> .....	<b>36</b>
APPRAISAL.....	36
<b>SECTION 6</b> .....	<b>48</b>
ACQUISITION .....	48
<b>SECTION 7</b> .....	<b>52</b>
LOCAL PUBLIC AGENCIES .....	52
<b>SECTION 8</b> .....	<b>57</b>
PROPERTY MANAGEMENT .....	57
<b>SECTION 9</b> .....	<b>63</b>
RELOCATION .....	63
<b>SECTION 10</b> .....	<b>71</b>
DEFINITIONS .....	71

# **SECTION 1**

## **ORGANIZATION**

### **1.1. GENERAL**

The Right of Way Division (Right of Way) of the Arkansas Department of Transportation (ARDOT) 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. The Division Head is responsible for the activities of the Section Heads in the following Sections: Acquisition, Administrative, Appraisal, Engineering, Relocation, Utilities, and Beautification. 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 ARDOT Divisions and the establishment of policies and procedures and performance of work in accordance with Federal and State laws and regulations, and ARDOT 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 under the direction of the 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.

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

The Administrative Section under the direction of the 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, securing signatures on deeds, and coordinating Federal land transfers and right of way use agreements.

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

The Appraisal Section under the direction of the 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 proceedings.

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

The Engineering Section under the direction of the 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 under the direction of the 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. Responsibility for property management functions including the ultimate disposal of surplus real and personal property is also assigned to Relocation.

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

The Utilities Section under the direction of the Section Head is the liaison between the utility companies and the ARDOT 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. BEAUTIFICATION SECTION (BEAUTIFICATION)**

The Beautification Section under the direction of the Section Head enforces the Federal Highway Beautification Act of 1965 and Act 640 of the 1967 Arkansas Legislature along highways in the state. Beautification is responsible for billboard control, junkyard control, logo signing, tourist information signing and vegetation cutting near billboards.

#### **1.11. STEWARDSHIP AND OVERSIGHT AGREEMENT**

The Arkansas State Highway Commission (Commission) and Federal Highway Administration (FHWA) have adopted a Stewardship and Oversight Agreement outlining

the standards and procedures for the administration of those projects for which the ARDOT has oversight responsibilities.

In accordance with 23 CFR 710, ARDOT 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 Federal and State laws and regulations.

ARDOT 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, implemented through 23 CFR and 49 CFR, and all applicable Federal and State laws and regulations. The manual is updated and certified by ARDOT every five years. These updates are coordinated with and approved by FHWA.

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

#### **1.12. 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 ARDOT in adherence to this manual as follows:

- 1.12.1. Arterials – Proposed right of way, containing an arterial as any part of the project, is acquired by ARDOT. All necessary utility adjustment activities are coordinated by ARDOT.
- 1.12.2. Collectors and Locals - ARDOT acquires right of way in cooperation with appropriate County Judge and/or City Official. All necessary utility adjustment activities are coordinated by ARDOT. In order to expedite project schedule, other entities may participate in project costs.

#### **1.13. RIGHT OF WAY ACQUISITION AND UTILITY ADJUSTMENTS – NON-STATE HIGHWAY PROJECTS**

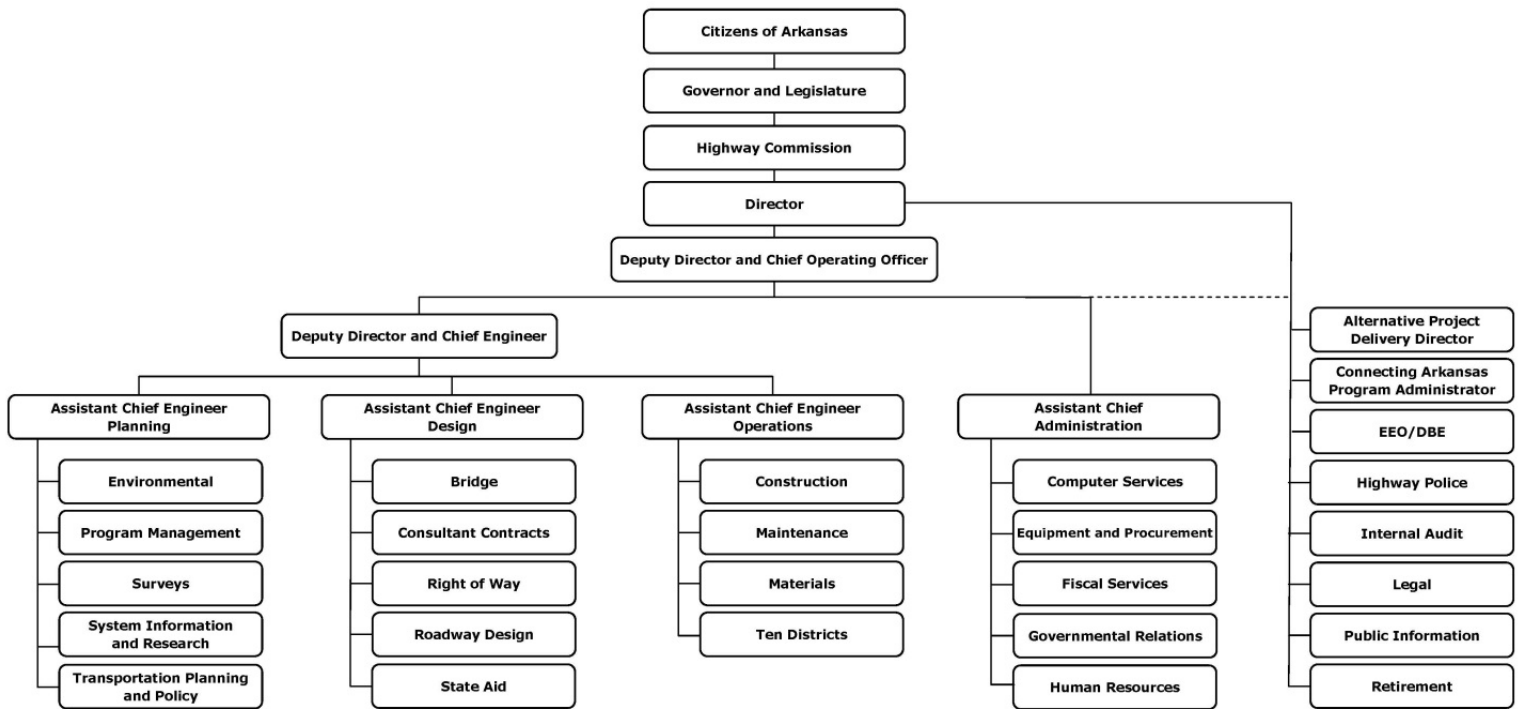
The acquisition of right of way and the coordination of utility adjustment activities are performed by the project Sponsor (appropriate County or City) or by ARDOT upon request of the project Sponsor. These activities will follow the functions and procedures contained in this manual.

#### **1.14. PROJECT AUTHORIZATION AND RIGHT OF WAY CERTIFICATION**

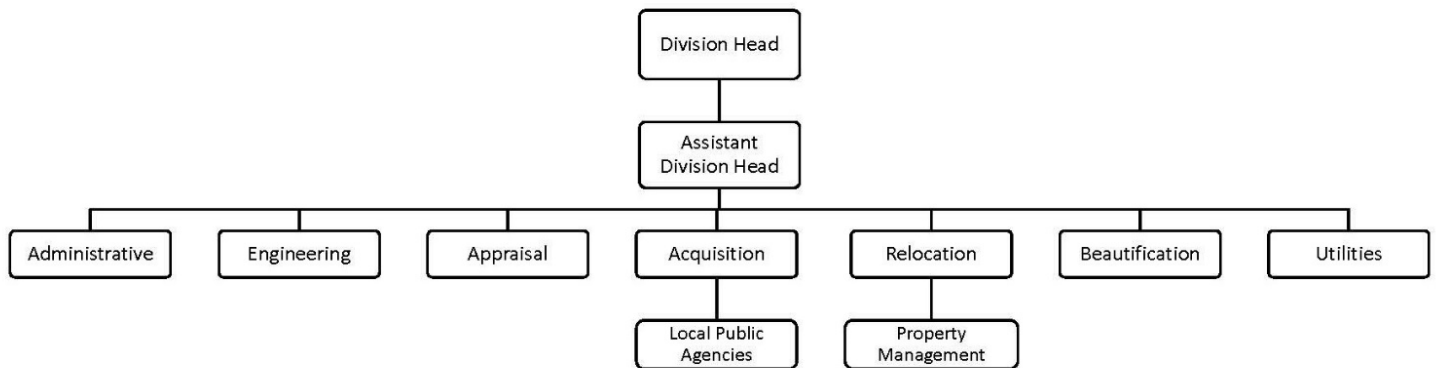
- 1.14.1. Prior to submittal to FHWA for authorization, ARDOT will ensure that the project is included in the Statewide Transportation Improvement Program (STIP) and subsequently satisfies National Environmental Policy Act (NEPA) requirements. ARDOT will ensure that projects located in Metropolitan Planning

Organization (MPO) areas are included in the applicable Transportation Improvement Program (TIP).

- 1.14.2.** ARDOT 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.



**FIGURE 1-1. ARDOT ORGANIZATION CHART**



**FIGURE 1-2. RIGHT OF WAY DIVISION ORGANIZATION CHART**

## SECTION 2

### GENERAL PROCEDURES AND POLICIES

#### 2.1. GENERAL PROCEDURES

The ARDOT 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 ARDOT's Right of Way Program.

The ARDOT 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. Just compensation for the real property is established and handled as follows:
  - A. For uncomplicated acquisitions with an anticipated valuation of \$10,000 or less, Appraisal or Acquisition, as assigned, prepares the appropriate valuation and acquisitions documents then initiates negotiations to acquire the property.
  - B. For acquisitions requiring appraisals, Appraisal invites the owner to attend the property inspection, establishes just compensation, and prepares the appropriate valuation documents. After appraisals have been made, reviewed and approved, they are forwarded to Acquisition. Acquisition prepares the appropriate acquisition documents and initiates negotiations to acquire the property.
- 2.1.3. If displaced persons are involved, the appraisal is sent to Relocation, and a Relocation Coordinator meets with the property owner to discuss relocation benefits.
- 2.1.4. Prior to or during the negotiation process, Administrative obtains the necessary ownership information to assure that the ARDOT 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.



- 2.2.2. Upon receipt of the Minute Order, the Program Management Division (Program Management) 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.
- 2.2.3. Upon STIP approval of the project by FHWA, an allotment is prepared by Program Management 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 clearance, 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 Program Support Section of Program Management for the preparation of a Project Agreement.
- 2.3.3. Upon approval and return from the Program Support 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**

- 2.4.1. 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, searching for comparable properties for potential displaced persons, identifying replacement neighborhoods and available public services, the checking of plans as to correctness and accuracy, and the actual preparation of right of way plans.
- 2.4.2. Preliminary acquisition activities that can be advanced under preliminary engineering and prior to environmental clearance may also include appraisal, appraisal review, waiver valuation, and preliminary relocation planning activities, limited to searching for comparable properties, identifying replacement neighborhoods and identifying available public services.
- 2.4.3. Acquisition activities involving contact with affected property owners for purposes of negotiation or relocation assistance must be deferred until environmental clearance is received; except in the cases of early acquisition, hardship acquisition or protective buying.

- 2.4.4.** 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, 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," as well as federal regulations at 23 CFR 710.601.

## **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 ARDOT. 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 proceedings.
- 2.10.2** It is the policy of the ARDOT 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.** ARDOT complies with all civil rights provisions of federal statutes and related authorities that prohibit discrimination in the programs and activities receiving federal financial assistance. Therefore, ARDOT does not discriminate on the basis of race, sex, color, age, national origin, religion, disability, Limited English Proficiency (LEP), or low-income status in the admission, access to and treatment in ARDOT's programs and activities, as well as ARDOT's hiring or employment practices.
- 2.11.2.** Consistent with this policy, all programs and activities administered by Right of Way shall comply with the current ARDOT Title VI Program Implementation Plan (Title VI Plan). The following nondiscrimination statutes and authorities are included in the Title VI Plan: Title VI of the Civil Rights Act of 1964, Section 162 (a) of the Federal-Aid Highway Act of 1973, The Age Discrimination Act of 1975, Americans with Disabilities Act of 1990, The Civil Rights Restoration Act of 1987, 23 CFR Part 200, 49 CFR Parts 21 and 303, USDOT Order 1050.2A, Executive Orders #12898 (Environmental Justice) and #13166 (Limited English Proficiency, and other related statutes and regulations.
- 2.11.3.** As described in the ARDOT Policy Statement (see Title VI Plan, Appendix A) and in compliance with Title VI of the Civil Rights Act of 1964, ARDOT assures through its policies and procedures that no person shall on the grounds of race, color, national origin, including LEP, be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination under any ARDOT program or activity receiving federal assistance under this title or carried out under this title. While ARDOT receives funds from various sources, there is no distinction between the sources of funding.
- 2.11.3.** The Assistant Division Head serves as the liaison between the Division and EEO/DBE Section for compliance of the Title VI Plan. 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 Plan activities on a continuing basis to ensure that personnel implement procedures in a nondiscriminatory manner.
- 2.11.4.** The EEO/DBE Section Head is the ARDOT's ADA/504/Title VI Coordinator. All complaints of alleged discrimination shall be reported to the EEO/DBE Section immediately. The investigation and processing of alleged complaints of discrimination will be accomplished in accordance with the procedure described in the ARDOT'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 Federal and State laws and regulations, and ARDOT policies, 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 applicable Federal and State laws and 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.

- A. The Division Head directs periodic process reviews of selected functional areas of Right of Way.
- B. 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, ARDOT and FHWA personnel.
- C. 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. ARDOT**

- A. 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:
  1. Interviews with Right of Way and ARDOT personnel.
  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.
- B. 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.

- C. The auditor will report to ARDOT management any actual or potential adverse conditions relative to the procedures and controls, propriety, validity and accuracy of cost, and compliance with Federal and State laws, regulations, policies and procedures.
- D. On those projects that are not NHS or Interstate, the ARDOT has oversight responsibility.

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

- A. FHWA provides oversight by its approval of all Federal-aid project agreements and approval of Right of Way Certifications for Federal Oversight designated projects.
- B. 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 ARDOT 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 of the Relocation Section, 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 displaced persons on the project, and that all applicable provisions of FHWA's relocation program have been complied with.
- 2.13.5.** In instances where displaced persons remain on the project, the certification will list the tract number, the vacancy date, and the date that the right of way will be cleared.
- 2.13.6.** Projects acquired by a Local Public Agency sub-grantee (LPA) are certified to the ARDOT in accordance with the above criteria and the ARDOT in turn certifies

to FHWA. Information submitted to the ARDOT from the LPA is maintained in the ARDOT'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 ARDOT'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 AND ADVANCE ACQUISITION**

- 2.15.1.** Based on program and property considerations, the ARDOT may choose to initiate the acquisition of real property at any time after it has the legal authority. This type of early acquisition will typically be paid with State funds and does not require any Federal action at the time of purchase.
- 2.15.2.** Prior to the ARDOT's obtaining final environmental approval, the ARDOT may proceed to initiate the acquisition of parcels for the anticipated project. These parcels may be considered to be an "early acquisition" under 23 CFR 710.501, or as "protective buying" or a "hardship acquisition" under 23 CFR 710.503.
- 2.15.3.** Hardship acquisitions will be a determination by the ARDOT, 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.
- 2.15.4.** Protective buying will be a determination by the ARDOT, through Right of Way, with substantiated evidence that it is the public interest to prevent imminent development and increased costs on the preferred location.
- 2.15.5.** The ARDOT'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 ARDOT will document its request for protective buying with the circumstances surrounding the proposed advance acquisition.
- 2.15.7.** If ARDOT desires federal participation in the proposed early or advance acquisition at either the time of the acquisition or when normal project activities commence, then Administrative will request a NEPA evaluation and determination of the parcel(s) to be acquired.

- 2.15.8.** Upon receipt of the approved NEPA document, the Division Head will request in writing to FHWA that the acquisition be approved as either a “early acquisition,” “protective buying,” or a “hardship acquisition” as defined by federal regulations at 23 CFR 710.501 and 710.503.
- 2.15.9.** Upon approval by FHWA, Right of Way will proceed with acquisition activities in accordance with federal and state laws and regulations, and ARDOT policies and procedures.
- 2.15.10.** If ARDOT does not desire federal participation in the early acquisition but would desire to be eligible for project credit match at a later date, then federal approval is not necessary, however, all applicable regulations and procedures must be followed.
- 2.15.11.** Early acquisition actions may include real property rights such as fee title, permanent easements, options to purchase, or property reservations.

## **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 ARDOT’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 ARDOT will secure concurrence and authorization from FHWA to proceed with functional replacement when federal funds are participating in the acquisition.
- 2.16.3.** Replacement sites and improvements or construction will be in accordance with all applicable state and local codes, laws and zoning regulations for the area in which the facility is located.
- 2.16.4.** The ARDOT 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 ARDOT's determination that the functional replacement need exists.
- 2.16.6.** The need will be established by meetings with ARDOT personnel and the officials of the public facility involved. These activities will be coordinated with the FHWA, if federal funds are participating.

## **2.17. DESIGN-BUILD PROJECTS**

- 2.17.1** In the case of a design-build project, right of way acquisition will normally be the responsibility of the Right of Way Division. In the case where the Design-Builder is responsible for right of way acquisition, Right of Way will coordinate with the ARDOT's Alternative Project Delivery Director to ensure necessary appraisal, acquisition, and relocation assistance requirements are followed to comply with Federal and State laws and regulations.
- 2.17.2** Federal regulations applicable to design-build projects are set out at 23 CFR 710.309. Some of the basic provisions of the regulations include:
- A. The right of way must be acquired and cleared in accordance with all applicable Federal and State laws and regulations, and the ARDOT Right of Way Manual approved by FHWA.
  - B. Right of Way must ensure that right of way is available prior to the start of construction on individual properties.
  - C. The decision to advance a right of way segment to construction stage shall not impair the safety or in any way be coercive in the context of 49 CFR 24.102(h) with respect to unacquired or occupied properties on the same or adjacent segments of project right of way.
  - D. If a design-build project includes right of way activities in the scope of work, the request for proposals document must contain information outlined in 23 CFR 710.309(d).
  - E. Right of Way shall submit a Right of Way Certification in accordance with 23 CFR 635.309(p) when requesting FHWA authorizations.
  - F. Construction may not commence until all property has been acquired and relocations have been completed; or phased construction may be permitted in a manner satisfactory to the ARDOT's Alternative Project Delivery Director. Right of Way Certifications will be prepared for each phase or segment.

## **2.18. 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 prepares reimbursement requests for utility relocations and verifies charges are in accordance with the Utility Accommodation Policy.

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.

Additionally, Administrative is responsible for the preparation and oversight of Federal Land Transfers and Right of Way (ROW) Use Agreements.

#### **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, or federal funding in the case of early acquisition or advance acquisition, Environmental must provide Right of Way with one of the following approved National Environmental Policy Act (NEPA) documents:

- EA/FONSI – Environmental Assessment – Finding of No Significant Impact
- Categorical Exclusion
- EIS/ROD – Environmental Impact Statement – Record of Decision

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

- A. When right of way plans are 50% complete, Appraisal and Relocation submit an estimated job cost to Administrative. (These costs are submitted by the Local Public Agency (LPA), if they are performing those tasks.)
- B. The Administrative Section Head submits a request for funding to Program Management. 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, Program Management uses these values to request and establish allotments prior to negotiations.

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

- A. The Administrative Section Head sends a funding request for the federally funded project to Program Management.
- B. Program Management prepares a Federal-Aid Project (FAP) Agreement to request authority.
- C. The funding request is entered into the Financial Management Information System (FMIS) and sent to FHWA for approval.
- D. Upon approval by FHWA, Program Management updates the allotment system and forwards an approved copy of the FAP Agreement and allotment to Right of Way.
- E. Once the approved FAP Agreement is received by Right of Way, the Staff Minutes are updated with the authorization date.

### **3.2.5. Projects Requiring State Funds:**

- A. The Administrative Section Head sends a funding request for the state funded project to Program Management.
- B. Program Management establishes an allotment on the ARDOT system, shown as Function 3151, FAP # 9990. and forwards a copy of the allotment to Right of Way.
- C. Once the allotment is received by Right of Way, the Staff Minutes are updated with the allotment date.

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

- A. Upon receipt of the Right of Way funding request for an LPA funded project, Program Management prepares a letter to the LPA requesting their portion of the funding.
- B. Once these funds are received by the ARDOT, any additional funding sources are addressed.

- C. If ARDOT is acquiring with only LPA funding, an allotment is established on the ARDOT system for Function 3151 (Right of Way – Non-Participating); FAP # 9030.
- D. If the LPA is acquiring with only LPA funding, no allotment is established.

### **3.2.7. 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. Program Management 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.

## **3.3. TYPE OF RECORDS MAINTAINED**

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

- 3.3.1.** Job Cost Ledger itemizing cost incurred on a given project by tract number or incidental cost, where necessary.
- 3.3.2.** Court Deposit Register reflecting the status of money on deposit in the courts subsequent to a Declaration of Taking.
- 3.3.3.** 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 ARDOT use. Administrative coordinates the scanning and long-term digital file storage of these documents.
- 3.3.4.** Minor fixed asset files containing information related to purchases, transfers and disposals, as well as bi-annual inventories.
- 3.3.5.** 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 ARDOT server.

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

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

- 3.5.1. Certificates of Title supplied by title companies in the county where the property is located or by Right of Way Abstractors, and
- 3.5.2. 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.
- 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. Refer to Section 3 of the User's Guide for a table of search spans based on the tract value.
- 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). Documents such as certificates of death, affidavits, divorce decrees and property settlement agreements, declarations of trust, trust agreements, etc. will also be included in the search.
- 3.6.5. 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.

Refer to Section 3 of the User's Guide for additional information about the Abstractor's duties and responsibilities, the completion of title certificates, and the need for title insurance.

### **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:**

##### **A. Administrative Audit:**

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:

- |                                       |                                  |
|---------------------------------------|----------------------------------|
| 1. Settlement up to \$ 10,000         | Acquisition Section Head         |
| 2. Settlement \$ 10,001 to \$ 100,000 | Right of Way Division Head       |
| 3. Settlement over \$ 100,000         | Assistant Chief Engineer- Design |

##### **B. Title Review**

A title review is performed to check property descriptions, confirm the status of liens and encumbrances, and verify the property owner has clear title to the tract. The Administrative Section Head assigns each job to one of the Sr. Abstractors, which allows for an overall knowledge of a job. 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.

Refer to Section 3 of the User's Guide for specific activities required during the title review.

##### **C. Transaction Closing:**

The Closing Agent is responsible for closing the tract. The Closing Agent first reviews the packet, noting any special instructions on the Abstractor's Review and Title Opinion, and then conducts a final review of the legal documents for accuracy. For tracts over \$ 5,000.00 encumbered by a mortgage, the Closing Agent will coordinate with the mortgage company(s) to satisfy payoff requirements and obtain executed partial releases.

Refer to Section 3 of the User's Guide for specific requirements for the transaction closing.

D. Document Recording

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.
2. Once the recorded documents are returned to Administrative, they are scanned and saved to the ARDOT 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 ARDOT 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.

A. Initiation of Condemnation:

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 temporary construction easements (TCEs) with a requested completion date.
2. A condemnation letter to the property owner is prepared, and the Administrative Section Head reviews it for accuracy.
3. The letter and tract packet are forwarded to the Division Head for signature.
4. The signed letter is returned to Administrative for mailing and copies are placed in the reading file and tract packet.
5. The condemnation memorandum is prepared and attached to the front of packet.

B. Section Review

1. The condemnation tract packet is forwarded to the Sr. Abstractor for title review.
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. Once all documents have been received, the condemnation memorandum is updated as to date and appraised value.

C. Condemnation Approval

1. The condemnation memorandum and tract packet are forwarded to the Division Head for signature.
2. A copy of the condemnation memorandum is included in tract packet.

3. The condemnation memorandum and packet are submitted to the Assistant Chief Engineer-Design for approval.
4. Upon receipt, Administrative forwards the approved condemnation memorandum and tract packet to the Assistant Division Head for a requested filing date.
5. 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.
6. 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.
7. The file and original condemnation memorandum are submitted to Legal for processing.

#### D. Condemnation Reporting and Records

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.

#### E. Judgments and Settlements

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.
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.

Refer to Section 3 of the User's Guide for specific information about payment requisitions and the voucher process.

### **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.

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.

### **3.11. 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, ARDOT 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 ARDOT 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 curtesy, if relinquished.

##### **A. 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 curtesy 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.

#### B. 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.

#### C. 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 \$ 5,000.00 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 ARDOT for purposes other than highway right of way. Land to be used for ARDOT 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 ARDOT 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 and the estimate of value is deemed reasonable, 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):**

- A. Environmental notifies the FS and FHWA by letter of the need for federal property in the construction of a highway project.

- B. 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.
- C. 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 ARDOT.
- D. 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.
- E. The FS will respond with a decision memorandum indicating any stipulations and conditions.
- F. Environmental and Roadway Design will review the FS response and determine if the ARDOT can accommodate all stipulations and conditions. The two (2) Divisions will resolve any issues with the FS.
- G. Once agreement is made regarding stipulations and conditions, Right of Way will request, by memorandum, for Legal to prepare an easement deed.
- H. 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.
- I. FHWA will submit a letter to the FS requesting the "Letter of Consent" for the Federal Land Transfer and requests any additional stipulations. This letter will also serve as a transfer of authority to FHWA to convey the property.
- J. Upon receipt of the Letter of Consent, FHWA will execute the highway easement deed and transfer the deed to ARDOT's Director for execution.
- K. Administrative will have the deed recorded.
- L. A copy of the recorded deed will be returned to FHWA for distribution to the FS.

### **3.13.2. National Park Service:**

- A. Environmental notifies FHWA and National Park Service (NPS) by letter of land needed for a proposed highway project.

- B. Environmental notifies the affected NPS facility of the proposed Federal Land Transfer.
- C. 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.
- D. 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.
- E. FHWA requests consent from the NPS for the transfer of land to the ARDOT.
- F. If the NPS consents to the transfer, FHWA and the ARDOT negotiate with NPS to reach a determination of mutually acceptable conditions, including stipulations. After conditions are decided, Legal drafts a deed including these conditions.
- G. The draft deed is submitted to FHWA, which forwards the document to the NPS along with all documentation, including plans and environmental documentation.
- H. Upon acceptance by NPS, the Division Administrator executes the deed and transfers it to the ARDOT's Director for execution.
- I. Administrative records the deed and sends a copy to NPS.

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

Any property needed for a highway project involving property owned by the US Army is handled through the 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 ARDOT. Depending upon the provisions of the "Stewardship and Oversight Agreement on Project Assumption and Program Oversight by and between FHWA, Arkansas Division and ARDOT" (S&O Agreement), FHWA approval may also be necessary. 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 proper authority is making the request; and if the change impacts the property; and, if so, establish a fair market value attributable to the proposed change.
- 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.** In accordance with the S&O Agreement for routes where FHWA is responsible, a letter requesting concurrence in the change in control of access is submitted to the FHWA Division Administrator. Copies of all supporting memorandums, letters, a copy of the proposed plans, and valuation attributable to the proposed change are included.
- 3.14.7.** In accordance with federal regulations at 23 CFR 710.403(e), the FHWA must approve the use or disposal of all real property interests including access control for less than market value if those property interests were obtained with Title 23 U.S.C. funding (certain exceptions are set out in in the referenced regulation).
- 3.14.8.** After review, the FHWA informs the ARDOT by letter of the decision regarding the access revision and when applicable, the request for marketing at less than the fair market value, and ARDOT provides a memorandum to the District Engineer and Engineering notifying of the decision.
- 3.14.9.** For approved access changes, 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), and a compensation agreement if necessary.
- 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.** Administrative forwards to Fiscal Services revenues collected because of the change in access to be used on other eligible projects under Title 23 U.S.C.

**3.14.15.** Upon notification of the receipt of recorded documents, Engineering makes permanent revisions to the plans and forwards copies to the District Office.

### **3.15. RIGHT OF WAY USE AGREEMENTS**

#### **3.15.1. General**

ARDOT may allow the use of real property or real property interests for non-highway purposes by a public entity or private party, if the use is in the public interest and does not interfere with the operations of the road facility nor jeopardize its safety. ARDOT may grant these rights through a ROW Use Agreement, for a specified period of time. The process is described in Section 3 of the User's Guide.

#### **3.15.2. Federal Oversight**

In accordance with the S&O Agreement, FHWA approval of the ROW Use Agreement is required, if the real property boundaries encompass any part of the Interstate System.

- A. The process for transmitting the ROW Use Agreement to FHWA and then through ARDOT for execution is described in Section 3 of the User's Guide.
- B. The Division Head transmits the ROW Use Agreement by letter to FHWA requesting approval.
- C. Upon approval by FHWA, the Division Head transmits the proposed ROW Use Agreement and Minute Order to the Assistant Chief Engineer-Design.
- D. The Assistant Chief Engineer-Design submits the proposed ROW Use Agreement and Minute Order to the Director for consideration by the Commission.
- E. After the Commission has passed the Minute Order authorizing the Director to execute the ROW Use Agreement, two original copies are transmitted to the requesting party for signatures.
- F. After two signed copies have been returned, the Director will sign both copies.
- G. One fully executed copy is returned to the requesting party, and the other copy is retained in Right of Way's permanent files.

#### **3.15.3. State Oversight**

The process for transmitting and executing a ROW Use Agreement requiring state oversight is typically handled as a District Special Permit and is described in Section 3 of the User's Guide.

### **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.

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

Refer to Section 3 of the User's Guide for information about preparation of the 1099S form.

### **3.15.2. 1099-MISC – 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-MISC is sent to the recipient. Refer to Section 3 of the User's Guide for information about preparation of the 1099-MISC form.

## **3.16. REAL ESTATE TAXES**

In situations where an entire parcel of property is being acquired, the ARDOT 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 ARDOT is tax exempt, no payment will be made for that portion of the year the property was owned by the ARDOT.
  - A. If yes, a requisition is submitted to Fiscal Services for issuance of a state warrant.
    - 1. A payment for the amount of collected taxes is remitted to the County Tax Collector.

2. Payment is noted in the records, and a request for budget credit is sent to Fiscal Services.

B. 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:

A. Real Property Acquisitions

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

B. 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

C. 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

D. 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 1<sup>st</sup> through December 31<sup>st</sup>. All statistics on this report are shown based on non-participating and federally participating project funding. The following information is included:



A. 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

B. 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

C. 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**

Each month Fiscal Services provides Right of Way with various financial reports related to all charges to Federal-aid participating projects, monthly expenditures for

reconciliation with travel reimbursement forms, and court deposits/withdrawals for condemnation cases for monthly reconciliation.

Refer to Section 3 of the User's Guide for more detailed information about the Job Charge Review, Travel Expense Reconciliation, and Court Deposit Reconciliation.

### **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 ARDOT Accounting Manual Section 40.

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

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

- 3.20.1.** For services estimated to cost \$5,000.00 or less, a vendor(s) in the area is contacted for an estimate of cost.
- 3.20.2.** For services estimated to cost \$5,000.01 to \$20,000.00. (The limit of \$20,000.00 is absolute and should include all costs except tax.) Vendor(s) are contacted, three (3) quotes (by telephone or fax) are obtained and recorded on a Telephone and Verbal Quotations (Form 19-186).

#### **3.20.3. Competitive Bidding**

For services estimated to cost \$20,000.01 to \$75,000.00. (The limit of \$75,000.00 is absolute and should include all costs except tax.). 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 \$75,000.00 limit, the award is to be made to the lowest bidder. However, if the vendor quote to be used is over \$75,000.00, the process must start again using the sealed bid procedures.

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

For services estimated to cost \$75,000.01 or more or when such bidding would result in better pricing for the ARDOT.

#### **3.20.5. 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 ARDOT 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.

Refer to Section 3 of the User's Guide for more guidance and important information about procurement of services.

### **3.21. 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 and staff Title VI training.

### **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.

## **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-Aid 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. MAJOR FUNCTIONS**

Engineering has the following major functions.

- 4.2.1.** Right of way plans and legal descriptions – preparation; progressive development as plans are finalized; and incorporating right of plan changes; review of plans and descriptions prepared by others.
- 4.2.2.** Plans and legal descriptions for projects acquired through County Court Order-Collector Projects.
- 4.2.3.** Plans and legal descriptions for projects acquired through court order-state aid projects.
- 4.2.4.** Plans and legal descriptions for projects acquired in fee
- 4.2.5.** Maintain inventory and mapping of existing right of way.
- 4.2.6.** Plans, descriptions and exhibits for legal proceedings
- 4.2.7.** Prepare plans and legal descriptions for the disposition of surplus property.
- 4.2.8.** Prepare plans and legal descriptions for changes in control of access.

- 4.2.9. Review legal descriptions and plans for Right of Way Use Agreements proposed by others; and if granted, amend right of way plans to reflect permit use area.
- 4.2.10. Prepare plans and legal descriptions for federal land transfers.

### 4.3. RIGHT OF WAY PLAN DEVELOPMENT

Right of way plans are based on the three (3) essential elements listed below. 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.

- 4.3.1. 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.
- 4.3.2. Roadway Design provides the construction centerline and the right of way line based on construction limits.
- 4.3.3. 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 ARDOT. The ground coordinate data is used as the basis of the right of way coordinate geometry database.

Refer to Section 4 of the User's Guide for more information about these functions.

## **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 and State laws and regulations, and ARDOT 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 ARDOT 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 ARDOT 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 §§ 24.102, 103, 104 and 105. Three basic valuation formats may be used.

##### **5.2.1. Waiver Valuation**

This is an uncomplicated valuation method, which may be used for valuations of \$10,000.00 or less. A waiver valuation is not considered an appraisal report and does not technically qualify as one.

##### **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.

### **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.

## **5.3. CONFLICT OF INTEREST**

- 5.3.1.** 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.
- 5.3.2.** The person preparing the waiver valuation or the person approving the waiver valuation shall have no interest, direct or indirect, in the real property being valued.
- 5.3.3.** Payment and fees for making an appraisal or preparing a waiver valuation shall not be based on the amount of the valuation.
- 5.3.4.** No Appraiser or Review Appraiser shall act as a negotiator for real property, which that person has appraised or reviewed.
- 5.3.5.** An appraiser or acquisition agent may act as the negotiator for real property, for which that person has prepared a waiver valuation.

## **5.4. INVITATION TO OWNER**

- 5.4.1.** As soon as feasible, Appraisal staff will send a first contact letter to the property owner with notification of the ARDOT's interest in acquiring the real property, including the ARDOT's obligation to secure an appraisal.
- 5.4.2.** The appraiser will contact the property owner to invite the property owner or the owner's designated representative to attend an inspection of the property. The appraiser shall give sufficient lead time for the owner to arrange to be present or to request an alternative time.
- 5.4.3.** 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.
- 5.4.4.** 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.

## **5.5. JUST COMPENSATION**

Just Compensation represents a full and complete equivalent (usually monetary) to the owner whose land has been taken or damaged for the fair market value of the property taking into account the value of allowable damages or benefits to any remaining property.

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

- 5.5.1** Disregards any project caused decrease or increase in the fair market value of the real property taken.
- 5.5.2** Separately states the just compensation for real property acquired and the amount of damages, if any.
- 5.5.3** Identifies and includes allowable benefits.
- 5.5.4** Considers whether the remaining property or portion thereof is an uneconomic remnant.
- 5.5.5** 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.

## **5.6 WAIVER VALUATION**

- 5.6.1.** When ARDOT determines an appraisal is unnecessary because the valuation problem is uncomplicated, and the total compensation is estimated to be \$10,000.00 or less, based on analysis of available data, it will prepare a waiver valuation document.
- 5.6.2.** The decision to use the waiver valuation is handled during the appraisal assignment process by the Review Appraiser or designated agent.
- 5.6.3.** Even though an appraisal is not required, the ARDOT 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.
- 5.6.4.** If the property owner requests an appraisal of the property to be acquired, the Appraisal Section Head will determine if the request is reasonable, and if an appraisal report should be prepared.

Refer to Section 5 of the User's Guide for detailed information about the preparation of waiver valuations.



## **5.7. APPRAISALS**

### **5.7.1. General Requirements**

After receiving tract assignments, the staff or fee appraisers:

- A. Review the ARDOT's Plans (Right of Way plans and Construction plans)
- B. Prepare Scope of Work, which is a written document between the ARDOT 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.
- C. Follow the requirements of 49 CFR 24.102(c) and Section 5.4 of this chapter for contacting property owners and property owner's inspection.
- D. Conduct a field inspection of affected property

Refer to Section 5 of the User's Guide for additional general requirements for staff or fee appraisers.

### **5.7.2. 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 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.

### **5.7.3. 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. 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 ARDOT may do this when inclusion of the additional approaches would not significantly add to the reliability and support of the final estimate of value.

Refer to Section 5 of the User's Guide for the minimum items required in a detailed appraisal.

## **5.8. 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 ARDOT in considering budget priorities.

- 5.8.1.** 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.
- 5.8.2.** 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.
- 5.8.3.** A memorandum is sent to Administrative indicating the estimated cost of acquiring the needed right of way.

#### **5.9. UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE (USPAP) vs. 49 CFR PART 24 REQUIREMENTS**

Although the appraisal reporting standards of USPAP and 49 CFR Part 24 are generally compatible, the Uniform Act regulation requirements are somewhat more restrictive and must be recognized by any licensed appraiser who is preparing an appraisal report for ARDOT. Following are some of the more detailed Uniform Act regulation requirements, as opposed to basic USPAP requirements.

- 5.9.1.** The report must contain a 5-year sales history of the subject property as opposed to a 3 years sales history.
- 5.9.2.** The appraiser must disregard any project valuation influence on the before value of the property being appraised.
- 5.9.3.** Any comparable sales must be verified by a party to the actual transaction.
- 5.9.4.** The property owner, or their representative, must be offered the opportunity to accompany the appraiser during their inspection of the real property being acquired.
- 5.9.5.** Any appropriate non-compensable damages must be set out in the appraisal report.
- 5.9.6.** Any tenant-owned real property must be identified in the appraisal report.
- 5.9.7.** The appraisal report must set apart real property vs. personal property to the extent warranted.

Refer to Section 5 of the User's Guide for additional information related to the identification of real vs. personal property.

#### **5.10. NUMBER OF APPRAISALS**

- 5.10.1.** The ARDOT 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.

- 5.10.2.** The ARDOT 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.

### **5.11. 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.

Refer to Section 5 of the User's Guide for information about the preparation of the Sales Brochure.

### **5.12. 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.

- 5.12.1.** The Review Appraiser examines the appraisal report to determine that it:
- A. Is completed in accordance with the ARDOT's appraisal specifications and/or contract (for Fee Appraisers).
  - B. Adheres to accepted appraisal principles and techniques in the valuation of real property in accordance with Federal and State laws, regulations, and requirements.
  - C. Contains or references the information necessary to explain, substantiate, and document the conclusions and estimate of fair market value.
  - D. Considers compensable items, damages and benefits, if any, and does not include compensation for non-compensable items.
  - E. 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.

- F. 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.

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

- A. Requests and obtains from the appraiser any needed corrections or revisions.
- B. Makes minor corrections, such as mathematical ones, and note and initial his/her action.
- C. Makes comments and provides additional supporting data as necessary, then initialing.

**5.12.3.** Upon completion of the review, the Review Appraiser reaches one of three possible conclusions:

- A. The appraisal is recommended as the basis for just compensation;
- B. The appraisal is accepted but not recommended; or
- C. The appraisal is not accepted.

**5.12.4.** The review appraiser also attaches a signed and dated certification to the appraisal report setting forth:

- A. 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).
- B. 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.
- C. 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.
- D. That the estimate of just compensation has been reached independently, without collaboration or direction, and is based on appraisals and other factual data.
- E. If appropriate, a value estimate of items compensable under State law but not eligible for Federal reimbursement.

**5.12.5.** 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.

### **5.13. FEE APPRAISERS**

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

- 5.13.1.** ARDOT staffing is insufficient to perform the work within a reasonable time.
- 5.13.2.** A fee appraisal or specialist report is needed for use in a condemnation case.
- 5.13.3.** The unusual character of the work requires the services of a person(s) with highly specialized knowledge and experience not available on the ARDOT staff.
- 5.13.4.** Fee Appraisers will conform to appraisal procedures included in Section 5.7 and 5.9-5.11 of this manual and guidance contained in Section 5 of the User's Guide.
- 5.13.5.** 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.

### **5.14. 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 economic interest in the property.

Refer to Section 5 of the User's Guide for detailed information about valuation of the leasehold interest.

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

- 5.15.1.** 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.
- 5.15.2.** 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.
- 5.15.3.** 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.
- 5.15.4.** No payment shall be made to a tenant-owner for any real property improvement unless:

- A. The tenant-owner, in consideration for the payment, assigns, transfers, and releases to the ARDOT all of the tenant-owner's right, title, and interest in the improvements; and
- B. The owner of the real property on which the improvement is located disclaims all interest in the improvement; and
- C. The payment does not result in the duplication of any compensation otherwise authorized by law.

#### **5.16. TEMPORARY AND PERMANENT EASEMENTS**

- 5.16.1.** It is often necessary during highway construction to obtain land for temporary purposes. Since the ARDOT does not wish to burden itself with excess property, land needed for these purposes is conveyed in the form of a temporary construction 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 ARDOT's use of the land.
- 5.16.2.** Permanent construction easements may be required for purposes such as drainage, access or other highway purposes as determined by the ARDOT. Permanent construction easements are appraised as if the fee interest is being acquired and the remaining lands are treated accordingly.

#### **5.17. UPDATED OR REVISED APPRAISALS**

- 5.17.1.** At the discretion of the Appraisal Section Head, an updated or new appraisal will be obtained should the following affect the property value:
  - A. Additional information presented by the property owner,
  - B. A material change in the character or condition of the property, or
  - C. A significant time delay since the most recent appraisal.
- 5.17.2.** 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.

#### **5.18. ROADSIDE SIGNS**

- 5.18.1.** On-premise signs considered as real property to be acquired are recognized and itemized in the appraisal.
- 5.18.2.** 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.

- 5.18.3. Any sign or billboard that is erected and encroaching on existing right of way is not eligible for consideration within the appraisal.
- 5.18.4. If any doubt or question arises concerning the payment for roadside signs, the matter should be resolved by Right of Way, Legal and Environmental.

### 5.19. DAMAGES AND BENEFITS

- 5.19.1. 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.
- 5.19.2. 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.
- 5.19.3. 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.
- 5.19.4. 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.
  - A. Loss of business profits (possible exception - farm property).
  - B. Loss of goodwill.
  - C. Interruptions of or loss of business, inconvenience, etc. during temporary period of construction.
  - D. The loss of expected profits from a projected subdivision.
  - E. Loss of tenants, business, etc. because of anticipated taking.
  - F. Damage to personal property and moving expense.
  - G. Cost of obtaining or inability to obtain new quarters.
  - H. Annoyance, discomfort, dust, etc. during period of construction.
  - I. Diversion of traffic.
  - J. Circuitry of travel.
  - K. Inability to gain access to a newly located highway. (This does not necessarily exclude severance damages where a unit of land has been severed.)

- L. Dust, and other such items incident to living on a public highway.
- M. Bringing about the change in the character of the neighborhood.

## **5.20. 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.

## **5.21. RECORDS**

Project records are maintained by Appraisal personnel. The records are entered in a computer database file. Refer to Section 5 of the User's Guide for project record information entered in the computer database.

## **5.22. 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.

## **5.23. MISCELLANEOUS ITEMS**

- 5.23.1.** 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.
- 5.23.2.** Fences not shown on plans as construction items are included in the appraisal report.
- 5.23.3.** Structures, water wells, driveways and entrances are considered in the appraisal report as to their contributory value to the property.
- 5.23.4.** Merchantable timber on timberland is graded and quantified by a qualified appraiser and shown in appraisal report as to its market value.
- 5.23.5.** Crop appraisals are made on crops which will not be harvested prior to entry by the contractor.
- 5.23.6.** With the exception of capital assets and uneconomic remnants, oil and gas mineral rights are not acquired by the ARDOT. 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.



- 5.23.7.** Salvage values on all major improvements are estimated in accordance with market information.
- 5.23.8.** Economic rents are estimated from market information and provided to Relocation.
- 5.23.9.** The Review Appraiser will review appraisals submitted by property owners in a similar manner as ARDOT commissioned appraisal reports, and comment by memorandum on the findings.

#### **5.24. 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.

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.

Refer to Section 5 of the User's Guide for information about potentially hazardous uses of a property.

## **SECTION 6**

### **ACQUISITION**

#### **6.1. GENERAL**

ARDOT intends to acquire all needed right of way in an expeditious manner and minimize litigation in the courts while promoting public confidence in federally-assisted land acquisition programs. Property owners shall be treated fairly and consistently. 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 and Arkansas State law.

#### **6.2. ARDOT BASIC ACQUISITION POLICIES**

- 6.2.1.** As soon as feasible, ARDOT will notify property owners in writing of its interest in acquiring certain real property. ARDOT will also provide owners with a written description of its real property acquisition process under Federal and State laws and regulations, and of the owner's rights, privileges, and obligations.
- 6.2.2.** ARDOT will establish its offer of just compensation. Such offer will not be less than the approved appraisal considering all damages and benefits. Negotiations will begin after authority to acquire has been received from FHWA, appraisals have been performed, just compensation established and relocation studies, if necessary, have been completed.
- 6.2.3.** Upon receipt of the waiver valuations or appraisals, Acquisition will prepare a tract packet containing: Right of way and construction plans, cross sections, Acquisition Agent checklist and certification, waiver valuation or appraisal, offer letter, Contract to Sell, W-9, mortgage release, title certification, and for tracts containing improvements, amount of bond required by Property Management in the event the property owner decides to retain the improvements.
- 6.2.4.** Acquisitions involving displaced persons are coordinated with Relocation, so the Acquisition Agent and Relocation Coordinator can schedule a simultaneous visit to the property owner. It is the responsibility of the Acquisition Agent to notify Relocation of the first scheduled appointment with the property owners.
- 6.2.5.** ARDOT will present the tract packet and deliver to the owner it's written just compensation offer amount to purchase the needed real property interests along with a written summary statement providing the basis of the total amount offered for the real property acquired and severance damages to the remaining property. Section 6 of the User's Guide provides a full list of materials to be presented to the owner.

- 6.2.6.** The owner will be given a reasonable period of time to consider the offer and present material the owner believes to be relevant to the value. ARDOT will consider any such submission by the owner and promptly respond to the owner as appropriate.
- 6.2.7.** Based on information provided by the property owner, ARDOT may:
- A. Revise its appraisal;
  - B. Agree to an Administrative Settlement; or
  - C. Reject the counter-offer of the property owner.
- 6.2.8.** ARDOT will make the agreed payment for the real property available to the property owner before requiring delivery of possession of the real property interests. In the event of condemnation, the payment will be deposited for the benefit of the owner with the court.
- 6.2.9.** ARDOT will not engage in coercive actions as a means to achieve an agreement in negotiations. This includes:
- A. Deferring Negotiations. Negotiations shall 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.
  - B. Advancing or Deferring Condemnation. The Acquisition Section Head shall review the Acquisition Agent's progress periodically to ascertain when condemnation is appropriate.
  - C. Taking any other action that is coercive in nature such as intimidation, deferring due diligence, undue duress, etc.
- 6.2.10.** It is acceptable for an ARDOT right of way employee or contractor to both establish value using a Waiver Valuation and then negotiate for the acquisition of the parcel provided the value of the parcel is \$10,000 or less.

### **6.3. ACQUISITION ACTIVITIES WITHIN ARDOT**

- 6.3.1.** 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.
- 6.3.2.** ARDOT will make reasonable efforts to contact the owner of the real property to discuss its offer to purchase the needed real property interests. These negotiations will be conducted with an in-person meeting when logistically feasible. When an in-person meeting is not feasible, the offer and other related materials will be mailed via certified mail with a return receipt to the owner or owner's representative.

- 6.3.3.** All contact related to negotiations of a tract shall be documented in the Acquisition Agent's Narrative. The Narrative shall document the property owner's issues, concerns, and counteroffers along with an explanation of how the Acquisition Agent addressed each item.
- 6.3.4.** The Acquisition Section Head will monitor the activities of the agents assigned to acquire real property interests to assure compliance with all of the ARDOT policies and procedures; and to determine that negotiations are resolved expeditiously.
- 6.3.5.** When reasonable efforts in the negotiations to purchase a property at just compensation have failed, counter offers received from property owners may be considered. ARDOT may authorize an administrative settlement when an authorized official approves such a settlement as being reasonable, prudent, and in the public interest. The following personnel are authorized to approve administrative settlements within the stated amounts:
- A. The Acquisition Section Head has authority to approve administrative settlements up to \$10,000.
  - B. The Division Head has authority to approve administrative settlements up to \$100,000.
  - C. The Assistant Chief Engineer Design must approve administrative settlements greater than \$100,000.
- 6.3.6.** When an agreement is reached with the property owner through negotiations, the property owner executes a Contract to Sell stating all terms of the transaction and containing a legal description of the property rights conveyed.
- 6.3.7.** When an agreement cannot be reached with the property owner and the Acquisition Section Head concurs further contact will not prove beneficial, or the property owner states they do not wish to continue negotiations, the Acquisition Section Head may recommend to the Division Head the property be condemned. Upon the Division Head's concurrence, ARDOT will proceed with acquiring the needed property through an eminent domain lawsuit as outlined in the Administrative Section of this Manual.
- 6.3.8.** If a partial acquisition will leave a property owner with an uneconomic remnant, ARDOT may initially make two offers to the property owner. One offer will include the uneconomic offer; the other will not.
- 6.3.9.** In accordance with 23 CFR 710.505(a), 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 or waiver valuation for the real property, and of all other applicable financial and non-financial assistance provided under 49 CFR part 24 and applicable state laws. If the owner decides to donate, the owner will sign the Donation Agreement provided by the ARDOT.

**6.3.10.** In accordance with 23 CFR 710.505(c), the ARDOT 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.

**6.3.11.** Upon executing Contract to Sell or receiving concurrence from the Division Head to condemn a tract, tract packets containing sufficient detail to demonstrate compliance with 49 CFR part 24 are forwarded to Administrative for processing.

#### **6.4. RIGHTS OF ENTRY**

In exceptional circumstances with prior approval from the owner, Rights of Entry may be obtained for construction purposes before making payment available to the owner.

## SECTION 7

### LOCAL PUBLIC AGENCIES

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

Whenever right of way acquisition is the responsibility of a Local Public Agency (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 applicable Federal and State laws and regulations, Right of Way Operations Manual, and the Stewardship and Oversight Agreement. The Right of Way User's Guide provides additional guidance and information related to completing right of way activities.

#### 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:

- A. County Judge or Mayor
- B. District Engineer or the Designated Representative
- C. Representative from Roadway Design
- D. Representative from Utilities Section
- E. 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.

**7.2.5.** 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**

- A. 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.
- B. 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 the Engineering Section of this Manual.
- C. 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:

- A. Review the Court Order and acquisition documents addressing any issues and questions expressed by the LPA.
- B. Review the Court Order making sure the local official is aware of what responsibilities he/she is to assume, and also what the ARDOT will assume.
- C. Deliver the Court Order in triplicate and distribute when completed.
- D. A copy of the recorded Court Order is sent to the Administrative Section and appropriate District Engineer.

#### **7.3.3. Acquisition Process**

- A. Each LPA will, without exception, follow the provisions of the Uniform Act and all other applicable Federal and State laws and regulations.
- B. The LPA and its representatives will maintain a contact log of the project activities including any contact with the property owners.
- C. As soon as feasible, the LPA representative will send a first contact letter to the property owner with notification of the LPA's interest in acquiring the real property, including the LPA's obligation to secure an appraisal.
- D. The LPA representative will contact the property owner to invite the property owner or the owner's designated representative to attend an inspection of the

- property. The LPA representative shall give sufficient lead time for the owner to arrange to be present or to request an alternative time.
- E. 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 \$10,000.00, no appraisal will be required. If this value is more than \$10,000.00, an appraisal must be made by a qualified appraiser and approved by Appraisal Section prior to the beginning of negotiations with the property owner.
  - F. When requested by the LPA, the ARDOT may consent to perform the appraisal work and provide it to them for further action.
  - G. 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.
  - H. 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 or waiver valuation for the real property and of all other applicable financial and non-financial assistance provided under 49 CFR part 24 and applicable state laws. If the owner decides to donate, the owner will sign the Donation Agreement provided by the LPA.
  - I. Filing of a Court Order may proceed even when, after repeated contacts and attempts to negotiate, the owner refuses to sign the petition or compensation document.
  - J. The LPA will be responsible to see that the condemned owner is properly and legally served the filed Court Order as furnished by the ARDOT.
  - K. 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 ARDOT 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 and all applicable Federal and State laws and regulations.



### **7.4.1. Project Initiation**

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

- A. Project application submitted by Sponsor.
- B. Approval letters sent to Sponsors by Commission.
- C. Sponsor's Consultant prepares plans, specifications and estimate.
- D. If additional right of way is needed, authority to appraise and acquire will be obtained from FHWA upon completion of environmental clearance.
- E. Construction allotment issued by the ARDOT.

### **7.4.2. Sponsor Responsibilities**

- A. Before acquiring additional property, the Sponsor will submit a letter to Right of Way which either:
  - 1. Stipulates the services relative to right of way acquisition, appraisal, relocation, and utilities that the Sponsor will assume, or
  - 2. Requests that the ARDOT handle some or all of these services.
- B. Acquisition and related right of way activities must be accomplished in accordance with the Uniform Act and all applicable Federal and State laws and regulations.
- C. The Sponsor will begin acquisition of right of way upon notification by the Right of Way Coordinator.
- D. The Sponsor will submit a letter certifying the ownership of the needed right of way was acquired in accordance with all applicable Federal and State laws and regulations.
- E. After acquisition activities are complete, the Sponsor will submit a certification letter to the ARDOT 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.
- F. 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.
- G. The Sponsor will grant the right of access to Sponsor's records pertinent to this project and the right to audit by ARDOT and FHWA officials.
- H. The Sponsor will advertise for construction bids.
- I. Sealed bids received by Sponsor and opened at public meeting.

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

- A. When requested, provide the necessary services relative to right of way acquisition, appraisal, relocation, and utility adjustments in accordance with the Uniform Act and the Acquisition and Relocation Sections of this Manual.
- B. 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.
- C. Upon receipt of the Sponsor's certification of right of way (real property) ownership and all contact logs, 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.
- D. Upon verification of compliance with the Uniform Act and all applicable Federal and State laws and regulations, the Right of Way Coordinator recommends certification of the project.
- E. ARDOT 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 ARDOT 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 Relocation 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, as well as additional land and improvements ARDOT acquires in connection with a proposed highway project.
- 8.2.2.** Collecting samples for asbestos testing and, when necessary, hiring an asbestos testing lab and/or asbestos abatement contractor in accordance with ARDOT policies and procedures contained in Section 8.13.
- 8.2.3.** Clearing the right of way for construction, which includes conducting activities necessary for asbestos abatement and hiring demolition contractors in accordance with ARDOT policies and procedures and guidance contained in Section 8 of the User's Guide.
- 8.2.4.** Leasing property acquired by the ARDOT and disposing of surplus property in accordance with applicable ARDOT policies and procedures, and Federal and State laws and regulations.

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

Whenever the acquisition of right of way requires the ARDOT to purchase real property, Property Management will conduct a field inspection of the project area prior to the initiation of negotiations to identify improvements that will be acquired or impacted by the proposed highway project. This includes a thorough investigation of each tract for other improvements such as: water wells and risers, septic systems and private lines. This inspection will include an examination to identify the potential for contamination and whether further investigation should be conducted prior to the initiation of negotiations.

#### **8.4. 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 is responsible for conduction activities necessary to insure the removal of all improvements located within the project area in a timely manner to prevent delay of scheduling of projects to letting.

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

Whenever the ARDOT acquires an improved property, the following options for disposal will be considered. Refer to Section 8 of the User's Guide for details about these options.

##### **8.5.1. Retention by Grantor**

Under this method, the owner pays the salvage value determined by Appraisal, posts a performance deposit or bond, and then removes the improvements.

##### **8.5.2. Public Sale**

If Property Management determines that the improvements can be sold and moved prior to the proposed letting date, and that a sale of the improvements is in the best interest of the state, a public auction will be held.

##### **8.5.3. Demolition Contract**

Under this method, bids for demolition of improvements and clearance of the land will be solicited by Property Management in accordance with Section 3.20 of this manual.

##### **8.5.4. Removal at Highway Construction**

Under this method, improvements are included in the Roadway Construction Contract as removal and disposal items.

#### **8.6. 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 Removal and Disposal (R & D) List.

#### **8.7. RODENT CONTROL**

Property Management will inspect all vacant ARDOT 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, 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.

### **8.8. RENTAL OF ARDOT-OWNED PROPERTY**

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 Relocation Section Head. Most rentals are on a month-to-month basis pending final disposition of the property. Refer to Section 8 of the User's Guide regarding the rental of property.

### **8.9. PROPERTY RENTAL BY ARDOT PRIOR TO ACQUISITION**

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 notify the appropriate Section Head so the property may be considered for negotiation of a mutually acceptable rental agreement.

See Section 8 of the User's Guide for additional information about determining whether ARDOT will rent a property prior to acquisition.

### **8.10. 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.

### **8.11. MANAGEMENT OF RIGHT OF WAY**

ARDOT may allow the use of real property or real property interests for non-highway purposes by a public entity, if the use is in the public interest and does not interfere with the operations of the road facility nor jeopardize its safety. ARDOT may grant these rights through a Right of Way (ROW) use agreement, for a specified period of time. Administrative Section is responsible for the preparation and oversight of ROW Use Agreements. The process is described in Section 3 of the User's Guide.

## **8.11. RELINQUISHMENT OF RIGHT OF WAY**

- 8.11.3.** 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.
- 8.11.4.** Highway facilities that are no longer needed for ARDOT purposes in which Federal funds participated in either the right of way or construction may be relinquished to another government agency for continued transportation use.
- 8.11.5.** 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 ARDOT and the other governmental agency.
- 8.11.6.** The other governmental agency usually furnishes the right of way to the ARDOT for construction of the project.
- 8.11.7.** After construction, the lands are relinquished to that agency and permanent maintenance becomes their responsibility.

## **8.12. SURPLUS PROPERTY**

### **8.12.3. General**

When right of way is no longer necessary or desirable for highway purposes, the property may be declared surplus by the Commission. Refer to ACA 27-67-321 and 27-627-322 and to Section 8 of the User's Guide for this process, in accordance with Act 1315 of 1997.

### **8.12.4. Non-controlled highways, limited access controlled highways, and fully controlled non-Interstates:**

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

### **8.12.5. Interstate:**

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.

#### **8.12.6. Fee Owned Right of Way**

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 or by a negotiated 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 portion of the original right of way, the original property owner may reacquire the property at the current fair market value as determined by three licensed appraisers. Refer to Section 8 of the User's Guide for the release process.

#### **8.12.7. Fee Owned Capital Assets, Including Uneconomic Remnants**

In accordance with state law, the party from whom the property was originally acquired, their heirs, successors, or assignees are notified that the property may be sold. First right to repurchase the surplus property does not have to be offered. The property may be disposed of at a public sale or by a negotiated sale twenty-two (22) days after the date of the notification. Refer to Section 8 of the User's Guide for the release process.

#### **8.12.8. 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. Refer to Section 8 of the User's Guide for this process.

### **8.13. 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.

Refer to Section 8 of the User's Guide for information about inspection, abatement and removal.

#### **8.14. 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. Refer to Section 8 of the User's Guide for this process.



## **Section 9**

### **Relocation**

#### **General Statement**

One purpose of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (hereinafter referred to as the Uniform Act) is to reduce the disproportionate injury suffered by persons who must move or move their personal property due to a highway project. ARDOT offers a Relocation Assistance Program to provide relocation assistance, advisory services, and payments to all persons who are displaced by highway projects, in accordance with The Uniform Act and its implementing regulations, 49 CFR, part 24. It is the policy of ARDOT that no person shall be displaced from their residence unless and until comparable replacement housing has already been provided for or is built. The payments and services provided by the Relocation Assistance Program assure that there is a decent, safe, and sanitary replacement dwelling for any eligible person who must move from their residence. It also provides for advisory services and payments to all eligible persons, including businesses, farms and non-profit organizations, who must move or move their personal property.

#### **9.1. PLANNING**

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

As a part of project planning, Relocation may be called on to prepare an estimate of the cost to provide relocation services and payments. This will generally occur at or about the 50% complete plan stage.

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

At the request of the Environmental Division, a CSRS form will be completed by Relocation for use in various environmental documents and public meetings. The form will provide an estimate of the number of households and businesses that are proposed to be displaced. Relocation will also determine the availability of comparable replacement housing, and an estimate of farms and commercial/industrial properties that could provide replacement locations for displaced persons. The statement will also detail any special relocation advisory services that may be necessary including Housing of Last Resort.

##### **9.1.3. Public Meetings**

Relocation personnel attend public meetings to discuss the services and payments available to displaced persons.

#### **9.1.4. Initial Relocation Contact**

The Relocation Section Head will designate adequate personnel to interview all potential displaced persons. Since this interview may occur before a project is finally approved, care must be exercised to assure that all potential displaced persons understand that the plan is not final and will be subject to change. The purpose of these initial contacts is to determine the preferences and needs of those who may be displaced. A copy of the Relocation Assistance Program booklet will also be provided to each potential displacee.

### **9.2. RELOCATION NOTICES**

The effective performance of the relocation program depends on the timely delivery of various notices that impact the displacement process. Relocation will assure that proper notices are hand-delivered or sent via certified mailed with a return receipt requested. All notices are written and in plain, understandable language. Measures such as translation for persons with LEP will be taken to ensure Civil Rights compliance.

#### **9.2.1. General Information Notice**

Provides general information to persons potentially displaced on a project. After the initial relocation contact, all potentially displaced persons will receive a General Information Notice that provides a general written description of ARDOT's Relocation Assistance Program.

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

Provides persons to be displaced a minimum notice of 90-days before lawful occupants can be required to vacate and/or give possession of the real property. 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.

A subsequent notice, the Final Vacate Notice, provides at least a 30-day, date specific notice to vacate if a person remains in occupancy after ARDOT takes possession of the property. Possession of the property means:

- A. In cases of negotiated settlement, the displaced person has been paid for the acquired property; or
- B. In cases of condemnation, the acquisition amount has been deposited in the Court.

The 30-day notice will not shorten the 90-day period.

#### **9.2.3. Urgent Need**

In certain emergency situations, the issuance of 90-day and 30-day notices may not be possible. In that case, ARDOT will document its decision to waive the normal

possession periods. Such situations are unusual and associated with major health or safety issues.

#### **9.2.4. Notice of Relocation Eligibility**

Eligibility for relocation assistance begins on the earliest of the date of a Notice of Intent to Acquire, the initiation of negotiations, or actual acquisition. All persons to be displaced will be provided with a written Notice of Relocation Eligibility advising them of their eligibility for applicable relocation assistance. This notice will be delivered in conjunction with the 90-Day Notice, either in person or by first-class mail, with a return receipt requested.

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

In certain unusual circumstances, ARDOT may choose to establish eligibility for relocation payments for persons to be displaced prior to the initiation of negotiations. The information regarding such a decision will be maintained in the relocation file. Such an action will require a Notice of Intent to Acquire to be delivered to the party to be displaced. The Notice will be in writing and delivered in person or via first-class mail with a return receipt requested, along with an ARDOT Relocation Brochure.

When a notice of intent to acquire is furnished to a tenant, ARDOT will inform the property owner and deliver a copy of the notice to the property owner.

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

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

The Relocation Coordinator may attend appraisal inspections with the parcel appraiser to assist in distinguishing realty from personalty, and determining ownership of all items. The agreed realty-personalty report will be maintained in both the appraisal file and relocation file.

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

For those parcels that involve displacement of person, a copy of the appraisal will be provided to Relocation.

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

To assure the timeliness of relocation assistance and information of benefits, the Acquisition Agent and Relocation Coordinator will coordinate their schedule of contacts with the owner and occupants.

The ARDOT policy is that residential owner-occupants are provided relocation assistance assurances and payment information simultaneously with the offer of just compensation. Residential tenant-occupants, businesses, farms and non-profit organizations will be contacted regarding relocation eligibility, assistance and payments in a prompt and timely manner following the initiation of negotiations.

Refer to Section 9 of the User's Guide for a description of roles and responsibilities related to coordination with other sections.

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

Prior to an offer of relocation payments being made to a potentially displaced person, the Relocation Coordinator should:

- 9.4.1.** Verify that occupancy is lawful and continuing;
- 9.4.2.** If the potential displacee is not lawfully present in the United States, inform the occupant of their right to appeal the ineligibility of relocation payments;
- 9.4.3.** For persons lawfully present in the United States, obtain a signed certification of lawful presence;
- 9.4.4.** Verify length of occupancy; and
- 9.4.5.** For displaced residential owners and tenants, complete the required replacement housing studies

#### **9.5. RELOCATION ELIGIBILITY PRESENTATIONS**

##### **9.5.1. Residential Owner-Occupants**

The ARDOT policy is that residential owner-occupants are provided relocation assistance assurances and information on benefits simultaneously with the offer of just compensation. The Relocation Coordinator and the Acquisition Agent will meet jointly with the residential owner-occupant. After the offer to acquire the real property is made to the owners, the Relocation Coordinator will explain the relocation assistance program requirements, advisory services, present information regarding the relocation payments, and deliver the 90-Day Notice and Notice of Relocation Eligibility.

##### **9.5.2. Residential Tenant Occupants**

All lawful residential tenant-occupants have eligibility for both relocation payments and services. ARDOT policy is that tenant-occupants are promptly contacted after the initiation of negotiations and offered relocation assistance and payment information. Promptly after the initiation of negotiation with the owner of the property, the residential tenant-occupants will be contacted to apprise them of their eligibility, relocation program requirements, payment amounts and advisory services, and to deliver the 90-Day Notice and Notice of Relocation Eligibility.

### **9.5.3. Businesses, Farms and Non-Profit Organizations**

Promptly after the initiation of negotiation for the property on which the business, farm or non-profit organization is sited, the owner (or representative) of the business, farm or non-profit organization will be contacted to apprise them of their eligibility, relocation program requirements, payment amounts and advisory services, and to deliver the 90-Day Notice and Notice of Relocation Eligibility. For owners, this may occur simultaneously with the initiation of negotiations.

### **9.5.4. Personal Property Only Moves**

Promptly after the initiation of negotiation for a parcel that will require the move of personal property located thereon, the owner of the personal property will be contacted regarding relocation assistance payments and services.

## **9.6. RELOCATION ASSISTANCE ADVISORY SERVICES**

The Relocation Coordinator will determine through discussions with the displaced person the nature and type of advisory services needed. The Relocation Coordinator will then make available to each displaced person advisory services as are necessary and appropriate to meet their needs. These services include assistance in locating comparable replacement housing or suitable replacement nonresidential sites and referrals to other resources, such as financing, moving specialists and Federal, State and local housing or other assistance programs. These services will be provided throughout the relocation process, beginning prior to displacement and continuing until all claims have been resolved.

Refer to Section 9 of the User's Guide for more information about the relocation assistance advisory services program.

## **9.7. RELOCATION PAYMENTS**

ARDOT will promptly pay all eligible relocation claims that it determines are actually incurred, reasonable and necessary, and within the permitted latitude of the law and regulations. If payment is denied for any claimed amount, the displaced person will be informed of the basis of the denial and provided information on the appeal process for the determination. All persons claiming relocation payments must be lawfully present in the United States. As a function of the advisory assistance role, the Relocation Coordinator will assist all displacees in filing claims for payment.

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

Eligible moving and related expenses and various moving options exist as set out in law and regulation, specifically 49 CFR Part 24, Subpart D. Any person required to move or move their personal property from real property acquired by ARDOT will be paid the actual, reasonable and necessary costs of such a move. The Relocation Coordinator will

explain the moving options to displaced persons and assist them in selecting an appropriate option(s).

Refer to Section 9 of the User's Guide for information about the move options available to residential and nonresidential displaced persons.

### **9.9. RESIDENTIAL MOVES – ELIGIBLE MOVING EXPENSES**

Any displaced person who moves from a dwelling is entitled to the actual, reasonable and necessary cost of such a move including certain eligible expenses, as ARDOT determines appropriate. Any person who moves a mobile home that is personal property is also entitled to the actual, reasonable and necessary expenses as determined by ARDOT for the move of their mobile home.

Refer to Section 9 of the User's Guide for a list of eligible moving expenses for residential displaced persons.

### **9.10. BUSINESS, FARM AND NONPROFIT ORGANIZATION MOVING EXPENSES**

Any business, farm or nonprofit organization that qualifies as a displaced person is entitled to a payment for the actual cost of moving and certain related expenses as ARDOT determines to be reasonable and necessary.

Refer to Section 9 of the User's Guide for a list of eligible moving and related expenses for a business, farm or nonprofit organization.

### **9.11. PERSONAL PROPERTY ONLY MOVING EXPENSES**

Any person who is required to move personal property, but is not displaced from a dwelling, business, farm or nonprofit organization, is entitled to a payment for the actual moving expenses incurred and certain related expenses as ARDOT determines to be reasonable and necessary.

Refer to Section 9 of the User's Guide for a list of eligible moving expenses for a personal property only move.

### **9.12. TYPES OF ELIGIBLE MOVING EXPENSES**

ARDOT will pay those types of moving costs as required by the Uniform Act and all applicable Federal and State laws and regulations. Moving costs must be determined by ARDOT to be actual, reasonable and necessary.

Refer to Section 9 of the User's Guide for types of eligible moving expenses.

### **9.13. INELIGIBLE MOVING AND RELATED EXPENSES**

Certain moving and related expenses are ineligible for payment. A full list of these ineligible costs may be found in Section 9 of the User's Guide.

#### **9.14. NOTIFICATION AND MONITORING OF THE MOVE**

For nonresidential displacements, the displaced person must notify the Relocation Coordinator of the anticipated date of the start of their move, and permit ARDOT to monitor the move when it determines it appropriate or necessary. For residential displacements, the displaced person must notify the Relocation Coordinator of the anticipated date of final move out.

#### **9.15. REESTABLISHMENT EXPENSES FOR BUSINESS, FARM AND NONPROFIT ORGANIZATION**

In addition to payments for moving and related expenses, a small business, farm or nonprofit organization may receive a payment, not to exceed \$25,000, for expenses actually incurred to relocate and reestablish its operation at a replacement location. The eligible expenses and limitations of this additional payment is discussed in Section 9 of the User's Guide.

#### **9.16. FIXED PAYMENT IN LIEU OF ACTUAL MOVING COST AND REESTABLISHMENT EXPENSES**

A business, farm or nonprofit organization may seek a fixed payment in lieu of actual moving and related expenses and reestablishment payments. The fixed payment is based on the average annual net earnings of the business, with a minimum payment of \$1,000 and maximum payment of \$40,000. The limitations and eligibility requirements for the fixed payment, as well as the method of payment computation are more fully discussed in Section 9 of the User's Guide.

#### **9.17. REPLACEMENT HOUSING PAYMENTS**

ARDOT will provide financial assistance to residential owner-occupants and tenant-occupants, as ARDOT determines appropriate, to purchase or rent comparable, decent, safe and sanitary housing for all eligible persons displaced from a dwelling unit. Such housing will be made available prior to displacement. The types of replacement housing payments, specific limitations and eligibility requirements, and payment computations are more fully discussed in Section 9 of the User's Guide.

#### **9.18. HOUSING OF LAST RESORT**

Whenever an ARDOT program or project cannot proceed in a timely manner due to the lack of comparable replacement housing within the monetary limits of the relocation program, ARDOT will provide such housing through alternate means or additional financial assistance as ARDOT finds to be reasonable. ARDOT will document each file as to the reason for the use of this provision.

### **9.19. EVICTION FOR CAUSE**

All occupants of real property are initially presumed to be eligible for relocation payments and services. Persons determined to be unlawfully present in the United States and those lawfully evicted prior to ARDOT displacement are not considered to be eligible for relocation assistance and payments. ARDOT may choose to continue eligibility of persons if it can be shown that they were evicted to thwart their ability to receive relocation benefits.

### **9.20. ALIENS NOT LAWFULLY PRESENT IN THE UNITED STATES**

Each person seeking advisory assistance and relocation payments must, as a condition of such services and payment, certify that they are legally present in the United States, as a citizen, a national of the United States, or an alien who is lawfully present in the United States. The denial of such payments may be appealed.

### **9.21. APPEALS**

The relocation program necessarily involves many administrative decisions based on laws, regulations and precedent. Any person may file a written appeal with ARDOT in any case which the person believes ARDOT has failed to properly determine the person's eligibility for or amount of a relocation payment as prescribed by the Uniform Act. The Relocation Coordinator will provide information and assistance to file such an appeal. Appeals will be carried out in accordance with the Arkansas Administrative Procedures Act.



## SECTION 10

### DEFINITIONS

**Accepted Appraisal** - An appraisal accepted by the ARDOT 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** – ARDOT or other Agency, which has the authority to acquire property by eminent domain under Arkansas law, and an Agency or person which does not have such authority.

**Acquisition** – Activities to obtain an interest in, and possession of, real property.

**Administrative Settlement** - A settlement reached prior to filing a condemnation proceeding based on value related evidence, administrative consideration, or other factors approved by an authorized agency official.

**Agency** - The Federal Agency, ARDOT, government 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 ARDOT 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 ARDOT deems it necessary).

**Citizen** - Includes both citizens of the United States and noncitizen nationals.

**Comparable Replacement Housing** - means housing 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 ARDOT 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 90 days prior to initiation of negotiations (90-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 ARDOT 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.

**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".

**Court Settlement or Court Award** - Any decision by a court that follows a contested trial or hearing before a jury, commission, judge, or other legal entity having the authority to establish the amount of just compensation for a taking under the laws of eminent domain.

**Damages** – The loss in the value attributable to remainder property due to the severance or consequential damages that arise when only part of an owner's real property is acquired.

**Decent, Safe and Sanitary (DSS) Housing** – 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 ARDOT. 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 ARDOT and the officers, agents and employees thereof, that a dwelling is decent, safe and sanitary.

**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 the Uniform Act 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, ARDOT, and any State Agency, or person carrying out a program or project with Federal financial assistance, which causes a person to be a displaced person.

**Disposal** – The transfer by sale or other conveyance of permanent rights in excess real property, when the real property interest is not currently or in the foreseeable future needed for highway right of way.

**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.

**Early Acquisition** - Acquisition of real property interests by an acquiring agency prior to completion of the environmental review process for a proposed transportation project.

**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:** FHWA or 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** - ARDOT acting through the FHWA.

**Legal Settlement** - A settlement reached by an authorized legal representative or a responsible official of the acquiring agency who has the legal power vested in him by State law, after filing a condemnation proceeding, including agreements resulting from mediation and stipulated settlements approved by the court in which the condemnation suit had been filed.

**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 Arkansas law, together with the credit instruments, if any, secured thereby.

**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.

**Option** - The purchase of a right to acquire real property within an agreed-to period of time for an agreed-to amount of compensation or through an agreed-to method by which compensation will be calculated.

**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.

**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.

**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 or Real Property Interest** - Any interest in land and any improvements thereto, including fee and less-than-fee interests such as: temporary and permanent easements, air or access rights, access control, options, and other contractual rights to acquire an interest in land, rights to control use or development, leases, and licenses, and any other similar action to acquire or preserve right of way for a transportation facility.

**ROW Use Agreement** - Real property interests, defined by an agreement, as evidenced by instruments such as a lease, license, or permit, for use of real property interests for non-highway purposes where the use is in the public interest, consistent with the continued operation, maintenance, and safety of the facility, and such use will not impair the highway or interfere with the free and safe flow of traffic.

**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.

**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** - Arkansas or 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** - ARDOT or 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, for public purposes, under Arkansas law.

**Stewardship/Oversight Agreement** - The written agreement between the ARDOT and FHWA that defines the respective roles and responsibilities of FHWA and ARDOT for carrying out certain project review, approval, and oversight responsibilities.

**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.

**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 ARDOT has determined has little or no value or utility to the owner.

**Uniform Act** - The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Public Law 91-646, 84 Stat. 1894; primarily codified in 42 U.S.C. 4601 et seq.), and the implementing regulations at 49 CFR part 24.